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Senate

(Legislative day of Tuesday, December 18, 2001)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable E. BENJAMIN NELSON, a Senator from the State of Nebraska.

PRAYER

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

Dear Father, sovereign of this Nation, we press on with the work of the Senate with the message and meaning of this sacred season in our hearts. Although the Senators worship You in different liturgies based on their religious backgrounds, they all believe in You as sovereign of this Nation. Help them and their staffs work together in a way that exemplifies to our Nation that people who trust in You can trust one another; that people who experience Your goodness can be people of good will. May this historic Chamber be a place of creative exchange of insight that leads to greater unity around shared convictions about what is best for America. You are here listening, watching, judging. When we end this week, may we hear Your affirmation: ''Well done, you have pulled together for the sake of America.'' Amen.

PLEDGE OF ALLEGIANCE

The Honorable E. BENJAMIN NELSON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 20, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable E. BENJAMIN NELSON, a Senator from the State of Nebraska, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. NELSON of Nebraska thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2002—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to consideration of the conference report to accompany H.R. 3061 which the clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3061) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2002, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment and the Senate agree to the same, signed by all conferees on the part of both Houses.

(The conference report is printed in the House proceedings of the RECORD of Wednesday, December 19, 2001.)

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the time that has been assigned run equally against all parties during this time. There is no one here on the bill.

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

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

NEBRASKA SENATORS

Mr. REID. Mr. President, until someone comes to work on these bills, I would like to mention one thing. I wanted to say this last night. The hour was late. The Presiding Officer was the same.

I have had the good fortune during the time I have served in the Senate to work with some outstanding Senators. The two who come to my mind are from the State of Nebraska. Senator Jim Exon was such a unique individual. I have so many fond memories of this great big man who had such a big body, but in that big body was a great big heart. He was a tremendous Senator. I miss him a great deal.

Then, of course, to serve with BOB KERREY is an experience. He was truly a free spirit, someone who was not only an American hero, having the Congressional Medal of Honor, but someone who was as valiant in his legislative duties as he was in his military duties.

Following in the footsteps of these two men whom I enjoyed serving with so much is the Presiding Officer, a man who served as Governor of the State of Nebraska and came to the Senate with great credentials from my perspective. On paper, the Presiding Officer has all the credentials to be a great Senator. A lot of people are good on paper in all walks of life. But in the short time I have served with the Presiding Officer as a Senator from Nebraska, his credentials certainly have served him well in the Senate because the Presiding Officer is as good a person as he is on paper.

I extend my congratulations to the people of Nebraska for sending to the Senate a person with such great qualities. I am sure the people of Nebraska appreciate Senator BEN NELSON. But I am not sure they appreciate him enough. For those of us who work personally with the Presiding Officer on a daily basis, in some of the most difficult legislative matters that ever come before this country, I can say without hesitation that Senator BEN NELSON is in the same caliber as Nebraskans who have served before him and with whom I have had the honor of serving: Senators Exon and KERREY.

Nebraska should be very proud of the dignity and the service of the three people I have had the good fortune of serving with in the Senate.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

ECONOMIC STIMULUS

Mr. THOMAS. Mr. President, I rise to make a couple of general comments. As we move towards perhaps the final day, certainly very close to the final day of our time here, I hope we can move forward. We have three appropriations bills that we have been looking forward to discussing and have to finish before we end. There will probably be some discussion on particularly the Defense appropriations.

Nevertheless, the bill and the issue that I suppose we will talk about the most, and seems to be one that is not agreed to, is that of economic stimulus. Certainly that will be coming forward. We have talked about it for a very long time. The President has talked about it. We have had meetings about it. The House obviously has worked out a separate proposal for us. I am hopeful that as we undertake this effort, we will decide, as we should on all of the topics that come before us, what do we want to see as the result.

So often we get wrapped up entirely with the details of what is going on here, and the details obviously are important, but what is more important is what it is we want to accomplish and how will what we are talking about do that.

Certainly, I hope we talk about what is the purpose of an economic stimulus package. Obviously, we are in a recession. No one seems to know exactly what the best techniques are to deal with stimulating the economy. We have listened to all kinds of economists, including our nationally celebrated economists. There are different ideas about that. Certainly, we want to see if we can't create more jobs, if we can't strengthen the economy.

If it is called an economic stimulus, then certainly that has to be the purpose.

How do you do that? You do it by creating jobs and investment. You do it by putting more money in the hands of the people in the countryside, particularly those who have suffered, of course. That is another alternative. The proposals we have had do both of those things in varying degrees. So I hope we can do that.

There are those, of course, who believe that at this point an economic stimulus is not necessary. I don't agree with that, but it is a point of view. I was thinking this morning, listening to the TV, about politics. This is politics. Well, having different views is not unusual. Everyone in the country has different views. In many places, that is defined as standing up for what you believe. When we disagree here, it is suddenly called politics. I understand that. There are legitimate, different views.

I hope we can keep in mind that certainly one of the major purposes of an economic stimulus is to stimulate the economy, to create jobs. We are not looking for a continuing assistance program. We are looking for something that will cause jobs to come back, so people can spend money. The other thing that, obviously, we want to do is assist those who have suffered as a result of the September 11 tragedy.

I look forward to it. I hope we can do something that will have an impact. Frankly, we will be limited in time, but I hope we don't establish new entitlement programs through this kind of emergency program. We ought to really be serious about seeing what we can do that is effective in measuring against the results we would like to have.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

STIMULUS PACKAGE

Mr. REID. Mr. President, I didn't want this morning to disturb the mood of our last day here. Therefore, I didn't do anything about the message delivered from the House this morning. When she came in and bowed—and I appreciate the dignity that creates here—I had a big smile on my face. I wrote on my pad here ''laugh,'' because it is laughable.

A stimulus package now? What in the world are they trying to do in the House of Representatives? They are going home at 1:30 this afternoon. Did they think, after we worked on this so long and hard, we are going to accept that in the Senate? It makes the original bill they did that was so bad look good.

So I hope the American public understands the charade. That is what it is. The House of Representatives worked until 4:30 this morning coming up with a stimulus package strictly for political purposes. It has no substantive merit whatsoever. They knew that, and they know it has no chance of passing over here. That is too bad.

We started out with a stimulus package that made sense. Senator BYRD and I wanted to do something to create jobs. We knew that for every billion dollars spent on road building, 42 thousand jobs are created, and those 42,000 people would, of course, pay taxes and buy refrigerators and cars. The Republicans would not go along with that. We were always attempting to protect the American worker—their unemployment benefits, health benefits.

Because of the very narrowminded of the Republican House of Representatives, we are unable to do anything. That is too bad. I am disappointed that we have, on the last day of the session, this silly package brought to us from the House of Representatives. That is what it is—a silly package.

COMPLIMENTING SENATOR HARKIN

Mr. REID. Mr. President, changing the subject for a minute, while I still have the floor, I have spent 2 or 3 weeks with the Senator from Iowa on the farm bill. He has done a wonderful job getting the bill out of committee, trying to satisfy the disparate groups throughout America that have farm interests. He has done that. Again, because of a filibuster, we were unable to bring the bill forward. He is here again today as chairman of the Labor-HHS Appropriations Subcommittee, which is, other than Defense, the biggest money-spending bill we have.

There are so many important provisions for the State of Nevada and every State in our Nation. I hope people in Iowa understand what a resource they have in TOM HARKIN, chairman of the Agriculture Committee, chairman of the Labor-HHS Appropriations Subcommittee, one of the most senior members of the Appropriations Committee. I didn't have a chance, because of the parliamentary situation in the

last few days, to say anything complimentary about my friend. I want him to understand, on behalf of the entire Democratic caucus, how much we appreciate what he does. He is a resource that is invaluable to the Senate and this country.

Mr. HARKIN. I thank my friend from Nevada for the very kind words. I, again, thank him for all of his great support and help as we tried to get the farm bill through, but it was stopped by the other side. I thank my friend from Nevada for his great help on getting our appropriations bill through.

As Senator REID said, this is the second largest appropriations bill—second only to Defense. But what is important is that this is the appropriations bill that binds our country together. This is the bill that makes America unique in the world. This is the appropriations bill that says to every kid in America: No matter where you are born, no matter the circumstances of your birth, you are going to get a good education; we are going to put the resources out there. No matter what your resources are, we are going to get you the funds you need to go to college, or for job training if you don't want to go to college.

This provides the underpinning of our medical research. This bill underpins the health care of America in so many ways. This is the bill that provides all of the support for our jobs, our Job Corps, our training programs, all of the worker training programs that come through the Department of Health. This is the bill that covers the Department of Education, the Department of Health and Human Services, and the Department of Labor, and all biomedical research.

So I am very proud and I feel very privileged to be a Senator, but also to be on the Appropriations Committee and to chair this subcommittee that I believe speaks about what America really is. I am also on the Defense Appropriations Subcommittee. That is the committee that defends our interests around the globe. This is the subcommittee that makes America what America is in the world community—unique among nations.

I am proud and privileged to bring to the Senate Chamber this morning the conference report on the Labor, Health and Human Services, Education and related agencies appropriations bill.

First, I thank my good friend and longtime partner in this effort, Senator SPECTER. We have had a great partnership for a number of years. Some time ago, I was chairman of this subcommittee, and he was my ranking member. Then when the other party took control of the Senate, he became chairman and I was ranking member. Now I am chairman again and he is ranking member again. We have had a great partnership, going back now just about an even dozen years. I thank him and his staff, who I will name after a bit, for helping put together this bill on a truly bipartisan basis.

The conference report is a good bill. It is one I can strongly recommend to my colleagues. Senator SPECTER and I worked with our subcommittee members, the House leaders, Congressmen OBEY and REGULA, to help shape it. We have done our best to accommodate the literally thousands of requests we have received from our colleagues.

I wish to highlight some of the main features of our conference report.

First, it takes a number of important steps to improve the quality, affordability, and accessibility of health care in America. We included a record increase for the National Institutes of Health of $3 billion—again, building upon the excellent work done when Senator SPECTER chaired this subcommittee, in meeting the stated goal of the Congress to double NIH funding over 5 years. So we put a record $3 billion into this bill for NIH.

We have also combined with that an additional approximately $200 million in NIH resources related to bioterrorism, which is included not in this bill but in the supplemental appropriations bill. This keeps us on track in doubling our commitment. This action holds the hope of improving the lives of millions of Americans plagued by killers such as Alzheimer's, cancer, Parkinson's, heart disease, diabetes, osteoporosis, and so many other things.

The conference agreement also makes a major improvement in access to affordable health care by providing a $175 million increase to community health centers and major increases in critical prevention activities, such as cancer and heart disease screening. These changes will save lives and improve health around the country.

As a Senator from Iowa and cochair of the Rural Health Caucus of the Senate, I am pleased to report that the agreement includes a major new effort to improve health care in rural areas and small towns.

We will bring more doctors, nurses, and other health professionals to places they are needed by expanding the National Health Service Corps and the Nurse Loan Repayment Program. Our struggling rural hospitals are given help to deal with Medicare paperwork and help to expand into other activities, such as adult daycare.

This agreement also includes substantial new resources to improve education. While I am disappointed that additional funds were not provided by beginning to fully fund special education as a part of the education reform bill, I believe we did a good job with the resources we were provided.

The agreement makes college more affordable for millions of young people by increasing the Pell grant maximum to $4,000. We increase the TRIO Program by $72.5 million, which brings total funding for the TRIO Program to $802 million.

The bill also increases funding for title I reading and math by $1.6 billion for a total of $10.35 billion to title I.

We increase afterschool programs by $154 million. We finally broke the $1 billion threshold. We provide for $1 billion in afterschool programs.

We increase the funding for teacher quality by three-quarters of a billion dollars. The total we have in this bill for teacher quality is $2.85 billion.

The Senate bill contained nearly $1 billion when we passed it to make needed repair to our schools, including security enhancements. We started this initiative last year. It has been a great success. I am very disappointed we could not reach an agreement to continue it this year. However, I have made it clear that I will bring the issue back again next year. We have schools crumbling all over America, and I think it is a legitimate role for the Federal Government to play to help our States and local communities repair, rebuild, and modernize their schools to make them adaptable for the 21st century. The average age of our schools now is well over 40 years, many 50 years old and over 75 years old. They need to be upgraded. They need to be modernized. Our property-tax payers in my State and I know in the Presiding Officer's State are overburdened as it is. Property tax is not a real reflection of one's ability to pay, and yet that is still how we fund the rebuilding of our schools across America.

We started on this last year. I am disappointed we could not continue it this year, but hopefully we will be back again next year to meet that need.

I am also pleased this agreement improves our commitment to worker training and safety. We funded our State unemployment offices to handle the increased caseloads they are facing now and probably will face for the remainder of the winter. At this time of economic downturn, these investments are crucial.

I wish to highlight a substantial initiative in this bill to improve services to our Nation's elderly. We will allow more homebound seniors to receive Meals on Wheels. We provide a major increase in services, such as adult daycare, to help the elderly stay in their own homes and to give their loved ones who are taking care of them needed respite care and support.

Finally, our subcommittee held a series of four hearings on the need to better protect Americans from the threat of bioterrorism. Based on these hearings, Senator SPECTER and I put together a comprehensive antibioterrorism funding plan.

While the agreement before us contains a modest level of funding to address this need, our comprehensive $3 billion plan is included in the homeland security package which we will work on later today on the Defense appropriations bill. Between the two, we will be substantially improving the security of Americans against a bioterrorist attack. For the record, in the bioterrorism supplemental, we have provided $865 million to expand State and local public health capacity, to expand the health alert network, and for

round-the-clock disease investigators in every State.

We provided $512 million to acquire enough smallpox vaccine for every American, and hopefully the smallpox vaccine will be available for every American sometime towards the end of next year, maybe as early as September of next year.

We included $593 million to beef up our entire vaccine stockpile in America; $135 million to help our hospitals with surge capacity. If, God forbid, we did have a terrorist attack, our hospitals in so many areas just would not be able to handle it. We have provided $135 million that will help hospitals meet that surge capacity if they require it.

We provided $155 million to improve vaccine research and lab capacities at NIH. And we included up to $10 million for a new national tracking system for deadly pathogens such as anthrax. Right now, we track every microscopic ounce of radioactive material that is in our powerplants, in our laboratories, and weapons. We keep a good inventory and tracking system of radioactive nuclear materials, but we do not have such a capacity with our deadly pathogens, as we have seen with anthrax.

It now looks as though the anthrax that was sent to Senator DASCHLE's office and Senator LEAHY and others that came through the mail originated in this country. There are all kinds of stories in the press of it coming through Fort Detrick, MD, and Dugway in Utah, but no one knows because we have never had in place an inventory and tracking system for deadly pathogens. The money we appropriated will begin the process of making sure this situation does not happen again.

We put in $71 million to improve security at our Nation's laboratories.

That is all the money we put into the bioterrorism portion of the bill which will be in the Defense appropriations bill later today.

I believe we have a good bill of which we can be proud. It is the product of a bipartisan compromise. As I said, it is not perfect. Some of us wanted different provisions. I wish we could have kept the money in for school construction, but that is the legislative process. We had good bipartisan cooperation in getting to the end result.

I close by thanking my chairman, Senator BYRD, for all of his support and for the excellent leadership he has provided to make this bill and the bioterrorism package possible. I thank our ranking member, Senator STEVENS. Again, at every step of the way he has been a strong supporter and has made sure we received the necessary allocations for our bill.

Finally, this bill, as I said earlier, would not have been possible without the tireless and outstanding staff work. Our staffs have done a terrific job. I know they have not had much sleep in the process. In fact, I understand the night before last they broke at 6 o'clock in the morning. They worked all night to get this done. That is the kind of dedication and hard work of our Appropriations Committee staff of which I am proud.

I especially note the great work of the staff director on the subcommittee, Ellen Murray, who worked tirelessly through the year to shape, form, and work on the allocations and bring this all together. Just as I have worked closely with Senator SPECTER, I know she has worked closely with another great staff person, Bettilou Taylor with Senator SPECTER, and all of our staffs. Bettilou and Ellen have just done an outstanding job of putting this together. It would not have been possible without them. I thank them both very much for their expertise and their hard work.

I thank Jim Sourwine, Erik Fatemi, Mark Laisch, Adam Gluck, Lisa Bernhardt, Adrienne Hallett, and Carole Geagley, as well as Bev Schroeder and Chani Wiggins of my personal staff for their terrific and tireless efforts.

As I said, the bill before us simply would not have been possible without them. I mentioned my staff. Let me also mention Mary Dietrich on Senator SPECTER's staff, Sudip Parikh—I do not know where Sudip is, but I thank him for all the great briefings he has given me in the past. I thank him very much.

Maybe after all my briefings on anthrax he will let me know how it all works. Emma Ashburn, also I thank Emma for all of her great work.

I say again, we have an outstanding staff, and I thank them all. I take this opportunity publicly to wish them a restful Merry Christmas. I hope they catch up on all the sleep they have lost over the last couple weeks. They have done a great job and have my undying appreciation and admiration and thanks for the great job they have done.

I know a couple of other Senators were seeking time. How much time do I have remaining?

The PRESIDING OFFICER (Ms. STABENOW). The Senator has 22 minutes.

Mr. HARKIN. How much time does the Senator desire?

Mr. DURBIN. Ten minutes.

Mr. HARKIN. I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the Chair. I thank Senator HARKIN. He and I were colleagues in the House of Representatives, and he would probably recall that Congressman Bill Natcher of Kentucky on the Appropriations Committee always chaired the subcommittee that had this appropriations, the Labor-HHS appropriations, and he would come to the floor in his courtly and dignified way and announce that this was the people's bill, Labor-HHS appropriations was the people's bill.

When Congressman Natcher took a look at the rollcalls he had in support of the bill, all the people were voting for it. And I think it reflects what Senator HARKIN said earlier about what is in this bill. I noticed Senator INOUYE was here a few moments ago. As chair of the Appropriations Subcommittee on Defense, he has a responsibility to defend and protect America. Senator HARKIN of the Labor-HHS Subcommittee of Appropriations has the responsibility to make sure that Americans' lives are worth living, whether it is education, health care or a commitment to labor. Time and again Senator HARKIN, in this appropriations bill, has answered the call of this country. I commend him, as Senator REID did earlier.

This is an important bill for America. It is a better bill because of the hard work Senator HARKIN and Senator SPECTER and the staffs have put into it. I am going to be an anxious supporter of the bill.

I have been fortunate to have served 12 years on the House Appropriations Committee and now 3 years on the Senate Appropriations Committee, but my dream to be on this appropriations subcommittee is still yet to be realized. I hope someday to make it because I think it is most important and certainly reflects your hard work has made it to the bill that will be considered on what may be the last day.

VERIFICATION OF PERSONAL IDENTITY

Madam President, I would like to address another issue very quickly, if I may.

Since September 11, 2001, all of us in Federal, State, and local governments have been looking for ways to enhance our homeland security. We have reviewed just about every government regulation or practice that affects the security of our daily lives in order to fix weaknesses, close loopholes, and beef up protection for all Americans.

Among other efforts that I have led—such as airline security, food safety, assuring a state of national readiness—I am now working on a bill to address weaknesses in our nation's personal identification system.

Specifically, I am interested in fixing the problems in the current disparate system we have where states issue driver's licenses without uniformity and without cross-checking with sister States.

In the aftermath of the most devastating attacks on America, we learned that some of the terrorists who were responsible for the September 11 tragedy carried driver's licenses issued to them by states that had extremely lax application process.

In Virginia, for example, it was reported that a terrorist paid a complete stranger $50 in the parking lot of a Department of Motor Vehicles to sign a sworn statement that vouched for the terrorist's identity and in-state residence on his driver's license application.

It was also reported that 13 of the 19 terrorists held driver's licenses from Florida, a state that—at that time—did not require any proof of permanent

residency from anyone. In fact, any foreign tourist could walk into a motor vehicles office, fill out a form on his own, and get one.

I am certainly not asserting that the September 11 attacks would have been avoided had the terrorists not had these driver's licenses. Clearly, there is little direct connection between the cards these evil men carried and the ungodly deeds that they carried out.

But what these driver's licenses—which have now become the most widely used form of personal ID in the country—gave these terrorists was the cover of legitimacy that allowed them to walk around and mingle into American society without being detected.

A driver's license is a key that opens many doors. In America, anyone who can produce a valid driver's license can access just about anything.

It can get you a motel room, membership in a gym, airline tickets, flight lessons, and even buy guns—all without anyone ever questioning you about who you are. If you can produce a driver's license, we just assume that you are legitimate, and you have a right to be here.

I realize that the investigations surrounding September 11 are still ongoing, but I think we can safely assume what some of the problems were that led to the vulnerability we left for the terrorists to exploit.

The terrorists took advantage of a combination of failures in our intelligence, law enforcement, border patrol, aviation security, and other infrastructures that, at some point, should have been able to discover and identify these individuals as threats.

As we enhance homeland security, it is critical that we improve all of these areas. But no amount of data sharing among Federal, State, local, and international law enforcement and regulatory agencies can be useful if one of the most significant pieces of the data that they transmit back and forth is unreliable.

And today, verification of personal identification is that weakest link in the process.

Whenever someone presents identification to a government official, we must be able to rely on that ID to be sure that the person is in fact who he says he is. That is the only way to ensure accurate results when a government official inputs that person's name into various databases that agencies use.

But today, with hundreds of different forms of ID cards that are in use across the Nation and with rampant identity theft problems, it is nearly impossible to know with certainty who a person is standing before you, no matter how many ID cards they can produce.

To further aggravate the problem, one form of ID often begets another, and can help someone assume a completely false identity.

For example, a person can start with a fake driver's license; and then pick up a fake Social Security number—this is really easy to get, and you don't even need a photo.

With this, he can easily obtain credit cards, library cards, video rental membership cards, etc.—all genuine forms of ID based on the fake original.

To begin the process of critically reviewing our Nation's ID system, I am drafting legislation to enhance the reliability of today's most popularly-used form of identification—the driver's license and State ID card.

But before I explain what this bill does, let me be absolutely clear what it does not do.

This is not about creating a new national ID card nor is it about developing one centralized mega-database that houses everyone's personal data. I understand the concerns that Americans have about going in that direction, and I agree that we do not need a national ID card which crosses that critical line of personal privacy.

Instead, my effort is focused on fixing a problem that we can address immediately and with significant results. My bill is about making the driver's license—which many consider as a de facto national ID card—more reliable and verifiable as a form of personal identification than it is today.

First, my bill requires all States and U.S. territories to adopt a minimum uniform standard in issuing drivers' licenses.

If someone walks into a department of motor vehicles in Virginia, he should be required to provide the same methods of verifying who he is, and should go through the same set of requirements, as someone who walks into a DMV in Illinois.

Why? Because if we don't have uniformity among States, we will remain vulnerable to those who exploit the system by forum shopping for a driver's license card in the weakest State. With that initial ID card, they can go on to obtain other ID cards and gain official recognition.

Or, under reciprocity, they can trade in that driver's license for a driver's license in another State with more strict application requirements even though they may not have qualified to get a license in the other State.

If we mandate a minimum standard that is applied uniformly across the Nation, we can ensure that anyone who presents any State-issued driver's license can be trusted that he is in fact who he claims he is, since he would not have been able to obtain the card but for having initially verified his identity in the same way across the country.

To set up the criteria and implementation of the uniform standard, I have enlisted the assistance of the American Association of Motor Vehicle Administrators AAMVA, which is a nonprofit organization whose members consist of motor vehicle and traffic law enforcement administrators of jurisdictions in the U.S., Canada, and Mexico.

AAMVA is the national expert on issues dealing with motor vehicle administration, and it develops model programs and encourages uniformity and reciprocity among the States.

My bill appoints AAMVA as the regulatory document and biometric standards-setting body, and tasks AAMVA to develop the minimum verification and identification requirements that each State must adopt for issues such as:

Uniform definition of in-State ''residency''; validation of source or ''breeder'' documents to verify ID; establishment of legal presence in the country; initial issuance procedures; and minimum security features.

With congressional oversight, AAMVA would supervise the implementation by the States so that within reasonable time, every State of our Nation will finally have uniform standards.

In implementing the uniform standards, it is also important to make sure the State DMVs have the support they need to verify the data they receive. Many DMVs across the country have complained that they receive little cooperation from Federal agencies who maintain databases containing information that could verify and confirm the information that people present at the DMV counter.

For example, the Social Security number is one of the primary unique identifiers used across the country. Yet many State DMVs have a difficult time accessing records from the Social Security Administration to match the number with the name of the applicant of the driver's license.

My bill addresses this problem by authorizing the Social Security Administration, Immigration and Naturalization Service, law enforcement agencies and any other sources of appropriate, relevant, real-time databases to provide motor vehicle agencies with limited access to their records.

My bill would also authorize and fund an initiative to ensure that all of these databases are compatible and can communicate with each other effectively.

Let me emphasize here that the access to the records is for the limited purpose of cross-checking and verifying individuals' name, date of birth, address, social security number, passport number if applicable, or legal status.

It is not a carte blanche access to records that could contain many confidential and sensitive and private information.

But we know that there may be unscrupulous employees in any organization, and some DMV employee, unfortunately, may be tempted to cut corners.

In order to discourage and prevent anyone from accessing these records without authorization, or use it in an unauthorized manner, my bill provides stiff penalties for any employee, agent, contractor, or anyone else who engages in unlawful access to such records.

Similarly, my bill provides for internal fraud within a department of motor vehicle where state employees access

DMV records to make fake IDs or to personally profit in any way.

My bill also encourages individuals to report any suspicious activities within such offices by providing whistleblower protection to those who uncover internal fraud.

But setting up the uniformity and data sharing are not enough to ensure security. I also want to make sure that the driver licenses and other forms of government identification cards issued by departments of motor vehicles are tamper proof so that there is no other source from which someone can obtain such a card.

It is time to stamp out the multi-billion dollar cottage industry of fake IDs.

My bill will make life miserable for those who manufacture, distribute, market, or sell fake driver's licenses or other forms of government identification cards, by raising the stakes for those caught in the act.

Identity theft is a national problem, and it deserves a national response. That is why I propose to make it a Federal offense to engage in the fake ID business.

I have heard from State and local officials across the country who complain that they didn't have sufficient tools to go after these crooks who hang out in parking lots and on the web luring people to buy fake IDs

In most States, such offenses are dealt with a slap on the wrist and the criminals are back on the streets eagerly trying to earn back the fines they just paid with the sale of a few more fake cards.

So I believe we need to federalize the illegal nature of this activity and go after the manufacturers, distributors, and marketers with full force of the law.

Likewise, I propose severe penalty for anyone who purchases fake IDs, obtains legitimate ID cards in a fraudulent manner, or engages in any activity that misrepresents their personal identification in anyway by using a fake or altered government-issued ID card.

Last year, I worked with Senator COLLINS to pass the Internet False Identification Prevention Act of 2000 which addressed many of these problems. My bill is designed to ensure that this and other laws dealing with fake IDs which are already in the books are working, and if they are not, that we find ways to ensure they are enforced against criminals.

Since September 11, all of us have been working around the clock with a singular goal: enhancing security of our homeland. I believe this bill will help us seal some of the cracks in our internal security systems, and I urge my colleagues to join me in this effort.

As chairman of the Governmental Affairs' Subcommittee on Oversight of Government Management, I will be holding a hearing when we return from the holidays to address this problem.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. I think there is time that has been allocated to the Senator from Massachusetts. Am I correct?

The PRESIDING OFFICER. There has not at this point been time allocated to the Senator from Massachusetts.

Mr. KENNEDY. I see my friend and colleague from Minnesota. I am mindful that there is only about 12 minutes remaining to the Senator from Iowa.

The PRESIDING OFFICER. Fifteen remain.

Mr. DURBIN. Madam President, I yield any time remaining under my allocation of time until Senator HARKIN's return to the floor.

The PRESIDING OFFICER. Without objection, the Senator is recognized. The Senator from Massachusetts.

Mr. WELLSTONE. Madam President, also to facilitate the Senator from Massachusetts, I think I have 10 minutes separately allotted; is that correct?

The PRESIDING OFFICER. The Senator is correct. The Senator from Massachusetts.

Mr. KENNEDY. I thank the Chair.

Madam President, first of all, I join with others in commending our friend and colleague from Iowa for an excellent job in finding scarce resources and focusing them on the Nation's needs. I think particularly of the great efforts he made to make sure children in this country were going to have the benefits, hopefully, of an education bill that can provide educational opportunities for young people in this country. As a result of the actions of Senator HARKIN and his committee, more than 600,000 children who would not have participated in the title I program will participate in that program; 400,000 children who would not have participated in a bilingual program will participate in those programs; 200,000 children who would not have had an opportunity for after-school programs will benefit from those programs; and there will be tens of thousands of children who will benefit from the 1.2 billion that he has had in special education. So this has been an impressive achievement.

When you look at the allocations for funding of these programs in the early part of the year, none of this was foreseen. I think he would agree with me that we are going to have to do even better in the future as we are facing the challenges in education, and understanding the importance that has in the lives of families in this country.

I also commend him for his extraordinary efforts in leading this body, along with Senator HAGEL and our colleague, Senator JEFFORDS, in the funding for the IDEA program, which is related to education. There are those who say it is not, but I think we understand, as indicated in the conclusion of the debate on education, that two out of three of the children who receive IDEA funding also qualify for Title I. These, in many instances, are the same children. Shortchanging one group pits one group against the other. By adding the money even over the administration's budget, it will mean additional quality services for needy children.

We were unable to get the funding for the children who need IDEA, and that is going to be the subject of my comments this morning.

I also want to thank Senator HARKIN and Senator SPECTER for the great progress that was made in funding the health care priorities. Graduate Medical Education was increased by $50 million; the National Health Service Corps was increased by $24 million; and Community Health Centers received an increase of $175 million, which is the largest increase in its history.

Of course Senator HARKIN was there in the beginning with his subcommittee, understanding the importance of getting the funding to deal with bioterrorism. His committee worked with the Appropriations Committee and had very instructive and productive hearings developing the strong case for funding for bioterrorism as well as building a stockpile of vaccines. I feel strongly that, just as we have a petroleum reserve, we ought to have a pharmaceutical reserve so every child can be protected against any of these potential threats.

Senator HARKIN, in his committee, held very important hearings. Then Senator BYRD, with his strong leadership was able, working with Senator HARKIN, to make sure we are going to meet our Nation's responsibility. All of us are thankful for that leadership.

For more than 200 years, Americans have fought battle after battle against discrimination in all its forms. We have fought for racial equality to assure that all people are judged not by the color of their skin. We have fought for voting rights for women, and their rightful place in shaping the nation's democracy. We have acted to end discriminatory practices against the elderly and disabled.

Despite our many successes in the ongoing battle for fairer treatment for all, there is one form of dangerous discrimination that still pervades every community in this country. Few families have escaped facing this discrimination personally, or seeing the harm it has caused to loved ones, friends, or acquaintances. This discrimination is not based on skin color, gender, or age. It is based on an illness—mental illness.

For years, millions of Americans across this country with mental illness have faced stigma and misunderstanding. Even worse, they have been denied the treatment that can cure or ease their cruel afflictions. Too often, they are the victims of discrimination practiced by health insurance companies. It is unacceptable that the Nation continues to tolerate actions by insurers that deny medically necessary care for curable mental illnesses, while fully covering the cost of treatment for physical illnesses that are often more costly, less debilitating, and less curable.

It is long past time to end this unjust discrimination.

Unfortunately, we have just suffered a serious setback in the ongoing battle for the rights of the mentally ill. The House Republican leadership has blocked the Domenici-Wellstone Mental Health Equitable Treatment Act, which assures fair health insurance coverage of mental illness for the millions of Americans who must live with depression, post-traumatic stress, anorexia, and other mental illnesses.

This important bill was approved by the Senate Health, Education, Labor, and Pensions Committee last month on a unanimous vote. It passed the Senate without a word of opposition. This success was achieved by the skilful leadership and hard work of the bipartisan team of Senator PAUL WELLSTONE and Senator PETE DOMENICI.

That bill deserved to become law this year, but the House Republican leadership has refused to act. Three House committees have jurisdiction over parts of this legislation, but none has held a markup. Not one has held a single day of hearings. Now, operating behind the closed doors of the conference committee, the House Republican leadership has insisted on striking the amendment which the Senate added to the Labor, Health and Human Services Appropriations bill to achieve this essential goal.

The House leadership has bowed to the pressure of insurers and big business, at the peril of the health of millions of Americans. This legislation has the support of the American people. It has the support of a broad bipartisan majority of the Congress. It is cosponsored by 65 Members of the Senate. Over 240 Members of the House have signed a letter urging the House leadership to accept the Senate mental health parity amendment as part of the appropriations bill. The collective will of Congress has been flagrantly disregarded.

The message of the opponents on this basic issue is the same message of delay and denial that has been such a shameful blot on our national history when it was applied to African-Americans, to women, to the disabled, and to the elderly.

One of the most disappointing things about this first session of Congress has been the apparent retreat from the principles of equality and nondiscrimination.

On the education bill, the Congress failed to provide needed funding for IDEA. The Congress retreated from the commitment made a quarter of a century ago to assure that every child with disabilities would have a fair and equal chance for a quality education. Today, Congress has once again retreated on a basic question of civil rights and nondiscrimination—fair treatment for the mentally ill.

As one who has been involved in these struggles to end discrimination throughout my career, I know that the American people understand that discrimination against any American diminishes all Americans. They understand that discrimination is not only a denial of our brotherhood as human beings, it denies our country the ability to benefit from the talents and contributions of all our citizens.

Surely, this time of renewed patriotism in the struggle against the common enemy of terrorism is the wrong time to retreat from our basic American ideals.

Equal treatment for the mentally ill is not just an insurance issue, it is a civil rights issue. At its heart, mental health parity is a question of simple justice.

The House Republican leadership has now succeeded in blocking action for this session of Congress. But the battle goes on, and it will not end until true parity has been achieved once and for all. The American people understand that this battle is about justice for the mentally ill and their families. The Senate and a majority of the House understand it. It is time for the House Republican leadership to stop kowtowing to powerful special interests and listen to the voice of the American people—and to what is fair, just, and right for all those who suffer from mental illness.

I yield the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Iowa?

Mr. HARKIN. Madam President, before I yield time to my good friend from Minnesota, let me again thank Senator SPECTER, who showed up here from the hearing in which he has been tied up.

Let me thank Senator KENNEDY for his great leadership on the two areas on which he spoke. Basically, I want to speak about education. I am privileged to serve on his committee and have for almost all the time I have been in the Senate. There isn't anyone I could even think of mentioning here in the Chamber who has devoted more of his or her life to the education of our kids and making sure they have a good quality education than Senator KENNEDY of Massachusetts. It has been a privilege and honor to work with him all these years.

We have had a tough fight over the last year in reauthorizing the Elementary and Secondary Education Act. I believe we came out with a good bill, one that will move us forward. But now, as I said at the time when the authorizing bill passed: We have created the authorization, now show us the money.

I think this is an appropriate time to say the President's budget will be coming down in a couple of months, the budget for next year. The President, I know, is a strong supporter of the reauthorization of the Elementary and Secondary Education Act. It has all these requirements for schools for testing and teacher quality and improvement, all the things on which we agreed. But will we have the resources? Will this President, in his budget, provide those resources to back up the authorization bills we passed? That will be the real test.

I hope this President will meet that test. I hope we get a budget from him next year that reflects those priorities.

Again, on the issue of the mental health parity, we had it on this bill.

As the Senator from Massachusetts said—I know Senator WELLSTONE will speak about it here in just a second—we had it in the bill, and it was widely supported, almost unanimously, in the Senate. It was widely supported in the House. But for some reason which I can't really divine and understand, the House Members decided they were going to vote against it. But it was the moment in time when we could have finally gotten over this, when we finally could have provided the same access to health care for mental health problems as we do for physical health problems.

Quite frankly, I believe we have failed in this endeavor. It should have been done. We held as long as we could, but when the House decided they would not agree to it, we had to abide by that and come back to the Senate without that provision in it. It is perhaps the biggest glaring loophole in our entire appropriations bill that we are now reporting back to the Senate.

My friend from Minnesota, Senator WELLSTONE, has been the leader in fighting for the people with mental health problems in this country to assure they have the same kind of health care coverage in their policies that people have for physical health problems. He has been the leader. He has led the charge on it. I know he is not going to give up. If I know anything about PAUL WELLSTONE, he is not going to give up on this fight. We will be back again next year. I will look to him next year for the same kind of leadership he provided this year, and for so many years in the past, for finally breaking down this last civil rights issue. I think Senator KENNEDY spoke about that. We have to confront it here in America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I begin by congratulating my distinguished colleague, Senator HARKIN, with whom I have worked closely on the subcommittee which has the responsibility for appropriations for the Departments of Labor, Health and Human Services, and Education for many years. While I liked it better when I was chairman for 6½ years, I believe the work of the subcommittee goes on seamlessly regardless of whether TOM HARKIN is chairman or ARLEN SPECTER is chairman. I think Senator HARKIN and I both recognize you can't get anything done in Washington if you are not willing to cross party lines and make accommodations.

May I just parenthetically note my very deep disappointment that there has not been an agreement on a stimulus package before Congress adjourns,

according to the most recent reports. Perhaps that will be corrected before we adjourn. If they would assign it to me and Senator HARKIN, I am sure we could get it worked out.

But this subcommittee report adopted by the full committee—and now by both the Senate and the House—is one of the most important pieces of legislation to emerge from the Congress all year.

I regret that I could not be here at the outset when the bill was called up. But I had reason to go to the hearing of the Commerce Committee which is considering the nomination of John Magaw to be the No. 3 man at that Department. I came back as soon as I could to make brief opening comments before yielding to Senator WELLSTONE who I know is waiting to speak.

This bill is one of enormous importance to America. The total figure of $123 billion represents an enormous investment in critical aspects of our way of life.

This bill contains very important funding and increases in the Department of Labor on worker safety, funding for the National Labor Relations Board, funding for the various other agencies, the Mine Health Safety Board, and OSHA.

It is my hope yet that we will resolve the critical question of ergonomics on which we await action by the Department Of Labor subcommittee. The subcommittee has held extensive hearings.

With respect to education, this bill contains more than $48 billion. There is an enormous increase for Federal participation in education. Last year's budget increased education funding by $5 billion. This year's budget increases education funding by $8 billion more.

Not only is there additional Federal funding but, as a result of action by the Congress, we are directing more of this money to the neediest students. Philadelphia, illustratively, under the new formula will get $115 million as opposed to $90 million last year.

In the conference, we adopted an amendment to provide additional targeted funding for those who were the neediest. We have provided very extensive funding on Pell grants and on guaranteed student loans in our recognition that education is a priority second to none and a major capital investment for the United States.

On a brief personal note, education was very heavily emphasized in the Specter household, perhaps because my parents had so little of it. My father was an immigrant from Russia in 1911 and had no formal education but became very extensively self-educated. My mother only went to the eighth grade but increased her educational background on her own. But my brother and my two sisters and I have been able to share the American dream because of our educational opportunity. When the President talks about leaving no child behind, it is not only for children, it is for college students, adult education, and literacy training.

There is very important funding in this bill.

The health subcommittee has taken the lead in increasing the funding for the National Institutes of Health—some $11 billion in the past several appropriations cycles. This year's increase was $2.9 billion. Frankly, I would like to have seen more, but there were other priorities.

The mark from our Senate subcommittee was $3.4 billion. The National Institutes of Health are the crown jewels of the Federal Government—maybe the only jewels of the Federal Government. They have made marvelous strides in conquering Parkinson's, perhaps with a sight 5 years down the road to cure Parkinson's, Alzheimer's, cancer, heart disease, and virtually every known malady.

Three years ago, there burst upon the scene the stem cell issue. Stem cells are extracted from embryos. Now they are working on inserting the stem cells in the human brain to cure Parkinson's or delay Alzheimer's; or into the heart, or into many other parts of the body.

A controversy has arisen because some object to stem cell research because they are extracted from embryos. Embryos can produce life. But the ones which are used for stem cell research would be discarded. Embryos are created from in vitro fertilization—customarily about a dozen. Mainly three or four are used, and the balance are being discarded.

If any of those embryos could produce life, I think they ought to produce life and ought not be used for stem cell production. If they are not going to produce life, why throw them away? Why not use them for saving lives?

We have put into this bill $1 billion for sort of a test program on embryo adoption. Let us try to find people who will adopt embryos and take the necessary steps on implanting them in a woman to produce life. If that could be done and use all of the embryos, that would be marvelous to produce life. But where those embryos are going to be discarded, I think the sensible thing to do is to use them for saving lives.

We have had in this Chamber an effort by our subcommittee and then the full committee to expand Federal funding for research on stem cells.

Right now Federal funding is permitted on stem cells once they have been extracted but not to extract them. My view is, that is something in which the Federal Government ought to participate, with the extensive funding available now in NIH.

Our efforts to expand that activity, to some extent, was complicated by amendments offered by the Senator from Kansas, Mr. BROWNBACK, who wanted to raise the cloning issue. We deferred that until next year because it would have tied up the bill for a protracted period of time. As the slow schedule of the Senate has worked, we could have been tied up, in any event, but we made the judgment, with the agreement of the majority leader, that a freestanding bill would come up in February or March.

While there is a consensus against cloning of another individual, there has been an unfortunate use of the terminology ''therapeutic cloning,'' which is really a transplant. That involves a process where there is the DNA for a person, for example, who has Parkinson's, and that is inserted into the embryo so the stem cells come out consistent with the patient, not being rejected by the patient. So that is something we will be working on further with hearings set for our subcommittee into the next year.

We have taken a very firm stand on the bioterrorism issue, with our bill containing $338 million, and our subcommittee taking the lead on having hearings which eventuated in the supplemental appropriations bill having an additional $2.5 billion for the needs of State and local health departments purchasing vaccines against bioterrorism.

When the officials from the Centers for Disease Control came in, we admonished, I guess is as good a word as any, why they had not made the subcommittee aware of their needs before.

It is no secret, you did not have to wait until anthrax came into the Hart Building or the terrorist attack on September 11 to realize the dangers of bioterrorism. Had they told us what their needs were, we would have responded as we were responding with billions for NIH.

But we worked through that. We asked them in an October 3 hearing for a list of all the bioterrorism threats and what it would cost to cure them. They produced the list, but we could not get it. CDC had to give it to HHS which did not want to disclose it because HHS had to give it to OMB, the Office of Management and Budget. By the time you finish playing alphabet soup in Washington, virtually everything is stymied.

But we had a subsequent hearing, and we got these figures, asking them what their professional judgment was as to what the funding should be. We have taken very important steps to protect America on bioterrorism.

Head Start has been a big issue for the subcommittee. There is additional funding, as we have in community health centers, and elevating women's health with additional funding. There was an initiative taken in the early 1990s by Senator HARKIN and myself to create a separate unit on women's health in the National Institutes of Health. There is additional funding for LIHEAP, the aging programs, AIDS, education, including education for disadvantaged children, school improvement programs, impact aid, bilingual education, special education, student aid, and public broadcasting.

Madam President, the conference agreement on the Labor, Health and Human Services, and Education bill before the Senate today includes $123.1

billion in discretionary spending, the full amount of the subcommittee's budget authority allocation under section 302(b) of the Budget Act. This amount represents an increase of $14 billion over the fiscal year 2001 freeze level.

At this time, I want to take this opportunity to thank the distinguished Senator from Iowa, Mr. HARKIN, the chairman of the committee, for his hard work in bringing this bill through the committee and on the floor for full consideration by all Senators.

The programs funded within the subcommittee's jurisdiction provide resources to improve the public health and strengthen biomedical research, assure a quality education for America's children, and offer opportunities for individuals seeking to improve job skills. I would like to mention several important accomplishments of this bill.

The conference agreement includes $23.3 billion for the National Institutes of Health, the crown jewel of the Federal Government. The $2.9 billion increase over the fiscal year 2001 appropriation will support medical research that is being conducted at institutions throughout the country. This increase will continue the effort to double NIH by fiscal year 2003. These funds will be critical in catalyzing scientific discoveries that will lead to new treatments and cures for a whole host of diseases.

Since September 11, 2001, Americans have become acutely aware that our enemies will use any means to murder and maim large numbers of U.S. civilians. The use of biological agents is no longer a threat—it is a reality. The committee has included $338 million to coordinate state and local readiness, stockpile appropriate pharmaceuticals, and build our public health infrastructure to respond to any act of bioterrorism. The anthrax found in Senator DASCHLE's office and in the House and Senate mail rooms, at postal facilities in New Jersey and the District of Columbia and surrounding areas, in news and other media facilities proves that we must try and prevent, detect and quickly respond to any further acts of bioterrorism. The supplemental appropriations bill which the Senate will take up shortly contains an additional $2,504,314,000 to address the needs of state and local health departments, purchase smallpox vaccine, to upgrade the capacity of laboratories and the CDC and NIH, and develop new vaccines at the National Institutes of Health.

For the first time, the conference agreement includes $1 million for a public awareness campaign to educate Americans about the existence of spare embryos and adoption options. During stem cell hearings, we were made aware that there are 100,000 spare frozen embryos stored in invitro fertilization clinics throughout the U.S. Many infertile couples could choose to adopt and implant such embryos if they were aware of that option.

To enable all children to develop and function at their highest potential, the agreement includes $6.5 billion for the Head Start Program, an increase of $338 million over the last year's appropriation. This increase will provide services to 916,000 ch8ldren in 49,420 classrooms across the nation.

To help provide primary health care services to the medically indigent and undeserved populations in rural and urban areas, the agreement contains $1.34 billion for community health centers. This amount represents an increase of $175.1 million over the fiscal year 2001 appropriation. These centers provide health care to nearly 12 million low-income patients, many of whom are uninsured.

Again this year, the conferees placed very high priority on women's health. Included in the amount is $26.8 million for the Public Health Service, Office of Women's Health, an increase of $9.5 million over last year's funding level to continue and expand programs to develop model health care services for women, provide monies for a comprehensive review of the impact of heart disease on women, and to launch an osteoporosis public educatoin campaign aimed at teenagers. Also included is $265 million for family planning programs; $124.4 million to support the programs that provide assistance to women who have been victims of abuse and to initiate and expand domestic violence prevention programs.

In fiscal year 2001, the Labor-HHS Subcommittee held several hearings to explore the factors leading to medical errors and received testimony from family members and patients detailing their experiences with medical mistakes. The Institute of Medicine also gave testimony and outlined findings from their recent report which indicated that 98,000 deaths occur each year because of medical errors and these deaths may cost up to $29 billion in excess health care expenditures and lost productivity each year. The conference report bill before the Senate contains $55 million to determine ways to reduce medical errors.

The agreement maintains $2 billion for the low Income Home Energy Assistance Program LIHEAP. The amount, when combined with the additional $300 million in emergency appropriations, will provide a total of $2.3 billion for the LIHEAP program fiscal year 2002 LIHEAP is the key energy assistance program for low income families in Pennsylvania and in other cold weather states throughout the Nation. Funding supports grants to states to deliver critical assistance to low income households to help meet higher energy costs.

For programs serving the elderly, the agreement includes: $357 million for supportive services and senior centers; $566.5 million for congregate and home-delivered nutrition services; and $206 million for the national senior volunteer corps; $445 million for the community service employment program which provides part-time employment opportunities for low-income elderly. Also, the bill provides $893.4 million for the National Institute on Aging for research into the causes and cures of Alzheimer's disease and other aging related disorders; funds to continue geriatric education centers; and the Medicare insurance counseling program.

For AIDS, the agreement includes in this amount is $1.9 billion for Ryan White programs, an increase of $103.1 million. also included is $; $781.2 million for AIDS prevention programs at the Centers for Disease Control; and $2.341 billion for research at the National Institute of Allergy and Infectious Diseases.

To enhance this Nation's investment in education, the bill before the Senate contains $48.5 billion in discretionary education funds, an increase of $8.3 billion over the fiscal year 2001 level, and $4 billion more than the President's budget request.

For programs to educate disadvantaged children, the bill recommends $12.3 billion, an increase of $2.6 billion over last year's level. The agreement also includes $250 million for the Even Start program to provide educational services to low-income children and their families.

For school improvement programs, the agreement includes $7.8 billion, an increase of $1.6 billion over the fiscal year 2001 appropriation. Within this amount, $2.850 billion will be used for a new state grant program for improving teacher quality. The agreement also includes $700.5 million for educational technology state grants.

For impact Aid programs, the agreement includes $1.143 billion, an increase of $150.1 million over the 2001 appropriation. Included in the recommendation is: $50 million for payments for children with disabilities; $982.5 million for basic support payments, $48 million for construction and $50 million for payments for Federal property.

For bilingual education, the agreement provides $665 million to assist in the education of immigrant and limited—English proficient students. This recommendation is an increase of $205 million over the 2001 appropriation.

For special education, the $8.6 billion provided in the agreement will help local educational agencies meet the requirement that all children with disabilities have access to a free, appropriate public education, and all infants and toddlers with disabilities have access to early intervention services. The $1.2 billion increase over the FY'01 appropriation will serve an estimated 6.5 million children age 3–21, at a cost of $1,133 per child. While also supporting 612,700 preschoolers at a cost of $637 per child.

For student aid programs, the agreement provides $12.3 billion, an increase of $1.6 billion over last year's amount. Pell grants, the cornerstone of student financial aid, have been increased by $250 for a maximum grant 34 million,

the work study program is held at the FY '01 level and the Perkins loans programs is increase by $7.5 million.

The agreement includes $380 million for the Corporation for Public Boardcasting. In addition to the core amount provided for CPB, the committee recommends $25 million for the conversion to digital broadcasting.

There are many other notable accomplishments in this agreement, but for the sake of time, I have mentioned just several of the kep highlights so that the nation may grasp the scope and importance of this bill.

In closing, Madam President, I again thank Senator HARKIN and his staff and the other Senators on the subcommittee for their cooperation.

I thank my distinguished colleague from Minnesota for his patience, if, in fact, he was patient.

I yield the floor. And may I note for the record that I am going to have to return to the Commerce Committee, but I will be back to carry forward on the floor consideration of the conference report.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I, first of all, say to Senator SPECTER that was very gracious. Senator SPECTER and Senator HARKIN—Senator HARKIN and Senator SPECTER—are the ones who have led us, the ones who have been the leaders on this bill. So it was important to hear Senator SPECTER outline this legislation. I thank Senators HARKIN and SPECTER for their leadership. I am very proud of what they have done, given the resources with which we had to work.

I also thank Ellen Murray and Bettilou Taylor for their work. For a lot of us, there is a lot in this bill that is important to the people we love and believe in in our States. It is just a fact that a lot of the real tough work is done by the people who work with us. I thank them.

I also thank Ellen Gerrity because she is the one who has really driven, for me, and for lots of people, the mental health work. I am blessed to have her working with me. Senator DOMENICI and I are blessed to have her working with us.

On the vote which occurred 2 days ago in the conference committee, 10 House Members basically decided to eliminate the mental health parity legislation which would have ended the discrimination against people who struggle with this illness. This was the chance to end the discrimination, and they decided not to do so.

There were 67 Senators who were cosponsors of this legislation. It passed our committee—the HELP Committee—with the leadership of Senator KENNEDY, by a 21-to-0 vote. It was unanimously accepted on the floor of the Senate. And 244 House Members called on the conference committee: Please, don't block this legislation. This is an idea whose time has come. You can do something very good. You can end the discrimination against people struggling with this illness.

But the insurance companies won the day. The insurance companies lobbied furiously, and they got the House leadership to stop this. And the White House did not give us the support. No. The White House did not give us the support.

House leaders say next year they will hold hearings. They never have in the last 6, 7, 8, 9 years, but they say they will hold hearings. The White House says: We want to help next year. They could have helped this year. They could have helped now. It is not as if this discrimination just started yesterday. It is not as if we have not been working on this legislation for years. But they did not help now.

But I am confident, working with Senator DOMENICI—I am proud to work with him—that we will get their support next year. All of the groups and organizations representing all the people who struggle with this illness, and all the people who have loved ones who struggle with this illness, will be back.

My hope is that next year there will be a thousand people who struggle with this illness and who have friends and loved ones who struggle with this illness who will go to the House of Representatives and get 1 inch away from these Members who have blocked this bill and say: We are not going to let you do this to us any longer. We are men and women of worth and dignity and substance, and we refuse to accept this discrimination any longer.

They argue premiums would go up, but the Congressional Budget Office said premiums would go up 0.9 percent. They say it would be too expensive, but they do not talk about the $70 billion a year that we save by getting the treatment to people who now work, who can work with more productivity, with less absenteeism, or whose children now will be in school and will not be in jail, incarcerated, and needing to receive social services help.

The Washington Post editorialized last week that ''the new asylums of the 21st century'' for people struggling with mental illness are the prisons. I visited some of these juvenile ''correctional'' facilities. I have seen these children who never should have been there.

I say to Senator HARKIN, if there had been treatment for them on the front end, they would have never wound up incarcerated.

I went down to a hearing in Houston with SHEILA JACKSON-LEE. She asked me to come down there. It was packed with desperate parents who talked about the fact that their children ended up in jails because they couldn't get any coverage or help anywhere else. And the leadership of the House of Representatives, doing the bidding of the insurance companies, blocked this bill, and the White House did not help.

Now with the insurance industry we have something we have to be careful about. They are saying maybe next year we will cover only serious mental illness. They know that 90 percent of their costs are associated with severe mental illness, and they know that if they now all of a sudden say other illnesses won't be covered, the accountants working for the insurance companies will decide, not the doctors.

Do you want to know what will happen if all of a sudden we say we will only cover what they say is serious mental illness? The children will be the ones most discriminated against.

Suicide is the third leading cause of death of young people in the United States. Every year 30,000 Americans take their lives. In 90 percent of these situations it is because of depression, and the cause is inadequately treated mental illness. Every 18 minutes a child or adult takes their life because of the unmitigated, searing pain of depression and mental illness, and next year, while Americans wait for fairness in mental health care, thousands more will die and millions more will suffer because the House of Representatives, the Republican leadership, couldn't stand up to the insurance industry and couldn't do the right thing. And the White House couldn't see its way to help.

I thank the 67 Senators who helped. I thank the 244 House colleagues who helped. I thank the 154 organizations that have supported this legislation. I thank the Coalition for Fairness in Mental Illness Coverage, and I thank all of the organizations that are involved in that coalition.

I look forward to the day when people with mental illness will receive decent, humane, and timely health care. It will be a good day for our country.

A critical vote occurred in the Labor Health and Human Services conference committee earlier this week when 10 House members decided whether Congress would respond to the will of the people and establish fair treatment for people with mental illness. They decided they would not. The Mental Health Equitable Treatment Act (S. 543), supported by 67 Senators and 244 House members, was included in the Senate version of the LHHS appropriations bill, but not in the House version. Most of the 32 conferees had expressed strong support for this bill, and thus had their chance to vote their conscience and resist the enormous pressure that had been brought to bear by the business and insurance industries to kill this measure. Unfortunately, these lobbyists were joined by the House Republican Leadership and the White House to stop this bill in its tracks. They succeeded when the 10 House Republicans voted against accepting the mental health provision. Mental health parity was dropped.

House leaders are reportedly promising to hold hearings on parity for next year, and I strongly urge them to do so, and to allow no further delay to pass a full mental health parity bill. I look forward to continuing my long partnership with Senator DOMENICI and

working with the House to ensure that such hearings are fair and represent all those with mental illness. Mental health parity supporters on the House side have waited nine years for the authorizing committees to do just that and move the mental health parity legislation in the House. The White House too has expressed support for working on mental health parity legislation next year, though they had no explanation for their opposition to moving the bill now. They were very pleased with the bill as it was voted out of the Senate HELP committee with a vote of 21–0 on August 1, 2001. Yet, when Americans with mental illness needed the support of their President, now more than ever, he was not there for them.

Sometimes opponents claim that ending unfair limits for mental health care will cost too much, yet the Congressional Budget Office reported that the bill would increase total premium costs by only 0.9 percent. Moreover, this estimate does not even take into account the cost savings that have resulted in overall health care costs when mental health care is properly covered. Nor does it consider the cost savings in the workplace when absenteeism is reduced, and productivity is increased. Something else is lurking behind the claim of cost problems. What is lurking there is the continuing and widespread discrimination against people with mental illness in our health care system.

The stigma against people with mental disorders has persisted throughout history. As a result, people with mental illness are often afraid to seek treatment for fear that they will not be able to receive help, a fear all too often realized when they encounter outright discrimination in health coverage. Why is it that because the illness is located in the brain, and not the heart or liver or stomach, that such stigma persists?

One of the most serious manifestations of stigma is reflected in the discriminatory ways in which mental health care is paid for in our health care system. Health plans routinely set aside ''mental'' illnesses as distinct from ''physical'' illnesses in health care coverage. Inexplicably, they set an arbitrary number of hospital days or visits, or a higher level of copayments or deductible, as a way to handle mental health care. There is no clinical or scientific evidence that mental illness, or any illness for that matter, can always be treated successfully within a fixed number of days. Nor is there any economic or moral justification for charging people with mental illness more money for their care. One can only conclude that health plans try to save money at the expense of people with mental illness, and they bank on the stigma that accompanies this illness to discourage individuals from demanding better care. What a sad commentary on our health care system, and on our country.

The opponents, business and insurance lobbyists and their Congressional friends, who cite cost issues fail to recognize that proper treatment of mental illness actually saves money. They ignore the $70 billion per year cost of untreated mental illness. They also fail to recognize that our society picks up the cost of untreated mental illness in any case, for untreated illnesses don't just go away. Children with mental illness may end up in public institutions, foster care, or jail because their parents cannot afford their care. Adults who have private insurance are often forced into public health care systems financed through State governments, Medicare, and Medicaid. These systems are then forced to take scarce resources from those who have no insurance. Families are forced into bankruptcy; lives are broken; and lives are lost.

We also know that the number of people with serious mental illnesses in America's jails and prisons today is five times greater than the number in state mental hospitals. That is what happens when people, including those with jobs and private health insurance, do not get adequate care. How can our country tolerate this kind of abuse of basic human rights? Prisons, as the Washington Post editorial noted last Monday, are ''the new asylums of the 21st century.'' This criminalization of the mentally ill is inhumane. It is also emotionally and financially costly, and a testament to government failure at all levels. We cannot afford to lose any more lives and we must not let those with mental illness go on being treated as criminals or as unworthy of medical care.

Opponents also often try to defeat mental health parity legislation by claiming they want to cover mental illness, but only ''serious'' mental illness, and thus they would limit coverage to a selected list that is also designed to discriminate, most of all against children. The bill that was developed this year was carefully crafted to address the health needs of all those with mental illness as well as the concerns of employers, and it did so without discriminating against particular diagnoses. The insurance industry is very aware that 90 percent of their costs associated with mental illness are associated with the most severe, as is true for other kinds of health issues as well. And yet, they want to oppose coverage for life-threatening illnesses that accountants, and not doctors, have listed as not ''serious''. Any effort on the part of the lobbyists, the House Republicans, or the White House to limit coverage by particular diagnoses should be stopped immediately. It is just another way to try to stop the effort to provide fairness in treatment for people with mental illness.

We know that mental illness is a real, painful, and sometimes fatal disease. It is also a treatable disease. The gap between what we know from scientific research and clinical expertise and what we do on behalf of patients is lethal. Suicide is the third leading cause of death of young people in the U.S. Each year, 30,000 Americans take their lives, and in 90 percent of these situations, the cause is inadequate treated mental illness. This is one of the true costs of delaying this bill that I hope those who voted against this understand: Every 18 minutes, a child or adult takes their lives because of the unmitigated, searing pain of depression or other mental illness. Next year, while Americans wait for fairness in mental health care, thousands will die and millions will suffer.

Parity will do so much to end the unfair cost requirements, access limits, and personal indignities that people seeking mental health care have been forced to endure. Parity in private insurance has been shown to save other health care costs and would revolutionize our country and our health care system in extraordinarily humane ways. Congress was stopped from doing this right now because of a few members and their lobbyist friends. We must not let these powerful lobbyists subvert the will of the Congress and the will of the 154 supporting organizations of the 2001 Mental Health Equitable Treatment Act and the millions of Americans they represent whose lives are touched by the pain, suffering, and sorrow of mental illness.

I thank the 67 Senate and the 244 House colleagues who worked hard to do the right thing for people with mental illness, and I urge them to not take this defeat lightly. I especially want to thank the 154 organizations who supported this legislation and fought for its passage, particularly the Coalition for Fairness in Mental Illness Coverage and its member organizations: American Managed Behavioral Healthcare Association, American Medical Association, American Psychiatric Association, American Psychological Association, Federation of American Hospitals, National Alliance for the Mentally Ill, National Association of Psychiatric Health Systems, and National Mental Health Association.

We must return quickly to this bill early in 2002 and accept no excuses from the Administration or the House for any further delay. I look forward to the day when people with mental illness receive decent, humane, and timely health care. It will be a good day for our country.

Mr. SARBANES. Madam President, today I would like to bring to your attention title VI of the Labor, Health and Human Services Appropriations bill (H.R. 3061), which is the ''Mark to Market Extension Act of 2001''. This legislation was passed unanimously out of the Committee on Banking, Housing and Urban Affairs on August 1, 2001. We worked closely with both the House and the Administration to craft the final product that is now part of this conference report.

The legislation will ensure that HUD continues to have the authority to restructure the rents and the mortgages of its FHA-insured section 8 project-

based portfolio. These properties have been operating for the past 20 years on long term rental subsidy contracts, many of which are currently paying above-market rents. The program we seek to reauthorize provides HUD with the tools to reduce those rents to market levels and to restructure the underlying mortgages so that the new, lower rents will be sufficient to cover the debt. At the same time, the program provides for the rehabilitation of these projects, and requires another long term commitment to keep the properties affordable.

The appropriators asked that this reauthorization be incorporated into this appropriations bill in order to make use of the $300 million in savings that this legislation will generate. We were happy to accommodate this request.

I would like to thank Senator REED, the Chairman of the Subcommittee on Housing and Transportation, Senator GRAMM and Senator ALLARD for their hard work, support and cooperation throughout this process.

Below is a detailed description of title VI, which I would like to submit for the record on behalf of myself and Senators REED, GRAMM and ALLARD.

I ask unanimous consent that the two statements be printed in the RECORD.

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

STATEMENT OF SENATOR SARBANES, SENATOR GRAMM, SENATOR REED, AND SENATOR ALLARD ON EXTENSION OF MARK-TO-MARKET PROGRAM FOR MULTIFAMILY ASSISTED HOUSING IN FY-20 LABOR-HHS APPROPRIATIONS LEGISLATION

The following represents the views of the Chairman and Ranking Members of the Senate Committee on Banking, Housing, and Urban Affairs and its Subcommittee on Housing and Transportation regarding the ''Mark-to-Market Extension Act of 2001,'' which is part of the Labor-HHS Appropriations Conference Report.

SUBTITLE A—MULTIFAMILY HOUSING MORTGAGE AND ASSISTANCE RESTRUCTING AND SECTION 8 CONTRACT RENEWAL

Section 602: Purposes

The bill includes a number of new purposes that reflect some of the concerns of the Committee and a number of stakeholders regarding the administration of the mark-to-market (MTM) program. For example, concerns were raised that the private participating administrative entities (PAEs) might not be providing the amount of rehabilitation and reserves necessary for the properties to meet the 30 years affordability commitment required by the law. Likewise, it is important for the PAEs, both public and private, to correctly calculate project expenses. Underestimation of expenses, as with inadequate investment in rehabilitation, will undermine the physical and financial condition of the properties. Failure to account realistically and accurately for the expenses of running a project could result in the project underwriting being too ''tight'' with too little debt restructured, and too little cash flow. In such cases, unexpected events, such as spikes in energy prices, could force the property into default. Such an outcome would undercut the purpose of this program, which is intended to reposition these properties both physically and financially to continue to serve low-income residents for the long haul.

The Committee expects the Department to continue to keep track of the properties after they have been restructured. This is particularly important for a number of properties that have had rents reduced to market levels without the debt being restructured. These properties have been put on a ''watch list'' to make sure the owners continue to maintain the properties, despite the reduction in cash flow. The Committee expects HUD to act expeditiously if these properties show any signs of deterioration.

Section 611: Mark-to-Market Amendments

Subsection (a)—Authorizes $10 million per year for tenant groups, non-profit organizations, and public entities for technical assistance and capacity building to meet the purposes of the Act. This provision allows the funding to be carried over. Entities that qualify for debt forgiveness under section 517(a)(5) automatically qualify for grants under this subsection.

(b) Exception rents are allowed for up to 5 percent of the total number of projects subject to a portfolio restructuring agreement.

(c) Provides for notice to residents of the Secretary's rejection of an assistance plan.

(d) Allows certain properties to go through the program upon transfer of ownership, at the request of the new owner.

(e) Provides the Secretary the authority to reduce the amount of funds contributed by owners for rehabilitation in cases where additional features such as an elevator or air conditioning are added to the project and were not previously in that project. This flexibility extends to these additional features only; the Committee expects the Secretary to continue to apply the full matching funds requirement for all standard rehabilitation.

(f) Allows owners of previously eligible projects to opt back into the program. HUD believes that the section 8 contracts on some properties that should have gone through the mark-to-market program were renewed without going through the program. This subsection allows such properties, at the owner's consent, to get back into the program, if the property would have been otherwise eligible.

(g) Redefines second mortgages to allow inclusion of miscellaneous costs, subject to likelihood of repayment. This subsection also allows the Secretary to assign the second mortgage to an entity that meets the conditions for debt modification or forgiveness. The Congress intends this additional tool to be used in the same framework as modification or forgiveness. For example, if HUD would otherwise have forgiven a second mortgage, we would expect the Secretary to assign the mortgage to the eligible owner without any additional requirements, if that is the preference of the non-profit owner.

(h) Retains program exemption for elderly projects financed through section 202 that have been refinanced.

Section 613: Consistency of Rent Levels Under Enhanced Voucher Assistance and Rent Restructurings

The Mark-to-market program is designed to lower section 8 rental payments that are above market and, where necessary, restructure the underlying debt in eligible properties. To determine if the contract rent is above, below, or at market levels requires that a rent comparability study be done. The Department raised a concern that some rent comparability studies may be inaccurate, resulting in a number of contracts being renewed at above market rents. Alternatively, the Committee has heard reports that OMHAR is setting rents too low, or that the value of vouchers being provided to residents in the case of opt outs are being set too high, thereby encouraging owners to avoid the mark-to-market program.

The Committee believes that none of these results is desirable: properties with rents that are above market should go through the program in order to get a thorough financial and physical review. Moreover, whatever organization is establishing the comparable market rent, whether it is the PAE or the PHA, the results should be consistent so that the owner's decision to stay in the program or opt out is not determined by who is doing the rent study. In this section, the Committee directs the Secretary to establish procedures for ensuring rents as determined through this program, the contract renewal process, or for enhanced vouchers for the same units are reasonably consistent.

Section 614: Eligible Inclusions for Renewal Rents of Partially Assisted Buildings

Allows certain projects that are partially assisted with section 8 to get budget-based rents up to comparable market rents, sufficient to cover the costs of maintenance of the project.

Section 615: Eligibility of Restructuring Projects for Miscellaneous Housing Insurance

Amends Section 223(a)(7) of the National Housing Act to allow HUD-held mortgages on properties in the program to be treated as FHA-insured loans to expedite the refinancing process. In addition, it extends the maximum term of FHA-insured and HUD-held mortgages refinanced under this subsection to 30 years.

SUBTITLE B—OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING

Section 621: Reauthorization of Office and Extension of Program

Extends the program to October 1, 2006. Extends the Office until October 1, 2004.

Sections 622 and 623: Appointment of Director and Vacancy in Position of Director

Establishes the procedure for appointing the Director of OMHAR and for filling vacancies. The Director would be appointed by the President, but would no longer be a Senate-confirmed position.

Section 624: Oversight by Federal Housing Commissioner

Places OMHAR under the jurisdiction of the FHA Commissioner/Assistant Secretary of Housing, as requested by the Administration. This is being done to enable better coordination between the Office of Housing and OMHAR. The Committee does this with the understanding, as expressed by Assistant Secretary Weicher at the Subcommittee's June 19, 2001 hearing, that HUD has ''every expectation that [OMHAR] will continue to be fully dedicated to [the mark-to-mark] work.''

The Committee also expects the FHA Commissioner to work conscientiously to maintain the highly qualified staff that exists at OMHAR. At the hearing, the GAO witness noted several times of the need to retain OMHAR's ''contract staff that have unique expertise in this program. . . .''

Section 625: Limitation on Subsequent Employment

Prohibits certain OMHAR employees from subsequent compensation from parties with financial interests in the program for a period of 1 year.

SUBTITLE C—MISCELLANEOUS HOUSING PROGRAM AMENDMENTS

Section 631: Extension of CDBG Public Services Cap Exception

Extends the expanded public services cap for Los Angeles for an additional 2 years. It is expected that this will be the last in a number of extensions.

Section 632: Use of Section 8 Enhanced Vouchers for Prepayments

Extends eligibility for enhanced vouchers to projects that prepaid in 1996.

Section 633: Prepayment and Refinancing of Loans for Section 202 Supportive Housing

Makes the refinancing provisions for elderly (section 202) projects in the American Homeownership and Economic Opportunity Act of 2000 self-enacting. The Committee believes that the provisions enacted last year should have already been implemented by HUD. This Section makes it clear that the provisions from the 2000 Act are self-enacting, and do not need implementing regulations from the Department.

CHANGES TO THE 2001 AND 2002 APPROPRIATIONS COMMITTEE ALLOCATIONS AND THE BUDGETARY AGGREGATES

Mr. CONRAD. Madam President, section 314 of the Congressional Budget Act, as amended, requires the chairman of the Senate Budget Committee to adjust the budgetary aggregates and the allocation for the Appropriations Committee by the amount of appropriations designated as emergency spending pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. The conference report to H.R. 3061, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act for 2002 includes $300 million in emergency-designated funding for the Low-Income Home Energy Assistant Program. That budget authority will result in $75 million in new outlays in 2002.

Pursuant to section 302 of the Congressional Budget Act, I hereby revise the 2002 allocation provided to the Senate Appropriations Committee in the concurrent budget resolution in the following amounts.

TABLE 1.—REVISED ALLOCATION FOR APPROPRIATIONS COMMITTEE, 2002

[In millions of dollars]

	Budget authority	Outlays
Current Allocation:		
General Purpose Discretionary	549,444	551,304
Highways	0	28,489
Mass Transit	0	5,275
Conservation	1,760	1,232
Mandatory	358,567	350,837
Total	909,771	937,137
Adjustments:		
General Purpose Discretionary	300	75
Highways	0	0
Mass Transit	0	0
Conservation	0	0
Mandatory	0	0
Total	300	75
Revised Allocation:		
General Purpose Discretionary	549,744	551,379
Highways	0	28,489
Mass Transit	0	0
Conservation	1,760	1,232
Mandatory	358,567	350,837
	910,071	937,212

Mr. CONRAD. Mr. President, I rise to offer for the RECORD the Budget Committee's official scoring for the conference report to H.R. 3061, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act for fiscal year 2002.

The conference report provides $123.371 billion in discretionary budget authority, which will result in new outlays in 2002 of $50.089 billion. When outlays from prior-year budget authority are taken into account, discretionary outlays for H.R. 3061 total $107.791 billion in 2002. The conference report provides virtually the same amount of budget authority as did the Senate-passed bill, which provided $123.37 billion. The conference report is at the Senate subcommittee's section 302(b) allocation for both budget authority and outlays.

Included in the conference report's total is $300 million in emergency-designated funding for the low-income home energy assistance program, (LIHEAP), which will result in new outlays of $75 million in 2002. In accordance with standard budget practice, I am adjusting the appropriations committee's allocation by the amount of that emergency-designated spending.

Additionally, H.R. 3061 also provides $18.874 billion in advance appropriations for 2003 for employment and training, health resources, child care, and education programs. Those advances are specifically allowed for under the budget resolution adopted for 2002, and, combined with all other advance appropriations considered by the Senate to date, fall within the limit imposed by the resolution. Further, the report adopts the Senate provision extending the Mark-to-Market Program for multifamily assisted housing. That provision, which is included in the above totals, is estimated to save $355 million in 2002. Finally, the report includes language that extends by one year certain benefits regarding mental health parity. Because that provision includes language directing how its costs are to be counted for budgetary purposes, it violates section 306 of the Congressional Budget Act of 1974.

I ask unanimous consent that a table displaying the budget committee scoring of this report be printed in the RECORD.

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

H.R. 3061, CONFERENCE REPORT TO THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2002

[Spending comparisons—Conference Report, in millions of dollars]

	General purpose	Mandatory	Total
Conference report:			
Budget Authority	123,371	272,937	396,308
Outlays	107,791	272,968	380,759
Senate 302(b) allocaiton:[1]			
Budget Authority	123,371	272,937	396,308
Outlays	107,791	272,968	380,759
President's request:			
Budget Authority	116,382	272,937	389,265
Outlays	105,957	272,968	378,925
House-passed:			
Budget Authority	123,371	272,937	396,308
Outlays	106,828	272,968	379,796
Senate-passed:			
Budget Authority	123,370	272,937	396,307
Outlays	107,749	272,968	380,717
CONFERENCE REPORT COMPARED TO			
Senate 302(b) allocation: [1]			
Budget Authority	**0**	**0**	**0**
Outlays	**0**	**0**	**0**
President's request:			
Budget Authority	7,043	0	7,043
Outlays	1,834	0	1,834
House-passed:			
Budget Authority	0	0	0
Outlays	963	0	963
Senate-passed:			
Budget Authority	1	0	1
Outlays	42	0	42

[1] For enforcement purposes, the budget committee compares the conference report to the Senate 302(b) allocation.

Notes.—Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions. In addition, the conference report provides $18.874 billion in advance appropriations for fiscal year 2003.

Mr. DURBIN. Mr. President, during this summer's debate on the ESEA reauthorization legislation, I offered an amendment to increase the authorization for the new math and science partnerships program from $500 million in the Senate bill to $900 million in fiscal year 2002. Raising the authorization to this level brought math and science partnership participated and science partnership funding to the same level as the Reading First program also created in the education bill. My amendment passed by voice vote.

During that debate, I joined several of my colleagues in emphasizing the critical need to improve math and science education in our nation's elementary and secondary schools. U.S. students consistently score lower than their counterparts in other nations in math and science, yet more than one in four high school math teachers and nearly one in five high school science teachers lack even a minor in their main teaching field. The training and preparation of math and science teachers must be a top priority.

I am disappointed that the Labor–HHS–Education Appropriations bill funds the math and science partnerships at just $12.5 million in fiscal year 2002— a level far below the $450 million authorized by Congress for this program in the final ESEA legislation.

But I am encouraged by language included in the conference report that states,

the conferees believe math providing high-quality math and science instruction is of critical importance to our nation's future competitiveness, and agree that math and science professional development opportunities should be expanded. The conferees therefore strongly encourage the Secretary and the State to continue to fund math and science activities within the Teacher Quality Grant program at a comparable level in fiscal year 2002.

I understand that the conferees intend that at a minimum, the current commitment to the training of math and science teachers will be upheld. The conference report urges the Secretary of Education and the States to use the Teacher Quality grant program, funding available for math and science partnerships and through other federal grants to bring math and science education is a level that adequately prepares our young people for

the demands for the demands of the 21 century. I hope that States and districts continue to increase their efforts in the area. I look forward to working with my colleagues next year to further support strong math and science education in schools.

SMALLPOX VACCINATION FOR FIRST RESPONDERS

Mrs. BOXER. Mr. President, smallpox is a deadly disease that if not treated within the few first days after initial exposure, can cause death in 1 out of 3 cases. Clearly, this is not a disease to take lightly.

The problem with smallpox, unlike our recent experience with anthrax, is that it is highly contagious, and not simply infectious. Thus, one person can spread the disease to hundreds of people within a matter of days.

In this new climate of threatened bioterrorist attacks, it is essential that we prepare ourselves for the worst case scenario and not simply sit back and hope for the best.

This fact was highlighted in disturbing detail in the ''Dark Winter'' exercise conducted by the Center for Civilian Biodefense Studies at John Hopkins University.

''Dark Winter'' showed that an aerosol release of smallpox virus would spread easily, and that the dose needed to cause infection is very small. The exercise showed that 20 confirmed cases could result in as many as 300,000 additional infections and 100,000 deaths in just 3 short weeks.

In light of this, the Federal Government is working quickly to ensure that public health officials at all levels of government are able to work together should an outbreak occur.

I applaud the steps already taken by the Centers for Disease Control to vaccinate some of its first response personnel and to ensure the safety of those vaccinations.

But I believe it is not only essential to have a trained and ready team in place at the federal level to respond immediately to a possible outbreak, I believe that such a vaccination program should be expanded.

That is why I sent a letter to Health and Human Services Secretary Thompson urging him to work with Governors to identify and vaccinate key first responders in all 50 States. I specifically asked Secretary Thompson to instruct CDC officials to reach out to Governors and work with them to create lists of critical first responders in their States, and to authorize those vaccinations within the next 60 days.

We must also work quickly to make sure we have at least 290 million doses of smallpox vaccine available to treat the entire population as well as support additional research on antiviral therapies and other vaccines to help control and contain any bioterrorist attack.

In California, many companies are already making progress toward such antiviral therapies for smallpox, and I hope that we will not delay in providing funding for this type of research.

Mr. HARKIN. I commend my colleague from California on her thoughtful comment on the dangers of smallpox. I agree with her that much more research on new vaccines and therapies is needed and am proud of the many companies across the nation that are leaders in this important effort.

As my colleague indicates, the CDC has recently developed a strategy for vaccination in response to a smallpox outbreak and the funding provided in the Labor, Health and Human Services and Education Appropriations bill will help the CDC in carrying out this goal.

Additionally, I believe that the funding provided for the Office of Emergency Preparedness for bioterrorism-related activities can be especially useful in making the vaccine available to first responders.

Mrs. BOXER. I thank my distinguished colleague from Iowa for his supportive remarks, and hope that Secretary Thompson will seriously consider his suggestion.

I truly believe that a small cadre of vaccinated first responders from each of the 50 states would provide an indispensable complement to the CDC staff already inoculated.

Mr. HARKIN. I agree with my colleague from California that vaccinating first responders should be given serious consideration as the CDC and the Office of Emergency Preparedness pursue bioterrorist activities.

Mrs. BOXER. As we continue to discuss funding to prepare for potential bioterrorist attacks, we should also have confidence in this country's ability to react to a smallpox outbreak promptly. Ensuring that first responders are ''armed'' with a vaccination and in a position to respond is a responsible way to achieve this goal.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Madam President, I thank the conferees on this bill for their hard work. This is important legislation that provides Federal funding for the Departments of Labor and Health and Human Services, and Education, and related agencies.

I am pleased to see increased funding for many programs, especially in light of our Nation's war on terrorism. This includes an increase in funding for bioterrorism activities and for strengthening our Nation's public health infrastructure. This funding is critical for all our States, localities, and our Nation as a whole to ensure that we are ready to respond to all contingencies.

There is funding to ensure our Nation's food supply remains safe and resources for helping meet the health care needs of the uninsured. In addition to funding key public health programs, this bill provides funds for helping States and local communities educate our children. Furthermore, it funds our scientists who are dedicated to finding treatments, if not cures, for many illnesses, including Parkinson's, Alzheimer's, and ALS.

The legislation also ensures our Nation's most vulnerable, our children, senior citizens and the disabled, have access to quality health care.

Funds are also provided for important programs that assist working families needing child care, adult daycare for elderly seniors, and Meals on Wheels.

For all the good in this bill, I ask: How many other worthy programs are being shortchanged because of our parochial appetites? Again, I find myself in the unpleasant position of speaking about parochial projects in yet another conference report. I have identified nearly $1 billion in earmarks. The total amount in porkbarrel spending appropriations bills considered so far is $15 billion.

I would like to start out by asking unanimous consent to print in the RECORD the Web site of the U.S. Senate Committee on Appropriations.

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

UNITED STATES SENATE COMMITTEE ON APPROPRIATIONS

AUTHORIZATIONS AND APPROPRIATIONS: WHAT'S THE DIFFERENCE?

Authorization laws have two basic purposes. They establish, continue, or modify federal programs, and they are a prerequisite under House and Senate rules (and sometimes under statute) for the Congress to appropriate budget authority for programs.

Some authorization laws provide spending directly. In fact, well over half of federal spending now goes to programs for which the authorizing legislation itself creates budget authority. Such spending is referred to as direct, or mandatory, spending. It includes funding for most major entitlement programs. (Some entitlements are funded in annual appropriation acts, but the amounts provided are controlled by the authorization law that established the entitlement.) The authorization laws that provide direct spending are typically permanent, but some major direct spending programs, such as the Food Stamp program, require periodic renewal.

Discretionary spending, which is provided in the 13 appropriation acts, now makes up only about one-third of all federal expenditures. For discretionary spending, the role of the authorizing committees is to enact legislation that serves as the basis for operating a program and that provides guidance to the Appropriations Committees as to an appropriate level of funding for the program. That guidance typically is expressed in terms of an authorization of appropriations. Such authorizations are provided either as specific dollar amounts (definite authorizations) or ''such sums as are necessary'' (indefinite authorizations).

In addition, authorizations may be permanent and remain in effect until changed by the Congress, or they may cover only specific fiscal years. Authorizations that are limited in duration may be annual (pertaining to one fiscal year) or multiyear (pertaining to two, five, or any number of specific fiscal years). When such an authorization expires, the Congress may choose to extend the life of a program by passing legislation commonly referred to as a reauthorization. Unless the underlying law expressly prohibits it, the Congress may also extend a program simply by providing new appropriations. Appropriations made available for a program after its authorization has expired are called ''unauthorized appropriations.''

Longstanding rules of the House allow a point of order to be raised against an appropriation that is unauthorized. During initial consideration of a bill in the House (which by precedent originates appropriation bills), unauthorized appropriations are sometimes dropped from the bill. However, the House Committee on Rules typically grants waivers for unauthorized appropriations that are contained in a conference agreement. In the Senate, there is a more limited prohibition against considering unauthorized appropriations.

Both House and Senate rules require that when the Committees on Appropriations report a bill, they list in their respective committee reports any programs funded in the bill that lack an authorization. The information in the committee reports, however, differs somewhat from the information shown in this report. This report covers programs that at one time had an explicit authorization that either has expired or will expire. Unlike the lists shown in the Appropriations Committee reports, this report does not include programs for which the Congress has never provided authorizations of appropriations. For example, some Treasury Department programs have never received explicit authorizations of appropriations. They receive appropriations nonetheless because the authority to obligate and spend funds is considered ''organic''—inherent in the underlying legislation or executive action that originally empowered the Treasury to perform particular functions.

As mentioned above, many laws establish programs with authorizations of discretionary appropriations that do not expire. Both the Appropriations Committee reports and this CBO report exclude programs with that type of authorization because its effect is permanent.''

WHERE DOES THE MONEY GO?

While the size of the annual federal budget has increased in dollar terms (reflecting inflation, increased population and economy) over the years, the proportion available for common government services has shrunk dramatically. Competition among federal agencies for funding is heating up.

Over the last three decades, discretionary spending has been cut significantly to accommodate rapid growths in other expenses. Discretionary spending covers everything from road building to police protection to medical research to our national defense—most of the government services with which Americans are familiar. All other spending is mandatory—required by law regardless of what is left over for discretionary spending. Mandatory spending includes entitlements such as Social Security and Medicare, and the enormous interest the U.S. must pay every year to finance the national debt.

Three decades ago, nearly two-thirds of the federal budget was available for discretionary programs: 1966—$9 billion, interest; $43 billion, entitlement; $90 billion (63%), discretionary.

In the 1970s, entitlement spending jumped, placing a crimp on discretionary spending: 1976—$27 billion, interest; $189 billion, entitlement; $475 billion, (45%), discretionary.

By the mid-1980's, interest payments on the national debt began to rise: 1986—$136 billion, interest; $462 billion, entitlement; $438 billion (42%), discretionary.

By 1996, entitlement spending took half of the budget pie. In just 30 years, the amount left over for roads, police, defense, and most other government services shrunk to a third of the budget: 1966—$241 billion, interest; $859 billion, entitlement; $535 billion (33%), discretionary.

Current budget projections show the same trend. By 2006, entitlement spending will demand the majority of the federal budget. Interest payments will continue to be a major drain on the Treasury, and the remaining amount will be divided among discretionary programs: 2006—$209 billion, interest; $1,476 billion, entitlement; $6266 billion (27%), discretionary.

Compare the forty-year difference side-by-side: 1966—$9 billion, interest; $43 billion, entitlement; $90 billion (63%), discretionary. 2006—$209 billion, interest; $1,476 billion, entitlement; $626 billion (27%), discretionary.

RULE XVI—APPROPRIATIONS AND AMENDMENTS TO GENERAL APPROPRIATIONS BILLS

1. On a point of order made by any Senator, no amendments shall be received to any general appropriation bill the effect of which will be to increase an appropriation already contained in the bill, or to add a new item of appropriation, unless it be made to carry out the provisions of some existing law, or treaty stipulation, or act or resolution previously passed by the Senate during that session; or unless the same be moved by direction of the Committee on Appropriations or of a committee of the Senate having legislative jurisdiction of the subject matter, or proposed in pursuance of an estimate submitted in accordance with law.

2. The Committee on Appropriations shall not report an appropriation bill containing amendments to such bill proposing new or general legislation or any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law if such restriction is to take effect or cease to be effective upon the happening of a contingency, and if an appropriation bill is reported to the Senate containing amendments to such bill proposing new or general legislation or any such restriction, a point of order may be made against the bill, and if the point is sustained, the bill shall be recommitted to the Committee on Appropriations.

3. All amendments to general appropriation bills moved by direction of a committee having legislative jurisdiction of the subject matter proposing to increase an appropriation already contained in the bill, or to add new items of appropriation, shall, at least one day before they are considered, be referred to the Committee on Appropriations, and when actually proposed to the bill no amendment proposing to increase the amount stated in such amendment shall be received on a point of order made by any Senator.

4. On a point of order made by any Senator, no amendment offered by any other Senator which proposes general legislation shall be received to any general appropriation bill, nor shall any amendment not germane or relevant to the subject matter contained in the bill be received; nor shall any amendment to any item or clause of such bill be received which does not directly relate thereto; nor shall any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law be received if such restriction is to take effect or cease to be effective upon the happening of a contingency; and all questions of relevancy of amendments under this rule, when raised, shall be submitted to the Senate and be decided without debate; and any such amendment or restriction to a general appropriation bill may be laid on the table without prejudice to the bill.

5. On a point of order made by any Senator, no amendment, the object of which is to provide for a private claim, shall be received to any general appropriation bill, unless it be to carry out the provisions of an existing law or a treaty stipulation, which shall be cited on the face of the amendment.

6. When a point of order is made against any restriction on the expenditure of funds appropriated in general appropriation bill on the ground that the restriction violates this rule, the rule shall be construed strictly and, in case of doubt, in favor of the point of order.

7. Every report on general appropriation bills filed by the Committee on Appropriations shall identify with particularity each recommended amendment which proposes an item of appropriation which is not made to carry out the provisions of an existing law, a treaty stipulation, or an act or resolution previously passed by the Senate during that session.

8. On a point of order made by any Senator, no general appropriation bill or amendment thereto shall be received or considered if it contains a provision reappropriating unexpended balances of appropriations; except that this provision shall not apply to appropriations in continuation of appropriations for public works on which work has commenced.

Mr. McCAIN. I will quote from it. It says:

Authorization laws have two basic purposes. They establish, continue, or modify federal programs, and they are a prerequisite——

I emphasize, ''a prerequisite''——

under House and Senate rules . . . for the Congress to appropriate budget authority for programs.

I found that entertaining and amusing because we have this list of hundreds of projects which are not authorized and are funded at whatever level the appropriators see fit.

I will go through a number of them. Some of them are entertaining; some of them make you sad. I would like to pose a question to the manager of the bill, if I could have his attention. I see that there is $1 million for the Shakespeare Rose Theater to enhance educational and cultural programs and language literacy in the arts for students and the general public.

Could the manager of the bill tell me where the Shakespeare Rose Theater is located?

I admit there are hundreds here. I can understand why the manager of the bill wouldn't know why it is a paltry $1 million, but could the manager of the bill tell me where the Shakespeare Rose Theater is located?

Mr. HARKIN. Might I inquire of the Senator, what committee does the Senator——

Mr. McCAIN. I only have 10 minutes. Can you tell me where the theater is located? That is a pretty straightforward question. It deserves a straightforward answer.

Mr. HARKIN. You know, Madam President, I would just say to the Senator, he asked me a question——

Mr. McCAIN. I withdraw the question.

Mr. HARKIN. You asked me a question. Now he won't let me answer it.

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

Mr. McCAIN. I asked for an answer. I didn't get an answer.

Mr. HARKIN. The answer is there are 1,600 different items in this bill. If the Senator has about 60 seconds of patience, I will find out for him.

Mr. MCCAIN. I thank you, but it is an example. The manager of the bill doesn't even know where a place that we are giving $1 million of the taxpayers' dollars is located.

Mr. HARKIN. It is in Massachusetts.

Mr. MCCAIN. That is instructive. That is instructive about the proliferation of the pork in this legislation.

Let me cite a few others: $500,000 for the Mattatuck Museum in Waterbury, CT; $800,000 for the Mind-Body Institute of Boston, MA—the Mind-Body Institute of Boston, MA?—$150,000 for the Lady B Ranch Apple Valley, CA, for the Therapeutic Horseback Riding Program.

I want to go back to what the Senator said, that there are 1,600 earmarks. So the manager of the bill doesn't even know where $1 million goes. Maybe $1 million isn't much to the manager of the bill, but it sure as heck is a great deal of money to my constituents. I won't pursue this.

Again, $150,000 for the Lady B Ranch Apple Valley, CA, for the Therapeutic Horseback Riding Program. If you asked the average citizen if a therapeutic horseback riding program was at the top of their priority list, I don't think so. But therapeutic horseback riding has to be earmarked for Apple Valley, CA.

Continuing, $500,000 for the University of Washington Center for Health Workforce Studies in Seattle, WA. By the way, there is $800,000 for the Seattle King County Workforce Development Council, Seattle, WA, for the purpose of retraining displaced Boeing employees. Now in the Defense appropriations bill, which is coming up very shortly, we will have a $26 billion bailout for Boeing. Yet we still need $800,000 to retrain their workers. That is a good deal for Boeing.

The list continues:

$750,000 for the Center for Textile Training and Apparel Technology at Central Alabama Community College;

$200,000 for the University of Arkansas Medical Services BioVentures Incubator for equipment needed for wetlabs used in training;

$800,000 for Bishops Museum. I dare not ask the manager where Bishops Museum is, but I can find out for myself.

Continuing with the list: $200,000 for the Mississippi State University, Center for Advanced Vehicular Systems, Mississippi State, MS, for automotive engineering training.

The list goes on and on and on. Here is something that is really entertaining, or saddening, depending on whether or not you are a taxpayer. For example, it earmarks $5 million, $5 million for a program never authorized—never a hearing through the Commerce Committee—$5 million for a program to promote educational, cultural apprenticeships, and exchange programs for Alaska Natives, native Hawaiians, and their historical whaling and trading partners in Massachusetts. That is remarkable, remarkable—$5 million. This is a new program authorized by the Senate-passed version of the ESEA authorization bill. It was not requested by the administration.

It is interesting to note that even though the United States does not engage or support commercial whaling—we are against commercial whaling—we are willing to provide $5 million for a program highlighting the practice.

Another issue of concern is the report's inclusion of $25 million for equipment and facilities to assist public broadcasters with the transition to digital television. I would remind my colleagues that this request was never the subject of a hearing by the Commerce Committee, which is the authorizing committee. I don't believe that Congress is exercising sound fiscal policy when it decides to appropriate millions of dollars to publicly funded television stations so that they may purchase the latest in digital technology.

Rather, the Corporation for Public Broadcasting should have come before the Commerce Committee to discuss with us the best way to achieve the goals of public broadcasters and ensure that taxpayer dollars are spent wisely.

So as the manager said, there are 1,600 earmarks in this bill, very few of them, if any, previously authorized; all of them are in violation of the Web site the Appropriations Committee has. The overwhelming majority of these earmarks are for members of the Appropriations Committee, so that those States that are not represented on the Appropriations Committee are shortchanged. There is no competition. There is no authorization. There is no hearing. We are talking about a billion dollars here. It is remarkable.

The rules of the Senate have to be changed. The rules of the Senate have to be changed so that those of us who don't support these programs will have an opportunity to have our States' priorities considered as well.

I have something that my staff put in front of me regarding the Rose. Apparently, it is in London, England. It was built in 1587 by Philip Henslowe. The Rose was the first theater on London's Bankside. Its repertory included plays by Kyd, Jonson, Shakespeare, and Marlowe. In 1989 its remains were discovered and partially excavated amidst a blaze of international press coverage.

Are we now giving a million dollars to a theater in London, England? Remarkable. Put in without any hearing, without any authorization, without anything? We are going to give a million dollars for that? Are the British so bad off that they need a million dollars from us for a theater in London?

We have homeless people wandering the cities of America and we are going to give a million dollars to the Rose Theater? Remarkable. Remarkable.

Madam President, it is outrageous, disgraceful, and it is an abrogation of the process of legislation. Again, I will continue to oppose this and try to bring this to the attention of the American people.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Madam President, the Senator from Arizona never mentioned the projects in Arizona in the amount of $6.7 million. Let me read a couple: University of Arizona for a border health initiative. There is one for Pima Community College in Arizona for minority students to attend college. There is the Pima County Department of Health and the University of Arizona. Here is one for Herd Museum in Phoenix to develop exhibits and educational programs about the historic Phoenix Indian School and the Native Americans who attended the school.

Does the Senator want us to knock all those out?

Mr. MCCAIN. Absolutely. I have opposed every earmarked project for my State, and I have done so for all the years I have been here. I am sorry the Senator from Iowa doesn't know that.

Mr. HARKIN. The Senator knows full well that the other Senator from Arizona supports those.

Mr. MCCAIN. The other Senator does not support those. It came from the House.

Mr. HARKIN. So does the Congressman.

Mr. MCCAIN. It came from the House. He doesn't even know where the theater is in London.

Mr. HARKIN. The Congressman also supports them. I want to mention a couple of other projects. The Senator mentioned the Bishop Museum located in Hawaii. The other one mentioned was in Massachusetts. The Senator made fun of a horseback riding project that he kind of mocked. I don't know that program intimately, but I remember when it was brought up. This is a program in California for therapy for severely mentally retarded and brain-injured kids. It is a program where they have found that by using this kind of therapy, it allows these kids to have a little bit better life. I am not a medical expert. I don't know how this works. But according to the Member of Congress who brought this up, this is something the health care professionals believe is very important to these disabled kids.

I am told that the Senator from Arizona may be slightly mistaken, that the Senator from Arizona did ask for some of these projects. The Pima County Department of Health in Arizona, a $400,000 grant was asked for by the Senator from Arizona, Mr. MCCAIN—I am sorry, Mr. KYL. It was asked for by the other Senator from Arizona. Certainly, the other Senator from Arizona —I can't speak for him—would not say just this is mine and nobody else's. So I say that there are four projects in Arizona asked for by Senator KYL from Arizona. I want the record to show that.

Mr. MCCAIN. Madam President, do I have any time remaining?

The PRESIDING OFFICER. The Senator does not have any time remaining.

The Senator from Kansas is recognized.

Mr. BROWNBACK. I believe I have 10 minutes.

The PRESIDING OFFICER. Correct.

Mr. BROWNBACK. I yield a minute to the Senator from Arizona.

Mr. MCCAIN. The Senator from Iowa knows that Senators speak for themselves. My record is clear over many years. I have never supported earmarks, not because of its virtue or vices, but because it didn't go through an authorizing procedure. The Pima County College project may be good and beneficial, and the therapeutic horseback riding project might be good and beneficial. I happen to be ranking member of the Commerce Committee. Those are under the oversight of our Committee and they should be authorized. It is disgraceful the way these are put in.

The Senator from Kansas will soon bring out an example of a problem of legislating on appropriations. There is a major issue in his State concerning Indian gaming on which there has never been a hearing, never consideration. It was stuck into an appropriations bill, and it has profound effects on the State of Kansas. He is here, and rightfully upset, to say the least, about the fact that he, as a Senator from Kansas, never had any input into it and it was stuck into an appropriations bill.

I tell the Senator from Kansas that I will do everything I can to help him in the authorizing process to see that the process is carried out in a legitimate fashion.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

INDIAN GAMING

Mr. BROWNBACK. Madam President, I want to draw attention to something that happened in my State that I think is completely wrong in the appropriations process. The Senator from Nevada is aware of this and stated yesterday his support to help me out with this problem. I hope I can get the attention, as well, of the Senator from Iowa. This is what happens in the worst situations in the appropriating committees. It is not about money or an appropriation for a particular line item. In a conference committee, a half sentence was written in the report that overturned a Tenth Circuit Court of Appeals decision about Indian gaming in Kansas. It affects the Huron Cemetery in Kansas City, KS.

You can look at this picture. This is not a casino site. This is a cemetery site, Huron Indian Cemetery. It has been there several hundred years. It is on the banks of the Kansas River. It is a beautiful site, maintained well. What took place was this. We have four recognized Indian tribes in Kansas, and all four have casinos. A fifth tribe from outside the State, the Wyandotte tribe of Oklahoma, bought adjacent land and said: We want to make it into a reservation and casino, even though our tribe is in Oklahoma. We want to do this in Kansas City because this looks lucrative to us.

So they said, first, they wanted to put it right on top of this site. Then the courts and local opinion said no. Then they wanted to build the casino on stilts on the site. They said no to that, also. So they bought an adjacent building. That was blocked. That was blocked in the courts. The State of Kansas fought it.

The four recognized tribes of Kansas fought against it. I fought against it. The other Senator from Kansas fought against that. It has been stopped. The people of Kansas City don't want this taking place there.

OK. So then the tribe from Oklahoma litigates it in court. They are defeated at the Tenth Circuit Court of Appeals. They can't do this casino in Kansas, according to the Tenth Circuit Court of Appeals. The Governor doesn't want it, we Senators don't want it, and the tribes don't want it. Then they go into a conference committee—Department of Interior—and in the conference, at the last minute, a half-sentence, handwritten note was put in that overturns the Tenth Circuit Court of Appeals. Now they are going to be able to go forward and build a casino next to this beautiful cemetery.

This is a sacred site to a number of Native Americans in the United States. But because in a conference committee they got a half sentence in, written in pencil, it will overturn all of this work by all of these people. Is that right? Is that fair to take place? Is that the way the system is supposed to work? I don't think that is what is supposed to take place.

So we came back in the Labor-HHS appropriations bill and on the floor we worked with the managers and said: Look, this isn't right. Let's correct this in this appropriations bill.

The managers in the Senate, to their great credit—and I thank the Senator from Iowa—said: You are right; we will correct it in the Labor-HHS bill. Then it got stripped out of the bill because the House would not recede. We were trying to correct what took place in the dark of night through this conference committee report on Labor-HHS, and we were not able to get it done.

Now we are left with the possibility of a casino being built next to a cemetery by an out-of-State tribe that the tribes in Kansas, the Governor of Kansas, and the Senators from Kansas do not want, and it took place in the Appropriations Committee process.

We need a rule change so it does not happen again. I am here today to tell my colleagues that I am going to be working on this next year to get this overturned, to get this clarified. There were no hearings on this issue—none—in either the House or the Senate. It was stuck in at the last minute. It should not have taken place, yet it did, and now it is the law of the land, in spite of what all the people involved in this think about it.

This is clearly not appropriate. I hope we can put a rule in place to raise a point of order, requiring a 60-vote supermajority, against situations such as this happening to the Huron Indian Cemetery in Kansas City, KS. This just is not right. I am going to raise this issue next year. I hope my colleagues, and those on the Appropriations Committee, will work with us to correct such an injustice.

Thank you, Madam President. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Madam President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Iowa has no time remaining.

Mr. HARKIN. How much time does Senator SPECTER have remaining?

The PRESIDING OFFICER. Twenty-nine minutes.

If no one yields time, time is charged equally to both parties.

Mr. HARKIN. Madam President, parliamentary inquiry: If a quorum call is instituted, does that time run against both sides?

The PRESIDING OFFICER. Under a previous order, it will run against all sides.

Mr. HARKIN. In that case, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

Ms. LANDRIEU. Mr. President, I ask unanimous consent for 5 minutes to speak on the underlying bill and another unrelated subject.

The PRESIDING OFFICER. Against whose time?

Ms. LANDRIEU. Whatever time is remaining.

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

Ms. LANDRIEU. I thank the Chair.

Ms. LANDRIEU. Mr. President, I realize there is time remaining and I thank the Senators for yielding. I have spoken many times on this issue, but I want to take another minute to speak about the underlying appropriations bill, particularly the educational aspects and components of this legislation. There were a few things I didn't get to say that I would like to add for the RECORD.

I thank the chair of the subcommittee, the Senator from Iowa, Mr. HARKIN, for his extraordinary work in this area for helping bring forward an appropriations bill that reflects the positive changes of the authorization bill, to have the appropriations reflect those new strategies for improving our schools and strengthening our move for reform, for strengthening the notion that every child can learn, that we can really have excellence in every school, that we are not happy with the status quo, that we recognize some schools

are terrific, some teachers are wonderful, but the system itself is not as invigorated and as strong as it should be, and it can be improved.

That is what this legislation says: No to the status quo and yes to change; no to process and yes to progress; no to ''incomes'' and yes to outcomes; and yes to results.

In this holiday season it is a wonderful gift to ourselves, to our Nation, to change the way we are appropriating funding for public schools and for all schools in this Nation.

Today marks a historic moment. For the first time in 35 years since the Federal Government says we will work in partnership with States to help educate our children, it needs to be a local responsibility, but it must be a national priority. Our Nation cannot be strong, it cannot be great, it cannot be economically as vital if we don't have good schools. In Florida and Louisiana, that does not begin in kindergarten or end with a college degree; that is prekindergarten, early childhood education, and lifelong learning.

It is clearly in our Nation's interest to help States and local communities educate and bring schools to our citizens. The best place to begin doing that is in the home. The second best place to shore that up is in schools, starting at the lower grades and working up. As a mother with young children, I know directly and very personally that those first few years, the foundation, are important.

This bill is historic because in that whole partnership, for the first time, we have actually funded something we talk about. We targeted the grants for title I. We have funded the effort to help get the money to the districts that need a helping hand, that have difficulty raising either sales tax or property tax or industrial tax and corporate tax because the tax base is not there, but the children are. The tax base might not be there, but there are smart children who live in that county. The tax base is not there, but their parents are working hard.

This bill, for the first time, sends the new money through the targeting formulas to bring that help to poor and disadvantaged children so they can take the new tests, pass them, and meet the new standards of accountability.

It is an extraordinary accomplishment. I thank the Senator from Vermont. I know he cast his vote—it was a difficult vote to cast—against the authorization bill because we failed to fully fund special education. I am disappointed in that. I will work with him and pledge to work with Democrats and Republicans to pick up more of our fair share of those special education dollars. I will work to reform special education, to make sure it works for our students, our families, our children who are greatly challenged, mentally and physically, as well as our teachers.

Without Senator JEFFORDS, the Senator from Vermont, his untiring commitment and focus to education, we never would have had $3 billion added to the Education bill. It would have been left on the table and there would not be the energy to get it. I know he is disappointed, but I hope he hears my words this morning and is encouraged.

There are those in the Chamber who recognize without his complete commitment and dedication to the schoolchildren of this Nation, this bill would be short a lot of money. But because he put his political muscle behind it and did what he needed to do, we have seen a tremendous increase in these investments. He should be happy and grateful. I know he is disappointed in special education, but I commit to him I will work diligently to see if we cannot shore up that part of the bill.

I ask unanimous consent to have printed in the RECORD the list of the moneys the States will receive, additional funds. Every State and county will be helped, but we will get resources to those families and communities that need a helping hand. It is a historic moment.

The PRESIDING OFFICER. The Senator from New Mexico has 5 minutes remaining.

Mr. DOMENICI. Did I lose time?

The PRESIDING OFFICER. There was a quorum call in progress that was evenly divided.

Mr. DOMENICI. Mr. President, fellow Senators, let me take a few minutes. First, I rise with a sense of great sadness and yet a feeling of great hope. You really can have both votes in yourself at the same time. Two nights ago Mental Health Equitable Treatment of 2001 was dropped from the Labor-HHS appropriations conference report. The Senate passed a wonderful bill. We sent it to the House as part of Labor appropriations, even though it was a major, major authorizing bill. We had our hopes high because in the Senate the support was high. The time had come to make sure, 2 years from now in the United States, most insurance policies would cover the mentally ill. That meant to this Senator in 8 or 10 years we would be able to look back and see a very different America when it came to street people, people who during cold winter months we see on the grates of our cities with the blankets wrapped around them.

In our jails and prisons, we know that now and for the ensuing months those who have mental illnesses such as distress that comes from depression, manic depression, schizophrenia, and a whole host of serious mental diseases, are more apt to be found in the county jail or the State jail than they are in treatment centers, be they treatment centers to which you take your sick person, and they are run privately or publicly. More mentally ill people, men and women, are in jails and facilities not intended for them than there are in facilities intended for them.

We in the Senate, with the leadership and help of my friend, Senator WELLSTONE, have a bill. We call it the Domenici-Wellstone bill. It is moving right along. It cleared the Senate, sending a powerful signal to those in America by the millions who are sick with these diseases, their relatives, and their friends. They had an extremely high hope that ran through their bodies and in many cases gave them a superb ray of hope that maybe, in the future in the greatest land on Earth, we would have insurance—subject to some limitations and some exclusions, but across this land the large businesses would be offering insurance coverage for those who were mentally ill who worked for them; that we would begin to see the same thing happen there that has happened to people with heart conditions. We would have doctors taking care of them. We would have research taking place. We would have centers and facilities for research and for care growing up across this land, public or private. We know that would be happening. Sure enough, we could cast our eyes, cast our vision not too far ahead of us, and say we are doing the right thing, serious mental illness is going to receive treatment.

I ask consent I have 5 additional minutes.

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

Mr. DOMENICI. Insurance companies will be putting forth the kind of coverage necessary. What a day this will be. What a time that will be. What joy will come to those of us who have worked so hard. But more importantly, what joy will come to the millions of parents who will now see their children, when they probably have the first signs of these dread diseases, and these parents are going to be able to say we are not going to go broke trying to take care of an uninsured child with one of these dread diseases. What a marvelous, wonderful thing America will have done.

What do we hear? Over on the side, a dull but powerful beat of the insurance companies that are saying: This hasn't been covered before. Let's not cover it now. We hear a large undercurrent saying: We have never done this before. We should not start now. It is going to cost too much.

To them let me say: We hope you will join us when this bill clears both Houses, and when at that point you have to start writing insurance for people who are sick with schizophrenia, manic depression, those kinds of diseases—and there are many other diseases that will be covered. Research will start to take place because these kinds of sick people are carrying on their backs a package of assets, assets that are the payments that will be forthcoming from the sick person running to the doctor, to the clinic, to the research facilities. What a change and how America will have grown up when that occurs.

There are a lot of workers in this vineyard. There are thousands upon thousands of Americans who are busy in this field, in their home cities, in

their States. Many came to town this past week to show up at the conference meeting where the House and Senate met on this Labor, Health and Human Services appropriations bill. Why did they show up? They showed up because the Senate had attached to that bill a thorough covering of these diseases.

We knew it was a chance because the House would rather have this considered by another committee, not an appropriations committee. We got our chance to speak a few words. What words were spoken. Clearly, the message did not stay in this little cubicle, Senator WELLSTONE. The message went out from that room. The message went out that it is the time, it is the place, and it is ready.

As a matter of fact, I believe the members there present would have, by overwhelming numbers, voted to take this bill and put it on this appropriations bill and send it to the President for his signature. We made some good things happen. The President of the United States has issued a letter saying next year will be the time. We will hold him to it. He is saying he would like to do that. We know he had a distinguished friend who had depression and committed suicide, and he doesn't have any trouble with the idea of this being a disease, severe depression. It must be treated. Severe depression must have coverage just as the other dread diseases.

I have here lately been comparing these dread diseases of the mind with the diseases of the heart. Clearly, we covered heart even though it is part spiritual, part physical. We do not say ''we don't cover that because it is very difficult to diagnose and do research on.'' Thank God we got it together and worked on it.

So I understand my time is about to run out. I thank the Chair.

I just want to say I am happy again. The tenor and the tone—those who were saying we are going do it were really a different group of people. They are going to have hearings. Where they have not had a single hearing in the House of Representatives on the issue of parity of coverage for American people, we have had numerous hearings here. They have had none. They pledge it. Once they have it, once their Members hear, once their Members are importuned by these citizens to do this, it will move.

So I say thanks to Senator WELLSTONE for all the support and help, and to all those in the Senate—there are many, over 65 on the bill. The pressure from that, the ambience from that, was strong. We will, indeed, next year, be moving ahead with a big strong wave, and it will happen.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Parliamentary inquiry, Mr. President: How much time remains on the conference report?

The PRESIDING OFFICER. The time remaining is 20 minutes to the Senator from Pennsylvania.

Mr. HARKIN. Again, I inquire, if there is a quorum call, then the time runs on both sides?

The PRESIDING OFFICER. It will all be charged to the Senator from Pennsylvania.

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

Mr. NELSON of Florida. Mr. President, I ask if the Senator from Pennsylvania would give me 2 minutes of his time.

Mr. SPECTER. Mr. President, I am delighted to yield 2 minutes to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized for 2 minutes.

Mr. NELSON of Florida. I thank the Senator.

TERRORISM INSURANCE

Mr. NELSON of Florida. Mr. President, we are coming down to the crunch time with the conclusion of this session. One of the issues to be decided this afternoon is whether or not we are going to have any protection on terrorism insurance—not only for large and small businesses but also for homes and cars, and for personal lives.

Since there are so many agendas going on with this topic, I urge, since this is the very last gasp, the Senate to come to an agreement for a fallback and a short period of time—say 6 months—and adopt legislation that would have the Federal Government assume the terrorism risk for that short period of time with a freeze on rates so the consumer is not paying the high rates now being jacked up; and a moratorium on the cancellations so the consumers, businesses, and individual home and car owners would have protection against a terrorist risk of loss.

We can do that. That is a fallback position. The alternative is to do nothing. That is unconscionable.

Rates are being jacked as we speak, and cancellations of terrorist coverage is now occurring in the 50 States.

I thank the President for letting me bring this to the attention of the Senate. I thank the Senator from Pennsylvania for yielding the time.

Mr. SPECTER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Pennsylvania has 13 minutes remaining.

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

Is someone yielding time?

Mr. SPECTER. I yield 2 minutes of my time.

The PRESIDING OFFICER. The Senator from Texas is recognized for 2 minutes.

Mr. GRAMM. Mr. President, I think we need to take the opportunity to do terrorism insurance. I don't think at this late date, having put together two different compromises, that we could start from scratch on a program which nobody fully understands. We are going to have a chance this afternoon to do it. We have a compromise that has been worked out by Senator DODD, Senator DASCHLE, Senator SARBANES, and members of the Banking and Commerce Committees. I think we need to take it.

THE STIMULUS PACKAGE

Mr. GRAMM. Mr. President, I hope we get an opportunity to vote on the stimulus package. I liken our situation to a situation we would face if in the cold of winter a storm came along and blew the roof off of an apartment house. It is clear unless something is not done that people would get pneumonia, frostbite, and suffer from exposure.

We have one group of Congressmen and Senators rushing in to say that we have to hire doctors. We have to buy penicillin. We need blankets.

We have another group that says: Why don't we rebuild the roof? Then it is suggested that rich people live on the upper floors and they would benefit more by putting the roof back on.

Then the President proposes the classic political compromise, which is: Why don't you rebuild some of the roof and buy some of the penicillin?

I hope we can go that route. At least we would benefit people. I hope we get a chance to vote on that package today.

I yield the floor. I thank the Senator for this and for many other things.

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

The PRESIDING OFFICER (Mr. NELSON of Florida). The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, we are about at the end of the time in this session. I just want to make a comment or two about the subject matter of the Domenici-Wellstone amendment to try to bring parity to mental health. I regret very much that the Appropriations Committee did not act on it.

That amendment passed the Senate floor. And it had support from some in the House, really divided along party lines. There are some assurances from the President and at least one of the

authorizing committees in the House that there will be action to bring parity.

Mental illness is as much an illness as is physical illness, and that ought to be corrected. In the conference, I made the point that it was my hope that if action was not taken by the authorizers that the appropriators would proceed, again, next year at this time and act in our conference.

Mr. President, how much time remains?

The PRESIDING OFFICER. There are 8 minutes remaining for the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that I may proceed for the remainder of that time—the 8 minutes—as in morning business.

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

REPORTS ON THE CASES OF DR. WEN HO LEE AND DR. PETER LEE

Mr. SPECTER. Mr. President, before the first session of the 107th Congress ends, I want to put on the RECORD reports on the cases of Dr. Wen Ho Lee and Dr. Peter Lee, which were subject to oversight by the Judiciary Committee on the Department of Justice during the 106th Congress. The Subcommittee's work was controversial, partly because it included oversight of Attorney General Reno's handling of the investigations into campaign finance matters on President Clinton and Vice President Gore.

Without going into all the details, suffice it to say that bipartisan agreement could not be reached within the Subcommittee on a report or in the full Committee on issuance of subpoenas to obtain necessary testimony.

When a subpoena was sought for FBI Director Louis Freeh, the opposition of Senator HATCH, the Chairman of the Committee, proved decisive. In April 2000, the Subcommittee obtained a memorandum from Director Freeh dated December 1996 which recited a conversation between a ranking FBI official and a ranking Department of Justice official to the effect that the investigation of the Department of Justice would effect the Attorney General's tenure at a time before President Clinton had reappointed her. The Freeh memo further referenced a conversation between Attorney General Reno and Director Freeh. The Subcommittee's inability to subpoena and question Freeh was a significant hindrance to pursuing that important matter.

That memorandum and other files have been inaccessible since October with the closing of the Hart Building due to the anthrax mail. The terrorist attack of September 11 has further hindered the finishing of the Subcommittee's work because the FBI has, understandably, been occupied with investigating terrorists, which preempted other pending matters.

The Subcommittee's oversight was thwarted repeatedly by delays by the FBI and the intransigence of the Department of Energy. Once Wen Ho Lee was indicted, the FBI refused to provide additional information, claiming it would hamper the prosecution. Even after Dr. Wen Ho Lee entered a guilty plea and the prosecution was concluded, the FBI continued to refuse to provide information on the ground that it would impede their debriefing of Dr. Lee in obtaining the tapes which he took.

Congressional oversight is traditionally a difficult matter because the House and the Senate are so busy with legislative matters and it is like pulling teeth, at best, to get cooperation from the Executive branch. The Subcommittee's oversight efforts on Dr. Wen Ho Lee have been even tougher. In addition to the general difficulties, the Subcommittee's oversight efforts have been further complicated by the change in party control in May 2001, the terrorist attack on September 11 of this year, and the departure of the Subcommittee's key investigator Mr. Dobie McArthur. Mr. McArthur did an extraordinary job, virtually singlehandedly conducting the oversight investigations and writing the reports.

With the new FBI Director Robert S. Mueller, III focusing on reorganization of the Bureau and the additional responsibilities of the FBI occasioned by the September 11 terrorist attack, and the shift of the Department of Justice in the focus of FBI activities, it is very difficult to pursue further the Subcommittee's inquiry on Dr. Wen Ho Lee, but it is my hope that at some date that might be done. Because of the serious dereliction of the FBI's handling of the Dr. Wen Ho Lee investigation, it will never be known beyond a reasonable doubt whether Dr. Wen Ho Lee was a spy, although there is substantial evidence to that effect in the McArthur reports. The publication of the reports on Dr. Wen Ho Lee and Dr. Peter Lee will enable readers to evaluate the seriousness of espionage in damaging our national security interests, the failure of the Executive branch in dealing with those investigations, the need for changes in procedures by the Department of Justice, including the FBI, and the Department of Energy. Some legislation, as noted in the McArthur reports, has already been enacted as a result of the Subcommittee's oversight and further legislative reforms are needed. Publication of these reports will promote those objectives.

Mr. President, I ask unanimous consent that the text of the two-page Freeh memorandum of December 1996 be printed in the RECORD.

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

DECEMBER 9, 1996.

To: MR. ESPOSITO,
From: DIRECTOR,
Subject: DEMOCRATIC NATIONAL CAMPAIGN MATTER

As I related to you this morning, I met with the Attorney General on Friday, 12/6/96, to discuss the above-captioned matter.

I stated that DOJ had not yet referred the matter to the FBI to conduct a full, criminal investigation. It was my recommendation that this referral take place as soon as possible.

I also told the Attorney General that since she had declined to refer the matter to an Independent Counsel it was my recommendation that she select a first rate DOJ legal team from outside Main Justice to conduct that inquiry. In fact, I said that these prosecutors should be ''junk-yard dogs'' and that in my view, PIS was not capable of conducting the thorough, aggressive kind of investigation which was required.

I also advised the Attorney General of Lee Radek's comment to you that there was a lot of ''pressure'' on him and PIS regarding this case because the ''Attorney General's job might hang in the balance'' (or words to that effect). I stated that those comments would be enough for me to take him and the Criminal Division off the case completely.

I also stated that it didn't make sense for PIS to call the FBI the ''lead agency'' in this matter while operating a ''task force'' with DOC IGs who were conducting interviews of key witnesses without the knowledge or participation of the FBI.

I strongly recommended that the FBI and hand-picked DOJ attorneys from outside Main Justice run this case as we would any matter of such importance and complexity.

We left the conversation on Friday with arrangements to discuss the matter again on Monday. The Attorney General and I spoke today and she asked for a meeting to discuss the ''investigative team'' and hear our recommendations. The meeting is now scheduled for Wednesday, 12/11/96, which you and Bob Litt will also attend.

I intend to repeat my recommendations from Friday's meeting. We should present all of our recommendations for setting up the investigation—both AUSAs and other resources. You and I should also discuss and consider whether on the basis of all the facts and circumstances—including Huang's recently released letters to the President as well as Radek's comments—whether I should recommend that the Attorney General reconsider referral to an Independent Counsel.

It was unfortunate that DOJ declined to allow the FBI to play any role in the Independent Counsel referral deliberations. I agree with you that based on the DOJ's experience with the Cisneros matter—which was only referred to an Independent Counsel because the FBI and I intervened directly with the Attorny General—it was decided to exclude us from this decision-making process.

Nevertheless, based on information recently reviewed from PIS/DOC, we should determine whether or not an Independent Counsel referral should be made at this time. If so, I will make the recommendation to the Attorney General.

Mr. SPECTER. Mr. President, I am now going to commence with the reading of the report on Dr. Wen Ho Lee: My understanding, after consulting with the authorities, is that once I begin the reading of the report, the remainder may be incorporated in the RECORD as if read in full.

The PRESIDING OFFICER. And the Senator is advised he has 2½ minutes left.

Mr. SPECTER. I thank the Chair. I shall not use the full 2½ minutes.

This report augments and completes the interim report released on March 8, 2000, regarding the Government's investigation of espionage allegations against Dr. Wen Ho Lee who pleaded guilty on September 13, 2000 to one felony count of unlawful retention of national defense information.[1] The special Judiciary subcommittee on Department of

Justice Oversight, which I chaired in the last Congress, began oversight on the Wen Ho Lee case and several other matters in September 1999, but suspended its review of this case at the request of FBI Director Louis Freeh after Dr. Lee was indicted and jailed on December 10, 1999.

I issued the interim report in March 2000 to demonstrate the need for reforms contained in the Counterintelligence Reform Act of 2000, which became law as Title VI of Public Law 106–567 on December 27, 2000. That bipartisan bill, which passed the Senate Judiciary and Select Intelligence committees without a single vote in opposition despite sometimes strong disagreements about certain aspects of the Wen Ho Lee case, corrected many of the flaws in the government's procedures for handling espionage investigations and prosecutions. This report, consisting of an executive summary accompanied by a detailed review of the case, completes the oversight record on the Wen Ho Lee matter.

HIGHLIGHTS OF THE REPORT

The government's investigation of Los Alamos National Laboratory (LANL) nuclear weapons scientist Dr. Wen Ho Lee was so inept that despite scrutiny spanning nearly two decades, both the FBI and the Department of Energy missed repeated opportunities to discover and stop his illegal computer activities. As a consequence of these numerous failures, magnetic computer tapes containing some of the nation's most sensitive nuclear secrets are now missing when they could have been recovered as late as December 1998 and possibly even later.

One great tragedy of the Wen Ho Lee case is that the entire truth will likely never be known. As a consequence of an inept investigation, the government has lost the credibility to claim that its version of events is the absolute truth. Dr. Lee also lacks the credibility to tell the definitive tale of this case: he repeatedly lied to investigators, created his own personal nuclear weapons design library without proper authority, copied nuclear secrets to an unclassified computer system accessible from the Internet, and passed up several opportunities to turn his tape collection over to the government. If the information Dr. Lee put at risk did not fall into the wrong hands, it is a matter of mere luck. When the nation's most sensitive nuclear secrets are at issue, it is unacceptable that we should have to rely on luck to keep them safe.

Among the many concerns arising from the investigation and prosecution of Dr. Lee, the following are most significant:

The government obtained highly credible information in 1994 that Dr. Lee had helped the Chinese with computer codes and software, but took no steps to examine his computer. Had Dr. Lee's computer been examined, his illegal downloads of some of the nation's most sensitive nuclear weapons data to an unclassified computer system accessible from the Internet could have been detected and stopped.

The manner in which the FBI relied almost completely on the Department of Energy's Administrative Inquiry (AI) throughout the investigation which began in 1996, rather than developing an independent investigative plan, caused an inappropriate focus on the alleged loss of W–88 warhead design information to the exclusion of all else. The FBI never questioned how the suspected loss of the W–88 information related to the codes and software help that Dr. Lee was suspected of having provided to the PRC. The ongoing debate over whether the AI's underlying assumptions—namely that rapid advances in the PRC weapons program in the early 1990s resulted from their acquisition of U.S. weapons design information, and that the loss most likely occurred from Los Alamos—is of secondary importance. The mere fact that the PRC had obtained classified nuclear weapons information should have been sufficient to trigger a thorough investigation, but the FBI's investigation was anything but thorough.

The Department of Justice was wrong to reject the 1997 request by the FBI for electronic surveillance under the Foreign Intelligence Surveillance Act. Had the request been permitted to go forward to the court, Dr. Lee's illegal downloading could have been detected and halted in 1997. The Department of Justice's own internal review, conducted by Assistant U.S. Attorney Randy Bellows, concluded that the request should have been approved.

The Department of Energy was wrong to allow Wackenhut contract polygraph examiners to administer a polygraph to Dr. Lee on December 23, 1998. The Wackenhut contractors incorrectly reported that Dr. Lee passed the polygraph, prompting the FBI to nearly shut down its investigation at a time when scrutiny of Dr. Lee should have been intensified. Dr. Lee has told investigators the computer tapes that are now missing were in his office on December 23. Had the FBI conducted its investigation consistent with the fact that Dr. Lee did not pass the polygraph, the tapes could have been recovered.

The nuclear secrets that Dr. Lee mishandled were correctly described by the government as extremely sensitive. Dr. Lee's actions in downloading these files onto an unclassified computer system accessible from the Internet, and later onto portable magnetic tapes, constituted a serious threat to the national security.

Allegations that Dr. Lee was targeted for investigation and prosecution as a result of ''ethnic profiling'' are unfounded. The repeated investigations of Dr. Lee resulted from reasonable suspicions raised by Dr. Lee's own conduct. Moreover, there is absolutely no evidence that Dr. Lee's ethnicity was a factor in the decision to prosecute Dr. Lee or to hold him in unusually strict pretrial confinement.

The government's harsh treatment of Dr. Lee after his arrest on December 10, 1999, including putting him in solitary confinement and requiring him to be manacled does, however, raise troubling questions. The government's claim that Dr. Lee was such a threat he had to be held in pretrial confinement under very strict conditions is inconsistent with the long delay from March to December 1999—when the government first learned of the downloaded secrets until he was arrested—and the acceptance of a plea agreement in September 2000 by which Dr. Lee was released with no monitoring whatsoever, and which is only marginally better than it could have had in December 1999, at least in terms of finding out what happened to the tapes. Taken together with the many missed opportunities to detect Dr. Lee's illegal computer activity and recover the tapes, the government's handling of the plea agreement raises questions as to whether the harsh tactics were intended to coerce a confession.

The government's claim that Dr. Lee presented such a danger that he had to be prohibited from communicating is severely undercut by its failure to even seek any type of electronic surveillance on him even after the existence of the tapes was known. If the government was truly concerned that Dr. Lee could potentially alter the global strategic balance through phrases as innocuous as ''Uncle Wen says hello,'' or might send a signal to a foreign intelligence service to extract him, it should have sought to monitor his communications, but it did not.

Some of the most controversial and misguided steps in the case appear to have been motivated more by a desire to protect the affected agency's image than the national security. This is particularly true of the Department of Energy's decision to administer a polygraph to Dr. Lee in December 1998 when it seemed likely that the House's Cox Committee report[3] was going to expose the many missteps that had occurred up to that point.

The full report which follows addresses each of these matters in detail, as well as several other important aspects of the case.

REPORT ON THE GOVERNMENT'S HANDLING OF THE INVESTIGATION AND PROSECUTION OF DR. WEN HO LEE

The government's conduct in this case is so filled with major breakdowns by every agency involved that it almost defies analysis and makes determining responsibility for the failures a very complicated matter. This report attempts to sort out what went wrong and why, and to determine how such mistakes can be avoided in future cases. It includes some new information which has not been publicly disclosed before, and provides a thorough review of the facts that are known. For ease of reading, it is organized in roughly chronological order, with the exception being a section in the beginning which describes the key elements of the government's case against Dr. Lee.

The case against Dr. Wen Ho Lee

Most Americans had never heard of Dr. Wen Ho Lee before he was fired from Los Alamos National Laboratory in New Mexico on March 8, 1999. The first vague hints of the story that would explode on the national scene in March 1999 had come in a January 7, 1999, Wall Street Journal article by Carla Anne Robbins, which alleged that ''China received secret design information for the most modern U.S. nuclear warhead'' and quoted unnamed U.S. officials as saying that the ''top suspect is an American working at a U.S. Department of Energy laboratory.''[4] The WSJ article went on say that the loss of information related to the W–88 warhead was the ''most significant in a 20–year espionage effort by Beijing that targeted the U.S. nuclear weapons laboratories,'' and that ''China was given general, but still highly secret, information about the warhead's weight, size and explosive power, and its state-of-the-art internal configuration, which allowed designers to minimize size and weight without losing power.''[5] The article further noted that the investigation of the suspected loss of W–88 information was the ''third major Chinese espionage effort uncovered at the U.S. labs over the last two decades,'' and was a key part of the work of the special House committee, known as the Cox Committee, that was reviewing American high-tech transfers to China.[6]

The story of suspected espionage at LANL remained dormant after the Robbins article until the New York Times published a March 5, 1999 piece by James Risen and Jeff Gerth, titled ''Breach at Los Alamos: A Special Report.'' The article did not name Dr. Lee, but raised the profile of the case by quoting unnamed administration officials as saying that ''working with nuclear secrets stolen from an American Government laboratory, China has made a leap in the development of nuclear weapons: the miniaturization of its bombs. . .''[7] The Risen and Gerth story put a political spin on the case, quoting ''some American officials'' as asserting that ''the White House sought to minimize the espionage issue for policy reasons.'' The senior National Security Council official who handled the case, Gary Samore, denied the allegations, telling the NYT reporters that ''The idea that we tried to cover up or downplay these allegations to limit the damage to U.S.-Chinese relations is absolutely wrong.''[8]

Risen and Gerth then explained that their own investigation had revealed that ''throughout the Government, the response to the nuclear theft was plagued by delays, inaction and skepticism—even though senior intelligence officials regarded it as one of the most damaging spy cases in recent history.''[9] In support of their charges, they cited disagreements between former DOE intelligence chief Notra Trulock, who was the main proponent of the view that Chinese weapons advances were attributable to espionage, and other senior administration officials, including former Acting Energy Secretary Elizabeth Moler, who was said to have ordered Trulock not to brief the Cox Committee ''for fear that the information would be used to attack the President's China policy.''[10]

Ms. Moler denied the allegations that she had interfered with Mr. Trulock's congressional testimony, but the die had been cast so that as the story unfolded over the following months there was always an underlying hint that the Clinton Administration had ignored or downplayed an important espionage case to avoid criticism or complications with its China policy.

On March 8, 1999, Dr. Lee was publicly named for the first time in an Associated Press story by Josef Hebert. Quoting a statement from the Department of Energy (which did not name Dr. Lee), Hebert wrote that Dr. Lee had been fired for '''failing to properly safeguard classified material' and having contact with 'people from a sensitive country'''.[11] Shortly thereafter, the New York Times ran another article by James Risen, who had interviewed Energy Secretary Bill Richardson. According to Risen, Richardson told him that Dr. Lee had been fired on March 8 ''for security breaches after the FBI questioned him in connection with China's suspected theft of American nuclear secrets. . .''[12] Secretary Richardson also acknowledged that Dr. Lee had been questioned for three days, but had ''stonewalled'' during the questioning.[13]

Through the spring and summer, details of the case dribbled out as the press continued its investigation into the matter and several congressional committees conducted oversight on the case. Among the new details to emerge were allegations totally unrelated to the W–88 matter, including charges that Dr. Lee had transferred massive amounts of classified nuclear data to the unclassified portion of the LANL computer system and later onto portable magnetic tapes, which were thought to be missing.

The Cox Committee released its unclassified report on May 25, 1999, which did not mention Dr. Lee by name but clearly referred to his case. The President's Foreign Intelligence Advisory Board released its own review of security at the national labs in June, concluding that the labs did wonderful science but were lousy on security matters.[15] In August, Senators Thompson and Lieberman of the Governmental Affairs Committee released a special statement, saying:

''This is a story of investigatory missteps, institutional and personal miscommunications, and—we believe—legal and policy misunderstandings and mistakes at all levels of government. The DOE, FBI, and DOJ must all share the blame for our government's poor performance in handling this matter.''[16]

By September 1999, the government had finally separated the W–88 matter from the issue of Dr. Lee's illegal file downloads, and had started a new investigation aimed at finding out how the PRC had obtained the W–88 information it was known to possess. It did so quietly, without publicly acknowledging that Dr. Lee was apparently no longer a suspect in the loss of the W–88 information.

Also in late September 1999, the Senate Judiciary subcommittee on Department of Justice Oversight was organized, with a mandate to examine: technology transfer to the PRC, including the Wen Ho Lee case, the Peter Lee case, and the Loral/Hughes matter; the facts surrounding the FBI's use of pyrotechnic tear gas rounds during the 1993 standoff at Waco, which had recently been confirmed in a special report of the Texas Rangers; and the Department of Justice's handling of campaign finance investigations and prosecutions from the 1996 presidential campaign.[17]

The subcommittee began an expeditious review of the Wen Ho Lee case and the other matters within its jurisdiction, and sent out letters to witnesses on December 7, 1999, for a hearing on December 14, which would examine two issues: 1) the details of a December 23, 1998 polygraph exam that had been administered to Dr. Lee, and 2) the relationship between the Lees and the government.

On December 10, 1999, Dr. Lee was arrested and charged in a 59–count indictment[18] of mishandling classified nuclear weapons data, prompting FBI Director Freeh to write to me, asking that I postpone hearings on the case. In view of the extraordinary circumstances of the case and Director Freeh's unprecedented request, which he reiterated to me and Senator Torricelli in a meeting on December 14, I agreed to postpone hearings on the case, but to continue a review of government documents unrelated to the criminal case, as well as documents that came into the public domain as a result of the government's prosecution of Dr. Lee.

The indictment of Dr. Lee referred to a series of tapes Dr. Lee made from 1993 through 1997, during which time he collected SECRET and CONFIDENTIAL Restricted Data[19] into a directory on the classified computer system at LANL, then transferred the information onto the unclassified portion of the LANL computer system and ultimately onto a series of portable magnetic computer tapes, each capable of holding 150 megabytes of information. All told, the information he collected and transferred to portable magnetic tapes was more than 800 megabytes, the equivalent of over 400,000 pages of data.[20]

At the bail hearing of Dr. Lee on Dec. 13, 1999, the key government witness, Dr. Stephen Younger, Associate Laboratory Director for Nuclear Weapons at Los Alamos, testified as follows about the nuclear secrets Dr. Lee was accused of mishandling:

''These codes, and their associated data bases, and the input file, combined with someone that knew how to use them, could, in my opinion, in the wrong hands, change the global strategic balance.''[21]

It would be hard, realistically impossible, to pose a more severe risk than to ''change the global strategic balance.''

Dr. Younger further testified that:

''They enable the possessor to design the only objects that could result in the military defeat of America's conventional forces . . . . They represent the gravest possible security risk to . . . the supreme national interest.''[22]

A ''military defeat of America's conventional forces'' and ''the gravest possible security risk to . . . the supreme national interest'' constitute threats of obvious enormous importance.

At this same bail hearing, when the judge seemed to be leaning toward a restrictive form of house arrest, Mr. Kelly warned that Dr. Lee could be ''snatched and taken out of the country'' by hostile intelligence services.[23] The lead FBI Agent then on the case, Robert Messemer, told the judge to expect ''a marked increase in hostile intelligence service activities both here in New Mexico and throughout the United States in an effort to locate those tapes,'' and warned that ''our surveillance personnel do not carry firearms, and they will be placed in harm's way if you require us to maintain this impossible task of protecting Dr. Lee.''[24]

The government made these representations in a successful effort to deny Dr. Lee bail and he remained in pretrial confinement for more than nine months. By September 13, 2000, when Judge Parker approved the plea agreement under which Dr. Lee would plead guilty to one of the original fifty-nine felony counts and accept a sentence of ''time-served'' at 278 days, the government's case against Dr. Lee appeared to lie in tatters, as did its credibility.

Judge Parker's statements at the plea hearing were a stunning rebuke of the government when he said:

''. . . I believe you were terribly wronged by being held in custody pretrial . . . under demeaning, unnecessarily punitive conditions. I am truly sorry that I was led by our Executive Branch of government to order your detention last December.

''Dr. Lee, I tell you with great sadness that I feel I was led astray last December by the Executive Branch of our government through its Department of Justice, by its Federal Bureau of Investigation and by its United States Attorney for the District of New Mexico. . .''[25]

After praising many of the lawyers on both sides of the case, Judge Parker made clear where he felt the responsibility for the government's mistakes should lay:

''It is only the top decision makers in the Executive Branch, especially the Department of Justice and the Department of Energy and locally, during December, who have caused embarrassment by the way this case began and was handled. They did not embarrass me alone. They have embarrassed our entire nation and each of us who is a citizen of it.''[26]

When Dr. Lee walked free, convicted of a single felony count out of 59 and sentenced to time served, the nation was stunned by the government's rapid reversal. The government had argued even as late as September 1, 2000 that Dr. Lee was so serious a threat to the national security that he had to be held in solitary confinement under extraordinarily stringent conditions, yet less than two weeks later, he was allowed to walk out of jail a free man. Even President Clinton, who strangely acted as though it was some alien entity that had done such a sharp turnabout rather than an agency within his own administration, seemed stunned by the change of position. On the day after Dr. Lee was released, President Clinton told reporters at the White House:

''The whole thing was quite troubling to me, and I think it's very difficult to reconcile the two positions that one day he's a terrible risk to the national security and the next day they're making a plea agreement for an offense far more modest than what had been alleged.''[27]

It may remain impossible to reconcile the two positions, but it is necessary to try, if for no other reason than to help Americans understand why the government acted as it did in the Wen Ho Lee case. Although it may not be sufficient to restore the public's confidence in the agencies involved in this case, a thorough examination of the facts such as that attempted here is a necessary step in that direction.

The Investigations of Dr. Wen Ho Lee

The purpose of counterintelligence is to identify suspicious conduct and then pursue an investigation to prevent or minimize access by foreign agents to our secrets. From a counterintelligence perspective, the government's handling of the Wen Ho Lee matter

has been an unmitigated disaster. The investigation of Dr. Lee since 1982 has been characterized by a series of errors and omissions by the Department of Energy and the Department of Justice, including the FBI, which have permitted Dr. Lee to threaten U.S. supremacy by putting at risk information that could change the ''global strategic balance.''

While Dr. Lee, of course, must bear primary responsibility for any damage that might result to national security from his mishandling of our nuclear secrets, those officials in the DOE, the FBI and, to a lesser degree, the DOJ, who participated in the investigation of Dr. Lee must accept responsibility for their own failure to detect and put a stop to Dr. Lee's illegal computer activity. It would be one thing if an individual who had never shown up on the counterintelligence radar scope was later found out, but Dr. Lee was under active investigation during the very time he was engaged in illegal computer downloads, yet his activities were not detected.

In fact, Dr. Lee was investigated on multiple occasions over seventeen years, but none of these investigations—or the security measures in place at Los Alamos—came close to discovering and preventing Dr. Lee from putting the national security at risk by placing highly classified nuclear secrets on an unsecure system where they could easily be accessed by even unsophisticated hackers.[18] It is difficult to comprehend how officials entrusted with the responsibility for protecting our national security could have failed to discover what was really happening with Dr. Lee, given all the indicators that were present.

The 1982–1984 Investigation

Dr. Wen Ho Lee was born in Nantou, Taiwan, in 1939. After graduating from Texas A&M University with a Doctorate in 1969, he became a U.S. citizen in 1974, and began working at Los Alamos National Laboratory in applied mathematics and fluid dynamics in 1978.[20] The X-Division, where Dr. Lee worked from 1982 until 1998, has the highest level of security of any division at LANL. It is responsible for the design of thermonuclear weapons, and Dr. Lee was part of a team working on five Lagrangian mathematical codes, also known as ''source codes'', used in weapons development. Dr. Lee's wife, Sylvia, also worked at LANL from November 1980 until June 1995. The last position she held was ''Computer Technician,'' and she held a Top Secret clearance from 1991 through 1995.[30]

The FBI first became concerned about Dr. Lee as a result of contacts he made with a suspected PRC intelligence agent in the early 1980s. On December 3, 1982, Dr. Lee called a former employee of Lawrence Livermore National Laboratory (LLNL) who was suspected of passing classified information to the Peoples Republic of China (PRC). This call was intercepted pursuant to a FISA court authorized wiretap in another FBI espionage investigation. After introducing himself, Dr. Lee stated that he had heard about the Lawrence Livermore scientist's ''matter'' and that Lee thought he could find out who had ''squealed'' on the employee.[31] Based on the intercepted phone call, the FBI opened an espionage investigation on Dr. Lee.

For the next several months the FBI investigated Dr. Lee, with much of the work being done under the guise of the periodic reinvestigation required for individuals with security clearances. On November 9, 1983, the FBI interviewed Dr. Lee. Before being informed that the FBI had intercepted his call to the Lawrence Livermore employee, Lee stated that he had never attempted to contact the employee, did not know the employee, and had not initiated any telephone calls to him. These representations were patently false.[32] Dr. Lee offered during the course of this interview to assist the FBI with its investigation of the other scientist.

On December 20, 1983 Dr. Lee was again interviewed by the FBI,[33] this time in California. During this interview, Lee explained that he had been in contact with Taiwanese nuclear researchers since 1977 or 1978, had done consulting work for them, and had sent some information that was not classified but that should have been cleared with DOE officials. He tried to explain that he had contacted the subject of the other investigation because he thought this other scientist was in trouble for doing the same thing that Lee had been doing for Taiwan.[34] After this interview, the FBI sent Dr. Lee to meet with the espionage suspect.

On January 24, 1984, Dr. Lee took an FBI polygraph examination which included questions about passing classified information to any foreign government, Lee's contacts with the Taiwanese Embassy, and his contacts with the LLNL scientist. Although the FBI has subsequently contended that Dr. Lee's answers on this polygraph were satisfactory, there remained important reasons to continue the investigation. His suspicious conduct in contacting the Lawrence Livermore scientist and then lying about it, the nature of the documents that he was sending to the Taiwanese Embassy, and the status of the person to whom he was sending those documents were potential danger signals. Although not classified, the documents Dr. Lee was passing to Taiwan's Coordination Council of North America were subject to Nuclear Regulatory Commission export controls. They were specifically stamped ''no foreign dissemination.'' According to testimony of FBI Special Agent Robert Messemer at a special hearing on December 29, 1999, FBI files also contain evidence of other ''misrepresentations'' that Dr. Lee made to the FBI in 1983–1984 which have raised ''grave and serious concerns'' about Dr. Lee's truthfulness.[36] Notwithstanding these reasons for continuing the investigation, the FBI closed its initial investigation of Lee on March 12, 1984.[37]

Although the FBI's 1982–1984 investigation was generally well run, three areas of concern are worth noting. First, the FBI should have coordinated more closely with the Department of Energy. When initially contacted by the FBI in 1982, the DOE's Office of Security recommended that Dr. Lee be removed from access due to the sensitivity of the area in which he worked. Had the DOE security official's instincts been followed, Dr. Lee would not have been able to put at risk, years later, the massive volume of nuclear data that he ultimately did.

The second area of concern is that the FBI closed the investigation despite several troubling indicators. As noted previously, FBI Special Agent Messemer mentioned several misrepresentations that Dr. Lee made to the FBI which were relevant to his truthfulness. Two of these misrepresentations stand out as particularly important. First, Dr. Lee learned about the LLNL scientist's situation from a mutual friend during an October 1982 visit to LLNL.[38] Second, and more importantly, upon learning of the LLNL scientist's predicament, Dr. Lee immediately attempted to call his point of contact at the Coordination Council of North America (the equivalent of the Taiwanese Embassy in Washington, DC).[39] That Dr. Lee would attempt to contact a foreign embassy seeking help for a fellow scientist should have raised serious questions about his trustworthiness.

Unfortunately, the FBI did not discover this until after they had already made a decision to use him in the investigation of the LLNL scientist. Had the FBI been more cautious in assessing Dr. Lee's trustworthiness in the first place, it would likely not have used him in the investigation of the other scientist, and would therefore have been in a better position to facilitate his termination from LANL or, at the very least, the removal of his security clearance. Director Freeh recently confirmed that the FBI had made no recommendation to the DOE regarding the removal of Dr. Lee's clearance following the 1982–1984 investigation.[40]

The second element of Dr. Lee's conduct in the 1982–1984 investigation that deserved greater attention from the FBI than it got is the status of the individual to whom Dr. Lee was sending the information at the CCNA. This individual was known to the FBI as an intelligence collector (although it remains unclear as to whether Dr. Lee had any reason to be aware of that). The FBI did take the necessary steps to learn how Dr. Lee came to know this individual, but it did not give sufficient weight to the individual's status as an intelligence collector.

The third and final area of concern about the FBI's handling of the 1982–1984 investigation relates to the FBI's reporting of Dr. Lee's assistance in the investigation of the LLNL scientist, which has been inconsistent. Some documents, apparently including information provided to Attorney General Reno in preparation for her June 8, 1999 appearance before the Judiciary Committee in closed session, indicate that the FBI did not use Dr. Lee in its investigation. The final draft of the 1997 request for FISA coverage on Dr. Lee, in recounting this episode, states flatly that while Dr. Lee offered to help the FBI in its investigation of the LLNL scientist, the FBI did not use him.[41] Contemporaneous FBI records of the 1982 investigation, however, indicate that not only did Dr. Lee assist the FBI with its investigation of the other scientist, but that the result was far better than had been anticipated.

The failure to mention the assistance provided by Dr. Lee in 1983 when requesting FISA coverage in 1997 is troubling because it has the effect of presenting an incomplete picture of the initial investigation of Dr. Lee. Judgements regarding whether an individual is acting as an agent of a foreign power should be made in consideration of the totality of the circumstances, and the FBI's decision to use Dr. Lee in the investigation of the LLNL scientist is an important element of the total circumstances. If the FBI trusted Dr. Lee enough to use him in the investigation of the LLNL scientist, that fact should have been included in the FISA request. The failure to mention that fact gives an incomplete impression, which is inappropriate in these matters.

It is likely that the FBI's incorrect characterization of Dr. Lee's 1982–1984 activities was merely an inadvertent oversight and was not an attempt to conceal the assistance he had provided. For example, the FBI did not make any effort to conceal or deny Mrs. Lee's assistance to the government.

While the FBI should have acknowledged Dr. Lee's assistance in the FISA request, the totality of Dr. Lee's conduct in 1982–1984 was suspicious and was directly relevant on a probable cause determination.

The 1982–1984 investigation of Dr. Lee represents a missed opportunity to protect the nation's secrets. Had the matter been handled properly, Dr. Lee's clearance and access would most likely have been removed long ago, before he was able to put the global strategic balance at risk.

The 1994–November 2, 1995, Investigation of Dr. Lee

This investigation of Dr. Lee was initiated based upon the discovery that he was well

acquainted with a high-ranking Chinese nuclear scientist who visited Los Alamos as part of a delegation in 1994,[42] and that he was alleged to have helped Chinese scientists with codes and software. Dr. Lee had never reported meeting this scientist, which he was required to do by DOE regulations, so his relationship with this person aroused the FBI's concern. Unclassified sources have reported that Dr. Lee was greeted by ''a leading scientist in China's nuclear weapons program who then made it clear to others in the meeting that Lee had been helpful to China's nuclear program.'' [43] In concert with the 1982–1984 investigation, Dr. Lee's undisclosed relationship with this top Chinese nuclear scientist should have alerted the FBI and the DOE of the imperative for intensified investigation and reconsideration of his access to classified information. Instead, this FBI investigation was deferred on November 2, 1995, because Dr. Lee was by then emerging as a central figure in the Department of Energy's Administrative Inquiry,[44] which was developed by a DOE counterintelligence expert in concert with a seasoned FBI agent who had been assigned to DOE for the purposes of the inquiry. (The DOE Administrative Inquiry was given the code name Kindred Spirit.[45]) The investigation of Dr. Lee was essentially dormant from November 1995 until May 1996, when the FBI received the results of the DOE Administrative Inquiry and opened a new investigation of Dr. Lee on May 30, 1996.

It is difficult to understand why the FBI would suspend the investigation in 1995, even to wait for the Kindred Spirit Administrative Inquiry, when the issues that gave rise to 1994–1995 investigation remained valid and unrelated to the Kindred Spirit investigation. The key elements of the 1994–1995 investigation are described in the 1997 Letterhead Memorandum (LHM) which was prepared to support the request for a FISA search warrant. Specifically, the LHM describes the unreported contact with the top nuclear scientist,[46] and it makes reference to the ''PRC using certain computational codes . . . which were later identified as something that [Lee] had unique access to.'' [47] And, finally, the LHM states that ''the Director subsequently learned that Lee Wen Ho had worked on legacy codes.'' Given these allegations, it was a serious error to allow the investigation to wait for several months while the DOE AI was being completed. This deferral needlessly delayed the investigation and left important issues unresolved.

In addition to information known to the FBI which required further intensified investigation and not a deferred investigation on November 2, 1995, the Department of Energy was incredibly lax in failing to understand and pursue obvious evidence that Dr. Lee was downloading large quantities of classified information to an unclassified system. The sheer volume of Dr. Lee's downloading showed up on a DOE report in 1993.[49] Cheryl Wampler, from the Los Alamos computer office, has testified that the NADIR system, short for Network Anomaly Detection and Intrusion Recording, flagged Dr. Lee's massive downloading in 1993.[50] This system is specifically designed to create profiles of scientists' daily computer usage so it can detect unusual behaviors. A DOE official with direct knowledge of this suspicious activity failed to act on it, or to tell DOE counterintelligence personnel or the FBI. Based on its design, the NADIR system would have continued to flag Dr. Lee's computer activities in 1994 as being unusual, but no one from DOE took any action to investigate what was going on.[51] And it wasn't mentioned to the FBI or DOE's counter-intelligence personnel.

In response to written questions after a September 27, 2000 hearing on the Wen Ho Lee matter, DOE officials provided information to put the NADIR alerts in perspective. According to DOE, an average of 180 users per week exceeded the thresholds established by the system, and were flagged just like Dr. Lee.[52] While 180 is a substantial number of individuals, it would not be impossible to devise a system by which counterintelligence personnel can review these records to determine whether or not any individuals who are already under investigation have been identified by the system.

In response to another question about what happened to the NADIR records for 1994 (which, according to testimony from Ms. Wampler are missing), DOE replied simply that:

''. . . in 1993 NADIR was a new and developing technique and many other scientists in addition to Dr. Lee were transferring data due to a change in the computer environment at that time. During the 1993–1994 timeframe, Dr. Lee was not a suspect.'' [53]

Apart from the fact that the DOE's response is incorrect—Dr. Lee was a suspect beginning in 1994—the records should have been available for review when the FBI began its investigation. The fact that the DOE was able to confirm that Dr. Lee was flagged by NADIR in 1993 proves that point, but it does not explain the absence of the 1994 NADIR records. Had the FBI bothered to check with the DOE computer personnel, and there should have been no doubt that Dr. Lee had no expectation of privacy with regard to a system designed to identify abnormal system operations, Dr. Lee's illegal computer downloads could have been detected and halted.

The DOE computer and counterintelligence personnel could also have been more helpful in this situation.[54] Had DOE transmitted this information to the FBI, and had the FBI acted on it, Dr. Lee could have and should have been stopped in his tracks in 1994 on these indicators of downloading. The full extent of the importance of the information that Dr. Lee was putting at risk through his downloading was encapsulated in a document the Government filed in December 1999 as part of the criminal action against Dr. Lee:

''[I]n 1993 and 1994, Lee knowingly assembled 19 collections of files, called tape archive (TAR) files, containing Secret and Confidential Restricted Data relating to atomic weapon research, design, construction, and testing. Lee gathered and collected information from the secure, classified LANL computer system, moved it to an unsecure, ''open'' computer, and then later downloaded 17 of the 19 classified TAR files to nine portable computer tapes.'' [55]

These files, which amounted to more than 806 megabytes, contained information that could do vast damage to the national security.

The end result of these missteps and lack of communication was that, during some of the very time that the FBI had an espionage investigation open on Dr. Lee resulting from his unreported contacts with a top Chinese scientist and the realization that the Chinese were using codes to which Dr. Lee had unique access, DOE computer personnel were being warned by the NADIR system that Dr. Lee was moving suspiciously large amounts of information around, but were ignoring those warnings and were not passing them on to the FBI. At the same time, FBI personnel were taking no steps to investigate Dr. Lee's computer activities, even when one of the key allegations that prompted scrutiny of him in 1994 was that he had helped the Chinese with codes and software.

The near perfect correlation between the allegations which began the 1994–1995 investigation and Dr. Lee's computer activities is stunning. The codes the Chinese were known to be using were computer codes, yet FBI and DOE counterintelligence officials never managed to discover these massive file transfers. Where, if not on his computer, were they looking? And, as for the lab computer personnel who saw but ignored the NADIR reports, what possible explanation can there be for a failure to conduct even the most minimal investigation?

FBI and DOE failures in 1994–1995 represented the loss of a golden opportunity to detect and halt Dr. Lee's illegal computer activities. In the 1995–1996 period, another opportunity to find and fix the problem presented itself in the form of the DOE Administrative Inquiry (AI). Unfortunately, the opportunity represented by the AI was never fully realized.

The Investigation Renewed, May 30, 1996 to August 12, 1997

As noted previously, the investigation of Dr. Lee was dormant from November 2, 1995 until May 30, 1996. The investigation had been shut down to await the arrival of DOE's Administrative Inquiry, which was presented on May 28, 1996. With the DOE AI in hand, the FBI resumed its investigation of the Lees. To understand that investigation, however, it is first necessary to review the AI.

The Kindred Spirit Administrative Inquiry

The public perception of the government's actions in the Wen Ho Lee case, particularly with regard to charges of so-called ''ethnic profiling'', has been shaped by a misunderstanding of the Department of Energy's Administrative Inquiry (AI), code named ''Kindred Spirit''. Although he was not its author, former DOE intelligence chief Notra Trulock has been closely associated with this document, in large measure because he was instrumental in commissioning the DOE's Kindred Spirit Analytical Group (KSAG) which spawned the AI, and he later forcefully advocated the position that substantial espionage had occurred and that something needed to be done about it. The KSAG was formed in 1995 when scientists studying Chinese nuclear developments became concerned about certain developments in the level of sophistication of the PRC's weapons. During the summer of 1995, these concerns were fueled when an individual provided to the U.S. government a document, subsequently known as the ''walk-in'' document, which contained highly classified details of some of our most advanced nuclear warheads.

Recent attempts to re-examine the premise of the Kindred Spirit AI and to question its role in the FBI's subsequent investigation of the same name have fostered the perception that the DOE's AI was largely to blame for the FBI's misdirected investigation, which focused almost exclusively on Dr. and Mrs. Lee, the loss of the W–88 information, and the Los Alamos lab, when a much broader investigation was required.

The perception that DOE's AI was the weakest link in the FBI's Kindred Spirit investigation is unfortunate because it obscures a far more complex set of circumstances. This perception has also unfairly undermined the government's credibility on the ethnic/racial profiling question and seriously damaged Notra Trulock's reputation and career. A more complete public record on this matter may be helpful in repairing some of the damage.

In an October 29, 1999 letter, Energy Secretary Bill Richardson reacted to the FBI's attempts to lay the blame for its problems in the Kindred Spirit investigation on the Administrative Inquiry:

''. . . I think there has been a tendency to overstate the adverse influence that DOE's technical analysis and preliminary investigative support had on the conduct of the

KINDRED SPIRIT investigation. There also has been, in my opinion, an over-emphasis on the degree to which DOE input served to limit the FBI's investigative work. . . . [T]he fact is that all of the decisions to limit the scope of the investigation were clearly, mutually agreed-upon by DOE and the FBI, based on security and other concerns.'' [57]

In this regard, Secretary Richardson is correct. The FBI's failures in the Wen Ho Lee investigation should not be blamed on the AI. The DOE is, by law, limited in the scope of what it can do. The FBI could have and should have looked at the AI as a starting point. Instead, the FBI case agents seemed to think that the DOE investigators had done their job for them, and never seriously looked at the premise of the AI and its relationship to Dr. Lee's activities.

The facts of the AI and the controversy surrounding it can be stated in an unclassified fashion as follows:

(A) The U.S. government concluded in 1995 that the PRC had made remarkable progress in its nuclear weapons program in the early 1990s.

(B) The government also learned in 1995 that the PRC had obtained certain classified nuclear weapons design information on the W–88 warhead and other weapons.

There is widespread agreement that both A and B are true: the Chinese made rapid advancements in their nuclear weapons program in the early 1990s, and they obtained classified nuclear weapons design information sometime before 1995. The controversy arises over whether there is any causal relationship between the two facts. One school of thought—embodied in the Kindred Spirit AI—holds that the Chinese advances occurred because they obtained classified U.S. nuclear weapons design information, particularly that related to the W–88. The contrary school of thought holds that while both A and B may be true, there is no evidence that the Chinese nuclear advances resulted from their acquisition of U.S. nuclear weapons design information.

Investigations predicated upon these two schools of thought would take remarkably divergent paths. If one took as a starting point, as did the authors of the AI, the belief that the PRC's nuclear weapons design advances were in large part attributable to espionage against the United States, one would be looking for the wholesale transfer of W–88 design information. The alternative view—that the PRC's nuclear weapons advances could have occurred independently of the acknowledged acquisition of classified U.S. weapons data in the ''walk-in'' document—would lead to an investigation focused on the specific bits of classified information the Chinese were known to have obtained, not only about the W–88 but about other weapons systems as well. The former theory paints a picture consistent with a single act of espionage, conducted by a single individual transferring information from a specific place. The latter theory forces a broader review, implicitly acknowledging that the information could involve multiple transfers from multiple sources, quite possibly by numerous individuals.

While the debate over whether or not the PRC's nuclear weapons advances resulted from espionage is important from both a counterintelligence and an intelligence point of view, it should not have been the determinative factor in deciding how to conduct this espionage investigation. The threshold for required action by the FBI is met on the basis of fact B, irrespective of fact A and any relationship between the two elements. Section 811 of the Intelligence Authorization Act of 1995, enacted to improve interagency coordination on espionage investigations in the wake of the Aldrich Ames spy case, requires an agency to notify the FBI when it becomes aware that espionage may have occurred. Proof that the PRC had obtained classified U.S. nuclear weapons design information became available in the summer of 1995 in the form of the ''walk-in'' document, which was really a large cache of documents delivered to the U.S. government by a Chinese national. The information in the ''walk-in'' document was sufficient to trigger the requirements of section 811 and to prompt an investigation by the FBI.

The DOE could have satisfied its statutory obligations under section 811 simply by notifying the FBI of its view that certain information in the ''walk-in'' document was not in the public domain, had not been authorized for transfer to the PRC, and was therefore likely in the possession of the PRC as a result of espionage. In retrospect, it might have been better if they had done so. The conclusions of the AI, while accompanied by many caveats that the DOE had been limited in its ability to conduct the investigation and that further review was required, were adopted almost wholesale by the FBI and formed the basis of the FBI's own Kindred Spirit espionage investigation.

The Bellows Report is highly critical of the DOE AI, concluding essentially that the DOE overstated the degree of consensus that existed on the question of espionage as a causal factor in the PRC's nuclear weapons advances, thereby establishing a faulty predicate for the entire investigation. The fact that the DOE was already concerned that the PRC had detonated what appeared to be an advanced nuclear weapon when the information in the ''walk-in'' document became available may have led some members of the DOE scientific review panel, called the Kindred Spirit Analytical Group (KSAG), to give undue weight to the possibility of a causal link between the PRC's weapons design advances and the information in the ''walk-in'' document. That is a question about which reasonable individuals may disagree—even among the members of the KSAG there was not unanimity on this point [58]—but there is no doubt that the AI which flowed from the KSAG was built upon the belief that the PRC's design advances were the result of espionage. There can also be no doubt that the AI cast strong suspicion on the Lees.

Any fair reading of the Administrative Inquiry makes clear that its authors (a DOE counterintelligence official and an FBI agent seconded to the DOE to assist with the AI) considered Wen Ho and Sylvia to be the prime suspects in the alleged loss to the PRC of certain W–88 nuclear warhead design information, and that the loss had most likely occurred at Los Alamos. The AI reaches a preliminary conclusion:

''. . . it is the opinion of the writer that Wen Ho Lee is the only individual identified during this inquiry who had, opportunity, motivation and legitimate access to both W–88 weapons system information and the information reportedly received by [the PRC].'' [59]

A fair reading of the document also shows that the authors explicitly recognized the limitations of their investigation and recommended that the Lees and Los Alamos be a starting place for an investigation into the loss of the W–88 information, an investigation that would necessarily extend well beyond the Lees and Los Alamos. For example, the report says:

''This by no means excludes any other DOE personnel as being possible suspects in this matter. However, based upon a review of all information gathered by this inquiry, Wen Ho Lee and his wife, Sylvia appear the most logical suspects. Wen Ho Lee had the direct access to the W–88 [information], motivation and opportunity to provide the PRC the W–88 weapons design [information].'' [60]

The report concluded with the following recommendation:

''The writer believes the ECI [DOE Counterintelligence] has basically, exhausted all logical 'leads' regarding this inquiry which ECI is legally permitted to accomplish. Therefore, I strongly urge the FBI take the lead in this investigation.'' [61]

Thus, while the AI strongly points toward the Lees there are also enough qualifiers to make it clear that other suspects should also be investigated.

Had the AI arrived on the doorstep of the FBI's Albuquerque office under different circumstances, it might have been handled more appropriately. The AI came when the FBI had already been investigating Dr. Lee, albeit not very competently, on the basis of credible allegations from 1994 that he had helped the Chinese with codes and software. In this context, the AI served to reinforce the FBI's existing perceptions of Dr. Lee as a likely espionage suspect.

Instead of using the AI as a starting point for a comprehensive investigation, the FBI did little or no additional analysis and began focusing almost exclusively on the W–88 issue and the Lees. The reason for the FBI's action was made clear in an interview of the special agent who helped write the AI, who said that he assumed that the investigation of Dr. Lee and the Kindred Spirit investigation would eventually merge because it looked like Dr. Lee was the most likely suspect.[62]

Even when given an opportunity to take a fresh look at the case, the FBI did not do so. When the CIA expressed concern in the summer of 1996 that the individual who provided the ''walk-in'' document might be under the control of a hostile intelligence service, the FBI actually shut down its investigation for nearly three weeks in July and August. An August 20, 1996 teletype from FBIHQ to the Albuquerque division says:

''On August 19, 1996, DOEHQ provided FBIHQ with a letter stating it had conferred with CIAHQ and that DOE judged 'that a serious compromise of U.S. weapons-specific restricted data occurred most likely in the 1984–1988 timeframe.' In effect, DOE stands by their original conclusion.'' [63]

Thus, after the details were sorted out, it was clear that the investigation should go forward because the PRC had information they should not have, even if there were disagreements over what, exactly, had been compromised. A September 16, 1996 FBI 302 from an interview of a scientist puts this in perspective. It says, ''There was no disagreement that 'Restricted Data' information had been acquired by the Chinese. The only disagreement was over how valuable the information was.'' [64]

Thus, the recent attempts to dissect the AI, outlined elsewhere in this report, miss the mark. The FBI had an opportunity when the CIA raised a red flag about the ''walk-in'' in 1996 to review the structure of their investigation. They knew, based on the review they conducted at the time, that there had been some disagreement within the KSAG, but that espionage had, in fact, occurred. Unfortunately, when the FBI restarted its investigation in August 1996, the case agents never questioned the underlying assumptions of the AI or the impact of these assumptions on the structure and course of the investigation.

By restarting the investigation where they left off, the FBI failed to take into consideration massive amounts of information in their own files indicating that the investigation should extend beyond the W–88 information, beyond Los Alamos, and beyond the Lees. More importantly, the FBI never seems to have made any effort to understand what, if any, relationship existed between the Kindred Spirit allegations and the investigation

of Dr. Lee that was already under way related to computer codes and software. The FBI's failure to ask this basic question sent the investigation on a wild goose chase for more than three years while Dr. Lee's illegal computer activities, which were highly relevant to the 1994 allegations against him, continued unchecked and unimpeded.

The ''walk-in'' document

The ''walk-in'' document is central to the Kindred Spirit investigation, so it should be described in the greatest detail consistent with classification concerns. This document, dated 1988, is said to lay out China's nuclear modernization plan for Beijing's First Ministry of Machine Building, which is responsible for making missiles and nose cones.[65] The 74–page document contains dozens of facts about U.S. warheads, mostly in a two-page chart. On one side of the chart are various US Air Force and US Navy warheads, including some older bombs as well as the W–80 warhead (cruise missiles), the W–87 (Minuteman III); and the W–88 (Trident II).[66] Among the most important items of information in the ''walk-in'' document are details about the W–88 warhead.

The Cox Committee Report provides the following description and assessment of the ''walk-in'' document:

''In 1995, a ''walk-in'' approached the Central Intelligence Agency outside of the PRC and provided an official PRC document classified ''Secret'' that contained design information on the W–88 Trident D–5 warhead, the most modern in the U.S. arsenal, as well as technical information concerning other thermonuclear warheads.

''The CIA later determined that the ''walk-in'' was directed by the PRC intelligence services. Nonetheless, the CIA and other Intelligence Community analysts that reviewed the document concluded that it contained U.S. thermonuclear warhead design information.

''The ''walk-in'' document recognized that the U.S. nuclear warheads represented the state-of-the-art against which PRC thermonuclear warheads should be measured.

''Over the following months, an assessment of the information in the document was conducted by a multidisciplinary group from the U.S. government, including the Department of Energy and scientists from the U.S. national weapons laboratories.''[67]

The Cox Committee's view that the Chinese had obtained sensitive design information about U.S. thermonuclear warheads is bolstered by the June 1999 report of the President's Foreign Intelligence Advisory Board, which states that the ''walk-in'' document:

''unquestionably contains some information that is still highly sensitive, including descriptions, in varying degrees of specificity, of the technical characteristics of seven U.S. thermonuclear warheads.'' [68]

The preceding analysis shows that while there can be a legitimate debate as to whether the conclusions of the AI were stated with inordinate confidence, which may have contributed to the FBI's decision to focus on the Lees and the loss of the W–88 information, there can be no doubt that: (1) the PRC obtained classified nuclear secrets through espionage, and (2) the FBI had ample reason to investigate Dr. Lee. The problem is that the FBI focused too narrowly on the Lees as suspects in the W–88 investigation without ascertaining whether their suspicions about Dr. Lee were logically related to the alleged loss of the W–88 information.

From 1996 until 1997 the DOE and FBI investigation was characterized by additional inexplicable lapses. For example, in November 1996, the FBI asked DOE counterintelligence team leader Terry Craig for access to Dr. Lee's computer. Although Mr. Craig apparently did not know it until 1999, Dr. Lee had signed a consent-to-monitor waiver[69] on April 19, 1995. The relevant portion of the waiver states:

''Warning: To protect the LAN [local area network] systems from unauthorized use and to ensure that the systems are functioning properly, activities on these systems are monitored and recorded and subject to audit. Use of these systems is expressed consent to such monitoring and recording. Any unauthorized access or use of this LAN is prohibited and could be subject to criminal and civil penalties.'' [70]

For reasons that have yet to be explained, this waiver was not in Dr. Lee's security file or his personnel file.[71]

The computer that Dr. Lee used apparently also had a banner, which had information that may have constituted sufficient notice to give the FBI access to its contents. And, finally, LANL computer use policy gave authorities the ability to search computers to prevent waste, fraud and abuse.[72] As noted in the press release accompanying the August 12, 1999, Department of Energy Inspector General's Report, Mr. Craig's ''failure to conduct a diligent search deprived the FBI of relevant and potentially vital information.'' [73] Had the FBI National Security Law Unit (NSLU) been given the opportunity to review these facts, it may well have concluded that no FISA warrant was necessary to conduct a preliminary investigation of Dr. Lee's computer. More importantly, records from the DOE monitoring systems like NADIR could almost certainly have been reviewed without a FISA warrant. Had these records been searched, Dr. Lee's unauthorized downloading would have been found nearly three years earlier. Unfortunately, through the failures of both DOE and FBI personnel, this critical information never reached FBI Headquarters, and the NSLU decided that Dr. Lee's computer could not be searched without a FISA warrant.[74] Thus, a critical opportunity was lost to find and remove from an unsecure system, information that could alter the global strategic balance.

Nonetheless, the FBI developed an adequate factual basis for the issuance of a FISA warrant. The information developed by the FBI to support its FISA application in 1997 was cogently summarized in the August 5, 1999 special statement of Senators Thompson and Lieberman of the Senate Committee on Governmental Affairs[75]:

''DOE counterintelligence and weapons experts had concluded that there was a great probability that the W–88 information had been compromised between 1984 and 1988 at the nuclear weapons division of the Los Alamos laboratory. It was standard PRC intelligence tradecraft to focus particularly upon targeting and recruitment of ethnic Chinese living in foreign countries (e.g., Chinese-Americans).

''It is common in PRC intelligence tradecraft to use academic delegations—rather than traditional intelligence officers—to collect information on science-related topics. It was, in fact, standard PRC intelligence tradecraft to use scientific delegations to identify and target scientists working at restricted United States facilities such as LANL, since they ''have better access than PRC intelligence personnel to scientists and other counterparts at the United States National Laboratories.''

''Sylvia Lee, wife of Wen Ho Lee, had extremely close contacts with visiting Chinese scientific delegations. Sylvia Lee, in fact, had volunteered to act as hostess for visiting Chinese scientific delegations at LANL when such visits first began in 1980, and had apparently had more extensive contacts and closer relationships with these delegations than anyone else at the laboratory. On one occasion, moreover, Wen-Ho Lee had himself aggressively sought involvement with a visiting Chinese scientific delegation, insisting upon acting as an interpreter for the group despite his inability to perform this function very effectively.

''Sylvia Lee was involuntarily terminated at LANL during a reduction-in-force in 1995. Her personnel file indicated incidents of security violations and threats she allegedly made against coworkers.

''In 1986, Wen-Ho Lee and his wife traveled to China on LANL business to deliver a paper on hydrodynamics[76] to a symposium in Beijing. He visited the Chinese laboratory—the Institute for Applied Physics and Computational Mathematics (IAPCM)—that designs the PRC's nuclear weapons.

''The Lees visited the PRC—and IAPCM—on LANL business again in 1988.

''It was standard PRC intelligence tradecraft, when targeting ethnic Chinese living overseas, to encourage travel to the ''homeland''—particularly where visits to ancestral villages and/or old family members could be arranged—as a way of trying to dilute loyalty to other countries and encouraging solidarity with the authorities in Beijing.

''The Lees took vacation time to travel elsewhere in China during their two trips to China in 1986 and 1988.

''The FBI also learned of the Lees' purchase of unknown goods or services from a travel agent in Hong Kong while on a trip to that colony and to Taiwan in 1992. On the basis of the record, the FBI determined that there was reason to believe that this payment might have been for tickets for an unreported side trip across the border into the PRC to Beijing.

''Though Wen-Ho Lee had visited IAPCM in both 1986 and 1988 and had filed ''contact reports'' claiming to recount all of the Chinese scientists he met there, he had failed to disclose his relationship with the PRC scientist who visited LANL in 1994.

''Wen-Ho Lee worked on specialized computer codes at Los Alamos—so-called ''legacy codes'' related to nuclear testing data—that were a particular target for Chinese intelligence.

''The FBI learned that during a visit to Los Alamos by scientists from IAPCM, Lee had discussed certain unclassified hydrodynamic computer codes with the Chinese delegation. It was reported that Lee had helped the Chinese scientists with their codes by providing software and calculations relating to hydrodynamics.

''In 1997, Lee had requested permission to hire a graduate student, a Chinese national, to help him with work on ''Lagrangian codes'' at LANL. When the FBI evaluated this request, investigators were told by laboratory officials that there was no such thing as an unclassified Lagrangian code, which describes certain hydrodynamic processes and are used to model some aspects of nuclear weapons testing. ''In 1984, the FBI questioned Wen-Ho Lee about his 1982 contact with a U.S. scientist at another DOE nuclear weapons laboratory who was under investigation. ''When questioned about this contact, Lee gave deceptive answers. After offering further explanations, Lee took a polygraph, claiming that he had been concerned only with this other scientist's alleged passing of unclassified information to a foreign government against DOE and Nuclear Regulatory Commission regulations—something that Lee himself admitted doing. (As previously noted, the FBI closed this investigation of Lee in 1984.) ''The FBI, as noted above, had begun another investigation into Lee in the early 1990s, before the W–88 design information compromise came

to light. This investigation was based upon an FBI investigative lead that Lee had provided significant assistance to the PRC. ''The FBI obtained a copy of a note on IAPCM letterhead dated 1987 listing three LANL reports by their laboratory publication number. On this note, in English, was a handwritten comment to 'Linda' saying '[t]he Deputy Director of this Institute asked [for] these paper[s]. His name is Dr. Zheng Shaotang. Please check if they are unclassified and send to them. Thanks a lot. Sylvia Lee.' ''

The FBI request was worked into a draft FISA application by Mr. David Ryan, a line attorney from the Department of Justice's Office of Intelligence Policy and Review (OIPR) with considerable experience in FISA matters. It was then reviewed by Mr. Allan Kornblum, as Deputy Counsel for Intelligence Operations, and finally, by Mr. Gerald Schroeder, Acting Counsel, OIPR.[77] As is well known by now, the OIPR did not agree to forward the FISA application, and yet another opportunity to discover what Dr. Lee was up to was lost.

The Department of Justice should have taken the FBI's request for a FISA warrant on Dr. Lee to the Court on August 12, 1997.

Attorney General Reno testified about this case before the Senate Judiciary Committee on June 8, 1999. A redacted version of her testimony was released on December 21, 1999. The transcript makes it clear that the Department of Justice should have agreed to go forward with the search warrant for surveillance of Dr. Wen Ho Lee under the Foreign Intelligence Surveillance Act when the FBI made the request in 1997.

The DOJ's internal review of the FISA request, conducted by Assistant U.S. Attorney Randy Bellows, confirms that the request should have gone forward. Mr. Bellows said:

''The final draft FISA application [deleted] on its face, established probable cause to believe that Wen Ho Lee was an agent of a foreign power, that is to say, a United States Person currently engaged in clandestine intelligence gathering activities for or on behalf of the PRC which activities might involve violations of the criminal laws of the United States and that his wife, Sylvia Lee, aided, abetted or conspired in such activities. Given what the FBI and OIPR knew at the time, it should have resulted in the submission of a FISA application and the issuance of a FISA order.'' [78]

In evaluating the sufficiency of the FBI's statement of probable cause, the Attorney General and the Department of Justice failed to follow the standards of the Supreme Court of the United States that the requirements for ''domestic surveillance may be less precise than that directed against more conventional types of crime.'' In *United States v. U.S. District Court* 407 U.S. 297, 322–23 (1972) the Court held:

''We recognize that domestic security surveillance may involve different policy and practical considerations from the surveillance of ''ordinary crime'' . . . *the focus of domestic surveillance may be less precise than that directed against more conventional types of crime*. . . . Different standards may be compatible with the Fourth Amendment if they are reasonable both in relation to the legitimate need of government for intelligence information and the protected rights of our citizens. For the warrant application *may vary according to the governmental interest* to be enforced and the nature of citizen rights deserving protection.'' [emphasis added]

Even where domestic surveillance is not involved, the Supreme Court has held that the first focus is upon the governmental interest involved in determining whether constitutional standards are met. In *Camera v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523, 534–539, (1967), the Supreme Court said:

''In cases in which the Fourth Amendment requires that a warrant to search be obtained, ''probable cause'' is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness. To apply this standard, it is obviously necessary *first to focus upon the governmental interest* which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen. . . . [emphasis added]

''Unfortunately, there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails. . . .

''The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant.''

Where the Court allowed inspections in *Camera* without probable cause that a particular dwelling contained violations, it is obvious that even more latitude would be constitutionally permissible where national security is in issue and millions of American lives may be at stake. Even under the erroneous, unduly high standard applied by the Department of Justice, however, the FBI's statement of probable cause was sufficient to activate the FISA warrant.

FBI Director Freeh correctly concluded that probable cause existed for the issuance of the FISA warrant. At the June 8 hearing, Attorney General Reno stated her belief that there had not been a sufficient showing of probable cause but conceded that FBI Director Freeh, a former Federal judge, concluded that probable cause existed as a matter of law.[79]

The Department of Justice applied a clearly erroneous standard to determine whether probable cause existed. As noted in the transcript of Attorney General Reno's testimony:

''On 8–12–97 Mr. Allan Kornblum of OIPR advised that he could not send our (the FBI) application forward for those reasons. We had not shown that subjects were the ones who passed the W–88 [design information] to the PRC, and we had little to show that they were presently engaged in clandestine intelligence activities.'' [80]

It is obviously not necessary to have a showing that the subjects were the ones who passed W–88 design information to the PRC. That would be the standard for establishing guilt at a trial, which is a far higher standard than establishing probable cause for the issuance of a search warrant. Attorney General Reno contended that the remainder of the 12 individuals identified in the AI would have to be ruled out as the ones who passed W–88 design information to the PRC before probable cause would be established for issuance of the FISA warrant on Dr. Lee. That, again, is the standard for conviction at trial instead of establishing probable cause for the issuance of a search warrant. Thus, it is apparent from the Kornblum statement that the wrong standard was applied: ''that subjects were the ones that passed the W–88 [design information] to the PRC.'' [81]

DOJ was also wrong when Mr. Kornblum concluded that: ''We had little to show that they were presently engaged in clandestine intelligence activities.'' [82] There is substantial evidence that Dr. Lee's relevant activities continued from the 1980s to 1992, 1994 and 1997 as noted above.

When FBI Assistant Director John Lewis met with Attorney General Reno on August 20, 1997, to ask about the issuance of the FISA warrant, Attorney General Reno delegated the matter to Mr. Daniel Seikaly, former Director, DOJ Executive Office for National Security, and she had nothing more to do with the matter. Mr. Seikaly completed his review by late August or early September and communicated his results to the FBI through Mr. Kornblum. As Mr. Seikaly has testified, this was the first time he had ever worked on a FISA request and he was not ''a FISA expert.'' It was not surprising then that Seikaly applied the wrong standard for a FISA application:

''We can't do it (a FISA wiretap) unless there was probable cause to believe that that facility, their home, is being used or about to be used by them as agents of a foreign power.'' [83]

Mr. Seikaly applied the standard from the typical criminal warrant as opposed to a FISA warrant. 18 U.S.C. 2518, governing criminal wiretaps, allows surveillance where there is:

''Probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted, are being used, or are about to be used *in connection with the commission of such offense.*'' [emphasis added]

This criminal standard specifically requires that the facility be used in the ''commission of such offense.'' FISA, however, contains no such requirement. 50 U.S.C. 1805 (Section 105 of FISA) states that a warrant shall be issued if there is probable cause to believe that:

''Each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power.''

There is no requirement in this FISA language that the facility is being used in the commission of an offense. This incorrect application of the law was a serious mistake. As noted in the Bellows report, ''This matter should not have been assigned to an attorney who did not already have a solid grounding in FISA law, FISA applications, and the FISA Court.'' [84]

Attorney General Reno demonstrated an unfamiliarity with technical requirements of Section 1802 versus Section 1804. She was questioned about the higher standard under 1802 than 1804: ''It seems the statutory scheme is a lot tougher on 1802 on its face.'' [85]

Attorney General Reno replied: ''Well I don't know. I've got to make a finding that under 1804, that it satisfies the requirement and criteria—and requirement of such application as set forth in the chapter, and it's fairly detailed.'' [86]

When further questioned about her interpretation on 1802 and 1804, Attorney General Reno indicated lack of familiarity with these provisions, saying:

''Since I did not address this, let me ask Ms. Townsend who heads the office of policy review to address it for you in this context and then I will. . . .'' [87]

As noted in the record, the offer to let Ms. Townsend answer the question was rejected in the interest of getting the Attorney General's view on this important matter rather than that of a subordinate.

The lack of communication between the Attorney General and the Director of the FBI on a matter of such grave importance is troubling. As noted previously, Director Freeh sent John Lewis, Assistant FBI Director for National Security to discuss this matter with the Attorney General on August 20, 1996. However, when the request for a review of the matter did not lead to the forwarding of the FISA application to the court, Director Freeh did not further press the issue. And Attorney General Reno conceded that she did not follow up on the Wen Ho Lee matter. During the June 8 hearing, Senator Sessions asked, ''Did your staff convey to you that they had once again denied this matter?'' [88]

Attorney General Reno replied, ''No, they had not.'' [89]

As the Bellows Report concludes, ''The failure to advise the Attorney General of the resolution of this matter had an unfortunate consequence: It effectively denied the FBI the true appeal it had sought.'' [90]

The June 8, 1999 hearing also included a discussion as to whether FBI Director Freeh should have personally brought the matter again to Attorney General Reno. The Attorney General replied that she did not ''complain'' about FBI Director Freeh's not doing so and stated, ''I hold myself responsible for it.'' [91]

Attorney General Reno conceded the seriousness of the case, stating, ''I don't think the FBI had to convey to the attorneys the seriousness of it. I think anytime you are faced with facts like this it is extremely serious.'' [92]

In the context of this serious case, it would have been expected that Attorney General Reno would have agreed with FBI Director Freeh that the FISA warrant should have been issued. In her testimony, she conceded that if some 300 lives were at stake on a 747 she would take a chance, testifying: ''My chance that I take if I illegally search somebody, if I save 300 lives on a 747, I'd take it.'' [93]

In that context, with the potential for the PRC obtaining U.S. secrets on nuclear warheads, putting at risk millions of Americans, it would have been expected that the Attorney General would find a balance in favor of moving forward with the FISA warrant. As demonstrated by her testimony, Attorney General Reno sought at every turn to minimize the FBI's statement of probable cause. On the issue of Dr. Lee's opportunity to have visited Beijing when he had been in Hong Kong and incurred additional travel costs of the approximate expense of traveling to Beijing, the Attorney General said that ''an unexplained travel voucher in Hong Kong does not lead me to the conclusion that someone went to Beijing any more than they went to Taipei.'' [94]

It might well be reasonable for a fact-finder to conclude that Dr. Lee did not go to Beijing; but, certainly, his proximity to Beijing, the opportunity to visit there and his inclination for having done so in the past would at least provide some ''weight'' in assessing probable cause. But the Attorney General dismissed those factors as having no weight even on the issue of probable cause, testifying, ''I don't find any weight when I don't know where the person went.'' [95] Of course it is not known ''where the person went.'' If that fact had been established, it would have been beyond the realm of ''probable cause.'' Such summary dismissal by the Attorney General on a matter involving national security is inappropriate given the circumstances. In other legal contexts, opportunity and inclination are sufficient to cause an inference of certain conduct as a matter of law.

The importance of DOJ's erroneous interpretation of the law in this case, which resulted in the FISA rejection, should not be underestimated. Had this application for a FISA warrant been submitted to the court, it doubtless would have been approved. DOJ officials reported that approximately 800 FISA warrants were issued each year with no one remembering any occasion when the court rejected an application.

Assistant U.S. Attorney Randy Bellows concurred on the damage done by OIPR's rejection of the FISA request:

''OIPR's erroneous judgment that [deleted] did not contain probable cause could not have been more consequential to the investigation of Wen Ho Lee. From the beginning of that investigation, the FBI's objective had been to obtain FISA coverage. It now faced the prospect of no FISA coverage, an eventuality for which it had never prepared. The other consequence, of course, is that such information as might have been acquired through FISA coverage was not acquired. It is impossible to say just what the FBI would have learned through FISA surveillance. That is, after all, the point of surveillance. What is clear is that [deleted] should have been approved, not rejected. For all the problems with the FBI's counterintelligence investigation of Wen Ho Lee, and they were considerable, the FBI had somehow managed to stitch together an application that established probable cause. That OIPR would disagree with the assessment would deal this investigation a blow from which it would not recover.'' [96]

Had the FBI obtained the FISA search warrant, it might have had a material effect on the investigation and criminal charging of Dr. Lee. Given the serious mistakes that had been made by the FBI prior to 1997, there is no guarantee that a FISA warrant would have led to a successful conclusion to the investigation, but the failure to issue a warrant clearly had an adverse impact on the case.

To put the 1997 FISA rejection in perspective, consider that the open network to which Dr. Lee had transferred the legacy codes was ''linked to the Internet and e-mail, a system that had been attacked several times by hackers.'' [97] Although we do not know the exact figures for the number of times that it was accessed, it has been reported that between October 1997 and June 1998 alone, ''there were more than 300 foreign attacks on the Energy Department's unclassified systems, where Mr. Lee had downloaded the secrets of the U.S. nuclear arsenal.'' [98]

Consider also the following from a December 23, 1999, Government filing in the criminal case against Dr. Lee:

''. . . in 1997 Lee downloaded directly from the classified system to a tenth portable computer tape a current nuclear weapons design code and its auxiliary libraries and utility codes.'' [99]

This direct downloading had been made possible by Los Alamos computer managers who made Lee's file transfers ''easier in the mid–1990s by putting a tape drive on Lee's classified computer.'' [100] As incomprehensible as it seems, despite the fact that Dr. Lee was the prime suspect in an ongoing espionage investigation, and despite plans to limit his access to classified information to limit any damage he might do, DOE computer personnel installed a tape drive on his computer that made it possible for him to directly download the nation's top nuclear secrets.

An important aim of surveillance under the FISA statute is to determine whether foreign intelligence services are getting access to our classified national security information. Although we do not know, and may never know, why Dr. Lee placed these classified files on an unsecure system, there should be no doubt that transferring classified information to an unclassified computer system and making unauthorized tape copies of that information created a substantial opportunity for foreign intelligence services to access that information. The breakdown of communication between the FBI and DOJ which resulted in the rejection of the FISA in 1997 resulted in yet another missed opportunity to find and protect the information Dr. Lee illegally put at risk.

Certain provisions of the Counterintelligence Reform Act of 2000, which became law as Title VI of Public Law 106–567 on December 27, 2000, will prevent the kinds of problems that plagued this FISA request. The law now requires that, upon written notification from the Director of the FBI (or of one of the few other officials who are authorized to make FISA requests), the Attorney General must explain in writing why the Department does not believe that probable cause has been established, and to make recommendations for improving the request. When given such recommendations in writing, the requesting official must personally supervise the implementation of any such recommendations. These procedures will ensure that disagreements over matters of probable cause are resolved rather than allowed to linger, as happened in the Wen Ho Lee case.

Investigation from August 12, 1997 to December 23, 1998

Notwithstanding the serious evidence against Dr. Lee on matters of great national security importance, the FBI investigation languished for 16 months, from August 1997 until December 1998, with the Department of Energy permitting Dr. Lee to continue on the job with access to classified information.

After OIPR's August 1997 decision not to forward the FISA application, FBI Director Louis Freeh met with Deputy Energy Secretary Elizabeth Moler to tell her that there was no longer any investigatory reason to keep Lee in place at LANL, and that DOE should feel free to remove him in order to protect against further disclosures of classified information. In October 1997, Director Freeh delivered the same message to Energy Secretary Federico Pena that he had given to Moler.[101] These warnings were not acted on, and Dr. Lee was left in place, as were the files he had downloaded to the unclassified system, accessible to any hacker on the Internet.

After the rejection of the FISA warrant request on August 12, it took the FBI three and one-half months to send a memo dated December 19, 1997, to the Albuquerque field office listing fifteen investigative steps that should be taken to move the investigation forward. The Albuquerque field office did not respond directly until November 10, 1998. The fifteen investigative steps were principally in response to the concerns raised by OIPR about the previous FISA request. To protect sources and methods, the specific investigative steps in the December 19, 1997 teletype cannot be disclosed, but have been summarized by the FBI as follows:

1. Conduct Additional Interviews

(a) Open preliminary inquiries on other individuals named in the DOE AI who met critical criteria;

(b) Develop information on associate's background, and interview the associate, and

(c) Interview co-workers, supervisors, and neighbors.

2. Conduct Physical Surveillance

3. Conduct Other Investigative Techniques

(a) Review information resulting from other investigative methods;

(b) Review other investigations for lead purposes; and

(c) Implement alternative investigative methods.[102]

Only two of the leads were seriously pursued. Most importantly, the FBI did not open investigations on the other individuals named in the DOE AI until much later.

The False Flag

One of the steps recommended in the December 1997 HQ investigative plan was carried out in August 1998. The results of this ''False Flag'' operation against Dr. Lee are partially described in a November 10, 1998 memorandum from Albuquerque to FBIHQ. The memorandum is identified as a request for electronic surveillance and lays out the basis for probable cause, including a description of a series of phone calls between Dr. Lee and an individual posing as an officer of

the Ministry of Foreign Affairs and Ministry of State Security. According to the memo, this undercover agent (UCA) introduced himself to Dr. Lee ''as a representative of the 'concerned Department,' from Beijing, PRC,'' and explained that the purpose of his visit to Sante Fe was to ''meet with Wen Ho Lee to assure of Lee's well-being in the aftermath of the conviction of a Chinese-American scientist, Peter Lee in California.'' [103]

The Albuquerque memo describes Dr. Lee as being ''skeptical of the entire situation and apprehensive about meeting face-to-face with [the UCA]'' and relates how Dr. Lee mentioned that ''departmental policy at LANL requires him to report to his superior if he meets with a representative of a foreign government, however, it does not mean that he is forbidden to meet such a person.'' [104] Dr. Lee stated a preference for discussing any matters with the representative of the PRC over the phone, but when told that there were other sensitive issues besides the Peter Lee case which must be discussed in person, Dr. Lee agreed to meet the UCA at the Hilton Hotel.[105]

About ten minutes after agreeing to travel to meet the UCA, Dr. Lee called back and said he had changed his mind, reiterating his concerns about registering with his superior when meeting with foreign government officials. Given that Dr. Lee would not agree to a face-to-face meeting, the UCA said that ''although he was an official from the PRC government, he was traveling under civilian status on this trip so that he could avoid scrutiny by the United States government.'' [106] The UCA then asked Dr. Lee if he had been interviewed by any U.S. authorities, including the FBI, and whether Dr. Lee had noticed anything unusual or was being treated differently by his employer or had any restrictions on his travel arrangements in the wake of the Peter Lee case. Dr. Lee responded negatively.[107]

The UCA then told Dr. Lee that one of the reasons he wanted to meet was to see if there was any material to take back to the PRC. After Dr. Lee said there was not any such material, the UCA said that ''since the material he brought back to China and the speech he gave were so helpful, did Lee have any plans in going to the PRC in the near future.'' [108] Dr. Lee said that he would probably not be going to the PRC until after his retirement from LANL in one or two years. He did not, as one would expect, deny that he had previously sent material.

The next day (August 19), the UCA called Dr. Lee again, saying that he would be leaving Santa Fe in a few days and asking if Dr. Lee would like to have a number where he could contact the UCA in the future. Dr. Lee said he would like to have a number, and was provided a pager number and was told that it belonged to an American friend who had helped the UCA and his associates in the past, and who could be trusted.[109]

Dr. Lee did not immediately report this contact, but he told his wife who told a friend, who told DOE security. When Dr. Lee was questioned by DOE counterintelligence personnel about the phone call, he was vague, and failed to mention the beeper number or the hotel.

The FBI did not properly handle the information learned from the False Flag operation. First, it took more than three months for the transcript of the exchange between Dr. Lee and the UCA to get to FBI Headquarters where it could be fully analyzed. Unfortunately, the transcript (and the FISA request based on the results of the False Flag) arrived at FBI HQ just when the DOE was asserting control over the case. Had the transcript been analyzed in the full detail that it deserved, the FBI would have been able to tell the Office of Intelligence Policy and Review that prior concerns about whether Dr. Lee was ''currently engaged'' as an agent of a foreign power had been addressed by his dealings with the undercover agent. Among the key points that should have been worked into the renewed FISA application are the following:

That Dr. Lee agreed to meet with an individual purporting to be an agent of a foreign government, traveling in the U.S. in civilian clothes to avoid detection by U.S. authorities. Although Dr. Lee called back and canceled the face-to-face meeting, he never reported to lab security personnel that he had agreed to meet in the first place.

That Dr. Lee accepted the contact number of an individual claiming to be an agent of a foreign power, yet failed to disclose that fact to lab security officials about the incident when asked about this contact. Dr. Lee apparently admitted more of the details of the August phone conversations when he was interviewed by FBI agents in January 1999, but his failure to acknowledge this fact when he spoke to Los Alamos officials in August 1998 continued a pattern of incomplete disclosure from Dr. Lee.

That Dr. Lee asked questions during the conversation which indicated a knowledge of PRC intelligence and scientific organizations and the operational methods used by these agencies.

None of these new items of information was sufficient, on its own, to tip the balance of probable cause against Dr. Lee. However, in the context of the other evidence that had already been gathered by the FBI, these elements were certainly relevant to a probable cause determination and should have been relayed to OIPR for consideration. While the FBI informally told OIPR of Dr. Lee's failure to fully report the August contact, that conversation did not take place until three months after the incident occurred. A proper and timely interpretation of the False Flag operation would have set the investigation on a very different course in late 1998. The Bellows Report supports the judgement that the FBI's handling of the False Flag was inappropriate, and that the information gained through the False Flag would have added to a showing of probable cause necessary for a FISA warrant.

Surreptitious Communications

The December 19, 1997 directive from FBI Headquarters also revived an investigative issue that had come to the FBI's attention in 1995, prior to the start of the Kindred Spirit investigation. Among the 15 actions that FBI Headquarters directed the Albuquerque office to take was a reinvestigation of the possibility that Dr. Lee was engaging in clandestine communications, using either a satellite system or Short Range Agent Communications (SRAC).

As part of the 1994–1996 investigation of Dr. Lee, the FBI had learned that Dr. Lee was reported to have installed a satellite antenna near his home and was suspected of using it to communicate surreptitiously. The case agents requested assistance in investigating the possibility that Dr. Lee was engaged in some sort of satellite communications, but the request was summarily dismissed by the case manager at FBI Headquarters, Supervisory Special Agent Craig Schmidt, and the matter was not further pursued for nearly three years.

After the FISA request was rejected in 1997, in part because the FBI had not been able to convince OIPR that Dr. Lee was currently engaged in any clandestine activity, the case manager's interest in the communications issue picked up. In the December 19, 1997 communication to Albuquerque, he directed the agents in the field to renew their investigation of this matter, which they did with substantial vigor. For several months during the summer of 1998, the Albuquerque office collected information to determine whether or not Dr. Lee was, in fact, engaged in some sort of clandestine communication from his home.

The Albuquerque case agents, with the help of a technical adviser who was brought in specifically for the purpose of helping on this issue, formed a hypothesis that Dr. Lee was communicating by satellite. They included this information, and much of the supporting data, in the November 10, 1998 request for a FISA warrant. The agents did not assert conclusively that Dr. Lee was using SRAC or satellite communications, but they explained their reasons for believing that he might be doing so and requested help in making a final determination about the significance of the possible communications.

The FBI has subsequently concluded that the observed phenomenon which originally led the Albuquerque case agents to believe that Dr. Lee might be using SRAC was not linked to any communication from Dr. Lee's house. The FBI's technical analysis of this issue is thorough and convincing. On the current state of the record, the phenomenon which led the FBI to suspect that Dr. Lee was engaged in surreptitious communications, while still unexplained, cannot be conclusively linked to anything that was going on inside Dr. Lee's house or on his property.

What is disturbing, however, is that the FBI did not even begin this analysis until November 1999, shortly after the November 3, 1999 closed hearing which focused heavily on this issue. The case manager at FBI Headquarters who received the November 10, 1998 FISA request from Albuquerque rejected the new request, despite the fact that it contained new information beyond what the FBI had felt was sufficient, in 1997, to get a FISA warrant. Outside the Albuquerque field office, no one in the FBI made any real effort to understand the data in the November 10, 1998 FISA request.

Even when the dynamics of the case changed after the FBI concluded that Dr. Lee had not passed the December 23, 1998 polygraph, and changed again when Dr. Lee failed an FBI polygraph on February 10, 1999, no one in the FBI expressed any interest in examining the possibility that there might be something more to the SRAC issue than initially suspected. The FBI still did not revisit the clandestine communications issue after learning that Dr. Lee had been downloading computer files and putting them on portable tapes. The notion that there might be a link between the clandestine communications and the portable tapes apparently never occurred to the FBI, and no effort was made to investigate the meaning of the strange electromagnetic phenomenon that had led the FBI case agents to suspect that Dr. Lee was using SRAC.

Instead of taking action on the new information, the case manager sent back a cable on December 10, telling the case agents that FBIHQ had reviewed the new FISA request and determined that it did ''not yet contain the justification necessary to successfully support a FISA Court application for electronic surveillance,'' and recommended that Albuquerque send copies of written reports from LANL's Counterintelligence officer, Terry Craig, regarding Dr. Lee's deception about the False Flag.[110]

On the merits, the failure to forward the FISA request to OIPR is inexplicable. The FBI had felt since 1997 that they had sufficient probable cause to get a FISA warrant. The 1998 investigative steps yielded new information that directly addressed the concerns OIPR had raised about the Lees being currently engaged in clandestine activity,

yet the FBI case manager summarily dismissed the new request, failing to even forward it to OIPR for consideration. The failure to take action when the dynamics of the case changed in early 1999 is just incomprehensible.

When such serious national interests were involved in this case, it was simply unacceptable for the FBI to tarry from August 12, 1997 to December 19, 1997, to send the Albuquerque field office a memo. It was equally unacceptable for the Albuquerque field office to take from December 19, 1997 until November 10, 1998 to respond to the guidance from Headquarters, and then for the FBI not to renew the request for a FISA warrant based on the additional evidence. The FBI's handling of this issue is impossible to justify.

The December 23, 1998 Polygraph

When Dr. Lee returned to the United States from a three-week trip to Taiwan in December 1998, he was administered a polygraph examination on instructions from Mr. Ed Curran, Director of DOE's Office of Counterintelligence (OCI). Although Dr. Lee was initially thought to have passed the polygraph with very high scores, his access to the X-Division was temporarily suspended to give the FBI time to conclude its investigation. When the polygraph results were examined by the FBI in late January or early February 1999, it became clear that Dr. Lee had not passed, and the investigation was restarted, eventually leading to the dismissal of Dr. Lee from LANL and, several months later, his indictment and jailing.

The circumstances surrounding this December 1998 polygraph are among the most important but least understood aspects of the case. The June 1999 report of the President's Foreign Intelligence Advisory Board raised questions about this issue and recommended that the Attorney General determine, ''why DOE, rather than the FBI, conducted the first polygraph in this case when the case was an open FBI investigation. . . .'' [111] The subcommittee's investigation demonstrates that the handling of the December 23, 1998 polygraph, or more accurately the mishandling of this polygraph is one of the most consequential errors of the Wen Ho Lee matter. To understand the impact of the polygraph on the case, it is necessary to review: 1) the events leading up to and the reasons for the December 23, 1998 polygraph; 2) the results of that polygraph; and 3) the effect on the investigation of the erroneous polygraph reading by Wackenhut. The short answer is that: 1) DOE jumped into the case in a heavy handed way during late 1998 in an effort to avoid criticism related to the upcoming release of the Cox Committee report, 2) the Wackenhut examiners' incorrect conclusion that Dr. Lee passed the polygraph prompted the FBI to nearly shut down its investigation of Dr. Lee, 3) with the result that during the time he supposedly was denied access to the X-Division, Dr. Lee was able to return and recover the tapes that are now missing. Given the vast number of mistakes that had already been made prior to December 1998, and the number that were made thereafter, it would be wishful thinking to believe that a correct reading of the polygraph would have led to a successful conclusion in this case, but Wackenhut's erroneous initial interpretation of the results and the long delay in getting the charts passed to FBIHQ for review put the case on a downward spiral from which it almost never recovered. Because these issues are both highly important and widely misunderstood, each is examined in some detail.

The events leading up to the December 23, 1998 Polygraph

As noted previously, the FBI's investigation of Dr. Lee had been dealt a severe blow in August 1997 when DOJ's Office of Intelligence Policy and Review rejected the FISA request. The local case agents spent most of 1998 trying to get the investigation back on track, but were not notably successful. By November 1998, the newly appointed lead case agent was ready to move forward and sent a new request for FISA coverage to FBI HQ. Unfortunately, the request fell on deaf ears for reasons that will be explored more fully below.

At approximately the same time the case agents were seeking FISA coverage, Dr. Lee asked for permission to travel to Taiwan to visit a company called Asiatek. According to an FBI document describing this request, Dr. Lee said that ''Asiatek invited him to visit Taiwan in December 1998 to give a presentation in exchange for his airfare.'' [112] When Dr. Lee submitted a request to travel under these terms, the LANL Internal Security section denied it, so Dr. Lee reportedly traveled at his own expense to visit an ailing sister.[113]

While the Internal Security section was correct to deny Dr. Lee's request to let Asiatek pay his travel expenses, the request should have set off alarm bells within both DOE and the FBI. The aforementioned FBI document says:

''Asiatek is a Taiwan-based company founded in 1985 which introduced state-of-the art information technology to both China and Taiwan. The company works with both private industry and Taiwan government research facilities such as the Chung Shan Institute of Science and Technology (administered by the Ministry of National Defense). Asiatek specializes in information technology, program planning and management, business process re-engineering, integrated logistic support, and continuous acquisition and life cycle support environmental planning and implementation. Asiatek also develops cannon and tank systems.'' [114]

The fact that the prime suspect in a major espionage investigation was asking to travel out of the country for the second time in less than nine months, with his travel to be paid for by a foreign company, should have been a call to action by someone in DOE or the FBI. The local case agent sent a message to FBIHQ asking that this information be considered ''in conjunction with Albuquerque Division's request for FISA/MISUR coverage of Wen-Ho Lee,'' [115] but the case manager did not act on it.

If the travel alone was not sufficient to compel the FBI and/or DOE to take some positive steps to regain control over the case, the nature of the work performed by Asiatek and its relationship to the Chung Shan Institute of Science and Technology should have been because these matters related directly to concerns that had been raised about Dr. Lee during the course of the investigation. When asked why Dr. Lee was allowed to travel under these circumstances, Mr. Curran replied that ''FBI personnel were running the investigation and were the ones that allowed Dr. Lee to travel to Taiwan. If it were my decision, I would not have allowed Mr. Lee to leave the country.'' [116]

Mr. Curran's statement on the travel issue reflects a larger problem that plagued the Kindred Spirit investigation from beginning to end, namely the systemic breakdown of effective communication between DOE and the FBI on matters of great importance.[117] If Mr. Curran was opposed to letting Dr. Lee go to Taiwan, he should have said something. As Director of DOE's OCI, his opinion clearly had weight. He did not act, so Dr. Lee went to Taiwan.

As another example of ineffective communication on important issues, consider Mr. Curran's statement that he first learned on December 15, 1998, that Director Freeh had recommended removing Dr. Lee from access more than a year before.[118] Mr. Curran assumed his position as Director of OCI in April 1998 and immediately conducted a 90–day review of the CI program at DOE as mandated by PDD–61. He received what he describes as a ''summary briefing on the Kindred Spirit investigation.'' He was aware of the False Flag that was run in August and wanted to ''get the case moving and to resolve the issues of the possible loss of sensitive information,'' but the fact that the FBI had recommended that Dr. Lee's access to classified information be pulled was apparently not shared with Mr. Curran until mid-December 1998, while Dr. Lee was in Taiwan.[119] It should be noted, however, that Mr. Curran told the DOE IG that he learned about Director Freeh's 1997 comments on moving Dr. Lee in October 1998, two months before he finally took action.[120] This is significant because it undermines Mr. Curran's assertion that the reason he acted in December 1998 was because he had just learned of Director Freeh's 1997 recommendations.

That the Director of DOE's Office of Counterintelligence was not informed (or did not make himself aware) of the FBI's view that Dr. Lee should be pulled from access reflects poorly on the DOE and the FBI. How could anyone brief this case to Mr. Curran in 1998 without mentioning that the Director of the FBI had twice told DOE's top leadership that Dr. Lee's access to classified information should be removed? What would one say, when briefing the new head of counterintelligence, that would not somehow convey the message that the FBI was concerned about the potential damage from keeping him in access? And how could the top counterintelligence officer in the DOE not inquire as to whether consideration had been given to reducing the risk posed by an individual who was the chief suspect in a major espionage investigation? This lack of communication defies comprehension.

The Counterintelligence Reform Act of 2000 will prevent such disasters in the future. The Act requires the Director of the FBI to notify appropriate officials, in writing, when a full field investigation is started in an espionage case, and to present to the head of the affected agency a written assessment of the potential impact of the actions of that agency or department on an FBI counterintelligence investigation. It will not be possible in future investigations for the head of counterintelligence in an agency to claim ignorance of an FBI recommendation regarding a suspect's access to classified information. And the FBI will have to ensure that its coordination with the affected agency is both close and continuous, so that when new officials come into decision-making roles, they will be fully informed as to the important aspects of pending cases. The FBI/DOE polygraph disaster in the Wen Ho Lee case should be the last such calamity.

The interim report issued in March 2000 touched briefly on the polygraph issue, prompting a letter from Mr. Curran,[121] who provided the following account of the events leading up to the polygraph:

''Every detail of this case was coordinated between DOE and the FBI. I personally wanted the FBI to do the interview rather than DOE, but they stated that they were not ready to interview him because they first wanted to interview some neighbors and associates of Mr. Lee. DOE had been asking the FBI to bring this case to a conclusion since the [false flag] in August. I did not believe I had the luxury of waiting any longer since the investigative activity in August and this was Mr. Lee's first opportunity to leave the U.S. I was very concerned as to what he would do and say on his trip to Taiwan and then what he would do upon his return. Since

the FBI was not going to interview Mr. Lee and bring this case to a conclusion prior to his departure to Taiwan, I made the decision, with the Secretary's approval, to remove Mr. Lee from access upon his return from Taiwan and until the FBI could conclude their investigation through interview and polygraph.

''Mr. Lee returned from Taiwan on December 23, 1998. He was interviewed and removed from access and asked to take a polygraph. The FBI was aware that if Mr. Lee refused to take a DOE polygraph, his security clearance would have been removed and steps taken to terminate his employment; if Mr. Lee agreed to take the test and failed, his clearance would be removed and termination proceedings would be initiated. This activity was completely coordinated with the FBIAQ. On December 21, 1998, a memo was furnished to the Secretary of Energy from me setting forth the above scenario. Mr. Lee took the polygraph test and representatives from FBIAQ were present.'' [122]

In subsequent correspondence with the subcommittee, Mr. Curran elaborated on his reasons for removing Dr. Lee's access in December 1998. Responding to follow-up questions from a September 27, 2000 subcommittee hearing, Mr. Curran cited four reasons for his decision to remove Dr. Lee from access in December 1998: ''(1) the fact that the FBI no longer required Lee be kept in access, (2) my discomfort at the extent of Dr. Lee's access, which was greater than I had originally thought, (3) the fact that the FBI's false flag operation had been unsuccessful, possibly alerting Lee to the investigation, and (4) the fact that Lee was then traveling in Taiwan, thus able to travel easily to Hong Kong or the People's Republic of China without our knowledge.'' [123]

While Mr. Curran's account explains what happened, it does not adequately explain why these events took place. It was simply inconsistent for DOE to allow Dr. Lee to travel to Taiwan, yet polygraph him and pull his access to classified information upon his return, even though he supposedly passed the polygraph. If Dr. Lee was such a threat that he needed to be polygraphed and removed from access, why was he allowed to go to Taiwan? And if he passed the polygraph after returning from Taiwan, including specific questions about espionage, why was there still a need to remove his access?

Mr. Curran's explanation for the series of events leading up to the December 1998 polygraph shows an investigation that was, at best, disjointed and poorly coordinated (despite Mr. Curran's assertions to the contrary). Consider, for example, that the FBI agent who took over the case on November 6, 1998, did not agree with the DOE decision to have Wackenhut [124] give Dr. Lee a polygraph examination, and has called it ''irresponsible.'' According to FBI protocol, Dr. Lee would have been questioned as part of a post-travel interview. However, as Mr. Curran noted, the case agents were inexplicably unprepared to conduct such an interview and the Special Agent in Charge (SAC) in Albuquerque agreed to go ahead with the polygraph at Mr. Curran's request. The lead case agent requested a new FISA in November 1998, but Supervisory Special Agent Craig Schmidt the same FBI case manager at headquarters who had put together an action plan in December 1997 trying to get the investigation back on track had suddenly gotten cold feet on the matter, casually rejecting the FISA request without even showing OIPR a written product. DOE was exercised enough about Dr. Lee that Ed Curran wanted to give Dr. Lee a polygraph and pull his access to classified information (something the FBI had recommended 14 months prior), but was not willing to stop him from traveling to Taiwan. The case was a mess, and then it got worse.

The disagreement between FBI and DOE over how best to proceed in late 1998 only partially explains why the investigation lurched forward with FBI seemingly in charge one moment (letting Dr. Lee travel to Taiwan, contrary to Mr. Curran's preference) and Mr. Curran prevailing the next (getting the Albuquerque SAC to overrule the lead case agent on the polygraph question). Other testimony and documents provided to the subcommittee paint a more complete and markedly different picture of the events surrounding the polygraph of Dr. Lee on December 23, 1998. Unfortunately, the picture they paint is one of DOE trying desperately to protect its image from the revelations it expected to come with the release of the Cox Committee report, with the FBI going along, and neither agency focusing on the national security implications of their actions.

To understand the context in which these decisions were being made, consider that the Cox Committee was taking testimony in mid-December, and that key portions of the testimony centered on security at the national labs. The atmosphere leading up to the Cox Committee hearings has been described as follows:

''With impeachment as a backdrop, allegations that the Clinton administration was allowing China easy access to American secrets collided with charges that China's military had funneled money into Democratic coffers. The New York Times reported that the daughter of a senior Chinese military officer was giving money to Democrats while also working to acquire sensitive American technology.

''Republicans, opening a new front against a beleaguered president, created a House select committee, headed by Representative Cox, to investigate whether the government was compromising technology secrets by letting American companies work too closely with China's rocket industry. With its deadline approaching, the committee stumbled on the W–88 case.

''Mr. Trulock became a star witness, and committee members were riveted by his testimony. C.I.A. analysts who testified before the committee agreed there was espionage, people who heard the secret proceedings said, but were more equivocal about its value to China.'' [125]

The Mr. Trulock referenced above is Notra Trulock, former DOE intelligence chief. According to a DOE chronology, the Cox Committee was briefed by DOE on November 12, 1998 and again on December 7. On December 16, Mr. Curran, Mr. Trulock and the Director of the DOE's Office of Intelligence, Mr. Lawrence Sanchez, testified again before the Cox Committee.[126] Describing the impact of his testimony to the House panel, Mr. Trulock told the subcommittee on September 27, 2000 that ''after our initial appearance and particularly our second appearance before the Cox Committee in December of 1998, there was a high level of agitation within the Office of Counterintelligence on the part of Mr. Sanchez and within the political appointees at the department.'' [127] Mr. Trulock further testified:

''it is certainly not a coincidence that after the FBI provided the information to the Cox Committee on Dr. Lee and other espionage cases within the Department of Energy that for the first time in almost two years, DOE management became energized about addressing the advice we had received from Director Freeh in August of 1997.'' [128]

Mr. Trulock's testimony is supported by documentary evidence and testimony from other witnesses. A December 18, 1998, memorandum from the FBI's Assistant Director for National Security, Neil Gallagher, says that Secretary Richardson would be calling Director Freeh about the Lee investigation on December 21, 1998. The memorandum explains that DOE counterintelligence personnel wanted to ''neutralize their employee's access to classified information prior to the issuance of a final report by the Cox Committee.'' When questioned on this point Mr. Curran acknowledged that the conversation mentioned in the memo had taken place, but denied any connection between DOE's desire to polygraph Dr. Lee and the release of the Cox Committee report.[130]

Mr. Curran's account of these events is contradicted by testimony from other individuals who were also directly involved. When Director Freeh testified before the Senate Select Committee on Intelligence on May 19, 1999, he told the committee:

''DOE was seeking to establish grounds to terminate Mr. Lee in December of 1998, and they went forward with their polygraph and interview with that objective. We, at that point, wanted more time to prepare for a confrontational interview which in these kinds of cases is the most important interview.'' [131]

Other FBI files from this period support the contention that Secretary Richardson wanted Dr. Lee fired in early 1999. A January 21 memo from FBI Supervisory Special Agent C. H. Middleton to Deputy Assistant Director Horan said that ''DOE is anxious to avoid criticism about the case. It removed the subject's access to classified information on 12/23/98. DOE wants to fire the subject, but may not have justification to do so at this time.'' [132]

None of the information the government had in its possession at that point would have justified a decision to fire Dr. Lee, but firing him would have allowed Secretary Richardson to avoid criticism that the DOE had not taken action on a major espionage case. Director Freeh's comments are further buttressed by statements that two security personnel made to the DOE Inspector General during an investigation of the decision-making process related to Dr. Lee's clearance and access. The former Director of LANL's Internal Security Division, Mr. Ken Schiffer, told the IG that he first heard Dr. Lee's name on December 21, 1998, in a conference call with two individuals from the Office of Counterintelligence, one of whom told him that ''the Secretary wanted Mr. Lee to be fired.'' [133] Mr. Richard Schlimme, the Counterintelligence Program Manager in the Albuquerque office, told the DOE IG that he had been on annual leave on December 21, 1998, when he was called to come in to work to deal with the Wen Ho Lee situation. When he arrived, Mr. Schlimme was told that ''Secretary Richardson wanted immediate action, so Mr. Curran decided to interview Mr. Lee immediately.'' [134] Further, according to Mr. Schlimme, ''Mr. Curran wanted Mr. Lee removed from the laboratory regardless of how he did on the polygraph.'' [135]

In addition to the evidence described above, the subcommittee has a sworn deposition from the case manager at FBI Headquarters, Supervisory Agent Craig Schmidt, who said he had very little control over the investigation in December 1998 because the ''Department of Energy was becoming more and more concerned about how they would appear and how they were appearing during the [Cox] committee meetings,'' [136] In the context of all the evidence to the contrary, Mr. Curran's assertion that the decision to act with regard to Dr. Lee had nothing to do with the imminent release of the Cox Committee report is not persuasive.

Incorrect reading of the December 23, 1998 polygraph

The subcommittee focused very intently on the question of whether Dr. Lee passed or failed the December 23, 1998 polygraph for

three reasons: (1) the erroneous reading changed the course of the investigation, prompting the FBI to nearly close down its investigation at a time when the scrutiny of Dr. Lee should have been increasing, (2) it took an inordinate amount of time to discover that the initial reading of the polygraph was wrong, and (3) the public perception that Dr. Lee really passed the test but the FBI somehow later reversed that finding is incorrect.

The consequences of the incorrect interpretation of the December 23, 1998 polygraph are the subject of the next section of this report. The remainder of this section will address the matter of the delay in getting the charts to the FBI and the question of whether Dr. Lee actually passed or failed this test.

The initial interpretation of the test was made by Wolfgang Vinskey, a Senior Polygraph Examiner with Wackenhut, a private firm that had a contract with DOE to conduct polygraphs. Mr. Vinskey wrote that he had administered ''a DOE Counterintelligence Scope PDD Examination'' to Dr. Lee, and concluded that ''this person was not deceptive when answering the relevant questions pertaining to involvement in espionage, unauthorized disclosure of classified information and unauthorized foreign contacts.'' [137] Mr. John Mata, Manager of DOE's AAAP Test Center, reviewed the exam and concurred with Mr. Vinskey that ''upon completion of testing, the Examinee was not deceptive when answering the relevant questions. . . .'' [138] Mr. Mata followed up the initial report with a more detailed memorandum on December 28, 1998, in which he reiterated to Mr. Curran the information that had been in the December 23 polygraph report, namely that ''data analysis of this examination disclosed sufficient physiological criteria to opine Mr. Lee was not deceptive when answering'' the relevant questions.[139]

After the exam, the two FBI agents who were on hand were briefed on the results of the test. There is a December 21, 1999 memorandum for the record written by John Mata which describes how the test results were relayed to the FBI.[140] Mr. Mata says that he told the lead case agent that the charts did not show significant reaction on three of the questions, but that ''a plus 3 on the fourth question (relating to having knowledge of anyone he knew who had committed espionage against the United States) was close.'' [141] Mr. Mata told the agent that Dr. Lee ''had disclosed information during the examination that he had not previously reported regarding an approach that was made to him on his recent or a past trip,'' and gave her a sheet of paper containing the data analyses.[142] According to Mr. Mata, the agent wrote down the questions from the exam and asked ''if further processing involved the charts being reviewed by their polygraph examiner (specific reference to Roger Black) . . .'' to which he said no.'' [143] Mr. Mata's memo also says that at no time [on that date] was he asked to provide the charts or any allied data from the test to the FBI.

During the first week of January, Mr. Mata's memo continues, the entire polygraph package (charts, questions, data analysis sheets and video tape) were sent to OCI Polygraph Program Manager David Renzleman in Richland, Washington. In mid-January, Mr. Mata got a call from Mr. Renzleman instructing him to provide the local FBI with everything generated by the polygraph, which he did.

An undated Quality Assurance record of this examination, prepared by David Renzleman contains the following comments:

''This test was initially classified and consequently DOE OCI did not get to see the collected charts or video tape recording until late January 1999.

''When the charts were subjected to the OCI QC [Quality Control] process, the initial NDI [No Deception Indicated] opinion could not be duplicated or substantiated.

''The Test Center Manager was advised of these QC concerns and was requested to send the charts to the Department of Defense Polygraph Institute (DODPI) which he did.

''DODPI advised the Test Center Manager that they could not duplicate or support the NDI opinion of this test.'' [144]

In the ''QC Opinion'' section of the report, Mr. Renzleman said, ''I am unable to render an opinion pertaining to the truthfulness of the examinee's answers to the relevant questions of this test. Additional testing is recommended.'' [145]

When the charts and videotape were subsequently analyzed by FBI polygraph experts in late January or early February, they concluded that Dr. Lee had failed relevant questions[146] or was, at best, inconclusive.[147] Based on these concerns, the FBI arranged for additional interviews and a new polygraph on February 10, 1999. In addition to learning on this date that Dr. Lee had reactivated his computer account simply by calling up the help desk and asking that it be restored,[148] the FBI concluded Dr. Lee failed the February polygraph and increased its investigative activity, but by then the chances of salvaging the investigation were slipping away.

There remains a serious question about the chain of events which led to the delayed discovery that Dr. Lee did not pass the December 1998 polygraph. A February 26, 1999 memorandum from William Lueckenhoff, Assistant Special Agent in Charge in Albuquerque, says:

''The FBI personnel present immediately requested the polygraph charts and documentation to the polygraph in order to have it reviewed by FBIHQ. DOE's initial response to this request, as per Ed Curran, DOE Counterintelligence Office, was not to allow the FBI access to the tapes and charts, only the numerical results of the polygraph.'' [149]

As is discussed elsewhere in this report, Dr. Lee did not pass the polygraph, and no one other than the initial reviewers have been able to interpret the charts to say that he did pass. Given that the charts clearly show that Dr. Lee did not pass, any effort to prevent their release to the FBI would be a serious matter. Where DOE was concerned about criticism because it was being accused before the Cox Committee of not taking action on the case, a failed polygraph would tend to prove the critic's point. However, a passed polygraph, followed by an investigation which cleared Dr. Lee of the W–88 allegations yet later resulted in his firing for unrelated security violations would show that DOE's critics were wrong about the W–88 investigation, but that DOE was serious about security anyway and ultimately removed Dr. Lee because he was a security risk. In these circumstances, any shenanigans with the polygraph charts would be extremely serious.

Mr. Curran strongly denies the allegation in Mr. Lueckenhoff's memo and DOE documents indicate that Mr. Curran was instrumental in getting the full record of the polygraph into the FBI's hands in January, 1999.[150]

When pressed for an explanation of the February 26, 1999 memo blaming Mr. Curran for the delay in getting the test results, the FBI took the position that the memo was only a blind memorandum not intended to capture official witness statements.[151] That does not explain why Assistant Special Agent in Charge William Lueckenhoff would attribute such remarks to Mr. Curran if he had no factual basis to do so.

Mr. Lueckenhoff's account is consistent with what actually happened, but the FBI is no longer willing to stand by the February 1999 memo. It is also possible that by February 26, 1999, after Dr. Lee had failed an FBI polygraph, Albuquerque realized that its failure to obtain the charts in a timely fashion (and the creation of the disastrous January 22 memo clearing Dr. Lee on the W–88 matter) would eventually be questioned. Saying that the FBI tried to get the charts but had been denied by Mr. Curran would provide an excuse for the Albuquerque division's abysmal performance in early 1999. Because the FBI will not stand by the version of events in the February 1999 memo, it is not possible to know what really happened. Instead, the FBI's position has the effect—intended or not—of making it next to impossible to assign responsibility for giving Dr. Lee more than a month to regain access to his computer and his office, enabling him to delete the incriminating evidence from his computer and destroy the now-missing tapes.

The FBI deserves substantial criticism for its handling of this investigation, but the record should be set straight on the result of the December 23, 1998 polygraph. On this matter, the FBI was correct—Dr. Lee did not pass the polygraph test.

One of the earliest and most sustained attacks on the FBI's reading of the December 1998 polygraph came from Dr. Lee's defense team. After Dr. Lee was held without bail at the end of 1999, defense attorney Mark Holscher claimed that Dr. Lee's scores on the 1998 test had been '' 'off the charts'' in indicating truthfulness.'' [152] It is a common defense tactic to take evidence that might be harmful to the defendant's position and deal with it up front, trying to put a positive spin on it. Mr. Holscher's comments that Dr. Lee's scores were off the charts in indicating truthfulness would certainly fit into that pattern—taking on an issue that might have to be dealt with if the case went to trial and getting a positive interpretation planted in the public's mind, to include the potential jury pool. As the negotiations between the defense and the government went forward, Mr. Holscher continued to press the polygraph issue, claiming that Dr. Lee had passed the only test that had been properly administered, and suggesting that the FBI was wrong to claim that Dr. Lee had failed either exam. Mr. Holscher's statements on the polygraph are exactly what one would expect a defense lawyer to do, but they have created the incorrect impression that the Wackenhut examiners were right and the FBI was wrong.

Mr. Holscher and Dr. Lee's supporters got help on this score from a story by CBS reporter Sharyl Attkisson. The February 2000 news report, titled ''Wen Ho Lee's Problematic Polygraph,'' claimed that ''three experts gave the nuclear scientist passing scores but the FBI later reversed the findings. CBS investigation fuels argument that he was a scapegoat.'' [153]

Ms. Attkisson asked precisely the right question, ''. . . how could the exact same charts be legitimately interpreted as 'passing' and also 'failing?' '' [154] To answer this question, CBS reached out to Richard Keifer, who was then the chairman of the American Polygraph Association. Mr. Keifer was also a former FBI agent who had run the FBI's polygraph program. The CBS report continues:

''Keifer says, ''There are never enough variables to cause one person to say (a polygraph subject is) deceptive, and one to say he's non-deceptive . . . there should never be that kind of discrepancy on the evaluation of the same chart.''

''As to how it happened in the Wen Ho Lee case, Keifer thinks, ''then somebody is making an error.''

''We asked Keifer to look at Lee's polygraph scores. He said the scores are ''crystal clear.'' In fact, Keifer says, in all his years as a polygrapher, he had never been able to score anyone so high on the non-deceptive scale. He was at a loss to find any explanation for how the FBI could deem the polygraph scores as ''failing.''

. . . Since Lee was never charged with espionage (only computer security violations), the content of the polygraph may be unimportant to his case. But the fact that his scores apparently morphed from passing to failing fuels the argument of those who claim the government was looking for a scapegoat—someone to blame for the alleged theft of masses of American top secret nuclear weapons information by China—and that Lee conveniently filled that role.'' [155]

The CBS report gave the clear impression that the Wackenhut examiners were correct. Rather than take on the issue, the FBI simply told CBS ''it would be 'bad' to talk about Lee's polygraph, and that the case [would] be handled in the courts.'' [156] The case never went to trial, and the FBI never got the chance to explain its interpretation of the exam. The result has been that there are lingering doubts as to whether the polygraph is a reliable tool, and whether it was misused by the FBI in the Wen Ho Lee case.

When the case of FBI Special Agent Robert Hanssen broke in February 2001, FBI Director Louis Freeh ordered, among other things, an expanded use of the polygraph within the FBI for counterintelligence purposes. The Judiciary Committee held a hearing on the utility of polygraphs in law enforcement and counterintelligence cases, and heard from a distinguished panel with witnesses offering opinions on both sides of the issue. With the matter of Wen Ho Lee's polygraph still unresolved, two of the witnesses were asked to review the results of the December 23, 1998 polygraph and answer a series of questions that would address the same concern that CBS had raised—how can the same charts be interpreted as both passing and failing?

Dr. Michael H. Capps, currently Deputy Director for Developmental Programs at the Defense Security Service and formerly head of DOD's Polygraph Institute, reviewed the polygraph data and said that he could ''render no opinion regarding whether or not deception is indicated. . . .'' [157] Mr. Capps went on to describe how he had evaluated the exam with and without the aid of the John Hopkins algorithm, which is designed to provide a statistical analysis using a mathematical model to render a probability of deception. He noted that ''there are what I believe to be substantial differences in the scores my evaluation produced and those of the Wackenhut examiner. . . . I cannot account for the differences between my results and those of the Wackenhut examiners.'' [158]

In response to a direct question about how different examiners could reach substantially different conclusions, Mr. Capps said, ''One would expect two properly trained examiners evaluating the same data to draw a similar, but not necessarily identical conclusion. This was not the case when comparing my evaluation with that of the Wackenhut examiner. I cannot account for the differences.'' [159]

One possible explanation for the differing opinions on the polygraph is that the questions were improperly structured, making the entire test invalid because the control questions and the relevant questions were not sufficiently distinct to permit an accurate differentiation of the responses to each. When Dr. Capps was asked about the appropriateness of the questions, he faulted two of the comparison questions used in the exam and said ''these comparison questions were not sufficiently distinct from the relevant questions so as to generate a useful basis of comparison.'' [160]

Mr. Richard Keifer was also asked to evaluate the December 23, 1998 exam in light of his comments to CBS. He provided a detailed analysis and critique of the test and reported:

''My review of the polygraph examination of Wen Ho Lee determined the results to be inconclusive. . . . It is my opinion this examination was not set up, conducted and reviewed using well-established procedures for counter-intelligence polygraph testing. This lack of experience in Foreign Counter-Intelligence polygraph testing contributed to an incorrect decision, an unacceptable delay in the decision making process, and negated the potential of fully uncovering the truth with a timely posttest interrogation.'' [161]

Mr. Keifer further noted that ''I have reviewed these charts at least a dozen times and have done so under every favorable assumption I could make and I have never found this examination to be non-deceptive.'' [162]

When asked to evaluate the test itself, which was not a standard set of questions but one that was created specifically for the examination of Dr. Lee, Mr. Keifer said that ''the fundamental problem with this examination was in question formulation.'' He then took issue with both the relevant questions and the control questions.[163] This finding is consistent with the concerns raised by Dr. Capps, as well as by FBI examiners who noted that Dr. Lee appeared to be reacting to all the questions, control and relevant. The structure of the questions used in the test is important because a polygraph is designed to measure differences between a subject's responses to control questions, which should generate little or no reaction, and the relevant questions where a substantial response is meaningful. Control questions that produce a reaction have the effect of minimizing the differences between the reactions to control questions and relevant questions, thereby rendering the test less useful.

Mr. Keifer also commented on his CBS appearance:

''I was quoted out of context and I felt it was deliberate. I had numerous telephonic conversations with Attkisson prior to the taped interview. She was fully briefed regarding polygraph procedures. I clearly and fully explained to her several times that the ''scores'' of the examiners were high on the non-deceptive side, but that subsequent testing and admissions indicated Lee was in fact deceptive. During the course of our conversations she suggested cover up and misconduct of various officials in the matter. Unfortunately, during the taped interview she asked only about the ''scores'' and did not provide an opportunity for me to clarify. In my opinion this was deliberate, and the piece was manipulated to suggest wrongdoing by the government. Once I saw the piece, I called officials at the Energy Department and the FBI to clarify the matter.'' [164]

The subcommittee's review of the matter shows that Dr. Lee definitely did not pass the December 23, 1998 exam. The best that anyone other than the initial examiners has been able to justify is an ''inconclusive'' or ''no opinion'' rating. It is important that no one has been able to substantiate the ''no deception indicated'' finding because any other result even a ''no opinion''—would have put the investigation on a completely different track. Instead, the government quit looking at Dr. Lee at the precise moment when it should have been looking most intently at his activities.

The Consequences of DOE's Interference in the Investigation

Ordinarily, the decision to polygraph an individual or to remove his access to the classified X-Division spaces would have only limited ramifications. In the Wen Ho Lee case, however, the incorrect handling of the polygraph issue was one of the most consequential mistakes in the entire investigation, likely costing the government an opportunity to recover the tapes that ultimately led to Dr. Lee's indictment and conviction, and creating much angst about the fate of the nuclear secrets on those tapes. In a June 28, 2001 letter, Assistant Attorney General Daniel J. Bryant confirmed that ''Dr. Lee has told the debriefing team that on December 23, 1998, the computer tapes at issue in the indictment were in his X-Division office at the Los Alamos National Laboratory.'' [165]

In other words, the tapes containing the ''crown jewels'' of American's nuclear secrets, that could ''change the global strategic balance,'' were sitting in Dr. Lee's X-Division office and could have been recovered by the government if the DOE had not gone into the panic mode and put political considerations ahead of national security concerns when it became concerned about what the Cox Committee report would say. The FBI, especially the Albuquerque SAC, bear equal responsibility for this turn of events for allowing it to happen.

One of the most fundamental tenets of counterintelligence work is that when you spook a suspect, you watch him. The suspect's reaction to unexpected events, whether planned (as when the FBI decides to confront a suspect in a hostile interview) or driven by unanticipated events (like DOE's decision to interview, polygraph and change Dr. Lee's classified access for no reason that he would know about), is a critical element of any counterintelligence investigation. Success often depends on observing and correctly interpreting that reaction. Even if the suspect does not show any apparent reaction in the presence of investigators, it is imperative that he be watched to see what he does when he thinks he isn't being watched. People with problems react differently than people who don't have anything to worry about. Failure to maintain proper surveillance under these circumstances can lead to the loss of the best opportunity to find out what is really going on. In the Wen Ho Lee, it cost a lot more than that.

Dr. Lee was definitely spooked by the interview and polygraph on December 23. According to an FBI chronology, the polygraph was completed at 2:18 p.m. and he was told at about 5:00 p.m. that his access to secure areas of X-Division and to both his secure and open X-Division computer accounts had been suspended. At 9:36 p.m., Dr. Lee made four attempts to enter the secure area of X-Division through a stairwell. At 9:39 p.m., he tried again through the south elevator.[166] At 3:31 a.m. on Christmas Eve, Dr. Lee again tried to gain access to the X-Division. Had the FBI maintained proper surveillance, they would have known that Dr. Lee was making these desperate attempts to get back into the X-Division. Surely that would have been a clue that further investigation was necessary. Had the case been handled properly, FBI or DOE personnel could have done what Dr. Lee eventually did—just walk into the X-Division and pick up the tapes. Instead of destroying them, as Dr. Lee says he did, government officials could have properly secured these tapes containing the crown jewels of America's nuclear secrets.

In a December 24 meeting, Dr. Lee was told ''that he was being transferred from X-Division to T-Division for thirty days to allow time for the FBI to complete their inquiry.'' [167] If there had ever been any doubt in his mind as to whether he was under an FBI investigation, this comment from DOE removed that doubt. His conduct over the next

few days shows clearly that he was worried about the government's sudden interest in him and the fact that his access to the X-Division had been removed. All told, Dr. Lee tried to get back into his X-Division office almost twenty times between the December 23 polygraph and the February 10 exam. Had the FBI and DOE been watching, they might have wondered why Dr. Lee wanted to get back into the X-Division so desperately, and they might have gone there to look.

It should be noted that not all of the blame for the FBI's lack of interest in Dr. Lee's conduct after the polygraph can be placed on the incorrect interpretation of the polygraph results. Even if one takes the position that the FBI thought that Dr. Lee had passed the polygraph, there is no excuse for completely dropping an investigation solely on the basis of a passed polygraph, especially when DOE and the case agents were told that during the pre-polygraph interview Dr. Lee had admitted foreign contact that he had not previously reported. The FBI should have continued the investigation on the basis of that revelation, regardless of the polygraph exam. A review of the transcript from the March 7, 1999 interview of Dr. Lee shows that the FBI focused very heavily on that unreported contact. If it was worth investigating in March, it should have been worth investigating the previous December.

DOE's answer as to why it failed to monitor Dr. Lee after the December 23, 1998 polygraph is both baffling and informative. DOE's Ed Curran said that ''since the FBI was conducting the investigation of Dr. Lee, it was responsible for determining the level of monitoring necessary.'' [168] All available evidence indicates that the impetus for the polygraph clearly came from within DOE, and that the FBI agreed to this at the insistence of DOE, yet DOE washed its hands of any responsibility for determining whether the polygraph provoked a response from Dr. Lee. Consider also that the catalog of Dr. Lee's attempts to get back into the X-Division was culled from information under DOE's control, information that the FBI did not have access to unless the DOE gave it to them. Under these circumstances, it is not surprising that Dr. Lee's attempts to get back into the X-Division almost immediately after his access was pulled went undetected until much later. The FBI says that it did not learn of Dr. Lee's attempts to reenter the X-Division until March 13, 2000.[169]

The almost complete breakdown in the surveillance of Dr. Lee had severe consequences. As the FBI later learned, ''within one hour of reactivation [of his computer account], he immediately deleted three files, including one which was named after the graduate student who had worked for him in 1997.'' [170] In late January, he began erasing the classified files from the unsecure area of the computer. After he was interviewed by the FBI on January 17, Dr. Lee ''began a sequence of massive file deletions . . .'' [171] He even called the help desk at the Los Alamos computer center to get instructions for deleting files. After he was interviewed and polygraphed again on February 10, within two hours of the time he was told he had failed the exam, he deleted even more files. All told, Dr. Lee deleted files on January 20th, February 9th, 10th, 11th, 12th, and 17th. When he called the help desk on January 22nd, his question indicated that he did not know that the ''delay'' function of the computer he was using would keep deleted files in the directory for some period of time. He asked why, when he deleted files, were the ones in parentheses not going away, and asked how to make them go away immediately. He also asked, on February 16, how to replace an entire file on a tape.[172]

Thus, the report that Dr. Lee had passed the December 23 polygraph gave Dr. Lee precious time to delete and secrete information. The significance of Dr. Lee's file deletions and the unreasonable delays in carrying out the investigation that should have detected and prevented them should not be underestimated. As FBI Agent Robert Messemer has testified, the FBI came very close, ''within literally days, of having lost that material.'' [173] The FBI was almost unable to prove that Dr. Lee downloaded classified files. If the material had been overwritten after it was deleted, ''that deletion by Dr. Lee [would] have kept that forever from this investigation.'' In this context, the repeated delays, the lack of coordination between the FBI and the Department of Energy, and later between the FBI and the Department of Justice, are much more serious.

February 10, 1999 to March 8, 1999

On February 10, 1999, Wen Ho Lee was again given a polygraph examination, this time by the FBI. During this second test, which Lee failed, he was asked: ''Have you ever given any of [a particular type of classified computer code related to nuclear weapons testing] to any unauthorized person?'' and ''Have you ever passed W–88 information to any unauthorized person?'' [174] It should be noted that the 1997 FISA request mentioned that the PRC was using certain computational codes, which were later identified as something Lee had unique access to.[175] Moreover, the computer code information had been developed independently of the DOE Administrative Inquiry which was subsequently questioned by FBI and DOJ officials.

After this second failed polygraph, there should have been no doubt that Dr. Lee was aware he was a suspect in an espionage investigation, and it is inconceivable that neither the FBI nor DOE personnel took the rudimentary steps of checking to see if he was engaging in any unusual computer activity. Again, this is not hindsight. The classified information to which Dr. Lee had access, and which he had been asked about in the polygraph, was located on the Los Alamos computer system. The failure of DOE and FBI officials to promptly find out what was happening with Dr. Lee's computer after he was deceptive on the code-related polygraph question is inexplicable. As noted above, this failure afforded Dr. Lee yet another opportunity to erase files from both the unsecure system and the unauthorized tapes he had made.

As should have been expected, Dr. Lee used the time afforded him by the delays to delete the classified information he had placed on the unclassified system, and to retrieve and dispose of the now-missing tapes. According to press reports, Dr. Lee was allowed to return to the X-Division in January 1999 by an unwitting security office. On other occasions, he walked in behind division employees. In fact, he apparently managed to slip in though an open door just hours after he was barred from X-Division.[176] He also approached two other T-Division employees with a request to use their tape drive to delete classified data from two tapes (he no longer had access to the one that had been installed in his X-Division computer since he had been moved from that division in December 1998).

Nearly three weeks after the polygraph failure, the FBI finally asked for and received permission to search Lee's office and his office computer, whereupon they began to discover evidence of his unauthorized and unlawful computer activities. Even so, the FBI did not immediately move to request a search warrant. The three week delay, from February 10 until the first week of March, is inexplicable.

The long hiatus in moving the case forward seems to have been broken primarily by the impending release of a story on the W–88 case by the New York Times, after which the case was once again moved from the national security track onto the political track. Upon learning of the New York Times story, government officials asked that it be delayed for several weeks, ''saying they were preparing to confront their suspect.'' [177] It is almost incomprehensible that the FBI was still not ready, in March 1999, to interview Dr. Lee. The same argument had been made in December 1998 when the DOE wanted to polygraph Dr. Lee, so there is absolutely no reason that the necessary preparations could not have been made in the interim.

The reporters did not know Dr. Lee's identity, but the FBI said they worried that he might recognize himself from details in the article as if he was not already aware that the FBI was investigating him after having been polygraphed and having his access to classified information suspended since December, having been interviewed by the FBI in January, having been asked to take another polygraph in February.

The FBI interviewed Dr. Lee on March 5, and the New York Times published its story the next day, ''China Stole Nuclear secrets for Bombs, U.S. Aides Say.'' Prompted to move by the breaking story, the FBI interviewed Dr. Lee again on Sunday, March 7. It was during this interview that one of the case agents, at the suggestion of Albuquerque SAC Kitchen, asked Dr. Lee if he had heard of the Julius and Ethel Rosenberg, the couple who had been executed for providing nuclear secrets to the Soviet Union. The reference to the Rosenberg case, after threats that Dr. Lee would lose his job, be handcuffed and thrown in jail, was over the top, creating the inference that the FBI was trying to scare Dr. Lee into a confession. According to a transcript of the interview:

''Do you know who the Rosenbergs are?'' [the agent] asked.

''I heard of them, yeah, I heard them mention,'' Dr. Lee said.

''The Rosenbergs are the only people that never cooperated with the federal government in an espionage case,'' she said. ''You know what happened to them? They electrocuted them, Wen Ho.'' [178]

FBI Director Freeh later acknowledged that this reference to the Rosenbergs was inappropriate, but he denied that the FBI ever attempted to coerce a confession from Dr. Lee.[179]

One day after the FBI's confrontational interview, Dr. Lee was dismissed from Los Alamos. Former LANL Counterintelligence chief Robert Vrooman, has suggested that the leaking of Dr. Lee's name to the press had an adverse impact not only on Dr. Lee but also on the integrity of the investigation into how the Chinese obtained U.S. nuclear secrets,[180] but the investigation was already in deep trouble before Dr. Lee's name became public.

Reopening the W–88 Investigation

Before turning to the criminal case against Dr. Lee, it is appropriate to make a comment about the status of the investigation into the loss of the W–88 information, the matter at the heart of the DOE's AI and the FBI's investigation from 1996 to 1999. The September 1999 decision by the FBI and the DOJ to expand the investigation of suspected Chinese nuclear espionage [181] is puzzling, primarily because it should have happened long ago.

In an October 1, 1999 letter, Attorney General Reno and FBI Director Freeh explained the rationale for reopening the case:

''Our decision to take this action in regard to the investigation into the compromise of U.S. nuclear technology is the result of two separate inquiries. First, there were investigative concerns raised by the FBI Albuquerque field office that began to develop in

November, 1998, regarding deficiencies in the DOE Administrative Inquiry. Second, after questions were raised by Senate Governmental Affairs Committee staff, we started to re-examine flawed analysis in the conclusions drawn in the DOE Administrative Inquiry.''[182]

This letter is significant on several fronts. First, it represents the beginning of a top level assault within DOJ and FBI on the AI as an explanation for why the W–88 investigation had been bungled. The reference to concerns in the Albuquerque office in November 1998 is misleading all—of the documents coming out of Albuquerque in 1998 were focused on getting FISA coverage on Dr. Lee. The documents did contain acknowledgment that somewhere in the neighborhood of 250 personnel per year had access to the W–88 information, which was more than had been previously believed, but the case agent nevertheless pressed for a FISA. It is simply not accurate to portray the November 1998 documents as raising questions about the AI as a basis for investigating Dr. Lee.

Subsequent documents from Albuquerque did raise concerns about the AI. One of the worst in this regard is the January 22, 1999 memorandum which essentially clears Dr. Lee. It says:

''A review of the pertinent questions asked in the [December 23, 1998] polygraph exam showed that Lee did not pass classified information to a foreign intelligence service. The polygraph charts and other documentation relating to the examination were made available to FBI AQ by DOE on 01/22/1999 . . .''[183]

In a section titled ''SAC ANALYSIS'' David Kitchen wrote that ''based on FBI AQ's investigation it does not appear that

Lee is the individual responsible for passing the W–88 information.'' At that point, FBI–AQ had done remarkably little investigation. The lead case agent had requested a FISA in November 1998, but had been overruled. By December, the DOE jumped into the investigation in response to the Cox Committee hearings and gave Dr. Lee a polygraph. Based on nothing more than a supposedly passed polygraph—the results of which Albuquerque received on the same day it was writing the memo and could not have—analyzed and an interview on January 17 (during which, according to Director Freeh, Dr. Lee provided new information about his relationships with Chinese scientists), the SAC Kitchen was prepared to shut down the investigation. This is nothing short of outrageous.

Was it mere coincidence that in his ''Dr. Lee's not guilty memo'' Kitchen took aim at the AI, which contained the very allegations that were the subject of testimony before the Cox Committee? The January 22, 1999 memo does not even address the allegations, from 1994, that Dr. Lee had helped the Chinese with codes and software, yet Mr. Kitchen is prepared to shut down the investigation. Any comments from Mr. Kitchen regarding flaws in the Administrative Inquiry must be viewed in the context of the Albuquerque division's bungling of the Kindred Spirit investigation.

Another significant result of the decision to reopen the W–88 investigation, and to do so based on the supposedly faulty analysis in the AI, has been to put FBI Assistant Director Neil Gallagher on the spot based on his testimony to Congress. In a November 10, 1999 letter on the question of why the investigation was reopened, he acknowledged that when discussing the DOE's Administrative Inquiry (AI) during his June 9, 1999, testimony before the Governmental Affairs Committee,[185] he stated that he ''had full credibility in the report,'' had ''found nothing in DOE's AI, nor the conclusions drawn from it to be erroneous,'' and stated there is a ''compelling case made in the AI to warrant focusing on Los Alamos.'' [186]

As a result of further inquiry, however, Mr. Gallagher now has reason to question the conclusions of the AI. He cites an August 20, 1999, interview by FBI officials of one of the scientists who participated in the technical portion of the AI, in which the scientist ''stated that he had expressed a dissenting opinion with respect to the technical aspects of the AI,'' and points out that the statement of this scientist is ''in direct conflict with the AI submitted to the FBI because the AI does not reflect any dissension by the 'DOE Nuclear Weapons Experts.' '' [187]

A General Accounting Office investigation of Mr. Gallagher's comments regarding the AI later concluded that his testimony had been inaccurate and misleading because he had ample opportunity to know and should have known that documents created by the Albuquerque office of the FBI raised questions about the FBI in late 1998 and early 1999.[188]

In his November 1999 letter, Mr. Gallagher could also have mentioned the draft of the July 9, 1999 document prepared by the Albuquerque division, ''Changed: FBI–DOE National Laboratory Assessment. . . .'' Had he done so, he would have reported that:

''Albuquerque is of the firm opinion that the AI should have been used only for investigative assistance during the initial portion of the 'Kindred Spirit' inquiry, and that a more in-depth and comprehensive analysis of the relevant issues/facts should have been continued through the course of the investigation.'' [189]

A subsequent draft of the same document lists half a dozen reasons why the AI was flawed. The document says that the espionage could have been done by a network of sources, the travel analysis was incomplete, the strategic opinions were preliminary, there had been a disagreement over the extent of the W–88 information compromise, the Lees had been doing things at the behest of the Government, and finally, ''. . . the AI was extremely confusing and self contradictory in reporting its conclusions . . .'' [190]

This is a classic case of too little too late, and it raises questions as to whether the FBI's assault on the AI was intended to get an investigation back on track or to spread the blame for a bungled investigation.

The delay by DOJ and the FBI until September 1999 is perplexing since five governmental reports had concluded, with varying degrees of specificity, that the losses of classified information extended beyond W–88 design information and beyond Los Alamos:

(1) the classified version of the Cox Report (January 1999);

(2) the April 21, 1999 damage assessment by Mr. Robert Walpole, the National Intelligence Officer for Strategic and Nuclear Programs; [191]

(3) the unclassified version of the Cox Committee Report (May 25, 1999);

(4) the Special Report of the President's Foreign Intelligence Advisory Board (June 1999); and

(5) the Special Statement by Senators Thompson and Lieberman (August 5, 1999)

All of these reports gave FBI and DOJ ample evidence that further investigation was necessary. For example, the Cox Committee report states flatly that ''the PRC stole classified information on every currently deployed U.S. inter-continental ballistic missile (ICBM) and submarine-launched ballistic missile (SLBM).[192] Tellingly, the Cox Committee notes that ''a Department of Energy investigation of the loss of technical information about the other five U.S. thermonuclear warheads had not begun as of January 3, 1999 . . .'' and that ''the FBI had not yet initiated an investigation'' as of that date.[193] Thus, the failure to reopen the investigation into the loss of W–88 design information much sooner, or to even initiate an investigation of the other losses, simply continued that pattern of errors.

The Prosecution of Dr. Lee

Two weeks[194] after Dr. Lee was fired from LANL, investigators discovered a notebook in his X–Division office containing a one-page computer-generated document showing the files in the ''kfl'' directory Dr. Lee had created on the unclassified portion of common file system.[195] When it was discovered that many of these files were highly classified, the FBI began a criminal investigation of Dr. Lee which led to his indictment, arrest and pretrial incarceration beginning on December 10, 1999.

Almost from the moment Dr. Lee was taken into custody, his attorneys protested the strict conditions of confinement and worked to secure his release under some combination of home detention and electronic monitoring. Judge James Parker, who presided over much of the case, repeatedly urged the government to relax the conditions of confinement, but the government steadfastly argued against releasing Dr. Lee, even under strict monitoring, until September 13, 2000. On that date, the government entered into a plea agreement with Dr. Lee under which he would plead guilty to a single felony count of mishandling government secrets and go free immediately in exchange for a promise to explain what happened to the missing tapes.

FBI Director Louis Freeh issued a statement on September 13, 2000, explaining the government's decision to reach the plea agreement. In relevant part, the statement said:

''In this case, as has often happened in the past, national security and criminal justice needs intersect. In some cases, prosecution must be foregone in favor of national security interests. In this case, both are served.

''As the government indicated previously, the indictment followed an extensive effort to locate any evidence that the missing tapes were in fact destroyed, and repeated requests to Dr. Lee for specific information and proof establishing what did or did not happen to the nuclear weapons data on these tapes. None was forthcoming. The indictment followed substantial evidence that the tapes were clandestinely made and removed from Los Alamos but no evidence or assistance that resolved the missing tape dilemma. . . .

''The obligation that rests on the government is first and foremost to determine where the classified nuclear weapons information went and if it was given to others or destroyed. This simple agreement, in the end, provides the opportunity of getting this information where otherwise none may exist.'' [196]

But the sudden reversal of the government's position flabbergasted Judge Parker. During the hearing to finalize the plea agreement, he commented from the bench:

''I would like to know why the government argued so vehemently that Dr. Lee's release earlier would have been an extreme danger to the government when at this time he, under the agreement, will be released without any restrictions.'' [197]

At a later point in the hearing, the judge continued:

''What I believe remains unanswered is the question: What was the government's motive in insisting on your being jailed pretrial under extraordinarily onerous conditions of confinement until today, when the Executive

Branch agrees that you may be set free essentially unrestricted? This makes no sense to me.'' [198]

The judge was not alone in being puzzled by the government's handling of the criminal phase of the case. It is difficult to reconcile the lack of forceful action between the time the government discovered, in June 1999 at the latest, that the tapes had been created, with its December 1999 claims that the only way to safeguard the secrets on the tapes was to hold Dr. Lee virtually incommunicado. As will be discussed later in this report, the information on the tapes was extremely sensitive, but it does not necessarily follow that the pretrial confinement conditions the government demanded represent the only way to protect that information. If it was the government's judgement that protecting the information required extraordinary restrictions on Dr. Lee, then why not act as soon as the existence of the tapes was known? [199] Moreover, if the government was willing, in September 2000, to accept Dr. Lee's sworn statement as to the disposition of the tapes (to be verified by polygraph examination), why could it not have accepted a very similar offer from Mr. Holscher on December 10, 1999, the date of Dr. Lee's arrest?

The remainder of this report addresses the government's handling of: (1) the investigation of Dr. Lee from March–December 1999, (2) the pretrial confinement of Dr. Lee, and (3) the case against Dr. Lee. The subcommittee's investigation supports the following conclusions regarding these matters: (1) the information on the tapes was highly sensitive and, if anything, the government should have acted sooner than it did to find out what happened to them, (2) the government overreached in demanding such onerous conditions of confinement prior to trial, and (3) the plea agreement was an acceptable resolution to the case, one that very likely could have been had much sooner if the government had not backed itself into a corner with its aggressive tactics after December 1999.

The March–December 1999 Investigation [200]

One day after Dr. Lee was fired, the Albuquerque Division of the FBI (FBI–AQ) met with the U.S. Attorney for the District of New Mexico, Mr. John J. Kelly. The following day, Dr. Lee's lawyer, Mr. Mark Holscher, wrote to the government offering to surrender Dr. Lee's passport and asking whether Dr. Lee was a target or a subject of investigation. In this letter, Mr. Holscher also advised the government that his client intended to travel to Los Angeles for several days.[201]

On March 11, the FBI learned that another LANL employee had been asked by Dr. Lee to retrieve a box of documents from his X–Division office.[202]

After a telephone conversation between Mr. Kelly and Mr. Holscher on March 15, Mr. Holscher wrote on March 19 asking that the investigation of Dr. Lee be terminated, and requesting security clearances so that he could counsel Lee. In this letter, Mr. Holscher also noted that at least six newspapers had carried stories quoting unnamed FBI officials as saying that there was not enough information to indict, much less convict, Dr. Lee. Mr. Holscher described this information as Brady material, and said the government had no evidence that Dr. Lee had any intent to injure the United States, as would be required under the espionage statutes.[203]

On March 23, investigators discovered the ''kfl'' file listing, and reached a tentative conclusion that classified files had been maintained on the unclassified portion of the LANL computer system. That same day, Mr. Holscher wrote to Mr. Kelly protesting government leaks to the press about the case, including statements that Dr. Lee had failed to cooperate with the government and had failed a polygraph exam. Mr. Holscher pointed out that 28 CFR 50.2(b)(2) prohibits DOJ personnel from disclosing any information that ''may reasonably be expected to influence the outcome of a pending or future trial.'' [205]

Mr. Holscher also sent a letter to FBI Director Louis Freeh on March 23, demanding an investigation into case-related leaks. In a clear reference to Dr. Lee's assistance to the government in the 1980s, Mr. Holscher told Director Freeh that he had ''refrained from explaining to the press the true facts concerning the Lee's 1986 visit to China and follow-up activities that are known to the FBI,'' and requested that Director Freeh release a statement showing that Dr. Lee had cooperated with the government.[206]

On March 26, a LANL scientist assisting with the investigation told the FBI that the ''kfl'' directory had been in the open part of the common file system (CFS), that the file names in the directory suggested they were classified, and that the files had been deleted from the CFS on February 11, 1999. The scientist also told the FBI that Dr. Lee had typed up and stored in a CFS directory letters seeking employment overseas.

After a telephone conversation between the two men, Mark Holscher wrote to Robert Gorence on March 29, saying that he understood from the conversation that Dr. Lee was the subject of a grand jury investigation rather than a target.[207] The difference is significant because being the target of an investigation is more serious than merely being the subject of one.

On March 30, a draft rule 41 search warrant affidavit for Dr. Lee's home was presented to the U.S. Attorney's Office (USAO) in New Mexico. From April 1–8, personnel in Washington and the USAO worked on an affidavit for a search warrant.

During this time the FBI was pursuing a dual track, and a key meeting took place on April 7 between the FBI and representatives of the Office of Intelligence Policy and Review. Rather than moving quickly to discover the extent of the potential damage, FBI and DOJ officials continued to wrangle over whether the matter should be handled under FISA or was ''way too criminal'' for that.[208] OIPR attorneys raised their old concerns about the currency and sufficiency of the evidence against Lee, as well as new concerns about the appearance of improperly using FISA for criminal purposes and the prospect of conducting an unprecedented overt FISA search.[209] FBI officials indicated that FBI Director Freeh was ''prepared formally to supply the necessary certifications that this search met the requirements of the FISA statute—that is, that it was being sought for purposes of intelligence collection (e.g., to learn about Lee's alleged contacts with Chinese intelligence).'' [210] The draft FISA application the FBI prepared was never formally presented to OIPR, in large part because the criminal search warrant was issued.

On April 9, Attorney General Reno made the necessary certification for using FISA derived material [211] in a rule 41 search warrant, and Magistrate Judge William W. Deaton issued the warrant later that same day. The following day, April 10, Dr. Lee's home was searched, and he provided written consent to search his automobiles.

In a letter to Mark Holscher dated April 16, Mr. Kelly and Mr. Gorence made one demand and several requests. The two prosecutors demanded the return of any classified material in Dr. Lee's possession, and requested the names and addresses of the individuals with whom the Lees stayed during their March 9 to April 7 trip to Los Angeles. The prosecutors also told Mr. Holscher of their intent to issue a grand jury subpoena to Mrs. Lee regarding the 1986 and 1988 trips to the PRC, and any actions related to those trips.[212]

On April 18, LANL provided two computer reports, one which outlined the deletion of files by Dr. Lee from his open CFS directories in January and February, and another describing the earlier transfer of these files from the closed to open CFS. A week later, according to an FBI chronology, a technical expert assisting the FBI in the investigation said that the information Dr. Lee had downloaded would not be sufficient for a foreign power to build or duplicate U.S. weapons, but that ''the files would significantly enhance their program and save them years of research and testing.'' [213]

On April 30, a LANL computer security expert informed the FBI of two incidents involving Dr. Lee which showed up in a review of the Network Anomaly Detection and Intrusion Recording system, one in 1993 and another in 1997.[214] That Dr. Lee was flagged by this system in 1997, while he was under investigation, but the FBI only learned about it in April 1999 is simply inexplicable.

On May 5, the FBI was informed by a LANL scientist that a notebook recovered during the search of Dr. Lee's residence contained directions for transferring classified files to a Sun Sparc computer workstation and from there onto portable DC6150 computer tape cartridges. On May 9, a LANL computer official provided a report on how the file transfers had been accomplished.

In response to suggestions from counsel for Mrs. Lee that she might claim marital communication privilege, spousal privilege or both, Mr. Kelly and another prosecutor, Ms. Paula Burnett, wrote to Mr. Brian Sun on May 5. The prosecutors laid out the areas of proposed questioning, to include: (1) biographical information on Mrs. Lee, her husband and their children; (2) contacts the Lees have with extended family, friends or business contacts in the PRC and Taiwan; (3) cooperation with the FBI in the 1986–1988 period; and (4) her knowledge of Dr. Lee's work and any job related activity that he did at home. Focusing on the Mrs. Lee's assistance to the FBI, the prosecutors explained that:

''Not only would we ask her the details of what she was asked to do and what she did during the time of cooperation with the FBI, but also the extent to which her husband was aware of those activities and participated in them.'' [215]

The next day, Mr. Sun responded in writing, saying that he had spoken to Mr. Holscher and felt it was appropriate for Mrs. Lee to assert the marital communications privilege and the spousal privilege. He said, however, that he might be willing to make an attorney proffer.[216]

On May 11, FBI–AQ prepared a Letterhead Memorandum on the Lee case, which was followed on May 16 by a written status report from USA Kelly to Deputy Attorney General Eric Holder and Attorney General Reno.

The next day, May 17, a LANL computer official provided a report on potential movement of files on Dr. Lee's CFS directories from LANL computers to outside computers.

The U.S. Attorney presented a prosecution memorandum on May 27, and requested guidance form DOJ because ''the Atomic Energy Act violation had never been prosecuted before.'' He anticipated difficulty showing Lee intended to harm the U.S. as a necessary element of the crime.[217] The FBI, USAO, and Criminal Division met in Washington, DC, on the same day the prosecution memorandum was presented, to discuss the case, and two days later FBI–AQ provided a written prosecutive report to USAO.

Mr. Holscher wrote on June 9, complaining that the government had not yet advised him what it wanted to discuss with Lee and had not sought to schedule a meeting. Six days later, Mr. Kelly responded that the government was considering serious charges, but ruled out espionage charges under 18 USC 794 (the most serious espionage charge), and suggested a meeting for June 21. In the letter, Mr. Kelly said that he had postponed a previously scheduled meeting so the government could complete its investigation. He further explained to Mr. Holscher:

''I did so not to inconvenience your client, but rather to insure that the interview would take place toward the conclusion of the investigation at a time when I would be able to provide meaningful information about potential charges and, in turn, your client would be motivated to provide a more complete explanation for his potentially criminal conduct. As I stated in our telephone conversation last night, that time has now come.

''You should know that I will be making a charging decision in this matter before the end of June and that the offense conduct under consideration involves various actions by your client over the last decade that collectively have compromised some of our nation's most highly sensitive and closely guarded nuclear secrets.'' [218]

At the June 21 meeting, which was attended by USAO, FBI and Criminal Division representatives, Dr. Lee's counsel asserted that he had only downloaded unclassified data onto the unsecure computer and then on to tapes. (When later confronted with evidence that Dr. Lee had, in fact, downloaded classified data onto portable tapes, counsel claimed that if Dr. Lee had done so, any such tapes had been destroyed.) The meeting was followed by a written status report to the DAG and the AG the following day.

In the interim, on June 15, the FBI learned that Dr. Lee had asked a colleague to retrieve a box of materials that he had left in his X-Division office when he had been transferred to the T-Division. The FBI was told that the colleague had retrieved the box for Dr. Lee, but had taken the materials to LANL security, which had questions regarding some of the contents of the box.[219] The FBI chronology does not mention when the colleague had retrieved the box or what LANL security did about the contents. The absence of details raises the inference that the now-missing tapes could have been in the box, and LANL security may have passed them back to Dr. Lee without knowing what was on them. The FBI has not answered this question.

During the first week of July 1999, Dr. Lee's lawyers made written presentations to the Albuquerque USAO and the Criminal Division in Washington, each of which was designed to dissuade the government from taking action against Dr. Lee.

On July 15, a LANL scientist provided a report on the creation of Tape N, which was downloaded directly to tape in 1997. It was also during July that the government learned that one of the six tapes which had been recovered from Dr. Lee's T-Division office contained a classified file, and that two others contained deleted classified files. LANL computer officials advised the government that one tape had been cleansed of classified data in February 1999, on the unsecure computer workstation belonging to a T-Division colleague of Dr. Lee.

Three days after a meeting in Washington between the USAO and the Criminal Division, Mr. Holscher sent a letter to the government explaining that Dr. Lee had not violated the Atomic Energy Act of 1954. The letter was followed one day later, on July 27, by a meeting in Washington between counsel for Dr. Lee and the Criminal Division.

Mr. Holscher wrote again on August 2, offering to make additional factual submissions, which prompted a response from Mr. Kelly on August 4, saying the government would review anything Mr. Holscher submitted but wanted a complete explanation from Dr. Lee himself. At the same time, Mr. Kelly sent a letter to Eugene Habiger, Director of DOE's Office of Security and Emergency Operations, seeking to include in a proposed indictment of Dr. Lee information about Dr. Lee's downloading activity.

After an August 9 telephone conversation between counsel for Dr. Lee and Richard Rossman, Chief of Staff of the Criminal Division, Mr. Holscher wrote a letter on August 10 stating that Dr. Lee would not submit to any additional interviews and offering further arguments why Dr. Lee had not violated 18 USC 793.

On August 16, Criminal Division Chief of Staff Rossman wrote to counsel for Dr. Lee advising that the government had not yet made a decision whether to charge Dr. Lee, and asking for additional information (which had been discussed during the July meeting) by August 30.

Following a supplemental written presentation by Dr. Lee's counsel on August 30, Mr. Kelly wrote to Mr. Holscher on September 3 asking for information about the location and custody of the tapes from the time of their creation until the present.

On September 8, representatives of the Criminal Division, USAO, LANL and DOE met in Washington to discuss the handling of classified information in the prosecution of Dr. Lee. All of the DOE and LANL representatives concurred as to the significance of the data at issue. By October 4, DOE had prepared a draft classification guide governing issues related to Dr. Lee's illicit computer activity and the classified files involved.

On October 14, the Senate Judiciary Committee approved a resolution authorizing subpoenas relevant to the work of the Department of Justice Oversight subcommittee, including the Wen Ho Lee matter. (A second, broader resolution was authorized on November 17.[220])

On October 27, Assistant Attorney General James Robinson, Criminal Division, wrote a memo to USA Kelly recommending that Dr. Lee be prosecuted under the Atomic Energy Act of 1954.

On November 3, the Department of Justice Oversight subcommittee held its first hearing on the Wen Ho Lee case. Much of the testimony focused on the failure of the FBI to properly investigate, from 1995 to 1998, the information it had related to Dr. Lee potentially engaging in surreptitious electronic communications.

The Lee case was discussed at an National Security Council meeting on November 11, with DOE, DOJ and LANL representatives in attendance.

On November 15, a LANL scientist wrote a ''Draft of Input to Damage Assessment'' regarding the case, which was faxed to USA Kelly on November 15. At the request of the NSC, the CIA prepared a damage assessment regarding the material on the missing tapes on November 24.

The case was briefed at the White House on December 4. A September 24, 2000 Washington Post article by Walter Pincus and David A. Vise described the events leading up to and the discussion at the December 4 meeting as follows:

''The decision to prosecute Lee was made at a meeting in [Attorney General] Reno's conference room shortly before Thanksgiving. Despite lingering question's about Lee's motives, according to participants, there was unanimity among the federal prosecutors from New Mexico and their superiors in Washington that the government should bring a massive, 59–count indictment against Lee using the Atomic Energy Act. Indeed, officials in Washington had decided to charge Lee with intent to injure U.S. national security and (not ''or'') to aid a foreign adversary.

''Crossing a final hurdle, Reno called a meeting of senior national security officials in the White House Situation Room on Dec. 4, 1999, to explain how much classified information prosecutors were prepared to reveal in court. In addition to Reno, Kelly, Freeh, and Richardson, those present included national security adviser Samuel R. ''Sandy'' Berger, CIA Director George J. Tenet and deputy defense secretary John J. Hamre.

''Robert D. Walpole, the national intelligence officer for strategic and nuclear programs, began the meeting with a formal assessment that the loss of the data downloaded by Lee would be a serious blow to national security

''The meeting ended after Reno offered her assurance that prosecutors were prepared to drop the case immediately if the judge were to grant a motion, sure to come from the defense, that the data downloaded by Lee had to be introduced, in full, in open court.'' [221]

On December 7, the Department of Justice Oversight subcommittee sent letters requesting testimony in a closed hearing from nine FBI witnesses, including two of the case agents, FBI General Counsel Larry Parkinson, Albuquerque Special Agent in Charge David Kitchen, Assistant Director for National Security Neil Gallagher, and other case supervisors and managers. The hearing, scheduled for December 14, was to explore the circumstances of the December 23, 1998 polygraph and the relationship between the government and the Lees.

On December 8, as required by statute, the Attorney General sent letters to Energy Secretary Richardson and USA Kelly approving charges against Dr. Lee under the Atomic Energy Act of 1954. That same day, Mr. Kelly spoke to Mr. Holscher by phone, telling him that indictment was imminent and asking for information about the missing tapes. At some point in late 1999, prior to the indictment, Mr. Kelly told Mr. Holscher that the case might be resolved without an indictment and advised Mr. Holscher to look at the latter sections of 18 USC 793.

Although Mr. Holscher faxed a letter at 8:24 a.m. (Pacific Time) on December 10, offering to make Dr. Lee available for a polygraph by a mutually agreeable polygrapher to verify that Dr. Lee did not mishandle the tapes or provide them to a third party, Dr. Lee was indicted and arrested later that same day.

Also on December 10, FBI Director Freeh wrote to request that I ''delay hearings on any aspect of this investigation until the conclusion of the current criminal proceedings resulting from the indictment handed down today.'' [223] In explaining why it was necessary to delay subcommittee hearings, Director Freeh said:

''In my view, the potential that your hearings could inadvertently interfere with the prosecution is substantial. Subcommittee hearings at this time risk impacting upon the Government's ability to successfully prosecute Mr. Lee by creating issues that may not presently exist. Moreover, it is critical for our national security that we have every opportunity to learn as much as we can from Wen Ho Lee in a carefully controllable setting. Given the gravity of the allegations and charges, and the potential opportunities that could be lost by hearings, I respectfully ask that you not go forward at this time. I hope you will agree that to do otherwise poses a substantial risk not only to the prosecution but to the Government's ultimate ability to discover the full extent of the damage done.'' [224]

When Director Freeh met with Senator Torricelli and me on December 14, he made the same arguments. The subcommittee agreed to withhold hearings until the case was resolved, which occurred on September 13, 2000, with the acceptance of the plea agreement.

With the inexplicable exception of never seeking electronic surveillance on Dr. Lee, the chronology presented here shows a thorough and methodical investigation. The discovery that Dr. Lee had created his own portable nuclear weapons data library must, in large measure, be credited to the extraordinary level of effort and skill on the part of the investigators from the FBI and the DOE. In Senate testimony, Director Freeh said that the investigation had required the ''interview of over 1,000 witnesses, review of 20,000 pages of documents in English and Chinese, and the forensic examination of more than 1,000 gigabytes containing more than one million computer files . . .'' [225] Any assessment of the investigation must acknowledge the vast amount of work involved in discovering Dr. Lee's illegal computer activity after he tried so diligently to erase any traces of what he had done. In this regard, the government personnel should be commended.

There are, however, two areas for concern [226] related to the conduct of the March–December 1999 investigation. The first is the delay from the time the existence of the tapes was known, which occurred at the latest in June, and the time Dr. Lee was indicted in December. The chronology provided by the Department of Justice shows continuing activity on the part of the government, and multiple contacts with Dr. Lee's attorneys seeking information about the fate of the tapes, but nothing commensurate with its subsequent declarations in court that the only way to keep the information from falling into the wrong hands, where it could change the global strategic balance, was to hold Dr. Lee in very strict pretrial confinement. In responding to a question about this delay, Director Freeh testified, ''This was an extremely complex investigation and prosecutive process. It could not have been brought, in my view, fairly and accurately before it was.'' [227]

The second great concern is that the FBI did not seek electronic surveillance of Dr. Lee during this period.[228] In view of the government's later pleadings that Dr. Lee could, in effect, upset the global strategic balance merely by saying something as seemingly innocuous as ''Uncle Wen says hello,'' it is difficult to comprehend why the government never sought electronic surveillance in an effort to discover the whereabouts of the missing tapes. In the December 1999 detention hearings, the U.S. Attorney, John Kelly, suggested that if Dr. Lee still had the tapes, he could send a signal to a foreign intelligence service to extract him. If he wasn't in custody ''then we would be dealing with a situation in which an individual not in custody is going to be snatched and taken out of the country.'' [229] As early as April 30, 1999, the FBI had been told by a LANL scientist that if the files Dr. Lee downloaded were given to a foreign power, they would have the ''whole farm,'' the ''crown jewels'' of the U.S. program which had been obtained through decades of effort by the U.S.[230]

If the government felt his communications were such a potential threat, why was there never an effort to ascertain with whom and about what he was communicating during the March–December 1999 period? This lapse severely undercuts the government's later arguments that the harsh conditions of confinement were only to protect the downloaded information.

The Pretrial Confinement of Dr. Lee

After his arrest on December 10, 1999, and a detention hearing before U.S. Magistrate Judge Don Svet on December 13, 1999, Dr. Lee was placed in pretrial confinement in the Santa Fe County Correctional Facility. The conditions of his incarceration, including the Special Administrative Measures (SAM) taken to prevent him from possibly communicating to others about the location of the tapes or the material thereon, have received a great deal of attention from Dr. Lee's attorneys, the press, and eventually, Congress.

The government's decision to hold Dr. Lee under such strict conditions raises a number of important points. Defendants are presumptively entitled to pretrial release except in certain circumstances specified in statute. Because none of the ordinary conditions for pretrial confinement—for example, when a violent criminal is captured after a killing spree—applied to Dr. Lee, Judge Parker explained in his order that:

''Only after a hearing and a finding that ''no condition or combination of conditions will reasonably assure the appearance'' of the defendant and the safety of the community, can a judge order a defendant's pretrial detention. 18 USC 3142(e). A finding against release must be ''supported by clear and convincing evidence.'' 18 USC 3142(f).'' [231]

In reaching a decision on pretrial detention, the judge was required to take into account the available information regarding: (1) the nature and circumstances of the offense charged, (2) the weight of the evidence against the person, and (3) the history and characteristics of the person.[232]

At a series of detention hearings from December 13 through December 29, before two different magistrates, the government painted a stark picture of Dr. Lee's conduct. A December 23, 1999 filing by Mr. Gorence summarized the government's position:

''Lee stole America's nuclear secrets sufficient to build a functional thermonuclear weapon. Lee absconded with that information on computer tapes, seven of which are still missing. Those missing tapes, in the hands of an unauthorized possessor, pose a mortal danger to every American. The government does not know what Lee did with the tapes after he surreptitiously created them. Despite previous denials, Lee now admits that he created the tapes—tapes which the government will establish contain an entire thermonuclear weapon design capability. The risk to U.S. national security is so great if Lee were to communicate the existence, whereabouts, or facilitate the use of the tapes that there is no condition or combination of conditions that will reasonably assure the safety of this country if Lee is released.'' [233]

The Atomic Energy counts with which Dr. Lee had been charged required that the conduct at issue be done with intent to injure the United states. On this score, the government argued that:

''Lee's secretive and surreptitious actions to gather the classified TAR files, to downpartition and download the files on to tapes, to lie to colleagues to facilitate his actions, and then his subsequent deletions to cover his tracks all evidence an intent to injure the United States. Lee's intent to injure the United States also can be inferred by the additional testimony that the government will present to this Court that Lee, in taking complete thermonuclear weapon design capability, stole information that was not in any way related to his duties as a hydrodynamicist. The United States also will offer additional testimony that there was no work related reason to ever move the classified information that Lee moved and downloaded on to computer tapes from the secure to the unsecure computing environment. These facts evidence an intent to injure the United States by depriving it of exclusive control of its most sensitive nuclear secrets.'' [234]

The government also argued that the only way to safeguard the information on the tapes Dr. Lee created was to hold him in detention, with special restrictions on his communications. As described in the government's motion on December 23, these measures included segregation from other prisoners; limiting his visitors to immediate family members and his attorneys, having an FBI agent monitor all family visitations, denial of access to a phone except to call his attorneys, and mail screening.[235]

After the required hearings, Judge Parker issued his order on December 30, 1999, in which he concluded that ''at this time there is no condition or combination of conditions of pretrial release that will reasonably assure the appearance of Dr. Lee as required and the safety of any other person, the community, and the nation.'' [236] He then addressed the nature of the alleged crimes, the weight of the evidence, and the characteristics of the defendant. Judge Parker noted that while the offenses charged fell short of espionage, they were ''quite serious and of grave concern to national security.'' [237] The judge also described the surreptitiousness with which the tapes had been created, citing the government's contention that Dr. Lee had misled a T-Division employee by claiming to want to download a resume to tape.[238] In addressing the weight of the evidence against Dr. Lee, Judge Parker noted that the government had presented direct evidence of the downloads, which was the relevant conduct at issue. With regard to the intent to injure, which was also an element of the charged offenses, he noted that:

''although the Government did not present any direct evidence regarding Dr. Lee's intent to harm the United States or to advantage a foreign nation . . . the Government did present circumstantial evidence of Dr. Lee's intent to violate these provisions of the Atomic Energy Act and the Espionage Act.'' [239]

With regard to the characteristics of the defendant, Judge Parker made points on both sides, noting that Dr. Lee had ''lied to LANL employees and to law enforcement agents and has consciously deceived them about the classified material that he had put on the tapes and about contacts with foreign scientists and officials.'' [240] On the other hand, the judge noted Dr. Lee's longstanding ties to the community, and said, ''Aside from Dr. Lee's deceptive behavior regarding the issues raised in this case, his past conduct appears to have been lawful and without reproach.'' [241] And, finally, the judge concluded that the government had presented ''credible evidence showing that the possession of information by other nations or by organizations or individuals could result in devastating consequences to the United States' nuclear weapon program and anti-ballistic nuclear defense system.'' [242]

In concluding, the judge stated:

''With a great deal of concern about the conditions under which Dr. Lee is presently being held in custody, which is in solitary confinement all but one hour a week when he is permitted to visit his family, the court finds, based on the record before it, that the Government has shown by clear and convincing evidence that there is no combination of conditions of release that would reasonably assure the safety of any person and the community or the nation. The danger is presented primarily by the seven missing tapes, the lack of an explanation by Dr. Lee or his counsel regarding how, when, where, and under what circumstances they were destroyed, and the potentially catastrophic

harm that could result from Dr. Lee being able, while on pretrial release, to communicate with unauthorized persons about the location of the tapes or their contents if they are already possessed by others. Although Dr. Lee's motion to revoke Magistrate Judge Svet's detention order is denied at this time, changed circumstances might justify Dr. Lee renewing his request for release. If, for instance, Dr. Lee submits to a polygraph examination . . . and the results of the exam allay concerns about the seven missing tapes, Dr. Lee's request for pretrial release can be reconsidered in a significantly different light.'' [243]

The judge's final statement before denying Dr. Lee's motion for pretrial release was an admonishment to the government ''to explore ways to loosen the severe restrictions currently imposed upon Dr. Lee while preserving the security of sensitive information.'' [244]

Having lost the initial fight for pretrial release, Dr. Lee returned to jail where the conditions of his confinement became a rallying point for his defenders. The following excerpt is taken from an Internet site established and maintained by Dr. Lee's supporters:

''He was arrested on December 10, 1999 and is now put in solitary confinement in a cell in a New Mexico jail 23 hours a day. He is allowed only one hour of visit a week from his immediate family. He is shackled any time he is out of his cell, at his waist, his ankle and his wrist except when he is meeting with his lawyers (and even then he must wear an ankle chain). A chain around his belly connecting to his handcuff prevents him from raising his hand above his head. We were told that two U.S. Marshals with machine guns accompanied him whenever he goes within the confine of the prison and a 'chase car' with armed Marshals follows Dr. Lee when he is moved from Santa Fe to Albuquerque and back. This is highly unusual and we questioned that other prisoners received the same treatment. The lawyer said Lee was kept separate from other prisoners during his hour-long exercise period. He is finally allowed to speak Mandarin with his family but with two FBI agents listening in. We were told by his families that Dr. Lee was always in shackles and chain even during their one hour weekly meeting. We were also told that the food provided by the prison system was inappropriate to Dr. Lee because he has long adopted to live on a non red meat diet after his colon cancer surgery several years ago.'' [245]

The government, however, portrayed Dr. Lee's conditions of confinement as a matter of necessity to protect the classified information he had downloaded to portable tapes. In a series of memoranda written by Lawrence Barreras, Senior Warden of the Santa Fe County Correctional Facility, on December 10 and 14, 1999, and January 4, 2000, the terms of Dr. Lee's confinement were outlined in detail. Specifically, Dr. Lee's confinement consisted of 24 hour supervision by a rotation of guards, permission to speak only with his attorneys and immediate family members (his wife, daughter and son) and in English only, non-contact visits from his immediate family members limited to one hour per week, no personal phone calls, and that he remain secured in his cell 24 hours a day.[246] Further, Dr. Lee was to remain in full restraints (leg and hand irons) anytime he was to be out of his cell being moved from one location to another.[247]

As previously noted, Dr. Lee's lawyers protested his conditions of confinement almost from the beginning. In a December 21, 1999 letter to Mr. Kelly and Mr. Gorence, lead defense attorney Mark Holscher said:

''Apparently at the request of the Department of Justice and the FBI, Dr. Lee's jailers have barred his family from visiting him for more than one hour a week. In addition, the agents have demanded that my client and his wife speak only English and do so in the presence of a federal agent.

''Please provide me immediately with a written description of the conditions that you have placed on Dr. Lee's imprisonment, and a statement of the legal authority for these draconian conditions.'' [248]

The legal authority to which Mr. Holscher referred was at that time still being assembled. Title 28 of the Code of Federal Regulations, section 501.2, provides that upon direction of the Attorney General, special administrative measures may be implemented that are reasonably necessary to prevent disclosure of classified information, upon written certification . . . by the head of a member agency of the United States intelligence community that the unauthorized disclosure of classified information would pose a threat to the national security and that there is a danger that the inmate will disclose such information. Energy Secretary Bill Richardson sent a letter to the Attorney General on December 27, 1999, in which he said:

''In my judgment, such a certification is warranted to enable the Department of Justice to take whatever steps are reasonably available to it to preclude Mr. Lee, during the period of his pretrial confinement, any opportunity to communicate, directly or through other means, the extremely sensitive nuclear weapons data that the indictment alleges Mr. Lee surreptitiously diverted to his own possession from Los Alamos National Laboratory (LANL). I make this certification at the request of the U.S. Attorney for the District of New Mexico, John Kelly, and upon the recommendations and evaluations of the Director of the Federal Bureau of Investigation and DOE's Director of Security and Emergency Operations, Eugene Habiger.'' [249]

By January 6, the Department of Justice had reviewed the administrative segregation procedures at the Santa Fe County Correctional Facility and determined with some additional measures, the standard segregation policy would adequately confine Dr. Lee. In a letter to Warden Lawrence Barreras, the local U.S. Marshal, John Sanchez described ten additional measures that were necessary:

1. Mr. Lee is to be kept in segregation until further notice (single cell).

2. Mr. Lee is not to have contact with other inmates at anytime.

3. All outgoing mail EXCEPT LEGAL MAIL will be screened by the FBI.

4. Mr. Lee will not be permitted personal telephone calls.

5. Mr. Lee will be allowed to place collect telephone calls to attorneys of record [Mr. John Cline and Mr. Mark Holscher].

6. Mr. Lee will be allowed contact visits with his attorneys only.

7. Mr. Lee will be allowed non-contact visits with immediate family members. . . . The FBI must be on site to monitor each visit. Visits will not be allowed unless an FBI agent is present.

8. Visitors are to be restricted to Attorneys of Record and immediate family.

9. Any changes to Mr. Lee's conditions of confinement will be authorized by USMS [U.S. Marshals Service] personnel only.

10. Mr. Lee is NOT TO BE REMOVED FROM THE FACILITY BY ANYONE UNLESS AUTHORIZED BY THE USMS.[250]

That same day, another of Dr. Lee's attorneys, Mr. John Cline, wrote to Mr. Gorence expressing the view that the conditions of confinement were unlawful. He requested three specific changes, including: (1) two hours outdoors every day, (2) permission for Dr. Lee to have a television, radio, and a CD player in his cell and to receive access to newspapers, and (3) a daily shower.[251]

A January 12, 2000 memorandum to the Attorney General from Principal Associate Deputy Attorney General Gary Grindler demonstrates that at least some of the concerns of Dr. Lee's lawyers were taken to the highest reaches of the Justice Department. The memo notes that the Attorney General had ''advised that some individuals have expressed concern about Dr. Lee's access to exercise,'' and explains that the order for Special Administrative Measures that she was being asked to sign ''does not limit Dr. Lee's access to exercise. According to the Santa Fe County Jail rules, Dr. Lee will be limited to one-hour per day of exercise, as are all administrative segregation prisoners.'' [252]

On January 13, 2000, the Attorney General formally authorized the special administrative measures for a period of 120 days in a memorandum to John W. Marshall, the Director of the Marshals Service. The conditions of confinement were as previously described. It should be noted, however, that from December 10, 1999 until the date the Attorney General signed the order on January 13, 2000, any special conditions of confinement imposed on Dr. Lee would have been without proper authority. If federal regulations require certifications from agency heads and the Attorney General, it can only be presumed that restrictions such as those imposed on Dr. Lee would not be properly authorized until all the certifications were in place. It is troubling that the government was not better prepared to make the necessary certifications in a timely fashion.

As the end of the initial 120 days approached, the Attorney General received a new letter from Secretary Richardson on May 4, in which he expressed his support for continuing the SAM. However, he mentioned the conditions of Dr. Lee's pretrial confinement, saying:

''At the same time, I want to emphasize my concern, that to the extent consistent with protecting the sensitive weapons information to which the indictment of Dr. Lee pertains, Dr. Lee's civil rights as a pre-trial detainee should be honored. I understand that, in response to a request by Dr. Lee's counsel, the Department of Justice has arranged for a translator to be present when he speaks with his family so that he can speak Chinese. I further understand that arrangements have been made to permit him to visit with his family on weekends, to have access to Los Alamos National Laboratory with his lawyers under appropriate safeguards so that he can prepare his defense, and to have access to a radio and reading material of his choice, as well as a reasonable period of exercise every day. Finally, I understand that the conditions of his confinement are in no respect more restrictive than those of others in the segregation unit of the detention facility, where he is confined specifically to protect against further compromise of classified information. Based on this information, I am satisfied that his civil rights are being adequately protected.'' [254]

At about the same time the FBI SAC in Albuquerque, David Kitchen, wrote to the new U.S. Attorney in New Mexico, Norman Bay, and expressed his unequivocal support for maintaining the SAM in place. Agent Kitchen expressed his ''firm conviction that any loosening of the SAM would enable Dr. Lee to communicate with an agent of a foreign power regarding the disposition or usage of the materials contained in the seven missing tapes.'' [255]

In July, the new lead prosecutor on the case, George Stamboulidis, arranged to have restraints removed from Dr. Lee during his scheduled recreation times,[256] but this did not occur without some difficulty.[257]

An August 1, 2000 letter from Warden Barreras to Mr. Stamboulidis describes the final state of Dr. Lee's confinement:

''In response to your letter date July 30th, 2000 inmate Wen Ho Lee began recreating without restraints on July 18th, 2000 at 8:30 a.m. As of August 5th, 2000 he is also allowed participation in the recreation yard 7-days a week for a period of 1-hour per day.

''In reply to inmate Wen Ho Lee's housing conditions: inmate Wen Ho Lee is permitted to have a radio in his cell, this gives him the ability to listen to news programs; he receives reading materials per the SAM guidelines.

''In addition, an exception to the rule was made to grant inmate Wen Ho Lee visits on Saturdays as opposed to the regular Friday schedule: this was done in order to accommodate his family. Supervisors are the only staff that are assigned to oversee his escort and visit. Inmate Wen Ho Lee also receives extra fruit at dinnertime, daily.'' [258]

On September 7, 2000, U.S. Attorney Norman Bay requested that the Attorney General continue the SAM, which had last been extended on May 12. In his letter, he outlined recent developments in the case, including Judge Parker's order granting Dr. Lee's renewed motion for pretrial release on August 24. Mr. Bay informed the Attorney General of the government's motion to stay the request of that order, and noted that the Tenth Circuit had stayed Judge Parker's order pending further review. Mr. Bay concluded his request to the Attorney General by noting that ''nothing has changed since the special administrative measures were first imposed to reduce the risk of Lee disclosing highly sensitive classified information to an unauthorized possessor,'' and requested another 120 days of SAM.[259]

Before the Attorney General acted on the request, the government reached a plea agreement with Dr. Lee, which ended his confinement.

After the plea agreement, the conditions of Dr. Lee's confinement were widely discussed in a way that they had not been discussed before, with new allegations that a light had been left on his cell 24-hours a day, and that he had been kept in shackles an inordinate amount of time. During a series of three hearings in late September and early October 2000, Department of Justice witnesses were asked about the conditions of detention. Attorney General Reno made the point that Dr. Lee's lawyers had not previously complained about the leg-restraints and that no one had ever mentioned the light before.[260] Mr. Bay explained that the light in question was ''a dull blue light, kind of like a night light, in Dr. Lee's room . . . [used] to make sure that if someone walked by and looked inside his cell that they could make sure that he was there and that he was doing okay.'' [261]

The Attorney General also read into the record a memorandum from Raymond L. Cisneros, the local sheriff in Santa Fe who served as the jail monitor. The memorandum, dated March 10, 2000, was to the county manager and explained that Mr. Cisneros had met with Dr. Lee after receiving phone calls from unknown persons claiming that Dr. Lee was not being treated well. According to the memo:

''Other than being incarcerated, he had no complaints. The staff was treating him very well. He singled out Warden Barreras and Deputy Warden Romero as treating him great. . . . His only request was for additional fruit at the evening meal, which I relayed to Warden Barreras.

''I gave him my business card and told him to contact me through his attorney if there was any mistreatment of other issues regarding his incarceration. . . . Because of the high profile nature of this case, I felt it was necessary to either confirm or disprove the allegations. Mr. Lee was very surprised about the calls and stated, 'I haven't complained to anyone about the jail because I am being treated very well.' '' [262]

Realizing that the hearings had not provided all the necessary information on the confinement issue, the DOJ later provided several hundred pages of relevant documents. Much of the discussion above has been drawn from these documents. The Department also sent a letter, dated January 20, 2001, which provided additional detail on the matter. Assistant Attorney General Robert Raben explained that the manner in which Dr. Lee had been treated flowed ''directly from a policy that sets bright line rules that apply to all prisoners under defined circumstances. These bright line rules are, in the Department's view, better than an alternative that would require detention facility personnel to make *ad hoc* decisions in each individual prisoner's case. A rule allowing such discretion would invite both favoritism and abuse.'' [263] Mr. Raben went on to explain that, because there is no federal detention facility in New Mexico, Dr. Lee had been housed at the Santa Fe County Detention Facility, under its administrative segregation policies, with the additional condition that he be allowed no unmonitored communications. According to Mr. Raben:

''While housed in the Santa Fe County Detention Facility, Dr. Lee was subject to all of that facility's other regulations for all prisoners in administrative segregation in addition to the ban on unmonitored communications. One of those requirements is that prisoners in administrative segregation must be in ''full restraints'' (handcuffs, waist chains, and leg irons) whenever they are outside of their cells within the facility, including during exercise periods. Dr. Lee was not in restraints while in his cell. In July 2000, after the issues was raised by Dr. Lee's attorneys, the restraints policy was modified uniquely for Dr. Lee so that he, unlike others in administrative segregation could exercise without restraints.'' [264]

Mr. Raben further explained that Dr. Lee was transported for all court appearances and meetings with his attorneys by the U.S. Marshals, under standard procedures, which included ''full restraints'' during transport, and at all times except when Dr. Lee was in a holding area cell administered by the Marshals Service and when he was meeting with his attorneys. During such meetings, the leg irons remained on, but Mr. Raben said that Dr. Lee's attorneys had never objected to that procedure.[265]

After reviewing the documents and testimony on the conditions of Dr. Lee's pretrial confinement, it is clear that the reasonableness of the government's actions turns on the question of whether or not it was really necessary to restrict his ability to communicate. The government was convinced that the only way to protect the national security was to prevent Dr. Lee from communicating. Having taken that position, the remainder of the government's actions were simply to further the objective of limiting Dr. Lee's ability to communicate. Although some of the government's responses were not as prompt as one might like—for example, taking more than a month to get the initial SAM guidelines signed by the Attorney General—the government seems to have been generally responsive to requests from Dr. Lee's attorneys.

That is not to say that the government's actions were appropriate, however, because the government has not made a showing as to why it was necessary to hold Dr. Lee under such strict terms of confinement in the first place. If he had not communicated the whereabouts of the tapes to a third party in the period prior to his arrest, what made the government believe he would do so from jail? None of the documents, testimony or other information available to the subcommittee provides a compelling answer to this question. While the government may have believed such harsh conditions were necessary, they have not made a convincing case. Judge Parker was not convinced by the government's arguments, and granted Dr. Lee's renewed motion for pretrial release on August 24, 2001. In his remarks at the plea hearing, Judge Parker expressed his sentiments, telling Dr. Lee that ''since by the terms of the plea agreement that frees you today without conditions, it becomes clear that the Executive Branch now concedes, or should concede, that it was not necessary to confine you last December or at any time before your trial.'' [266]

The Case Against Dr. Lee

Had the government not reached a plea agreement with Dr. Lee, the case was scheduled for trial in late November 2000. When the government settled, many questioned the appropriateness of the plea agreement because it seemed to be in such stark contrast with what the government had argued all along. To ascertain whether the plea agreement was appropriate, it is first necessary to examine the government's case.

Although the government would likely have won a conviction because many elements of the charged conduct were not disputed Dr. Lee could not credibly deny that he had made the tapes containing vast quantities of classified nuclear weapons data this would not have been an easy case. The government faced a number of obstacles, including: (1) challenges to the government's claims about the importance of the material on the missing tapes, (2) threats by Dr. Lee's attorney to take the government on a ''long, slow death march under CIPA,'' (3) claims that Dr. Lee was the victim of selective prosecution based on racial profiling, and (4) the issue of Dr. and Mrs. Lee's assistance to the government during the 1980s. None of these obstacles would have been unsurmountable. Each is discussed below.

The Importance of the Missing Tapes

As previously noted, government witnesses testified at Dr. Lee's bail hearing that the information on the tapes was the ''crown jewels'' of our nuclear secrets that could, in the wrong hands, change the global strategic balance. When Dr. Lee's lawyers renewed their motion for pretrial release in July 2000, they made a direct assault on this claim. The defense offered depositions from Dr. Harold Agnew, former Director of LANL, and Dr. Walter Goad, a Fellow Emeritus at LANL, both of whom took issue with the government's characterization of the material on the tapes. Dr. Lee's lawyers also noted that the information in question was not classified at the highest level—Top Secret—and had, in fact, been placed in a special category called ''Protect as Restricted Data'' or PARD when Dr. Lee downloaded it.

When Judge Parker held three days of hearings in August 2000 to consider Dr. Lee's renewed motion for pretrial release, he got testimony from Dr. John Richter that the information on the tapes was 99% unclassified.[267] The government was also forced to acknowledge that the information in question was classified as Secret Restricted Data (SRD) rather than Top Secret Restricted Data (TSRD), and could therefore be sent through certified or registered mail, as demonstrated in the following excerpt from the hearing on August 17:

Mr. CLINE: SRD, unlike TSRD, can be, for example, double wrapped and sent by registered mail from one classified location to another, can it not?

Dr. ROBINSON: That is true today, yes.

Mr. CLINE: And TSRD can not be sent by mail?

Dr. ROBINSON: That is correct.

Mr. CLINE: . . . . the information that we are talking about here, which has been described as the crown jewels, could be double wrapped and sent by registered mail from Washington, D.C. to New Mexico, correct?

Dr. ROBINSON: Correct.[268]

The defense team also noted that the material Dr. Lee had downloaded fell into a category called Protect As Restricted Data, or PARD, when he made the tapes. The definition of PARD, taken from the U.S. Department of Energy Office of Security Glossary of Terms, is as follows: A handling method for computer-generated numerical data or related information which is not readily recognized as classified or unclassified because of the high volume of output and low density of potentially classified data.[269]

As described in the judge's order for Dr. Lee's pretrial release, the effect of the expert opinions offered by Drs. Agnew, Goad and Richter, the defense's showing that the material was SRD as opposed to TSRD, and that the material was marked as PARD when it was downloaded was to ''show that the information Dr. Lee took is less valuable than the government had led the Court to believe it was and less sensitive than previously described to the Court. . . .'' [270]

Judge Parker also raised a question as to whether the missing tapes contained ''all the information needed to build a functional thermonuclear weapon.'' [271] He went on to say, ''In sum, I am confronted with radically divergent opinions expressed by several distinguished United States nuclear weapons scientists who are on opposite sides of the issue of the importance of the information Dr. Lee took.[272] The judge's findings on the sensitivity of the material on the tapes were a principal factor in his decision to order Dr. Lee's pretrial release, which he did on August 24, 2000.

When the government settled the case with a plea agreement less than three weeks later, it gave the impression that it was backing away from its claims about the importance of the material. This had the unfortunate effect of reinforcing the public perception that the government was persecuting, rather than prosecuting Dr. Lee. Like the judge, the subcommittee can only rely on the testimony of expert witnesses, but it seems that the government's witnesses made the stronger arguments in this regard.

The most concise description of the information Dr. Lee downloaded is found in the government's public filing in response to Dr. Lee's appeal of Judge Parker's initial denial of bail, the relevant portions of which are excerpted below:

''The source codes model and simulate every aspect of the complex physics process involved in creating a thermonuclear explosion. The source codes are written to design specific portions of a nuclear weapon—either the primary or the secondary.

''Although nuclear weapons source codes contain all of the physics involved in a thermonuclear weapon, the source codes themselves require ''data files''—both classified and unclassified—to run actual simulations. Data files contain all of the physical and nuclear properties of materials required for a nuclear explosion. . . . Data files become classified as SRD [Secret Restricted Data] when the properties of the materials are most directly relevant to nuclear weapons, i.e., in environments involving very high pressures and temperatures. . . .

'' 'Input decks' are mathematical descriptions of the actual geometry and materials within a nuclear device itself. In essence, an input deck is an 'electronic blueprint' of either a primary or a secondary within a nuclear weapon.

''. . . [Dr.] Lee down-partitioned and downloaded all of LANL's significant nuclear weapon primary and secondary design codes in their entirety. . . . In addition, Lee down-partitioned and downloaded ''all of the data files required to operate those codes,'' as well as multiple input decks representing actual nuclear bomb designs that ranged in sophistication from relatively simple to complex.

''. . . . For a group or state that did not have the indigenous scientific capability to do it alone, the information would represent an immediate capability to design a credible nuclear explosive. A country that had some experience with nuclear explosives could use the information to optimize its nuclear bombs. An advanced nuclear state could use the information to augment their own knowledge of nuclear explosives and to uncover vulnerabilities in the American arsenal which would help them to defeat our weapons through anti-ballistic missile systems or other means.'' [273]

At the August detention hearings, government scientists elaborated on the significance of the material and, specifically the increased importance that came from the way the files had been put together on the tapes. Dr. Paul Robinson, president of Sandia National Laboratories, testified that the tapes ''were very carefully designed to be loaded with the subroutines that would be needed for each design code to be placed right behind that design code. And so I believe they should not require a lot of additional instruction.[274] In other words, the collection of files was more than just a collection of files—it had been assembled so as to ensure that the data files called for in the codes were available at the right place, making it possible for the codes to actually run when executed.

The government also explained its rationale for claiming that the information on the tapes could change the global strategic balance. After a lengthy discussion of the technical aspects of ballistic missile defense and the challenges presented by Multiple Independently Targeted Reentry Vehicles (MIRVs), which are generally quite small, Dr. Robinson expressed his concern that the tapes Dr. Lee made could enable another nation to develop devices that would have reentry vehicles approximately the size of orange traffic cones.[275] Such small warheads would present an enormous challenge to U.S. ballistic missile defenses, even more difficult than that of defending against single warhead weapons which are larger (about the size of a minivan or small bus).

While it might be tempting to simply state that one group of scientist's arguments on this issue is most persuasive, it is not necessary to do so. One of the key witnesses who testified in support of Dr. Lee's position at the August 2000 hearings, Dr. John Richter, subsequently modified his position. The following exchange took place at an October 3, 2000 hearing before the Department of Justice Oversight subcommittee:

Senator SPECTER: Dr. Richter, you have been quoted as testifying before Judge Parker that at least 99 percent of the nuclear secrets that Dr. Lee downloaded to tapes were unclassified. Is that an accurate statement?

Dr. RICHTER: An accurate statement regarding the codes. I still maintain that. The materials properties, I do not think I was referring to that at that time, If I did say it that way then I did not mean it and I erred.[276]

Dr. Richter also acknowledged that the input decks contained important information,[277] but ultimately took the position that the loss of the information on the tapes would be ''marginally harmful, at worst.'' [278]

In evaluating Dr. Richter's opinion on the value of the information on the tapes, it is helpful to consider that ''in 1995, he was the first to suggest that the Chinese might have significant information about the W–88 warhead. Even though he eventually backed off that opinion, it helped start the investigation that led to the discovery of Dr. Lee's download and his jailing.'' [279] Dr. Richter later put his dual roles at the start and at the end of the Wen Ho Lee case in perspective for a reporter when he said, ''If I had any influence in getting him out, I figured that's a payback.'' [280]

In sum, the information on the tapes was clearly important. It does not necessarily follow, however, that the government was right to hold Dr. Lee in harsh pretrial conditions on that basis. In fact, in the August hearings, the judge was only ruling on the question of whether not Dr. Lee should remain in pretrial confinement—under conditions that were considerably harsher than he would be subjected to if he had been convicted. If the case had gone to trial, the government would undoubtedly have prevailed on the matter of whether or not the material on the tapes was important. The government's error was not in claiming the material was important, but in claiming that the only way to protect it was to hold Dr. Lee under such harsh conditions.

The Classified Information Procedures Act (CIPA) issues

CIPA establishes a framework for handling trials involving classified information, with the objective of protecting both national security information and the rights of the defendant. One of the key concepts in CIPA is the provision permitting substitutions for classified information to prevent the government from having to expose that information at trial. Rather than show the actual material at trial, the government is permitted to offer a document that conveys the same information in unclassified form. The judge presiding over the case reviews the material in question and the government's proposed substitutions. If the judge finds that the substitutions are an adequate representation of the material in question, the case goes forward. If the judge finds the government's substitutions lacking, the government can make an interlocutory appeal of the judge's ruling, meaning that the appeal is decided before the case goes forward rather than after as is the usual fashion. If the government loses a CIPA ruling, it can also simply drop the case.

Although the prosecution of Dr. Lee ended before the CIPA issues were fully tested in court, the defense clearly intended to implement a classic graymail tactic of forcing the government to dismiss the case by claiming that secret information had to be revealed in open court to guarantee their client a fair trial. According to U.S. Attorney Norman Bay:

''In late May, we met with defense counsel in this case. . . . And the defense lawyer said that he would never take a plea to any count in the indictment—that is, 'he' being Dr. Lee—and that if the Government wasn't willing to accept, the defense was going to put the United States on a, quote, 'long, slow death march under CIPA.' '' [281]

Senator Specter replied, ''Mr. Bay, if somebody had told me when I was a prosecuting attorney they were going to put me on a long, slow death march, I would say let's start walking.[282]

One of Dr. Lee's attorneys, Mr. John Cline, was the lead attorney on CIPA issues. He told the judge that using classified information in the trial: would be necessary for

proving four central defense arguments: that most of the downloaded material was already in the public domain; that some of the computer codes contained flaws that made them less useful; that the codes were related to Dr. Lee's work; and that they were difficult to use without user manuals, which were not on the tapes.'' [283]

The defense found a sympathetic ear with Judge Parker on these issues. In an order filed August 1, 2000, the judge gave the government two weeks to provide substitute language for specified classified information. He agreed with Dr. Lee (and opposed the government) as to the relevance of particular information to the defense. For example, Judge Parker said that:

''Although the parties dispute the existence or magnitude of any 'flaws' or imperfections in the various codes at issue, the Court nonetheless finds that evidence of those alleged flaws or imperfections is relevant to the Defendant's intent to secure an advantage to a foreign nation or to injure the United States. Evidence of these alleged flaws and imperfections is also relevant for use in the Defendant's cross-examination of witnesses and in the Defendant's rebuttal of Government witnesses' testimony on the issue of the sensitive nature of these codes.'' [284]

The Court delivered another blow to the Government when he ruled that:

''Evidence making a comparison of the input decks of Files 1 through 19 and Tape N to a nuclear weapons blueprint is relevant to the Defendant's intent. In addition, this evidentiary comparison is relevant to the cross-examination of witnesses and to the Defendant's rebuttal of Government witnesses' testimony on the Government's assertion that the input decks constitute an electronic blueprint of a nuclear weapon.'' [285]

Consonant with these determinations, the judge ordered the government to propose substitutions by August 14, with the defense to respond by August 21. Any issues that could not be agreed upon were to be resolved at a hearing on August 31.[286]

The government was perhaps most concerned that the argument about flaws in the codes could force an in-depth discussion of the codes in open court, something it was not prepared to do. There was also a very real concern about permitting Dr. Lee to make a comparison between an actual blueprint and the electronic version of a weapon contained in the input deck. These would have been challenges, but the government had not taken any of its appeals when it made the plea deal, and was a long way from having to cede the case on CIPA grounds.

Allegations of Selective Prosecution/Racial Profiling

Among the more sensational allegations of government misconduct in this case are charges that Dr. Lee was selected for investigation and prosecution based on his ethnicity. The terms ''selective prosecution'' and ''racial profiling'' have been used to describe how the government allegedly decided to focus on Dr. Lee. The subcommittee's review of these allegations shows that the evidence simply does not support charges that Dr. Lee's ethnic heritage was a decisive factor in the government's actions during any phase of this case.

In June 2000, Dr. Lee's defense team filed a motion ''for discovery of materials relevant to establishing that the government has engaged in unconstitutional selective prosecution.'' [287] As grounds for this discovery request, the defense team claimed that Dr. Lee had ''concrete proof that the government improperly targeted him for criminal prosecution because he is 'ethnic Chinese.''' [288] The defense's memorandum cited four examples as proof of such targeting:

''A sworn declaration from a LANL counterintelligence official who participated in the investigation of Dr. Lee that Dr. Lee was improperly targeted for prosecution because he was ''ethnic Chinese.''

''Videotaped statements of the FBI Deputy director who supervised counterintelligence investigations until last year admitting that the FBI engaged in racial profiling of Dr. Lee and other ethnic Chinese for criminal counterintelligence investigations.

''The sworn affidavit the U.S. Attorney's Office used to obtain the warrant to search Dr. Lee's home, in which the FBI affidavit incorrectly claimed that Dr. Lee was more likely to have committed espionage for the People's Republic of China (PRC) because he was ''overseas ethnic Chinese.''

''A posting to the Los Alamos Employees Forum by a LANL employee who assisted counterintelligence investigations and personally observed that the DOE engaged in racial profiling of Asian-Americans at Los Alamos during these investigations.'' [289]

The memorandum went on to explain that even if Dr. Lee did not have the direct evidence of bias, he had:

''satisfied the stringent requirements of *United States* v. *Armstrong*, 517 U.S. 456 (1996), which held that . . . a defendant is nevertheless entitled to discovery if he provides some evidence that similarly situated people have not been prosecuted and that his investigation and prosecution were caused by improper racial motivations.'' [290]

At the plea hearing in September 2000, Judge Parker noted from the bench that the government had made a deal with Dr. Lee only a short time before it would have been required to produce to the judge a substantial volume of material on the selective prosecution issue,[291] raising the inference that the government reached the plea agreement to avoid its discovery obligations on the selective prosecution issue. A Department of Energy review of ethnic bias within the department concluded that there was room for improvement on ethnic sensitivity,[292] but none of the survey's results supported the allegations that Dr. Lee had been targeted because of his ethnicity. An April 2001 review by DOE Inspector General Gregory Friedman was even more direct, concluding that ''information reviewed by the Office of Inspector General did not support concerns regarding unfair treatment based on national origin in the security processes reviewed.'' [293]

Because these charges have not been rebutted, the public may have been left with the impression that Dr. Lee's allegations were correct, and that the government acted out of racial or ethnic prejudice. Any such impression is injurious to the public's trust in the institutions which are charged with enforcing the nation's laws and must be properly addressed.

In pleading the case that Dr. Lee was targeted for criminal investigation because he is ethnic Chinese, Dr. Lee's lawyers alleged that ''the troubling chain of events that led to Dr. Lee's indictment began when the DOE's Chief Intelligence Officer, Notra Trulock, incorrectly concluded in 1995 that the PRC had obtained the design information for the W–88 warhead from someone at the Los Alamos National Laboratory.'' [294] The defense memorandum further alleges that the Administrative Inquiry which was issued by Mr. Trulock in May 1996 listed Dr. Lee as the main suspect, prompting the FBI to open a criminal investigation of Dr. Lee.[295]

There is legitimate debate about the scope and conclusions of the AI, and that subject is addressed elsewhere in this report, but the defense's allegations are inaccurate in two major ways. First, the memorandum overstates Mr. Trulock's role in the development of the AI, which was written by Dan Bruno and an FBI Special Agent who was assigned to the DOE for the purpose of helping to conduct the AI. Although Mr. Trulock was an aggressive advocate in the 1995–1996 period of the argument that the Chinese nuclear weapons program had successfully targeted the U.S. labs for espionage, he had only a limited role in the investigation which resulted in the list of names upon which Dr. and Mrs. Lee appeared. Second, and more importantly, the defense memorandum fails to acknowledge that the FBI was predisposed to focus on Dr. Lee because he was already under investigation, albeit at a lower level than what happened after the AI was issued.

The cumulative effect of these errors has been to create the incorrect impression that somehow Mr. Trulock was directly or primarily responsible for the government's focus on Dr. Lee. The defense memorandum fails to even address the question of how Mr. Trulock supposedly played a role in the prosecution of Dr. Lee when Mr. Trulock left government service in August 1999, nearly four months before Dr. Lee was indicted.[296]

To bolster its case that Mr. Trulock was responsible for focusing on Dr. Lee, the defense memorandum cites Mr. Robert Vrooman, who was Chief Counterintelligence Officer at LANL from 1987 until 1998. The defense quoted Mr. Vrooman as saying that ''Mr. Trulock's office chose to focus specifically on Dr. Lee because he is 'ethnic Chinese.' Caucasians with the same background and foreign contacts as Dr. Lee were ignored,'' and that ''racial profiling was a crucial component in the FBI's identifying Dr. Lee as a suspect.'' [297]

The bevy of civil lawsuits that this case has spawned will have to sort out whether anyone has violated anyone else's rights or engaged in slander or defamation, but for the purposes of this report, several observations about Mr. Vrooman's allegations are appropriate. First, his statement that ''Caucasians with the same background and foreign contacts as Dr. Lee were ignored'' is factually incorrect. While any fair reading of the document would suggest that the authors of the AI were of the opinion that Dr. and Mrs. Lee were the prime suspects, the document also listed several other individuals, some of whom were Caucasian, and recommended that the others be investigated as well. Therefore, it is simply inaccurate to state that Mr. Trulock's office focused specifically on Dr. Lee, for any reason, let alone because he was ethnic Chinese.

Second, Mr. Vrooman raised questions in the late 1980s about Dr. Lee's contacts with Chinese officials and identified Dr. Lee to Energy Department officials as a potential suspect in the W–88 case.[298] He also formerly subscribed to the theory that the Chinese had obtained information about the W–88 through espionage, telling the FBI at one point of a ''smoking gun'' in the case.[299] Thus, although Mr. Vrooman has become critical of the conclusions of the AI and its focus on Dr. Lee, he was instrumental in relaying the DOE analysis regarding the extent of the PRC espionage to the FBI. Had Mr. Vrooman doubted the analysis of the DOE's review group, he could have raised those concerns then rather than saying that a smoking gun had been discovered. When challenged on this point during a hearing, Mr. Vrooman said that he had called Mr. Trulock's office in May 1996, but Mr. Trulock was not in. He said that he did not further pursue the matter because:

''My supervisor, who was the lab's director, told me he wanted me to improve my relationship with Mr. Trulock and what I was about to say would not have done that.

''So we decided, as a matter of course, to let the FBI have this case. We had worked with the FBI for years. They had always protected people's civil rights and did the case

well and we thought they would quickly come to the same conclusion we had.'' [300]

Mr. Vrooman also said that he met weekly with FBI agents on the case and routinely expressed reservations, which came to a head in December 1998 when ''we were basically thinking that Lee was not the right man.'' [301] Given that Mr. Vrooman retired from Los Alamos on March 13, 1998,[302] it remains unclear as to how he was sufficiently informed on the case in December of that year to make judgements of this sort.

And, finally, it should be noted that Mr. Vrooman was one of the three individuals disciplined for his role in failing to remove Dr. Lee from access after the Director of the FBI recommended twice in late 1997 that Dr. Lee's clearance be removed.[303] The subsequent discovery that Dr. Lee had been engaged in massive illegal downloading reflects poorly on Mr. Vrooman's conduct as the lab's counterintelligence chief and gives him a strong motive to minimize Dr. Lee's conduct and to allege government discrimination. Any assessment of Mr. Vrooman's opinion of the government's handling of the case against Dr. Lee must be made with these facts in mind.

Furthermore, when pressed for examples of supposed bias on the part of the government, Mr. Vrooman fell short. At an October 3, 2000 hearing of the Judiciary subcommittee on Department of Justice Oversight, Senator Grassley pursued this line of questioning. Senator Grassley asked for information to substantiate Mr. Vrooman's allegation that whenever Dr. Lee's motive [for the alleged espionage against the United States] was discussed, it came down to ethnicity. The following exchange occurred:

Mr. VROOMAN: Well, the Department of Justice representative asked the FBI what Lee's motive was because it was not clear to him and the response was an elaboration on how the Chinese focus their efforts on ethnic Chinese. That is one example. And there are others, conversations over the years since this investigation proceeded, that that was the only motive.

Senator GRASSLEY: Okay. Could you point to any documentation that would back up the point that was just made?

Mr. VROOMAN: No, sir, I cannot.

Senator GRASSLEY: Or the points that you are making about ethnicity being of prime concern?

Mr. VROOMAN: I do not believe there are any documents.[304]

In fact, there are documents which describe Dr. Lee's motives, but they run counter to what Mr. Vrooman alleges. In the November 10, 1998 request for electronic surveillance on Dr. Lee, the newly appointed FBI case agent describes several incidents from Dr. Lee's past and states their relevance to the issue of motive. One section of this November 1998 FISA request from the Albuquerque office describes how Dr. Lee sent numerous documents to Taiwan's Coordinating Council of North America (CCNA) in the late 1970s and early 1980s, and says that Dr. Lee told the FBI that:

''his motive for sending the publications was brought on out of a desire to help in scientific exchange. During the same interview, Dr. Lee stated that he helps other scientists routinely, and had no desire to receive any monetary or any other type of reward.''[305]

The memo continues, saying the Albuquerque Division of the FBI believes that Dr. Lee's actions in sending these documents to a foreign government without proper authorization ''shows that Wen Ho Lee has the propensity to commit and engage in the crime of espionage to include willingly providing documentation to foreign officials. . . .''[306] This discussion of motive makes no mention of Dr. Lee's ethnicity. If documents or information provided to a foreign government could injure the United States or aid a foreign country, the crime of espionage has still been committed even if the transfer was motivated by a desire to promote scientific exchange and in the absence of a desire for monetary reward.

The November 10, 1998 memorandum also describes a meeting at Los Alamos in early 1994 during which it became apparent that Dr. Lee had a relationship with a top PRC nuclear weapons scientist. A reliable source quoted this top PRC nuclear scientist as saying of Dr. Lee, ''We know him very well. He came to Beijing and helped us a lot.'' [307] The source further reported that Dr. Lee had helped the Chinese Academy of Engineering Physics ''with various computational codes used in fluid dynamics which is a very important aspect of thermal nuclear [sic] weapons design work.'' [308] The Albuquerque memo cited these specific acts as showing ''Wen Ho Lee's propensity to associate with foreign governments and provide information to foreign governments and therefore the propensity to aid in and commit acts of espionage.'' [309] These statements demonstrate clearly that the government's assertions about Dr. Lee's motives were based on specific acts he was known to have committed rather than on the fact that he is ethnic Chinese. These specific acts gave the government ample reason to investigate him and the allegations of Mr. Vrooman and others, that the government relied only on ethnic profiling, are simply incorrect.

In fact, all of the arguments put forward by Dr. Lee's lawyers on the racial profiling issue are a skewed interpretation of the same point—namely the U.S. government's recognition that the PRC intelligence services focus on Chinese-Americans. Consider the second and third examples cited in the discovery memorandum, where the defense claims that former FBI Deputy Director Paul Moore has confirmed that Dr. Lee was targeted by the FBI due to racial profiling, and that the affidavit in support of a search warrant for Dr. Lee's home claimed that Dr. Lee was more likely to have engaged in espionage for the PRC because he was ethnic Chinese. Neither of these claims stands up to even the most minimal level of scrutiny because both are misrepresentations of what was actually said.

The defense memorandum on selective prosecution quotes former FBI Deputy Director Paul Moore as saying in a televised interview with Jim Lehrer on December 14, 1999:

''There is racial profiling based on ethnic background. It's done by the People's Republic of China. . . . Now the FBI comes along and it applies a profile, so do the other agencies who do counter intelligence investigations they apply a profile, and the profile is based on People's Republic of China, PRC intelligence activities. So, the FBI is committed to following the PRC's intelligence program wherever it leads. If the PRC is greatly interested in the activities of Chinese-Americans, the FBI is greatly interested in the activities of the PRC as [regards] Chinese-Americans.'' [310]

To say that the United States government is cognizant of the fact that the PRC prefers to target individuals for elicitation based on their ethnicity is completely different from saying that an individual would be more likely to engage in espionage because he or she is a member of a particular ethnic group. The former statement about recruitment efforts of PRC intelligence services would be a logical, relevant and acceptable observation so long as it was based on fact. The latter statement, implying that an individual would be more likely to engage in espionage on the basis of his or her race, would be an outrageous, biased and unacceptable claim that would have no place in any law enforcement or counterintelligence investigation.

In the Wen Ho Lee case, the government's assertions were confined to acknowledging that the PRC focused on overseas ethnic Chinese, without making inferences that the targeted individuals would be more likely to respond positively because of their Chinese heritage. The defense memorandum cites FBI Special Agent Michael Lowe's April 9, 1999 affidavit in support of a search warrant, saying that it leaves no doubt that improper racial profiling was a substantial basis for the targeting of Dr. Lee. The defense's assertion on this point is incorrect. In relevant part, the affidavit says:

''. . . PRC intelligence operations virtually always target overseas ethnic Chinese with access to intelligence information sought by the PRC. Travel to China is an integral element of the Chinese intelligence collection tradecraft, particularly when it involves overseas ethnic Chinese. FBI analysis of previous Chinese counterintelligence investigations indicates that the PRC uses travel to China as a means to assess closely and evaluate potential intelligence sources and agents, as a way to establish and reinforce cultural and ethnic bonds with China, and as a safehaven in which to recruit, task, and debrief established intelligence agents.'' [311]

This does not allege that Dr. Lee is likely to have engaged in espionage because he is ethnic Chinese, only that he is likely to have been targeted by the PRC intelligence services on that basis. All the defense memorandum shows is that if there is any ethnic profiling done, it is done by the PRC. Since the PRC had no role in the decision to investigate or prosecute Dr. Lee, any bias on their part would be irrelevant.

It should be noted that Dr. Lee's request for discovery related to selective prosecution contained several factual errors, including an incorrect claim that no one else had ever been prosecuted under the Atomic Energy Act, and an incorrect claim that the Department of Justice had never prosecuted anyone under the espionage statutes without evidence that classified material had been transferred to a third party. These claims were shown to be incorrect in the government's response to Dr. Lee's discovery request.[312]

The Relationship Between the Lees and the Government

Shortly after Dr. Lee was fired from LANL, he retained Mark Holscher as his counsel. On May 6, 1999, Mr Holscher released the following statement, which clearly indicated that any prosecution of Dr. Lee would have to deal with the Lees' cooperation with the government:

''Dr. Wen Ho Lee has dedicated himself to the defense of this country for the last 20 years. His work, much of which is classified, has led directly to the increased Safety and national security of all Americans, and he is responsible for helping this country safely simulate nuclear tests.

''In 1986 and 1988, Dr. Lee went to Mainland China to present papers at two technical conferences. Dr. Lee's participation in these conferences was pre-approved and encouraged by the Los Alamos Laboratory and the Department of Energy. These same entities also cleared the texts of the papers given at these conferences, which covered mathematics and physics topics.

''The press has incorrectly reported that Dr. Lee made ''several'' trips to Mainland China and also has failed to report that his two trips were approved in advance by the Los Alamos Laboratory and the Department of Energy. These two approved trips were the only times Dr. Lee has ever traveled to

Mainland China. These false press reports do a disservice both to Dr. Lee and the Los Alamos Laboratory.

''The press reports also fail to include the fact that Dr. Lee presented similar papers at conferences in several countries throughout Western Europe and other parts of the world. The false insinuations that Dr. Lee went to Mainland China in the late 1980s with an improper purpose are unfair. Not only did Dr. Lee go to Mainland China to present a technical paper, his and his wife's attendance were with the full knowledge and approval of the Federal Bureau of Investigation.

''There have been inaccurate press reports regarding the circumstances surrounding Dr. and Mrs. Lee's cooperation with the government. Mrs. Lee agreed to the FBI's request that she assists it as a volunteer without pay in the FBI's efforts to monitor Chinese scientists. She agreed to help the FBI with the full knowledge and approval of Dr. Lee and continued to do so for a number of years.

''At the request of the FBI, Dr. Lee's wife attended the 1986 conference with him, where she voluntarily provided background information on Chinese scientists. Dr. and Mrs. Lee supported and agreed with the FBI's request that Mrs. Lee assist it in obtaining background information on Chinese scientists. It simply defies logic for critics to now allege that Dr. Lee was engaged in improper activities in Mainland China while he and his wife were there.

''At no time during or after the pre-approved 1986 or 1988 trips did Dr. Lee ever provide any classified information whatsoever to any representative of Mainland China, nor has he ever given any classified information to any unauthorized persons. As was anticipated and approved by the U.S. government, Dr. Lee and his wife socialized with Chinese scientists. It was fully understood by the Department of Energy and the Los Alamos Laboratory that the conferences included social events with the participants.'' [313]

Had the case gone to trial, the government would have had to confront the issue of its relationship with Dr. and Mrs. Lee over a long period of time. As previously noted, Dr. Lee assisted the FBI in a 1983–1984 investigation of a Lawrence Livermore scientist. Notwithstanding the FBI's denial of any assistance when the FISA request went forward in 1997, Dr. Lee had, in fact, helped the FBI. Mrs. Lee's relationship with the government would have been a substantially more difficult matter to contend with.

In one discovery request, Dr. Lee's defense team asked for, among other things, all information related to ''Sylvia Lee's Cooperation with the FBI and CIA.'' Citing grand jury testimony of the FBI case agent on the Wen Ho Lee matter, the defense memorandum said that:

''Sylvia Lee served as an FBI ''Information Asset'' between 1985 and 1991 in connection with visits to LANL by PRC scientists. Her principal FBI contact was FBI Special Agent David Bibb. On at least two occasions, Dr. Lee attended meetings between Sylvia Lee and her FBI contact. Sylvia Lee also met with [name redacted] and representatives of the LANL internal security office to provide information concerning PRC scientists.'' [315]

In its response, the government claimed that it had produced all documents related to Lee's cooperation with the FBI. Further, the government argued that while Dr. Lee's purported assistance to the government might be relevant to a jury in considering his criminal intent pursuant to the Atomic Energy Act counts, Mrs. Lee's ''affiliation with the FBI and/or the CIA has no bearing on Lee's criminal intent.'' [316]

In a July 13, 2000 order, Judge Parker said that he would address this issue by reviewing, in camera: (1) documents reflecting Sylvia Lee's cooperation with the Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), and the Department of Energy (DOE), and (2) certain FBI memoranda regarding the propriety of prosecuting the Defendant.[317] After reviewing this information, the judge ruled that it contained information relevant to the defense in several categories of exculpatory information:

1. [redacted];
2. The Defendant's cooperation with and provision of information to Government agencies;
3. The Government agencies' assessments of cooperation by and reliability of Sylvia Lee and the Defendant;
4. The Defendant's actions that may be perceived to be inconsistent with an intent to secure an advantage for a foreign nation; and
5. The Government agencies' conclusions about the Defendant's motives.[318]

The relationship between the government and the Lees would not likely have been a major part of any trial, but it certainly had the potential to embarrass the government. The laws on intelligence oversight set out strict procedures for establishing a reporting relationship or an asset relationship with an American citizen. Press reports suggest, for example, that Mrs. Lee provided information to both the FBI and the CIA, including repeated contacts in the mid–1980s where a CIA agent was present for the meetings and paid for the hotel room where the meetings took place.[319] If the government had failed to conform to any of the laws or regulations in these matters, it could expect the defense to bring them up at trial.

The Plea Agreement

After Judge Parker ruled that Dr. Lee had to be released pending trial, the landscape shifted markedly. By September 13, the government reached the plea agreement which has been previously described. When the judge accepted the plea agreement, Dr. Lee was set free, subject only to the requirement that he undergo three weeks of intense debriefing, subject himself to a polygraph on questions related to the case, and remain available to cooperate with the FBI for a period of one year.

During the plea hearing, Judge Parker asked the government to explain why the government considered the agreement to be in the best interest of the nation. The government's lead prosecutor, Mr. Stamboulidis, answered that the plea provided the ''best chance to find out with confidence precisely what happened to the classified material and data'' on the missing tapes, which he said had been the government's ''transcending concern.'' [320] He also explained that the cooperation agreement would allow the government to verify Dr. Lee's statements, and that Dr. Lee would be at great risk if he failed to fully cooperate or to be truthful. And, finally, Mr. Stamboulidis said, ''this disposition avoids the public dissemination of certain nuclear secrets which would have necessarily occurred on the way towards proceeding towards conviction in this case at trial.'' [321]

The judge was not entirely convinced, asking ''why the government argued so vehemently that Dr. Lee's release earlier would have been an extreme danger to the government at this time he, under the agreement, will be released without any restrictions?'' [322]

Referring to two sworn statements Dr. Lee had provided on the morning of the plea hearing, Mr. Stamboulidis said that Dr. Lee had finally, ''for the first time, given us these assurances that he never intended any harm to our nation by his mishandling these materials in an unlawful way and that he never allowed them to fall into harm's way and compromise national security.'' [323]

Again, the judge was not persuaded, saying, ''Throughout this case, the government has repeatedly questioned the veracity of Dr. Lee. You're saying now, simply because he has given a statement under oath, the government no longer believes he is a threat to national security?'' [324]

The judge appeared to be not so much concerned that the plea agreement was inappropriate, but that it could have been reached much sooner. He noted that the government had rejected a written offer from Dr. Lee's attorneys to have Dr. Lee explain the missing tapes under polygraph exam, which was essentially the same deal the government got in the end (minus the felony count). Judge Parker also reminded counsel for both sides that at the December detention hearing he had asked the parties to pursue the offer made by Mr. Holscher, but nothing came of it. Mr. Stamboulidis took issue with the judge, saying that after the indictment, the offer had been withdrawn, to which Judge Parker replied:

''Nothing came of it, and I was saddened by the fact that nothing came of it. I did read the letters that were sent and exchanged. I think I commented one time that I think both sides prepared their letters primarily for use by the media and not by me. Notwithstanding that, I thought my request was not taken seriously into consideration.'' [325]

The net effect of Judge Parker's questions and the government's apparent reversal on the matter of the threat posed by Dr. Lee created the impression that the case had collapsed. This led to some sharp questions to the Attorney General and FBI Director Freeh at the September 2000 hearing. Director Freeh explained that serious negotiations about a plea agreement had begun during the summer at the direction of Judge Parker, and reiterated that the over-arching reason for the government's decision to make the agreement was to find out what happened to the tapes.[326]

After noting that he and the Attorney General were in total agreement with the decision on the plea deal, Director Freeh outlined five other factors which figured into the government's decision which are summarized below:

1. Judge Parker's strong suggestion that the case was appropriate for mediation rather than trial;
2. Judge Parker's rulings in favor of the defendant in initial proceedings under CIPA, which made it appear that Dr. Lee might succeed in his attempt at graymail because the judge's reasoning left little room to expect that the government would prevail;
3. Judge Parker's August ruling (although stayed by the Tenth Circuit) that created the ''very real prospect that Dr. Lee would soon be released in any event under conditions that we pointed out to the judge were inadequate to prevent Dr. Lee's communications with others.''
4. The potential that the trial would become a ''battle of the experts'' with regard to the classification level and importance of the material on the tapes; and
5. The fact that ''the FBI's lead case agent had had to correct erroneous testimony from the initial detention hearing,'' including the agent's misstatement about Dr. Lee telling another scientist he wanted to use his computer to download a resume (when Dr. Lee had actually said he wanted to download some files), and the agent's overstatement of evidence relating to whether Dr. Lee had sent letters to find outside employment.[327]

Director Freeh's statements provide a compelling rationale for the government's decision to accept the plea agreement. What has not been adequately explained, however, is the decision to keep Dr. Lee in such onerous conditions of pretrial confinement. After

careful review, it becomes apparent that the government was right to reach a plea agreement with Dr. Lee, whose actions did constitute a serious threat to the national security, but was wrong to hold him virtually incommunicado in pretrial confinement for more than nine months.

ENDNOTES

1. ''Plea and Disposition Agreement,'' United States vs. Wen Ho Lee, Criminal No. 99–1417 JP, 13 September 2000: 2.

2. Although the request that was rejected by the Department of Justice's Office of Intelligence Policy and Review did not ask for computer surveillance, both the FBI and the DoJ acknowledge that this would have become part of any approved surveillance plan.

3. House of Representatives, ''Report of the Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China,'' 105th Congress, 2d Session, Report 105–851, 25 May 1999. [Hereafter Cox Committee Report]

4. Carla Anne Robbins, ''China Got Secret Data on U.S. Warhead,'' Wall Street Journal, January 7, 1999: 1.

5. Robbins, 1.

6. Robbins, 1.

7. James Risen and Jeff Gerth, ''Breach at Los Alamos: A Special Report,'' New York Times, March 5, 1999: A1.

8. Risen and Gerth, 1.

9. Risen and Gerth, 1. It should be noted that the New York Times, generally, and Risen and Gerth specifically, came under fierce attack for their original article, which was said to have vastly overstated the case against Dr. Lee. Shortly after Dr. Lee was freed in September 2000, the NYT published a statement finding fault with its coverage of the case, and promising a thorough review of the matter, which was published in a two-article series in February 2001. See Matthew Purdy, ''The Making of a Suspect: The Case of Wen Ho Lee,'' New York Times, February 4, 2001: 1, and Matthew Purdy and James Sterngold, ''The Prosecution Unravels: The Case of Wen Ho Lee,'' New York Times, February 5, 2001: 1.

10. Risen and Gerth, 1.

11. Josef Hebert, ''Government scientist involved in probe is fired,'' Associated Press, March 8, 1999: 1.

12. James Risen, ''U.S. Fires Scientist Suspected of Giving China Bomb Data,'' New York Times, March 9, 1999: A1.

13. Risen, 1.

14. See Cox Committee Report, Volume I, 90–91.

15. See ''Science at its Best, Security at its Worst: A Report on Security Problems at the U.S. Department of Energy,'' A Special Investigative Panel of the President's Foreign Intelligence Advisory Board, June 1999.

16. Senate Governmental Affairs Committee Chairman Fred Thompson (R–TN) and Ranking Minority Member Joseph Lieberman (D–CT), statement, ''Department of Energy, FBI, and Department of Justice Handling of the Espionage Investigation into the Compromise of Design Information on the W–88 Warhead,'' August 5, 1999: 1.

17. The initial plan was to commission a Task Force, which I would chair. By October, Senator Hatch had prepared a resolution transferring me from the Constitution Subcommittee to the subcommittee on Administrative Oversight and the Courts, and spelling out the areas of inquiry and special procedures applicable to the investigation. In the end, the subcommittee's investigation was conducted pursuant to two subpoena resolutions which spelled out, in general terms, the investigative mandate. The first subpoena resolution, adopted by a vote of 18–0 on October 14, 1999, authorized the charirman, in consultation with the ranking member, to issue a subpoena requiring the Attorney General to produce certain documents if they were not delivered voluntarily. The second resolution, authorizing subpoenas in 38 categories for individuals and documents, was approved (not unanimously) on November 17, after a narrower proposal by Senator Leahy was rejected.

18. The indictment alleged violations of the following sections of the U.S. Code: 42 USC 2276, 42 USC, 2275, 18 USC 793(c), and 18 USC 793(e).

19. The term ''Restricted Data'' means all data concerning: (1) the design, manufacture or utilization of atomic weapons: (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy. 42 U.S.C. §2014(y).

20. United States Senate, ''Joint Hearing on the Wen Ho Lee Case,'' before the United States Senate Select Committee on Intelligence and Committee on the Judiciary. 106th Congress, 2nd Session, September 26, 2000: 38. Testimony of FBI Director Louis Freeh. [Hereafter ''Joint Hearing''']

21. Stephen Younger, ''Transcript of Proceedings, Detention Hearing in the case of United States vs. Wen Ho Lee,'' December 13, 1999: 38. [Hereafter, Transcript of Proceedings, Detention Hearing, December 13, 1999]

22. Transcript of Proceedings, Detention Hearing, December 13, 1999, 38.

23. Transcript of an in camera proceeding held on December 29, 1999, United States v. Wen Ho Lee, 59.

24. Matthew Purdy and James Sterngold, ''The Prosecution Unravels: The Case of Wen Ho Lee,'' New York Times, February 5, 2001, online edition.

25. Transcript of Proceedings before The Honorable James A. Parker, U.S. v. Wen Ho Lee, September 13, 2000: 55 [Hereafter Plea Hearing, September 13, 2000]

26. Plea Hearing, September 13, 2000: 58.

27. ''President Clinton calls Lee case 'troubling' '', CNN website September 14, 2000.

28. Transcript of Proceedings, Motion Hearing, December 27, 1999: 49. [Hereafter Motion Hearing].

29. This information was drawn from Dr. Lee's web site at http://wenholee.org/whois.htm.

30. Michael W. Lowe, ''Application and Affidavit for Search Warrant,'' April 9, 1999: 1–2.

31. United States of America, ''Response to Defendant Wen Ho Lee's Motion to Revoke Judge Svet's Order of Detention,'' December 23, 1999: 10. See also, United States Senate, Committee on the Judiciary, Redacted Transcript of Closed Hearing with Attorney General Janet Reno Regarding the FISA Process in the Wen Ho Lee Case, June 8, 1999: 14–16.

32. USA, ''Response,'' 10. See also, United States Senate, Committee on the Judiciary. Redacted Transcript of Closed Hearing with Attorney General Janet Reno Regarding the FISA Process in the Wen Ho Lee Case, June 8, 1999: 15. [Hereafter, Redacted Transcript]

33. Redacted Transcript, 15.

34. Redacted Transcript, 15.

35. ''Response to Defendant Wen Ho Lee's Motion to Revoke Judge Svet's Order of Detention,'' December 23, 1999: 13, footnote 4.

36. Ian Hoffman, ''Agent: Lee Admitted Lying,'' Albuquerque Journal, January 18, 2000, online edition.

37. Redacted Transcript, 16.

38. The FBI could tell from the text of the intercepted call that Dr. Lee had heard of the other scientist through a mutual friend. What the FBI could not learn from that call, and what Dr. Lee did not fully explain until sometime later, was that he had learned about the other scientist when he visited LLNL in October, 1982. His actions upon learning about the other scientist's situation are of particular importance.

39. See declassified transcript of closed portion of detention hearing on December 29, 1999, during which FBI Special Agent Robert Messemer characterizes the fact that Dr. Lee called the Coordination Council of North America at the same time he was calling the LLNL scientist as more troubling then the fact that he lied to the FBI about having called the LLNL scientist.

40. United States Senate, Joint Hearing before the Senate Select Committee on Intelligence and the Senate Judiciary Committee, ''Joint Hearing on the Wen Ho Lee Case,'' 106th Congress, 2nd Session, September 26, 2001: 72.

41. Draft #3 of the 1997 FISA request, 10.

42. Redacted Transcript, 16–17; Thompson and Lieberman Statement, 6, 16.

43. James Risen and David Johnston. ''U.S. Will Broaden Investigation of China Nuclear Secrets Case,'' New York Times, September 23, 1999, Online Edition.

44. FBI Director Freeh testified at a joint hearing of the Senate Judiciary and Select Intelligence Committees on September 26, 2000 that ''the FBI's investigation into this 1994 matter was still ongoing when Dr. Lee emerged as a potential subject in the 1996 administrative inquiry. . . . Being aware of the potential interest in Dr. Lee, and not wanting to take any steps that would interfere with the inquiry or expose the FBI's interest in him, FBI headquarters and FBI Albuquerque agreed to hold the investigation of the 1994 investigation in abeyance.'' See hearing transcript, 46–47. At another hearing the following week, Mr. Trulock testified, however, that ''The DOE/FBI's team's first visit to the laboratory occurred in 1996. . . . DOE first learned of Dr. Wen Ho Lee when he was brought to our attention by Robert Vrooman in January of 1996. . . .'' See Judiciary Committee hearing, October 3, 2000: 43.

45. Thompson and Lieberman Statement, 6, footnote 14.

46. Redacted Transcript, 108–109.

47. Redacted Transcript, 109.

48. Redacted Transcript, 109.

49. Ian Hoffman, ''Lawyer: Lee's Intent in Question,'' Albuquerque Journal, January 5, 2000, at http://wenholee.org/ABQJournal010500.htm.

50. For a discussion of this issue, see Motion Hearing, 147–157.

51. Motion Hearing, 152–153.

52. DOE Assistant Secretary for Congressional and Intergovernmental Affairs John C. Angell, letter to Senator Charles Grassley of December 20, 2000, responding to written questions submitted by Senator Arlen Specter following a September 27, 2000, hearing of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts: 21.

53. See John Angell's December 20, 2000 letter to Senator Grassley, 20.

54. Even if DOE computer personnel and counterintelligence were unaware that Dr. Lee was under investigation by the FBI, and that would have been possible in 1994, it would not have been inappropriate for DOE to share records of systems like NADIR with the FBI. This has the benefit of allowing the FBI to find out if any individuals are being flagged by security and monitoring systems, without alerting computer personnel to the investigation.

55. United States of America, ''Response to Defendant Wen Ho Lee's Motion to Revoke Judge Svet's Order of Detention,'' December 23, 1999.

56. The ''walk-in'' document is so named because an individual provided this information to the United States without being solicited for it, in other words, he ''walked-in'' with the information. The documents he provided contained classified nuclear weapons information.

57. Energy Secretary William Richardson, letter to FBI Director Louis J. Freeh, of October 29, 1999L 1.

58. For example, a September 16, 1996 FBI 302 from an interview of a scientist says that in September 1995 the KSAG met and ''there was no disagreement that 'Restricted Data' information had been acquired by the Chinese. The only disagreement was over how valuable the information was.''

59. DOE Administrative Inquiry, 38.

60. DOE Administrative Inquiry, 36.

61. DOE Administrative Inquiry, 38.

62. See FBI 302 dated September 2, 1999, from an interview of the FBI agent who was detailed to assist with the AI, 4.

63. FBI teletype from FBIHQ to FBI–AQ, dated August 20, 1996: 3.

64. FBI 302 dated 9/16/96 (from an interview on 9/13/96) of a LANL scientist, 2.

65. William Broad, ''Spies Versus Sweat: The Debate Over China's Nuclear Advance,'' New York Times, September 7, 1999, Online Edition.

66. Vernon Loeb and Walter Pincus. ''China Prefers the Sand to the Moles,'' Washington Post, December 12, 1999, A02.

67. United States House of Representatives, Report of the Select Committee on U.S. National Security and Military/Commercial Concerns With the People's Republic of China, May 25, 1999: Volume 1, 83–84. [Hereinafter, Cox Report] A ''walk-in'' is an individual who voluntarily offers to conduct espionage.

68. President's Foreign Intelligence Advisory Board. Science at its Best; Security at its Worst, June 1999, 30–31.

69. Thompson and Lieberman Statement, 6–7.

70. X-Division Open LAN Rules of Use, Executed by Dr. Wen Ho Lee on April 19, 1995.

71. United States Senate, Senate Select Committee on Intelligence, testimony of FBI Director Louis J. Freeh at a ''Closed Hearing,'' May 19, 1999: 34.

72. Thompson and Lieberman Statement, 9.

73. ''Richardson Announces Results of Inquiries Related to Espionage Investigation,'' Department of Energy News Release, August 12, 1999.

74. Thompson and Lieberman Statement, 9.

75. This list has been extracted from the August 5, 1999, Statement by Senate Governmental Affairs Committee Chairman Fred Thompson and Ranking Minority Member Joseph Lieberman, Department of Energy, FBI, and Department of Justice Handling of Espionage Investigation into the Compromise of Design Information on the W–88 Warhead, 14–17.

76. Hydrodynamics is a science that is relevant to the development of nuclear weapons designs.

77. See Redacted Transcript, 35 and 88.

78. Bellows Report, 482.

79. Redacted Transcript, 118–119.

80. Redacted Transcript, 52. In a March 6, 2000 letter from Assistant Attorney General Robert Rabin to Senator Hatch, the Department of Justice takes issue with this statement, and quotes Senator Kyl's testimony on the subject: ''So it would be your view that [the language quoted in the draft report] is a summary that probably overstates the Justice Department's requirements for the FBI? The Attorney General responded: ''That is correct.'' Transcript of June 8, 1999 at 49.'' [sic] For the actual exchange, see page 53 of the June 8, 1999 transcript.

81. Redacted Transcript, 52.

82. Redacted Transcript, 52.

83. Unclassified excerpt of Mr. Seikaly's testimony before the Senate Select Committee on Intelligence, May 1999.

84. Bellows Report, 548.

85. Redacted Transcript, 49.

86. Redacted Transcript, 49.

87. Redacted Transcript, 24–25.

88. Redacted Transcript, 39.

89. Redacted Transcript, 39.

90. Bellows Report, 549.

91. Redacted Transcript, 40.

92. Redacted Transcript, 36.

93. Redacted Transcript, 56.

94. Redacted Transcript, 117.

95. Redacted Transcript, 117.

96. Bellows Report, 541.

97. Motion Hearing, 85. See also Pete Carey, ''Los Alamos Suspect May Have Been Doing His Job: Rerouting Files Common at Lab,'' Florida Times-Union, June 20, 1999, G–8.

98. ''With Intent to Injure the U.S.'' Washington Times, editorial, December 4 1999, A16.

99. United States of America, ''Response to Defendant Wen Ho Lee's Motion to Revoke Judge Svet's Order of Detention,'' December 23, 1999, 3–4.

100. Hoffman.

101. Thompson and Lieberman Statement, 23–24.

102. Unclassified summary of the December 19, 1997, FBIHQ teletype to Albuquerque, provided by FBI Office of Public and Congressional Affairs, December 3, 1999.

103. FISA Request, November 10, 1998: 11.

104. FISA Request, November 10, 1998: 11.

105. FISA Request, November 10, 1998: 11.

106. FISA Request, November 10, 1998: 11.

107. FISA Request, November 10, 1998: 11.

108. FISA Request, November 10, 1998: 11–12.

109. FISA Request, November 10, 1998: 12.

110. FBI memorandum, [title redacted], from FBI National Security Division to FBI–AQ, dated December 10, 1998: 1–2.

111. PFIAB, 34.

112. See the undated, unsigned memorandum provided to the subcommittee by the FBI Office of Congressional Affairs in December 1999.

113. See the undated, unsigned memorandum provided to the subcommittee by the FBI Office of Congressional Affairs in December 1999.

114. See the undated, unsigned memorandum provided to the subcommittee by the FBI Office of Congressional Affairs in December 1999.

115. FBI EC from Albuquerque to FBIHQ, dated December 8, 1998: 1.

116. See the letter of DOE Assistant Secretary for Congressional and Intergovernmental Affairs John Angell to Senator Arlen Specter of December 20, 2000, which encloses answers prepared by Mr. Curran to follow-up questions from the September 27, 2000 hearings of the Judiciary Subcommittee on Administrative Oversight and the Courts.

117. It is troubling that the level of attention paid to Dr. Lee's activities in 1998 was so low, and the coordination between DOE and FBI was so poor, that counterintelligence personnel did not even learn of his previous trip to Taiwan, in March-April 1998, until after he was already out of the United States.

118. See the letter of DOE Assistant Secretary for Congressional and Intergovernmental Affairs John Angell to Senator Arlen Specter of December 20, 2000, which encloses answers prepared by Mr. Curran to follow-up questions from the September 27, 2000 hearing of the Judiciary Subcommittee on Administrative Oversight and the Courts.

119. See the letter of DOE Assistant Secretary for Congressional and Intergovernmental Affairs John Angell to Senator Arlen Specter of December 20, 2000, which encloses answers prepared by Mr. Curran to follow-up questions from the September 27, 2000 hearing of the Judiciary Subcommittee on Administrative Oversight and the Courts.

120. See 1999 Report of DOE Inspector General regarding Dr. Lee's clearance and access, 101.

121. At the December 14, 1999 meeting in which Director Freeh asked the subcommittee to suspend its oversight of the Wen Ho Lee case, Mr. Curran was asked about an FBI memo from February 1999 which claimed that Mr. Curran had instructed his personnel not to share the charts and videotape of the December 1998 polygraph with the FBI. After seeing an early draft of the interim report. Mr. Curran wrote a letter on January 31, 2000, denying the information in the FBI report. He also sent a copy of a letter he had received from FBI Assistant Director Neil Gallagher, which described the memo in question as a ''blind memo'', not intended to capture actual witness statements.

122. Ed Curran, Director, DOE Office of Counterintelligence, letter to Senator Arlen Specter, January 31, 2000: 2–3.

123. See the letter of 20 December 2000 from John C. Angell, Assistant Secretary of Congressional and Intergovernmental Affairs, Department of Energy to Senator Charles Grassley, which enclosed responses from Mr. Curran to 22 questions from Senator Specter.

Wackenhut is a private company that has a contract with DOE to perform security related polygraphs.

125. Matthew Purdy, ''The Making of a Suspect: The Case of Wen Ho Lee,'' New York Times, February 4, 2001, online edition.

126. ''Department of Energy Chronology,'' May 6, 1999: 7–8.

127. United States Senate, Subcommittee on Administrative Oversight and the Courts of the Committee on the Judiciary, ''Continuation of Oversight of the Wen Ho Lee Case,'' 106th Congress, 2nd Session, 27 September 2000: 62. [Hereafter, 27 September 2000 hearing]

128. 27 September 2000 hearing: 62–63.

129. FBI Assistant Director for National Security Neil Gallagher, Memorandum of 18 December 1998: 1.

130. 27 September 2000 hearing: 32.

131. United States Senate, Senate Select Committee on Intelligence, ''Closed Hearing,'' 106th Congress, 2nd Session, May 19, 1999: 7.

132. FBI Supervisory Special Agent C.H. Middleton to Ms. Horan, dated January 21, 1999: 2.

133. DOE IG Gregory H. Friedman, letter to Senator Arlen Specter of October 2, 2000, enclosing a declassified segment of a 1999 Report by the IG. This information comes from page 113 of the full report.

134. DOE IG Gregory H. Friedman, letter to Senator Arlen Specter of October 2, 2000, enclosing a declassified segment of a 1999 Report by the IG. This information comes from page 115 of the full report.

135. DOE IG Gregory H. Friedman, letter to Senator Arlen Specter of October 2, 2000, enclosing a declassified segment of a 1999 Report by the IG. This information comes from page 116 of the full report.

136. Deposition of Supervisory Special Agent Craig Schmidt by Mr. Eric George of the Senate Committee on the Judiciary staff, 29 July 1999: 91.

137. U.S. Department of Energy Psychophysiological Detection of Deception (PDD) Examination Report, File #99–2A–003, December 23, 1998, statement of Wolfgang Vinskey.

138. U.S. Department of Energy Psychophysiological Detection of Deception (PDD) Examination Report, File #99–2A–003, December 23, 1998, statement of John P. Mata.

139. John P. Mata, memorandum ''Psychophysiological Detection of Deception (PDD) Examination of Wen Ho Lee,'' for Edward Curran, December 28, 1998: 3–4.

140. This memo was undoubtedly after Mr. Mata received a call from Ed Curran who was

told on December 14, 1999 of an FBI document which said that the FBI had not initially been able to get access to the charts, per instructions from Ed Curran.

141. John P. Mata, Memorandum for the Record, ''Recollection of Events Regarding DOE Polygraph Examination of Wen Ho Lee, December 23, 1998,'' December 21, 1999: 2.

142. John P. Mata, Memorandum for the Record, ''Recollection of Events Regarding DOE Polygraph Examination of Wen Ho Lee, December 23, 1998,'' December 21, 1999: 2.

143. John P. Mata, Memorandum for the Record, ''Recollection of Events Regarding DOE Polygraph Examination of Wen Ho Lee, December 23, 1998,'' December 21, 1999: 2.

144. OCI Polygraph Program Manager David M. Renzleman, Polygraph Program Record of Quality Assurance, undated, 1.

145. OCI Polygraph Program Manager David M. Renzleman, Polygraph Program Record of Quality Assurance, undated, 2.

146. See FBI Headquarters internal memo dated February 2, 1999 and or February 6, 1999 on the same subject.

147. United States Senate, Committee on Governmental Affairs, Testimony from June 9, 1999 closed hearing: 145.

148. Undated FBI response to questions for the record submitted by Senator Arlen Specter following the Senate Judiciary Subcommittee on Department of Justice Oversight hearing, ''Continuation of Oversight on the Wen Ho Lee Case,'' on September 27, 2000: 1.

149. FBI ASAC William Lueckenhoff, memorandum to DAD Sheila Horan, February 26, 1999: 1.

150. DOE IG Gregory H. Friedman, letter to Senator Arlen Specter of October 2, 2000, enclosing a declassified segment of a 1999 Report by the IG. This information comes from page 116 of the full report.

151. FBI Assistant Director Neil J. Gallagher, letter to Mr. Edward J. Curran of January 4, 2000: 1.

152. Ian Hoffman, ''Lee Denied Bail; Court Cites Risk,'' Albuquerque Journal, December 30, 1999: A1.

153. Sharyl Attkisson, ''Wen Ho Lee's Problematic Polygraph,'' February 4, 2000, accessed at http://www.cbsnews.com/now/story/0,1597,157220-412,00.shtml. [Hereafter, ''Wen Ho Lee's Problematic Polygraph''']

154. ''Wen Ho Lee's Problematic Polygraph.''

155. ''Wen Ho Lee's Problematic Polygraph.''

156. ''Wen Ho Lee's Problematic Polygraph.''

157. Dr. Michael Capps, Deputy Director of Developmental Programs, Defense Security Service, letter to Senator Arlen Specter of June 25, 2001: 1. [Hereafter, Capps letter]

158. Capps letter, 2–3.

159. Capps letter, 3.

160. Capps letter, 4.

161. Richard W. Keifer, letter to Senator Arlen Specter of June 26, 2001, ''Your letter of May 22, 2001 regarding the Dr. Wen Ho Lee polygraph Examination on December 23, 1998,'' 1. [Hereafter, Keifer letter.]

162. Keifer letter, 3.

163. Keifer letter, 3.

164. Keifer letter, 5.

165. Assistant Attorney General Daniel J. Bryant, letter to Senator Patrick Leahy and Senator Arlen Specter of June 28, 2001.

166. FBI ''Chronology of Significant Events Between 12/23/98 and 2/10/99,'' prepared for use by FBI Director Louis Freeh at a joint hearing of the Senate Select Committee on Intelligence and the Senate Judiciary Committee on September 26, 2000: 1. [Hereafter, FBI Unclassified Chronology.]

167. DOE IG Gregory H. Friedman, letter to Senator Arlen Specter of October 2, 2000, enclosing a declassified segment of a 1999 Report by the IG. This information comes from page 116 of the full report.

168. Assistant Secretary of Energy for Congressional and Intergovernmental Affairs John Angell, letter to Senator Grassley responding to questions from Senator Arlen Specter after a hearing before the Judiciary Subcommittee on Administrative Oversight and the Courts on September 27, 2000: 17.

169. Undated FBI response to questions for the record from Senator Arlen Specter following a hearing of the Senate Judiciary Subcommittee on Department of Justice Oversight, ''Continuation of Oversight on the Wen Ho Lee Case,'' of September 27, 2000: 1.

170. FBI Chronology of Wen Ho Lee Investigation 1999–2000: 12.

171. Transcript of Proceedings, 118.

172. For a detailed discussion of Dr. Lee's deletions and his call to the computer help line, see ''Transcript of Proceedings, Motion Hearing, December 27, 1999,'' United States of America vs. Wen Ho Lee, pages 132–138.

173. Transcript of Proceedings, 146.

174. Thompson and Lieberman Statement, 26.

175. For a detailed discussion of the computer code issue, see the transcript of Attorney General Reno's testimony before the Senate Judiciary Committee on June 8, 1999, 108–109 {as numbered in the lower-right-hand corner}.

176. Matthew Purdy and James Sterngold, ''The Prosecution Unravels: The Case of Wen Ho Lee,'' New York Times, February 5, 2001, online edition.

177. Matthew Purdy, ''The Making of a Suspect: The Case of Wen Ho Lee,'' New York Times, February 4, 2001, online edition. Unless otherwise noted, the description of the government's actions in the first week of March 1999 is taken from this article.

178. Matthew Purdy, ''The Making of a Suspect: The Case of Wen Ho Lee,'' New York Times, February 4, 2001, online edition.

179. In his written statement to the Joint Hearing of the Senate Select Committee on Intelligence and the Judiciary Committee on September 26, 2000, Director Freeh said, ''One approach that was taken during that interview was not consistent with the conduct expected of agents during an interview. Specifically, Dr. Lee was reminded of the fate of Julius and Ethel Rosenberg, who were executed for espionage. Confrontational interviews often call for tough statements by investigators, but that implication was inappropriate. Again, Dr. Lee ended the interview without providing any useful information and without giving any indication of the actions to which he has now pled guilty.'' When asked by Senator Specter at the September 26 hearing about the Rosenberg reference and the harsh conditions of confinement and the inference that these measures might be intended to coerce a confession, Director Freeh responded, ''I would disagree very strongly with the suggestion or the notion that anything was done with respect to confinement, or anything else in this case, to improperly or unfairly treat Dr. Lee.'' See hearing transcript, 81.

180. For a discussion of the issue of how Dr. Lee's name was leaked to the press, see pages 53, 54, 64 and 65 of the transcript of the Senate Judiciary Subcommittee on Department of Justice Oversight hearing on October 3, 2000, during which Mr. Trulock says that NYT reporter James Risen told him that Energy Secretary Richardson leaked Dr. Lee's name to the media. Secretary Richardson vehemently denied being the source of the leak, both in a letter to Senator Hatch on October 3, 2000, in which he said he had received a letter from Senator Specter requesting a hearing on the basis of Mr. Trulock's statement. In reply, Secretary Richardson said, ''Mr. Risen has denied that he made this statement to Mr. Trulock, and I categorically deny that I shared Mr. Lee's name with Mr. Risen.'' Secretary Richardson made the same denials to Senator Specter in a meeting on October 5, 2000, but a review of the articles in question shows that Secretary Richardson gave an on the record interview in which he named Dr. Lee and made several comments about his lack of cooperation. Although Dr. Lee's name had first appeared in the press in an AP article the day before, Secretary Richardson confirmed on the record that Dr. Lee was the individual who had been fired for security violations.

181. See, for example, the September 28, 1999 press release from the FBI National Press Office which states that Special Agent in Charge Steve Dillard ''has been appointed as Inspector in Charge of a task force composed of FBI Special Agents and analysts that will investigate the possible theft or compromise of classified information from United States nuclear laboratories. . . .'' The full text of the press release is available at http://www.fbi.gov/pressrm/pressrel/dillard.htm.

182. Attorney General Janet Reno and FBI Director Louis Freeh, letter to Senator Orrin Hatch, October 1, 1999: 1.

183. FBI Albuquerque EC to FBI HQ of January 22, 1999: 2.

184. FBI Albuquerque EC to FBI HQ of January 22, 1999: 3–4.

185. He made similar representations in other briefings provided to Senate staff.

186. Gallagher, letter of November 10, 1.

187. Gallagher, letter of November 10, 2.

188. Robert H. Hast, Managing Director of the General Accounting Office's Office of Special Investigations, letter to Senators Arlen Specter, Charles Grassley and Robert Torricelli, ''Subject: FBI Official's Congressional Testimony Was Inaccurate Because He Failed to Present Certain Information That Had Been Made Available to Him About the Wen Ho Lee Investigation,'' of June 28, 2001: 1.

189. FBI Albuquerque, ''Changed: FBI–DOE National Laboratory Assessment. . . .'' July 9, 1999: 6.

190. FBI Albuquerque, ''Changed: FBI–DOE National Laboratory Assessment. . . .'' August 26, 1999: 6–7.

191. See ''DCI Statement on Damage Assessment,'' at *http://www.cia.gov/cia/public*__affairs/ press__release/ps042199.html, and the ''Key Findings'' at *http://www.cia.gov/cia/public*__affairs/ press__release/0421kf.html.

192. Cox Committee Report, Vol 1, 68.

193. Cox Committee Report, Vol 1, 83–84.

194. According to a chronology prepared by the Justice Department, the discovery occurred on March 23, 1999. That it took more than two weeks after Dr. Lee had been dismissed from LANL (and nearly three weeks after he gave permission to search his office) to find this document is very troubling.

195. United States Senate, Joint Hearing of the Senate Select Committee on Intelligence and the Senate Judiciary Committee, ''Joint Hearing on the Wen Ho Lee Case,'' 106th Congress, 2nd Session, September 26, 2000: 52.

196. FBI Director Louis J. Freeh, ''STATEMENT BY FBI DIRECTOR LOUIS J. FREEH,'' September 13, 2000: 2.

197. Transcript of Proceedings, United States v. Wen Ho Lee, September 13, 2000: 34–37.

198. Transcript of Proceedings, United States v. Wen Ho Lee, September 13, 2000: 48–50.

199. Although the subcommittee has not had access to the files from the criminal case against Dr. Lee, it should be noted that none of the information otherwise available suggests that the government applied for a Title III wiretap between March and December 1999. If the government was concerned that

he might somehow communicate the existence of the tapes to a third party, it should have requested a wiretap. It may be that the wiretap was requested and received, but the absence of any such request would strongly undermine the government's claim that restricting his communications was necessary to protect the tapes.

200. Unless otherwise noted, all the information in this section is drawn from a chronology prepared by the Department of Justice and forwarded to the Senate Judiciary Committee on June 22, 2001.

201. Mark Holscher, letter to Robert Gorence and John Hudenko, of March 10, 1999: 1. [DOJ–WHL–00001–00002]

202. FBI Chronology of Wen Ho Lee investigation from 1999–2000: 2.

203. Mark Holscher, letter to John Kelly, of March 19, 1999: 1–2. [DOJ–WHL–00005–00006]

204. The Chronology of Wen Ho Lee investigation from 1999–2000 says this is discovered on March 21, 1999. See Chronology, 2.

205. Mark Holscher, letter to John Kelly, of March 23, 1999: 1–2. [DOJ–WHL–00009–00010]

206. Mark Holscher, letter to FBI Director Louis J. Freeh, of March 23, 1999: 1–3. [DOJ–WHL–00011–00013]

207. Mark Holscher, letter to Robert Gorence, of March 29, 1999: 1. [DOJ–WHL–00014]

208. For a discussion of the debate between FBI and DOJ after Lee's computer was searched, see Thompson and Lieberman Statement, 27–29.

209. Thompson and Lieberman Statement, 28–29.

210. Thompson and Lieberman Statement, 28.

211. In view of DOJ's assertion that it never had any sort of wiretap on Dr. Lee, this likely refers to FISA material from the investigation of the other scientist to whom Dr. Lee spoke by telephone in December 1982.

212. John Kelly and Robert Gorence, letter to Mark Holscher of April 16, 1999: 1–2. [DOJ–WHL–00015–00016]

213. FBI Chronology of Wen Ho Lee investigation from 1999–2000: 5.

214. FBI Chronology of Wen Ho Lee Investigation from 1999–2000: 6.

215. John Kelly and Paula Burnett, letter to Brian Sun, of May 5, 1999: 1–2. [DOJ–WHL–0017–0018]

216. Brian Sun, letter to John Kelly and Paula Burnett, of May 6, 1999: 1–2. [DOJ–WHL–00021–00022]

217. FBI Chronology of Wen Ho Lee investigation from 1999–2000: 7.

218. John Kelly, letter to Mark Holscher, of June 15, 1999: 1–2. [DOJ–WHL–00030–00031]

219. FBI Chronology of Wen Ho Lee investigation from 1999–2000: 8–9.

220. No subpoenas were issued pursuant to these resolutions because the investigation into the Wen Ho Lee case was suspended in December at the request of Director Freeh and the Department of Justice. The resolutions were intended as temporary measures to ensure that the subcommittee could continue its work during the congressional recess. When the Senate returned the following January, several other individual subpoenas on matters under investigation by the subcommittee were, in fact, debated and voted on. No subpoena requested by the subcommittee was defeated in the full committee.

221. Walter Pincus and David A. Vise, ''Blunders Undermined Lee Case,'' Washington Post, September 24, 2000: A1.

222. Senator Arlen Specter, letter to FBI Director Louis J. Freeh of December 7, 1999. 1–2.

223. FBI Director Louis J. Freeh, letter to Senator Arlen Specter of December 10, 1999: 1.

224. Director Freeh letter of December 10, 1999: 1–2.

225. United States Senate, Joint Hearing before the Senate Select Committee on Intelligence and the Senate Judiciary Committee, ''Joint Hearing on the Wen Ho Lee Case,'' 106th Congress, 2nd Session, September 26, 2000: 63.

226. There are a number of other issues that raise questions as to whether the government fully pursued all the information it had available during the course of its investigation. These questions were identified in a June 27, 2001 letter from senators Patrick Leahy and Arlen Specter to Attorney General Ashcroft. With the exception of confirming that Dr. Lee has told investigators that the tapes were still in his office as of December 23, 1998, however, the Department continues to refuse to answer these questions on the ground that the case is still open.

227. United States Senate, Joint Hearing before the Senate Select Committee on Intelligence and the Senate Judiciary Committee, ''Joint Hearing on the Wen Ho Lee Case,'' 106th Congress, 2nd Session, September 26, 2000: 83.

228. In response to a question from staff on July 5, 2001, Sheryl Walter of DOJ's Office of Legislative Affairs confirmed that Dr. Lee had never been the target of electronic surveillance.

229. Transcript of a closed Detention hearing on December 29, 1999, United States v. Wen Ho Lee, 59.

230. FBI Chronology of Investigation from 1999–2000: 6.

231. Judge James A. Parker, ''MEMORANDUM OPINION AND ORDER,'' United States v. Wen Ho Lee, December 30, 1999: 7.

232. Judge James A. Parker, ''MEMORANDUM OPINION AND ORDER,'' United States v. Wen Ho Lee, December 30, 1999: 7.

233. Robert J. Gorence, ''RESPONSE TO DEFENDANT WEN HO LEE'S MOTION TO REVOKE JUDGE SVET'S ORDER OF DETENTION,'' United States v. Wen Ho Lee, December 23, 1999: 18.

234. Robert J. Gorence, ''RESPONSE TO DEFENDANT WEN HO LEE'S MOTION TO REVOKE JUDGE SVET'S ORDER OF DETENTION,'' United States v. Wen Ho Lee, December 23, 1999: 7–8.

235. Robert J. Gorence, ''RESPONSE TO DEFENDANT WEN HO LEE'S MOTION TO REVOKE JUDGE SVET'S ORDER OF DETENTION,'' United States v. Wen Ho Lee, December 23, 1999: 14.

236. Judge James A. Parker, ''MEMORANDUM OPINION AND ORDER,'' United States v. Wen Ho Lee, December 30, 1999: 1.

237. Judge James A. Parker, ''MEMORANDUM OPINION AND ORDER,'' United States v. Wen Ho Lee, December 30, 1999: 10.

238. Judge James A. Parker, ''MEMORANDUM OPINION AND ORDER,'' United States v. Wen Ho Lee, December 30, 1999: 10–11.

239. Judge James A. Parker, ''MEMORANDUM OPINION AND ORDER,'' United States v. Wen Ho Lee, December 30, 1999: 12–13.

240. Judge James A. Parker, ''MEMORANDUM OPINION AND ORDER,'' United States v. Wen Ho Lee, December 30, 1999: 13.

241. Judge James A. Parker, ''MEMORANDUM OPINION AND ORDER,'' United States v. Wen Ho Lee, December 30, 1999: 14.

242. Judge James A. Parker, ''MEMORANDUM OPINION AND ORDER,'' United States v. Wen Ho Lee, December 30, 1999: 14.

243. Judge James A. Parker, ''MEMORANDUM OPINION AND ORDER,'' United States v. Wen Ho Lee, December 30, 1999: 16.

244. Judge James A. Parker, ''MEMORANDUM OPINION AND ORDER,'' United States v. Wen Ho Lee, December 30, 1999: 19.

245. Taken from the ''Overview'' section of the website, http://wenholee.org/

246. Memorandum from Lawrence Barreras, Senior Warden to Rick Ploof, Supervisor Deputy United States Marshal For Prisoner Operations dated December 14, 1999 re: High Security Supervision.

247. Memorandum from Lawrence Barreras, Senior Warden to Rick Ploof dated January 4, 2000 re: Segregation Inmates.

248. Mark Holscher, letter to John Kelly and Robert Gorence, ''Re: Dr. Wen Ho Les,'' of December 21, 1999: 1.

249. Energy Secretary William Richardson, letter to Attorney General Janet Reno, ''Re: United States v. Wen Ho Lee,'' of December 27, 1999: 1.

250. United States Marshal John S. Sanchez, letter to Warden Lawrence Barreras, ''Re: Federal Inmate Wen Ho Lee,'' of January 6, 2000: 1–2.

251. Mr. John D. Cline, letter to Mr. Robert Gorence, ''Re: United States v. Wen Ho Lee,'' of January 6, 2000: 1.

252. Principal Associate Deputy Attorney General Gary G. Grindler, ''MEMORANDUM FOR THE ATTORNEY GENERAL and THE DEPUTY ATTORNEY GENERAL,'' January 12, 2000: 1.

253. See Attorney General Janet Reno, ''MEMORANDUM FOR JOHN W. MARSHALL, SUBJECT: Origination of Special Administrative Measures of Confinement Conditions on Federal Government Pre-Trial Detainee Wen Ho Lee,'' of January 13, 2000: 1.

254. Energy Secretary Bill Richardson, letter to Attorney General Janet Reno of May 4, 2000: 1.

255. FBI Special Agent in Charge David V. Kitchen, letter to Norman C. Bay of May 2, 2000: 1.

256. See the letter of Warden Barreras to Mr. Stamboulidis of July 18, 2000, in which he notes that per their telephone conversation and the letter of July 17 from Mr. Stamboulidis, the Warden has removed Dr. Lee's restraints during exercise, but has declined to allow weekend recreation time as it will involve additional staff costs.

257. See, for example, the letter of Mr. John Cline to Mr. Stamboulidis of July 26, 2000, in which Mr. John Kline says that in the two weeks since Mr. Stamboulidis claimed in open court that Dr. Lee would be permitted to exercise without restraints, Dr. Lee had not, in fact been allowed to do so.

258. Warden Lawrence Barreras, letter to Mel George Stamboulidis of August 1, 2000.

259. United States Attorney Norman C. Bay, letter to Attorney General Janet Reno of September 7, 2000: 2.

260. United States Senate, Joint Hearing of the Senate Select Committee on Intelligence and the Senate Judiciary Committee, ''Joint Hearing on the Wen Ho Lee Case,'' 106th Congress, 2nd Session, September 26, 2000: 75.

261. United States Senate, Judiciary Subcommittee on Department of Justice Oversight, ''Continuation of Oversight on the Wen Ho Lee Case,'' 106th Congress, 2nd Session, October 3, 2000: 73.

See United States Senate, Joint Hearing of the Senate Select Committee on Intelligence and the Senate Judiciary Committee, ''Joint Hearing of the Wen H. Lee Case,'' 106th Congress, 2nd Session, September 26, 2000: 79–80, where Attorney General Reno read Mr. Cisneros' letter into the record.

263. Assistant Attorney General Robert Raben, letter to Senators Leahy, Graham, Hatch And Shelby, of January 20, 2001: 1.

264. Assistant Attorney General Robert Ruben, letter to Senators Leahy, Graham, Hatch and Shelby, of January 20, 2001: 2.

265. Assistant Attorney General Robert Ruben, letter to Senators Leahy, Graham, Hatch and Shelby, of January 20, 2001: 2.

66. Plea Hearing transcript, September 13, 2000: 55.

267. Transcript of Proceedings, United States v. Wen Ho Lee, August 16, 2000: 13.
268. Transcript of Proceedings, United States v. Wen Ho Lee, August 17, 2000: 12.
269. Transcript of Proceedings, United States v. Wen Ho Lee, August 17, 2000: 92.
270. Judge James A. Parker, ''MEMORANDUM OPINION,'' United States v. Wen Ho Lee, August 31, 2000: 3.
271. Judge James A. Parker, ''MEMORANDUM OPINION,'' United States v. Wen Ho Lee, August 31, 2000: 10.
272. Judge James A. Parker, ''MEMORANDUM OPINION,'' United States v. Wen Ho Lee, August 31, 2000: 14–15.
273. ''STATEMENT OF THE FACTS,'' from the Government's public filing in response to the defense appeal of Judge Parker's initial denial of bail, undated, 3–6.
274. Transcript of Proceedings, United States v. Wen Ho Lee, August 16, 2000: 142.
275. Transcript of Proceedings, United States v. Wen Ho Lee, August 16, 2000: 150.
276. United States Senate, Hearing before the Senate Judiciary Subcommittee on Department of Justice Oversight, ''Continuation of Oversight on the Wen Ho Lee Case,'' 106th Congress, 2nd Session, October 3, 2000: 17.
277. United States Senate, Hearing before the Senate Judiciary Subcommittee on Department of Justice Oversight, ''Continuation of Oversight on the Wen Ho Lee Case,'' 106th Congress, 2nd Session, October 3, 2000: 24.
278. United States Senate, Hearing before the Senate Judiciary Subcommittee on Department of Justice Oversight, ''Continuation of Oversight on the Wen Ho Lee Case,'' 106th Congress, 2nd Session, October 3, 2000: 26.
279. Matthew Purdy and James Sterngold, ''The Prosecution Unravels: The Case of Wen Ho Lee,'' New York Times, February 4, 2001: online edition.
280. Matthew Purdy and James Sterngold, ''The Prosecution Unravels: The Case of Wen Ho Lee,'' New York Times, February 4, 2001: online edition.
281. United States Senate, Hearing before the Judiciary Subcommittee on Department of Justice Oversight, ''Continuation of Oversight on the Wen Ho Lee Case,'' 106th Congress, 2nd Session, September 27, 2000: 57.
282. United States Senate, Hearing before the Judiciary Subcommittee on Department of Justice Oversight, ''Continuation of Oversight on the Wen Ho Lee Case,'' 106th Congress, 2nd Session, September 27, 2000: 58.
283. Matthew Purdy and James Sterngold, ''The Prosecution Unravels: The Case of Wen Ho Lee,'' New York Times, February 5, 2001, online edition. See also, MEMORANDUM CONCERNING THE USE, RELEVANCE, AND ADMISSIBILITY OF THE INFORMATION LISTED IN DR. WEN HO LEE'S FIRST NOTICE UNDER SECTION 5 OF THE CLASSIFIED INFORMATION PROCEDURES ACT.
284 Judge James A. Parker, ''COURT DETERMINATIONS AND ORDER ON FIRST NOTICE OF DR. WEN HO LEE UNDER SECTION 5 OF THE CLASSIFIED INFORMATION PROCEDURES ACT,'' August 1, 2000: 3.
285. Judge James A. Parker, ''COURT DETERMINATIONS AND ORDER ON FIRST NOTICE OF DR. WEN HO LEE UNDER SECTION 5 OF THE CLASSIFIED INFORMATION PROCEDURES ACT,'' August 1, 2000: 4.
286. Judge James A. Parker, ''COURT DETERMINATIONS AND ORDER ON FIRST NOTICE OF DR. WEN HO LEE UNDER SECTION 5 OF THE CLASSIFIED INFORMATION PROCEDURES ACT,'' AUGUST 1, 2000: 5.
287. MOTION FOR DISCOVERY OF MATERIALS RELATED TO SELECTIVE PROSECUTION, United States v. Wen Ho Lee, June 25, 2000: 1.
288. MEMORANDUM IN SUPPORT OF MOTION FOR DISCOVERY OF MATERIALS RELATED TO SELECTIVE PROSECUTION, United States v. Wen Ho Lee, June 25, 2000: 1. [Hereafter Selective Prosecution Memorandum]
289. Selective Prosecution Memorandum, 2.
290. Selective Prosecution Memorandum, 2–3.
291. Plea Hearing, September 13, 2000: 50.
292. See DOE press release, ''Richardson Releases Task Force Against Racial Profiling Report and Announces 8 Immediate Actions,'' January 19, 2001. Richardson said that the Task Force had made several general observations, including ''that some employees believed that counterintelligence efforts were targeting employees of Chinese ethnicity,'' but offered no direct proof of any such profiling.
293. Department of Energy Inspector General Gregory Friedman, Memorandum for the Secretary, ''Special Review of Profiling Concerns at the Department of Energy,'' April 3, 2001: 1.
294. Selective Prosecution Memorandum, 5.
295. Selective Prosecution Memorandum, 5.
296. For a discussion of the timing and reasons for Mr. Trulock's departure from DOE, see James Risen, ''Official Who Led Inquiry Into China's Reputed Theft of Nuclear Secrets Quits,'' New York Times, August 24, 1999, online edition.
297. Selective Prosecution Memorandum, 6.
298. Matthew Purdy and James Sterngold, ''The Prosecution Unravels: The Case of Wen Ho Lee,'' New York Times, February 5, 2001, online edition.
299. When questioned in an October 3, 2000 hearing about an August 1995 FBI document quoting Mr. Vrooman as saying that ''a 'smoking gun' had been found,'' Mr. Vrooman testified that he did not know what the memo referred to. After the hearing, Mr. Vrooman refreshed his recollection and wrote to me that the ''smoking gun'' quote referred to the analytical team headed by Mr. Michael Henderson, otherwise known as the Kindred Spirit Analytical Group.
300. United States Senate, Hearing before the Senate Judiciary Subcommittee on Department of Justice Oversight, ''Continuation of Oversight on the Wen Ho Lee Case,'' October 3, 2000: 65.
301. United States Senate, Hearing before the Senate Judiciary Subcommittee on Department of Justice Oversight, ''Continuation of Oversight on the Wen Ho Lee Case,'' October 3, 2000: 66.
302. Mr. Vrooman furnished this retirement date in his written testimony to the subcommittee on October 3, 2000. He obviously stayed in touch with the lab and may have consulted on certain security issues, but his contact with the case would have been less than during his tenure at the lab.
303. See Department of Energy Press Release, ''Richardson Announces Results of Inquiries Related to Espionage Investigation,'' August 12, 1999. The release says that a DOE counterintelligence official had been told in October 1997 that an espionage suspect [Dr. Lee] should be moved but decided to leave the suspect in place without consulting with senior management. The DOE press release does not name Mr. Vrooman or the others who were disciplined, but an August 13, 1999 story by Vernon Loeb in the Washington Post identifies the three officials as Sig Hecker, Robert Vrooman, and Terry Craig. See Vernon Loeb, ''Richardson Recommends Discipline for 3 in Los Alamos Case,'' Washington Post, August 13, 1999: A9.
304. United States Senate, Subcommittee on Administrative Oversight and the Courts of the Committee on the Judiciary, ''Continuation of Oversight on the Wen Ho Lee Case,'' October 3, 2000: 52–53.
305. FBI memorandum from Albuquerque Division to FBI HQ, ''Request for: (1) FISA Court Order authorizing the interception of signals emanating from the residence of captioned subject; (2) Application for ELSUR (FISA and MISUR coverage) at subject's residence and business location,'' November 10, 1998: 4. [Hereafter, FISA Request, November 10, 1998]
306. FISA Request, November 10, 1998: 4.
307. FISA Request, November 10, 1998: 5.
308. FISA Request, November 10, 1998: 5.
309. FISA Request, November 10, 1998: 5.
310. Selective Prosecution Memorandum, 7.
311. FBI Special Agent Michael W. Lowe, ''APPLICATION AND AFFADIVIT FOR SEARCH WARRANT,'' April 9, 1999: 1.
312. See RESPONSE TO DEFENDANT WEN HO LEE'S MOTION FOR DISCOVERY OF MATERIALS RELATED TO SELECTIVE PROSECUTION, United States v. Wen Ho Lee, July 21, 2000: 11–12.
313. ''A Reply to Misleading Press Reports Concerning Dr. Wen Ho Lee,'' May 6, 2000.
314. This is item D. of the ''Memorandum in Support of Motion to Compel Discovery on Issues other Than Selective Prosecution,'' filed May 10, 2000. Note that the declassified version of this document redacts must of Item D, including the header, but the Government's response spells out the materials in question.
315. ''Memorandum in Support of Motion to Compel Discovery on Issues Other Than Selective Prosecution,'' United States v. Wen Ho Lee, May 10, 20001: 14.
316. ''Response to Defendant Wen Ho Lee's Motion to Compel Discovery on Issues Other than Selective Prosecution, United States v. Wen Ho Lee, June 9, 2000: 6.
317. Judge James A. Parker, ''ORDER,'' July 13, 2000: 3. [Docket number 107 on the case docket]
318. Judge James A. Parker, ''ORDER,'' August 9, 2000: 1–2. [Docket number 130]
319. Matthew Purdy, ''The Making of a Suspect: The Case of Wen Ho Lee,'' New York Times, February 4, 2001: online edition.
320. Transcript of Proceedings, Plea Hearing, United States v. Wen Ho Lee, September 13, 2000: 34.
321. Transcript of Proceedings, Plea Hearing, United States v. Wen Ho Lee, September 13, 2000: 34–36.
322. Transcript of Proceedings, Plea Hearing, United States v. Wen Ho Lee, September 13, 2000: 36.
323. Transcript of Proceedings, Plea Hearing, United States v. Wen Ho Lee, September 13, 2000: 37.
324. Transcript of Proceedings, Plea Hearing, United States v. Wen Ho Lee, September 13, 2000: 37.
325. Plea Hearing transcript, September 13, 2000: 56–57,
326. United States, Joint Hearing Before the Senate Select Committee on Intelligence and the Judiciary Committee, ''Joint Hearing on the Wen Ho Lee Case,'' 106th Congress, 2nd Session, September 26, 2000: 41.
327. United States Senate, Joint Hearing Before the Senate Select Committee on Intelligence and the Judiciary Committee, ''Joint Hearing on the Wen Ho Lee Case,'' 106th Congress, 2nd Session, September 26, 2000: 41–43.

Mr. SPECTER. Mr. President, I now turn to the report on the handling of the espionage case against Dr. Peter H. Lee: Again, I intend to read only a sentence or two, as I have been advised that a sentence or two would be sufficient to have the remainder of the report printed in the RECORD.

On October 7th and 8th, 1997, Dr. Peter Hoong-Yee Lee confessed to the FBI that he

had provided classified nuclear weapons design and testing information to scientists of the People's Republic of China on two occasions in 1985 and had given classified antisubmarine information to the Chinese in May of 1997. The 1985 revelations, which occurred during discussions with, and lectures to, PRC scientists in Beijing hotel rooms, involved his work on hohlraums, devices used to simulate nuclear detonations in a process called Inertial Confinement Fusion, or ICF.[1] According to a 17 February 1998 ''Impact Statement'' prepared by experts from the Department of Energy,

''the ICF data provided by Dr. Lee was of significant material assistance to the PRC in their nuclear weapons development program. . . . For that reason, this analysis indicates that Dr. Lee's activities have directly enhanced the PRC nuclear weapons program to the detriment of U.S. national security.''[2]

The ''Impact Statement'' further notes that ''the ICF Program, when developed in conjunction with an already existing nuclear program, could assist in the design of more sophisticated nuclear weapons.''[3]

Dr. Lee's 1997 disclosures came in two lectures to PRC scientists, again in China, where he discussed his work on the joint U.S./U.K. Radar Ocean Imaging (ROI) project. The objective of the project, which has been carried out over several years at the cost of more than $100 million, is to study the feasibility of using radars to detect submerged submarines. After viewing videotapes of Dr. Lee's confession, Dr. Richard Twogood, former Technical Program Leader for the ROI project, stated that Dr. Lee's disclosures contained classified information at the SECRET level which went right to the heart of the most significant technical achievement of the U.S./U.K. program up until 1995.[4] Although Dr. Lee was not charged for the 1997 disclosures of classified information, a 9 March 2000 review by the Department of Defense concluded that Dr. Lee's anti-submarine warfare revelations were classified at the CONFIDENTIAL level,[5] which, by definition, would damage U.S. national security.[6] According to the Cox Committee Report, ''this research, if successfully completed, could enable the [Chinese military] to threaten previously invulnerable U.S. nuclear submarines.''[7]

Dr. Lee's confessed crimes caused serious harm to U.S. national security, yet he was offered a plea bargain which resulted in a sentence amounting to one year in a halfway house, 3,000 hours of community service and a $20,000 fine. Considering the magnitude of Dr. Lee's offenses and his failure to adhere to the terms of the plea agreement which called for complete cooperation and truthfulness, the interests of the United States were not well served by this outcome.

During the 106th Congress, I chaired a special subcommittee of the Senate Judiciary Committee for the purposes of conducting oversight on the Department of Justice's handling of this case and several other matters. The Subcommittee's review of the Dr. Peter Lee case identified a number of shortcomings in existing procedures for handling espionage investigations and prosecutions, particularly in cases where highly technical classified information is revealed verbally rather than through the transfer of documents. Communications between and within the Department of Justice and other Executive Branch organizations appear to have broken down at critical points during the Peter Lee case, with the result that several key decisions were made on the basis of incomplete or incorrect information. Had this case been handled more formally and deliberately, with more of the critical information being communicated in writing, the opportunities for misunderstandings would have been greatly reduced, and the chances of Dr. Lee receiving a long prison sentence commensurate with his crimes would have been greatly increased. Specifically, the Subcommittee's investigation showed that:

The classified nuclear weapons design and anti-submarine warfare information that Dr. Lee revealed in 1985, 1997, and on other occasions may have merited prosecution under 18 USC 794, the most serious of the espionage statutes.

Senior DoJ officials, including the Attorney General and the Deputy Attorney General, were not sufficiently involved in or aware of the case. Principal Deputy Assistant Attorney General John Keeney, the official with final approval authority in the case, advised that he would not have approved the plea bargain had he known the trial prosecutor would ask for only a short period of incarceration and would charge only an attempt to transmit classified information.[8]

The Department of Justice's ability to seek a tougher plea agreement or to prosecute Dr. Lee under section 794 was hampered by its failure to fully understand the classification level of, and the damage to national security from, Dr. Lee's nuclear weapons design revelations prior to offering him a plea agreement.

DoJ failed to inform the court that Dr. Lee repeatedly confessed to disclosing classified information to the PRC in 1997, allowing the defense to convince the judge during sentencing that the only time Dr. Lee intentionally passed classified information was more than 13 years prior.

DoJ did not have the DoE's ''Impact Statement,'' which stated that Dr. Lee had provided significant material assistance to the PRC nuclear weapons program, until February 1998, well after the plea agreement was concluded.

The reluctance of the Department of Defense, and the Navy in particular, to support the prosecution of Dr. Lee for his anti-submarine warfare revelations had an adverse impact on the case.

The ambiguity of the 14 November 1997 memorandum authored by Mr. J.G. Schuster, head of the Navy's Science and Technology Branch, seriously undermined DoJ efforts to prosecute Dr. Lee. This memorandum was based on incomplete information, without knowing the details of what Dr. Lee confessed to disclosing to PRC scientists.

DoJ prematurely determined that Dr. Lee could not be prosecuted for the 1997 revelations, and the explanation that the information Dr. Lee revealed was already in the public domain is contradicted by two classified memoranda from Lawrence Livermore National Laboratory which show that the disclosures extended beyond what was publicly available.

DoJ's failure to prosecute on the 1997 disclosures, or at least to add them as a separate count to the plea agreement, had a material adverse effect on the disposition of the case. Coupling the 1997 disclosures with the 1985 revelations would have demonstrated that Dr. Lee's classified disclosures were not limited to a single incident long ago, but were ongoing. Obtaining a conviction on the 1997 disclosures would not have been a foregone conclusion—pushing the matter risked disclosing certain information that the FBI and the prosecutor wanted very much to protect, and the Navy was reluctant to assist in the prosecution—but these were not insurmountable obstacles. At a minimum, an effort should have been made to add a separate count to the plea agreement to address these disclosures.

DoJ communications were confused on the critical question of what authority the trial prosecutor had with regard to a charge under Section 794. DoJ officials advised that the Internal Security Section would have reconsidered a prosecution under Section 794 if the plea agreement broke down,[9] which was unknown to the trial prosecutor who thought he could only take the watered-down plea bargain or get nothing at all.[10]

The fact that Dr. Lee was an espionage suspect while working on the Joint U.S./U.K. Radar Ocean Imaging project was not disclosed to the program's sponsors within the Office of the Assistant Secretary of Defense/Command, Control, Communications and Intelligence (OASD/C3I).[11]

Electronic surveillance under the Foreign Intelligence Surveillance Act was terminated at a critical juncture in September 1997, just when the FBI was stepping up its activity with regard to Dr. Lee and electronic surveillance could have yielded important counter-intelligence information. Although the listening device in Dr. Lee's home had been discovered in July, thereby decreasing the utility of that particular device, the FBI Field Office felt strongly enough about the need for continued surveillance to make a verbal renewal request to FBI Headquarters in August, but not strongly enough to ensure the request was granted.

The problems which affected this case were serious enough to require remedial steps. The Counterintelligence Reform Act of 2000 (S.2089), which became law on 27 December 2000 as Title VI of Public Law 106–567 (H.R. 5630), contained a provision that will address many of the shortcomings in the way the DoJ handled this case. That provision, Section 607, amended the Classified Information Procedures Act (CIPA) to require that the Assistant Attorney General for the Criminal Division and the appropriate United States attorney provide briefings to senior agency officials from the victim agency in cases involving classified information. The section further required that these briefings occur as soon as practicable after the Department of Justice and the United States attorney concerned determine that a prosecution could result and at such other times thereafter as are necessary to keep the affected agency fully and currently informed of the status of the prosecution.

The Subcommittee's investigation revealed other problems that have not yet been addressed through legislation, primarily because it was not possible to reach a consensus on how best to solve them. The Counterintelligence Reform Act moved through the Judiciary Committee and the Senate Select Committee on Intelligence without a single vote in opposition. The Judiciary Committee reported the measure favorably on 23 May 2000 and the Intelligence Committee did the same on 20 July 2000. As the bill's chief sponsor, I opted to work toward a consensus measure to ensure that the important reforms we had identified during oversight on this case and the Dr. Wen Ho Lee case could be implemented in a timely fashion. Rather than wait until we could work out acceptable language on other proposals arising from the Peter Lee case, I felt it more important to accomplish what could be done in the time available and address the more difficult matters later. I also withheld publication of this report during the last Congress so as not to inject it into the presidential election. Now that the election is over and the 107th Congress is well underway, it is appropriate to release this report and begin working on legislation to solve the other problems identified by our oversight but upon which we were unable to achieve consensus.

Specifically, I am introducing legislation to require victim agencies—the agencies whose classified information is lost—to

produce a written ''damage statement'' which specifies the level of classification of the material alleged to have been revealed, and justifies the classification level by describing the potential harm to national security from such revelations. The legislation further requires the prosecution team to consider the ''damage statement'' before any final decision is made as to whether the case should be taken to trial or a plea bargain should be offered. I also strongly believe, but will not attempt to mandate through legislation, that key instructions from Main Justice (Internal Security Section, etc.) to the U.S. Attorney's Office with responsibility for prosecuting the case, including charging authority and plea bargain authority, should be in writing. These written instructions should be shared with the investigating agency or agencies and the victim agency so they have an opportunity for input before any final decisions are made.

The findings and recommendations included in this report are based on a review of more than 6,000 pages of documents from the FBI, the Department of Defense and its subcomponents, the Department of Justice and information submitted to the court during the sentencing process. The Subcommittee conducted three open hearings, three closed hearings, two ''on-the-record'' Senators' briefings, and numerous staff interviews, which resulted in hearing from more than 30 individuals who played key roles in the conduct of the case. The information presented here is derived from unclassified documents and testimony, or relies upon unclassified extracts from classified documents.

SUMMARY OF DR. PETER H. LEE'S ESPIONAGE ACTIVITIES

Dr. Peter Lee is a naturalized U.S. citizen who worked for TRW Inc., a contractor to Lawrence Livermore National Laboratory, from 1973 to 1976. Dr. Lee worked at Lawrence Livermore from 1976 to 1984, and at Los Alamos National Laboratory from 1984 to 1991. He returned to TRW from 1991 until December 1997, when he was dismissed in the wake of his plea agreement for passing classified information to the Chinese.[12]

According to his October 1997 confession to the FBI, Dr. Lee traveled to China from 22 December 1984 to 19 January 1985 (while he was employed by Los Alamos National Laboratory).[13] On 9 January 1985, Dr. Lee met with Chen Nengkuan, a PRC scientist employed by the China Academy of Engineering Physics (CAEP), in a hotel room in Beijing. Chen told Dr. Lee that he had classified questions to ask, and that Dr. Lee could answer just by nodding his head yes or no.[14] Chen drew a diagram of a hohlraum (a device in which lasers are fired at a glass globe to ''create a small nuclear detonation which is then studied and used in the design of nuclear weapons),''[15] and asked the classified questions, which Dr. Lee, by his own admission, knew were classified but answered anyway.[16]

The following day, Dr. Lee accompanied Chen to a hotel in Beijing where another group of PRC scientists was waiting. These scientists were also from the China Academy of Engineering Physics, which is ''responsible for all aspects of the PRC's nuclear weapons program.''[17] Among the scientists Dr. Lee briefed was Yu Min, who has been called ''the 'Edward Teller' of the PRC nuclear weapons program.''[18] For two hours, Dr. Lee answered questions and drew diagrams, including several hohlraums. Dr. Lee also ''discussed problems the U.S. was having in its nuclear weapons testing program.''[19] Dr. Lee further admitted discussing with the Chinese scientists at least one portion of a classified document he authored in 1982. Although the document, titled ''An Explanation for the Viewing Angle Dependence of Temperature from Cairn Targets,'' was subsequently declassified in 1996,[20] revealing its contents in 1985 was an illegal act that could be expected to provide substantial assistance to the Chinese from 1985 to 1996 and to harm U.S. national security.

Dr. Lee again visited China, while he was employed by TRW, from 30 April to 22 May 1997.[21] Although Dr. Lee claimed on his travel request form, and in a 25 June 1997 interview with FBI Agent Gilbert Cordova, that the visit to China had been a pleasure trip for which he paid all his own expenses, the truth was that Dr. Lee traveled as a guest of the Chinese Institute of Applied Physics and Computational Mathematics (IAPCM), which is part of the China Academy of Engineering Physics.[22]

During this May 1997 trip, Dr. Lee gave a lecture at the PRC Institute of Applied Physics and Computational Mathematics in Beijing. The lecture covered his work for TRW in support of the Radar Ocean Imaging Project, and was attended by nearly 30 top PRC scientists.[23] When asked about the applicability of his work to anti-submarine warfare, Dr. Lee showed the scientists a surface ship wake image (which he had brought from the U.S. to show them), drew a graph, explained the physics underlying his work, and told the Chinese where to filter the data within the graph to enhance the ability to locate the ocean wake of a vessel.[24] A few days later, Dr. Lee gave the same lecture in another city, using the graphs that the Chinese had saved from his first lecture and had brought to the second lecture for his use.[25]

Upon his return from the PRC, Dr. Lee filled out a TRW Post-Travel Questionnaire in which he denied that there ''were any requests from Foreign Nationals for technical information,'' and denied that there were any attempts to persuade him to reveal or discuss classified information.[26]

On 5 August and 14 August 1997, Peter Lee was interviewed by FBI agents at a Santa Barbara, California, hotel. During these interviews, Dr. Lee admitted that he had lied on his travel form about the purpose of his trip to China in May, and that he had lied about receiving requests for technical information. However, he continued to insist that he had paid for the trip to the PRC with his own money.[27]

After the two FBI interviews, Dr. Lee contacted a Chinese official named Gou Hong by e- mail on 25 August 1997, and requested that Gou provide Lee with receipts indicating that Lee had paid for the trip to the PRC, that the receipts contain the names of Lee and his wife in English, and that they show that Lee paid cash for the trip.[28] On 3 September 1997, Dr. Lee provided the FBI with copies of hotel and airline receipts for the May 1997 trip which stated that Lee had paid for the trip in cash. Based on a review of e-mail transmissions and telephone conversations between Lee and Gou, however, the FBI concluded that these receipts were false.[29]

On 7 October 1997, Dr. Lee was interviewed and polygraphed by the FBI. The polygraph examiner believed that Lee showed deception when he answered ''no'' to the following questions: (A) Have you ever deliberately been involved in espionage against the United States? (B) Have you ever provided classified information to persons unauthorized to receive it? (C) Have you deliberately withheld any contacts with any non-U.S. intelligence service from the FBI?[30] After being told that he had failed the polygraph on these questions, Dr. Lee made a videotaped confession in which he admitted ''having passed classified national defense information to the PRC twice in 1985, and to lying on his post-travel questionnaire in 1997.''[31]

During this same interview, Dr. Lee also repeatedly confessed that he intentionally revealed classified information during his 1997 anti-submarine lectures in China. Dr. Lee was not prosecuted for these revelations, and the judge was not adequately informed of these admissions at sentencing.

On 8 December 1997, Dr. Lee pleaded guilty to a two count information that he violated: (1) 18 USC 793(d)—Attempt to communicate national defense information to a person not entitled to receive it, and (2) 18 USC 1001—False statement to a government agency.[32] According to the press release from the office of U.S. Attorney Nora Manella, Dr. Lee ''admitted that he knew the information was classified, and that by transmitting the information he intended to help the Chinese.''[33] The offenses to which Lee pleaded guilty could have resulted in a maximum sentence of 15 years in federal prison and a fine of $250,000. Under the terms of the agreement, the Government asked for a ''short period of incarceration,'' a formulation that was negotiated by the trial attorney and approved by Mr. John Dion in the Internal Security Section, but was not approved by Principal Deputy Assistant Attorney General Keeney, the DoJ official with final authority, who advised the Subcommittee that he would not have approved the plea agreement had he known that it would request only a short period of incarceration as an opening position.[34]

On 26 March 1998, Dr. Lee was sentenced by U.S. District Court Judge Terry Hatter to one year in a community corrections facility, three years of probation, 3,000 hours of community service, and a $20,000 fine. The sentence was based upon a sealed plea agreement from 8 December 1997.[35] The plea agreement and other key documents in the case were unsealed at the request of the Subcommittee in late 1999.[36]

Every DoJ official interviewed by the Subcommittee expected Dr. Lee to receive jail time, during which they planned to seek his further cooperation. When he received no jail time, all leverage was lost by the government.

Analysis of the Nuclear Weapons Design Revelations

The importance of Dr. Lee's 1985 disclosures is highlighted by the 17 February 1998 ''Impact Statement'' from the Department of Energy which concludes that:

''the [Inertial Confinement Fusion] data provided by Dr. Lee was of significant material assistance to the PRC in their nuclear weapons development program. . . . For that reason, this analysis indicates that Dr. Lee's activities have directly enhanced the PRC nuclear weapons program to the detriment of U.S. national security.''[37]

The ''Impact Statement'' further notes that ''the ICF Program, when developed in conjunction with an already existing nuclear program, could assist in the design of more sophisticated nuclear weapons.''[38]

The trial attorney wanted to prosecute under Section 794 for the 1985 revelations, but was overruled by Main Justice as well as his supervising attorney.[39] In his 12 April 2000 written statement to the Subcommittee, the Internal Security Section (ISS) line attorney with primary responsibility for the Peter Lee case, explained why he did not feel it appropriate to pursue a 794 charge on the 1985 disclosures.

''In my estimation, both then and now, the sole weakness in the case was the questionable significance of the information Lee compromised, both in 1985 and in 1997. As to Lee's 1985 disclosure, I knew, for instance, that the Department had never prosecuted a case under 794 where the compromised information, as in the case of Lee's 1985 disclosure, had been declassified prior to the crime

being discovered. Let me emphasize this: the information Lee admitted disclosing in 1985 had been declassified.'' [40]

This analysis may be correct as far as it goes, but there were other factors and issues that should have been considered. Dr. Lee's confession, though carefully crafted to limit his exposure, simply confirmed much, but not all, of what the FBI already knew about his espionage activities. The FBI knew well before they confronted Dr. Lee that he had likely been compromising anti-submarine information since the early 1990s,[41] and that in the early 1980s Dr. Lee had allegedly given the Chinese classified information that greatly assisted their nuclear weapons program.[42] One scientist the FBI consulted in trying to evaluate the extent of Dr. Lee's revelations said, ''It seems likely that Peter Lee at least partially compromised every project, classified or unclassified, he was involved with at Livermore, [Los Alamos National Laboratory], and TRW.'' [43]

At a later stage of the proceeding, Dr. Lee admitted that he had given the PRC scientists additional information which had not been declassified. Had the Internal Security Section awaited fuller development of the facts, it might not have declined prosecution under 794 on grounds of subsequent declassification. The Government would have been able to corroborate Dr. Lee's confession and to prove that he had done more than he confessed to. As the prosecuting attorney noted during his 5 April 2000 appearance before the Subcommittee, ''. . . in the many cases I had with a cooperating defendant or a defendant who pled guilty who was debriefed, I never had the kind of information to corroborate what was said as I did in this case.'' [44]

The ISS line attorney's statement regarding the ''questionable significance of the information Lee compromised'' in 1985 is flatly contradicted by the DoE ''Impact Statement'' of 17 February 1998 which states that Dr. Lee did serious harm to U.S. national security. Had the ISS line attorney waited for the experts to evaluate the case, he would have known that a 794 charge should be given much greater consideration than it got.

During testimony before the Subcommittee, the ISS line attorney who handled the case stated that it would have been impractical to wait for a damage assessment which, in his experience, normally takes more than a year. In fact, however, there were two assessments available within less than 90 days of the start of plea negotiations. Dr. Thomas Cook's ''Declaration of Technical Damage to United States National Security Assessed in Support of United States v. Peter Hoong-Yee Lee'' was available in February 1998, as was the Department of Energy ''Impact Statement.''

The Government had spent six years and considerable amounts of money investigating Dr. Lee's espionage activities, had obtained a confession that substantiated much of the information it already had from other sources, and had not charged Dr. Lee with a crime and therefore did not have a speedy trial issue to contend with. Consequently, there was no reason why the Government could not wait for a complete analysis by competent experts of Dr. Lee's espionage activities. The failure to obtain such an analysis prior to entering a plea agreement seriously undermined the Government's ability to prosecute Dr. Lee under section 794, and was a major factor in the unsatisfactory disposition of the case.

In his testimony before the Subcommittee on 12 April 2000, the ISS line attorney who handled the Lee case further argued that the Government would have had a hard time proving that the classified nuclear weapons design information that Dr. Lee provided to the Chinese was related to the national defense, an element of proof that would have been necessary to sustain a charge under 18 USC 794. In response to a question from Senator Sessions, the attorney said that the information Dr. Lee revealed in 1985 ''was classified SECRET, but I'm not sure it would have been ultimately found to be national defense information at the time he compromised it.''

When pressed by Senator Sessions to explain how nuclear weapons design information could be deemed not related to the national defense, the attorney referred to the Supreme Court's opinion in Gorin v. United States.[46] Any reliance on the Gorin decision in the context of the Peter Lee case is misplaced. The Gorin case was decided in January 1941, well before the advent of nuclear weapons. The Court's opinion, written by Justice Reed, makes clear that the information in the Lee case would have been found to be ''national defense information.'' In the words of the Court:

''National defense, the Government maintains, ''is a generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness.'' We agree that the words ''national defense'' in the Espionage Act carry that meaning.'' [47]

When the Supreme Court held, as it did in Gorin, that reports ''as to the movements of fishing boats, suspected of espionage and as to the taking of photographs of American war vessels'' [48] constituted national defense information, there can be no doubt that nuclear weapons design information would be encompassed by the term.

The DoJ attorney also cited the decision of the Second Circuit Court of Appeals in United States v. Heine.[49] That case has no applicability to this matter since all the information given to a German automobile corporation was publicly available at the time of disclosure.[50]

During the sentencing hearing, Dr. Lee's lawyer, Mr. James Henderson, tried to downplay the significance of the 1985 revelations through character witnesses who claimed that the disclosures were not related to nuclear weapons but to energy production.[51] These witnesses did not have access to the text or tape of Dr. Lee's confession which detailed the extent of his revelations.[52] Dr. Cook and the authors of the 17 February 1998 DoE ''Impact Statement'' had access to Dr. Lee's confession and were in a position to evaluate the extent of damage and of the espionage. In view of these facts it was surprising that the ISS attorney advanced the argument:

''that Lee could claim that he made the disclosures to encourage China not to conduct nuclear weapons tests in the field, and he would likely be supported by internal Government documents or even testimony of former U.S. Government or Livermore officials that that was actually one of the reasons the U.S. Government declassified the information beginning in 1990.

''In other words, Lee would have been able to credibly argue that his actions were in the national interest.'' [53]

Any claim by Dr. Lee that his actions were in the national interest would be totally unfounded. Individual scientists do not have the latitude to make determinations—during the course of lectures in Beijing hotel rooms—as to whether or not it is in the national interest to help the Chinese develop more sophisticated nuclear weapons.

The prosecuting attorney made this very point at the sentencing hearing when he said, ''It is not up to the whim of an individual scientist to determine if something is classified. . . . This is one of the nation's top scientists from one of the nation's top research nuclear weapons facilities giving a two hour lecture regarding classified information to the top nuclear scientists of China.'' [54]

Dr. Lee very likely could have been prosecuted under 18 USC 794, the harshest of the espionage statutes, for his nuclear weapons design revelations. As Senator Sessions said at the Subcommittee's 5 April 2000 hearing:

''I don't think [the prosecuting attorney] would have had a problem getting a conviction on that. [Dr. Lee] confessed to it, number one. Number two, I don't think any jury is going to believe that he was there for his health and a casual conversation to have two different meetings in Beijing hotel rooms with top Chinese scientists. There is no business for that, and anyone with common sense would understand it.'' [55]

In the context of the prosecuting attorney's efforts to proceed under 794 and Senator Sessions' strongly expressed views, there is a strong argument that a 794 prosecution should have been brought.

Internal DoJ Mis-communication and a Lack of High Level Supervision

Unfortunately, the case never went to trial. By late November 1997, the Internal Security Section attorney had completed his analysis of the case, concluding that Dr. Lee should be offered a plea under 18 USC 793 or section 224(b) of the Atomic Energy Act of 1954 for the 1985 compromise, in combination with a charge under section 1001 for the false statements on his travel form.[56] When it became apparent that ''Lee was balking at a plea with a potential 10-year exposure for the 1985 incident,'' the attorney recommended to Mr. Dion that ''although the section 794 case for that incident in 1985 had problems, it was sufficiently robust that we could ethically use it as leverage.'' [57] Mr. Dion testified that he called the prosecuting attorney and authorized him to:

''seek a plea of guilty by Lee to a violation of 18 USC Section 793(d) for his 1985 disclosures and to a violation of the false statement statute, 18 USC Section 1001. As such a plea would require Lee to waive the 10-year statute of limitations, [the prosecuting attorney] was authorized to advise counsel that no final decision had been made as to the prospect of charging Lee with a violation of Section 794.'' [58]

The prosecutor, who was emphatic in his testimony that his instructions were to accept a plea under 793 and 1001, or nothing,[59] obtained a plea on both counts, but had to concede to only a ''short period of incarceration'' to secure Dr. Lee's agreement.[60] Principal Deputy Assistant Attorney General John Keeney told the Subcommittee that, ''. . . I was not aware, so far as I recall, that it would call for only a short period of incarceration or would charge only an attempted 793 charge. Had this been our opening position in plea negotiations, I doubt that I would have approved it, particularly, the 'short period of incarceration.' '' [61] He then tried to justify DoJ's handling of the case by saying that ''this was the best that could be hoped for given the sentencing practices of the courts in the Central District of California.'' [62]

Had Dr. Lee cooperated, as he was required to do under the plea agreement, it might have been possible to achieve an acceptable disposition in the case even with the weak plea agreement. Had Dr. Lee told the whole truth and provided whatever counter-intelligence information he knew, that would mitigate the need to punish him with a long sentence. It might have been acceptable to balance counterintelligence information gained from a cooperating defendant against the need to punish wrongdoing. However, there is no benefit in accepting a plea contingent upon the defendant's cooperation

and then not getting that cooperation. Dr. Lee did not live up to his obligation to be truthful. The ''Position with Respect to Sentencing Factors'' that the Government submitted to the court acknowledged ''concerns that defendant has still not been completely forthcoming about the nature, quality and extent of his improper contacts with scientists of the PRC.'' [63] Dr. Lee's lack of cooperation was further highlighted in the February 1998 DoE ''Impact Statement'' where the authors note that:

''[W]e do not believe that Dr. Lee has been fully cooperative in identifying or describing other classified information he may have compromised. We believe that Dr. Lee confessed to compromising selected classified information in the hope his other, more damaging activities would not be discovered or fully investigated.'' [64]

On 26 February 1998, Dr. Lee failed an FBI-administered polygraph where he was asked whether he had lied to the FBI since his last polygraph examination regarding passing classified information.[65] When interviewed by DoE scientists in March 1998, Dr. Lee again failed to cooperate fully. As Dr. Thomas Cook pointed out during his testimony before the Subcommittee on 29 March 2000, when asked questions about what he had done, Dr. Lee ''repeatedly denied any knowledge or any interest in classified programs and publications. He was, however, the author and/or the technical editor of some of these publications which he denied knowledge of.'' [66] In view of these repeated lies and lack of cooperation, there should be no doubt that Dr. Lee did not comply with the terms of the plea agreement, and the Government could have successfully sought to breach it.

When asked by Senator Specter why he did not breach the plea agreement in view of this lack of cooperation, the prosecuting attorney explained that he could not abrogate the deal because he had nothing to fall back on,[67] and because doing so risked exposing extremely sensitive classified information he had been instructed to protect.[68] The prosecutor advised that he was told that if there was a risk of certain evidence coming out, he would have to drop the case. As the case unfolded, however, there was no risk of that evidence being disclosed. In the absence of any problem as to disclosure of the sensitive information, and had the prosecutor known he could have, or at least might have been able to proceed with the 794 prosecution, then the better course would have been to have abrogated the plea agreement on the basis of Peter Lee's failure to cooperate which could have been established without disclosing any classified information.

Due to the significance of the sensitive information about which the prosecutor was concerned, and the restrictions it placed on the prosecution of the case, it is troubling that at no time during the course of the Subcommittee's review of the case did Mr. Dion or anyone else from DoJ ever brief Congress about the information until after the prosecuting attorney raised the subject in the context of explaining why he had not sought to abrogate the plea agreement. The Classified Information Procedures Act (CIPA) specifically provides procedures whereby the Government can deal with the risks of exposing such information, even to the extent of permitting the Attorney General to decline prosecution if the risk of exposing classified information is too high. There is no evidence that the Department of Justice formally considered this sensitive information in the CIPA context.

The prosecutor's understanding of his limited authority was caused by a breakdown of communications. As he understood his authority, since Dr. Lee had waived the statute of limitations on the 793 count to accept the plea, breaching the plea would leave the Government with only the 1001 count, which was also in the plea. Therefore, the prosecutor felt he had to stick with the plea agreement because it was that or nothing.[69] Even though the prosecutor knew Dr. Lee was lying and was not cooperating, he felt he could not abrogate the plea agreement because he thought he could not charge Dr. Lee under Section 794 due to constraints imposed by the Internal Security Section at Main Justice.

Mr. Dion conceded at the Subcommittee's 12 April 2000 hearing that he did not recall discussing with the prosecuting attorney that he (Dion) might reconsider a 794 prosecution if the proposed plea agreement fell through:

Senator SPECTER: You say no final decision had been made . . . as to whether he would be charged with 794?

Mr. DION: That's correct, sir. . . .

Senator SPECTER: . . . Mr. Dion, when you say no decision had been made and I interrupted you at that point as to what would happen if the plea bargain broke down, [the prosecuting attorney] testified very emphatically that he wanted to proceed with 794 but was told that all he could do was do the best he could under the authorized plea bargain, so that is why he proceeded as he did, asking for only a short period of incarceration and not taking action when Dr. Lee lied on his polygraph and did not give further answers. But are you suggesting, if that plea bargain had broken down, that you might have reconsidered and authorized a 794 prosecution?

Mr. DION: We definitely would have reconsidered our course of action, sir.

Senator SPECTER: Well, did you tell [the prosecutor] that?

Mr. DION: I don't recall specifically if we discussed that or not. We did discuss that no final decision had been made on the 794 and that he should proceed with plea negotiations on that basis.[70]

In the face of the prosecuting attorney's testimony that he was authorized only to take the weak plea agreement or nothing, it seems clear that he was correct on what authority was communicated to him.

The prosecuting attorney was not the only one who did not understand the Internal Security Section's position with regard to a charge under Section 794. An FBI e-mail of 25 November 1997, from an attorney in the National Security Law Unit, to an FBI Supervisory Special Agent in the National Security Division, noted in relevant part that ''According to [the FBI Supervisory Special Agent], ISS/Dion said that if [Dr. Lee] doesn't accept the plea proffer, then he gets charged with 18 USC 794, the heftier charge.''

The Secretary of Defense was told the same thing. On 26 November 1997, Colonel Dan Baur prepared a memorandum for the Secretary of Defense and the Deputy Secretary of Defense, in which he relayed information on the case he had received from the FBI. Colonel Baur's memo stated that DoJ had granted the U.S. Attorney authority to offer to let Lee plead guilty under 18 USC 793 and 18 USC 1001 to avoid being charged under Section 794.[72] Furthermore, the memo noted that ''should Lee decline the offer, the U.S. Attorney will seek an indictment against him for violation of Section 794.'' When read relevant portions of these communications at the Subcommittee's 12 April 2000 hearing, however, Mr. John Dion stated that they were incorrect.[73] Clearly there was a miscommunication on this very important issue, both within the Department of Justice and between DoJ and DoD.

It is surprising and disturbing that a critical piece of information in the case exactly what the Assistant U.S. Attorney was authorized to do and under what terms he was authorized to do it could be subject to such differing interpretations and understandings. In an effort to understand how such a fundamental point could be misunderstood, the Subcommittee traced the information that appeared in Colonel Baur's memo to Secretary Cohen back to its origins. It appears that Mr. Dion spoke to the prosecutor, who then spoke to the Los Angles case Agents. Sometime thereafter, the FBI Supervisory Special Agent in Los Angles was briefed by one of the two case agents, or by both. One of these agents relayed the information to the attorney in National Security Law Unit, who passed it on to the FBIHQ Supervisory Special Agent, for subsequent relay to Colonel Baur. Whatever the actual path of the information—and wherever the mis-communication was introduced—it is clear that the information did not pass, as one might expect, from the Internal Security Section to the Department of Defense. The ISS line attorney handling the case testified that he never spoke to anyone in DoD about the plea discussions. As a consequence of this failure to communicate, the victim agency and officials within the Department of Justice were acting without a clear understanding of the actual decisions that had been made.

It is obvious that the case would have benefitted from more direct supervision by high level Justice Department officials, which would have likely reduced the confusion within the Department of Justice and between DoJ and the Department of Defense. Attorney General Reno was provided with three ''Urgent Reports'' informing her of ''(1) Peter Lee's admission on October 7, 1997, (2) his entry of a guilty plea on December 9, 1997, and (3) the court's imposition of sentence on March 26, 1998.'' [75] On 31 October 1997, as required by law, she also signed the document authorizing the use of FISA-derived information for law-enforcement purposes. She was not otherwise involved in the case, leaving the matter to subordinates. The Deputy Attorney General, Mr. Holder, was also uninvolved in the case.

Mr. John Dion was the supervisory attorney in the Internal Security Section, but one of his subordinates made the substantive decisions in this case. When questioned about allegations that Dr. Lee's revelations extended beyond what he confessed to, for example, Mr. Dion deferred, saying that one of his subordinate attorneys was ''more directly familiar with that information than I am. . . .'' [76] More direct supervision by key DoJ personnel may have ensured a better outcome in this important espionage case.

Analysis of the Anti-Submarine Warfare Revelations

It also appears that Dr. Lee should have been prosecuted in relation to the information he revealed in his May 11, 1997 briefing of Chinese scientists. Charges should have been filed under Section 794(a) which applies to ''any other major weapons system or major element of defense strategy.'' The U.S. nuclear submarine fleet, which comprises one leg of the nation's strategic triad, would qualify as a major weapons system. The potential harm from Dr. Lee's 1997 revelations was described by the Cox Committee Report:

''Lee admitted to the FBI that, in 1997, he passed to PRC weapons scientists classified research into the detection of enemy submarines under water. This research, if successfully completed, could enable the PLA to threaten previously invulnerable U.S. nuclear submarines.'' [77]

To determine whether or not the information Dr. Lee revealed would qualify for prosecution under section 794, the Government first needed to get an assessment of that information. On 14 October 1997, the Assistant

U.S. Attorney handling the case in Los Angeles contacted a representative of the Defense Criminal Investigative Service. He was referred to Dr. Donna Kulla in the Intelligence Systems Support Office where she dealt with the Radar Ocean Imaging (ROI) project on which Peter Lee worked. Dr. Kulla informed the prosecuting attorney that the information that Dr. Lee had revealed was classified CONFIDENTIAL.[78]

In mid-October, the FBI also contacted Dr. Richard Twogood, of Lawrence Livermore National Laboratory (LLNL), and asked for his opinion on the level of classification of Dr. Lee's revelations. Dr. Twogood was the Deputy Associate Director for Electronics Engineering at LLNL, and from 1988 until 1996 had been the Program Leader for the Imaging and Detection Program at LLNL. The Joint U.S./U.K. Radar Ocean Imaging Program, for which Dr. Twogood was the Technical Program Leader from 1990 through 1995, was the single largest component of LLNL's Imaging and Detection Program, and it was the one where Dr. Peter Lee worked and where he would have had access at the DoD SECRET level to the important discoveries and significant advances in the development of methods to detect submarine signatures with remote sensing radars.[79]

Dr. Twogood is an authorized derivative classifier, which means that he can make appropriate judgements about classification based on guidance written by others. Although the Navy had primary jurisdiction over the anti-submarine warfare information that Dr. Lee revealed to the Chinese, Dr. Twogood had personally written some of the classification guidance being used in the Joint U.S./U.K. program, and was therefore familiar with the importance of the information. When he reviewed the videotaped confession on 15 October 1997, Dr. Twogood noted that Dr. Lee himself admitted that he had passed CONFIDENTIAL information. Furthermore, Dr. Twogood informed the FBI that the information was at least CONFIDENTIAL and likely DoD SECRET. More importantly, in Dr. Twogood's view, Dr. Lee's disclosures went right to the heart of the most significant technical achievement of the U.S./U.K. program up until 1995.[80]

The prosecuting attorney was concerned that Dr. Twogood's position could be said to have evolved, from saying it was CONFIDENTIAL when first asked, to the later position that the information was SECRET. The prosecutor was also aware that the defense would be able to find competent scientists who would take a different view about the level of classification due to the similarity of some of the information to what was already in the public domain. These are legitimate concerns, but are not outside the realm of what prosecutors contend with in all espionage cases. They are, by no means, sufficient to justify not going forward with the prosecution.

On 28 October 1997, the ISS attorney handling the case attended a meeting with DoD officials for the purpose of determining whether there was publicly available information that could undermine an espionage prosecution for the 1997 compromise.[81] At the meeting, the DoJ attorney provided DoD officials with the draft Cordova affidavit, and made them aware that the confession had been videotaped, but he did not provide copies of the tapes and no DoD officials asked for them.[82] When asked about why he had not provided copies of the tapes to DoD personnel, the ISS attorney replied:

''Because at that point, at the initial meeting, the purpose was not to get a final classification determination or even a preliminary classification determination on this information. It was only to find out one of two things: what publicly available information might be out there that could potentially compromise a Section 794 prosecution on the 1997 compromise, and what could we say about the program generally, as we have here today, in an open trial setting.'' [83]

By 3 November 1997, the Department of Defense had compiled an extensive list of publicly available information on the topic of radar ocean imaging and provided it to the Internal Security Section. Among the documents was a printout from a LLNL website titled ''Radar Ocean Imaging,'' and prepared remarks that Dr. Twogood had presented in open session before the House Armed Services Committee in April 1994. Both of these documents contained general information about the use of radars to detect submarines.[84] Based on his assessment of these documents, the ISS attorney concluded that Dr. Lee could not be prosecuted under section 794 for the 1997 compromise. As he put it in his 12 April 2000 appearance before the Subcommittee:

''The Web site and Dr. Twogood's testimony, coupled with the fact that the underlying 1995 document was only classified under a mosaic theory, convinced me that there was no section 794 case on the 1997 compromise. In my opinion, Senators, it was not even a close call.''[85]

The ISS line attorney was wrong in concluding that the information was already publicly available.[86] Subsequent analysis showed that Dr. Lee's anti-submarine warfare revelations extended beyond what was in the public domain and therefore remained classified.

On 10 November 1997, in response to a 30 October request from the prosecuting attorney, Lawrence Livermore employee Al Heiman provided an FBI Special Agent with a copy of the Security Plan covering the detection results in the U.K./U.S. Radar Ocean Imaging program. The enclosed memorandum from Dr. Twogood described the classification guidelines established for the program. Paragraph 3 of Appendix A of the classification guideline—indicating that ''processing techniques which, when applied to unclassified or classified data, yield a significant enhancement in signature detectability which might apply to the submarine case'' should be classified SECRET—was directly applicable to the information that Dr. Lee revealed to the Chinese.[87]

On 14 November 1997, Mr. John G. Schuster, Jr., wrote the following memorandum for Navy Captain Earl Dewispelaere:

''The signal analysis techniques briefed by the subject are UNCLASSIFIED when applied to environmental data and they have been presented and published in several unclassified forums. Any application of the technique to submarine wake signatures, however, would be classified at the SECRET level, as called out in current classification guides.

''The material that was briefed appears to have been extracted from a CONFIDENTIAL document. This classification was applied based on concern that the document, taken as a whole, might suggest a submarine application even though it was not explicitly stated. Given that the CONFIDENTIAL classification cannot be explicitly supported by the classification guides and that material similar to that briefed by the subject has been discussed in unclassified briefings and publications, it is difficult to make a case that significant damage has occurred. Further, bringing attention to our sensitivity concerning this subject in a public forum could cause more damage to national security than the original disclosure.

''Based on the above, it is recommended that the disclosure of this material should not be considered as the sole or primary basis for further legal action.'' [88]

On 19 November 1997, the Schuster memorandum was sent to Mr. Dion from Navy General Counsel Steven S. Honigman, who stated that he and the Vice Chief of Naval Operations concurred with Mr. Schuster's conclusions. The Schuster memo has been described by various DoJ officials as a ''body blow'' to the prosecution because of their view that it might be ''Brady material'' or in some way exculpatory as to Dr. Lee. At minimum, it seriously complicated DoJ's case.

The ambiguous Schuster memorandum was apparently designed to later enable the Navy to take virtually any position: the signal analysis techniques are unclassified; they could be classified SECRET; the material was extracted from a CONFIDENTIAL document; significant damage may not be provable; bringing the issue to a public forum could damage national security; avoid legal action. When Mr. Schuster was questioned by the Subcommittee, he was unable to explain why the memo was written as it was or what it meant. The most charitable view of the Schuster memo is that it was misleading and should never have been written.

The Schuster memo was based on incomplete information since neither Mr. Schuster nor any other Navy or DoD personnel reviewed the video or audio tapes of Dr. Lee's confession. When that confession was reviewed at the Subcommittee's request, Mr. Schuster, along with Dr. Donna Kulla and Wayne Wilson, signed a memorandum dated 9 March 2000 stating that Dr. Lee's disclosures should have been classified CONFIDENTIAL.

Two additional memoranda were made available to the Department of Justice regarding Dr. Lee's 1997 disclosures, but were apparently insufficient to change the view of the ISS line attorney handling the case. A classified 17 November 1997 memorandum, referencing a conversation with Dr. Twogood, stated that, contrary to Mr. Schuster's opinion, what Dr. Lee revealed to the Chinese in 1997 should be considered SECRET. The memo provides substantial technical detail to make the case that Mr. Schuster was incorrect in his analysis. Lawrence Livermore followed up with another classified memorandum on 21 November 1997, citing the opinions of both Dr. Twogood and Mr. Jim Brase, who was also knowledgeable of the Radar Ocean Imaging project. Most importantly, these memoranda explain, in considerable scientific detail, how the information Dr. Lee provided to the Chinese differed in ways that made it classified from what had been on the LLNL Web site, in Dr. Lee's 1995 article, and in Dr. Twogood's April 1994 House Armed Services Committee testimony.

When questioned at a Subcommittee hearing on 29 March 2000, Mr. Schuster conceded that Dr. Twogood was the person to accurately evaluate Dr. Lee's disclosures:

Senator SPECTER: Dr. Twogood testified that [Dr. Lee] gave away the heart, the core . . . of the information. Would you disagree with that?

Mr. SCHUSTER: He was talking about the information in the program. That is not my program and I don't know that I could speak to the heart or core of that program.

Senator SPECTER: So that is beyond the purview of your expertise or knowledge?

Mr. SCHUSTER: Yes, sir, relative to the program.

Senator SPECTER: So based on your knowledge, you wouldn't have a basis for disagreeing with what Dr. Twogood said?

Mr. SCHUSTER: Not in that sense. I couldn't comment.[89]

Mr. Schuster sought to explain his 14 November 1997 memo by saying that it was his intent to give his assessment to Captain

Dewispeleare and not to the Department of Justice.[90]

Mr. Schuster testified that he never talked to anyone in the Department of Justice and had never been briefed as to how sensitive Navy and DoD information could be protected by the Classified Information Procedures Act.[91] This is in contrast to the prosecuting attorney, who testified, ''We assured the Navy that we could very confidently protect any classified information primarily because it was my analysis that the stuff was less classified, less dangerous.'' [92]

On 21 May 1999, the Navy again weighed in on the subject, writing to the Cox Committee to assert that ''the draft report mischaracterizes the substance and significance of the disclosure made by Lee during his trip to Beijing in 1997.'' [93] The letter further takes issue with the Cox Committee Report draft for creating the:

''erroneous impression that the technology Lee discussed during his 1997 Beijing trip was highly sensitive and previously unknown, and that his disclosure to the PRC caused grave harm to the national security, imperiling our submarine forces. In the considered judgement of the Navy, fortunately that is not the case.'' [94]

When questioned about this letter, Mr. Preston had no facts to support his disagreement with the conclusions of the Cox Committee Report. He conceded that none of the individuals who had been involved in responding to the Cox Committee Report had ever had access to the tapes or transcripts of Dr. Lee's confession, had made no effort to obtain them, and therefore did not know the full extent of what he revealed.[95]

FISA Issues

The loss of electronic surveillance on Dr. Lee occurred at a critical juncture that may have seriously hampered the Government's ability to collect important counter-intelligence information. When the Foreign Intelligence Surveillance Act (FISA) court order expired on 3 September 1997, it was not renewed. The FBI stated during testimony on 29 March 2000 that the FISA had not been renewed for several reasons, including concerns within the DoJ's Office of Intelligence Policy and Review (OIPR) that the information on Dr. Lee was ''too stale,'' [96] but OIPR disagrees with the FBI's characterization of what happened.[97] In view of the disagreement as to what actually happened with the FISA request, it is only possible to conclude that the FBI should have pursued the matter by making a formal written request. The Counterintelligence Reform Act, which became law at the end of the 106th Congress, will prevent future disputes over who is responsible for the loss of FISA coverage by providing a mechanism for the Director of the FBI to raise the matter directly with the Attorney General, who will be required to reply in writing. In this way, senior officials in both the FBI and the Department of Justice can be held accountable for their judgements on important espionage cases.

Additional issues

In addition to the disclosures of classified information for which Dr. Lee was charged, the Government knew that: (1) Dr. Lee asked for and received falsified travel documents from the Chinese, which he presented to the FBI on 3 September 1997,[98] (2) that his travel expenses in China were paid for by the Chinese,[99] (3) that he enlisted the assistance of Chinese officials associated with the CAEP in his attempt to deceive the FBI, and (4) that he confessed on videotape to intentionally passing classified information during his 1997 trip to China.'' [100] The only charge arising from the events of 1997, however, pertained to Dr. Lee's false statements on his Post-Travel Questionnaire submitted to TRW.[101]

It seems apparent that obtaining false documents from a Chinese official would have warranted a separate count under 18 USC 1001, and would have shown that Dr. Lee's 1997 transgressions extended beyond his lies to his employer. The Government's failure to highlight Dr. Lee's collusion with officials from the Chinese institutes where he visited resulted in an inaccurate portrait of his activities, one that was significantly less sinister than the reality of his conduct. Had this case enjoyed better communication within DoJ and better cooperation from the Navy, and a more aggressive approach by senior DoJ officials, Dr. Lee should have been charged or required to plead to at least four counts: (1) a 794 charge for the 1985 hohlraum revelations, (2) a 794 charge for the 1997 anti-submarine warfare revelations, (3) a false statements charge under 18 USC 1001 for his lies on the TRW Post-Travel questionnaire, and (4) a 1001 charge for submitting false travel documents that he got from the Chinese. Had these charges been filed, there is little doubt that the extent of Dr. Lee's espionage and attempted cover-up would have been made known. As it happened, the full range of Dr. Lee's felonious conduct was never presented to the Court.

It should be noted that Judge Hatter could have requested additional information to gain a better understanding of the case, but he did not. DoE witnesses were present and prepared to testify in camera at the sentencing hearing regarding Dr. Lee's 1985 revelations. Had the Judge heard from these expert witnesses, the harm done by Dr. Lee's significant material assistance to the PRC nuclear weapons program could have been made clear to the Court.

RECOMMENDATIONS

The single greatest problem the Government faced was its failure to come to terms with the significance of the information that Dr. Lee revealed to the PRC, both in 1985 and in 1997. Important were decisions were made without an adequate understanding of exactly what Dr. Lee had revealed and what were the consequences of those revelations. To prevent these problems from happening again, I am introducing legislation that would require victim agencies to produce a written ''damage statement'' which states the level of classification of the material alleged to have been revealed, and describes in detail the potential harm to national security from such revelations. The prosecution team should consider the ''damage statement'' before any decision is made as to whether the case should be taken to trial or a plea bargain should be offered.

The Department of Justice and the victim agency may wish to consult informally before the damage assessment is reduced to writing so that the victim agency will not unwittingly and incorrectly create Brady [102] problems and hamper any ultimate prosecution. The risks of creating potential Brady material—as might happen if an initial classification assessment were later reviewed and changed—are obvious, but the risks of proceeding to a plea without a clear written statement, made by competent officials, as to the level of classification of the material in question are even greater.

As noted previously, the Counterintelligence Reform Act, which became law in December 2000, contains a provision requiring that the Justice Department provide briefings to victim agency officials regarding the manner in which the Classified Information Procedures Act enables a prosecution to go forward without revealing additional secrets. Contemporaneous written records, particularly the Schuster memo, make it clear that the Navy was reluctant to proceed with a prosecution due to sensitivity about a public discussion of anti-submarine warfare, but the process established by CIPA could have ensured that no sensitive information was disclosed. In the absence of any risk of disclosing classified information, the Navy's general unwillingness to have anti-submarine warfare discussed in a public proceeding should have had no bearing on the Government's decision to proceed with a prosecution. The briefing process established by the Counterintelligence Reform Act will ensure that any legitimate concerns of the victim agency are addressed, and that the Justice Department will be able to distinguish between real security concerns and a general unwillingness to support a prosecution.

Although I do not intend to introduce legislation requiring it, I believe that key instructions from Main Justice (Internal Security Section, etc.) to the U.S. Attorney's Office with responsibility for prosecuting the case, including charging authority and plea bargain authority, should be in writing. These written instructions should be shared with the FBI and the victim agency so they have an opportunity for input before any final decisions are made. There can be no doubt that key officials in this case were operating under severe misunderstandings. The prosecuting attorney thought his instructions were that he had to accept a plea under Sections 793 and 1001 or nothing, while the Internal Security Section claimed that it was still open to a possible 794 prosecution. Key officials within the Department of Defense, up to and including the Secretary, were informed that if Dr. Lee refused the plea agreement, he would be prosecuted under Section 794. With so much misunderstanding, it is surprising that the prosecution did not suffer even more.

CONCLUSION

This was an important espionage case, yet remarkably little was documented during the key weeks leading up to the plea agreement in late 1997. Decision-makers within the Department of Justice and the Department of Defense clearly have discretion in executing their responsibilities, and should not be second-guessed at every turn. However, the need to strike a balance between protecting the national security—which can conceivably be achieved by not prosecuting in certain circumstances—and the equal application of the laws to ensure justice is done, requires that when judgements are made for which the reasons are not immediately apparent, the decision-makers must offer some explanation for their actions. In the absence of such a documented rationale for what may be necessary exceptions, the result is what appears to be arbitrary application of the laws, an outcome which protects neither the national security nor the law. The Government's handling of the Dr. Peter Lee case demonstrates clearly that ongoing, thorough congressional oversight is essential.

ENDNOTES

1. Gilbert Cordova, ''Affidavit in Support of Complaint, Arrest Warrant and Search Warrants: United States v. Peter Hoong-Yee Lee,'' undated: 16.

2. Robin Staffin, Deputy Assistant Secretary for Research and Development, Office of Defense Programs, Department of Energy, Notra Trulock III, Senior Intelligence Officer, Office of Energy Intelligence; and Joseph S. Mahaley, Director, Office of Security Affairs, ''Impact Statement'', 17 February 1998: 2. [DoJ Bates number 00116]

3. Robin Staffin, Deputy Assistant Secretary for Research and Development, Office of Defense Programs, Department of Energy; Notra Trulock III, Senior Intelligence Officer, Office of Energy Intelligence; and Joseph S. Mahaley, Director, Office of Security

Affairs, ''Impact Statement'', 17 February 1998: 2. [DoJ Bates number 00116]

4. Transcript of Proceedings (first draft), hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts regarding the Dr. Peter Lee Case, 29 March 2000: 52–53.

5. Wayne Wilson, John G. Schuster, and Donna Kulla, ''MEMORANDUM FOR THE GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,'' 9 March 2000: 1.

6. According to Section 1.3 of Executive Order 12958 (April 17, 1995, which superseded Executive Order 12356 of April 6, 1982), information is to be classified as ''CONFIDENTIAL'' if ''the unauthorized disclosure of which reasonable could be expected to cause damage to the national security. . . .''

7. Cox Committee Report, Vol. 1, 88.

8. John C. Keeney, Principal Deputy Assistant Attorney General, Criminal Division, Department of Justice, prepared statement submitted to the Senate Judiciary Subcommittee on Administrative Oversight and the Courts Concerning the Peter Lee Espionage Case,'' 12 April 2000: 6.

9. See Transcript of Proceedings (first draft), Hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts regarding the Dr. Peter Lee Case, 12 April 2000: 14, 38–39 and 87–89.

10. Prosecuting Attorney, Transcript of Interview with Senator Arlen Specter in Los Angeles, CA, 15 February 2000: 73–74.

11. Donna Kulla, interviewed by Charlie Battaglia in Washington, DC on January 2000.

12. Bruce Lake, e-mail to Dobie McArthur of January 28, 2000. Lists the following as dates of Peter Lee was employed by TRW: Original hire date: 06/18/73 to 10/08/76 Rehire date: 04/29/91 to 12/08/97 Retired eff.: 12/30/97. See also House of Representatives, Report of the United States House of Representatives Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China, May 25, 1999, Vol. 1, 87–88. [Hereinafter, Cox Committee Report]

13. Gilbert Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 13. [DoJ Bates number 000085]

14. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 13–14 [DoJ Bates number 000085–000086]

15. Reporter's Transcript of Proceedings, United States of America, vs. Peter Lee, 26 March 1998: 20. [DoJ Bates number 000023]

16. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 13–14. [DoJ Bates number 000085–000086]

17. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 2. [DoJ Bates number 000074]

18. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 16. [DoJ Bates number 000088]

19. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 14. [DoJ Bates number 000086]

20. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 14–15. [DoJ Bates number 000086–000087]

21. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 7. [DoJ Bates number 000079]

22. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 7. [DoJ Bates number 000079]

23. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 16–17. [DoJ Bates number 000088–000089]

24. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 1. [DoJ Bates number 000089]

25. See Transcript of Proceedings (first draft), Hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts regarding the Dr. Peter Lee Case, 29 March 2000: 39.

26. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 10. [DoJ Bates number 000082]

27. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 10–11. [DoJ Bates number 000082–000083]

28. Cordova, Declaration in the Manner of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 11–12 [DoJ Bates number 000083–000084]

29. Cordova, Declaration in the Manner of United States vs. Peter Hoong-Yee Lee CR No. 97–1181th–TJH, 27 February 1998: 11–12 [DoJ Bates number 000083–000084]

30. Cordova, Declaration in the Manner of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 12. [DoJ Bates number 000084]

31. Cordova, Declaration in the Manner of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 13. [DoJ Bates number 000085] See also Government's Response to Defendant's Position with respect to Sentencing Factors; Declarations of [Prosecuting Attorney], 23 March 1998: 5. [DoJ Bates number 000069]

32. INFORMATION, [18 USC 793 (d): Attempt to Communicate National Defense Information to A Person Not Entitled To Receive It; 18 USC 1001: False Statement to Government Agency], undated, 1–3 [DoJ Bates number 000001–000003]

33. Nora M. Manella, Physicist Pleads Guilty to Transmitting Classified Defense Information to Representatives of the People's Republic of China, News Release, 8 December 1997: 1. [DoJ Bates number 000096]

34. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 90.

35. Nora M. Manella, Nuclear Physicist Sentenced to One Year in Custody for Passing Classified Defense Information to Scientists of the People's Republic of China, News Release, 26 March 1998: 1. [DoJ Bates number 000098]

36. See, for example, GOVERNMENT'S EX PARTE APPLICATION FOR ORDER UNSEALING PLEA AGREEMENT, 22 October 1999 [DoJ Bates number 00235–00240], and GOVERNMENT'S EX PARTE APPLICATION FOR ORDERING UNSEALING GOVERNMENT'S SENTENCING POSITION AND GOVERNMENT'S FILING OF DEPARTMENT OF ENERGY ''Impact Statement'', 25 October 1999 [DoJ Bates numbers 00252–00260]

37. Robin Staffin, Deputy Assistant Secretary for Research and Development, Office of Defense Programs, Department of Energy; Notra Trulock III, Senior Intelligence Officer, Office of Energy Intelligence; and Joseph S. Mahaley, Director, Office of Security Affairs, ''Impact Statement'', 17 February 1998: 2. [DoJ Bates number 00116]

38. Robin Staffin, Deputy Assistant Secretary for Research and Development, Office of Defense Programs, Department of Energy; Notra Trulock III, Senior Intelligence Officer, Office of Energy Intelligence; and Joseph S. Mahaley, Director, Office of Security Affairs, ''Impact Statement'', 17 February 1998: 2. [DoJ Bates number 00116]

39. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Court Hearing regarding the Dr. Peter Lee Case, 5 April 2000: 53.

40. ISS Line Attorney, Prepared Statement submitted to the Senate Judiciary Subcommittee on Administrative Oversight and the Courts Concerning the Peter Lee Espionage Case, 12 April 2000: 7.

41. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearings regarding the Dr. Peter Lee Case, 29 March 2000: 37.

42. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 29 March 2000: 38.

43. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 29 March 2000: 39.

44. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 5 April 2000: 66.

45. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 67.

46. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 67–68.

47. See the opinion of Mr. Justice Reed, in Gorin v. United States, 312 U.S. 19; 61 S. Ct. 429, 1941 U.S. Lexis 1033; 85 L. Ed 488: at 14–15.

48. See the opinion of Mr. Justice Reed, in Gorin v. United States, 312 U.S. 19; 61 S. Ct. 429; 1941 U.S. Lexis 1033; 85 Ed. 488; at 5.

49. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 68.

50. See the opinion of Circuit Judge L. Hand, in United States v. Heine, 151 F.2nd 813; 1945 U.S. App. Lexis 3049: at 8.

51. Reporter's Transcript or Proceedings, United States of America, vs. Peter Lee, 26 March 1998: 14. [DOJ Bates number 000017]

52. Reporter's Transcript of Proceedings, United States of America, vs. Peter Lee, 26 March 1998: 25. [DOJ Bates number 000028]. See also Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97–1181–TJH, 27 February 1998: 18. [DOJ Bates number 000090]

53. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 29.

54. Reporters Transcript of Proceedings, United States of America, vs. Peter Lee, 26 March 1998: 21–22. [DOJ Bates number 000024–000025]

55. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 5 April 2000: 15. See also Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 73.

56. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 34–35.

57. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing

regarding the Dr. Peter Lee Case, 12 April 2000: 36.

58. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 86.

59. Prosecuting Attorney Transcript of Interview with Senator Arlen Specter in Los Angeles, CA, 15 February 2000: 70–71. See also, Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 5 April 2000: 41,48.

60. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 90.

61. John C. Keeney, Principal Deputy Assistant Attorney General, Criminal Division, Department of Justice, prepared statement submitted to the Senate Judiciary Subcommittee on Administrative Oversight and the Courts Concerning the Peter Lee Espionage Case,'' 12 April 2000: 6.

62. John C. Keeney, Principal Deputy Assistant Attorney General, Criminal Division, Department of Justice, prepared statement submitted to the Senate Judiciary Subcommittee on Administrative Oversight and the Courts Concerning the Peter Lee Espionage Case,'' 12 April 2000: 6.

63. Prosecuting Attorney, ''Government's Position With Respect to Sentencing Factors: Declarations of [Prosecuting Attorney],'' 27 February 1998: 7.

64. Department of Energy, ''Impact Statement,'' 17 February 1998: 3: [DoJ Bates number 00117]

65. Gilbert Cordova, ''Declaration of Gilbert R. Cordova,'' 23 March 1998; 2.

66. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 61.

67. Prosecuting Attorney, Transcript of Interview with Senator Arlen Specter in Los Angeles, CA, 15 February 2000: 72.

68. Prosecuting Attorney, Transcript of Interview with Senator Arlen Specter in Los Angeles, CA, 15 February 2000: 76.

69. Prosecuting Attorney, Transcript of Interview with Senator Arlen Specter in Los Angeles, CA, 15 February 2000: 72.

70. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 29 March 2000: 87–88.

71. SSA, National Security Law Unit, ''Royal Tourist,'' e-mail to FBIHQ Supervisory Special Agent, 25 November 1997: 1.

72. Dan Bauer, Colonel, US Army, ''Possible Espionage Arrest Update (U)—INFORMATION MEMORANDUM,'' MEMORANDUM FOR THE SECRETARY OF DEFENSE, DEPUTY SECRETARY OF DEFENSE, 26 November 1997: 1.

73. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 92–93.

74. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 40.

75. Jon P. Jennings, letter to Senator Orrin G. Hatch, 18 April 2000: 2.

76. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 93–94.

77. Cox Committee Report, Vol. 1, 88.

78. Defense Criminal Investigative Service, ''Report of Investigation,'' 11 September 1998: 2. [DoD Bates number D001003]

79. Transcript of Proceedings (first draft), Hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts regarding the Dr. Peter Lee Case, 29 March 2000: 51.

80. Transcript of Proceedings (first draft), Hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts regarding the Dr. Peter Lee Case, 29 March 2000: 52–53.

81. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 31.

82. Transcript of Proceedings (first draft), Hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts regarding the Dr. Peter Lee Case, 12 April 2000: 58.

83. Transcript of Proceedings (first draft), Hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts regarding the Dr. Peter Lee Case, 12 April 2000: 58–59.

84. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 32–33.

85. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 34.

86. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 34.

87. See Al Heiman, fax cover sheet of November 10, 1997 to FBI Special Agent Dave LeSueur, and Dr. Richard Twogood, memorandum to Bill Cleveland and Al Heiman, ''Classification Guidelines'', November 10, 1997.

88. J.G. Schuster, Jr., ''REQUEST FOR CLASSIFICATION GUIDANCE,'' 14 November 1997.

89. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 29 March 2000: 100.

90. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 29 March 2000: 105–107.

91. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 29 March 2000: 106–107.

92. Prosecuting Attorney, Transcript of Interview with Senator Arlen Specter in Los Angeles, CA, 15 February 2000: 63.

93 Stephen Preston, General Counsel of the Navy, letter to the Cox Committee, 21 May 1999: 1.

94 Stephen Preston, General Counsel of the Navy, letter to the Cox Committee, 21 May 1999: 2.

95. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 29 March 2000: 79.

96. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 29 March 2000: 24–25.

97. Transcript of Proceedings (first draft), ''Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 5 April 2000: 11.

98. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee CR No. 97 1181–TJH, 27 February 1998: 12. [DoJ Bates number 000084]

99. Cordova, Declaration in the Matter of United States vs. Peter Hoong-Yee Lee CR No. 97 1181–TJH, 27 February 1998: 7. [DoJ Bates number 000079]

101. INFORMATION, United States of America v. Peter Lee, filed 5 December 1997:3. [DoJ Bates number 000003)

102. See Brady v. Maryland 373 U.S. 83 (1963), in which the Supreme Court declared that, regardless of the good faith or bad faith of the prosecution, the suppression of evidence favorable to the accused violated due process where the evidence is material to either guilt or punishment. This court ruling imposes an obligation on the Government to provide to the defense any evidence or information in its possession which could be favorable to the accused.

Mr. SPECTER. Mr. President, I ask unanimous consent that two letters from the Justice Department be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, DC, December 19, 2001.

Hon. ARLEN SPECTER,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: We have no objection on national security grounds to publication of your final report on the Wen Ho Lee investigation. We have not reviewed the report for the accuracy of the facts or conclusions reflected therein.

Sincerely,

JOHN E. COLLINGWOOD,
Assistant Director, Officer of Public and Congressional Affairs.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, DC, December 20, 2001.

Hon ARLEN SPECTER,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: We have no objection on national security grounds to publication of your final report on the Peter lee investigation. We have not reviewed the report for the accuracy of the facts or conclusions reflected therein.

Sincerely,

JOHN E. COLLINGWOOD,
Assistant Director, Office of Public and Congressional Affairs.

Mr. SPECTER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. One minute.

Mr. SPECTER. As promised, I yield back the remainder of my time.

VOTE ON CONFERENCE REPORT ACCOMPANYING H.R. 3061

The PRESIDING OFFICER. All time having expired, the question occurs on agreeing to the conference report to accompany H.R. 3061.

Mr. SPECTER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Nevada (Mr. ENSIGN) are necessarily absent.

The PRESIDING OFFICER (Mrs. CLINTON). Are there any other Sentors in the Chamber desiring to vote?

The result was announced—yeas 90, nays 7, as follows:

[Rollcall Vote No. 378 Leg.]

YEAS—90

Allen	Domenici	Lott
Baucus	Dorgan	Lugar
Bayh	Durbin	McConnell
Bennett	Edwards	Mikulski
Biden	Enzi	Miller
Bingaman	Feinstein	Murkowski
Bond	Frist	Murray
Boxer	Graham	Nelson (FL)
Breaux	Gramm	Nelson (NE)
Brownback	Grassley	Reed
Bunning	Gregg	Reid
Burns	Hagel	Roberts
Byrd	Harkin	Rockefeller
Campbell	Hatch	Santorum
Cantwell	Hollings	Sarbanes
Carnahan	Hutchinson	Schumer
Carper	Hutchison	Sessions
Chafee	Inhofe	Shelby
Cleland	Inouye	Smith (OR)
Clinton	Jeffords	Snowe
Cochran	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kerry	Stevens
Corzine	Kohl	Thomas
Craig	Kyl	Thompson
Crapo	Landrieu	Thurmond
Daschle	Leahy	Torricelli
Dayton	Levin	Warner
DeWine	Lieberman	Wellstone
Dodd	Lincoln	Wyden

NAYS—7

Allard	McCain	Voinovich
Feingold	Nickles	
Fitzgerald	Smith (NH)	

NOT VOTING—3

Akaka	Ensign	Helms

The conference report was agreed to.

Mr. DURBIN. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Madam President, I yield to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I congratulate all those who worked on this bill.

I have already extended my congratulations to my distinguished colleague, Senator HARKIN. I also thank Senator BYRD and Senator STEVENS. We have a very devoted staff. I would like to thank them. For the majority: Ellen Murray who is the majority clerk and an extraordinary worker; Jim Sourwine, Mark Laisch, Erik Fatemi, Lisa Bernhardt, Adrienne Hallett, Adam Gluck, and Carole Geagley. I did not know the majority had so many more than we do. On the minority staff, Bettilou Taylor—Senator Taylor—Mary Dietrich, Sudip Parikh, and Emma Ashburn.

This was an extraordinary bill, very complicated, $123 billion, lots of requests, lots of pages, lots of proofreading, and we are glad it is finished.

I yield the floor.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DASCHLE. I ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar Nos. 616 and 617; that the nominations be confirmed, the motions to reconsider be laid upon the table, any statements relating to the nominations be printed in the RECORD, the President be immediately notified of the Senate's action, and the Senate return to legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I ask the leader, what nominees?

Mr. DASCHLE. I advise the Senator from Iowa that these nominees are for the First Vice President of the Export-Import Bank and for a member of the Board of Directors of the Export-Import Bank.

Mr. HARKIN. I have no objection.

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

The nominations were considered and confirmed, as follows:

EXPORT-IMPORT BANK OF THE UNITED STATES

Eduardo Aguirre, Jr., of Texas, to be First Vice President of the Export-Import Bank of the United States for a term expiring January 20, 2005.

J. Joseph Grandmaison, of New Hampshire, to be a Member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 2005.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

INVESTOR AND CAPITAL MARKETS FEE RELIEF ACT

Mr. DASCHLE. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 74, H.R. 1088.

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

The legislative clerk read as follows:

A bill (H.R. 1088) to amend the Securities Exchange Act of 1934 to reduce fees collected by the Securities and Exchange Commission, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. DASCHLE. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD, with no intervening action.

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

The bill (H.R. 1088) was read the third time and passed.

PROVIDING FOR SINE DIE ADJOURNMENT OF THE SENATE AND HOUSE OF REPRESENTATIVES

Mr. DASCHLE. Madam President, I now call up H. Con. Res. 295, the adjournment resolution. I ask that the Senate vote on adoption of the concurrent resolution, with no intervention action or debate.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 295) providing for the sine die adjournment of the first session of the One Hundred Seventh Congress.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DASCHLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the concurrent resolution.

The clerk will call the roll.

Mr. REID, I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

Mr. NICKLES, I announce that the Senator from North Carolina (Mr. HELMS), and the Senator from Nevada (Mr. ENSIGN), and the Senator from Kansas (Mr. ROBERTS) are necessarily absent.

The PRESIDING OFFICER (Mr. MILLER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 40, as follows:

[Rollcall Vote No. 379 Leg.]

YEAS —- 56

Baucus	Edwards	Lincoln
Bennett	Feingold	McCain
Biden	Feinstein	Mikulski
Bingaman	Fitzgerald	Miller
Boxer	Graham	Murkowski
Breaux	Gramm	Murray
Bunning	Hagel	Nelson (FL)
Byrd	Harkin	Nelson (NE)
Cantwell	Hollings	Reed
Carnahan	Inouye	Reid
Carper	Jeffords	Rockefeller
Chafee	Johnson	Sarbanes
Cleland	Kennedy	Shelby
Cochran	Kerry	Stabenow
Corzine	Kohl	Stevens
Daschle	Landrieu	Torricelli
Dodd	Leahy	Wellstone
Dorgan	Levin	Wyden
Durbin	Lieberman	

NAYS — 40

Allard	Domenici	Santorum
Allen	Enzi	Schumer
Bayh	Frist	Sessions
Bond	Grassley	Smith (NH)
Brownback	Gregg	Smith (OR)
Burns	Hatch	Snowe
Campbell	Hutchinson	Specter
Clinton	Hutchison	Thomas
Collins	Inhofe	Thompson
Conrad	Kyl	Thurmond
Craig	Lott	Voinovich
Crapo	Lugar	Warner
Dayton	McConnell	
DeWine	Nickles	

NOT VOTING—4

Akaka	Helms
Ensign	Roberts

The concurrent resolution (H. Con. Res. 295) was agreed to, as follows:

H. CON. RES. 295

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Thursday, December 20, 2001, or Friday, December 21, 2001, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate adjourns at the close of business on Thursday, December 20, 2001, or Friday, December 21, 2001, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

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

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

The motion to lay on the table was agreed to.

Mr. DASCHLE. Mr. President, it was my hope that we could go immediately to the final vote on the conference report on the Defense appropriations bill. I make that recommendation. 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. BREAUX. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

ECONOMIC STIMULUS PACKAGE

Mr. BREAUX. Mr. President and colleagues, while we are waiting some other colleagues to return to this Chamber to negotiate, I would like to make just a short comment on the economic stimulus package.

I would imagine that right now the political pundits of Washington, and really the political pundits all around the country, are already sharpening their pencils, and the editorial writers are already banging away on their typewriters, as well as the political consultants and all the special-interest groups are preparing, already, their attack ads to blame someone for the failure of this Congress to complete and pass an economic stimulus package.

Over the next several days, and possibly even over the next several weeks, we are going to hear some say: Well, it is TOM DASCHLE'S fault that we do not have an economic stimulus package because he did not bring the package to the Senate floor. We will also hear that, no, it is the Republican leader's fault because they only supported a package that helped the rich special interests. Or perhaps we will hear that, no, it is the fault of the President of the United States for not providing the leadership to bring both sides together.

The blame game has now begun. I have noticed the papers already this morning.

The Wall Street Journal said: The White House and congressional leaders fail to reach a compromise and now turn their efforts instead to casting blame for its failure.

The front page of the Washington Post this morning said: Yesterday, as both sides began engaging in a furious legislative end game designed to assign blame to the other party for failure . . .

The front page of the New York Times said the same thing, in essence. They said: The Bush administration, along with others, turned instead to partisan finger pointing over who was to blame for the impasse.

So, my colleagues and folks around the country, the blame game has already begun.

But one thing is very certain, and that is Americans cannot go to the grocery store and buy bread and buy milk with blame. It does not work.

When Congress fails to act, it is not our political parties that are hurt but the people we represent are truly the ones who are hurt.

Unfortunately, our political parties sometimes believe that they are actually helped when nothing is done so that they can blame the other side for failure and perhaps pick up a few congressional seats or perhaps even take over the White House.

Perhaps we, as members of the centrist coalition, should have gotten involved sooner. Maybe we should have offered our congressional proposal, blending the best ideas from both sides, earlier than we did. It might have helped.

Perhaps the White House should have become engaged earlier than they did. Maybe they should have been stronger in telling both sides to work together for an agreement.

Perhaps, perhaps, maybe, maybe, might have, might have, but in the end our biggest enemy was time. There simply was not sufficient time remaining to take up an extremely complicated package, only passed late last night by the House of Representatives, and to try to explain it sufficiently to colleagues in the Senate in order for people to take a rational vote on that legislation.

To those who try to blame Leader TOM DASCHLE, I say, baloney. I was there. I worked hard for an agreement. But we did not in the end—and we do not now—have the votes to pass such a package in the Senate. I know that. We all know that. And it serves no one to bring up, in the last few hours, a very complicated package only for political purposes when we know the votes are not there.

The good news is that we came very close and can use the progress that we made in these negotiations to pass a package when we return in January. Both sides moved. We moved on taxes. We moved on health coverage. But only if we allow the outside forces to poison the wells so badly that we cannot negotiate will we not be able to reach an agreement.

Both sides must realize in a divided government we must compromise or nothing will get done. Businesses will get no relief or incentives to grow. Individuals will get no stimulus checks.

Unless we come together and reach an agreement, businesses will get no relief. They will get no incentives to grow. Individuals, on the other hand, will get no stimulus checks. They will get no extended unemployment compensation. They will get no Federal assistance to buy their health insurance.

For the first time in this country's history, we had the Federal Government paying for over one-half of an unemployed worker's health insurance. Now they must pay 100 percent. We came close.

The special interests in both our Democratic Party and our Republican Party must realize that in representing their constituents, they need to be flexible. They cannot insist that those of us who care about them be forced into a ''we want it all or nothing'' situation. In that case, the ''all or nothing'' situation produces nothing.

Is ''nothing'' what they want for the people they represent? Can they tell the workers, over the holidays, that not getting $14 billion in stimulus checks and not getting $18 billion in unemployment money and not getting $21 billion more in health assistance was the right thing for them because there were other provisions that would not directly help them that was also part of the package?

Can business lobbyists say they are better off with no accelerated depreciation because they wanted it for 3 years? Or are they really better off with no AMT relief because they wanted a permanent repeal instead of only a partial repeal?

Is it not better to reach an agreement that you can get 70 percent of what you want and then fight for the remainder in the future?

Neither Medicare nor Social Security started out providing everything they

provide today. Government is a gradual thing, and that is not bad. It is what American Government does best. We evolve. We cannot be stagnant.

More and more Americans look at Washington and wonder why it does not work as it should. Why do grown men and women fight and argue when solutions need to be reached? Especially is this true as a feeling among younger voters.

Let me conclude by pointing out that in the height of the Presidential election squabble in Florida, the Gallup organization asked Americans at that time, in a national poll, about their political affiliation. Shockingly, for some Americans, the poll came back and said that 42 percent of Americans identified themselves as Independents. That was more than who identified themselves as either Democrats or Republicans.

There is a message there: Americans do not want blame as a theme song for their Government. They want results. They want results that help them, and they do not particularly care who produces it.

I hope we can all learn from this experience. The greater challenges ahead can be solved only by working for the greater good. We can only do that by working together in order to achieve it.

I yield the floor.

Mr. MILLER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. DASCHLE addressed the Chair.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. DASCHLE. Mr. President, I appreciate very much the Senator from Georgia allowing me to make a unanimous consent request.

UNANIMOUS CONSENT AGREEMENT—H.R. 3338 CONFERENCE REPORT

Mr. DASCHLE. Mr. President, we have been negotiating with a number of our colleagues regarding the Defense appropriations conference report. I would like to propound a unanimous consent request, with an expectation that it may need further clarification.

I ask unanimous consent that the Senator from Arizona, Mr. MCCAIN, be recognized; that the Senator from West Virginia, the chairman of the Appropriations Committee, be recognized; that the two subcommittee chairs, the Senator from Alaska and the Senator from Hawaii, also be recognized; and that the Senator from Michigan be recognized; that upon the recognition of those Senators and their remarks in regard to the Defense appropriations conference report, the Senate vote immediately on its final passage.

The ACTING PRESIDENT pro tempore. Is there objection?

Mrs. HUTCHISON. Reserving the right to object, I just ask the question, Will the subcommittee chairs be designating time from their time?

Mr. DASCHLE. The answer is yes. It is not necessarily in that order, I would clarify, Mr. President.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. DASCHLE. I thank all of my colleagues.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2002—CONFERENCE REPORT

The PRESIDING OFFICER (Mr. DODD). The clerk will report the conference report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3338) making appropriations for the Department of Defense for the fiscal year ending September 30, 2002, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, agree to the same with an amendment, and the Senate agree to the same, signed by all conferees on the part of the two Houses.

(The conference report is printed in the House proceedings of the RECORD of December 19, 2001.)

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I am pleased to rise today to offer my unqualified support for the conference agreement that was just reported. I am pleased to present the recommendations to the Senate today as division A of this measure. The recommendations contain the result of lengthy negotiations between the House and Senate managers and countless hours of work by our staffs acting on behalf of all Members.

The agreement provides $317.2 billion, the same as the House and Senate levels, consistent with our 302(b) allocations.

In order to accommodate Members of the Senate, may I request that I be given the opportunity to now set aside my statement and yield to the Senator from Arizona for his statement. Upon his conclusion, I will resume my statement.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Chair recognizes the Senator from Arizona.

Mr. MCCAIN. Mr. President, I am not ready to give my statement yet. I am still having my people come over with information. As a matter of fact, we haven't even gotten through the entire bill yet. I will be ready shortly.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alaska.

Mr. STEVENS. Mr. President, I join the distinguished chairman of the defense subcommittee, Senator INOUYE, in presenting the fiscal year 2002 Department of Defense conference report to the Senate.

This bill enjoys my total support, and I urge all my colleagues to support this conference report, and the funds provided herein that are vital to our national security.

In addition to the base funding for the current fiscal year, this bill also includes the allocation of $20 billion in emergency supplemental funding provided by Congress immediately after the September 11 attack.

These funds fulfill the commitment made by Congress to respond to the needs of the victims of the September 11 attack. I commend the Governor of New York, the Mayor of New York City, and the two Senators from New York, for their stalwart work to ensure these funds meet the needs of their constituents.

The enhanced funding provided in Division B of this bill for homeland defense will also have a significant effect on the security of this nation.

It is appropriate that the homeland defense funding be included in this bill—in the war against terrorism, there are no boundaries.

The money in this bill to secure our borders, our airports, our ports, to protect against bioterrorism and to assist first responders will send a strong signal to our citizens, and our potential adversaries, of our determination to win this war on terrorism on every front.

Turning more specifically to the underlying defense bill in Division A, there are two matters in particular I wish to address today: missile defense and the tanker leasing initiative.

The Senate version of the bill provided the full $8.3 billion requested by Secretary Rumsfeld for missile defense programs. The House bill provided approximately $7.8 billion.

During our conference, we were informed of two major program changes in missile defense.

The Undersecretary of Defense for acquisition, on behalf of Secretary Rumsfeld, reported that the department would terminate the Navy area defense system, and the SBIRS-low satellite program.

Funding for these two programs, totaling more than $700 million, was realigned to other defense priorities within and outside missile defense.

For example, of the Navy area program funds, $100 million was reserved for termination liabilities for the program and $75 million was transferred to the airborne laser program.

From the SBIRS-low termination, $250 million is reserved for satellite sensor technology development—which could all be used for further work under the existing SBIRS-low contracts, if the department so chooses.

Addressing the significance of protecting our deployed forces, the conference agreement provides an additional $60 million over the budget request to accelerate production of the Patriot PAC–3 missile.

In his statement, the chairman of the subcommittee articulated his support for the air refueling tanker initiative, and I appreciate his kind words on my role in that effort.

Contrary to some reports, this provision was not a last minute industry bailout, hidden from public view. In fact, this responds to military need,

and unforeseen economic circumstances—and opportunities.

The effort to lease these aircraft reflects an extensive review of the Air Force's needs, and the crisis it faces in the air refueling fleet.

This lease provision, provides permissive authority for the Secretary of the Air Force to replace the 134 oldest KC–135E aircraft with new tankers.

These aircraft average 42 years of age, and have not received the comprehensive ''R'' model refurbishment.

All of these aircraft are operated by the Air National Guard, at bases throughout the Nation. The lease will provide the new tankers to the Air Force, and permit recently refurbished ''R'' models to cascade to the Guard.

This permits the National Guard to have a common fleet of aircraft, providing significant training and maintenance cost savings. They daily do the refueling operations for our Air Force planes nationally and throughout the world.

The KC–135E aircraft require extensive depot maintenance. Once every 5 years, we lose that aircraft for an average of 428 days, and many more than 600 days.

That means a squadron loses that aircraft for at least 15 months, up to 2 years.

At any one time, one third of the fleet is unavailable for service—redlined—putting that much more pressure on the rest of the force.

During peacetime, one might argue we can survive with an inadequate air refueling fleet. Now, in wartime, the price for that failure becomes clear.

Every sortie flown into Afghanistan requires at least two, and sometimes as many as four, aerial refuelings. This is the highest rate of sustained operations we have maintained since the gulf war.

In the 10 years since that conflict, we have not purchased one new tanker—we've watched the fleet age and deteriorate. I know the feeling of watching a fuel gauge determine the fate of an aircraft and crew. It is not a comfortable or pleasant one. I remember one time I ran out of fuel on landing and had to have the aircraft towed off the field.

This may sound like an arcane discussion, compared to the allure of new F–22's, or B–2 bombers, but let me give you an old transport pilot's perspective.

Our forces today have virtually no margin for error—an F–15 doesn't glide very long, and an F–18 that cannot make the carrier deck has little hope for survival.

We can buy the exciting, and needed, new weapons platforms but without the gas they'll never get home after the fight.

Some have suggested the leasing approach is not a good deal for the Government. That is simply wrong. This provision includes the most stringent requirements ever set for an aircraft leasing program.

The law states that the cost to the Air Force for the lease cannot exceed 90 percent of the fair market value of the aircraft. That means the Secretary cannot sign a contract if the lease cost would exceed that threshold.

The Secretary must report to the Congress all the details of any proposed contract in advance of signing any agreement. We will get to look at this contract before the deal is set.

Mr. President, nothing in the leasing authority provided in this bill is directive—the discretion rests solely with the Secretary of the Air Force.

I have had extensive discussions about this initiative with the Secretary, with the former Commander of the Transportation Command, Gen. Robertson, and other DOD officials.

All have endorsed this approach.

The language in this bill is the product of extensive discussions with CBO and OMB. No objection has been raised.

Secretary Rumsfeld's letter on the bill did not object to this initiative, nor did the Department's detailed appeals to the Appropriations Conference.

Since taking office, Secretary Rumsfeld has sought to chart a course to manage the Pentagon consistent with the best practices in the private sector.

This initiative seeks to do just that—give the Secretary all the tools we can to meet the Department's modernization needs, within the tight budget constraints he will face.

The airlines lease aircraft, private businesses lease aircraft, our ally Great Britain currently leases U.S. built C–17 aircraft.

In addition, Great Britain has issued a solicitation to lease air refueling tankers, and the Boeing 767 is the lead candidate.

We did not decide to choose the 767. The Air Force told us this is the right aircraft for the mission.

Gen. Jumper, the Air Force Chief, envisions moving the Air Force to a common wide body platform for a range of missions—he determined the 767 is the best platform.

Interestingly, two of our closest allies—Italy and Japan—have already signed contracts to purchase 767 tankers on a commercial basis.

Some have suggested that this provision should have opened the door to competition with Airbus.

The problem is that Airbus does not have a tanker on the world market. More telling, two of the Airbus founding partners—Britain and Italy—have both opted for the American-built tanker for their military.

Personally, I have complete confidence we can extend this authority to the Secretary of the Air Force, and he will only use it if he believes it is absolutely in the best interest of the Air Force.

I want to close by thanking again our Chairman, Senator INOUYE, for his leadership in moving this bill through committee, the floor and conference in only 15 days—an incredible achievement.

Also, our partners in the House, Chairman LEWIS and Mr. MURTHA, and the full committee chairman, Congressman BILL YOUNG and ranking member, DAVE OBEY, deserve tremendous credit for managing their bill in the House, and working out this package in conference.

Mr. President, I yield to the Senator from Texas, Mrs. HUTCHISON.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I thank Senator STEVENS and Senator INOUYE for the hard work they did on this bill. Since this bill was left to be the last appropriations bill passed this year, it had many difficulties. During this time, our Armed Forces were prosecuting a war on last year's budget. That is very serious and it is unacceptable. We must pass this bill today. It is a good bill.

Our armed services need the extra help that is in this bill. It provides $26 billion more in spending for the Department of Defense than was appropriated last year. That gives us the added equipment we need to be in Afghanistan and throughout the world, as we are today. It also reduces the military/civilian paygap by funding a pay raise of 5 percent across the board and up to 10 percent for targeted ranks with low-retention rates.

Thank goodness we are trying to address people who are leaving the armed services because we just can't compete with the private sector. Also, I want to mention the TRICARE For Life; $3.9 billion in this bill implements TRICARE For Life. This is something I worked on for a long time to make sure that those who have served in our military, who have done what we asked them to do for our country, will never be left without full medical care. That is something they deserve, it is something we promised, and it is a promise we must keep.

I am very pleased that, finally, Desert Storm veterans are getting the notice they deserve for the symptoms that one in seven of them have shown after returning to our country after serving in Desert Storm. One in seven of the people who served in the Desert Storm operation came back with symptoms and different stages of debilitation that they did not have when they went to serve our country.

But for years, the Department of Defense and the Department of Veterans Affairs have denied there was any kind of causal connection between these symptoms and their service. It just wasn't plausible.

I happened to learn about some research that was being done at the University of Texas, Southwestern Medical School, that did find a causal connection in a very small unit; it was the first research that really showed the causal connection between actual brain damage and service in the gulf war.

This last week, I am proud to say, the Secretary of Veterans Affairs, Secretary Principi, released a study indicating that gulf war vets are twice as

likely to get ALS; that is, Lou Gehrig's disease. To his credit, Secretary Principi immediately widened the gulf war presumption to cover victims of Lou Gehrig's disease. I have also extended for 5 years—and the President has signed the bill—the presumption that the people with these symptoms would still be able to get the benefits to which they are entitled, even though it hasn't been settled exactly what Desert Storm disease is.

So the bill before us today does have $5 million to continue the research that shows that causal connection. That will not only help keep our promise to the people who served in Desert Storm, but it will also help us understand those whom we are sending today into places where there could be chemical warfare and what we might do to give them the best protection against that chemical warfare. It will also help us to inoculate and treat those who might be affected by chemical warfare in the future. This is something I worked on in the bill, and I appreciate so much Senator INOUYE and Senator STEVENS supporting this particular cause because I think these veterans have been ignored for too long. It is time we treated them the way they deserve to be treated, and that is to give them the medical care and the research to find the cause of the debilitating disease that we see in so many of the people.

Finally, I am very pleased that the bill provides for missile defense. Clearly, we now have a cause to go forward on missile defense. I have always thought it was better to err on the side of doing more for defense, even if we weren't sure what the threats were. Now we know there are people throughout the world who will attack Americans just because we are Americans. So we must defend against that. That is what the missile defense system will prepare our country to do.

This bill provides for that. I close by saying there may be small things in this bill that people don't like. I am sure there are some things in this bill that some people would not support. But the big things are done right. It would be inexcusable for us not to fully fund the war, while we have troops on the ground fighting for the very freedom that we have in this country and that we enjoy in this country.

As we are leaving Congress to go home for the holidays with our families, we must show our appreciation to those who are in the caves in Afghanistan, in Uzbekistan and Pakistan, and who are on missions in Saudi Arabia and Kuwait, who are ready to go at the call of our country, if need be. We want to remember them. I think the most important way we can say thank you to those people is to fully fund their training, their equipment, and the support they deserve as they are going forward in the name of freedom and representing our country in the best possible way.

I thank Senator INOUYE for being the great leader that he is and Senator STEVENS for working in a bipartisan way to assure our troops that we appreciate them and we are going to give them everything they need to do the job they are doing.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. On behalf of Senator STEVENS and I, I express our gratitude to the Senator from Texas for her kind remarks.

UNANIMOUS CONSENT AGREEMENT—S. 1214

Mr. INOUYE. Mr. President, I ask unanimous consent that when the Senate considers Calendar No. 161, S. 1214, the port security bill, the only amendment in order be the Hollings-McCain-Graham substitute amendment, which is at the desk; that there be a time limitation for debate of 17 minutes to be divided as follows: 5 minutes each for Senators HOLLINGS, MCCAIN, and MURKOWSKI, and 2 minutes for Senator HUTCHISON; that upon the use or yielding back of time, the substitute amendment be agreed to, the bill, as amended, be read the third time and passed, and the motion to reconsider be laid upon the table, with no further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. INOUYE. I yield 5 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

The PRESIDING OFFICER. The Chair recognizes the Senator from Michigan.

Ms. STABENOW. I thank the Chair.

Mr. President, I rise to applaud a provision in the supplemental portion of the Defense appropriations conference report. This conference report includes a bill authored by myself and Senator KYL that will help honor the victims of the September 11 attacks. It is called the Unity in the Spirit of America Act, or the USA Act.

We all witnessed a great national tragedy 3 months ago. While the deaths and damage occurred in New York, Washington, and in the fields of Pennsylvania, a piece of all of us died that day. Many people came up to me in Michigan after the attacks and asked: What can I do? I have given blood, I have donated to relief efforts, but I want to do more.

We all shared in the horror and now everyone wants to share in the healing, but how? Then a constituent of mine, Bob Van Oosterhout, wrote me with an idea: Why not have the Federal Government devise a program that will encourage communities throughout the Nation to create something that will honor the memory of one of the victims lost in the attack, one by one by one. Together these local memorials to honor individuals would dot our Nation and collectively honor all of those who were lost in the attacks. What could be simpler or more moving?

From that idea came the Unity in the Spirit of America Act. Here is how it works:

Communities—they can be as small as a neighborhood block or nonprofit organizations, houses of worship, businesses or local governments—are encouraged to choose some kind of project that will unite and help their communities. It is a way they can give back to their community.

Applications and the assigning of names for each project will be handled by the Points of Light Foundation. Basically, we will see a project in a local community dedicated to one of the victims of September 11. The Points of Light Foundation will set up a Web site, applications, and procedures for this. This is privately funded. It is an opportunity for our neighbors, coworkers, and communities across the United States to decide what will be a living legacy to those who died by helping each other.

The Points of Light Foundation will track each project's progress on their Web site. The only rule is that qualified projects should be started by September 11, 2002. Then on that day, as all over America we gather to grieve over the first anniversary of the attack that enraged the world, we will be able to look over thousands and thousands of selfless acts that made our country better.

In our sadness, we can create thousands of points of light across our Nation and show the world that our resolve was not fleeting and our memories are not short. They will see the unity in the spirit of America.

I have many Members to thank for making the USA Act happen. First and foremost, I thank my chief cosponsor, Senator JON KYL, for his commitment and hard work. I thank the chairman and ranking member of the Appropriations Subcommittee on Defense, Senators INOUYE and STEVENS, for their support. I also express my gratitude to Senators MIKULSKI and BOND for their guidance in moving this legislation through the process. Finally, I thank all the cosponsors, who include our Senators from New York and Virginia.

I am very pleased we have come together on our last day in a bipartisan way to put forward this important living legacy to the victims of September 11.

Mr. President, I now yield to my colleague and friend who has been my partner in the USA Act, and that is Senator JON KYL.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I thank the Senator from Michigan for her leadership in this effort. It has been a pleasure to work with her on this legislation. It demonstrates a couple of things: First, that all Americans care about the victims of the tragedy of September 11. Second, that the U.S. Government can be a facilitator but does not have to be the financier of good works on behalf of the people of the country.

At the conclusion of my remarks, I will ask to print in the RECORD a letter

from Robert K. Goodwin who is the president of the Points of Light Foundation.

The president of the Points of Light Foundation points out that there are no Federal funds used in this project but, rather, that money has been raised by people from around the country to support these projects that literally will exist in every corner of this great country. Each one of these projects will be named for one of the victims of the September 11 tragedy.

What the Points of Light Foundation will do is help coordinate so there is a common listing of all the different projects, in which part of the country they are located, and coordinating with the names of the victims. This is a good project for the American people to demonstrate their support for the country, to do good works at the same time, and to memorialize the victims of the tragedy of September 11.

I compliment the cosponsor of the legislation and the chairman and ranking member of the committee for including this legislation in the Defense appropriations bill. I appreciate our colleagues' support for this important project.

Mr. President, I ask unanimous consent that the letter from the president of the Points of Light Foundation be printed in the RECORD.

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

POINTS OF LIGHT FOUNDATION,
Washington, DC, December 20, 2001.

Hon. JON KYL,
U.S. Senate,
Washington, DC.

DEAR SENATOR KYL: The Points of Light Foundation would like to take this opportunity to sincerely thank you for your support and leadership of the Unity in the Spirit of America (USA). We were informed last evening that it will indeed be a part of the FY 2002 Defense Appropriations Bill. We are excited and humbled by this opportunity to create living memorials through service and volunteering, to those who perished as a result of the September 11th terrorist attacks.

Please also let me extend my gratitude to your Legislative Director, Tom Alexander. His hard work in securing the necessary support was particularly appreciated as the bill made its way through several conference committees. His continued accessibility and hands-on approach were invaluable.

As the USA Act stipulates, no federal funds will be utilized in carrying out its provisions. We are extremely pleased to inform you that we have secured significant private and corporate donations to fulfill this most worthy project. In fact, The Walt Disney Company has made a substantial commitment, paving the way for countless community-based memorial service projects, as well as an expansive national media campaign. We look forward to continuing to work closely with yourself and Senator Stabenow in cultivating this important initiative.

In closing, please accept our gratitude and best wishes for a safe, happy and healthy holiday season.

Your very truly,

ROBERT K. GOODWIN
President & CEO.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask the distinguished Senator from Michigan if I may be a sponsor of the amendment. It is a very exciting amendment that we should be considering today.

Ms. STABENOW. It will be my honor, Mr. President, to add the distinguished Senator's name.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, pursuant to the agreement, will the Chair recognize the Senator from Arizona?

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I do not yet seek recognition.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, since no one is seeking time, I ask unanimous consent that the Senator from New Mexico be allowed to speak for 5 minutes on the economic stimulus package.

The PRESIDING OFFICER. Is there objection?

Mr. REID. What is the pending business? What is the request?

The PRESIDING OFFICER. The Senator from New Mexico has asked to speak for up to 5 minutes on the economic stimulus package.

Mr. REID. I reserve the right to object and ask the Senator to amend his request so that the Senator from Georgia, Mr. MILLER, and the Senator from Nebraska, Mr. NELSON, have 5 minutes to speak on the economic stimulus package.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. How much time?

Mr. REID. Two Senators, 5 minutes each: Senators NELSON and MILLER.

Mr. DOMENICI. I have no objection.

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

ECONOMIC STIMULUS PACKAGE

Mr. DOMENICI. Mr. President, I rise to express my sincere disappointment with our seeming inability to consider a stimulus package; that is, a job-creating piece of legislation, for our people. Millions of Americans have lost their jobs over the last year. My fellow New Mexicans, as do all Americans, want and deserve action on this slowing economy.

Let me be very clear. While some would like a different stimulus package than the one the House passed in the early morning hours today, there are alternatives that were considered in this first session.

The House-passed bill will provide needed tax relief to millions of working Americans. It will provide tax relief to those individuals who make more than $28,000 and those who file joint returns making more than $46,000.

These are not rich people. These are hard-working Americans.

Along with provisions to encourage business investment with 30 percent depreciation and extending businesses net operating losses carry back for two years, and increasing expensing provisions for small businesses, the House-passed bill provides nearly $60 billion in tax relief to encourage growth in this weakened economy.

Further, addressing many of the concerns raised on the other side of the aisle, the House-passed bill is a significant improvement over an earlier bill in the area of providing needed help to the unemployed and dislocated workers.

The House-passed bill provides significant support for those who for reasons they do not control, find themselves without employment this holiday season—all totaled nearly $32 billion would be provided in the form of direct payments to low-income workers, extended unemployment benefits and health insurance assistance.

The House-passed bill provides cash payments for those who filed a tax return in 2000 but did not receive a rebate check earlier this year. These payments will be $300 for individuals and $600 for married couples.

The House-passed bill provides 13 weeks of extended unemployment insurance going back to those displaced from work from the beginning of this recession last March.

And including $8 billion in National Emergency Grants and Emergency Medicaid funding to the states, over $21 billion would be assist individuals and families with their health care costs immediately.

The House-passed bill is not perfect. But it is a major improvement over an earlier version, largely because of the input of a group of Senators know as the Centrists here and because of President Bush's willingness to work with them in crafting this package.

I hope that we do not let ''one man rule'' prevent us from even having a vote on this bill.

We need to pass something. But if we don't assure you I will be the first to be back here in January asking that we consider the ''payroll tax holiday'' proposal.

I will take the remaining few minutes and talk to my fellow Senators. Whatever the case and whoever could not reach accord, I believe we have to tell our fellow Americans we did not do them right in the waning days of this session. While Christmas is upon us and good will is everywhere, it is quite obvious the House and Senate, even with the President nudging and participating, did not and will not produce a stimulus package that will get America going again.

I wish we would have considered something in the Senate. I believe there was time for us to consider amendments and even vote on a stimulus package. I think that could have been worked out, and we could have passed something. I regret we have not. I say to the leadership in the Senate, they could have done better.

While I have great respect and, in some cases, admiration for our leadership, I believe in this case one-man rule prevailed, the Democratic majority

leader prevailed. He has what I would call a one-man rule because he can keep us from debating and considering the House-passed measure. He can do that all by himself. That is a very big undertaking by any one Senator, to say we are not going to consider a stimulus package this year in this Senate. That is one-man rule. That is a very big exercise of power.

While the Democratic majority leader has a very difficult job in the waning moments because of different ideas and different proposals and obviously some politics, I think we should have done better and he should have done better.

I close by saying I proposed, along with about 10 Senators, an idea for a holiday from the Social Security taxes imposed on both employee and employer, to do that for 1 month. Nobody suggested to me that is not a very good stimulus, to put before the American people a month that is picked in the near future to put $42 billion into the hands of every working man and woman and every employer across this land in a rather instant payment to them, or nonpayment to the Government, of Social Security withholding.

I believe if we start over with good will, and in a nonpartisan way, when we return because I do not believe the economy will improve and we will be back at this—I urge we consider it at a high enough level to let the country focus on this idea.

There is a lot of talk about the negative aspects of it, and most of them are untrue. If we have a chance to get this issue before a committee, or debate it in the Senate, we would have a great starting point to which we could add the social welfare aspects of the unemployment benefits, of some health care coverage, and all the other issues we are talking about. We would have as a basis a single powerful issue that would be building jobs and causing America to take a look and say we know how to do something very positive.

So I do not give up. If we are doing nothing, I assume this idea will come back and I assume, when we start thinking about it and analyze it well, it will be high on the agenda.

I say to all of my friends in the Senate, they worked very hard. I congratulate them. They worked either as a centrist member of the committee or member of the leadership, put in a lot of time, a lot of effort. I am hopeful even in the last moment it will work and somehow it will come out of the forest and be sitting there for us to look at.

If not, then I urge when we come back and consider how we stimulate, that we put this holiday back on the table with all the other things we have been considering.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I appreciate the opportunity to address the Chamber today and speak on a very important issue we have all been concerned about and we all have had comments about, continue to have thoughts about, and will continue to have them into the future. I speak of the stimulus package.

It is unfortunate we missed the opportunity to be able to conclude a package of the type the centrists put together based on what was supported by so many different individuals and groups. Unfortunately, the blame has already begun. So we are in a position where we are talking about would have, could have, should have. We will have an opportunity as time goes by over this holiday break to continue to talk and continue to look for solutions.

In January, something must in fact be done so we can move forward to protect the jobs of those who currently have them, help those individuals who have lost them, and help create new jobs. This is about three things: Jobs, jobs, jobs. And it is about the people who support them.

TERRORISM INSURANCE

Mr. NELSON of Nebraska. In addition to being concerned about the future of the stimulus package, there is an aspect of stimulus that is involved in another proposal that hopefully will be brought up today, and that is the terrorism insurance issue. It is not about insurers, it is about insureds. It is about the ability to be able to insure one's property, one's house, one's home, one's apartment, one's automobile. If one is a business owner, it is about insuring their storefront or their business. It is about having workers compensation insurance and liability insurance. It is about having insurance for the protection one needs.

There is a very important timeframe we must in fact look at, and that is January 1 of this coming year. I am hopeful we will be able to settle today on a bill and be able to pass something and send it on for reconciliation in conference, so we can match or in some way make it close enough to the House version that a reconciliation of the conference committee is possible, because if we fail to do that, there is a possibility, and perhaps even a strong likelihood, that on January 1 of this coming year 70 percent of the reinsurance that is currently available to direct writers will be affected. It may not provide for terrorism in the future.

I know for many people it seems sort of esoteric. It seems sort of complex and perhaps eyes-glazed-over thinking about insurance and reinsurance and whether there will be protection for terrorism or not, but it is a very real issue, a very real and present concern we must in fact have. It is not about simply insuring skyscrapers. It is about insuring small businesses. It is about apartment buildings, storefronts, and people's own personal residences, as well as their automobiles. It is about whether or not money will be available for lending or whether or not it will continue to be available for construction.

If we are concerned, as I think we are, about a worsening economy and at what point we will be able to see the economy turn around and be stimulated so it can be a robust economy, one of the things we must in fact be concerned about is anything that tips the scales against the economy we have today that can make it worse. In fact, failure to take action can make it worse by not taking the appropriate action to undergird and support it.

If we are unable to come together and make sure insurance continues to be available, as well as affordable, but certainly available to the public, if we fail to take that opportunity, then we might expect construction will be impeded, if not stopped, and that we may in fact see housing starts and other building starts stopped.

Unemployment can be affected. We could end up with more people unemployed, and the economic downturn could be accelerated. I say these things not to provide a scare tactic but simply to impress as to how important it is we solve this problem of availability of terrorism insurance in the near term so we can work for a longer term solution.

What has been offered to date is, in fact, a short-term solution, a backup, a compromise to work in the immediate term, the short term, with broad-based support. I hope we will take this up and move forward.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Georgia.

Mr. MILLER. Madam President, I, too, will have a few remarks on the economic stimulus bill. I think a decision not to have a straight up-or-down vote on it and let the majority of this Senate prevail, regardless of the makeup of the majority, is a mistake. I know it is a loss for the country and the folks who need our help and need it immediately.

Why do we always have to act as if we are in a football game where one side, one team, has to win and the other team has to lose? Why can't we have both parties the winners, along with the American people?

Myself, when it gets down to the block, I am kind of a half-a-loaf man. Whether it is 75 percent, 65 percent, or 50 percent, when you get right down to it, that is always better than zero percent. You can eat half a loaf. Having no loaf at all may make a political point, but in the end somebody goes hungry.

This is not the House bill. I could never have supported that bill. I would never have voted for it. This compromise package does not include everything either side wanted. Instead, it represents a reasonable compromise.

Some say speeding up the reduction of the tax rates from 27 percent to 25 percent is just helping the wealthy. Nothing could be further from the truth. The folks who benefit from this are folks who earn as little as $27,000 a year, going up to $67,000 a year. For married couples, this rate reduction would help those who earn between $47,000 to $120,000 a year. Those are not the wealthy or the rich. Those are middle-income Americans. Many are our

friends and organized labor. This bill also includes a $300 rebate for those who did not get anything from the earlier tax cut.

On the health insurance area, we recognize the need to help the unemployed by providing health insurance for them. This is a very significant change. This is a dramatic change and should be welcomed by both Republicans and Democrats alike.

Some argue that the best way to give laid-off workers access to health care is to provide a 75-percent subsidy for COBRA premiums, as well as access to State Medicaid Programs. Others disagreed and preferred a broader tax credit for health insurance premiums. This package falls somewhere in between, providing a 60-percent advanceable, refundable tax credit for all health insurance.

It is not a whole loaf for anyone, but it represents a practical solution, and it is the best way to do what we all want; that is, to help the workers and help them before it is too late.

The package also includes help for State governments, something our Governors and legislators desperately need right now. It provides almost $5 billion in payments to State Medicaid Programs. This does not represent everything States or many of us wanted. I was hoping to get a fix for the upper payment limit but, again, it is half a loaf.

As it is, we have no loaf. We have no loaf at all. We do not even have a slice. Who was it who said, Let them eat cake?

I yield the floor.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Arizona.

DEFENSE APPROPRIATIONS

Mr. MCCAIN. Madam President, I rise, once again, to address the issue of wasteful spending in appropriations measures; in this case, the bill funding the Department of Defense for fiscal year 2002.

In provisions too numerous to mention in detail, this bill, time and again, chooses to fund porkbarrel projects with little, if any, relationship to national defense at a time of scarce resources, budget deficits, and underfunded urgent defense priorities.

The Web site of the Senate Committee on Appropriations, in its opening sentence, states the following:

> Authorization laws have two basic purposes. They establish, continue, or modify Federal programs, and they are a prerequisite under House and Senate rules . . . for the Congress to appropriate budget authority for programs.

I will not go through all of the unauthorized programs that are in this legislation. I only mention those that relate to the committee of which I am proud to serve and be the ranking member, formally the chairman, the Commerce Committee. I and Senator HOLLINGS and members of my committee take our responsibilities very seriously.

Now we have seen, despite what apparently is the mission or the obligation of the Appropriations Committee—and that is to not appropriate funds for programs that are not authorized—just in the Commerce Committee alone, we have for the 2002 Winter Olympics, $93.3 million; port security grants, $90 million; airport and airways trust fund, payment to air carriers, $50 million; DOT Office of the Inspector General, $1.3 million; FAA operations, taken from the aviation trust fund, without authorization, $200 million.

Just as the appropriators are now taking away highway money appropriated under a formula passed by the full Senate and House and violating TEA–21, we are now taking away from the aviation trust fund for pet projects $200 million worth, to pet projects of the appropriators.

We have FAA facilities and equipment, $108.5 million; Federal Highway Administration, proposed operations, $10 million was requested by the administration, $100 million; capital grants to the National Railroad Passenger Corporation, $100 million; Federal Transit Administration capital investment gains, $100 million; restoration of broadcasting facilities, $8.25 million; National Institutes of Standards and Technology, $30 million; Federal Trade Commission, $20 million; FAA grants and aid for airports, $175 million; Woodrow Wilson Bridge project, $29 million.

Why did they have to do that? Because they took the money out of the highway funds in the Transportation appropriations bill, thereby shorting the Woodrow Wilson Bridge, so they had to add another $30 million to make up for the shortfall. Unfortunately, that was about $500 million that they took, and every other State in America—by the way, not represented by a member of the Appropriations Committee—had highway funds taken away from them.

Provision relating to Alaska in the Transportation Equity Act for the 21st century—it will be interesting to see the impact that has on the rest of America. We have the U.S. 61 Woodville widening project in Mississippi, $300,000; Interstate Maintenance Program for the city of Trenton, $4 million; international sports competition, $15.8, million, emergency planning assistance for 2002 Winter Olympics.

I have to talk for a minute before I get into the major issue, and that is the Boeing lease, and discuss the Olympics issue. It is now up to well over $1.5 billion that the taxpayers have paid.

I refer my colleagues to an article that was in Sports Illustrated magazine, December 10, 2001. The title of it is, ''Snow Job.''

I will not read the whole article. It is very instructive to my colleagues in particular and to our citizens about what has happened in the Utah Olympics. The headline is ''Snow Job.''

> Thanks to Utah politicians and the 2002 Olympics, a blizzard of federal money—a stunning $1.5 billion—has fallen on the state, enriching some already wealthy businessessmen.
>
> Is this a great country or what? A millionaire developer wants a road built, the federal government supplies the cash to construct it. A billionaire ski-resort owner covets a choice piece of public land. No problem. The federal government arranges for him to have it. Some millionaire businessmen stand to profit nicely if the local highway network is vastly improved. Of course. The federal government provides the money.
>
> How can you get yours, you ask? Easy. Just help your hometown land the Olympics. Then, when no one's looking persuade the federal government to pay for a good chunk of the Games, including virtually any project to which the magic word Olympics can be attached.
>
> Total federal handouts. The $1.5 billion in taxpayer dollars that Congress is pouring into Utah is 1½ times the amount spent by lawmakers to support all seven Olympic Games held in the U.S. since 1904—combined. In inflation-adjusted dollars.
>
> Enrichment of private interests. For the first time, private enterprises—primarily ski resorts and real estate developments—stand to derive significant long-term benefits from Games-driven congressional giveaways.
>
> Most government entities tapped for cash. With all that skill, grace and precision of a hockey team on a power play, Utah's five-member congressional delegation has used the Olympics to drain money from an unprecedented number of federal departments, agencies and offices—some three dozen in all, from the Office of National Drug Control to the Agriculture Department.
>
> Most U.S. tax dollars per athlete. Federal spending for the Salt Lake City City Games will average $625,000 for each of the 2,400 athletes who will compete. (Not a penny of it will go to the athletes.) That's a 996% increase from the $57,000 average for the 1996 Olympics. It's a staggering 5,582% jump from the $11,000 average for the 1984 Summer Games in Los Angeles.
>
> Parking lots are costing you $30 million. Some $12 million of that is paying for two 80-acre fields to be graded and paved for use as two temporary lots, then returned to meadows after the flame is extinguished.
>
> Housing for the media and new sewers are each costing you $2 million.
>
> Repaved highways, new roads and bridges, enlarged interchanges and an electronic highway-information system are costing you $500 million.
>
> Buses, many brought in from others states, to carry spectators to venues are costing you $25 million.
>
> Fencing and other security measures at the Veterans Administration Medical Center in northeast Salt Lake City—to protect patients and staff from the Olympia hordes—are costing you $3 million.
>
> A light-rail transit system that will ferry Olympic visitors around Salt Lake City is costing you $326 million.
>
> Improvement at Salt Lake City-area airports are costing you $16 million.
>
> The list goes on and on:
>
> Recycling and composting are costing you $1 million, and public education programs for air, water and waste management are costing you another $1 million.
>
> A weather-forecasting system being set up for SLOC is costing you $1 million. The money is going to the University of Utah to enable its Meterorology Department to provide data that will supplement forecasts provided to SLOC by the National Weather Service.
>
> New trees planted in Salt Lake City and other communities ''impacted'', as the funding legislation put it, by the Olympics are

costing you $500,000. Said Utah Senator Robert Bennett, who arranged for the money. ''We do the Olympics because it gets us together doing thinks like planting trees.''

''We do the Olympics because it gets us together, doing things like planting trees.''

Wow.

I want to repeat, I am all for whatever expenditure for security for the Salt Lake City Olympics. A good part of this $1.5 billion—and there is more in this appropriations bill—has nothing to do with security. It has to do with roadbuilding. It has to do with land swaps, worthless land for valuable land. It has to do with wealthy developers; it has to do with the enrichment of billionaires; and it really is quite a story. I hope every American will read that story that is in Sports Illustrated dated December 10 entitled ''Snow Job''—aptly entitled ''Snow Job.''

As I pointed out before, our nation is at war, a war that has united Americans behind a common goal—to find the enemies who terrorized the United States on September 11 and bring them to justice. In pursuit of this goal, our service men and women are serving long hours, under extremely difficult conditions, far away from their families. Many other Americans also have been affected by this war and its economic impact, whether they have lost their jobs, their homes, or have had to drastically cut expenses this holiday season. The weapons we have given them, for all their impressive effects, are, in many cases, neither in quantity nor quality, the best that our government can provide.

For instance, stockpiles of the precision guided munitions that we have relied on so heavily to bring air power to bear so effectively on difficult, often moving targets, with the least collateral damage possible, are dangerously depleted after only 10 weeks of war in Afghanistan. This is just one area of critical importance to our success in this war that underscores just how carefully we should be allocating scarce resources to our national defense.

Yet, despite the realities of war, and the responsibilities they impose on Congress as much the President, the Senate Appropriations Committee has not seen fit to change in any degree its usual blatant use of defense dollars for projects that may or may not serve some worthy purpose, but that certainly impair our national defense by depriving legitimate defense needs of adequate funding.

Even in the middle of a war, a war of monumental consequences and with no end in sight, the Appropriations Committee, Mr. President, still is intent on using the Department of Defense as an agency for dispensing corporate welfare. It is a terrible shame that in a time of maximum emergency, the U.S. Senate would persist in spending money requested and authorized only for our Armed Forces to satisfy the needs or the desires of interests that are unrelated to defense needs.

The Investor's Business Daily, on December 18, 2001, had this to say in an article titled At the Trough: Welfare Checks to Big Business Make No Sense:

Among the least justified outlays is corporate welfare. Budget analyst Stephen Slivinski estimates that business subsidies will run $87 billion this year, up a third since 1997, Although President Bush proposed $12 billion in cuts to corporate welfare this year, Congress has proved resistant. Indeed, many post-September 11 bailouts have gone to big business. Boeing is one of the biggest beneficiaries. Representative Norm Dicks, Democrat from Washington, is pushing a substantial increase in research and development support for Boeing and other defense contractors, the purchase of several retrofitted Boeing 767s and the leasing of as many as 100 767s for purposes ranging from surveillance to refueling. Boeing has been hurt by the storm that hit airlines, since many companies have slashed orders. Yet China recently agreed to buy 30 of the company's planes, and Boeing's problems predate the September 11 attack. It is one thing to compensate the airlines for forcibly shutting them down; it is quite another to toss money at big companies caught in a down demand cycle. Boeing, along with many other major exporters, enjoys its own federal lending facility, the Export-Import Bank. ExIm uses cheap loans, loan guarantees and loan insurance to subsidize purchases of U.S. products. The bulk of the money goes to big business that sell airplanes, machinery, nuclear power plants and the like. Last year alone, Boeing benefitted form $3.3 billion in credit subsidies. While corporate America gets the profits, taxpayers get the losses. . . .

As I mentioned last week when the Senate version of the Defense Appropriations bill was being debated—and now carried through the Conference Committee—is a sweet deal for the Boeing Company that I'm sure is the envy of corporate lobbyists from one end of K Street to the other. Attached is a legislative provision to the Fiscal Year 2002 Department of Defense Appropriations bill that would require the Air force to lease one hundred 767 aircraft for use as tankers for $26 million apiece each year for the next 10 years. Moreover, in Conference Committee the appropriators added four 737 aircraft for executive travel—mostly benefitting Members of Congress. We have been told that these aircraft will be assigned to the 89th Airlift Wing at Andrews Air Force Base.

Since the 10-year leases have yet to be signed, the cost of the planes cannot be calculated, but it costs roughly $85 million to buy one 737, and a lease costs significantly more over the long term.

The cost to taxpayers?

$2.6 billion per year for the aircraft plus $1.2 billion in military construction funds to modify KC–135 hangars to accommodate their larger replacements, with a total price tag of more than $30 billion over 10 years when the costs of the 737 leases are also included. This leasing plan is five times more expensive I repeat, five times more expensive to the taxpayer than an outright purchase, and it represents 30 percent of the Air Force's annual cost of its top 60 priorities. But the most amazing fact is that this program is not actually among the Air Force's top 60 priorities—it was not among their top 60 priorities—nor do new tankers appear in the 6-year defense procurement plan for the Service!

That's right, when the Air Force told Congress in clear terms what its top priorities were tankers and medical lift capability aircraft weren't included as critical programs. In fact, within its top 30 programs, the Air Force has asked for several essential items that would directly support our current war effort: wartime munitions, jet fighter engine replacement parts, combat support vehicles, bomber and fighter upgrades and self protection equipment, and combat search and rescue helicopters for downed pilots.

Let me say that again, within its top 30 programs, the Air Force has asked for several essential items that would directly support our current war effort: wartime munitions, jet fighter engine replacement parts, combat support vehicles, bomber and fighter upgrades and self protection equipment, and combat search and rescue helicopters for downed pilots.

This leasing program also will require $1.2 billion in military construction funding to build new hangars, since existing hangars are too small for the new 767 aircraft. The taxpayers also will be on the hook for another $30 million per aircraft on the front end to convert these aircraft from commercial configurations to military; and at the end of the lease, the taxpayers will have to foot the bill for $30 million more, to convert the aircraft back—pushing the total cost of the Boeing sweetheart deal to $30 billion over the ten-year lease. Mr. President, that is waste that borders on gross negligence.

I wrote a letter to the Director of OMB. Here is the answer I received:

DEAR SENATOR MCCAIN:

Thank you for your inquiry regarding the costs associated with the conversion of 767 aircraft tankers. According to the Air Force, the total cost for a program to lease 100 tankers is approximately $26 billion.

I ask unanimous consent that the letter from Mr. Mitchell Daniels, Director of OMB, be printed in the RECORD.

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, December 18, 2001.

The Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: Thank you for your inquiry regarding the costs associated with the conversion of 767 aircraft to tankers. According to the Air Force, the total cost for a program to lease 100 tankers is approximately $26 billion. I have attached a summary of assumptions and costs they have identified. Please let me know if you require any additional information.

Sincerely,

MITCHELL E. DANIELS, JR.,
Director.

Mr. MCCAIN. Mr. President, I want to read a letter that I received recently. This letter is from the Americans for Tax Reform, Council for Citizens Against Government Waste, Congressional Accountability Project, Ronnie Dugger, Ralph Nader, National Taxpayers Union, Project on Government Oversight, Public Citizen, and Taxpayers for Common Sense.

All of these organizations are on the right and the left of the political spectrum.

They wrote the following letter:

DECEMBER 19, 2001.

DEAR SENATOR: Even as veteran observers of the Congressional appropriations process, we are shocked, and outraged, by the provision in the Defense Appropriations bill that would have the Air Force lease Boeing 767s at a price dramatically higher than the cost of direct purchase. We are writing to urge you to take to the floor to speak and vote against this specific siphoning of taxpayer money to the Boeing company.

Leave aside the serious questions about whether the Air Force wants or needs the 767s, and simply consider the economics of this sugar-coated deal:

Under the Boeing lease provision, the Air Force will lease 100 Boeing 767s for use as tankers, at a pricetag of $20 million per plane per year, over a 10-year period. This $20 billion expenditure is far higher than the cost of direct purchase. The government will accrue extra expenses because it will be obligated not only to convert the commercial aircraft to military configurations; when the 10-year lease is over, it will be required to convert them back to commercial format, at an estimated cost of $30 million apiece. Senator John McCain says the cost of the lease plan is five times higher than an outright purchase would be. Senator Phil Gramm says, ''I do not think, in the 22 years I have been here, I have ever seen anything to equal this.''

''I don't think, in the 22 years I have been here, I have ever seen anything to equal this.''

The letter goes on to say:

There is no conceivable rationale for such a waste of taxpayer resources. If some in Congress believe Boeing needs to be subsidized, then they should propose direct subsidies to the company, and let Congress fully debate and vote on the issue before the American people, following comprehensive public hearings on the proposal.

This is not a partisan issue. It is a basic test of whether Congress views itself as fundamentally accountable to the public interest, both procedurally and substantively.

There will obviously be a Defense Appropriations bill passed for the coming fiscal year. But it must not be one that includes such a gross exhibition of corporate welfare. We urge you to speak and vote against the bill; and to force consideration of a revised bill, stripped of this grotesquery.

Sincerely,

RALPH NADER,
GROVER NORQUIST,
President, Americans for Tax Reform.

I have never seen Ralph Nader and Grover Norquist on the same letter in all the years I have been in this town.

The letter is also signed by the following:

THOMAS A. SCHATZ,
President, Council for Citizens Against Government Waste.

GARY RUSKIN,
Director, Congressional Accountability Project.

RONNIE DUGGER,
Alliance for Democracy (organization listed for identification only).

PETE SEPP,
Vice President for Communications, National Taxpayers Union.

DANIELLE BRIAN,
Executive Director, Project on Government Oversight.

JOAN CLAYBROOK,
President, Public Citizen.

JOE THEISSEN,
Executive Director, Taxpayers for Common Sense.

Mr. President, I guess the obvious question that would then be asked is, How did this happen? On its face it is incredible.

Let me try to illuminate my colleagues on an article of December 12 in the New York Times entitled ''Boeing's War Footing; Lobbyists Are Its Army, Washington Its Battlefield.''

I will not read the entire article.

It says:

Staggered by the loss of the largest military contract in history and the collapse of the commercial airline market, Boeing has sharply intensified its efforts in Congress and the Pentagon to win an array of other big-ticket military contracts.

Mobilizing an armada of well-connected lobbyists, sympathetic lawmakers and Air Force generals, the company argues that by financing its contracts Congress would reduce the need for thousands of layoffs and help keep Boeing, the second-largest military contractor, healthy in a time of war:

It talks about losing the joint strike fighter to Lockheed Martin.

Those events sent Boeing reeling. But like battle-tested generals on the retreat, Boeing executives swiftly moved to recover their losses in a time-tested Washington way: wooing Congress and the Pentagon to support other contracts.

Few companies can rival Boeing influence in the capital. Its Washington office, headed by Rudy F. de Leon, the deputy secretary of defense in the final year of the Clinton administration, employs 34 in-house and more than 50 outside lobbyists.

One of the Boeing lobbyists' first moves after Sept. 11 was to prod the Air Force to reconsider the 767 lease deal, which had stalled months before. Though the Air Force has said it plans to replace its 40-year-old KC–135 tankers in the next decade or two, it has preferred to spend its money on elite fighter jets like the F–22.

But the war in Afghanistan has kept dozens of KC–135's in the air almost constantly, putting pressure on the Air Force to accelerate its replacement program. James Roche, the secretary of the Air Force, and Gen. John P. Jumper, the Air Force chief of staff, signed into the lease-purchase idea because it would spread the cost out into the future, Pentagon documents show.

Boeing next had to break down resistance to lease arrangements in Congress. According to one internal Pentagon study, a lease-purchase deal for 100 767's would cost 15 percent more than simply buying the planes. Moreover, federal rules discourage such deals by requiring that most of the entire contract cost be paid in the first year. To get around that, Boeing proposed having the Air Force simply lease the aircraft without a purchase option. But that would not cover the cost of adapting them for refueling and surveillance, or of ultimately buying them, as the Air Force is expected to do.

The company recruited the Congressional delegations from Washington and Missouri—the two states where it assembles most of its aircraft—to support the plan. And in the Senate, it found a powerful ally in Ted Stevens of Alaska, the ranking Republican on the Appropriations Committee, who is a fan of lease-purchase deals for the military.

Boeing lobbyists with Congressional experience—including Mr. de Leon, who also was a staff director for the House Armed Services Committee, and Denny Miller, a former chief of staff to the late Senator Henry M. Jackson of Washington—help negotiate the lease language.

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

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

Staggered by the loss of the largest military contract in history and the collapse of the commercial airline market, Boeing has sharply intensified its efforts in Congress and the Pentagon to win an array of other big-ticket military contracts.

Mobilizing an armada of well-connected lobbyists, sympathetic lawmakers and Air Force generals, the company argues that by financing its contracts Congress would reduce the need for thousands of layoffs and help keep Boeing, the second-largest military contractor, healthy in a time of war. ''You've got the nation's leading exporter, and one of its leading military contractors, who has been hit hard,'' said Representative Norm Dicks, a Washington State Democrat who has led the charge for Boeing on Capitol Hill. ''We can really help them.''

The push underscores a broader trend for Boeing, company officials and analysts say. The company, with most of its production in the Seattle area, has suffered a sharp downturn in commercial aircraft business, which last year generated two-thirds of its $51.3 billion in sales. Boeing is expected to announce this week that production of its 717 commercial airliners will be cut by half, to as little as one plane a month from two, company executives said. As recently as a month ago, analysis predicted that the company would end all 717 production, in part because the Sept. 11 attacks have slowed demand for commercial jets.

As a result, Boeing is looking more than ever to its military and space divisions to bolster sagging revenue.

Last week, it won a big lobbying battle when the Senate approved a sharply contested plan for Boeing to lease to the Air Force 100 new 767 wide-body jets for use as refueling tankers and reconnaissance planes. The proposal next goes before a House-Senate conference committee.

At an estimated cost of more than $20 billion over 10 years, that plan has been attacked as a costly corporate bailout by critics led by Senator John McCain, a Republican from Arizona. But supporters say that it would not only significantly offset Boeing's loss of orders from ailing commercial airlines but also help the Pentagon by accelerating the replacement of aging midair refueling tankers and reconnaissance aircraft that both have been worn down by heavy use in the war in Afghanistan.

''Near term, it's a very nice financial salve to an immediate wound,'' said Howard Rubel,

a military industry analysis at Goldman Sachs.

The 767 plan is just one of several major Pentagon programs that Boeing is prodding Congress to sustain, expand or accelerate. The company is the lead contractor on more than a dozen major contracts accounting for well over $10 billion in the 2002 Pentagon budget alone. Those include the F/A–18 fighter jet for the Navy, the V–22 Osprey tiltrotor aircraft for the Marine Corps, the AH–64 Apache Longbow helicopter for the Army and the airborne laser for the Pentagon's Ballistic Missile Defense Organization.

In addition, Boeing has been trying for years to become the dominant player in an array of new businesses, including unpiloted aircraft, battlefield and cockpit communications, surveillance technology and precision-guided numitions. The war on terrorism has only underscored the Pentagon's need for more of those systems, Boeing and its allies assert.

''What we're about to see was the reason for the merger with McDonnell Douglas in the first place,'' said Gerald E. Daniels, president of Boeing's military aircraft and missile systems division. ''With the cyclical nature of the commercial business, building strong military and space units serves to tamp down those gigantic swings.''

In 1999, two years after the merger with McDonnell Douglas, Boeing delivered 620 commercial aircraft, for revenue of $38.5 billion. By next year, analysts estimate, deliveries are expected to tally only 367, with revenue down to $26 billion.

The collapse in the commercial market resulted, of course, from the suicide hijacking attacks of Sept. 11. Air travel plummeted and airlines canceled dozens of jet orders, prompting Boeing to announce plans to lay off 30,00 workers over the next two years.

Just when it seemed Boeing's fortunes could not be worse, in October the Pentagon awarded a $200 billion contract for the Joint Strike Fighter to Boeing's larger rival, Lockheed Martin. The stealthy jet is expected to become the mainstay fighter for the Navy, Air Force and Marine Corps in the next two decades, raising doubts about Boeing's future in the tactical fighter business.

Those events sent Boeing reeling. But like battle-tested generals on the retreat, Boeing executives swiftly moved to recover their losses in a time-tested Washington way: wooing Congress and the Pentagon to support other contracts.

Few companies can rival Boeing's influence in the capital. Its Washington office, headed by Rudy F. de Leon, the deputy secretary of defense in the final year of the Clinton administration, employs 34 in-house and more than 50 outside lobbyists.

One of the Boeing lobbyists' first moves after Sept. 11 was to prod the Air Force to reconsider the 767 lease deal, which had stalled months before. Though the Air Force has said it plans to replace its 40-year-old KC–135 tankers in the next decade or two, it has preferred to spend its money on elite fighter jets like the F–22.

But the war in Afghanistan has kept dozens of KC–135's in the air almost constantly, putting pressure on the Air Force to accelerate its replacement program. James Roche, the secretary of the Air Force, and Gen. John P. Jumper, the Air Force chief of staff, signed onto the lease-purchase idea because it would spread the cost out into the future, Pentagon documents show.

Boeing next had to break down resistance to lease arrangements in Congress. According to one internal Pentagon study, a lease-purchase deal for 100 767's would cost 15 percent more than simply buying the planes. Moreover, federal rules discourage such deals by requiring that most of the entire contract cost be paid in the first year. To get around that, Boeing proposed having the Air Force simply lease the aircraft without a purchase option. But that would not cover the cost of adapting them for refueling and surveillance, or of ultimately buying them, as the Air Force is expected to do.

The company recruited the Congressional delegations from Washington and Missouri—the two states where it assembles most of its aircraft—to support the plan. And in the Senate, it found a powerful ally in Ed Stevens of Alaska the ranking Republican on the Appropriations Committee, who is a fan of lease-purchase deals for the military.

Boeing lobbyists with Congressional experience—including Mr. de Leon, who also was a staff director for the House Armed Services Committee, and Denny Miller, a former chief of staff to the late Senator Henry M. Jackson of Washington—helped negotiate the lease language.

With Senator Patty Murray, a Washington Democrat, the Boeing president, Philip A. Condit, has repeatedly met with senior lawmakers like Daniel Inouye, the chairman of the Senate Appropriations subcommittee on the military, and the Senate majority leader, Thomas Dashle. Last week, Mr. Condit returned to discuss the deal with several leading skeptics in the House, including the speaker, J. Dennis Hastert, and Representative Jerry Lewis of California, the influential chairman of the House subcommittee on defense appropriations.

A spokesman for Mr. Lewis, Jim Specht, said the Congressman remained undecided on the lease deal, but added: ''There is the concern that because of the Joint Strike Fighter contract, something has to be done to make sure we support all of our industrial base.''

All the work, however, did not win over Senator McCain, who last week accused Boeing of ''playing victim, blaming its own job cuts, many of which occurred before Sept. 11, on the tragedy itself.''

Boeing seems to have won Congressional support for accelerating purchases of C–17's, the all-purpose cargo planes it builds in Long Beach, Calif., at a former McDonnell Douglas plant. Last spring, Boeing formally asked that the Pentagon buy 60 more planes at a cost of about $150 million each. Without that increase, the Long Beach production line is scheduled to close later this decade.

Boeing has also tried to wiggle its way into the Strike Fighter deal. The company has quietly hinted that it could urge Congress to buy more unmanned aircraft or its F/A–18 to take the place of Navy and Air Force versions of the Joint Strike Fighter if Lockheed did not agree to give it a substantial piece of the work.

It has urged Senator Christopher S. Bond, a Missouri Republican, to continue promoting legislation requiring Lockheed to split the Strike Fighter work with Boeing. Senator Bond withdrew his bill for lack of support, but on Friday he won Senate funds for a study into whether the Pentagon should have two manufacturers of tactical fighter aircraft.

''I want to make sure we maintain that production line in St. Louis, because it's in the national interest,'' Mr. Bond said in an interview.

Lockheed, however, notes that it already has two major partners, the British military contractor BAE Systems and Northrop Grumman. ''There is only so much work to go around,'' said Charles Thomas Burbage, director of the fighter project for Lockheed.

Boeing, with the help of Senator Bond and Representative Richard A. Gephardt, the House Democratic leader, who comes from the St. Louis area, is also pushing the Navy to replace its aging EA6–B Prowler radar-jamming planes with an electronic-warfare version of the F–18, a move that could help keep Boeing's St. Louis plant open longer.

Unmanned aircraft are another focus of Boeing lobbying. Last month, Boeing organized a new division headed by a senior executive from its Strike Fighter program, Mike Heinz, to help it expand into a market the company estimates will top $1 billion a year.

Boeing is already building a prototype unmanned fighter for the Air Force, a project that many industry officials say is Boeing's to lose. At a recent meeting of industry executives, Darleen A. Druyun, the principal deputy assistant secretary of the Air Force for acquisition and management, spoke glowingly about the future of unmanned aerial vehicles.

''I see a very bright future for Boeing when it comes to aviation,'' she said, ''particularly in the areas of UAV's and in sales of C–17's.''

Mr. MCCAIN. Mr. President, when the Department of Defense appropriations bill was on the floor, Senator GRAMM of Texas, I, and others decided that we would do what we could to oppose this being included in the legislation.

We were prepared to engage in extended debate on this and many of the other provisions of the Defense appropriations bill. After conversations with Senator GRAMM and Senator STEVENS, I agreed to an amendment on my behalf along with Senator GRAMM that would give the President the authority not to spend the money if we found other more compelling needs for national defense, which seems like a reasonable solution to the dilemma in which we found ourselves.

(Mr. CLELAND assumed the Chair.)

Mr. MCCAIN. I will admit to a certain degree of naivety. I believed that provision would be held in conference. Obviously, I was incredibly naive. That provision, I am told, was the first to go.

So now we have a situation—even though the Air Force in its top 60 priorities did not request additional tankers, but did have plans in the next 10 years or so to purchase aircraft with refueling capability—we now have a provision in law, which I obviously will not be able to reverse, without competition.

Maybe Airbus could have provided some tankers. Maybe some airlines with excess aircraft could have provided some tankers. But no competition is allowed. It directs that it be 767s.

Now, of course, to sweeten the pot, we have four 737s which will go out to Andrews Air Force Base and be part of the aircraft that are used for ferrying VIPs and Members of Congress around the world.

I think you could make an argument that Boeing needs to be bailed out, that they are in trouble. They are a major manufacturing company. They lost out on a new fighter aircraft competition. There may be some argument to that. I might even consider cutting them a check for some money. We cut checks for a lot of other interests around here.

But there was never a hearing in the Armed Services Committee—never a

hearing in the Armed Services Committee—of a $30 billion purchase here. It was never considered by the Armed Services Committee—not once. Never did it come up. No. No, Mr. President. Again, it was stuck in an appropriations bill, stuck into an appropriations bill without a single hearing. Not even in the Appropriations Committee did they have a hearing on this.

What I am saying is, this system has run amok. This system has run amok. We are now in the situation where anyone who is not on the Appropriations Committee becomes irrelevant, particularly at the end of the year.

Where is the relevancy of the Commerce Committee when $310 million in appropriations is added on a Defense appropriations bill? Where is the relevancy when billions of dollars on a Defense appropriations bill are put in that have nothing to do with defense?

Where is the relevancy of the authorizing committees when billions and billions and billions of dollars are added without a hearing, without consideration, and without authorization?

I suggest that the Appropriations Committee change their Web site, the one I quoted earlier, that says that only authorized appropriations will be made. It says:

> Authorization laws have two basic purposes. They establish, continue, or modify federal programs, and they are a prerequisite under House and Senate rules . . . for the Congress to appropriate budget authority for programs.

I strongly recommend that the Appropriations Committee remove that from or at least add: However, in practice, that is not the case.

We now have disabled veterans who are not receiving the money that they need. It is an effort that I and the Presiding Officer have engaged in for several years now. They do not have a very big lobby around here. They do not have Rudy de Leon and Denny Miller, and a lot of high-priced lobbyists. So veterans who have disabilities are being deprived money they should rightly have, that any other person stricken with a similar disability, under any other circumstance, would receive.

We still have men and women in the military living in barracks that were built during World War II and the Korean war.

We still have a situation, at least up until the surge of patriotism as of September 11, where there has been enormous difficulty in maintaining our noncommissioned officers and our midlevel career officers.

A recent study by the U.S. Army showed the greatest exodus of Army captains in the history of the U.S. Army, which is quite interesting, to say the least.

We will not take care of these veterans, but we will put about $3 billion out of the Commerce Committee—under the Commerce Committee jurisdiction—into this Department of Defense appropriations bill. We will take care of the special interests. We will take care of the big campaign contributors.

I am sure Boeing will be extremely generous at the next fundraisers that both the Republican and Democrat Parties have. They have already been incredibly generous. And, by the way, they are very schizophrenic in their political outlook because they give pretty much the same amount of money to both parties, which shows how ideologically driven they are.

And we will get 767s. I am sure they are nice airplanes. But who is going to pay? Who is going to pay for it? The average taxpayer, because the cost to the taxpayer of this little backdoor, backroom maneuver is billions of dollars more than it should have been.

I remind you, the average lifespan of a tanker is around 35 to 40 years. That is the average lifespan because they are relatively simple airplanes. They are really flying gas stations. So they last a long time.

So what are we going to do? Pay 90 percent of the cost of the airplane and, after 10 years, pay to have it de-engineered as a tanker and give it back to Boeing, at a minimum of one-third of the life of the tanker. With a straight face, how can we possibly do this?

I had a lot of other concerns about the porkbarreling, but I want to say this. One of two things is going to happen around here in the Senate: Either the Appropriations Committee controls the entire agenda and does the things that we continue to see in ever increasing numbers—and I have been tracking it for many years; every year the Appropriations Committee adds more and more projects that are not authorized every year; and this year it is a big jump—or we are going to stop it; or we are going to have a change in the rules that comports with the Web site of the Appropriations Committee; that is, that no appropriation will be made that is unauthorized and no appropriation will exceed the authorized level either in an appropriations bill or in a conference report.

It is a pretty simple rule. And it would be subject to a point of order.

Now, there are times where appropriations have to be made, and that is where the point of order would come in. But unless we change the rules the way this body goes—I suggest to my colleagues that they understand we can have nice hearings.

We have some very interesting hearings in the Commerce Committee on a broad variety of subjects. It is great. It is the most intellectually stimulating experience I have ever had in my service on the Commerce Committee and on the Armed Services Committee, of which I have been a member since 1987.

I find it extremely enjoyable. The discussions are wonderful. I learn more about how our military is conducting their operations, how we are planning for the future. But do not think, as members of the authorizing committee, you will have the slightest effect on what is done in this body.

I am not going to take too much longer, but I will just make a reference. In 1997—since the Senator from Hawaii is here—there was a proposal put in an appropriations bill to build two ships in Mississippi. And certain waivers were made in those requirements. In return for that, those ships would operate from the State of Hawaii. About $1 billion worth of taxpayers' money was on the line.

I said, this is crazy. You can't do this. This is outrageous. Do you know what happened a few weeks ago? The company went bankrupt. There are two hulls sitting in the State of Mississippi. The taxpayers are already on the hook for $300-some million, and it will probably rise to $1 billion.

If that proposal had gone through the Commerce Committee, it never would have seen the light of day because, on its face, it was crazy. To give a 30-year or 20-year, or whatever it is, exclusivity to a cruise line in return for them being built with taxpayers' dollars, there was no way it was going to succeed. And I said so at the time.

So now the taxpayers are on the hook for $1 billion.

We are talking about real money. What is going on here? It is because we are violating the process and the rules for the way we should operate. Perhaps this Boeing deal would have gotten some consideration in a very different fashion. Probably what would have resulted is that we would have authorized the purchase of three or four 767s and then in the following year we would have authorized some more, depending on what the administration wanted. But now we are putting in 100 airplanes that weren't in the top 60 requirements the Air Force told the Congress and the American people they needed. After 10 years, one-third to one-fourth of their lifespan, we give them back. How does anybody justify this kind of procedure?

I suggest that the Senate look at itself. I can't speak for the House. The Senate ought to look at itself. What are we doing? What do we do here? I think I may be one of four or five Senators who has examined this bill. I may be one of four or five who has looked at this bill because I have about 10 staffers leafing through it trying to figure out what is in it. Everybody certainly wants to go home. I understand that. That is why I will not talk too much longer.

I said on the floor of the Senate that the Department of Defense appropriations bill would be the last bill we considered because it would have the most pork in it because everybody would want to go home and nobody would want to look at it. This is a bill that we received sometime this afternoon or late morning, this is the legislation, $343 billion. What is it full of? Does anybody know? I have had about 10 staffers trying to leaf through it and find out. We have already found billions of dollars of unauthorized projects.

This kind of behavior cannot go on. It can't go on. You will lose the confidence of the American people. You will lose their faith that you are representing them and their tax dollars and their priorities.

This is called war profiteering: On the 21st of December, the last bill, the last train loaded up, nobody has read it, and we vote for it. We all vote for it because, of course, we are in a war. We can't not do that. I won't. But the fact is, we better change the way we are doing business, and we ought to look at ourselves and see if we are proper stewards of the taxpayers' dollars.

More importantly, are we proper stewards of our Nation's defense? Are we placing our national priorities for our military and the men and women in the military and their needs first?

This is going to be a long war on terrorism. We can't afford to put all this stuff in a Defense appropriations bill that has nothing to do with defense. We can't load it up with all this pork for the Salt Lake City Olympics. We can't give sweetheart deals to cruise lines.

Early next year when we come back, I will propose a change in the rules of the Senate. I hope it will be considered by many of my colleagues. I know it probably won't be considered by those on the Appropriations Committee because now they have all the power. But I believe that this is a body of equals, of 100 equal Senators. Some are elected to our majority; some are chairmen and ranking members of committees and, obviously, have more power than others. But we are equals when it comes time to do what we should be able to do with the taxpayers' dollars.

The power is now in the hands of the Appropriations Committee and those members of the Appropriations Committees. You read these things. First you laugh, and then you cry. It is really unbelievable. I laughed when I saw $75,000 for the Reindeer Herders' Association. I cried when I saw $6 million for the airport in Juneau. We need to upgrade airports all over America.

I was very disturbed when I saw that for the byways program, last year 40 States got money for the Scenic Byways Program; this year it is 11. I was very disturbed when I saw the Transportation Appropriations Committee took $453 million out of the formula for highway fund distribution to the States and distributed it among the States of the appropriators. How do you justify that?

We debated for a week in the Senate on that formula. I didn't like the result because Arizona receives less money from Washington in our taxpayers' dollars than we send, but I accepted the verdict of the entire 100 Senators. Now hundreds of millions of dollars that should be fairly distributed under that formula were taken by the Transportation appropriators without a debate, without a hearing, and distributed to the States of the appropriators.

That kind of thing cannot continue. It cannot continue or it renders meaningless not only the nonappropriators but the debate we had. Why did we waste a week debating the TEA–21 formula. Because we thought it was important. We thought that was the way the money would be distributed. Then the Appropriations Committee takes that money and redistributes it, coincidentally, to the States of the members of the Appropriations Committee. We can't continue doing this.

I know the hour is late. I apologize to my colleagues if I have inconvenienced them. But I warned them weeks ago that the last train would be the Defense appropriations bill, and everybody would want to vote for it and leave.

I just hope that a document this big, with this much money, $343 billion in taxpayers' money, that before we vote on something such as this again, at least let's look at it and see what it contains.

I yield the floor.

Mr. HATCH. Mr. President, I want to take this opportunity to set the record straight with respect to a good deal of misinformation which has been circulating about Federal support for the 2002 Winter Olympic Games in Salt Lake City, Utah. In fact, earlier today, one of our colleagues took the floor to condemn the funding Congress has provided for the 2002 Olympics. I listened carefully to his remarks. I have to say that if his understanding of the situation were true, I could understand how he feels. Unfortunately, however, I believe he and others have relied on incomplete and distorted press accounts which are, simply, a disservice to the Olympic spirit that a majority of Americans have raced to embrace. Most of these distortions seem to have originated with an article in the December 10, 2001 edition of Sports Illustrated. The article, ironically entitled ''Snow Job,'' is in fact a snow job itself.

The thrust of the criticisms to which I refer appears to be an incorrect assumption that, in seeking support for the Olympic Games, the State of Utah is somehow attempting to enrich itself unfairly at the expense of American taxpayers. Nonsense. Poppycock. Malarky. What those who race to criticize our Olympic games fail to consider is that these are the world's Olympic Games, a time-honored tradition which our nation is so fortunate to be hosting in February. I find these slams against the Olympic Games particularly discouraging given the fact that tomorrow the Olympic torch will arrive on Capitol Hill. And I cannot fail to note that it was this very body, only days ago, that unanimously authorized the torch to be carried to our Capitol, and some are here today questioning our support for that effort.

Enthusiasm has been building across the country as the torch makes its way from Athens to Atlanta, and now from Atlanta to Washington to Salt Lake. Hundreds of thousands of spectators have been lining the streets, cheering on the torch-bearers as they carry the Olympic flame throughout the country. We have all been so heartened to see citizens from all walks of life passing the torch, honoring everyday heroes. The message of the Salt Lake 2002 Olympic Torch Relay is ''Light the Fire Within.'' The flame symbolizes the spirit and passion of individuals who inspire others. The young people who make great sacrifices to become Olympic champions are certainly heroes. The flame celebrates not only the Olympians, but people of all walks of life who have inspired others.

While the Torch Relay is only a part of the Olympics, it is symbolic of the fire and passion for excellence that the games are all about. it is ironic that a publication which has staked its reputation on America's passion for athleticism now just weeks before the opening ceremony seeks to diminish the glory of the games by sensationalizing an issue that has been scrutinized and laid to rest months ago. It is also personally discouraging to me that one of our colleagues would seize this one article, one story among a vast sea of positive journalism on the Olympics, as a populist club in a years-long crusade to curb unwise and unneeded Federal spending. Good motive. Wrong target.

Those of our colleagues who are interested in a fair and balanced analysis of Olympic spending should consult the November, 2001 General Accounting Office, GAO, report, ''Olympic Games Costs to Plan and Stage the Games in the United States.'' And if you have any problem getting a copy of the report, let me know and I'll send it right over. The GAO study debunks many of the criticisms and draws an accurate picture which should put into proper perspective many of the misconceptions that are circulating. As any fair-minded reader can glean from the extensive GAO analysis, the Sports Illustrated article compares apples to oranges when calculating the costs of the various Olympic planning events that have taken place in this country. For example, critics of Olympic spending often compare transportation improvements in Utah to those in Lake Placid, a small rural community.

The article also fails to take into consideration the passage of time and the changing scope of the Olympics as the international communities' participation in the Olympics has grown. Most disappointing, the article to fails to demonstrate an understanding of federal funding of state highway projects and the costs associated with highway projects already in the planning stages for federal funding.

Earlier, our colleague decried that the Olympic Games will cost about $1.5 billion. Wrong again. Actually, it is over that amount. But as the GAO report makes perfectly clear, Federal support only accounts for 18 percent of that total. In truth, as the GAO analysis makes clear, the total projected cost, both public and private, of staging the 2002 Winter Olympic and

Paralympic Games, excluding additional security requirements resulting from the September 11, 2001 terrorist attacks, is $1.9 billion. Of this total, GAO estimates that $342 million will be provided by the federal government, 18 percent. GAO also documents that the State of Utah will provide $150 million. That is eight percent, or almost half the Federal amount provided by the 50 States for this international effort.

Local governments alone are providing four percent, or $75 million. And the Salt Lake Organizing Committee has raised the vast majority of the funding, $1.3 billion. That is 70 percent. This represents the hard work of hundreds of people who have spent weeks and months raising private donations. This is a true public-private partnership, which shows America at its best. So why are we not racing to praise this effort, rather than condemn it? The GAO report levels the playing field by making more accurate funding comparisons with previous Olympic Games held in the United States. Rather than using a dollar to dollar comparison, a distorted calculation, the GAO report uses a percentage comparison, a better gauge to assess the true costs to the Federal government.

For the edification of my colleagues, I would like to point out that a second report will be published shortly that compares the 2002 Winter Salt Lake Winter Olympics with Olympic games in other countries. This report will be even more enlightening with regard to total cost growth for the Olympic games and to the extent other governments have subsidized the Olympics. The GAO report indicates that while the total costs for staging the U.S. Olympic games, particularly the winter games, have grown, the percentage of federal participation has remained fairly constant taking into consideration increasing security requirements due to the bomb incident in Atlanta and events since September 11, 2001.

In fact, the Sports Illustrated article attempts to throw a negative spin on security spending for the Olympics by stating that ''Surprisingly, all but $40 million of the $240 million in security spending was approved before September 11.'' Authors of the article fail to appreciate that a great majority of the security money was dedicated before September 11 because the intelligence community had knowledge of the growing terrorist threat in the world.

After September 11, the fact that security required little revision is testimony to the thoroughness in Olympic security planning and preparation. For any of my colleagues who still remain unconvinced, I urge you to review the GAO report and obtain a true picture of federal support for the Olympic Games.

I also want to address specifically the issue of federal funding for an area that has received the most attention in the press and elsewhere, yet is perhaps the least understood. This concerns federal funding for Utah transportation projects over the last five years. It has been a popular parlor game to criticize funding for Olympic transportation costs. Many naysayers have rushed to judgment incorrect judgment I might add assuming that any construction project underway in Utah must be a direct result of the Olympic Games and that the funding must be coming from sources outside Utah.

Nothing could be further from the truth. The indiscriminate and arbitrary inclusion of all transportation costs in federal funding figures for the 2002 Olympics have dramatically skewed the numbers to incorrectly support the allegation that Utah has gotten more than its fair share of Federal transportation dollars because of the Olympics. In fact, the Sports Illustrated article is particularly guilty of this erroneous assumption.

The article's $1.5 billion price tag for the Salt Lake Olympics includes well over $800 million in transportation projects that were not designed specifically for the Olympics. Let me address the three largest projects that have attracted considerable attention and set the record straight.

First, let me address the North/South Light Rail in Salt Lake City. Since 1983, the Utah Transit Authority has planed a light rail system to handle the increased traffic in and around Salt Lake City on a daily basis. The system design calls for two connected light rail lines one running north and south from downtown Salt Lake City south to Sandy City, and a second east/west line connecting downtown with Salt Lake International Airport and the University of Utah. The system is designed to be built in phases with the first phase winning approval by the Federal Transit Administration, FTA, through a rigorous competitive process, in 1996.

Under this process, FTA is required to rank proposed projects according to a number of objective criteria and to select those projects that are ranked highest. The criteria address such areas as ridership, mobility improvements, environmental benefits, operational efficiencies, and cost effectiveness. It is important to remember that the project must meet the FTA criteria before it is ever considered for federal funding and must compete with other projects. The first phase of the program, the North/South line, was found worthy and funded by both Federal and state transportation monies. This action was completely independent of the Olympics.

The North/South line was completed in December 1999 at a total project cost of $312.5 million, of which $241.3 million was paid by the federal government. The State of Utah paid $61.2 million which represents 20 percent of the bill. This is in keeping with the traditional split for state transportation projects, the state can fund as little as 20 percent and the federal as much as 80 percent of the project costs.

It is important to note that this light rail project benefits all Salt Lake City citizens. Not only does it help the poor who are unable to afford cars but it also draws commuters out of cars thus helping the environment. Everyone benefits from greater mobility and better air quality. From the opening of the line in 1999, ridership has far exceeded expectations and it has continued to rise. Again, this project was not built or funded as an Olympic project—it was approved by the Administration and Congress based on a detailed analysis of the merits of the project itself and the long-term transportation needs of the Salt Lake Valley.

The University Connector Light Rail is the second phase of the light rail program. It will run from downtown Salt Lake City to the University of Utah. In 2000, the Administration and Congress approved a full funding grant agreement, allowing the Utah Transit Authority to begin construction. The tremendous success of the North/South light rail line was a key factor in the decision by Congress and the Administration to approve construction. Like the first phase, this phase was approved by FTA pursuant to a rigorous evaluation process. However, once the project was deemed to qualify under the normal Federal guidelines, the Administration did choose to accelerate it based on a possibility that it could be completed before the Olympics. Nevertheless, everyone, including the Congress, recognized that there was a possibility that the segment would not be completed in time for the Olympic Games and, therefore, the agreement included provisions allowing for the temporary halt of construction with resumption following the Games.

Fortunately, UTA is on schedule to complete the project and therefore the extension will be operating during the Olympics. However, it is important to note that this project was never deemed necessary for the Olympic Games by the Salt Lake Organizing Committee; in fact, operations on the line will be suspended for opening and closing ceremonies at Rice-Eccles Olympic Stadium, which is served by the University Connector. The cost of the project will be $118.5 million with $84.0 million federally funded. Without a doubt, the most misunderstood of all the Utah transportation projects is the I–15 reconstruction. This $1.59 billion project has been characterized as an Olympic project funded by the Federal government. Not true.

It must be remembered that Utah is a crossroads of the West and the I–15 interstate highway is critical to regional shipping and other transportation needs. It benefits everyone in the region, including those in California, Nevada, Arizona, New Mexico, and Idaho. The project was planned long before the Games, in the mid-1980s in fact. The I–15 improvements address additional capacity needs resulting from normal growth in the Salt Lake Valley and correct some deplorable infrastructure problems such as cracks in

roadbeds and crumbling bridges. Critics also fail to recognize that the I–15 project has been a bargain for the Federal government by any analysis. The Federal taxpayer is only funding $210 million out of a $1.59 billion project. While the Federal government has authorized another $243 million in spending for this project in Utah for advance construction authority, these additional Federal funds may not be used.

Based on current projections, the most the Federal government may contribute is 25–30 percent of the project cost well below the customary 80 percent Federal share. Instead of criticizing our State, we should be applauded. Some here today might ask, ''Why did Utah pick up the lion's share of the I–15 reconstruction?''

Utah, though a relatively small state, is seriously committed to transportation improvements as demonstrated by the dedication of state funds for transportation projects. The Utah State Legislature, during the 1997 session, established an aggressive state funding program. The program, known as the Centennial Highway Fund, CHF, will provide for over $3 billion for transportation improvements across the entire state over a ten year period. The I–15 reconstruction project is the premier project funded under the CHF program. Clearly, the annual allocation of about $200 million per year in federal highway funds is insufficient to address all of the transportation needs of the state.

I want to point out that these three transportation projects, rather than a grab of federal money based on some loose association with the Olympics, are in fact long-planned and well thought-out projects to benefit the local community. The light rail system has been nationally noted as a shining example of urban/suburban Smart Growth. And interestingly, all three projects were considered and planned as a Joint Transportation Corridor which was one of the first in the country submitted for an environmental impact assessment. Today such joint corridors are common, but the Utah projects were first among this trend.

Finally, I take great exception with the Sports Illustrated article's sensational innuendos about some Utah businessmen. Did these businessmen benefit from road improvements due to the Olympic venues held on or near their property? Undoubtedly. However, we must remember that these are businessmen who have invested in property and infrastructure over the course of many years. They have taken risks by investing in the growth of the community.

As a result, many others have benefitted from their efforts. When federal money is spent on any state transportation project, the citizens of that state benefit. Some are richer; some are poorer than others. The Sports Illustrated article holds the rest of the United States to one standard and Utah to another. I do not consider this responsible journalism.

In closing, I want to express to my colleagues and the American people my appreciation for their overwhelming support of the Olympic Games. The Salt Lake Games promise to be a fantastic family event, one that I hope that the whole nation will enjoy. We should not let populist politics in Washington douse the Olympic flame in Utah.

PROCUREMENT OF SMOKELESS NITROCELLULOSE

Mr. TORRICELLI. I would like to take the opportunity to thank Senator INOUYE and Senator STEVENS and the Defense Appropriations Staff for their cooperation in securing $2 million for the procurement of smokeless nitrocellulose in this year's Department of Defense, DoD, Appropriations Bill. Indeed, the provision included in this legislation will help ensure that our nation will continue to have at least two domestic suppliers of smokeless nitrocellulose.

The $2 million direct procurement for this vital product will reestablish Green Tree Chemical Technologies of Parlin, New Jersey as a viable competitor for the DoD industrial base. Furthermore, this purchase will enable Green Tree to be viable for the long term. It will continue to produce the qualified material for DoD programs and provide the only other production base in the United States for what is a volatile product.

Mr. CORZINE. I concur with my colleague with regard to the importance of the smokeless nitrocellulose provision included in this year's defense spending bill. In fact the importance of this provision cannot be overemphasized because Green Tree now produces the qualified nitrocellulose for the Trident II, LOSAT, TOW and HELLFIRE missile programs. Had the provision providing the $2 million procurement of nitrocellulose been omitted, these important missile programs could have been disrupted because re-qualifying DoD materials can be costly and time consuming.

Mr. CARPER. My two colleagues from New Jersey are correct in their assessment of the importance of this $2 million appropriation for smokeless nitrocellulose. Earlier this year, an anti-competitive joint venture, which would have centralized the production of this key ingredient in Defense Department programs, threatened Green Tree. Indeed, had the Federal Trade Commission not found the joint venture to be monopolistic, Green Tree would have been forced to close its New Jersey plant. The provision was inserted to the conference report to serve the same purpose as an amendment added to the Senate DoD appropriations bill to provide Green Tree with a $2 million production grant.

By including this vital provision, Congress will ensure the survival of Green Tree and enhance and sustain the competitive domestic production base for smokeless nitrocellulose which plays a key role in many DoD weapons programs.

Mr. BIDEN. I join my colleagues in thanking Senator INOUYE and Senator STEVENS for their assistance in keeping this funding in the final bill. As my colleagues have indicated, smokeless nitrocellulose is a critical precursor for the ammunition of a number of vital weapons systems. By ensuring that more than one company produces it here in the United States, we are being both fiscally responsible and prudent.

SOUTHEAST MICHIGAN HEALTH ASSOCIATION DEVELOPMENT OF A HAND HELD WATER QUALITY DETECTION DEVICE

Mr. LEVIN. Mr. President, as the Senate considers the Fiscal Year 2002 Appropriations Act for the Department of Defense, I would like to emphasize the importance of portable water quality detection equipment in homeland security. Such devices are a important tools for ensuring a safe water supply for all Americans.

In Michigan, like the rest of the country, there is a vital need to implement responsible water quality monitoring and tracking due to serious threats to public health through raw sewage discharges into its lakes and the industrial outfalls that pollute lakes such as Lake St. Clair. Since September 11, this need is even more important. We must protect sources of drinking and recreational water for our citizens by developing technologies that can identify and quantify hazardous water pollutants in near ''real time''.

Four county health departments, Wayne, Oakland, Macomb and St. Clair, together with the U.S. Army Tank Automotive Research and Development Center, TARDEC, and Wayne State University, along with the support of the Michigan Department of Environmental Quality, comprise a consortium that is proposing to prove/develop methodologies to develop field portable equipment to detect chemical and biological contaminants including warfare agents. These technologies will accomplish the objectives of protecting public health and the health of our military by providing a valuable tool that can determine water quality.

September 11 has placed a new urgency on the need to implement a field detection program to ensure safe potable drinking water supplies for civilians as well as military personnel. Funding provided in this bill is essential to the Southeast Michigan Health Association's research and I would urge the Environmental Protection Agency to make this project a priority when distributing the funds provided in this bill.

Mr. BYRD. The Senator from Michigan has a very important point. I hope that the people at the Environmental Protection Agency will take note of his remarks.

Mr. LEVIN. I thank my friend from West Virginia and the committee for their hard work in putting together this important legislation.

OFFICE OF JUSTICE PROGRAMS

Mr. LOTT. Mr. President, the supplemental spending portion of the Department of Defense Appropriations bill for fiscal year 2002, H.R. 3338, including funding for the Department of Justice Office of Justice Programs' Justice Assistance account. Among the authorized uses of these funds are research and development to support counterterrorism technologies, training for first responders, and grants for State and local domestic preparedness support. The scope of events for which our communities are attempting to prepare is broad, including release of radiological, chemical or biological agents, explosions, armed confrontations, and hostage-taking. While the details of how these situations would affect a community and the appropriate responses differ due to local circumstances, weather, and topography, similar methods for planning for, detecting, and monitoring these events may apply nationwide.

It has come to my attention that technology and supporting online services are available to communities to provide emergency responders with the information necessary to manage and mitigate damage from such terrorist acts that have the potential to endanger individuals and entire communities. These systems are capable of monitoring from a remote location the release of radiological, chemical, and biological agents over open terrain or urban environments. Taking into consideration real-time weather conditions from multiple meteorological sensors, these systems can assess the need for evacuations and the potential for human loss or harm and physical damage.

I appreciate that the Office of Justice Programs works hard, both within its research and development arm, the National Institute for Justice, and in coordination with other Departments and agencies, to develop new technologies and standardized equipment and training to assist State and local responders with their preparations for these type of events. It seems an appropriate use the funds provided by this bill to the Office of Justice Programs to assess the capabilities of such systems and their utility for State and local entities with domestic terrorism responsibilities, and to work with other departments and agencies to include such systems in standard equipment lists for domestic terrorism response. I ask the Senator from New Hampshire, who is the ranking member on the appropriations subcommittee overseeing the Department of Justice, whether he agrees with that assessment.

Mr. GREGG. I agree that new technologies of the type described by the Republican Leader may indeed prove useful to local responders. I encourage the Office of Justice Programs to consider such systems and work to include such systems in its standard equipment list for domestic terrorism response if such systems prove effective.

Mr. LOTT. I thank my distinguished colleague for his assistance in this matter.

BOEING 767 LEASING PROVISION

Mrs. MURRAY. I rise to engage the Chairman and Ranking Member of the Senate Defense Appropriations Subcommittee in a colloquy regarding the Boeing 767 leasing provision included in the fiscal year 2002 Defense Appropriations bill.

Ms. CANTWELL. I rise to join my colleague from the State of Washington to discuss this matter.

Mr. INOUYE. I would be pleased to discuss this matter with the Senators.

Mr. STEVENS. As would I.

Mr. ROBERTS. This is a matter that is important to the Nation, our national security, and the great State of Kansas. I, too, would like to join with my colleagues to review the leasing issue.

Mrs. MURRAY. I agree with my colleague from Kansas. The aging of our military air refueling tanker fleet has become a critical military operations issue-one that requires a bold solution now. The Air Force's fleet of over 500 KC–135 air refueling tankers is, on average, more than 40 years old. In fact, the oldest of these tankers—100 KC–135E models—are close to 45 years in age. New 767 air refueling tankers are already under development and could begin replacing the KC–135 Es within 2 years. There would be no up-front development costs to the military.

Ms. CANTWELL. Of equal importance is the need to support our commercial and military industrial base in the wake of the September 11 terrorist attacks. The provision included in the fiscal year 2002 Defense Appropriations bill will allow the Air Force to meet a pressing military need and ensure continued, strong demand for the Boeing 767 aircraft. In this regard, it is my understanding that the provision included in the bill permits the leasing of up to 100 purpose Boeing 767 aircraft in a commercial configuration for up to 10 years. Is that correct?

Mr. INOUYE. That is correct. And contrary to some reports, this provision is permissive in nature. I believe this provision provides the right solution at the right time to address the Air Force's needs.

Mr. STEVENS. I agree with Senator INOUYE's remarks. Not only with this provisions allow for timely delivery of critical military assets, but it requires that the leasing costs be 10 percent less than the life cycle costs of the aircraft were they to be purchased outright.

Mr. ROBERTS. It is my understanding that Italy and Japan have selected the 767 tanker for their air forces and that 767s are being modified in Wichita already. Italy intends to buy four of the tankers and Japan intends to purchase at least one. I also know that this same tanker configuration is being offered commercially to other countries to meet their in-flight fueling requirements. Is that the Senator from Alaska's understanding as well?

Mr. STEVENS. It is. There are a number of other nations and at least one private company who have expressed an interest in procuring general purpose, commercially configured tanker aircraft.

Mrs. MURRAY. Then would you say that a commercial market exists for these aircraft?

Mr. STEVENS. I would.

Mrs. MURRAY. I ask the Senator from Hawaii, would you agree that a general purpose aircraft that will meet the general requirements of many customers; that can operate as a passenger aircraft, a freighter, a passenger/freighter ''combination'' aircraft, or as an aerial refueling tanker; and is available to either government or private customers meets the definition of a general purpose, commercially configured aircraft?

Mr. INOUYE. I believe that assessment makes sense.

Mrs. MURRAY. I thank the Senator.

Ms. CANTWELL. The opportunity has been presented to the Air Force and the Boeing company to come together to make this leasing provision work for the benefit of our national security and our industrial base. I urge them to do so quickly and cooperatively.

Mr. ROBERTS. I agree and pledge my support to making this effort a successful one.

Mr. STEVENS. I thank the Senators for their remarks and for their pledges of support.

Mr. INOUYE. I join with my friend, the Senator from Alaska, to thank you for your remarks and let you know that Senator STEVENS and I will closely follow the progress of this new program.

Mr. CONRAD. Mr. President, I rise to offer for the RECORD a preliminary scoring by the Budget Committee of the conference report to H.R. 3338, the Department of Defense Appropriations Act for fiscal year 2002. I will be submitting a final, official statement for the record after CBO completes its scoring of the conference report.

Preliminarily, the conference report provides $317.207 billion in nonemergency discretionary budget authority, almost all of which is for defense activities. That budget authority will result in new outlays in 2002 of $212.907 billion. When outlays from prior-year budget authority are taken into account, nonemergency discretionary outlays for the conference report total $309.256 billion in 2002. By comparison, the Senate-passed bill provided $317.206 billion in nonemergency budget authority, which would have resulted in $309.365 billion in outlays.

In addition, H.R. 3338 includes $20 billion in emergency-designated funding. That funding represents the second $20 billion previously authorized by and designated as emergency spending under Public Law 107–38, the Emergency Supplemental Appropriations Act for Recovery from and Response to Attacks on the United States. An estimate of the impact on outlays from the

emergency funding is not available at this time.

The conference report to H.R. 3338 violates section 302(f) of the Congressional Budget Act of 1974 because it exceeds the subcommittee's Section 302(b) allocation for both budget authority and outlays. Similarly, because the committee's allocation is tied to the current law cap on discretionary spending, H.R. 3338 also violates section 312(b) of the Congressional Budget Act. The bill includes language that raises the cap on discretionary category spending to $681.441 billion in budget authority and $670.206 billion in outlays and the cap on conservation category outlays to $1.473 billion. However, because that language is not yet law, the budget committee cannot increase the appropriations committee's allocation by the amount of the pending cap increase at this time, putting it in violation of the two points of order.

In addition, by including language that increases the cap on discretionary spending, adjusts the balances on the pay-as-you-go scorecard for 2001 and 2002 to zero, and directs the scoring of a provision in the bill, H.R. 3338 also violates section 306 of the Congressional Budget Act. Finally, the bill violates section 311(a)(2)(A) of the Congressional Budget Act by exceeding the spending aggregates assumed in the 2002 budget resolution for fiscal year 2002.

The conference report to H.R. 3338 violates several budget act points of order; however, it is good bill that addresses the Nation's defense needs, including the defense of our homeland. The President and Congressional leaders from both parties agreed in the wake of the September 11 attack that more money was needed to respond to the terrorists and to protect our homeland. This report follows that bipartisan agreement and includes language that raises the cap on discretionary spending. I urge its adoption.

I ask unanimous consent that a table displaying the budget committee scoring of H.R. 3338 be printed in the RECORD.

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

H.R. 3338, CONFERENCE REPORT TO THE DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2002 PRELIMINARY SCORING

[Spending comparisons—Conference Report, in millions of dollars]

	General purpose [2]	Mandatory	Total
Conference report:			
Budget Authority	317,207	282	317,489
Outlays	309,256	282	309,538
Senate 302(b) allocation:[1]			
Budget Authority	181,953	282	182,235
Outlays	181,616	282	181,898
President's request:			
Budget Authority	319,130	282	311,224
Outlays	310,942	282	311,224
House-passed:			
Budget Authority	317,207	282	317,489
Outlays	308,873	282	309,155
Senate-passed:			
Budget Authority	317,206	282	317,488
Outlays	309,365	282	309,647
CONFERENCE REPORT COMPARED TO			
Senate 302(b) allocation:[1]			
Budget Authority	135,254	0	135,254
Outlays	127,640	0	127,640
President's request:			
Budget Authority	(1,923)	0	(1,923)
Outlays	(1,686)	0	(1,686)
House-passed [2]			
Budget Authority	0	0	0
Outlays	383	0	383
Senate-passed [2]			
Budget Authority	1	0	1
Outlays	(109)	0	(109)

[1] For enforcement purposes, the budget committee compares the conference report to the Senate 302(b) allocation.

[2] All but $3 million of the nonemergency budget authority provided in the conference report is for defense activities.

Notes.—Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions. In addition, the conference report includes $20 billion in emergency funding related to the September 11th attacks. An estimate of the outlay impact from the emergency spending is not available at this time.

Mr. MCCAIN. Mr. President, I rise once again to address the issue of wasteful spending in appropriations measures, in this case the bill funding the Department of Defense for fiscal year 2002. In provisions too numerous to mention in detail, this bill, time and again, chooses to fund pork barrel projects with little if any relationship to national defense at a time of scarce resources, budget deficits, and underfunded, urgent defense priorities.

As I pointed out previously to this body on December 7th, the massive Department of Defense Appropriations Bill Conference Report, totaling $343 billion, would be the last business in the Senate and so it is. Not because of its level of difficulty, but because it is so easy to hide the mother of all pork projects in a large massive bill or maybe it wasn't because we found it as well as many other groups. For example, let me read a few comments.

Our Nation is at war, a war that has united Americans behind a common goal—to find the enemies who terrorized the United States on September 11th and bring them to justice. In pursuit of this goal, our servicemen and women are serving long hours, under extremely difficult conditions, far away from their families. Many other Americans also have been affected by this war and its economic impact, whether they have lost their jobs, their homes, or have had to drastically cut expenses this holiday season. The weapons we have given them, for all their impressive effects, are, in many cases, neither in quantity nor quality, the best that our government can provide.

For instance, stockpiles of the precision guided munitions that we have relied on so heavily to bring air power to bear so effectively on difficult, often moving targets, with the least collateral damage possible, are dangerously depleted after only 10 weeks of war in Afghanistan. This is just one area of critical importance to our success in this war that underscores just how carefully we should be allocating scarce resources to our national defense.

Yet, despite the realities of war, and the responsibilities they impose on Congress as much the President, the Senate Appropriations Committee has not seen fit to change in any degree its usual blatant use of defense dollars for projects that may or may not serve some worthy purpose, but that certainly impair our national defense by depriving legitimate defense needs of adequate funding.

Even in the middle of a war, a war of monumental consequences, the Appropriations Committee is intent on using the Department of Defense as an agency for dispensing corporate welfare. It is a terrible shame that in a time of maximum emergency, the United States Senate would persist in spending money requested and authorized only for our Armed Forces to satisfy the needs or the desires of interests that are unrelated to defense needs.

The Investor's Business Daily, on December 18, 2001, had this to say in an article titled At the Trough: Welfare Checks To Big Business Make No Sense, ''Among the least justified outlays is corporate welfare. Budget analyst Stephen Slivinski estimates that business subsidies will run $87 billion this year, up a third since 1997, Although President Bush proposed $12 billion in cuts to corporate welfare this year, Congress has proved resistant. Indeed, many post-September 11 bailouts have gone to big business. Boeing is one of the biggest beneficiaries. Representative NORM DICKS, Democrat from Washington, is pushing a substantial increase in research and development support for Boeing and other defense contractors, the purchase of several retrofitted Boeing 767s and the leasing of as many as 100 767s for purposes ranging from surveillance to refueling. Boeing has been hurt by the storm that hit airlines, since many companies have slashed orders. Yet China recently agreed to buy 30 of the company's planes, and Boeing's problems predate the September 11 attack. It is one thing to compensate the airlines for forcibly shutting them down; it is quite another to toss money at big companies caught in a down demand cycle. Boeing, along with many other major exporters, enjoys its own federal lending facility, the Export-Import Bank. ExIm uses cheap loans, loan guarantees and loan insurance to subsidize purchases of U.S. products. The bulk of the money goes to big business that sell airplanes, machinery, nuclear power plants and the like. Last year alone, Boeing benefitted from $3.3 billion in credit subsidies. While corporate America gets the profits, taxpayers get the losses. . . .The Constitution authorizes a Congress to promote the general welfare, not enrich Boeing and other corporate behemoths. There is no warrant to take from Peter so Paul can pay higher corporate dividends. In the aftermath of September 11, the American people can ill afford budget profligacy in Washington. If Congress is not willing to cut corporate welfare at a time of national crisis, what is it willing to cut?''

As I mentioned last week when the Senate version of the Defense Appropriations bill was being debated and—now carried through the Conference Committee there is a sweet deal for the Boeing Company that I'm sure is the envy of corporate lobbyists from one end of K Street to the other. Attached is a legislative provision to the Fiscal Year 2002 Department of Defense Appropriations bill that would require the Air Force to lease one hundred 767 aircraft for use as tankers for $26 million apiece each year for the next 10 years. Moreover, in Conference Committee the appropriators added four 737 aircraft for executive travel mostly benefitting Members of Congress. We have been told that these aircraft will be assigned to the 89th Airlift Wing at Andrews Air Force Base. Since the 10-year leases have yet to be signed, the cost of the planes cannot be calculated, but it costs roughly $85 million to buy one 737, and a lease costs significantly more over the long term.

The cost to taxpayers?

Two billion and six hundred million dollars per year for the aircraft plus another $1.2 billion in military construction funds to modify KC–135 hangars to accommodate their larger replacements, with a total price tag of more than $30 billion over 10 years when the costs of the 737 leases are also included. This leasing plan is five times more expensive to the taxpayer than an outright purchase, and it represents 30 percent of the Air Force's annual cost of its top 60 priorities. But the most amazing fact is that this program is not actually among the Air Force's top 60 priorities nor do new tankers appear in the 6-year defense procurement plan for the Service!

That is right, when the Air Force told Congress in clear terms what its top priorities were tankers and medical lift capability aircraft weren't included as critical programs. In fact, within its top 30 programs, the Air Force has asked for several essential items that would directly support our current war effort: wartime munitions, jet fighter engine replacement parts, combat support vehicles, bomber and fighter upgrades and self protection equipment, and combat search and rescue helicopters for downed pilots.

Let me say that again, within its top 30 programs, the Air Force has asked for several essential items that would directly support our current war effort: wartime munitions, jet fighter engine replacement parts, combat support vehicles, bomber and fighter upgrades and self protection equipment, and combat search and rescue helicopters for downed pilots.

This leasing program also will require $1.2 billion in military construction funding to build new hangars, since existing hangars are too small for the new 767 aircraft. The taxpayers also will be on the hook for another $30 million per aircraft on the front end to convert these aircraft from commercial configurations to military; and at the end of the lease, the taxpayers will have to foot the bill for $30 million more, to convert the aircraft back—pushing the total cost of the Boeing sweetheart deal to $30 billion over the ten-year lease. Mr. President, that is waste that borders on gross negligence.

But this is just another example of Congress' political meddling and of how outside special interest groups have obstructed the military's ability to channel resources where they are most needed. I will repeat what I've said many, many times before—the military needs less money spent on pork and more spent to redress the serious problems caused by a decade of declining defense budgets.

This bill includes many more examples where congressional appropriators show that they have no sense of priority when it comes to spending the taxpayers' money. The insatiable appetite in Congress for wasteful spending grows more and more as the total amount of pork added to appropriations bills this year—an amount totaling over $15 billion.

This defense appropriations bill also includes provisions to mandate domestic source restrictions; these ''Buy America'' provisions directly harm the United States and our allies. ''Buy America'' protectionist procurement policies, enacted by Congress to protect pork barrel projects in each Member's State or District, hurt military readiness, personnel funding, modernization of military equipment, and cost the taxpayer $5.5 billion annually. In many instances, we are driving the military to buy higher-priced, inferior products when we do not allow foreign competition. ''Buy America'' restrictions undermine DoD's ability to procure the best systems at the least cost and impede greater interoperability and armaments cooperation with our allies. They are not only less cost-effective, they also constitute bad policy, particularly at a time when our allies' support in the war on terrorism is so important.

Secretary Rumsfeld and his predecessor, Bill Cohen, oppose this protectionist and costly appropriation's policy. However, the appropriations' staff ignores this expert advice when preparing the legislative draft of the appropriations bills each year. In the defense appropriations bill are several examples of ''Buy America'' pork—prohibitions on procuring anchor and mooring chain components for Navy warships; main propulsion diesel engines and propellers for a new class of Navy dry-stores and ammunition supply ships; supercomputers; carbon, alloy, or armor steel plate; ball and roller bearings; construction or conversion of any naval vessel; and, other naval auxiliary equipment, including pumps for all shipboard services, propulsion system components such as engines, reduction gears, and propellers, shipboard cranes, and spreaders for shipboard cranes.

Also buried in the smoke and mirrors of the appropriations markup is what appears to be a small provision that has large implications on our warfighting ability in Afghanistan and around the world. Without debate or advice and counsel from the Committee on Armed Services, the appropriators changed the policy on military construction which would prohibit previous authority given to the President of the United States, the Secretary of Defense, and the Service Secretaries to shift military construction money within the MILCON account to more critical military construction projects in time of war or national emergency. The reason for this seemingly small change is to protect added pork in the form of military construction projects in key states, especially as such projects have historically been added by those Members who sit on the Military Construction Appropriations Subcommittee, at the expense, Mr. President, of projects the Commander-in-Chief believes are most needed to support our military overseas.

Does the appropriations committee have any respect for the authorizing committees in the Senate?

I look forward to the day when my appearances on the Senate floor for this purpose are no longer necessary. There is nearly $2.5 billion in unrequested defense programs in the defense appropriations bill and another $1.1 billion for additional supplemental appropriations not directly related to defense that have been added by the Chairman of the Committee. Consider what $3.6 billion when added to the savings gained through additional base closings and more cost-effective business practices could be used for. The problems of our armed forces, whether in terms of force structure or modernization, could be more assuredly addressed and our warfighting ability greatly enhanced. The public expects more of us.

But for now, unfortunately, they must witness us, blind to our responsibilities in war, going about our business as usual.

I ask unanimous consent that the list of earmarks from the fiscal year 2002 Department of Defense Appropriations Bill Conference Report be placed in the RECORD.

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

FY 2002 Defense appropriations pork

[In millions]

DIVISION A	
Operation and Maintenance, Army:	
Fort Knox Distance Learning Program	2.1
Army Conservation and Ecosystem Management	4.3
Fort Richardson, Camp Denali Water Systems	0.6
Rock Island Bridge Repairs	2.0
Memorial Tunnel, Consequence Management	16.5
FIRES Programs Data	6.8
Skid Steer Loaders	7.5
USARPAC Transformation Planning	8.5

FY 2002 Defense appropriations pork—Continued

USARPAC Command, Control, and Communications Upgrades	3.2
Hunter UAV	2.5
Field Pack-up Systems	2.5
Unutilized Plant Capacity	17.5
SROTC—Air Battle Captain	1.0
Joint Assessment Neurological Examination Equipment	2.6
Repairs Ft. Baker	1.0
Fires Program Data Capt.	6.8
Mobility Enhancement Study	0.5
Classified Programs, Undistributed	0.35
Operation and Maintenance, Navy:	
Naval Sea Cadet Corps	1.0
Shipyard Apprentice Program	7.8
PHNSY SRM	12.8
Warfare Tactics PMRF	20.4
Hydrographic Center of Excellence	2.5
UNOLS	1.5
Center of Excellence for Disaster Management and Humanitarian Assistance	4.3
Biometrics Support	2.5
Operation and Maintenance, Air Force:	
Pacific Server Consolidation	8.5
Grand Forks AFB ramp refurbishment	5.0
Wind Energy Fund	0.5
University Partnership for Operational Support	3.4
Hickam AFB Alternative Fuel Program	1.0
SRM Eielson Utilidors	8.5
Civil Air Patrol Corporation	3.2
PACAF Strategic Airlift planning	1.7
Elmendorf AFB transportation infrastructure	10.2
MTAPP	2.8
Operation and Maintenance, Defense-Wide:	
Civil Military programs, Innovative Readiness Training	8.5
DoDEA, Math Teacher Leadership	1.0
DoDEA, Galena IDEA	3.4
DoDEA, SRM	5.0
OEA, Naval Security Group Activity, Winter Harbor	4.0
OEA, Fitzsimmons Army Hospital	3.8
OEA Barrow landfill relocation	3.4
OEA, Broadneck peninsula NIKE site	1.0
OSD, Clara Barton Center	1.0
OSD, Pacific Command Regional initiative	6.0
OEA, Adak airfield operations	1.0
OSD, Intelligence fusion study	5.0
Free Markets	1.4
Trustfund for demining and mine eviction	14.0
Impact aid	30.0
Legacy	12.9
Operation and Maintenance, Army National Guard:	
Distributed Learning Project	25.5
ECWCS	2.5
Camp McCain Simulator Center, trainer upgrades	3.2
Fort Harrison Communications Infrastructure	1.0
Communications Network Equipment	0.209
Multimedia classroom	0.85
Camp McCain Training Site, roads	2.2
Full Time Support, 487 additional technicians	11.2
Emergency Spill Response and Preparedness Program	0.79

FY 2002 Defense appropriations pork—Continued

Distance Learning	30.0
SRM reallocation	25.0
Army Guard Education Program at NPS	2.0
Operation and Maintenance, Air National Guard:	
Extended Cold Weather Clothing System	2.5
Defense Systems Evaluation	1.7
Eagle Vision (Air Guard)	8.5
Bangor International Airport repairs	5.0
Military Techniques Costing Model	6.3
Angel Gate Academy	1.5
GSA Leased Vehicle Program	1.75
Camp Gruber Regional Trade Center	2.4
Information Technology Management Training	1.0
Rural Access to Broadband Technology	3.4
National Guard State Partnership Program	1.0
Aircraft Procurement, Army:	
Oil debris detection and burn-off system	3.5
ATIRCM LRIP	7.0
Guardrail Mods	5.0
Procurement of Weapons and Tracked Combat Vehicles, Army: Bradley Reactive Armor Tiles	20.0
Other Procurement, Army:	
Automated Data Processing Equipment	14.0
Camouflage: ULCANS	4.0
Aluminum Mesh Tank Liner	3.5
AN/TTC Single Shelter Switches w/Associated Support	26.5
Blackjack Secure Facsimile	7.0
Trunked Radio System	1.4
Modular Command Post	2.5
Laundry Advance Systems (LADS)	3.0
Abrams & Bradley Interactive Skills Trainer	6.3
SIMNET	10.5
AFIST	8.3
Ft. Wainwright MOUT Instrumentation	6.5
Target Receiver Injection Module Threat Simulator	4.0
Tactical Fire Trucks	4.0
IFTE	15.0
Maintenance Automatic Identification Technology	3.0
National Guard Distance Learning Courseware	8.0
Smart Truck	3.4
ULCANS	4.0
Floating Crane	7.0
2KW Military Tactical Generator	2.5
Firefighting Training System	1.2
Lightweight Maintenance Enclosure	1.2
GUARDFIST	3.0
Army Live Fire Ranges	3.5
USARPAC C–4 suites	7.2
Aircraft Procurements, Navy:	
JPATS (16 aircraft)	44.6
ECP–583	24.0
PACT Trainer	6.0
Direct Support Squadron Readiness Training	4.5
UC–45	7.5
Other Procurement, Navy:	
JEDMICS	11.5
Pacific Missile Range Equipment	6.0
IPDE Enhancement	4.2
Pearl Harbor Pilot	4.3
AN/BPS–15H Navigation System	6.3

FY 2002 Defense appropriations pork—Continued

Tactical Communication On-Board Training	4.5
Air Traffic Control On-Board Trainer	2.8
WSN–7B	7.0
Naval Shore Communications	48.7
Missle Procurement, Air Force:	
NUDET Detection System	19.066
Other Procurement, Air Force:	
CAP COM and ELECT	7.0
Pacific AK Range Complex Mount Fairplay	6.3
UHF/VHF Radios for Mont Fairplay, Sustina	3.0
National Guard and Reserve Equipment:	
Navy Reserve Misc. Equipment	15.0
Marine Corps Misc. Equipment	10.0
Air Force Reserve Misc. Equipment	10.0
Army National Guard Misc. Equipment	10.0
Air Guard C–130	219.7
Lasermarksmenship Training Center	8.5
UH–60 Blackhawk	8.7
Engage Skills Training	4.2
Multirole Bridging Compound	15.7
Braley ODS	51.0
Heavy Equipment Training System	2.5
Reserve Composition System	15.5
P19 Truck Crash	3.5
Weapons Procurement, Navy:	
Drones and Decoys	14.9
Shipbuilding and Conversion, Navy:	
Minehunter Swath	1.0
Yard Boilers	3.0
Research, Development, Test, and Evaluation, Army:	
Environmental Quality Technology Dem/Val	10.36
End Item Industrial Preparedness Activities	20.6
Defense Research Sciences Cold Weather Sensor Performance	1.0
Advanced Materials Processing	3.0
FCS Composites Research	2.5
AAN Multifunctional Materials	1.5
HELSTF Solid State Heat Capacity	3.5
Photonics	2.5
Army COE Acoustics	3.5
Cooperative Energetics Initiatives	3.5
TOW ITAS Cylindrical Battery Replacement	1.5
Cylindrical Zinc Air Battery for LWS	1.8
Heat Actuated Coolers	1.0
Improved High Rate Alkaline Cells	1.0
Low Cost Reusable Alkaline (Manganese-Zinc) Cells	0.6
Rechargeable Cylindrical Cell System	1.5
Waste Minimization and Pollution Research	2.0
Molecular and Computational Risk Assessment (MACERAC)	1.4
Center for Geosciences	1.5
Cold Regions Military Engineering	1.0
University Partnership for Operational Support (UPOS)	3.4
Plasma Energy Pyrolysis System (PEPS)	3.0
DOD High Energy Laser Test Facility	15.0
Starstreak	16.0
Center for International Rehabilitation	1.4
Dermal Phase Meter	0.6
Minimally Invasive Surgery Simulator	1.4

FY 2002 Defense appropriations pork—Continued

Minimally Invasive Therapy	5.0
Anthropod-Borne Infectious Disease Control	2.5
VCT Lung Scan	3.2
Tissue Engineering Research	4.7
Monocional Anti-body based technology (Heteropolymer System)	3.0
Dye Targeted Laser Fusion	3.4
Joint Diabetes Program	5.0
Center for Prostate Disease Research	6.4
Spine Research	2.1
Brain Biology and Machine Initiative	1.8
Medical Simulation training initiative	0.75
TACOM Hybrid Vehicle	1.0
N–STEP	2.5
IMPACT	3.5
Composite Body Parts	1.4
Corrosion Prevention and Control Program	1.4
Mobile Parts Hospital	5.6
Vehicle Body Armor Support System	3.3
Casting Emission Reduction Program	5.8
Managing Army Tech. Environmental Enhancement	1.0
Visual Cockpit Optimization	4.2
JCALS	10.2
Electronic Commodity Pilot Program	1.0
Battle Lab at Ft. Knox	3.5
TIME	10.0
Force Provider Microwave Treatment	1.4
Mantech Program for Cylindrical Zinc Batteries	1.8
Continuous Manufacturing Process for Mental Matrix Composities	2.6
Modular Extendable Rigid Wall Shelter	2.6
Combat Vehicle and Automotive technology	14.0
Auto research center	2.0
Hydrogen DEM fuel cell vehicle demonstration	5.0
Electronic Display Research	9.0
Fuel Cell Power Systems	2.5
Polymer Extrusion/Multilaminate	2.6
DoD Fuel Cell Test and Evaluation Center	5.1
Ft. Meade Fuel Cell Demo	2.5
Biometrics	5.1
Diabetes Project, Pittsburgh	5.1
Osteoporois Research	2.8
Aluminum Reinforced Metal Matrix Composition	2.5
Combat Vehicle Res Weight Reduction	6.0
Ft. Ord Celanup Demonstration Project	2.0
Vanadium Tech Program	1.3
ERADS	2.0
Advanced Diagnostics and Therapeutic Digital Tech	1.3
Artifical Hip	3.5
Biosensor Research	2.5
Brain Biology and Machine Initiative	1.8
Cancer Center of Excellence (Notre Dame)	2.1
Center for Integration of Medicine and Innovative Technology	8.5
Center for Untethered Healthcare at Worcester Polytechnic Institute	1.0
Continuous Expert Care Network Telemedicine Program	1.5
Disaster Relief and Emergency Medical Services (DREAMS)	8.0

FY 2002 Defense appropriations pork—Continued

Hemoglobin Based Oxygen Carrier	1.0
Hepatitas C	3.4
Joslin Diabetes Research-eye Care	4.2
LSTAT	2.5
Secure Telemedicine Technology Program	2.0
Memorial Hermann Telemedicine Network	9.0
Monoclonal Antibodies	1.0
Emergency Telemedicine Response and Advanced Technology Program	1.5
National Medical Testbed	7.7
Neurofibromatosis Research Program	21.0
Neurology Gallo Center-alcoholism research	5.6
Neurotoxin Exposure Treatment Research Program	17.0
Polynitroxylated Hemogolbin ..	1.0
SEAtreat cervical cancer visualization and treatment	1.7
Smart Aortic Arch Catheter	1.0
National Tissue Engineering Center	2.0
Center for Prostate Disease Research at WRAMC	6.4
Research, Development, Test, and Evaluation, Navy:	
Southeast Atlantic Coastal Observing System (SEA–COOS)	4.0
Marine Mammal Low Frequency Sound Research	1.0
Maritime Fire Training/Barbers Point	2.6
3-D Printing Metalworking Project	2.5
Nanoscale Science and Technology Program	1.5
Nanoscale devices	1.0
Advanced wateriet-21 project ...	3.5
DDG–51 Composite twisted rudder	1.0
High Resolution Digital mammography	1.5
Military Dental Research	2.8
Vector Thrusted Ducted Propeller	3.4
Ship Service Fuel Cell Technology Verification & Training Program	2.0
Aluminum Mesh Tank Liner	1.5
AEGIS Operational Readiness Training System (ORTS)	4.0
Materials, Electronics and Computer Technology	19.3
Human Systems Technology	2.6
Undersea Warfare Weaponry Technology	1.7
Medical Development	59.0
Manpower, Personell and Training ADV Tech DEV	2.0
Environmental Quality and Logistics AD Tech	1.4
Research, Development, Test, and Evaluation, Defense-Wide:	
Bug to Drug Identification and CM	2.0
American Indian higher education consortium	3.5
Business/Tech manuals R&D	1.5
AGILE Port Demonstrations	8.5
Defense Health Program:	
Hawaii Federal healthcare network	15.3
Pacific island health care referral program	4.3
Alaska Federal healthcare Network	2.125
Brown Tree Snakes	1.0
Tri-Service Nursing Research Program	6.0
Graduate School of Nursing	2.0

FY 2002 Defense appropriations pork—Continued

Health Study at the Iowa Army Ammunition Plant	1.0
Coastal Cancer Control	5.0
Drug Interdiction and Counter-Drug Activities, Defense:	
Mississippi National Guard Counter Drug Program	1.8
West Virginia Air National Guard Counter Drug Program	3.0
Regional Counter Drug Training Academy, Meridian MS ...	1.4
Earmarks:	
Maritime Technology (MARITECH)	5.0
Metals Affordability Initiative	5.0
Magnetic Bearing cooling turbin	5.0
Roadway Simulator	13.5
Aviator's night vision imaging system	2.5
HGU–56/P Aircrew Integrated System	5.0
Fort Des Moines Memorial Park and Education Center ...	5.0
National D-Day Museum	5.0
Dwight D. Eisenhower Memorial Commission	3.0
Clean Radar Upgrade, Clean AFS, Alaska	8.0
Padgett Thomas Barracks, Charleston, SC	15.0
Broadway Armory, Chicago	3.0
Advancer Identification, Friend-or-Foe	35.0
Transportation Mult-Platform Gateway Integration for AWACS	20.0
Emergency Traffic-Management	20.7
Washington-Metro Area Transit Authority	39.1
Ft. Knox MOUT site upgrades ..	3.5
Civil Military Programs, Innovative	10.0
ASE INFRARED CM ATIRCM LRIP	10.0
Tooling and Test Equipment	35.0
Integrated Family of Test Equipment (IFIE)	15.0
T–AKE class ship (Buy America)	
Welded shipboard and anchor chain (Buy America)	
Dwight D. Eisenhower Memorial	
Gwitchyaa Zhee Corporation lands	
Air Forces's lease of Boeing 767s	
Enactment of S. 746	
2002 Winter Olympics in Salt Lake City, Utah	
Nutritional Program for Women, Infants and Children	39.0
International Sports Competition	15.8
Animal and Plant Health Inspection Survey	105.5
Food and Safety Inspection	15.0
Total Pork in Division A (FY 2002 Defense Approps): $2.5 Billion ...	
DIVISION B	
Commerce related earmarks:	
Port Security	93.3
Airports and Airways Trust Fund, payment to air carriers	50.0
DoT Office of the Inspector General	1.3
FAA Operations (from aviation Trust Fund)	200.0
FAA Facilities and Equipment	108.5
Passenger Bag Match Demonstration at Reagan National Airport	2.0
Federal Highway Administration misc. appropriations ($10 m requested)	100.0
Capital Grants to the National Railroad Passenger Corporation	100.0
Federal Transit Administration Capital Investment Grants	100.0

FY 2002 Defense appropriations pork—Continued

Restoration of Broadcasting Facilities	8.25
National Institute of Standards and Technology	30.0
Federal Trade Commission	20.0
FAA Grants-in-AID for Airports	175.0
Woodrow Wilson Bridge Project	29.542
Provision relating to Alaska in the Transportation Equity Act for the 21st Century	
US–61 Woodville widening project in Mississippi	0.3
Interstate Maintenance Program for the city of Trenton/Port Quendall, WA	4.0
Interstate Sports Competition Defense	15.8
Utah Olympics Public Safety Command	0.02
FEMA support of the 2002 Salt Lake Olympic Games	10.0
Relocation costs and other purposes for 2002 Winter Olympics	15.0
Chemical and Biological Weapons Preparedness for DC Fire Dept	0.205
Response and Communications Capability for DC Fire Dept	7.76
Search and Rescue and Other Emergency Equip. and Support for DC Fire	0.208
Office of the Chief Technology Officer of the DC Fire Dept	1.0
Training and Planning for the DC Fire Dept	4.4
Protective Clothing and Breathing Apparatus for DC Fire Dept	0.922
Specialized Hazardous Materials Equipment for the DC Fire Dept	1.032
Total Commerce Related Earmarks:	$1.1 Billion
Total Pork in FY 2002 Defense Appropriations Conference Report:	$3.6 Billion

Mrs. MURRAY. Mr. President. I rise to lend my strong support to the Department of Defense Appropriations Conference Report.

And I do so with great admiration and respect for the leadership demonstrated by Chairman DANIEL INOUYE and Senator TED STEVENS. They have done great work, and I encourage the Senate to embrace this appropriations conference report.

I do want to briefly address the issue of tanker replacement which has been hotly debated here on the floor. I support the tanker leasing provisions in the bill, and I am again grateful to Senator INOUYE and Senator STEVENS for their work on the Boeing 767 leasing provisions. Many Senators worked on this issue. There were many hurdles to address and overcome. And we worked through them all together in a bipartisan fashion.

I want to again quote the Secretary of the Air Force from a letter he wrote to me in early December. Secretary James Roche says and I quote,

> The KC–135 fleet is the backbone of our Nation's Global Reach. But with an average age of over 41 years, coupled with the increasing expense required to maintain them, it is readily apparent that we must start replacing these critical assets. I strong endorse beginning to upgrade this critical warfighting capability with new Boeing 767 tanker aircraft.

The record is clear. The Air Force has been a contributing partner and fully supports the tanker replacement program contained in this appropriations bill.

The existing tankers are old and require costly maintenance and upgrades. The K–135s were first delivered to the Air Force in 1957. On average, they are 41 years old. KC–135s spend about 400 days in major depot maintenance every 5 years.

The tanker replacement program contained in this bill will save taxpayers $5.9 billion in upgrade and maintenance costs.

The record is clear. We need to move forward on tanker replacement. Our aging tankers have flown more than 6000 sorties since September 11. Our ability to project force depends on our refueling capabilities. We can no longer ignore these old and expensive aircraft.

The record is also clear on my State of Washington. This will help the people of my state. Washington now has the highest unemployment rate of any state in the nation. I am here to do everything I can to help my constituents. Any Senator, including critics of the leasing provisions in this bill, would do the same thing.

But this is not just about my State. Every state involved in aircraft production will benefit.

In addition, it is in our national interest to keep our only commercial aircraft manufacturer healthy in tough times, to keep that capacity and to keep that skill set.

The Air Force has identified this as a critical need. We rely on refueling tankers. Now is the time to move forward with tanker replacement. I again commend Senator INOUYE, Senator STEVENS, Senator CANTWELL, Senator CONRAD, Senator ROBERTS and the many others who worked so hard to move this program forward.

Shortly, we are all going to go home for the holidays to be with our families. Senators can go home knowing that they have sent a very powerful message to the families of our service members. We have acted today with this bill to equip our personnel now and in the future with best equipment and the best technology available to our armed forces. I will proudly vote for this conference report.

Mr. BIDEN. Mr. President, I rise today to thank my Senate colleagues for their support of two important aviation needs and to express my disappointment that the House did not support those decisions. I know that it is always difficult to reconcile the decisions made in the Senate with those made in the House, but this case, I am very sorry to see that the Senate's wisdom was not sustained.

When the Defense Appropriations bill left the Senate, it included full-funding for two important aviation assets—C–5 avionics modernization and 10 additional Blackhawks for the Amy National Guard. Unfortunately, the bill that we have before us does not include those items. Instead, the C–5 avionics funding is cut by $70.50 million and there are only 4 Blackhawks going to the Army National Guard.

Let me first review the importance of the C–5 Avionics Modernization Program which was not only fully funded in the Senate's Defense Appropriations bill, but which both the House and Senate Armed Services Committees fully supported in their bills.

The C–5 is what the military uses when it needs to deploy quickly with as much equipment as possible. This was confirmed once again in Operation Enduring Freedom where the Air Force reports that C–5s have hauled forty-six percent of the cargo during the operation while only flying approximately twenty-eight percent of the sorties. This plane is a vital part of our military success. It is also a key player in our nation's humanitarian efforts, so critical to the long-term success of our national security strategy.

Taking $70.5 million from the President's funding request means that critical Secretary of Defense directed Flight and Navigation Safety modifications and Global Air Traffic Management modifications will be delayed by up to a year or more. Delays in installing the safety equipment continue to place aircrews at risk at a time when they are engaged around the world in the war on terrorism and humanitarian missions. Delays also prevent the C–5 from being fully employed in certain parts of the world as AMP modifications are necessary to comply with new GATM regulations.

At a time when we are asking our military to do so much, to deny our aircrews and military planners C–5s that have the safety upgrades and operational improvements that the AMP will provide does not make sense. Again, I am sorry that the House did not agree with the Senate. I hope we can reverse this problem next year by accelerating the program with increased funding. I will certainly fight to do that and I hope that other colleagues who have been supportive in the past will join me in that fight next year.

My other concern with this bill is that the Army National Guard's need for additional UH–60 Blackhawk helicopters has not been properly addressed. Today, the Army National Guard comprises fifty percent of the Army's total utility airlift capability. Unfortunately, only twenty-seven percent of the fleet is usually flyable. On a regular basis a full seventy-three percent of the utility helicopters in the Guard are grounded because of a lack of parts or safety of flight concerns! Virtually every state confronts significant shortages, and some states, like Delaware, have absolutely no modern helicopters, relying instead on one or two Vietnam-era helicopters.

This means that regular state missions cannot be executed. Pilots and maintenance personnel cannot remain proficient. These skilled personnel are

not able to do their job, get frustrated, and decide not to stay in the military. Meanwhile, the Army is simply unready in this area. In normal times, these are unacceptable realities. Today, when the Guard has been asked to do so much more, it is unfathomable to me that we would not do more to fix these problems.

The Senate recognized the need to do more and provided a first installment of ten new Blackhawk helicopters for the Army Guard. Unfortunately, this bill only provides four. Today, many in utility aviation units do not have even the bare minimum they need to stay proficient, let alone do their missions. This is certainly true in Delaware and I know it also true for at least five other states. This bill does not even allow the Guard Bureau to put one new Blackhawk in each state that needs seven to ten!

The men and women who serve in the Guard every day, both in their states and overseas, deserve to have the equipment they need to perform their missions. I am sorry the House did not agree to do more to address their aviation needs this year and I will work with my colleagues again next year to try to improve this situation.

Mr. President, this bill includes a number of important items that will benefit our military and I support it. But, I want to put my colleagues on notice that next year I will be fighting to accelerate C–5 modernization and to get additional UH–60s for the Army National Guard. The Senate spoke wisely last week in fully funding both of these aviation needs and I am sorry that the House was unwilling to sustain that wisdom.

Mr. ALLARD. Mr. President, being that I was not able to discuss the Fiscal Year 2002 Defense Authorization Act last Thursday, I wanted to take a few minutes to discuss a few aspects of this very important bill.

I strongly support the Fiscal Year 2002 Defense Authorization Act. I want to congratulate Chairman LEVIN and the Ranking Member WARNER for the good work and the way they have moved this important bill for our men and women in the military. I believe this is a balanced bill which provides a much needed and deserved increase for our military men and women. After years of declining budgets, this bill continues the increase in resources which started 2 years ago.

The bill provides $343.3 billion in budget authority, plus authorizes the $21.2 billion in emergency supplemental appropriations as requested by the President in order to respond to the terrorist attacks. The bill also adds over $779.4 million above the request for the Department of Energy's environmental cleanup programs and nuclear weapons activities.

When I became the Personnel Subcommittee Chairman in 1999, the subcommittee provided the first major pay raise for our troops in over 20 years and I am glad that this year's bill continues this trend. The bill provides a targeted pay raise effective January 1, 2002, ranging 5 to 10 percent, with the largest increase going to junior officers and non-commissioned officers.

While no member enjoys having bases closed in their State, or even the possibility of closure, it is that time that we recognize we do have excess capacity and that is time to consider another round of base closings as requested by the administration. After much negotiating, the conferees authorized a round of base closings in 2005, with established criteria based on actual and potential military value that the Secretary of Defense must use to determine which bases to recommend.

As the rulemaking member of the Strategic Subcommittee, I would like to congratulate my chairman, Senator REED, for his good work on this bill. He worked in a bipartisan and even handed manner. While we disagreed on the missile defense programs, Senator REED and I were in agreement on most of the remaining major issues before the subcommittee.

While many in Congress may disagree on funding levels of missile defense, no one can argue that ballistic missiles, armed with nuclear, biological, or chemical warheads, present a considerable threat to U.S. troops deployed abroad, allies, and the American homeland. The consequences of such an attack on the United States would be staggering; yet the United States currently has no system capable of effectively stopping even a single ballistic missile headed toward the American homeland or depolyed U.S. troops.

To end this vulnerability, the President requested a significant increase in funding for ballistic missile defense programs which was an important first step toward protecting all Americans against ballistic missile attack. The conference provided up to $8.3 billion, $3 billion more than the fiscal year 2001 level, for the continued development of ballistic missile defenses. In addition, the conferees provided flexibility for the President to use up to $1.3 billion of these funds for programs to combat terrorism.

In an effort to increase the efficiency and productivity of the missile defense programs, the administration requested to fundamentally restructure the nation's ballistic missile defense programs into six primary areas: Boost, Midcourse, Terminal Defenses, Systems Engineering, Sensor, and Technology Development. This new approach will provide the flexibility to allow programs that work to mature but the ability to cancel programs that do not. Plus, the program will provide enhanced testing and test infrastructure.

A major testing initiative included in the President's request is the 2004 Pacific missile defense test bed, the conferees supported the request, for $786 million for the including $273 million for construction primarily at fort Greely, Alaska and other Alaska locations. Beginning in 2004, the Pacific missile test bed will allow more challenging testing in a far wider range of engagement scenarios than can be accommodated today.

The conferees provided the following levels for the restructured programs: $780 million for BMD system activities including battle management, communications, targets, countermeasures, and system integration; $2.2 billion (matching the President's request) for terminal defense systems, including Patriot Advanced Capability-3 (PAC–3), Medium Extended Air Defense System (MEADS), Navy Area (which has now been cancelled by the Administration), Theater High Altitude Air Defense (THAAD), and international missile defense programs, including the Arrow program; $3.9 billion (matching the President's request) for mid-course defense systems, including ground-based (formerly known as national Missile Defense) and sea-based (formerly known as Navy Theater Wide Defense) missile defense programs; $685 million (matching the President's request) for boost phase systems, including the Airborne Laser (ABL) and Space-Based Laser (SBL); $496 million (matching the President's request) for the Space-Based Infrared System (SBIRS) and international sensor programs, including the Russian-American Observation Satellite project; $113 million (matching the President's request) for development of technology and innovative concepts necessary to keep pace with evolving missile threats;

However, the conferees did not support the President's request to transfer PAC–3, Medium Extended Air Defense System, and Navy Area programs from BMDO to the military services. The bill requires the Secretary of Defense to establish guidelines for future transfers, and to certify that transferred programs are adequately funded in the future year defense program.

Just as the President moves to reduce our nuclear forces the conferees repealed the statute that prohibits the U.S. from retiring or dismantling certain strategic nuclear forces until START II enters into force. As part of this effort, the conferees increased funding for the retirement of the Peacekeeper ICBM.

The Strategic Subcommittee also has oversight over two-thirds of the Department of Energy's budget as it relates to our nuclear forces and defense nuclear cleanup programs.

During the subcommittee's hearings, we heard from DOE that one of the major shortfalls of the Department is the conditions of the infrastructure of our DOE labs and plants, the need for a principal deputy administrator at the National Nuclear Security Administration, and an increase in DOE's environmental cleanup programs and nuclear weapons activities.

Therefore the conferees provided $6.2 billion for DOE environmental cleanup and management programs including: $3.3 billion for work at facilities with

complex and extensive environmental problems that will be closed after 2006; $1.1 billion for the Defense Facilities Closure Project; $959.7 million for construction and site completion at facilities that will be closed by 2006; $216 million ($20 million more than the President's request) for the Defense Environmental Restoration and Waste Management Science and Technology programs; and $153.5 million ($12 million more than the President's request) for Defense Environmental Management Privatization.

In regards to the National Nuclear Security Administration conferees provided $7.1 billion for managing the nation's nuclear weapons, nonproliferation and naval reactor programs, including: $1 billion for stockpile life extension and evaluation programs; $2.1 billion for focused efforts to develop the tools and knowledge necessary to ensure the safety, reliability, and performance of the nuclear stockpile in the absence of underground nuclear weapons testing. Included in this, the conferees provided $219 million to fully fund plutonium pit manufacturing and certification; $200 million to begin to recapitalize the nation's nuclear weapons complex infrastructure, much of which dates to the post-World War II era; $688 million for the naval reactors program, which supports operation, maintenance and continuing development of Naval nuclear propulsion systems.

There is one issue that I am very proud to say is included in this bill and that is the creation of the Rocky Flats National Wildlife Refuge. This effort has been done in a bipartisan manner with Congressman UDALL and more than 2 years worth of work by local citizens, community leaders, and elected officials. Its passage has ensured that our children and grandchildren will continue to enjoy the wildlife and open space that currently exists at Rocky Flats. However, even with its passage, my primary goal remains the safe cleanup and closure of Rocky Flats.

I would like to mention a few of the following high points of the bill.

Rocky Flats will remain in permanent federal ownership through a transfer from the Department of Energy to the U.S. Fish and Wildlife Service after the cleanup and closure of the site is complete;

Secondly, we understand the importance of planning for the transportation needs of the future and have authorized the Secretary of Energy and the Secretary of the Interior the opportunity to grant a transportation right-of-way on the eastern boundary of the site for transportation improvements along Indiana Street;

The third point is one of the most important directives in this Act and it states that ''nothing . . . shall reduce the level of cleanup and closure at Rocky Flats required under the RFCA or any Federal or State law.'' I believe it is important to reiterate that the cleanup levels for the site will be determined by the various laws and processes set forth in the Rock Flats Cleanup Agreement and State and Federal law; and

Fourth, we firmly believe that access rights and property rights must be preserved. Therefore, this legislation recognizes and preserves all mineral rights, water rights and utility rights-of-ways. This act does, however, provide the Secretary of Energy and the Secretary of Interior the authority to impose reasonable conditions on the access to private property rights for cleanup and refuge management purposes.

I would also like to highlight another section of the bill which encourages the implementation of the recommendations of the Space Commission, which concluded that the Department of Defense is not adequately organized or focused to meet U.S. national security space needs. There are four major sections of the provision.

The first provision requires the Secretary of Defense to submit a report on steps taken to improve management, organization and oversight of space programs, space activities, and funding and personnel resources.

The second provision requires the Secretary of Defense to take actions that ensure space development and acquisition programs are jointly carried out and, to the maximum extent practicable, ensure that offers of the Army, Navy, Marine Corps, and Air Force are assigned to and hold leadership positions in such joint program offices.

Third, the conferees request that the Comptroller General report back to Congress on the actions taken by the Secretary of Defense to implement the recommendations contained in the Commission report.

Fourth, due to the concerns of the ''tripled hatted'' nature of the Commander-in-Chief, U.S. Air Force Space Command, the bill states that the position should not serve concurrently as commander of the North American Air Defense Command and as Commander-in-Chief, U.S. Space Command. Plus, the bill provides the needed flexibility in general officer limits to ensure that the commander of Air Force Space Command will serve in the grade of general.

Finally, even though I strongly support the Fiscal Year 2002 Authorization Act, I am very disappointed that this bill ignored real shortcoming as it relates to our military's voting rights.

While my original bill went much further in implementing the Space Commission report, I believe this is a first good step and, if needed, I hope we can revisit this issue next year to ensure that space management and programs get the senior level support it deserves.

Finally, even though I strongly support this bill, I am very disappointed that this bill ignored a real shortcoming as it relates to our military voting rights.

When I introduce S. 381, my Military Voting Rights Bill, I sought to improve the voting rights of overseas military voters in six key ways. And this Senate agreed to include that bill in our version of the defense authorization. But I am severely dismayed that the conference report contained none of the most important provisions relating to military voting.

Considering the egregious acts of last November, with the memory of campaign lawyers standing ready with preprinted military absentee ballot challenge forms, we needed to respond. And yet the House of Representatives, led by the House Administration Committee, refused to accept the sections of the Senate passed bill that would most effectively ensure the voting rights of our military men and women and their families.

In September, the GAO released a 92-page report entitled ''Voting Assistance to Military and Overseas Citizens Should Be Improved.'' I will not read the entire thing, but let me read one of the summary headers: ''Military and Overseas Absentee Ballots in Small Countries Were Disqualified at a Higher Rate Than Other Absentee Ballots.''

I also have an article from the Washington Post, page A17, November 22, 2000 that reads in part '' . . . lawyers spent a contentious six hours trying to disqualify as many as possible of the absentee ballots sent in by overseas military personnel.''

Let me also read from a Miami Herald article, November 19, 2000: ''Forty percent of the more than 3,500 ballots in Florida were thrown out last week for technical reasons, and elections observers are wondering whether the State's election laws are fair, especially to military personnel.''

Two main flaws in the military voter system—flaws that we have concrete proof were exploited—could have been fixed last week by sections of the Military Voting Rights bill that the House refuses to accept.

The first section prohibits a State from disqualifying a ballot based upon lack of postmark, address, witness signature, lack of proper postmark, or on the basis of comparison of envelope, ballot and registration signatures alone—these were the basis for most absentee ballot challenges.

There has been report after report of ballots mailed—for instance form deployed ships or other distant postings—without the benefit of postmarking facilities. Sometimes mail is bundled, and the whole group gets one postmark, which could invalidate them all under current law. Military ''voting officers'' are usually junior ranks, quickly trained, and facing numerous other responsibilities. We can not punish our service personnel for the good faith mistakes of others.

And military voters who are discharged and move before an election but after the residency deadline cannot vote through the military absentee ballot system, and sometimes are not able

to fulfill deadlines to establish residency in a State. There are roughly 20,000 military personnel separated each month. Our section allowed them to use the proper discharge forms as a residency waiver and vote in person at their new polling site. This brings military voters into their new community quicker. But the House rejected this section as well.

The Senate moved to address these problems. The Houses refuses to do so. This is an issue I, and those who feel as strongly as I do, such as our nation's veteran and active duty service organizations, will continue to press.

Mr. BOND. Mr. President. I rise to raise some significant concerns about S. 1389, the Homestake Mine Conveyance Act of 2001, which has been attached to the Department of Defense-Supplemental conference report.

This legislation will have serious adverse implications for the Federal Government most notably, the National Science Foundation (NSF) and the Environmental Protection Agency (EPA)—due to its unprecedented legal protections provided to the State and the Homestake Mining Company and its potentially significant budgetary costs.

While some modifications to the original have been made to the bill to address many of the problematic legal and programmatic issues, these changes were modest at best and the bill as a whole still has significant legal, budgetary, and policy implications that could negatively impact NSF and EPA. This bill is an improvement over the original legislation introduced by the senators from South Dakota, but it is still problematic and troubling.

As the ranking member of the VA-HUD Appropriations Subcommittee, I believe in deferring to the scientific expertise and judgment of the NSF and its Science Board in determining which projects had scientific merit and deserved funding. The Congress should not be in the business of legislating what is scientifically meritorious. The Homestake legislation totally circumvents the merit review process long-established and followed by the agency.

The reality of this matter is that the South Dakota Senators are using NSF as a means to save jobs that will be lost from the closing of the mine. While I appreciate the effort to save people's jobs, it should not be done by undermining the scientific merit review process. This is simply the wrong approach and creates a new, dangerous precedent.

Further, the broad indemnification provisions in the bill, even with the proposed modifications, are sweeping. The Federal Government would also be required to provide broad indemnification to both the Homestake Mining Company and the State for PAST and FUTURE claims related to the site. The sweeping and unprecedented language is in conflict with, and greatly expands, the Federal Government's potential tort liability well beyond provided in the Federal Tort Claims Act. The Federal Government's liability with respect to environmental claims would also be potentially unlimited. It is unclear whether the bill affects Homestake's obligations under court-approved Consent Decrees (CD) that the Federal Government has already entered into. These CDs address certain remediation and natural resource damage claims. There are additional legal issues related to the Anti-Deficiency Act and tort law concerning compensation after the fact of injury.

Funding this costly project would also potentially sap funding for other current and new initiatives that have scientific merit and which the Congress and Administration fully support. Critically important scientific research initiatives such as nanotechnology, information technology, and biotechnology initiatives may be significantly impaired. Major research projects related to astronomy, engineering, and the environment could be cut back or not funded.

I hope my colleagues will be sensitized to the dangerous legal, budgetary, and policy implications of the Homestake legislation. I am extremely troubled by this legislation and hope that political pressure does not influence the ultimate outcome of the proposed project in the Homestake bill.

Mr. DASCHLE. Mr. President, I am delighted that the Congress has incorporated S. 1389, the Homestake Mine Conveyance Act of 2001, as amended, into the fiscal year 2002 Department of Defense Appropriations conference report.

This important legislation will enable the construction of a new, world-class scientific research facility deep in the Homestake Mine in Lead, SD. Not only will this facility create an opportunity for critical breakthroughs in physics and other fields, it will provide unprecedented new economic and educational opportunities for South Dakota.

Just over a year ago, the Homestake Mining Company announced that it intended to close its 125-year-old gold mine in Lead, SD, at the end of 2001. This historic mine has been a central part of the economy of the Black Hills for over a century, and the closure of the mine was expected to present a significant economic blow to the community.

In the wake of this announcement, you can imagine the surprise of South Dakotans to discover that a committee of prominent scientists viewed the closure of the mine as an unprecedented new opportunity to establish a National Underground Science Laboratory in the United States. Because of the extraordinary depth of the mine and its extensive existing infrastructure, they found that the mine would be an ideal location for research into neutrinos, tiny particles that can only be detected deep underground, where thousands of feet of rock block out other cosmic radiation.

Earlier this year, I met with several of these scientists to determine how they planned to move forward. They told me they intended to submit a proposal to the National Science Foundation for a grant to construct the laboratory. After a thorough peer review, the National Science Foundation would determine whether or not it would be in the best interests of science and the United States for such a laboratory to be built. The scientists also explained that since the National Science Foundation normally does not own research facilities, the mine would need to be conveyed from Homestake Mining Company to the State of South Dakota for construction to take place. For the company to be willing to donate the property, and for the state to be willing to accept it, both would require the Federal Government to assume some of the liability associated with the property.

The purpose of the Homestake Mine Conveyance Act of 2001 is to meet that need. It establishes a process to convey the mine to the State of South Dakota, and for the Federal Government to assume a portion of the company's liabilities. This Act will only take effect if the National Science Foundation selects Homestake as the site for an underground laboratory. Only property needed for the construction of the lab will be conveyed, and conveyance can only take place after appropriate environmental reviews and after the Environmental Protection Agency certifies the remediation of any environmental problems. If the mine is conveyed, the State of South Dakota will be required to purchase environmental insurance for the property and set up an environmental trust fund to protect the taxpayers against any environmental liability that may be incurred.

I believe this process is fair and equitable to all involved. It will enable the laboratory to be constructed and the environment to be protected.

I am not a scientist, and the decision to build this laboratory must be made by the scientific community. However, it is helpful to review some of the information I have received from the team of scientists supporting this project to better understand why we would take the unusual step of conveying a gold mine to a state with federal indemnification.

Dr. John Bahcall is a scientist at the Institute for Advanced Study in Princeton, NJ. He was awarded the National Medal of Science in 1998. He is a widely recognized expert in neutrino science and an authority on the scientific potential of an underground laboratory. Recently, I received a letter from him explaining the research opportunities created by an underground laboratory. In the letter, he explained, ''There are pioneering experiments in the fields of physics, astronomy, biology, and geology that can only be carried out in an environment that is

shielded from the many competing phenomena that occur on the surface of the earth. These experiments concern such fundamental and applied subjects as: How stable is ordinary matter? What is the dark matter of which most of our universe is composed? What new types of living organisms exist in deep underground environments from which sunlight is excluded? How are heat and water transported underground over long distances and long times?''

As Dr. Bahcall's letter makes clear, the laboratory would provide an opportunity for a wide variety of important research. For that reason, it is receiving strong support in the scientific community. For example, every six to seven years, the Nuclear Science Advisory Board and the Nuclear Physics Division of the American Physical Society develop a Long Range Plan that identifies that the major priorities of American nuclear physicists for coming years. After a series of meetings, these scientists ranked the creation of a National Underground Science Laboratory as one of their top priorities in their Long Range Plan.

In a recent letter to the National Science Foundation, members of the Nuclear Science Advisory Committee explained their support for the creation of an underground laboratory at Homestake: ''[T]here is presently an outstanding opportunity for the United States to assume world leadership at the frontier of underground science through the acquisition and development by the National Science Foundation of the Homestake mine in South Dakota to create a deep underground (7000 meter of water equivalent (m.w.e.)) laboratory. . . . In the last decade, fundamental progress has been made in underground experiments in such diverse areas as nucleon decay, atmospheric neutrino oscillations, solar neutrino oscillations, and searches for dark matter. These studies not only have increased our understanding of the fundamental properties of the universe, but have pointed to new and even more challenging frontiers of compelling scientific interest. To explore these frontiers, the next generation of experiments (e.g. solar neutrino, double beta decay, etc.) will require a deep underground laboratory to reduce cosmic ray-related backgrounds, which constitute the limiting factor for high sensitivity experiments. A National Underground Science Laboratory at a depth of 7000 m.w.e., at the Homestake Mine site would constitute a world class facility, with a dedicated infrastructure to insure [sic] U.S. leadership in underground studies well into the next century.''

While there are two other locations under consideration in the United States for the construction of an underground laboratory, scientists have stated that the Homestake Mine, because of its unique characteristics, is the best location in the country to conduct this research. Dr. Wick Haxton of the Institute for Nuclear Theory put together the team's findings in a report entitled, ''The U.S. National Underground Science Laboratory at Homestake: Status Report and Update.''

I'd like to share some of their report: ''The announcement on September 11, 2000, that the historic Homestake Gold Mine would soon close presented a remarkable opportunity for creating a dedicated multipurpose deep underground laboratory in the U.S. Among its attributes are:

Homestake has very favorable physical properties. It is the deepest mine in the U.S. The rock is hard and of high quality: even at depth there is an absence of rock bursts common at sites of comparable depth. Large cavities built at depths of 7400 and 8000 feet have been shown to be stable over periods of a decade or more. The mine is dry, producing only 500 gallons/minute of water throughout its 600 km of drifts.

Homestake has shafts that can be adapted to provide unprecedented horizontal access. The replacement cost of the Ross and Yates shafts and the No. 6 winze, which access the proposed laboratory site, is approximately $300 million. The shaft cross sections are unusually large, 15 x 28 feet, and the Yates hoist, powered by two 1250 hp Nordberg motors, can lift nearly 7 tons. This makes it possible to lower cargo containers directly to the underground site. Finally, there are several existing ventilation shafts as well as an extensive set of ramps that connect the levels, providing important secondary escape paths.

Homestake is a site with remarkable flexibility. There are drifts approximately every 150 feet in depth, allowing experiments to be conducted at multiple levels and opening up possibilities for an unusually broad range of science. Coupled with the extensive ventilation system—including a massive cooling plant with four York compressors and 2300 tons of refrigeration—this allows a wide range of experiments to be mounted, including those involving flammables, cryogens, or other substances best sequestered and separately vented.

The flexibility to accommodate a very wide range of science is important because significant advantages will accompany a single multipurpose national laboratory. There are economies of scale in infrastructure and safety, including the development of common specialized facilities (like a low-background counting facility). This reduces costs and saves human scientific capital. Concentration also produces a stronger scientific and technical environment. It allows synergisms between disciplines to grow.

The proposed principle site of the laboratory is the region at 7400 ft between the Ross and Yates shafts. The site is accessible now: extensive coring studies of the site will be performed to verify its suitability, prior to any expenditures for major construction.

The mine is fully permitted for safety and rock disposal on site, and is located in a state supportive of mining.

The mine includes surface buildings, extensive fiber optics and communications systems, a large inventory of tools and rolling stock that may be transferable to the laboratory, and skilled engineers, geologists, and miners who know every aspect of the mine.''

This is not the first time that Homestake, or other mines, have been used to support this kind of research. In fact, underground scientific research at the Homestake mine dates back to 1965, when a neutrino detector was installed in the underground mine at the 4850-foot level. Research from that experiment is acknowledged as critical to the development of neutrino astrophysics. Similar experiments have continued in the Soudan mine in Minnesota, and in underground laboratories outside of the United States, leading to important discoveries and developments in particle physics and theory.

As I've stated, the purpose of the legislation passed by the Senate is to allow the conveyance of the property needed for the construction of the laboratory from Homestake Mining Company to the State of South Dakota. I'd like to take a moment to explain why it is necessary for the Federal Government to transfer the mine to the State, and to indemnify the company and the State in order for this conveyance to take place.

The National Science Foundation, which is reviewing a $281 million proposal to construct this laboratory, does not operate its own research facilities. Instead, it provides grants to other entities to operate facilities or to conduct experiments. In keeping with this tradition, the proposed laboratory would not be owned by the Federal Government, but instead would need to be operated by an entity other than the NSF. Since it is not practical for the company to retain ownership of the site as it is converted into a laboratory, Homestake expressed a willingness to donate the underground mine and infrastructure to the State of South Dakota, together with certain surface facilities, structures and equipment that are necessary to operate and support the underground mine, provided that it could be released from liabilities associated with the transfer and the future operation of its property as an underground laboratory.

Relief from liability is necessary because the construction of the lab will require the company to forgo certain reclamation actions that it would normally take to limit its liability in the mine. For example, in connection with closing the underground mine, Homestake planned to remove electric substations, decommission hoists and other equipment, turn off the pumps that dewater the mine, and seal all openings. Were the pumps to be turned off, the mine workings would slowly

fill with water, rendering the mine unusable laboratory.

The Act establishes a specific procedure that will be followed in order for conveyance to take place and Homestake to be relieved of its liability. First, the Act does not become effective unless the National Science Foundation selects Homestake Mine as the site for a National Underground Science Laboratory. This means that conveyance procedures will not begin until it is clear that the NSF supports the construction of a laboratory. Second, a due diligence inspection of the property will be conducted by an independent entity to identify any condition that may pose an imminent and substantial endangerment to public health or the environment. Third, any condition of the mine that meets those criteria must be corrected before conveyance takes place. Homestake may choose to contribute toward any necessary response actions. However, Section 4 of this Act includes a provision that limits Homestake's contribution to this additional work, if necessary, to $75 million, reduced by the value of the property and equipment that Homestake is donating. In addition, the State, or another person, may also assist with that action. Only after the administration of the Environmental Protection Agency has certified that necessary steps have been taken to correct any problems that are identified can the conveyance proceed.

Since some of the steps required to convert the mine into a laboratory go above and beyond normal reclamation, the company is not obligated to deliver the property in a condition that is suitable for use as a laboratory. However, those portions of the mine that require the most significant reclamation, including the tailings pond and waste rock dumps, are specifically prohibited from being conveyed under this Act and will remain Homestake's responsibility to reclaim.

Under normal circumstances, the mine would close in March of 2002. Since it must be kept open beyond that date to leave open the option to construct the laboratory, Congress has already appropriated $10 million in the VA-HUD Appropriations bill to pay for expenses needed for that purpose.

It is important that all aspects of the conveyance process be completed in a timely fashion. To facilitate the construction of the laboratory, the inspections, reports and conveyance will need to proceed in phases, with the inspections being initiated after Homestake has completed the reclamation work that may otherwise have been required. While the Act sets no specific deadline for the completion of these procedures, it is important that the entire process be completed in no more than eight months from the date of passage of the Act. The timeframes in the Act for public comment on draft reports and on EPA's review of the report are intended to emphasize the need for timely action.

S. 1389 also contains important provisions to protect taxpayers from any potential liability once the transfer of the mine takes place. First, South Dakota must purchase property and liability insurance for the mine. It may also require individual experiments to purchase environmental insurance. Second, the bill requires that South Dakota establish an Environment and Project Trust Fund to finance any future clean-up actions that may be required. A portion of annual Operations and Maintenance funding must be deposited into the fund, and the state may also require individual projects to make a deposit into the fund. The insurance and trust fund provisions of this bill will help to provide a firewall between the taxpayers and any future environmental clean-up that may be required.

I want to thank all of those who have been involved in the development of this legislation. I particularly appreciate the hard work and support of Governor Bill Janklow of South Dakota. I also want to thank my colleague, Senator JOHNSON, a cosponsor of this bill, for all of his work, particularly to secure the $10 million in transition funds that will bridge the gap between Homestake's closure and the establishment of the laboratory. And, I would like to thank officials from Homestake and Barrick.

This legislation will provide an opportunity for the United States to conduct scientific research and will provide important new educational and economic opportunities for South Dakota. I thank my colleagues in Congress for their support of this bill.

I ask unanimous consent that both a letter from the Nuclear Science Advisory Committee to the National Science Foundation and a section-by-section analysis of the bill be printed in the RECORD.

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

FISCAL YEAR 2002 DEPARTMENT OF DEFENSE APPROPRIATIONS CONFERENCE REPORT

DIVISION E—MISCELLANEOUS PROVISIONS

Title I—Homestake Mine Conveyance

Section-by-Section Analysis

Section 101. Short Title. Names bill as ''Homestake Mine Conveyance Act of 2001.''

Section 102. Findings. States that Homestake Mine has been selected by a committee of scientists as the preferred location for a National Underground Science Laboratory. While Homestake Mining Company is willing to transfer the mine to the State of South Dakota, both must be indemnified against future liability in order to do so.

Section 103. Definitions. Defines the following terms: Administrator, Affiliate, Conveyance, Fund, Homestake, Independent Entity, Laboratory, Mine, Person, Project Sponsor, Scientific Advisory Board and State.

The term ''Mine'' refers to the property to be conveyed from Homestake to South Dakota pursuant to the Act. This property consists of only a portion of Homestake's property in Lawrence County, South Dakota. The ''Mine'' is defined to include the underground workings and infrastructure at the Homestake Mine in Lawrence County, South Dakota and all real property, mineral and oil and gas rights, shafts, tunnels, structures, in-mine backfill, in-mine broken rock, fixtures, and personal property to be conveyed for establishment and operation of the laboratory, as agreed upon by Homestake and the State. ''Mine'' is also defined to include any water that flows into the Mine from any source. The real and personal property that is to be conveyed will be subject to further discussions among Homestake, the State and the laboratory. The laboratory has identified parts of the surface, real property, equipment, facilities and structures that will be necessary or useful in the operation of the laboratory. Homestake will determine if the identified property can be included in the conveyance. The definition of ''Mine'' excludes certain features, including the ''Open Cut,'' the tailings storage facility and existing waste rock dumps. These are not part of the ''Mine'' and cannot be conveyed under the Act. Homestake remains responsible for reclamation and closure of all property that is not conveyed under this Act.

Section 104. Conveyance of Real Property. The bill establishes several requirements as conditions for conveyance. Once conveyance is approved, the mine is transferred to the state ''as-is'' via a quit-claim deed.

Inspection. Prior to the conveyance, the Act provides for a due diligence inspection to be conducted by an independent entity. The independent entity is to be selected jointly by the Administrator of the EPA, the South Dakota Department of Environment and Natural Resources and Homestake. In consultation with the State and Homestake, the Administrator of the EPA will determine the methodology and standards to be used in the inspection, including the conduct of the inspection, the scope of the inspection and the time and duration of the inspection. The purpose of the inspection is to determine whether there is any condition in the Mine that may pose an imminent and substantial endangerment to public health or the environment. The inspection will not attempt to document all environmental conditions at the Mine, and will not inspect or evaluate any environmental conditions on property that is not part of the conveyance.

Report. After conducting the inspection, the independent entity must prepare a draft report on its findings that describes the results of its inspection and identifies any condition of or in the mine that may pose an imminent and substantial endangerment to public health or the environment.

This draft report must be submitted to the EPA and made available to the public. A public notice must be issued requesting public comments on the draft within 45 days. During the 45-day comment period, the independent entity shall hold at least one public hearing in Lead, South Dakota. After these steps are taken, the independent entity must submit a final report that responds to public comments and incorporates necessary changes.

Review to Report. Not later than 60 days after receiving the report, the EPA shall review it and notify the state of its acceptance or rejection of the report. The Administrator may reject the report if one or more conditions are identified that may pose an imminent and substantial endangerment to public health or the environment and require response action before conveyance and assumption by the Federal Government of liability for the mine. The Administrator may also reject the report if the conveyance is determined to be against the public interest.

Response Action. If the independent entity's report identifies no conditions that may pose an imminent and substantial threat to human health or the environment, and EPA

accepts the report, then the conveyance may proceed. If the report identifies a condition in the Mine that may pose an imminent and substantial endangerment to public health or the environment, then Homestake may, but is not obligated to, carry out or permit the State or other persons to carry out a response action to correct the condition. If the condition is one that requires a continuing response action, or a response action that may only be completed as part of the final closure of the laboratory, then Homestake, the State or other persons must make a deposit into the Environment and Project Trust Fund established in Section 7 that is sufficient to pay the costs of that response action. The amount of the deposit is to be determined by the independent entity, on a net present value basis and taking into account interest that may be earned on the deposit until the time that expenditure is expected to be made. Homestake may choose to contribute toward the response actions. However, Section 4 includes a provision that limits Homestake's contribution to this additional work, if necessary, to $75 million, reduced by the value of the property and equipment that Homestake is donating. Funds deposited into the Fund to meet this requirement may only be expended to address the needs identified in the inspection.

Once any necessary response actions have been completed, or necessary funds have been deposited, then the independent entity may certify to the EPA that the conditions identified in the report that may pose an imminent and substantial threat to human health or the environment have been corrected.

Final Review. Not later than 60 days after receiving the certification, the EPA must make a final decision to accept or reject the certification. Conveyance may proceed only if the EPA accepts the certification.

Section 105. Assessment of Property. Section 5 sets forth the process for valuing the donated property and services. For purposes of determining the amount of Homestake's potential contribution toward response actions identified in Section 4(b)(4)(C), the property being donated by Homestake is to be valued by the independent entity according to the Uniform Appraisal Standards for Federal Land Acquisition. To the extent that some property, such as underground tunnels, only has value for the purpose of constructing a laboratory, that entity is directed to include the estimated costs of replacing the facilities in the absence of Homestake's donation, and the cost of replacing any donated equipment. The valuation is to be submitted to the Administrator of the EPA, the state and Homestake in a separate report that is not subject to the procedures in Section 4(b). If it is determined that the conveyance can most efficiently be processed in several phases, then the valuation report is to accompany each of the due diligence reports.

Section 106. Liability

Assumption of liability. Upon conveyance, the United States shall assume liability for the mine and laboratory. This liability includes damages, reclamation, cleanup of hazardous substances under CERCLA, and closure of the facility. If property transfer takes place in steps, then the assumption of liability shall occur with each transfer for those properties.

Liability protection. Upon conveyance, neither Homestake nor the State of South Dakota shall be liable for the mine or laboratory. The United States shall waive sovereign immunity for claims by Homestake and the State, assume this liability and indemnify Homestake against it. However, in the case of any claim against the United States, it is only liable for response costs for environmental claims to the extent that response costs would be awarded in a civil action brought under the Federal Water Pollution Control Act, the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or any other Federal environmental law. In addition, claims for damages must be made in accordance with the Federal Tort Claims Act.

Exceptions. Homestake is not relieved of liability for workers compensation or other employment-related claims, non-environmental claims that occur prior to conveyance, any criminal liability, or any liability for property not transferred, unless that property is affected by the operation of the lab.

Section 107. Insurance Coverage

Requirement to Purchase Insurance for mine. To the extent such insurance is available, the state shall purchase property and liability insurance for the mine and the operation of the laboratory to provide coverage against the liability assumed by the United States. The requirement to purchase insurance will terminate if the mine ceases to be used as a laboratory or Operations and Maintenance funding is not sufficient to operate the laboratory.

Terms of Insurance. The state must periodically consult with the EPA and the Scientific Advisory Board and consider the following factors to determine the coverage, type and policy limits of insurance: the nature of projects in the laboratory, the cost and availability of commercial insurance, and the amount of available funding. The insurance shall be secondary to insurance purchased by sponsors of individual projects, and in excess of amounts available in the Fund to pay any claim. The United States shall be an additional insured and will have the right to enforce the policy.

Funding of insurance purchase. The state may finance the purchase of insurance with funds from the Fund or other funds available to the state, but may not be compelled to use state funds for this purpose.

Porject insurance. In consultation with the EPA and the Scientific Advisory Board, the State may require a project sponsor to purchase property and liability insurance for a project. The United States shall be an additional insured on the policy and have the right to enforce it.

State insurance. The State shall purchase unemployment compensation insurance and worker's compensation insurance required under state law. The State may not use funds from the Fund for this purpose.

Section 108. Environment and Project Trust Fund

Establishment of fund. On completion of conveyance, the State shall establish an environment and Project Trust Fund in an interest-bearing account within the state.

Capitalization of Fund. There are several streams of money that will capitalize the fund, some of which have restrictions on the way they may be spent.

Annual Portion of Operation and Maintenance Spending. A portion of annual O&M funding determined by the State in consultation with the EPA and the Scientific Advisory Board shall be deposited in the Fund. To determine the annual amount, the State must consider the nature of the projects in the facility, the available amounts in the Fund, any pending costs or claims, and the amount of funding required for future actions to close the facility.

Project Fee. The state, in consultation with NSF and EPA, shall require each project to pay an amount into the Fund. These funds may only be used to remove projects from the lab or to pay claims associated with those projects.

Interest. All interest earned by the Fund is retained within the Fund.

Other funds. Other funds may be received and deposited in the Fund at the discretion of the state.

Expenditures from Fund. Funds within the Trust Fund may only be spent for the following purposes: waste and hazardous substance removal or remediation, or other environmental cleanup; removal of equipment and material no longer used or necessary for use with a project or a claim association with that project; purchases of insurance by the State (except for employment related insurance; payments for other costs related to liability; and the closure of the mine.

Federal Authority. To the extent the United States is liable, it may direct that amounts in the Trust Fund be applied toward costs it incurs.

Section 109. Waste Rock Mixing. If the State, acting in its capacity overseeing the laboratory, determines to dispose of waste rock excavated for the construction of the laboratory on land owned by Homestake that is not conveyed under this legislation, then the State must first receive approval from the Administrator before disposing such rock.

Section 110. Requirements for Operation of Laboratory. The laboratory must comply with all federal laws, including environmental laws.

Section 111. Contingency. This Act shall be effective contingent upon the selection of the Mine by the National Science Foundation as the site for the laboratory.

Section 112. Obligation in the Event of Nonconveyance. If the conveyance does not occur, then Homestake's obligations to reclaim the mine are limited to the requirements of current law.

Section 113. Payment and Reimbursement of Costs. The United States may seek payment from the Fund or insurance as reimbursement for costs it incurs as the result of the liability it has undertaken.

Section 114. Consent Decrees. Nothing in this title affects the obligation of a party to two existing consent decrees.

Section 115. Offset. Offset for title.

Section 116. Authorization of appropriations. Such funds as are necessary to carry out the Act are authorized.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT AGREEMENT—H.R. 2884

Mr. DASCHLE. Mr. President, there is a matter that has some urgency associated with it only because I know the House is waiting to receive the language. So in the interest of expediting consideration of this particular piece of legislation, I now ask unanimous consent that the Chair lay before the Senate a message from the House on H.R. 2884, that the Senate concur in the amendment of the House with a further amendment which is at the desk.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Reserving the right to object, what is 2884?

Mr. DASCHLE. Mr. President, 2884 is the Victims Relief Fund, the legislation dealing with victims of terrorism.

Mr. GRAMM. What is the amendment, Mr. President?

Mr. DASCHLE. I yield to the Senator from New Jersey.

Mr. TORRICELLI. I thank the majority leader for yielding. When the Senate unanimously passed this legislation

previously, we included waiving income taxes and payroll taxes for families of the victims of September 11. The House of Representatives in their bill included only income taxes and not payroll taxes.

When the House repassed the bill and sent it to us, they included a provision that did not include payroll taxes but set a minimum of $10,000 so lower income people would receive some tax refund. The House wanted to retain the principle of not waiving payroll taxes but did want to give some refund to low-income families. This was seen as agreeable to both sides and fair.

Mr. GRAMM. Mr. President, further reserving the right to object, it is my understanding there were additional provisions such as extended unemployment, provisions of that nature. Are they in this bill?

Let me suggest the absence of a quorum so we could look at that.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. DASCHLE. 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. 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 have a unanimous consent request that is pending.

The PRESIDING OFFICER. Is there objection to the request?

Mr. BAUCUS. Reserving the right to object, is this the victims relief bill, I ask the majority leader?

Mr. DASCHLE. I answer to the Senator from Montana it is the victims relief bill.

Mr. BAUCUS. Reserving the right to object, and I shall not object, there is a disaster in the State of Montana and other higher plain States, which is a drought. I have been seeking agricultural disaster assistance. I see that is not going to happen. I ask my friend from South Dakota if he can assure me that at the first opportunity next year we will take up and consider the agricultural disaster assistance bill.

Mr. DASCHLE. Mr. President, I commend the Senator from Montana for his efforts over the course of the last several months. I have been impressing the Senate to act on disaster relief. Many farmers in South Dakota share this problem, and I have applauded the efforts made by the Senator from Montana. I appreciate his interest and his determination to see that it adequately responds to the Great Plains, the Midwest, and elsewhere.

I assure the Senator from Montana that at the first appropriate opportunity we will find a way to address the legislation and find a way in which to respond. As he recalls, we did some of that last summer. We had a good debate about how much was necessary. I think the Senator from Montana is correct in his observations that there is still a great deal more to be done. I will work with him to see that that happens.

Mr. BAUCUS. Mr. President, I thank my good friend from South Dakota. I add that this bill is very necessary to the victims relief bill, as it was reported to the Committee on Finance. I will not belabor it by going through the provisions. According to the rules, there is not time to do so. Suffice to say, this bill must pass in the next several hours because it will give much-needed relief. I thank my friend.

Mr. SCHUMER. Mr. President, reserving the right to object, and I will not object, I would like to just say that some of the provisions that are not in this bill—first, the victims relief part of the bill is very necessary. We did not want to stand in the way of that. Originally, when the victims relief bill came over to the House, it had provisions to benefit Lower Manhattan. We all know that Lower Manhattan is in real trouble because of what happened on September 11. The great fear is that businesses, large and small, will leave. The fear factor is enormous.

Over on the House side, the chairman of the Ways and Means Committee worked out a package that would help bring some relief. On this side, Senator CLINTON and I worked out a package that had tremendous support in our version of the stimulus bill from the majority leader, as well as the chairman of the Finance Committee. We had spent a great deal of time after it looked as though the stimulus bill was not going to happen, starting yesterday, and finishing about an hour and a half ago, trying to come to a compromise between the House version and the Senate version.

The chairman of the Ways and Means Committee in the other body and our staffs worked long and hard to come up with the compromise we have come up with. There are a few changes here and there that he might like, I might like, and Senator CLINTON might like, and others in New York might like, but we did come to an agreement. Unfortunately, the agreement we came to was not able to be reviewed by the Senators in this body. We just came up with it about an hour, hour and a half ago.

Unfortunately, because time is late and because the victims package has achieved that agreement, we will not stand in the way and object to removing the New York part from the bill and bringing up this other bill.

But I say this to my colleagues: We have a tremendous problem in downtown Manhattan. We are getting FEMA relief, and it is working well. The Senator from West Virginia has helped us in other areas. But tax relief to companies, big and small, to individuals, to nonprofits that don't have space right now, or that have space but are wondering whether they can stay in Lower Manhattan, is vital to New York's reblooming quickly.

I am hopeful that when we come back in January, the package that has been agreed to and worked on by the chairman of the Ways and Means Committee and many of his people, Senator BAUCUS, Senator GRASSLEY, Senator CLINTON, and myself will serve as a basis for bringing something up quickly then.

We had hoped to get something now. We have come really close—close but no cigar, they say. We are going to try to gain that cigar as soon as we come back. But make no mistake about it, we will be back. We very much need the help, and we appreciate everybody's cooperation to help us get there.

Mr. LOTT. Has the unanimous consent request been agreed to?

Mr. SCHUMER. I withdraw my objection.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I say to the Members, this final victims package is a good package. I earlier introduced a measure to make sure we included the provisions of S. 1433,which is supported by Senator WARNER, Senator CAMPBELL, and Senator CRAIG. I am glad these ideas have been recognized, that this war we are fighting is against terrorists who target defenseless men, women, and children. The areas in which these attacks occur are combat zones.

I am glad this package has been worked out, because the last thing the families of these victims need to be worrying about is paying taxes, whether income taxes or other types of taxes—this bill addresses those concerns.

While my colleague from New York may want to add some other items to this measure—but at this late hour will not—I commend to my colleagues the fact that the police officers and firefighters who first responded to the World Trade Center attacks, as well as the Pentagon, risked their lives in hazardous conditions, breathing toxic gases, to save the lives of their fellow citizens.

In my view, those who are serving in those terrorist attack zones ought to be looked upon as the same as those who work in combat zones, and the taxes of those first responders for that month ought not be subject to income taxes. I am going to work next year to get this proper recognition for our firefighters, law enforcement officers, and rescue personnel, but I do not want to hold up this good victims' relief package which means a good deal to a lot of families who feel a very big hole in their hearts during this holiday season.

I yield the floor.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Reserving the right to object, and I shall not object.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank my colleague, Senator ALLEN, for his comments. I also thank my colleague, Senator TORRICELLI, for his work and the work we did in the Finance Committee. We also included the victims from the Oklahoma City bombing disaster 6 years ago in which 189 people lost their lives. Likewise, they should not have to pay taxes for that year or the preceding year. The amount of income is almost de minimis, but it is only fair.

I thank my colleagues from New York and New Jersey for their cooperation. My colleagues from New York had many additional, very interesting items—accelerated depreciation and other ideas to stimulate the economy. We are happy to work with them to try to make that happen in the near future.

I thank my colleagues for their support, and I shall not object.

The PRESIDING OFFICER. Is there objection?

If there is no objection, without objection, it is so ordered.

The majority leader.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the vote on the conference report to accompany H.R. 3338 occur immediately following the remarks made by the senior Senator from West Virginia.

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

Mr. TORRICELLI. Will the majority leader yield?

The PRESIDING OFFICER. Is objection heard?

Mr. LOTT. Mr. President, I seek recognition, but in view of what we have just agreed to, I know the Senator from New Jersey wants to be heard. I yield the floor to him.

Mr. TORRICELLI. Mr. President, I thank the Republican leader for his courtesy. I want to say a word of thanks to all of my colleagues. I was proud to have offered this provision in the Finance Committee and again on the Senate floor.

The PRESIDING OFFICER. The Chair needs to ascertain if there is objection to the preceding unanimous consent request.

Mr. MCCAIN. I withdraw my objection.

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

The Chair laid before the Senate a message from the House, as follows:

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate to the bill (H.R. 2884) entitled ''An Act to amend the Internal Revenue Code of 1986 to provide tax relief for victims of the terrorist attacks against the United States on September 11, 2001'', with the following House amendment to senate amendments:

In lieu of the matter proposed to be inserted by the Senate amendment to the text of the bill, insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Victims of Terrorism Tax Relief Act of 2001''.

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

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—RELIEF PROVISIONS FOR VICTIMS OF TERRORIST ATTACKS

SEC. 101. INCOME TAXES OF VICTIMS OF TERRORIST ATTACKS.

(a) IN GENERAL.—Section 692 (relating to income taxes of members of Armed Forces on death) is amended by adding at the end the following new subsection:

''(d) INDIVIDUALS DYING AS A RESULT OF CERTAIN ATTACKS.—

''(1) IN GENERAL.—In the case of a specified terrorist victim, any tax imposed by this chapter shall not apply—

''(A) with respect to the taxable year in which falls the date of death, and

''(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds, injury, or illness referred to in paragraph (2) were incurred.

''(2) SPECIFIED TERRORIST VICTIM.—For purposes of this subsection, the term 'specified terrorist victim' means any decedent—

''(A) who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on April 19, 1995, or September 11, 2001, or

''(B) who dies as a result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002.

Such term shall not include any individual identified by the Attorney General to have been a participant or conspirator in any such attack or a representative of such an individual.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 5(b)(1) is amended by inserting ''and victims of certain terrorist attacks'' before ''on death''.

(2) Section 6013(f)(2)(B) is amended by inserting ''and victims of certain terrorist attacks'' before ''on death''.

(c) CLERICAL AMENDMENTS.—

(1) The heading of section 692 is amended to read as follows:

''SEC. 692. INCOME TAXES OF MEMBERS OF ARMED FORCES AND VICTIMS OF CERTAIN TERRORIST ATTACKS ON DEATH.''.

(2) The item relating to section 692 in the table of sections for part II of subchapter J of chapter 1 is amended to read as follows:

''Sec. 692. Income taxes of members of Armed Forces and victims of certain terrorist attacks on death.''.

(d) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending before, on, or after September 11, 2001.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

SEC. 102. EXCLUSION OF CERTAIN DEATH BENEFITS.

(a) IN GENERAL.—Section 101 (relating to certain death benefits) is amended by adding at the end the following new subsection:

''(i) CERTAIN EMPLOYEE DEATH BENEFITS PAYABLE BY REASON OF DEATH OF CERTAIN TERRORIST VICTIMS.—

''(1) IN GENERAL.—Gross income does not include amounts (whether in a single sum or otherwise) paid by an employer by reason of the death of an employee who is a specified terrorist victim (as defined in section 692(d)(2)).

''(2) LIMITATION.—Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to amounts which would have been payable if the individual had died other than as a specified terrorist victim (as so defined).

''(3) TREATMENT OF SELF-EMPLOYED INDIVIDUALS.—For purposes of paragraph (1), the term 'employee' includes a self-employed individual (as defined in section 401(c)(1)).''.

(b) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending before, on, or after September 11, 2001.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

SEC. 103. ESTATE TAX REDUCTION.

(a) IN GENERAL.—Section 2201 is amended to read as follows:

''SEC. 2201. COMBAT ZONE-RELATED DEATHS OF MEMBERS OF THE ARMED FORCES AND DEATHS OF VICTIMS OF CERTAIN TERRORIST ATTACKS.

''(a) IN GENERAL.—Unless the executor elects not to have this section apply, in applying sections 2001 and 2101 to the estate of a qualified decedent, the rate schedule set forth in subsection (c) shall be deemed to be the rate schedule set forth in section 2001(c).

''(b) QUALIFIED DECEDENT.—For purposes of this section, the term 'qualified decedent' means—

''(1) any citizen or resident of the United States dying while in active service of the Armed Forces of the United States, if such decedent—

''(A) was killed in action while serving in a combat zone, as determined under section 112(c), or

''(B) died as a result of wounds, disease, or injury suffered while serving in a combat zone (as determined under section 112(c)), and while in the line of duty, by reason of a hazard to which such decedent was subjected as an incident of such service, and

''(2) any specified terrorist victim (as defined in section 692(d)(2)).

''(c) RATE SCHEDULE.—

''If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over $150,000	1 percent of the amount by which such amount exceeds $100,000.
Over $150,000 but not over $200,000.	$500 plus 2 percent of the excess over $150,000.
Over $200,000 but not over $300,000.	$1,500 plus 3 percent of the excess over $200,000.
Over $300,000 but not over $500,000.	$4,500 plus 4 percent of the excess over $300,000.
Over $500,000 but not over $700,000.	$12,500 plus 5 percent of the excess over $500,000.
Over $700,000 but not over $900,000.	$22,500 plus 6 percent of the excess over $700,000.
Over $900,000 but not over $1,100,000.	$34,500 plus 7 percent of the excess over $900,000.
Over $1,100,000 but not over $1,600,000.	$48,500 plus 8 percent of the excess over $1,100,000.
Over $1,600,000 but not over $2,100,000.	$88,500 plus 9 percent of the excess over $1,600,000.
Over $2,100,000 but not over $2,600,000.	$133,500 plus 10 percent of the excess over $2,100,000.
Over $2,600,000 but not over $3,100,000.	$183,500 plus 11 percent of the excess over $2,600,000.
Over $3,100,000 but not over $3,600,000.	$238,500 plus 12 percent of the excess over $3,100,000.
Over $3,600,000 but not over $4,100,000.	$298,500 plus 13 percent of the excess over $3,600,000.
Over $4,100,000 but not over $5,100,000.	$363,500 plus 14 percent of the excess over $4,100,000.
Over $5,100,000 but not over $6,100,000.	$503,500 plus 15 percent of the excess over $5,100,000.
Over $6,100,000 but not over $7,100,000.	$653,500 plus 16 percent of the excess over $6,100,000.
Over $7,100,000 but not over $8,100,000.	$813,500 plus 17 percent of the excess over $7,100,000.
Over $8,100,000 but not over $9,100,000.	$983,500 plus 18 percent of the excess over $8,100,000.
Over $9,100,000 but not over $10,100,000.	$1,163,500 plus 19 percent of the excess over $9,100,000.
Over $10,100,000	$1,353,500 plus 20 percent of the excess over $10,100,000.

''(d) DETERMINATION OF UNIFIED CREDIT.—In the case of an estate to which this section applies, subsection (a) shall not apply in determining the credit under section 2010.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 2011 is amended by striking subsection (d) and by redesignating subsections (e), (f), and (g) as subsections (d), (e), and (f), respectively.

(2) Section 2053(d)(3)(B) is amended by striking ''section 2011(e)'' and inserting ''section 2011(d)''.

(3) Paragraph (9) of section 532(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

(c) CLERICAL AMENDMENT.—The item relating to section 2201 in the table of sections for subchapter C of chapter 11 is amended to read as follows:

''Sec. 2201. Combat zone-related deaths of members of the Armed Forces and deaths of victims of certain terrorist attacks.''.

(d) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents—

(A) dying on or after September 11, 2001, and

(B) in the case of individuals dying as a result of the April 19, 1995, terrorist attack, dying on or after April 19, 1995.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

SEC. 104. PAYMENTS BY CHARITABLE ORGANIZATIONS TREATED AS EXEMPT PAYMENTS.

(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986—

(1) payments made by an organization described in section 501(c)(3) of such Code by reason of the death, injury, wounding, or illness of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002, shall be treated as related to the purpose or function constituting the basis for such organization's exemption under section 501 of such Code if such payments are made—

(A) in good faith using a reasonable and objective formula which is consistently applied, and

(B) in furtherance of public rather than private purposes, and

(2) in the case of a private foundation (as defined in section 509 of such Code), any payment described in paragraph (1) shall not be treated as made to a disqualified person for purposes of section 4941 of such Code.

(b) EFFECTIVE DATE.—This section shall apply to payments made on or after September 11, 2001.

TITLE II—OTHER RELIEF PROVISIONS

SEC. 201. EXCLUSION FOR DISASTER RELIEF PAYMENTS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 139 as section 140 and inserting after section 138 the following new section:

''SEC. 139. DISASTER RELIEF PAYMENTS.

''(a) GENERAL RULE.—Gross income shall not include any amount received by an individual as a qualified disaster relief payment.

''(b) QUALIFIED DISASTER RELIEF PAYMENT DEFINED.—For purposes of this section, the term 'qualified disaster relief payment' means any amount paid to or for the benefit of an individual—

''(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,

''(2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster,

''(3) by a person engaged in the furnishing or sale of transportation as a common carrier by reason of the death or personal physical injuries incurred as a result of a qualified disaster, or

''(4) if such amount is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare,

but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

''(c) QUALIFIED DISASTER DEFINED.—For purposes of this section, the term 'qualified disaster' means—

''(1) a disaster which results from a terroristic or military action (as defined in section 692(c)(2)),

''(2) a Presidentially declared disaster (as defined in section 1033(h)(3)),

''(3) a disaster which results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature, or

''(4) with respect to amounts described in subsection (b)(4), a disaster which is determined by an applicable Federal, State, or local authority (as determined by the Secretary) to warrant assistance from the Federal, State, or local government or agency or instrumentality thereof.

''(d) COORDINATION WITH EMPLOYMENT TAXES.—For purposes of chapter 2 and subtitle C, a qualified disaster relief payment shall not be treated as net earnings from self-employment, wages, or compensation subject to tax.

''(e) NO RELIEF FOR CERTAIN INDIVIDUALS.—Subsections (a) and (f) shall not apply with respect to any individual identified by the Attorney General to have been a participant or conspirator in a terroristic action (as so defined), or a representative of such individual.

''(f) EXCLUSION OF CERTAIN ADDITIONAL PAYMENTS.—Gross income shall not include any amount received as payment under section 406 of the Air Transportation Safety and System Stabilization Act.''

(b) CONFORMING AMENDMENTS.—The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 139 and inserting the following new items:

''Sec. 139. Disaster relief payments.

''Sec. 140. Cross references to other Acts.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after September 11, 2001.

SEC. 202. AUTHORITY TO POSTPONE CERTAIN DEADLINES AND REQUIRED ACTIONS.

(a) EXPANSION OF AUTHORITY RELATING TO DISASTERS AND TERRORISTIC OR MILITARY ACTIONS.—Section 7508A is amended to read as follows:

''SEC. 7508A. AUTHORITY TO POSTPONE CERTAIN DEADLINES BY REASON OF PRESIDENTIALLY DECLARED DISASTER OR TERRORISTIC OR MILITARY ACTIONS.

''(a) IN GENERAL.—In the case of a taxpayer determined by the Secretary to be affected by a Presidentially declared disaster (as defined in section 1033(h)(3)) or a terroristic or military action (as defined in section 692(c)(2)), the Secretary may specify a period of up to one year that may be disregarded in determining, under the internal revenue laws, in respect of any tax liability of such taxpayer—

''(1) whether any of the acts described in paragraph (1) of section 7508(a) were performed within the time prescribed therefor (determined without regard to extension under any other provision of this subtitle for periods after the date (determined by the Secretary) of such disaster or action),

''(2) the amount of any interest, penalty, additional amount, or addition to the tax for periods after such date, and

''(3) the amount of any credit or refund.

''(b) SPECIAL RULES REGARDING PENSIONS, ETC.—In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a disaster or action described in subsection (a), the Secretary may specify a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this title. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of

disregarding any period by reason of the preceding sentence.

''(c) SPECIAL RULES FOR OVERPAYMENTS.—The rules of section 7508(b) shall apply for purposes of this section.''.

(b) CLARIFICATION OF SCOPE OF ACTS SECRETARY MAY POSTPONE.—Section 7508(a)(1)(K) (relating to time to be disregarded) is amended by striking ''in regulations prescribed under this section''.

(c) CONFORMING AMENDMENTS TO ERISA.—

(1) Part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131 et seq.) is amended by adding at the end the following new section:

''SEC. 518. AUTHORITY TO POSTPONE CERTAIN DEADLINES BY REASON OF PRESIDENTIALLY DECLARED DISASTER OR TERRORISTIC OR MILITARY ACTIONS.

''In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1033(h)(3) of the Internal Revenue Code of 1986) or a terroristic or military action (as defined in section 692(c)(2) of such Code), the Secretary may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this Act. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.''.

(2) Section 4002 of Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302) is amended by adding at the end the following new subsection:

''(i) SPECIAL RULES REGARDING DISASTERS, ETC.—In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1033(h)(3) of the Internal Revenue Code of 1986) or a terroristic or military action (as defined in section 692(c)(2) of such Code), the corporation may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this Act. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.''.

(d) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 6404 is amended—

(A) by striking subsection (h),

(B) by redesignating subsection (i) as subsection (h), and

(C) by adding at the end the following new subsection:

''(i) CROSS REFERENCE.—

''For authority to suspend running of interest, etc. by reason of Presidentially declared disaster or terroristic or military action, see section 7508A.''.

(2) Section 6081(c) is amended to read as follows:

''(c) CROSS REFERENCES.—

''For time for performing certain acts postponed by reason of war, see section 7508, and by reason of Presidentially declared disaster or terroristic or military action, see section 7508A.''.

(3) Section 6161(d) is amended by adding at the end the following new paragraph:

''(3) POSTPONEMENT OF CERTAIN ACTS.—

''For time for performing certain acts postponed by reason of war, see section 7508, and by reason of Presidentially declared disaster or terroristic or military action, see section 7508A.''.

(d) CLERICAL AMENDMENTS.—

(1) The item relating to section 7508A in the table of sections for chapter 77 is amended to read as follows:

''Sec. 7508A. Authority to postpone certain deadlines by reason of Presidentially declared disaster or terroristic or military actions.''.

(2) The table of contents for the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 517 the following new item:

''Sec. 518. Authority to postpone certain deadlines by reason of Presidentially declared disaster or terroristic or military actions.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to disasters and terroristic or military actions occurring on or after September 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after the date of the enactment of this Act.

SEC. 203. APPLICATION OF CERTAIN PROVISIONS TO TERRORISTIC OR MILITARY ACTIONS.

(a) DISABILITY INCOME.—Section 104(a)(5) (relating to compensation for injuries or sickness) is amended by striking ''a violent attack'' and all that follows through the period and inserting ''a terroristic or military action (as defined in section 692(c)(2)).''.

(b) EXEMPTION FROM INCOME TAX FOR CERTAIN MILITARY OR CIVILIAN EMPLOYEES.—Section 692(c) is amended—

(1) by striking ''outside the United States'' in paragraph (1), and

(2) by striking ''SUSTAINED OVERSEAS'' in the heading.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after September 11, 2001.

SEC. 204. CLARIFICATION OF DUE DATE FOR AIRLINE EXCISE TAX DEPOSITS.

(a) IN GENERAL.—Paragraph (3) of section 301(a) of the Air Transportation Safety and System Stabilization Act (Public Law 107–42) is amended to read as follows:

''(3) AIRLINE-RELATED DEPOSIT.—For purposes of this subsection, the term 'airline-related deposit' means any deposit of taxes imposed by subchapter C of chapter 33 of such Code (relating to transportation by air).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in section 301 of the Air Transportation Safety and System Stabilization Act (Public Law 107–42).

SEC. 205. TREATMENT OF CERTAIN STRUCTURED SETTLEMENT PAYMENTS.

(a) IN GENERAL.—Subtitle E is amended by adding at the end the following new chapter:

''CHAPTER 55—STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

''Sec. 5891. Structured settlement factoring transactions.

''SEC. 5891. STRUCTURED SETTLEMENT FACTORING TRANSACTIONS.

''(a) IMPOSITION OF TAX.—There is hereby imposed on any person who acquires directly or indirectly structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount as determined under subsection (c)(4) with respect to such factoring transaction.

''(b) EXCEPTION FOR CERTAIN APPROVED TRANSACTIONS.—

''(1) IN GENERAL.—The tax under subsection (a) shall not apply in the case of a structured settlement factoring transaction in which the transfer of structured settlement payment rights is approved in advance in a qualified order.

''(2) QUALIFIED ORDER.—For purposes of this section, the term 'qualified order' means a final order, judgment, or decree which—

''(A) finds that the transfer described in paragraph (1)—

''(i) does not contravene any Federal or State statute or the order of any court or responsible administrative authority, and

''(ii) is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, and

''(B) is issued—

''(i) under the authority of an applicable State statute by an applicable State court, or

''(ii) by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

''(3) APPLICABLE STATE STATUTE.—For purposes of this section, the term 'applicable State statute' means a statute providing for the entry of an order, judgment, or decree described in paragraph (2)(A) which is enacted by—

''(A) the State in which the payee of the structured settlement is domiciled, or

''(B) if there is no statute described in subparagraph (A), the State in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130) or the person issuing the funding asset for the structured settlement is domiciled or has its principal place of business.

''(4) APPLICABLE STATE COURT.—For purposes of this section—

''(A) IN GENERAL.—The term 'applicable State court' means, with respect to any applicable State statute, a court of the State which enacted such statute.

''(B) SPECIAL RULE.—In the case of an applicable State statute described in paragraph (3)(B), such term also includes a court of the State in which the payee of the structured settlement is domiciled.

''(5) QUALIFIED ORDER DISPOSITIVE.—A qualified order shall be treated as dispositive for purposes of the exception under this subsection.

''(c) DEFINITIONS.—For purposes of this section—

''(1) STRUCTURED SETTLEMENT.—The term 'structured settlement' means an arrangement—

''(A) which is established by—

''(i) suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2), or

''(ii) agreement for the periodic payment of compensation under any workers' compensation law excludable from the gross income of the recipient under section 104(a)(1), and

''(B) under which the periodic payments are—

''(i) of the character described in subparagraphs (A) and (B) of section 130(c)(2), and

''(ii) payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

''(2) STRUCTURED SETTLEMENT PAYMENT RIGHTS.—The term 'structured settlement payment rights' means rights to receive payments under a structured settlement.

''(3) STRUCTURED SETTLEMENT FACTORING TRANSACTION.—

''(A) IN GENERAL.—The term 'structured settlement factoring transaction' means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration.

''(B) EXCEPTION.—Such term shall not include—

''(i) the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights, or

''(ii) a subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

''(4) FACTORING DISCOUNT.—The term 'factoring discount' means an amount equal to the excess of—

''(A) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over

''(B) the total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

''(5) RESPONSIBLE ADMINISTRATIVE AUTHORITY.—The term 'responsible administrative authority' means the administrative authority which had jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

''(6) STATE.—The term 'State' includes the Commonwealth of Puerto Rico and any possession of the United States.

''(d) COORDINATION WITH OTHER PROVISIONS.—

''(1) IN GENERAL.—If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

''(2) NO WITHHOLDING OF TAX.—The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.''.

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle E is amended by adding at the end the following new item:

''Chapter 55. Structured settlement factoring transactions.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section (other than the provisions of section 5891(d) of the Internal Revenue Code of 1986, as added by this section) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into on or after the 30th day following the date of the enactment of this Act.

(2) CLARIFICATION OF EXISTING LAW.—Section 5891(d) of such Code (as so added) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into on or after such 30th day.

(3) TRANSITION RULE.—In the case of a structured settlement factoring transaction entered into during the period beginning on the 30th day following the date of the enactment of this Act and ending on July 1, 2002, no tax shall be imposed under section 5891(a) of such Code if—

(A) the structured settlement payee is domiciled in a State (or possession of the United States) which has not enacted a statute providing that the structured settlement factoring transaction is ineffective unless the transaction has been approved by an order, judgment, or decree of a court (or where applicable, a responsible administrative authority) which finds that such transaction—

(i) does not contravene any Federal or State statute or the order of any court (or responsible administrative authority), and

(ii) is in the best interest of the structured settlement payee or is appropriate in light of a hardship faced by the payee, and

(B) the person acquiring the structured settlement payment rights discloses to the structured settlement payee in advance of the structured settlement factoring transaction the amounts and due dates of the payments to be transferred, the aggregate amount to be transferred, the consideration to be received by the structured settlement payee for the transferred payments, the discounted present value of the transferred payments (including the present value as determined in the manner described in section 7520 of such Code), and the expenses required under the terms of the structured settlement factoring transaction to be paid by the structured settlement payee or deducted from the proceeds of such transaction.

SEC. 206. PERSONAL EXEMPTION DEDUCTION FOR CERTAIN DISABILITY TRUSTS.

(a) IN GENERAL.—Subsection (b) of section 642 (relating to deduction for personal exemption) is amended to read as follows:

''(b) DEDUCTION FOR PERSONAL EXEMPTION.—

''(1) ESTATES.—An estate shall be allowed a deduction of $600.

''(2) TRUSTS.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, a trust shall be allowed a deduction of $100.

''(B) TRUSTS DISTRIBUTING INCOME CURRENTLY.—A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of $300.

''(C) DISABILITY TRUSTS.—

''(i) IN GENERAL.—A qualified disability trust shall be allowed a deduction equal to the exemption amount under section 151(d), determined—

''(I) by treating such trust as an individual described in section 151(d)(3)(C)(iii), and

''(II) by applying section 67(e) (without the reference to section 642(b)) for purposes of determining the adjusted gross income of the trust.

''(ii) QUALIFIED DISABILITY TRUST.—For purposes of clause (i), the term 'qualified disability trust' means any trust if—

''(I) such trust is a disability trust described in subsection (c)(2)(B)(iv), (d)(4)(A), or (d)(4)(C) of section 1917 of the Social Security Act (42 U.S.C. 1396p), and

''(II) all of the beneficiaries of the trust as of the close of the taxable year are determined to have been disabled (within the meaning of section 1614(a)(3) of the Social Security Act, 42 U.S.C. 1382c(a)(3)) for some portion of such year.

A trust shall not fail to meet the requirements of subclause (II) merely because the corpus of the trust may revert to a person who is not so disabled after the trust ceases to have any beneficiary who is so disabled.''

''(3) DEDUCTIONS IN LIEU OF PERSONAL EXEMPTION.—The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending on or after September 11, 2001.

TITLE III—TAX BENEFITS FOR AREA OF NEW YORK CITY DAMAGED IN TERRORIST ATTACKS ON SEPTEMBER 11, 2001

SEC. 301. TAX BENEFITS FOR AREA OF NEW YORK CITY DAMAGED IN TERRORIST ATTACKS ON SEPTEMBER 11, 2001.

(a) IN GENERAL.—Chapter 1 is amended by adding at the end the following new subchapter:

''Subchapter Y—New York Liberty Zone Benefits

''Sec. 1400L. Tax benefits for New York Liberty Zone.

''SEC. 1400L. TAX BENEFITS FOR NEW YORK LIBERTY ZONE.

''(a) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001.—

''(1) ADDITIONAL ALLOWANCE.—In the case of any qualified New York Liberty Zone property—

''(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 30 percent of the adjusted basis of such property, and

''(B) the adjusted basis of the qualified New York Liberty Zone property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

''(2) QUALIFIED NEW YORK LIBERTY ZONE PROPERTY.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified New York Liberty Zone property' means property—

''(i)(I) to which section 168 applies (other than railroad grading and tunnel bores), or

''(II) which is computer software (as defined in section 167(f)(1)(B)) for which a deduction is allowable under section 167(a) without regard to this subsection,

''(ii) substantially all of the use of which is in the New York Liberty Zone and is in the active conduct of a trade or business by the taxpayer in such Zone,

''(iii) the original use of which in the New York Liberty Zone commences with the taxpayer after September 10, 2001, and

''(iv) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after September 10, 2001, and placed in service by the taxpayer on or before the termination date, but only if no written binding contract for the acquisition was in effect before September 11, 2001.

The term 'termination date' means December 31, 2006 (December 31, 2009, in the case of nonresidential real property and residential rental property).

''(B) EXCEPTIONS.—

''(i) ALTERNATIVE DEPRECIATION PROPERTY.—The term 'qualified New York Liberty Zone property' shall not include any property to which the alternative depreciation system under section 168(g) applies, determined—

''(I) without regard to paragraph (7) of section 168(g) (relating to election to have system apply), and

''(II) after application of section 280F(b) (relating to listed property with limited business use).

''(ii) QUALIFIED LEASEHOLD IMPROVEMENT PROPERTY.—Such term shall not include qualified leasehold improvement property.

''(iii) ELECTION OUT.—If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

''(C) SPECIAL RULES RELATING TO ORIGINAL USE.—

''(i) SELF-CONSTRUCTED PROPERTY.—In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iv) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after September 10, 2001, and before the termination date.

''(ii) SALE-LEASEBACKS.—For purposes of subparagraph (A)(iii), if property—

''(I) is originally placed in service after September 10, 2001, by a person, and

''(II) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subclause (II).

''(D) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—The deduction allowed by this subsection shall be allowed in determining alternative minimum taxable income under section 55.

''(b) 5-YEAR RECOVERY PERIOD FOR DEPRECIATION OF CERTAIN LEASEHOLD IMPROVEMENTS.—

''(1) IN GENERAL.—For purposes of section 168, the term '5-year property' includes any qualified leasehold improvement property.

''(2) QUALIFIED LEASEHOLD IMPROVEMENT PROPERTY.—For purposes of this section—

''(A) IN GENERAL.—The term 'qualified leasehold improvement property' means any improvement to an interior portion of a building which is nonresidential real property if—

''(i) such building is located in the New York Liberty Zone,

''(ii) such improvement is made under or pursuant to a lease (as defined in section 168(h)(7))—

''(I) by the lessee (or any sublessee) of such portion, or

''(II) by the lessor of such portion,

''(iii) such portion is to be occupied exclusively by the lessee (or any sublessee) of such portion,

''(iv) such improvement is placed in service—

''(I) after September 10, 2001, and more than 3 years after the date the building was first placed in service, and

''(II) before January 1, 2007, and

''(v) no written binding contract for such improvement was in effect before September 11, 2001.

''(B) CERTAIN IMPROVEMENTS NOT INCLUDED.—Such term shall not include any improvement for which the expenditure is attributable to—

''(i) the enlargement of the building,

''(ii) any elevator or escalator,

''(iii) any structural component benefiting a common area, and

''(iv) the internal structural framework of the building.

''(C) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

''(i) COMMITMENT TO LEASE TREATED AS LEASE.—A commitment to enter into a lease shall be treated as a lease, and the parties to such commitment shall be treated as lessor and lessee, respectively.

''(ii) RELATED PERSONS.—A lease between related persons shall not be considered a lease. For purposes of the preceding sentence, the term 'related persons' means—

''(I) members of an affiliated group (as defined in section 1504), and

''(II) persons having a relationship described in subsection (b) of section 267; except that, for purposes of this clause, the phrase '80 percent or more' shall be substituted for the phrase 'more than 50 percent' each place it appears in such subsection.

''(D) IMPROVEMENTS MADE BY LESSOR.—

''(i) IN GENERAL.—In the case of an improvement made by the person who was the lessor of such improvement when such improvement was placed in service, such improvement shall be qualified leasehold improvement property (if at all) only so long as such improvement is held by such person.

''(ii) EXCEPTION FOR CHANGES IN FORM OF BUSINESS.—Property shall not cease to be qualified leasehold improvement property under clause (i) by reason of—

''(I) death,

''(II) a transaction to which section 381(a) applies, or

''(III) a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as qualified leasehold improvement property and the taxpayer retains a substantial interest in such trade or business.

''(3) REQUIREMENT TO USE STRAIGHT LINE METHOD.—The applicable depreciation method under section 168 shall be the straight line method in the case of qualified leasehold improvement property.

''(4) 9-YEAR RECOVERY PERIOD UNDER ALTERNATIVE SYSTEM.—For purposes of section 168(g), the class life of qualified leasehold improvement property shall be 9 years.

''(c) INCREASE IN EXPENSING UNDER SECTION 179.—

''(1) IN GENERAL.—For purposes of section 179—

''(A) the limitation under section 179(b)(1) shall be increased by the lesser of—

''(i) $35,000, or

''(ii) the cost of section 179 property which is qualified New York Liberty Zone property placed in service during the taxable year, and

''(B) the amount taken into account under section 179(b)(2) with respect to any section 179 property which is qualified New York Liberty Zone property shall be 50 percent of the cost thereof.

''(2) RECAPTURE.—Rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified New York Liberty Zone property which ceases to be used in the New York Liberty Zone.

''(d) TAX-EXEMPT BOND FINANCING.—

''(1) IN GENERAL.—For purposes of this title, any qualified New York Liberty Bond shall be treated as an exempt facility bond.

''(2) QUALIFIED NEW YORK LIBERTY BOND.—For purposes of this subsection, the term 'qualified New York Liberty Bond' means any bond issued as part of an issue if—

''(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for qualified project costs,

''(B) such bond is issued by the State of New York or any political subdivision thereof,

''(C) the Governor of New York designates such bond for purposes of this section, and

''(D) such bond is issued during calendar year 2002, 2003, or 2004.

''(3) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated under this subsection shall not exceed $15,000,000,000.

''(4) QUALIFIED PROJECT COSTS.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified project costs' means the cost of acquisition, construction, reconstruction, and renovation of—

''(i) nonresidential real property and residential rental property (including fixed tenant improvements associated with such property) located in the New York Liberty Zone, and

''(ii) public utility property located in the New York Liberty Zone.

''(B) COSTS FOR CERTAIN PROPERTY OUTSIDE ZONE INCLUDED.—Such term includes the cost of acquisition, construction, reconstruction, and renovation of nonresidential real property (including fixed tenant improvements associated with such property) located outside the New York Liberty Zone but within the City of New York, New York, if such property is part of a project which consists of at least 100,000 square feet of usable office or other commercial space located in a single building or multiple adjacent buildings.

''(C) LIMITATIONS.—Such term shall not include—

''(i) costs for property located outside the New York Liberty Zone to the extent such costs exceed $7,000,000,000,

''(ii) costs with respect to residential rental property to the extent such costs exceed $3,000,000,000, and

''(iii) costs with respect to property used for retail sales of tangible property to the extent such costs exceed $1,500,000,000.

''(D) MOVABLE FIXTURES AND EQUIPMENT.—Such term shall not include costs with respect to movable fixtures and equipment.

''(5) SPECIAL RULES.—In applying this title to any qualified New York Liberty Bond, the following modifications shall apply:

''(A) Section 146 (relating to volume cap) shall not apply.

''(B) Section 147(c) (relating to limitation on use for land acquisition) shall be determined by reference to the aggregate authorized face amount of all qualified New York Liberty Bonds rather than the net proceeds of each issue.

''(C) Section 147(d) (relating to acquisition of existing property not permitted) shall be applied by substituting '50 percent' for '15 percent' each place it appears.

''(D) Section 148(f)(4)(C) (relating to exception from rebate for certain proceeds to be used to finance construction expenditures) shall apply to construction proceeds of bonds issued under this section.

''(E) Financing provided by such a bond shall not be taken into account under section 168(g)(5)(A) with respect to property substantially all of the use of which is in the New York Liberty Zone and is in the active conduct of a trade or business by the taxpayer in such Zone.

''(F) Repayments of principal on financing provided by the issue—

''(i) may not be used to provide financing, and

''(ii) are used not later than the close of the 1st semiannual period beginning after the date of the repayment to redeem bonds which are part of such issue.

The requirement of clause (ii) shall be treated as met with respect to amounts received within 10 years after the date of issuance of the issue (or, in the case of refunding bond, the date of issuance of the original bond) if such amounts are used by the close of such 10 years to redeem bonds which are part of such issue.

''(G) Section 57(a)(5) shall not apply.

''(6) SEPARATE ISSUE TREATMENT OF PORTIONS OF AN ISSUE.—This subsection shall not apply to the portion of the proceeds of an issue which (if issued as a separate issue) would be treated as a qualified bond or as a bond that is not a private activity bond (determined without regard to subsection (a)), if the issuer elects to so treat such portion.

''(e) EXTENSION OF REPLACEMENT PERIOD FOR NONRECOGNITION OF GAIN.—Notwithstanding subsections (g) and (h) of section 1033, clause (i) of section 1033(a)(2)(B) shall be applied by substituting '5 years' for '2 years' with respect to property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone but only if substantially all of the use of the replacement property is in the City of New York, New York.

''(f) NEW YORK LIBERTY ZONE.—For purposes of this section, the term 'New York Liberty Zone' means the area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the City of New York, New York.''

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 1 is amended by adding at the end the following new item:

''Subchapter Y. New York Liberty Zone Benefits.''

TITLE IV—DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS

SEC. 401. DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS.

(a) DISCLOSURE WITHOUT A REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—Paragraph (3) of section 6103(i) (relating to disclosure of return information to apprise appropriate officials of criminal activities or emergency circumstances) is amended by adding at the end the following new subparagraph:

''(C) TERRORIST ACTIVITIES, ETC.—

''(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. The head of the agency may disclose such return information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

''(ii) DISCLOSURE TO THE DEPARTMENT OF JUSTICE.—Returns and taxpayer return information may also be disclosed to the Attorney General under clause (i) to the extent necessary for, and solely for use in preparing, an application under paragraph (7)(D).

''(iii) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

''(iv) TERMINATION.—No disclosure may be made under this subparagraph after December 31, 2003.''.

(b) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—Subsection (i) of section 6103 (relating to disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration) is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—

''(A) DISCLOSURE TO LAW ENFORCEMENT AGENCIES.—

''(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (iii), the Secretary may disclose return information (other than taxpayer return information) to officers and employees of any Federal law enforcement agency who are personally and directly engaged in the response to or investigation of any terrorist incident, threat, or activity.

''(ii) DISCLOSURE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.—The head of any Federal law enforcement agency may disclose return information obtained under clause (i) to officers and employees of any State or local law enforcement agency but only if such agency is part of a team with the Federal law enforcement agency in such response or investigation and such information is disclosed only to officers and employees who are personally and directly engaged in such response or investigation.

''(iii) REQUIREMENTS.—A request meets the requirements of this clause if—

''(I) the request is made by the head of any Federal law enforcement agency (or his delegate) involved in the response to or investigation of any terrorist incident, threat, or activity, and

''(II) the request sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

''(iv) LIMITATION ON USE OF INFORMATION.—Information disclosed under this subparagraph shall be solely for the use of the officers and employees to whom such information is disclosed in such response or investigation.

''(B) DISCLOSURE TO INTELLIGENCE AGENCIES.—

''(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (ii), the Secretary may disclose return information (other than taxpayer return information) to those officers and employees of the Department of Justice, the Department of the Treasury, and other Federal intelligence agencies who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning any terrorist incident, threat, or activity. For purposes of the preceding sentence, the information disclosed under the preceding sentence shall be solely for the use of such officers and employees in such investigation, collection, or analysis.

''(ii) REQUIREMENTS.—A request meets the requirements of this subparagraph if the request—

''(I) is made by an individual described in clause (iii), and

''(II) sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

''(iii) REQUESTING INDIVIDUALS.—An individual described in this subparagraph is an individual—

''(I) who is an officer or employee of the Department of Justice or the Department of the Treasury who is appointed by the President with the advice and consent of the Senate or who is the Director of the United States Secret Service, and

''(II) who is responsible for the collection and analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity.

''(iv) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

''(C) DISCLOSURE UNDER EX PARTE ORDERS.—

''(i) IN GENERAL.—Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under clause (ii), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal law enforcement agency or Federal intelligence agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity. Return or return information opened to inspection or disclosure pursuant to the preceding sentence shall be solely for the use of such officers and employees in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceedings, pertaining to such terrorist incident, threat, or activity.

''(ii) APPLICATION FOR ORDER.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, or any United States attorney may authorize an application to a Federal district court judge or magistrate for the order referred to in clause (i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—

''(I) there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity, and

''(II) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

''(D) SPECIAL RULE FOR EX PARTE DISCLOSURE BY THE IRS.—

''(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (C)(i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that the requirements of subparagraph (C)(ii)(I) are met.

''(ii) LIMITATION ON USE OF INFORMATION.—Information disclosed under clause (i)—

''(I) may be disclosed only to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity, and

''(II) shall be solely for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

The head of such Federal agency may disclose such information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

''(E) TERMINATION.—No disclosure may be made under this paragraph after December 31, 2003.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 6103(a)(2) is amended by inserting ''any local law enforcement agency receiving information under subsection (i)(7)(A),'' after ''State,''.

(2) Section 6103(b) is amended by adding at the end the following new paragraph:

''(11) TERRORIST INCIDENT, THREAT, OR ACTIVITY.—The term 'terrorist incident, threat, or activity' means an incident, threat, or activity involving an act of domestic terrorism (as defined in section 2331(5) of title 18, United States Code) or international terrorism (as defined in section 2331(1) of such title).''.

(3) The heading of section 6103(i)(3) is amended by inserting ''OR TERRORIST'' after ''CRIMINAL''.

(4) Paragraph (4) of section 6103(i) is amended—

(A) in subparagraph (A) by inserting ''or (7)(C)'' after ''paragraph (1)'', and

(B) in subparagraph (B) by striking ''or (3)(A)'' and inserting ''(3)(A) or (C), or (7)''.

(5) Paragraph (6) of section 6103(i) is amended—

(A) by striking ''(3)(A)'' and inserting ''(3)(A) or (C)'', and

(B) by striking ''or (7)'' and inserting ''(7), or (8)''.

(6) Section 6103(p)(3) is amended—

(A) in subparagraph (A) by striking ''(7)(A)(ii)'' and inserting ''(8)(A)(ii)'', and

(B) in subparagraph (C) by striking ''(i)(3)(B)(i)'' and inserting ''(i)(3)(B)(i) or (7)(A)(ii)''.

(7) Section 6103(p)(4) is amended—

(A) in the matter preceding subparagraph (A)—

(i) by striking ''or (5),'' the first place it appears and inserting ''(5), or (7),'', and

(ii) by striking ''(i)(3)(B)(i),'' and inserting ''(i)(3)(B)(i) or (7)(A)(ii),'', and

(B) in subparagraph (F)(ii) by striking ''or (5),'' the first place it appears and inserting ''(5) or (7),''.

(8) Section 6103(p)(6)(B)(i) is amended by striking ''(i)(7)(A)(ii)'' and inserting ''(i)(8)(A)(ii)''.

(9) Section 6105(b) is amended—

(A) by striking ''or'' at the end of paragraph (2),

(B) by striking ''paragraphs (1) or (2)'' in paragraph (3) and inserting ''paragraph (1), (2), or (3)'',

(C) by redesignating paragraph (3) as paragraph (4), and

(D) by inserting after paragraph (2) the following new paragraph:

''(3) to the disclosure of tax convention information on the same terms as return information may be disclosed under paragraph (3)(C) or (7) of section 6103(i), except that in the case of tax convention information provided by a foreign government, no disclosure may be made under this paragraph without the written consent of the foreign government, or''.

(10) Section 7213(a)(2) is amended by striking ''(i)(3)(B)(i),'' and inserting ''(i)(3)(B)(i) or (7)(A)(ii),''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures made on or after the date of the enactment of this Act.

TITLE V—NO IMPACT ON SOCIAL SECURITY TRUST FUNDS

SEC. 501. NO IMPACT ON SOCIAL SECURITY TRUST FUNDS.

(a) IN GENERAL.—Nothing in this Act (or an amendment made by this Act) shall be construed to alter or amend title II of the Social Security Act (or any regulation promulgated under that Act).

(b) TRANSFERS.—

(1) ESTIMATE OF SECRETARY.—The Secretary of the Treasury shall annually estimate the impact that the enactment of this Act has on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401).

(2) TRANSFER OF FUNDS.—If, under paragraph (1), the Secretary of the Treasury estimates that the enactment of this Act has a negative impact on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401), the Secretary shall transfer, not less frequently than quarterly, from the general revenues of the Federal Government an amount sufficient so as to ensure that the income and balances of such trust funds are not reduced as a result of the enactment of this Act.

The amendment (No. 2689) was agreed to.

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

Mr. TORRICELLI. I express my thanks to Senator DASCHLE, Senator LOTT, Senator BAUCUS, Senator GRASSLEY, Senator NICKLES, and so many Members of the Senate who made this possible. I know during this Christmas season that the plight and distress of the families of those who lost their lives in Virginia, New York, New Jersey, and Pennsylvania will be in all of our thoughts. That really is not enough.

Charities have raised an enormous amount of money, but it has not gotten to the victims' families. There is a victims' fund this Government has raised, but it has not yet gotten to these victims' families. This tax relief offers real and immediate benefits. It has the promise that as American citizens give funds to charities, the funds from those charities will not in turn be taxed as they get to the widows, the parents, or other relatives. It holds the promise that there will be a refund given to many of these families.

Offering financial relief is little solace given such enormous pain, but it is of some help. Families who have buried their loved ones are also paying mortgages, tuition, and buying groceries. This is real help.

I am grateful to the Members of the Senate who have helped pass this legislation. I am grateful to Chairman THOMAS of the House Ways and Means Committee who has been with us as an architect in its passage.

I express on behalf of all the families for whom this means so much in this holiday season their gratitude to all of you who have made this possible. I yield the floor.

The PRESIDING OFFICER (Ms. CANTWELL). The majority leader.

Mr. DASCHLE. Madam President, I thank both Senators from New Jersey for their extraordinary work in getting us to this point. This was not easy, and I am grateful to them for their persistence, their leadership, and their efforts. This would not have happened were it not for their direct involvement to this moment. I say the same to the Senators from New York for the tremendous work they have done assisting us in getting to this point as well.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Madam President, I will be brief because I know we want to finish up the debate on the Defense appropriations conference report and get a recorded vote. There are Senators who would like that to occur sooner rather than later, so I will not belabor the point.

I am glad we worked out the agreement on the victims' disaster of September 11. I appreciate the cooperation all the way around. One can tell by the discussion that one of the reasons some of these other meritorious items were not added is that once we had one, there would be two, three, four, and we could not get all those worked out in the short time we had, and we stood the chance of losing the victims' tax provisions. I am glad we did that.

Also, I understand many of these provisions, including the New York provision, are in the stimulus package that has been voted on by the House. We are going to eventually get a stimulus package, and I hope and expect that provision will be in the bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. I thank the Chair.

Madam President, I, too, thank the Senate and the leadership of Senator DASCHLE, Senator LOTT, the chairman of the House Ways and Means Committee, Senator BAUCUS, and others who have worked with us to allow this victims' relief effort to come to pass.

Nothing can be more sincere and heartfelt during this holiday season than to respond with this legislation for families who have lost so much.

I thank the Senate for its efforts.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2002—CONFERENCE REPORT—Continued

Mr. DASCHLE. Madam President, it is my understanding we now have agreement to go directly to the vote on the conference report to H.R. 3338. I appreciate everyone's cooperation in that regard and I ask that the Senate proceed. For the interest of all Senators, this will be the last vote of the day.

The PRESIDING OFFICER. Is there further debate?

The Senator from West Virginia.

Mr. BYRD. I will take 30 seconds. I had agreed, in the interest of letting Senators catch their planes, to having the vote and then have my statement concerning the homeland defense part appear in the RECORD as though spoken before the vote. That unanimous consent was not agreed to and others spoke. The Senator from Arizona spoke. It was my understanding we would all give up that privilege and we would vote without speaking. Others have spoken. I am not going to stand in the way of Senators going home on this occasion, so I want to make it clear I did not object in the beginning so everybody who had speeches could make them.

I am willing to give up my speech right now. It is a great speech, but I will make it after the vote. I wanted to call it to the attention of the Senate that I kind of begrudgingly agreed to that request.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. DASCHLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the concurrent resolution.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

Mr. NICKLES. I announce that the Senator from Missouri (Mr. BOND), the Senator from Nevada (Mr. ENSIGN), and the Senator from North Carolina (Mr. HELMS) are necessarily absent.

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

The result was announced—yeas 94, nays 2, as follows:

[Rollcall Vote No. 380 Leg.]

YEAS—94

Allard	Durbin	Mikulski
Allen	Edwards	Miller
Baucus	Enzi	Murkowski
Bayh	Feingold	Murray
Bennett	Feinstein	Nelson (FL)
Biden	Fitzgerald	Nelson (NE)
Bingaman	Frist	Nickles
Boxer	Graham	Reed
Breaux	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Santorum
Byrd	Hatch	Sarbanes
Campbell	Hollings	Schumer
Cantwell	Hutchinson	Sessions
Carnahan	Hutchison	Shelby
Carper	Inhofe	Smith (NH)
Chafee	Inouye	Smith (OR)
Cleland	Jeffords	Snowe
Clinton	Johnson	Specter
Cochran	Kennedy	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Thomas
Corzine	Kyl	Thompson
Craig	Landrieu	Thurmond
Crapo	Leahy	Torricelli
Daschle	Levin	Voinovich
Dayton	Lieberman	Warner
DeWine	Lincoln	Wellstone
Dodd	Lott	Wyden
Domenici	Lugar	
Dorgan	McConnell	

NAYS—2

Gramm
McCain

NOT VOTING—4

Akaka	Ensign
Bond	Helms

The conference report (H.R. 3338) was agreed to.

Mr. REID. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. LOTT. Madam President, if I may take just one moment. I see Senator DASCHLE is getting ready to propound some unanimous consent requests.

Let me take a moment to say to the managers of the legislation and the chairman and ranking member of the committee, I know this has not been easy. There have been a lot of great ideas on both sides of the aisle as to how we could improve it or change it. You have been tenacious, you stuck with it, and you produced a good piece of legislation that is important for our country, important for our men and women in uniform.

This very morning the President called and said he was pleased with the result and he appreciates the leadership the Senate gave in this area.

I commend all of you, Senator INOUYE, Senator STEVENS, and Senator BYRD, for the work that has been done here.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Madam President, I concur in the comments made by the Republican leader. We should note that this completes our work on all 13 appropriations bills. I commend both the chair and the ranking member for their work in getting us to this point. This was not easy, especially this year. It would not have happened were it not for the tremendous effort made by each of the subcommittee chairs. I note especially the efforts of the Senator from Hawaii on the Defense appropriations bill, the largest of all bills with which we had to contend.

I congratulate them. I thank them. I note, again, the great work they have done in getting us to this point.

UNANIMOUS CONSENT REQUEST—H.R. 3210

Mr. DASCHLE. Madam President, I have a unanimous consent request to propound at this time. There will be many other unanimous consent requests made over the course of this afternoon. We will certainly notify Senators as they are propounded so that those who have an interest in a particular issue can be in the Chamber when we make them. Let me begin.

I ask unanimous consent the Senate proceed to Calendar No. 252, H.R. 3210, and the only amendment in order be a Dodd-Sarbanes-Schumer substitute amendment, that the substitute be considered and agreed to, the bill, as amended, be read a third time and passed, and the motion to reconsider be laid upon the table, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Senator from Kentucky.

Mr. MCCONNELL. Madam President, reserving the right to object—I will object—I have a different approach in mind on this which I would like to propound.

The PRESIDING OFFICER. Objection is heard.

Mr. DASCHLE. Madam President, the Republican leader and I have agreed that we would keep the remarks involving these unanimous consent requests to a minimum at this point to accommodate those Senators who are still waiting to speak on the Defense appropriations conference report. I would like to respect our earlier commitment to them that they would have the opportunity to make their remarks. But we will certainly entertain these unanimous consent requests without extended comments. I appreciate everyone's cooperation in that regard.

Mr. MCCONNELL. Madam President, will the leader yield for a question?

Mr. DASCHLE. Yes.

Mr. MCCONNELL. I was simply going to suggest that he modify his unanimous consent request. I was not going to make a speech.

Mr. DASCHLE. I would be happy to entertain the modification.

Mr. MCCONNELL. I was going to suggest the majority leader modify his unanimous consent request to adopt one amendment on each side with regard to liability only.

Mr. DASCHLE. Madam President, I appreciate the recommendation and proposal made by the Senator from Kentucky. I know this has been the subject of a good deal of discussion. There is no doubt the issue of liability will be a matter that will have to be addressed. But if we open it up to any amendment at this late hour, there is little likelihood we can complete our work in time for us to be able to go to conference before the holidays begin.

For that reason, I would have to object.

UNANIMOUS CONSENT REQUEST—H.R. 3529

Mr. LOTT. Madam President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 3529, which is the stimulus package received from the House. I further ask unanimous consent that there be 60 minutes for debate equally divided in the usual form; further, I ask that at the expiration or yielding back of that time, the bill be read a third time and the Senate proceed to a vote on passage of the bill, with points of order waived.

Before the Chair rules on this unanimous consent request, I add that if there is any additional debate time—if 2 or 3 hours would be needed—I will certainly amend my unanimous consent request to accommodate more debate.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Madam President, I offer an alternative and make it a proposal that we amend the unanimous consent request made by the distinguished Republican leader as the following: That the amendment include a substitute amendment that I have at the desk which would extend unemployment insurance coverage for 13 weeks, and that the bill, as amended, be read a third time and passed.

Mr. LOTT. Madam President, reserving the right to object, I want to make sure I understand the proposal: That we would not have a vote on that addition but to just include it in the package. Is that correct?

Mr. DASCHLE. Madam President, we have already indicated, of course, to all of our colleagues that we would not have any additional rollcall votes today. We would have to accommodate this request with simply a voice vote on the substitute.

Basically, what we are suggesting is that since we cannot reach agreement on the overall economic stimulus, the one piece for which there is general agreement is the need to extend unemployment insurance. We did it three times in the early 1990s, recognizing that the limited regular benefit period of time was inadequate for a lot of those who are out of work.

Again, without getting into extended remarks, I would simply, by explanation, note that would be the intent of this unanimous consent request, which is to substitute economic stimulus with the 13-week extension.

Mr. LOTT. Madam President, under those conditions, I would have to object.

Let me just say that if we can set it up in a way to have a rollcall vote on that rather than a voice vote to make that very substantial change, I think we need to do both, and therefore I would have to object to that modification.

Mr. DASCHLE. Madam President, I yield the floor.

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. Objection is heard.

The Senator from Hawaii.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2002—CONFERENCE REPORT

Mr. INOUYE. Madam President, pursuant to the unanimous consent agreement, I would like to proceed with my statements.

The PRESIDING OFFICER. The Senator is recognized.

Mr. INOUYE. Madam President, I am happy to rise today to offer my unqualified support for the conference agreement on H.R. 3338, the Department of Defense Appropriations Bill for Fiscal Year 2002.

I am pleased to present the recommendations to the Senate today, as division A of this bill.

The recommendations contained herein are the result of lengthy negotiations between the House and Senate managers and countless hours of work by our staffs acting on behalf of all members.

The agreement provides $317.2 billion, the same as the House and Senate levels, consistent with our 302b allocations.

As in all conference agreements, neither side, nor any individual member had every issue go his or her way. It represents a compromise.

It is one that protects the interests of both houses while clearly meeting our national defense reponsibilities.

For the information of all Senators, I should point out that the bill provides more funding for our men and women in uniform than was recommended by either body.

I want to note to all my collegues that this would not have been possible without the tremendous cooperation that I have received from Senator STEVENS and his able staff led by Steve Cortese with Ms. Margaret Ashworth, Kraig Siracuse, Alycia Farrell, and Mr. John Kem, on detail from DOD.

The Senate owes all of them a debt of gratitude. I want to also note the efforts of my staff, Charlie Houy, David Morrison, Gary Reese, Susan Hogan, Tom Hawkins, Bob Henke, Lesley Kalan, and Mazie Mattson who have devoted so much time to preparing the committee's recommendations for this bill.

The Defense appropriations bill as recommended by the conference committee provides a total of $317,623,747,000 in budget authority for mandatory and discretionary programs for the Department of Defense. This amount is $1,923,633,000 below the President's request.

The recommended funding is below the President's request by nearly $2 billion because the Congress has already acted to reallocate $500 million for military construction and $1.2 billion for nuclear energy programs under the jurisdiction of the Energy Water Subcommittee.

The total discretionary funding recommended in division A of this bill is $317,206,747,000. This is less than $2 million below the subcommittee's 302B allocation.

This measure is consistent with the objectives of this administration and the Defense Authorization Conference Report which passed the Senate.

In addition, we believe we have accommodated those issues identified by the Senate which would enhance our nation's defense while allowing us to stay within the limits of the budget resolution.

Our first priority in this bill is to provide for the quality of life of our men and women in uniform.

In that vein, we have fully funded a five percent pay raise for every military member as authorized.

We recommend additional funding for targeted pay raises for those grades and particular skills which are hard to fill.

We believe these increases will significantly aid our ability to recruit, and perhaps more importantly, retain much needed military personnel.

We have also provided $18.4 billion for health care costs. This is 46.3 billion more than appropriated in FY 2001 and nearly $500 million more than requested by the president.

This funding will ensure that tricare costs are fully covered.

It will also increase our military hospital funding to better provide for their patients and, by providing funding for ''TRICARE FOR LIFE'', we fulfill a commitment made to our retirees over 65.

This will ensure that those Americans who were willing to dedicate their lives to the military will have quality health care in their older years.

This is most importantly an issue of fairness.

It fulfills the guarantee our nation made to the men and women of our military when they were on active duty.

We also believe it will signal to those willing to serve today that we will keep our promises. In no small part we see this as another recruiting and retention program.

In title two, the bill provides $105 billion for readiness and related programs. This is $8.2 billion more than appropriated for fiscal year 2001. The bill reallocates funding from the Secretary of Defense to the military services for the costs of overseas deployments in the Balkans.

This is the way the Pentagon funds the Middle East deployments. The conferees have agreed to leave a small amount in the appropriation for unforeseen emergencies.

For our investment in weapons and other equipment, the recommendation includes $60.9 billion for procurement, nearly $500 million more than requested by the President. The funding here will continue our efforts to recapitalize our forces.

The agreement fully supports the Army's transformation goals and purchases much needed aircraft, missiles and space platforms for the Air Force.

For the Navy, the bill provides full funding for those programs that are on track and ready to move forward.

In the case of shipbuilding, the conferees strongly support the need to address our growing shortfalls in ship construction. The agreement provides more funding that in either House or Senate bill and $150 more than requested.

In some cases, contract delays have allowed the conferees to recommend reallocating funds for other critical requirements.

Included in that, the committee has recommended $700 million for procurement to support our national guard and reserve forces.

The conference funds 10 UH–60 helicopters for the National Guard and Army Reserve. It also provides four C–130's for our Air National Guard and Reserves.

The agreement adds funding for additional trainer aircraft for the Navy. It fully funds the requirements for the F–22, the JSF and the F/A–18.

In funding for future investment for research and development, the measure recommends $48.9 billion, nearly $1.5 billion more than the amounts appropriated for fiscal year 2001. Regarding missile defense, the bills is very close to the level requested by the President.

Last week, the Pentagon announced that it was terminating the Navy' area wide missile defense program. Additionally, we were informed that the Pentagon is restructuring its space based on infrared—low program. These two adjustments allowed the conferees to reduce funding for missile defense.

However, similar to the provision in the Senate and the authorization bill, the committee provides $478 million in additional funding that can be used for counter terrorism programs.

This is a balanced bill that supports the priorities of the administration and the Senate.

In order to cut spending by nearly $2 billion, some difficult decisions were required. The bill reduces funding for several programs that have been delayed or are being reconsidered because of the secretary's strategic review, the nuclear posture review, and the quadrennial defense review.

The bill also makes adjustments that are in line with the reforms championed by the administration:

A concerted effort was made at reducing reporting requirements in the bill;

The bill also reduces funding for consultants and other related support personnel as authorized by the Senate.

As requested, the bill provides $100 million for DOD to make additional progress in modernizing its financial management systems.

Finally, the bill places a cap on legislative liaison personnel which the Secretary of Defense has indicated are excessive.

I would like to take a few minutes to discuss an item that some have mischaracterized.

The bill provides discretionary authority to the Defense Department to lease tankers to replace the aging KC–135 fleet. This is a program that is strongly endorsed by the Air Force as the most cost effective way to replace our tankers.

Despite what has been claimed, the language in the bill requires that the lease can only be entered into if the Air Force can show that it will be 10 percent cheaper to lease the aircraft than to purchase them. In addition, it stipulates that the aircraft must be returned to the manufacturer at the end of the lease period.

No business sector has suffered more from the events of 9–11 than has our commercial aircraft manufacturers. The tragic events of that day have drastically reduced orders for commercial aircraft.

We have been informed that Boeing, for example, will have to lay off approximately 30,000 people as a direct consequence of the terrorist attack. We have provided funding to support the aircraft manufacturers as a result of that tragedy.

We are including funds elsewhere in this bill to help in the recovery in New York and the Pentagon. The leasing authority which we have included in Division A allows us to help assist commercial airline manufacturers while also solving a long-term problem for the Air Force.

I strongly endorse this initiative which was crafted by my good friend Senator STEVENS with the support of several other Members, including Senators CANTWELL, MURRAY, ROBERTS, and DURBIN. I believe it deserves the unanimous support of the Senate.

Today is December 20th. Nearly one quarter of the fiscal year has passed.

The Defense Department is operating under a continuing resolution which significantly limits its ability to efficiently manage its funding.

I don't need to remind any of my colleagues that we have men and women

serving half way around the world defending us.

Less than one percent of Americans serve in today's military. These few are willing to sacrifice themselves for us. They deserve our support.

One hundred days ago our Nation was shocked and hurt by a surprise attack. This is the bill, Mr. President, that allows us to respond to that attack.

It is also the measure we need to show our military forces that we support them.

This bill is urgently needed to fight and win this war and to demonstrate to the world our resolve.

I urge all my colleagues to support this bill.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Washington is recognized.

Ms. CANTWELL. Mr. President, I add my congratulations to the chairman of the subcommittee and the ranking member for their hard work on a very important piece of legislation.

I also ask unanimous consent to have printed in the RECORD a letter by Air Force Chief of Staff John Jumper and Secretary of the Air Force James Roche basically explaining in detail their need for the 767 tanker fleet and why the activities and events after September 11 have accelerated the interest in the replacement options that were a part of this legislation.

DECEMBER 18, 2001.

EDITOR-IN-CHIEF,
The Washington Post,
Washington, DC.

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

DEAR EDITOR: Robert Novak's Dec 16, 2001 column, ''Boeing Boondoggle,'' wrongly implies the Air Force doesn't have a position on leasing Boeing 767s for use as tanker aircraft. Our position, previously explained to Mr. Novak, is clear: we need to modernize our aging tanker fleet, and we owe it to our warfighters and taxpayers to consider all reasonable options, including leasing or buying 767s.

Air refueling enables America to project power anywhere in the world. Today, in the US-led global war on terrorism, that mission is mostly done with an aircraft designed and first built during the Eisenhower administration. We have flown more than 3500 refueling sorties in Operation Enduring Freedom and more than 2700 refueling sorties in support of air patrols over American cities since the September 11 attacks. These operations, along with a mission focus on homeland security, are forcing the Air Force to assess accelerating replacement options.

Incorporating new 767 aircraft into our fleet will dramatically enhance America's aerial refueling capability. Benefits include increased fuel offload, near-term aircraft availability, and mission realiability—all with far lower support costs. The 767 has also attracted the interest of Italy and Japan, allies with similar needs.

Should Congress approve a leasing option to put new tankers in service, we will analyze business conditions and determine the most cost-effect modernization path available. Leasing may enable the Air Force to avoid significant up-front acquisition cash outlays, and it could allow us to accelerate retirement of the oldest, least reliable tankers in the fleet, saving more than $3 billion in repair and maintenance costs. If a cost-benefit analysis favors another approach, we would pursue that alternative.

America's air refueling fleet is indispensable, and modernization is essential to future mission success. The 767 is the right platform to jumpstart tanker modernization, and we are committed to leveraging our resources to make the best overall arrangement for our citizens.

JOHN P. JUMPER,
General, USAF, Chief of Staff.
JAMES G. ROCHE,
Secretary of the Air Force.

Ms. CANTWELL. Mr. President, I also ask unanimous consent to have printed in the RECORD information about how the DOD process for reviewing the need for the 767 tanker replacement was started over 2 years ago, culminating in a report and analysis of, February 2001 that these tankers were in fact needed and not done behind closed doors but the process was followed.

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

Planning for the Air Force replacement of its KC–135 tanker fleet has been ongoing for years. The DoD's Joint Requirements Oversight Committee (JROC) has validated a Mission Needs Statement for this replacement, culminating a two year DoD review process.

In response, Boeing in February of 2001 submitted a proposal to the Air Force for the purchase of new 767 tankers—this is neither a new, nor a ''behind closed doors'' issue.

The Air Force Secretary and Chief of Staff have been visible and vocal (letters, press statements) is their support for the need to begin to modernize the tanker fleet. More specifically, they have been clear on the desirability of leasing 767 tankers in order to get them deployed (and old high cost tankers retired) in operationally significant quantities and within projected budgets over the next decade.

Ms. CANTWELL. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I rise because we have passed the 13th conference report on the 13 appropriations bills.

As we prepare to return to our home States, everyone here in the Chamber and everyone in the Senate can find some aspect of the conference report on Defense to which to object.

In the end, what we have to do is consider the work as a whole—as a complete body of work—and make our judgments on it as not any one single item or issue but the whole notion of how we protect our Nation's interests across the globe. On that, this measure deserves my support, and has gotten my support, and obviously the support of a majority of our colleagues.

As we dispose of the conference report on the Defense appropriations bill, I regret that we leave behind other issues involving security for our country at home. I want to mention those today.

I hope before we adjourn at the end of this day, we will have had the opportunity to bring to this floor several measures that will be brought up by unanimous consent, and I hope with no objection. One of those deals with the security of our ports. As it turns out, for the hundreds of ports across and around our Nation where ships travel in and out of them every single week, the security we provide for those ports and for the people who live in the areas around those ports is inadequate.

The opportunity for someone to bring terrorist devices into our ports and into heavily populated areas possibly is very real. It is one that we currently do not address well, and we need to.

The Senate Commerce Committee, under the leadership of Senator HOLLINGS, has reported out legislation, I believe unanimously, on port security. It needs to come before this body and to be considered before we ultimately adjourn.

Secondly, on the issue of airport security, aircraft security has been debated and I think satisfactorily addressed by the House and Senate and by the President.

Many people in this part of the country, and around the country, travel by railroad. We leave undone, at least at this moment, issues that ought to be addressed with respect to rail security, the security of people who are traveling on railroads as passengers around our Nation.

Again, the Commerce Committee, under the leadership of Senator HOLLINGS, has reported out, I believe unanimously, legislation dealing with rail security. It is an important issue, and not just for those of us in the Northeast corridor; it is an important issue for our Nation. And we know, as the Presiding Officer does, there are hundreds of thousands of people who travel literally every day through tunnels that go in and out of New York, under Baltimore, and under this city that are not too secure, are not well ventilated or well lit, and are not well protected.

This measure would help to address that, along with better surveillance of our bridges, providing better and more adequate security aboard our trains. My hope is that before we leave this day, before the Senate sets this day, we will have taken up this measure by unanimous consent and approve it in the Senate.

There was objection a few moments ago to another unanimous consent request which was made with respect to antiterrorism reinsurance. Other nations around the globe have been the target of terrorist attacks, and damage has been suffered from those attacks for many years. For us, fortunately, the experience of September 11 had never visited this country before. We have not had to trouble ourselves with determining how we provide adequately for insurance in the event of a terrorist attack.

Other countries deal with this differently. In Israel and the United Kingdom, which have had terrorist attacks

for many years, those countries have their own approach. In Israel, for example, the country provides the insurance for the terrorist attacks. The Banking Committee and the Commerce Committee both have sought to craft legislation to say there ought to be a backstop with respect to antiterrorism legislation, that initially the insurance companies themselves should put up money and absorb the losses, to the tune of $10 or $15 billion, but after that there should be a sharing of the costs that grow out of terrorist attacks. The Federal Government should share that. It is unfortunate we were not able to proceed with this legislation today, and it is imperative we take it up as soon as we return.

The last point is with respect to other unfinished business. When terrorists attacked us on September 11, they didn't just take people's lives in New York, the Pentagon, and in Pennsylvania; they struck a body blow to our economy. We are still reeling, to some extent, from that body blow. The work of the Federal Reserve on monetary policy helps us with respect to that body blow.

The fact that energy prices have fallen so much helps us with respect to that body blow. The fact that we are spending, frankly, a lot of money with deficit spending, in order to fight terrorism here and across the country and around the world, provides stimulus to the economy and helps to reduce the length of time under which we will likely have a recession.

There is one other thing we could have done, and ought to have done, besides the terrorism reinsurance proposal that has been objected to, and that was to pass an economic recovery plan. That, I think, had broad bipartisan support by Democrats and Republicans. It would have accelerated depreciation and gotten businesses back into the business of making capital investment. It would have provided a payroll tax holiday for businesses and employees as well. It would have provided extensions of unemployment insurance and helped folks on the health insurance side. It would have helped States that are reeling at this point in time. Unfortunately, we have not had the opportunity to debate that today and to pass a true bipartisan plan.

So we go home with half a loaf. We go home with half a loaf, but, as the Presiding Officer knows, we will come back next month. And as we come back next month, my hope is, if we have not dealt satisfactorily with railroad security and port security today, if we have not dealt with antiterrorism reinsurance today, as it appears we will not, that once we return we will take that up.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that when I complete my request for the unanimous consent, the Senator from West Virginia be recognized. He has time under the previous bill already, but I would like him to be recognized as soon as I finish.

The PRESIDING OFFICER. Is there objection?

Mr. BROWNBACK. Reserving the right to object, I have one unanimous consent request I would like to make regarding an immigration bill before, if possible, the Senator from West Virginia speaks.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Reserving the right to object, the Senators may be unaware, but under the previous order, I was to be recognized after the vote; right?

Mr. REID. Right.

The PRESIDING OFFICER. It was the understanding of the Chair that Senators INOUYE and STEVENS were to be recognized after the vote. And the Senator agreed to delay his statement, but the time had not been allotted to him specifically.

Mr. BYRD. Mr. President, I know what my rights are, and I know what the order said. I just have not pressed my rights. But I have no objection to the Senator making his request. I will not, however, stand aside for the Senator's request, but I will be here when he makes his request.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Is my consent granted then, Mr. President?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST—H.R. 3448

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to H.R. 3448, which is at the desk.

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

The assistant legislative clerk read as follows:

A bill (H.R. 3448) to improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies.

The PRESIDING OFFICER. Is there objection to proceeding to the measure at this time?

The Senator from Oklahoma.

Mr. NICKLES. I shall not object. I thank my colleague from West Virginia for his patience and tolerance, and also my colleague from Nevada for his assistance in moving this forward, as well as Senator DASCHLE and Senator LOTT. And I congratulate Senator FRIST and Senator KENNEDY for the work they have done in putting together this bipartisan Bioterrorism Preparedness Act.

The PRESIDING OFFICER. Is there objection to proceeding to this measure at this time?

Without objection, the Senate will proceed to the measure.

The Senator from Nevada.

Mr. REID. Mr. President, I say also that the Senator from West Virginia and I worked very hard on homeland security, which featured a lot of these matters in this legislation that will quickly be approved. And it was real money. This is not; this is an authorization. I am glad we are going to get this, but it would have been better had we done Senator BYRD's bill and mine.

Mr. President, I understand Senators FRIST, KENNEDY, and GREGG have a substitute amendment at the desk, which is the text of S. 1765. I ask unanimous consent that the amendment be considered and agreed to, the motion to reconsider be laid upon the table, that the bill, as amended, be read three times and passed, and the motion to reconsider be laid upon the table.

Mr. BYRD. Mr. President, I reserve the right to object. I do not know what this bill is about.

Mr. REID. Did the Senator from West Virginia hear my statement I just made?

Mr. BYRD. I could hardly hear anything, as a matter of fact.

Mr. REID. What I did say, I say to Senator BYRD, is that this is the authorization on which Senators KENNEDY and FRIST have worked. And I did say that the legislation you offered—with me being second in charge of that legislation—was real money, appropriated money, which would have done these things that this only authorizes. I am glad this is going to be authorized, but it is too bad we are not here celebrating real money for the people.

Mr. BYRD. I object to this bill. I object to this being considered at this time.

Mr. REID. Mr. President, I ask unanimous consent that my consent to lay this bill down be vitiated.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I will just state to my friend and colleague from West Virginia, he is very much my friend, and I know he has a Defense appropriations speech, and I look forward to hearing his comments on that, and then I look forward to working with him to kind of show him some of the provisions on which Senators FRIST, KENNEDY, and GREGG, and others have worked. I believe there are 75 or more cosponsors on this bill. I think it is a good bill, a bipartisan bill, strongly supported by both sides.

I will work with my colleague from West Virginia to acquaint him with that. I hope and expect we can pass it a little later this afternoon.

The PRESIDING OFFICER (Mr. DAYTON). Under the previous order, the Senator from West Virginia is recognized.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2002—CONFERENCE REPORT

Mr. BYRD. Mr. President, I have been more than patient. Under the majority leader's order earlier, I was to

have spoken on this subject, the Defense Department appropriations bill. Under his order, I was to be recognized after the vote so as to accommodate Senators that they might catch their planes.

Now there were other consents offered which I heard. I didn't object to them, but I believe the record will show that I was to be recognized immediately after the vote for the statement which I wanted to make on the homeland defense section of the DOD appropriations bill. I have been very patient.

I understand the problems of the two leaders. I have been majority leader before I have been minority leader, and I have been majority whip. I understand all their problems. This is the end of the year. Everybody wants to get away for Christmas. I don't want to interject myself in between someone's wish to catch a plane. But I have been very patient. I have let other consent orders come up without objecting because my speech isn't all that important. But I wanted to make it.

Now we are hearing consents offered for bills. I don't know who is watching the place on this bill. The distinguished Senator from Kansas is going to make a request on a bill. I want to be here when he makes it. He is entitled to make his request. But time is fast fleeting when this Senator is going to stand aside and just continue to wait and let everybody else speak, let everybody else object to the order of speaking, and just stand aside and let it be done.

That is not a big thing. It won't change the history of the world one way or the other. But I just want to say this: Next year, the chairman of the Senate Appropriations Committee is not going to stand aside for every other Senator's convenience in times like this.

I shall proceed.

The Senate has considered the conference report for the fiscal year 2002 Defense Department appropriations bill. It is a good bill, but it could have been much better. As Senators are aware, included in this legislation is the final allocation of the $40 billion emergency supplemental funding approved by this Senate just 3 days after the tragic attacks on the World Trade Center Towers and on the Pentagon. Quite simply, we wanted to respond to the attacks that occurred on September 11 and take steps to prevent attacks from occurring in the future. We didn't just want to respond to the attacks that had already occurred, but we wanted to take steps that could prevent attacks from occurring in the future.

Just a few days ago, the Senate had before it a broader package, one that fulfilled the $20 billion commitment made by the President and the Congress to New York and the other attacked communities; one that provided the Defense Department with substantial funding for its mission overseas—we wanted to give the President every dollar he asked for, $21 billion—and one that met the many pressing needs for our homeland defense: Improved hospital capacity to respond to terrorist attacks, wide distribution of smallpox vaccine, more border agents, improved safety at airports and train stations, safer mail, better trained and equipped police and firefighters.

That package, which was supported by a majority of this Senate in direct response to the September 11 disaster, succumbed to partisan politics. It fell when Republicans in this Chamber raised a procedural 60-vote point of order against the provision because they believed it was too expensive. They were within their rights to object. They were within their rights to propose a 60-vote point of order. But I don't understand how we can place an arbitrary price tag on protecting the safety of our citizens.

Never in my memory can I recall a time when Congress became so partisan over a disaster response, whether it be from earthquakes, floods, tornados, fires, never before can I remember our lining up so rigidly along political party lines when it came to providing the American people with funds to recover from disaster.

Unfortunately, the Senate minority and the White House used the 60-vote point of order against the homeland defense package. As I say, they have a perfect right to make that point of order. That is within the rules.

We all recognize that you can't beat 60 votes when you only have 51 at most on this side. Our Republican friends didn't want to help us get the 60 votes. So it must be dismaying to the people who have heard so much about the pledges of bipartisanship, so much about a new tone in Washington, to see what should have been a united, bipartisan approach to defending our homeland dissolve into a partisan dispute.

That is truly a shame. Since that vote, however, we have stepped back and worked on the smaller compromise plan that is before the Senate this afternoon. While it is not as comprehensive as the plan first proposed earlier this month, the allocation of the $20 billion emergency supplemental funding in this legislation provides support and resources that are needed right now for homeland defense, for national security, and for the recovery of New York City and the other communities directly affected by the September 11 attacks.

For those communities, the supplemental provides $8.2 billion. This brings the total commitment to the recovery effort to $11.2 billion, when previously released funds are included. The bulk of this funding, $4.35 billion, will fund debris removal at the World Trade Center site, repair public infrastructure such as the damaged subways and commuter trains, and assist individuals with expenses for housing, burial, and relocation. Another $2 billion will work to restore the economic health of the area.

This funding, to be provided in the form of community development block grants, will give businesses a much needed hand as they attempt to recover from the terrorist attacks. Other funding will improve security at transportation hubs and reimburse hospitals in New York that provided critical care on September 11 and for many days after.

Some of the money will help children who continue to be haunted by the ghosts of the terrorist attacks. As do the businesses and the communities, these children need to be made whole again. This money will assist in that effort.

As part of this supplemental allocation, the Defense Department will receive an additional $3.5 billion. When included with the funding in the regular Defense Appropriations bill, the Pentagon will receive a $43 billion increase over last year. This is the single largest one-year increase in Defense spending in more than two decades. It gives the military the resources necessary to battle terrorism overseas. It makes sure that our brave men and women who put themselves in harm's way will not fall short because of fiscal constraints. This package also provides for $775 million for repairs and reconstruction efforts at the Pentagon. As we rebuild Lower Manhattan, we must also repair the Pentagon.

Finally, we have provided in this allocation $8.3 billion for defense efforts here at home. In the days and weeks that have followed the terrorist attacks, committees on both sides of this Capitol have heard from experts, from federal, state, and local officials, and from regular Americans who are concerned for their safety at home. We cannot ignore the gaps in our homeland defenses. We cannot put off until tomorrow investments that must be made today. The $8.3 billion for homeland defense that is included in this legislation takes immediate steps to bolster our local police and fire departments. It provides critical funding to expand hospital capacity and to train doctors and nurses on what to do in case of a biological, chemical, or nuclear attack. The funding closes some of the holes in our Northern Border and in our seaports. Under the leadership of the distinguished Senator from South Carolina, Mr. HOLDINGS, we had $50 billion for port security. These things were knocked out under that 60-vote point of order. We are not going to forget that. It provides funds for improved cockpit security, to hire additional sky marshals and to purchase explosives detection equipment. It provides funds for the Postal Service to protect postal workers and purchase equipment to make our mail safer. The funding that we have included in this package will help Americans to know that we are not standing idly by, ignoring what are such obvious needs in our homeland defenses. We will take steps today to protect Americans and to try to prevent the tragedy we witnessed in September from occurring again.

This package is a compromise. It is not a be-all and end-all package. This money will not fill all of the gaps that exist. But what this package will do is move us forward. It will fund those initiatives that we need to begin now, and lay the groundwork for priorities that every Senator knows await us in the spring.

I want to thank my good friend, Senator STEVENS, for his work on this package. We would not be standing here today if not for his steadfast efforts. I also want to thank our House counterparts, Chairman BILL YOUNG of Florida. My, what a fine Congressman he is and a fine chairman of the Appropriation Committee now. I am sure that BILL YOUNG wanted to do more, but under the constraints that were upon him, he could not do more.

I also thank Congressman DAVID OBEY of Wisconsin. He is always a stalwart. He stood up for homeland defense. He tried in the House to move it forward and increase it, but he didn't have the votes. They and their staffs, led by Jim Dyer and Scott Lilly, worked closely with us to develop this package, and I appreciate their commitment to this successful conclusion.

As I mentioned earlier, with the Senate's passage of this conference report, Congress will have completed work on each of the 13 individual appropriations bills. I congratulate Senator INOUYE and Senator STEVENS, and their staffs, Charlie Houy and Steve Cortese, for crafting what I believe is a good Defense bill. I also am pleased that we were able to pass the thirteen individual bills on a partisan basis, with an average vote in the Senate of 91–6. We did not have to resort to an omnibus bill as has been the case in some years past. And we worked to protect the prerogatives of Congress. We did not invite the White House to sit at the table and negotiate these bills. That is not the role of the executive branch, nor should it be. The Constitutional Framers vested the power of the purse in this legislative branch—the people's branch—and we have a firm grasp on the strings. I only hope that Congress never sees fit to loosen that hold and give away what is the greatest single power afforded to this branch of government by the Framers, in their great wisdom.

Mr. President, before closing, I want to thank the members of my committee staff who have been so earnest and dedicated in their efforts this year. My staff director, Terry Sauvain, and my deputy staff director, Charles Kieffer, have done a remarkable job on these bills. They stayed at night. They stayed into the wee hours of the morning. They worked on the nuts and bolts. They worked and they grappled with problems and answered questions from disgruntled Senators and people on the outside and people on the inside. I don't see how they have been able to maintain their sanity. I congratulate them for the good work they did. This is their first year in these positions, and they have certainly set a high standard for the years to come.

I also want to thank Edie Stanley and Kate Eltrich for their assistance, as well as the staffs of our 13 subcommittees. These appropriations bills are not written by magic. Rather they are the product of hard work, determination, and an understanding of the intricacies of each piece of legislation. The Senate is blessed to have such a fine group of men and women dedicated to the service of the nation.

I also want to thank members of my personal staff who have been invaluable to me. My Chief of Staff, Barbara Videnieks, may Administrative Assistant, Ann Adler, my Legislative Director, Jane Mellow, my Press Secretary, Tom Gavin, my legislative assistant, David McMaster, and the entire Byrd team have done an outstanding job on these bills.

Mr. President, the fiscal year 2002 Department of Defense appropriations bill is a good bill. I urge all Senators to support it.

Mr. President, I ask unanimous consent to have printed in the RECORD a document entitled ''Compromise on $20 Billion Defense/New York/Homeland Defense Funding.''

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

COMPROMISE ON $20 BILLION DEFENSE/NEW YORK/HOMELAND DEFENSE FUNDING

The amendment allocates $20 billion as follows:

Defense: $3.5 billion ($3.8 billion below President).

New York/NJ/DC/MD/VA: 8.3 billion ($1.9 billion above the President).

Homeland Defense: 8.3 billion ($3.9 billion above the President).

UI/COBRA: 0.0 billion ($2 billion below President).

When combined with the $20 billion allocated by the President, the amendment results in the following allocation of the $40 billion approved in the September 18th supplemental (P.L. 107–38):

Defense: $17.5 billion ($3.5 billion below the President).

New York/NJ/DC/MD/VA: 11.2 billion ($1.8 billion above the President).

Homeland Defense: 9.8 billion ($4.0 billion above the President).

Foreign Aid allocated by President: 1.5 billion (same as the President).

UI/COBRA: 0.0 billion ($2 billion below the President—in stimulus).

Unallocated: 0.0 billion ($0.3 billion below the President).

Highlights of the $20 billion:

New York and other communities directly impacted by September 11th attacks ($8.2 billion): Examples follow:

FEMA Disaster Relief, which funds debris removal at the World Trade Center site, repair of public infrastructure such as the damaged subway, the damaged PATH commuter train, all government offices and provides assistance to individuals for housing, burial expenses, and relocation assistance, receives $4.35 billion.

Community Development Block Grants—$2 billion to help New York restore their economy.

Amtrak Security—$100 million for security in Amtrak tunnels.

Mass Transit Security—funding of $105 million for improving security in the New York and New Jersey subways.

New York/New Jersey Ferry Improvements—$100 million for critical expansion of interstate ferry service between New York and New Jersey. Prior to the September 11th attacks, 67,000 daily commuters used the PATH transit service that was destroyed.

Hospital Reimbursement—$140 million to reimburse the hospitals of New York that provided critical care on September 11th and the weeks and months that followed.

Workers Compensation/Job Training—$175 million that would help New York process workers compensation claims for the victims of the September 11th attacks. $59 million is provided for job training, environmental health and other programs.

Federal Facilities—$325 million for the costs of keeping Federal agencies operating that were in or near the World Trade Center, such as the Social Security Administration, the Occupational Safety and Health Administration, the Pension and Welfare Benefits Administration, the Commodity Futures and Trading Commission, the Secret Service, the Bureau of Alcohol, Tobacco and Firearms, the Securities and Exchange Commission, the Internal Revenue Service, the U.S. Marshals Service, the EEOC, the General Services Administration, the Food and Drug Administration, and the National Labor Relations Board.

Emergency Highway repairs—$85 million for damaged roads in New York City, including $10 million in FEMA for local roads.

Mental Health Service for Children—$10 million that would help New York schools provide mental health services to the children of the victims of the World Trade Center bombing.

Law enforcement reimbursements—$229 million for New York ($71.8 million), New Jersey ($50.7 million), Maryland ($39 million) and Virginia ($62.5 million) and Pennsylvania ($5 million) to improve counter terrorism capacity of law enforcement and fire personnel for States directly impacted by the attacks on September 11th. $68 million is provided for the Crime Victims Fund.

District of Columbia—$200 million for the District and for the Washington Metro for improved security.

Small Business Disaster Loans—$150 million.

National Monuments Security—$80 million for improved security at national parks and monuments such as the Statue of Liberty and the Washington Monument, the Smithsonian, the Kennedy Center and other facilities.

Department of Defense—$3.5 billion, including funding to repair the Pentagon.

Homeland Defense ($8.3 billion):

Examples follow:

Bioterrorism/Food Safety $3.0 billion, including $479 million for food security:

Provides $1.0 billion for upgrading our state and local public health and hospital infrastructure.

Provides $156 million for CDC capacity improvements and disaster response medical systems at HHS.

Provices $244 million for security improvements and research at the CDC and NIH and for mental health services.

Provides $593 million for the National Pharmaceutical Stockpile.

Provides $512 million to contract for smallpox vaccine to protect all Americans.

USDA Office of the Secretary: $81 million for enhanced facility security and operational security at USDA locations.

Agricultural Research Service: $40 million for enhanced facility security and for research in the areas of food safety and bioterrorism.

Agricultural Research Service Buildings and Facilities: $73 million for facility enhancements at Plum Island, NY, and Ames, IA, which includes funding necessary to complete construction on a bio-containment facility at the National Animal Disease Laboratory at Ames, IA.

Animal and Plant Health Inspection Service: $119 million for enhanced facility security, for support of border inspections, for pest detection activities, and for other areas related to bio-security and for relocation of a facility at the National Animal Disease Laboratory.

Food Safety Inspection Service: $15 million for enhanced operational security and for implementation of the Food Safety Bio-Terrorism Protection Program.

Food and Drug Administration: $151 million for food safety and counter-bioterrorism, including support of additional food safety inspections; expedited review of drugs, vaccines, and diagnostic tests; and enhanced physical and operational security.

State and Local Law Enforcement—$400 million.

FEMA firefighting—$210 million to improve State and local government capacity to respond to terrorist attacks.

Postal Service—$500 million to provide equipment to cope with biological and chemical threats such as anthrax and to improve security for Postal workers.

Federal Antiterrorism Law Enforcement (excluding amounts for New York)—$1.7 billion.

$745 million for the FBI.

$19 million for the U.S. Marshals.

$78 million for Cyber security.

$31 million for Federal Law Enforcement Training Center for training of new law enforcement personnel.

$16 million for the Bureau of Alcohol, Tobacco and Firearms.

$60 million for overtime and expanded aviation and border support for Customs.

$73 million for the Secret Service.

$209 million for increased Coast Guard surveillance.

$95 million for Federal courts security.

$70 million for Justice Department Legal Activities.

$109 million for EPA for anthrax cleanup costs and drinking water vulnerability assessments.

$66 million for EPA for bioterrorism response teams and EPA laboratory security.

$25 million for the FEMA Office of National Preparedness.

$30 million for the IRS.

$27 million for Olympic security.

Airport/Transit Security—$0.6 billion, including:

$175 million for Airport Improvement Grants.

$308 million for FAA for cockpit security, sky marshals and explosives detection equipment.

$50 million for FAA research to expedite deployment of new aviation security technologies.

$18 million for transit security.

$50 million for Essential Air Service.

Port Security improvements—$209 million, including $93 million for DOT and $116 million for Customs.

Nuclear Power Plant/Lab/Federal Facility Improvements—$0.8 billion.

$143 million for Energy for enhanced security at U.S. nuclear weapons plants and laboratories.

$139 million for the Corps of Engineers to provide enhanced security at over 300 critical dams, drinking water reservoirs and navigation facilities.

$30 million for the Bureau of Reclamation for similar purposes.

$36 million for the Nuclear Regulatory Commission to enhance security at commercial nuclear reactors.

$50 million for security at the White House.

$26 million for GSA and the Archives to improve federal building security.

$109 million for NASA for security upgrades at the Kennedy, Johnson and other space centers.

$256 million for improved security for the Legislative Branch.

Nuclear Non-proliferation—$226 million for the safeguarding and acquisition of Russian and former Soviet Union missile nuclear materials and to help transition and retrain Russian nuclear scientists.

Border Security—$0.7 billion.

$135 million for Customs for increased inspectors on the border and for construction of border facilities, with emphasis on the northern border.

$549 million for the Immigration and Naturalization Service.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. First, let me commend the Senator from West Virginia. Over the years, I have seen him accomplish many feats. None would be more outstanding than what he has done on homeland security for the City of New York. Like Horatio at the bridge, he stood there against all forces, particularly with respect to the executive branch, and otherwise, and made sure we at least got some semblance of homeland security started. It is on account of Senator BYRD of West Virginia.

Mr. BYRD. Mr. President, I thank the Senator for his kind words. I want to say this: If I were out in the streets of a big city and, for some reason, got into a street brawl, I would want Senator HOLLINGS with me. If that ever happened to me, I would say: Senator HOLLINGS, where is he? He is the man I want with me in a tough situation.

Mr. HOLLINGS. And if I were lost on a lonely, dusty road amongst the hills, I would want Senator BYRD with me.

PORT AND MARITIME SECURITY ACT OF 2001

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, under the unanimous consent agreement, can we turn to S. 1214 and ask the clerk to report?

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

A bill (S. 1214) to amend the Merchant Marine Act of 1936 to establish programs to ensure greater security for U.S. Seaports, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the Senator from South Carolina is recognized for 5 minutes.

Mr. HOLLINGS. In my 5 minutes, I thank the distinguished Senator from Arizona, my ranking member—this is really a bipartisan initiative—Senator GRAHAM of Florida who has been a leader in this regard and also Senator HUTCHISON of Texas.

I also thank the distinguished director of the Commerce, Science, and Transportation Committee, Mr. Kevin Kayes; Mr. Carl Bentzel, the expert on port security who has been working on this over the past several years; and Mr. Matthew Morrissey.

We actually reported the bill before September 11 of this year. We have been working diligently to take care of the concerns on both sides of the aisle and both sides of the Capitol. We think this measure can pass expeditiously, as soon as the House returns.

Following the terrorist attacks of Sept. 11, we have worked hard to improve the security of America's transportation system, starting with the airline security bill just signed into law. However, protecting America from terrorist threats is only as effective as the weakest line of defense. That means every mode of transportation must be secured, including maritime transportation.

The United States has more than 1,000 harbor channels and 25,000 miles of inland, intracoastal, and coastal waterways. Those waterways serve 361 ports and have more than 3,700 terminals handling passengers and cargo. The U.S. marine transportation system each year moves more than 2 billion tons of domestic and international freight, imports 3 billion tons of oil, transports 134 million passengers by ferry, and hosts more than 7 million cruise ship passengers. Of the more than 2 billion tons of freight, the majority of cargo is shipped in huge containers from ships directly onto trucks and railcars that immediately head onto our highways and rail systems. However less than 2 percent of those containers are ever checked by Customs or law enforcement officials. The volume of maritime trade is expected to more than double by the year 2020, making maritime security even more important for the future. This is a gaping hole in our national security that must be fixed—and it must be fixed before enemies of the United States try to exploit our weakness.

Before discussing the specifics of our bill, I want to read an excerpt from a chilling story published October 8 in the The Times of London:

Intelligence agencies across the world are examining Osama bin Laden's multimillion [dollar] shipping interests. He maintains a secret fleet, under a variety of flags of convenience, allowing him to hide his ownership and transport goods, arms, drugs, and recruits with little official scrutiny.

Three years ago, nobody paid much attention to a crew unloading cargo from a rusting freighter tied up on the quayside in Mombasa, Kenya. The freighter was part of Osama bin Laden's merchant fleet and the crew were delivering supplies for the team of suicide bombers who weeks later would blow up the U.S. embassies in Kenya and Tanzania. Bin Laden's covert shipping interests were revealed at the trial of the bombers, but until now security services have been slow to track down how many vessels he operates.

Lloyd's List International reported that a NATO country's intelligence service has identified more than 20 merchant vessels believed to be linked to Osama bin Laden. Those vessels are now subject to seizure in ports all over the world. Some of the vessels are thought to be owned outright by bin Laden's business interests, while others are on long-term charter.

Several weeks ago, a suspected member of the Al Qaeda terrorist network

was arrested in Italy after he tried to stow-away in a shipping container heading to Toronto. The container was furnished with a bed, a toilet, and its own power source to operate the heater and recharge batteries. According to the Toronto Sun, the man also had a global satellite telephone, a laptop computer, an airline mechanics certificate, and security passes for airports in Canada, Thailand and Egypt.

These two stories really bring home this issue of seaport security. Except for those of us who live in port cities like Charleston, Americans often do not think about their ports—the ports that load industrial and consumer goods onto trucks and railroad cars heading directly to their hometowns. Therefore, security provided through our seaports ultimately affects landlocked communities in the heartland of the United States. Of the cargo imported and exported into the United States, 95 percent arrives through our seaports; the balance is shipped through land and air borders. The potential damage and destruction that can be accomplished through security holes at our seaports potentially exceeds any other mode of transportation. And yet we have failed to make seaport security a priority.

Many of our busiest seaports are not only near large cities, they are in the core of cities like Charleston, Boston, Miami, and Seattle. These seaports have been the historic hubs of economic growth, and, in some cases, they have existed for close to four centuries. By comparison, our rail infrastructure is 150 years old and most of our aviation infrastructure is less than 60 years old. The port areas in many cities have become increasingly attractive places to live because many people want a view of the water, and to live near the coast. So we are facing a major problem: the number of people who want to live close to the waterfront is growing rapidly, but the open nature of our seaports exposes them to risks associated with maritime trade, including the transport of hazardous materials.

Most Americans would be surprised to discover there is no unified federal plan for overseeing the security of the international borders at our seaports. And that's what seaports are: international borders that must be protected as well as our land borders with Canada and Mexico. Yet we have failed to make them secure. The U.S. Coast Guard and Customs Service are doing an outstanding job, but they are outgunned. In the year 2000, we imported 5.5 million trailer truckloads of cargo. Due to that volume, seaports, according to the Customs Service, are only able to inspect between 1 to 2 percent of containers. In other words, potential terrorists and drug smugglers have a 98 percent chance of randomly importing illegal and dangerous materials.

When traveling by airplane, we walk through metal detectors, our luggage is X-rayed, and Customs officials may interview us and check our bags. The inspection rate is 100 percent. At our land border crossings, every single car and truck driver is stopped and interviewed, or at least reviewed by the federal government. Again, the inspection rate is 100 percent. However, at a U.S. seaport, a person has a 98 percent chance of importing a 48–foot truckload of cargo with no inspection at all. One marine container can carry more heroin than is used in the United States in one year. Some of these containers can carry as much as 30 tons, or 60,000 pounds of cargo. A medium sized tanker can carry as much as 32 million gallons of petroleum or hazardous materials. Nearly one-quarter of all hazardous materials are moved via water, most of it in bulk form via huge tankers. These shipments of oil or hazardous materials—most of them carried by foreign vessels—are especially dangerous targets for terrorists. Following the terrorist attacks of September 11, we must take action to better secure our maritime borders.

The Congress recently approved a new law that spends $3.2 billion to improve security at our airports. The highway reauthorization bill—TEA–21 passed in 1998—directed $140 million a year for five years to improve roads and security infrastructure at our land borders. We annually fund the Border Patrol to guard against illegal entry at our land borders. At U.S. seaports, the federal government provides officers from the U.S. Coast Guard, U.S. Customs Service, and the Immigration and Naturalization Service—but the federal government invests nothing in security infrastructure at our seaports. We leave that up to the state-controlled port authorities and private marine terminal operators. Thus, we have essentially abrogated the federal responsibility of our international seaport borders to states and the private sector.

Like airline security, seaport and international border security is one of the prime responsibilities of the federal government. We must meet the challenge head-on with enough resources to address these serious issues of national security, and to help our partners at the state and local levels protect their own communities. While these security holes at our seaports may be less obvious to the public, they do exist. Because of the magnitudes of the cargoes, the proximity of cargo delivery to large populations, and the transportability that water confers to certain hazardous materials or oil, seaports lacking adequate security are more vulnerable to attack and sabotage than our airports or land borders.

A couple years ago, Senator BOB GRAHAM convinced President Clinton to appoint a commission to look at seaport security. At the time, the main focus of port security was stopping illegal drugs, the smuggling of people, and cargo theft. While those problems still exist, the new—and very real—threat of terrorism strikes right at the heart of our national defense.

The Interagency Commission on Crime and Security at U.S. Seaports issued a report in September 2000 that said security at U.S. seaports ''ranges from poor to fair.'' Let me repeat that: 17 federal agencies reviewed our port security system and found that it is in poor shape.

According to the Commission:

> Control of access to the seaport or sensitive areas within the seaports is often lacking. Practices to restrict or control the access of vehicles to vessels, cargo receipt and delivery operations, and passenger processing operations at seaports are either not present or not consistently enforced, increasing the risk that violators could quickly remove cargo or contraband. Many ports do not have identification cards issued to personnel to restrict access to vehicles, cargo receipt and delivery operations, and passenger processing operations.
>
> At many seaports, the carrying of firearms is not restricted, and thus internal conspirators and other criminals are allowed armed access to cargo vessels and cruise line terminals. In addition, many seaports rely on private security personnel who lack the crime prevention and law enforcement training and capability of regular police officers.

The report also found that port-related businesses did not know where to report cargo theft and other crimes, and that federal, state and local law enforcement agencies responsible for a port's security rarely meet to coordinate their work.

That is what our legislation does—it creates mechanisms to integrate all these different security agencies and their security efforts at our seaports and the railways and highways that converge at our seaports. Our seaport security bill also directly funds more Customs officers, more screening equipment, and the building of important security infrastructure.

Each agency is good at what they do individually. But they will be even stronger working together, sharing information and tactics, and coordinating security coverage at our seaports. More teamwork between these federal, state and local agencies—along with our security partners in the private sector—will produce a more secure seaport environment that is stronger than the sum of each agency's individual efforts.

S. 1214, the Port and Maritime Security Act of 2001, requires the Secretary of Transportation to chair a National Maritime Security Advisory Committee. The Secretary is required to request participation of the U.S. Customs Service and invite the participation of other federal agencies with an interest in crime or threats of terrorism at U.S. seaports. The bill also authorizes the establishment of subcommittees, including a subcommittee comprised of Federal, State, and local government law enforcement agencies to address port security issues, and law enforcement-sensitive matters.

The Committee is required to advise on long-term solutions for maritime and port security; coordination of information-sharing and operations

among federal, state and local governments, and area and local port and harbor security committees; conditions for maritime security loan guarantees and grants; and the development of a National Maritime Security Plan. Given the varied nature and geographical structure of our port system, it will be important to consider private sector input. A one-size-fits-all approach will not work because we are looking at a wide variety of waterside facilities and maritime transportation-related infrastructure.

The bill will mandate, for the first time ever, that all ports and waterfront facilities have a comprehensive security plan approved by the Secretary of Transportation. An element of port security often overlooked are the intermodal means for transporting cargo from the ships: railroads, highways, and barges. The bill requires that all the modes of transportation converging at the port be covered by a port's security plan. To make the entire waterfront environment more secure, any facility that might pose a threat to the public must tender security plans to the Coast Guard for review and approval.

However, we will do more than just mandate security plans. We will have security experts to assess waterfront and port security, and provide those assessments to the individuals in charge of making security plans. Assessment information will be invaluable in helping the industry use the best information in order to complete effective security plans. The bill requires the Secretary to incorporate existing programs and practices when reviewing and approving security plans. The Department of Transportation will have to take into account the different security practices of our different ports. The Department must recognize and harmonize existing security practices to avoid duplicating costs. However, recognition of existing practices should not require the Department to endorse or approve faulty security.

At the seaport level, the bill will establish local port security committees at each U.S. seaport. The section would require membership of these committees to include representatives of the port authority, labor organizations, the private sector, and Federal, State, and local governments and law enforcement. The Committees would be chaired by the Coast Guard Captain of the Port, and meet 4 times per year. The Committees would be responsible for coordinating planning and other port security activities; making recommendations for the port security evaluations; annually reviewing security plans; and conducting a field security exercise at least once every 3 years. These committees will play a vital role—day to day and month to month—coordinating the actions of law enforcement and the private sector in combating threats of terrorism and crime.

The bill requires the Secretary of Transportation, in coordination with the Director of the FBI, ensure that all area maritime counter-terrorism and incident contingency plans are reviewed, revised, and updated no less than once every three years. The Secretary shall ensure that local port security committees conduct annual simulation exercises for all such plans, and actual practice drills at least once every three years. The plans should be comprehensive and address terrorist threats to waterfront facilities and adjacent areas, and also cover elements of prevention and protection as well as response. I would hope that the Secretary would take steps to ensure that area maritime counter-terrorism and incident contingency plans are coordinated with security plans.

The bill creates standards and procedures for training and certifying maritime security professionals. The bill requires the Secretary of Transportation and the Federal Law Enforcement Training Center, ''FLETC,'' to establish a Maritime Security Institute for training security personnel, in accordance with internationally recognized law enforcement standards. I look forward to working with the Department of Transportation and the FLETC to establish an Institute to strengthen and professionalize maritime law enforcement and security forces. I have worked with FLETC to establish a facility in Charleston, South Carolina to train Border Patrol personnel. I also look forward to working with the Secretary and FLETC to establish the Maritime Law Institute.

The legislation requires the Secretary of Agriculture, Secretary of the Treasury, Secretary of Transportation, and the Attorney General to work together to establish shared dockside inspection facilities at seaports for Federal and State agencies. At some U.S. ports, federal investigators and inspectors do not have any space available to conduct inspections, and they have to route the cargo to other places before inspection. In other words, it would be similar to Customs officials at JFK airport asking arriving international passengers to take a cab to the Customs headquarters downtown in order to have their bags inspected. That is just not right.

To improve seaport security tactics, the bill directs the Secretary of Transportation to immediately establish domestic maritime safety and security teams for the purpose of responding to terrorist activity, criminal activity, or other threats to U.S. ports, especially in strategically important ports. The units shall consist of personnel trained in anti-terrorism, drug interdiction, navigation assistance, and facilitating responses to security threats. I want to thank Senator EDWARDS for his work on this security team initiative. I was pleased that we were able to include in the bill two other amendments authored by Senator EDWARDS: one promotes research and development funds for non-intrusive scanning technology; the second establishes standards for locking marine containers. These amendments will contribute greatly to increasing security at our seaports.

Ports, terminals, waterfront facilities, and adjacent facilities will be required to immediately implement interim security measures, including securing their perimeters. The Secretary of Transportation will then prescribe regulations for the aforementioned parties to follow when designing the required maritime security plans. An important point is that the regulations will require ports to control and limit personnel access to security-sensitive areas. Ports also will be required to limit cars and trucks in security-sensitive areas, restrict firearms and other weapons, coordinate local and private law enforcement, and develop an evacuation plan. While the bill requires security programs to be individually tailored due to the varied nature of different ports, the Department of Transportation regulations will still require certain elements to be incorporated. In implementing new regulations, I would hope that the Department would review the feasibility of establishing a nationwide credentialing process. If we can harmonize identification procedures, we can eliminate duplication and reduce costs.

The Secretary of Transportation will write regulations to designate controlled access areas in the Maritime Facility Security Plan for each waterfront facility and other covered entities, and require ports to limit access to security-sensitive information, such as passenger and cargo manifests. The regulations may require physical searches of persons entering controlled access areas or exiting such areas, security escorts, and employment history and criminal background checks for individuals with unrestricted access to controlled areas or sensitive information. An individual will be eligible to work in such positions if they meet the criteria established by the Secretary, and a background check does not reveal a felony conviction within the previous 7 years, or release from prison during the previous 5 years. An individual that otherwise may have been disqualified from a security-sensitive position may still be hired if the employer establishes alternate security arrangements acceptable to the Secretary. The bill would allow the Secretary to access FBI, fingerprint, and other crime data bases to conduct the background investigations, and transmit the results to port authorities or other covered entities. The bill also would require the Secretary and the Attorney General to establish and collect reasonable fees to pay expenses incurred for the background checks.

The intent of conducting criminal background checks of port employees, employers and other maritime transportation-related employees or employers, is not to upset any of the existing work relationships or dynamics. Rather the background checks are intended to identify legitimate criminal

and national security risks. The Secretary of Transportation will write regulations outlining how background checks should be conducted, and will be responsible for conducting the background checks. In the aviation security bill, we created a Deputy Secretary for Transportation Security. The person in that position should be responsible for implementing the national security check program.

The Secretary also will determine which areas are controlled-access areas. Clearly, not all areas in ports are security risks areas justifying designation as such. I would suggest that controlled access areas include areas where ships tie up carrying combustibles, or storage areas for combustibles or explosives, areas where security admit credentialed persons into the port or terminal areas, or areas in the port or terminal where containers are opened or exposed. However, the Secretary should determine where risk or threat resides, and create a way to check the backgrounds of individuals who pose a national security or criminal threat by virtue of their presence in areas requiring a greater degree of control. Individuals subject to potential disqualification from positions with access to ocean manifests or segregated controlled access areas must be given full and adequate due process, and collected information must be protected from disclosure and only revealed to the extent that it is pertinent to security considerations.

The bill would give the Secretary of Transportation additional authority to address security risks arising from foreign ports, such as enhanced enforcement against vessels arriving from such port, travel advisories for passengers, suspension of the right of a United States vessel to enter such port, and authority to assist foreign port authorities to maintain an appropriate level of security. The Secretary of Transportation would be authorized to work through the Secretary of State to notify foreign countries of security problems with their ports, and to publish a list of ports with insufficient security that would be posted prominently at U.S. ports, on passenger tickets, and as a travel advisory by the State Department. The Secretary of Transportation, after consultation with the Secretary of the Treasury, may prohibit or prescribe conditions of port entry into the U.S. for any vessel arriving from a port listed as not secure. In particular, I would like to commend both Senator KERRY, who chairs the Coast Guard Subcommittee, and Senator BREAUX, who chairs the Surface Transportation and Merchant Marine Subcommittee, for their efforts on this front.

Senators KERRY and BREAUX authored another critical section of this bill: the Sea Marshal program. The bill would authorize the Coast Guard to board vessels in order to deter, prevent, or respond to acts of terrorism or otherwise provide for the safety and security of the port and maritime environment. We would authorize $13 million over five years for this new Coast Guard enforcement. The provision in question also requires the Secretary to evaluate the potential of using licensed U.S. merchant marine personnel to supplement the law enforcement efforts of the U.S. Coast Guard.

The bill would authorize the President, without prior notice or a hearing, to suspend the right of any vessel or person of the United States to enter from a foreign port or depart to a foreign port in which a condition exists that threatens the safety or security of passengers, vessels, or crew traveling to that port, or if a public interest requires the suspension of trade between the United States and that port. The bill would authorize the imposition of civil penalties of up to $50,000 for violating the law.

S. 1214 will require that we know more in advance about the cargo and crew members coming into the United States. The more we know about a ship's cargo, and where it originated, the better our Customs agents and other law enforcement officers can target the most suspicious containers and passengers. Even with more screening equipment, we are still going to have an inadequate number of inspections. So targeting the highest risk cargo will be crucial.

The bill requires ships to electronically send their cargo manifests to the port before gaining clearance to enter. While denying vessel clearance to land is within the authority of Customs, I would urge that it be used only in the most extreme cases, and that enforcement alternatives for handling offending cargo interests be pursued in order not to disrupt all the other legal cargoes on-board a vessel. Unloading cargo will be prohibited if it is not properly documented. Advanced import information is regularly transmitted by nearly 90 percent of the ocean shippers. But for the shippers who are not transmitting that information, we will require it. By giving Customs advance cargo information, we can better screen imported cargo.

Specifically, the legislation requires carriers, including non-vessel-owning common carriers, to provide by electronic transmission, cargo manifest information in advance of port entry or clearance. However, the Secretary of Treasury may exclude classes of vessels for which the Secretary concludes these manifest requirements are not necessary, and in some cases such as trucking, where the electronic transmission may not be possible. Customs should use its authority to require electronic transmission, but recognize, because of the nature of certain categories of transport, that it may not be possible to conduct electronic transmissions in every situation. The bill also outlines the cargo and route information that must be transmitted to Customs.

The bill prohibits the export of cargo unless properly documented, and no marine terminal operator may load, or cause to be loaded, any cargo that is not documented. The bill requires the U.S. Customs Service to be notified of improperly documented cargo that has remained in a marine terminal for more than 48 hours, and authorizes that cargo to be searched, seized, and forfeited. Undocumented cargo should not sit in port areas for extended periods of time. Specifically, shippers who file Shippers Export Declarations (SED) by paper shall be required to provide a copy of the SED to the carrier; shippers who file their SEDs electronically shall be required to provide the carrier with a complete master bill of lading or equivalent shipping instructions, including the Automated Export System number. While it is important that we obtain certain crucial pieces of information about cargo, Customs should recognize that certain elements of cargo information, such as weight discrepancies, may fluctuate and shippers should not be held responsible for 100 percent accuracy. The bill creates civil penalties for violating documentation requirements.

An important part of the legislation creates new requirements for the documentation and electronic transmission of passenger information in advance of entry or clearance into a port. It is imperative that the United States have advanced information on foreign passengers and crew members to ensure that we are not admitting security risks. Evidence indicates that materials used in terrorist attacks in Kenya and Tanzania were shipped by vessels owned and operated by Osama bin Laden. More information—and more credible information—about foreign entrants will be vital given the volume of vessels, cargo and crew members entering into U.S. waters. In establishing such regulations, Customs should work with all federal agencies to harmonize data reporting requirements to ensure that entrants into the United States only need to file one form. Policies such as INS pre-qualification of crew members between specific pre-approved train routes between the United States and Canada should be allowed to continue. Such policies ensure advance compliance, and stimulate regular cross-border operation, while not jeopardizing security.

I am also pleased that we were able to accept an amendment authored by Senator CLELAND to allow the Commissioner of Customs to develop a pilot program to pre-clear cargo coming into the United States if it is determined that such program would improve the security and safety of U.S. ports. However, before implementation of such a program, Customs must determine that it would not compromise existing procedures for ensuring the safety of these ports and the United States. The pilot program should be used to determine whether we can successfully shift the evaluation of cargo and cargo security to points outside the United States, and also ensure that the subsequent delivery of cargo is accomplished in a

way that protects against tampering and maintains the integrity of the cargo seal.

The bill directs the Customs Service to improve reporting of imports, including consigned items and goods, of in-bond goods arriving at U.S. seaports. Current policies can sometimes allow goods to travel into the United States, and travel for, in some instances, up to 37 days, without recording formal entry. The bill will require the reporting of in-bond movements prior to arrival to ensure advance filing of information identifying the cosignor, consignee, country of origin, and the 6–digit harmonized tariff code. The new information must be electronically filed by the importer of record, or its agent. This information will better enable Customs to track cargo and to intercept any suspicious cargoes in a more timely fashion. This reporting is not intended to reflect formal entry, but will allow Customs to use their targeting system on in-bond cargoes, where current policies make it difficult to enter relevant targeting data.

Within 6 months of the bill's enactment, the bill would require a report that evaluates the feasibility of establishing a general database to collect information about the movements of vessels, cargo, and maritime passengers in order to identify criminal threats, national and economic security threats, and threats of terrorism. The Secretary would submit a report of the findings to Congress. Among several requirements, the report must estimate potential costs and benefits of using public and private databases to collect and analyze information, including the feasibility of establishing a Joint Inter-Agency Task Force on Maritime Intelligence. Additional information, and coordination of information will be crucial in allowing law enforcement to evaluate threats in advance of U.S. arrival, ultimately, policies allowing us to identify risks abroad will help us avoid being forced to rely on policies of deterrence and prevention on U.S. soil.

Perhaps most importantly, we need to give seaport authorities the resources to get the job done. It would be great if we could simply declare our ports to be more secure. However, it takes money to make sure the international borders at our seaports are fully staffed with Customs, law enforcement, and Immigration personnel. It takes money to make sure they have modern security equipment, including the latest scanners to check cargo for the most dangerous materials. And it takes money to build the physical infrastructure of a secure port.

Our bill will provide $219 million over four years directly to these important national security functions. Cargo ships currently pay a tax on the gross registered tonnage the ship can carry. That tax rate, in current law, is scheduled to decline beginning in 2003. Our bill will simply extend the existing tax rate—which has been imposed since 1986—until 2006. All those revenues will be directed to help beef up security. These tax revenues will have to be appropriated, but they can only be spent on the programs authorized by this seaport security bill.

However, the funds provided directly by the tonnage tax extension are insufficient to cover all of the port security needs. So the bill includes additional authorizations of $965.5 million that Congress can appropriate as our colleagues come to realize the important security needs that must be met in the defense of our nation. Absent the realization of these authorized funds, Congress will be imposing an unfunded mandate on states and the private sector to secure our nation's maritime border.

The money will help pay for many of the items previously mentioned, and additionally will be focused on building infrastructure at our seaports, including gates and fencing, security-related lighting systems, remote surveillance systems, concealed video systems, and other security equipment. The bill will directly fund and authorize $390 million in grants to local port security projects. Specifically, the bill amends the Merchant Marine Act of 1936 to provide grants for security projects, of which the federal government will pay up to 75 percent. Projects under $25,000 would not have a matching requirement, and the Secretary may approve federal contributions above 75 percent to a project the Secretary deems to have high merit.

The bill also will fund loan guarantees that, according to regular credit risk premiums for federal loans, could cover as much as $3.3 billion in long term loans to port authorities acting to improve their security infrastructure. The loans could not cover more than 87.5 percent of the actual cost of a security infrastructure project, and can extend for up to 25 years. The loan guarantee mechanism allows the federal government to leverage funds by extending credit to cover loans for security infrastructure, and can help port authorities reduce their capital costs for security infrastructure by amortizing it over time. Ultimately, this policy will help us build an infrastructure at our maritime borders in the most cost-effective way. The bill makes directly available and authorizes $166 million to cover the credit risks of loans extended under this provision.

U.S. Customs officers must be able to screen more than just 2 percent of the cargo coming into our seaports. Investing in new screening technologies will help human screeners inspect more cargo, and detect the most dangerous shipments. To increase the amount of cargo screened, the bill authorizes $145 million for FY02 for additional Customs personnel, and to help Customs update their computer systems consistent with the requirements of this bill. Especially important is that the bill directly funds and authorizes $168 million to purchase non-intrusive screening and detection equipment for the U.S. Customs Service.

While we cannot expect to screen every marine container entering into the United States, we need to provide some expectation of inspection, or create some level of deterrence to dissuade smugglers from using the intermodal system to smuggle cargo. We are so busy investing in a anti-ballistic missile defense system, we fail to see perhaps even a greater threat: a cargo container equipped with a digital global positioning system can be delivered anywhere in the United States for less than $5,000. Why would the enemies of America spend millions on a rocket launcher and go up against the U.S. Air Force and U.S. Navy when they could spend $5,000 to ship a container full of explosives or other dangerous materials that has only a two percent chance of being inspected?

The bill also will authorize $75 million to establish a grant program to fund the development, testing, and transfer of technology to enhance security at U.S. seaports. The screening technology would focus on finding explosives or firearms, weapons of mass destruction, chemical and biological weapons. The grants may not exceed 75 percent of the research program.

This bill is the product of bipartisan compromise. I want to thank the Administration for their efforts to produce this legislation. The Maritime Administration, Coast Guard and Office of the Secretary all played a vital role in helping draft the bill. I had intended to work to include legislation that would increase various maritime criminal statutes. Unfortunately, in the crush of time we were unable to clear these amendments. I think that both Senator MCCAIN and I agree that these amendments are really important to be included in final legislation on seaport security, and I will work with him, and Chairman LEAHY and Ranking Member HATCH of the Judiciary Committee to include provisions updating our maritime criminal laws.

The bill would require the Secretary of Transportation to prepare and publish a National Maritime Transportation Security Plan for prevention and response to maritime crime and terrorism. The plan would include an allocation of duties among federal departments and agencies and among state and local governments and agencies; procedures and techniques for preventing and responding to acts of crime or terrorism; and designation of the federal official who shall be the Federal Maritime Security Coordinator for each area for which an Area Maritime Security Plan is required and prepared. Additionally, the bill would also require the Secretary of Transportation to establish Area Maritime Security Committees comprised of members appointed by the Secretary. Each Area Maritime Security Committee would be required to prepare a maritime security plan, and work with state and local officials to enhance contingency

planning. Each Area Maritime Security Plan must be submitted to the Secretary of Transportation. The plans are required to outline how to respond to an act of maritime crime or terrorism in or near the area, describe the area covered by the plan, and describe in detail how the plan is integrated with other security plans. This requirement is similar to the planning requirements that we mandated in the Oil Pollution Act for oil spill response, and will help ensure that we have local, regional and national level responses to maritime crime and terrorism. The bill would also authorize the Secretary of Transportation to issue regulations establishing requirements for vessel security plans and programs for vessels calling on United States ports, would also authorize the Secretary of Transportation, in consultation with the Attorney General, to require crewmembers aboard vessels calling on the United States ports to carry and present upon demand such identification as the Secretary determines.

The bill would require the Secretary of Transportation and the Secretary of Treasury to establish a joint task force to work with ocean shippers in the development of a system to track data for shipments, containers, and contents. The Secretaries also would work with the National Institute of Standards and Technology to develop enhanced performance standards for inbond seals and locks for use on or in containers used for water-borne cargo shipments.

The bill includes a number of reporting requirements to assess our progress on seaport security. I would like to thank Senator NELSON of Florida for his amendment asking for a Coast Guard and Navy study on the feasibility of creating a Center for Coastal and Maritime Security. We all look forward to the results of this important study.

We have made dramatic improvements to this bill since it was first approved by the Commerce Committee before the terrorist attacks. And I want to thank Senator MCCAIN for working with me to co-sponsor this manager's amendment to the previous version of our seaport security bill, S. 1214. Senator MCCAIN does not have many seaports in Arizona, but he understands that the cargo, materials and people who come through our seaports make their way quickly inland on trains and highways. So even if you are living in the desert, the security of our seaports affects all of us. I also would like to recognize and thank Rob Freeman of Senator MCCAIN's staff, who invested hours of time and effort to finalize this product.

I also must recognize the extraordinary efforts of Senator BOB GRAHAM, who began working to improve port security long ago and put this issue on our radar screen. Senator GRAHAM's home state of Florida has been wrestling with issues of crime, theft and drug smuggling at its seaports for many years. And while the federal government failed to address these problems, the state of Florida invested millions of dollars of its own resources to improve port security, which has helped the communities surrounding those ports. But they will still need much more. The states should not carry the entire burden of protecting the international boarders at our seaports. And yet, the problems had become so severe, that the state of Florida, led in part by BOB GRAHAM, decided it had to act on its own. Senator GRAHAM's leadership was vital as we developed this seaport security bill long before the terrorist attacks of September 11. I would also like to thank the fine work of Senator GRAHAM's staffer, Tandy Barrett, she also worked very hard on this legislation.

The initiatives in S. 1214 can help protect America and its citizens from potential terrorist threats against seaports and intermodal connections throughout the country. These initiatives will not make maritime transportation immune from attack. But this bill takes the necessary preventative steps to better protect the American public. I urge my colleagues to support this legislation that is vital to protecting our national security.

Mr. MCCAIN. Mr. President, once again I thank Chairman HOLLINGS for his efforts to address identified safety and security problems at our Nation's seaports. The legislation before us today is designed to address port security lapses that have been under review by the Senate Committee on Commerce, Science, and Transportation for the past two years. After hearings earlier this year and last year, the Commerce Committee reported out S. 1214 in August. The bill is intended to provide both the guidance and funding needed to improve seaport security. I commend Chairman HOLLINGS' leadership on this very important issue to transportation safety and security.

It is widely reported that transportation systems are the target of 40 percent of terrorist attacks worldwide. Since September 11, we have been working on a bipartisan basis to address the nation's most pressing needs in the wake of the terrorist attacks. The Senate Commerce Committee has been conducting a series of hearings to gain the information we need to help us evaluate potential transportation security risks and determine how best to respond to those potential risks.

While it is impossible to precisely quantify, there is no question that an attack on any one of our nation's 361 seaports would have far-reaching effects. With 95 percent of our Nation's foreign trade moving through our seaports, the impact of such an attack would ripple through our Nation. Businesses nationwide would face problems getting supplies and exporting finished goods. Our entire economy would be impacted.

Both the Hart-Rudman Report on Homeland Security and the Interagency Commission on Crime and Seaport Security found our seaports to be vulnerable to crime and terrorism. While there is no way to make our Nation's seaports completely crime free and impenetrable to terrorist attacks, the bill before us today is a very strong first step in closing the gaps in national security that now exist at our seaports.

I want to point out to my colleagues that the Commerce Committee had acted on S. 1214 prior to the September 11 attacks. As a result of the attacks, members of the committee and others have worked together to further modify the legislation to provide direction and funding to the agencies involved to focus their efforts not only on decreasing crime in our seaports, but to also increase protection against terrorist attacks.

In our efforts to increase our nation's seaport security, we have worked to take into account not only the wide range of threats and crimes surrounding our seaports, but also the unique nature of our ports. As I have said before, a ''one-size-fits-all'' approach will not work. Our ports are complex and diverse in both geography and infrastructure. This is why we have worked to ensure this provides for direct local input into the development of security plans for their ports, as well as for response plans for local responders should an attack occur.

S. 1214 would help address a wide range of security shortcomings at our Nation's seaport that were identified in the Interagency Commission on Crime and Security in U.S. Seaports that was issued September 2000. According to the Commission's report, seaport crime encompasses a broad range of crimes, including the importation of illicit drugs, contraband, and prohibited or restricted merchandise; stowaways and alien smuggling; trade fraud and commercial smuggling; environmental crimes; cargo theft; and the unlawful exportation of controlled commodities and munitions, stolen property, and drug proceeds. These crimes are violations of federal law, and therefore, the primary responsibility for enforcement falls to Federal agencies. This bill would give those agencies the authority and funding needed to make up for these shortcomings.

Additionally, the bill would provide much needed improvements in preventing terrorist attacks at our Nation's seaports. While seaports represent an important component of the nation's transportation infrastructure, seaports' level of vulnerability to attack is high, and such an attack, as I just mentioned, has the potential to cause significant damage. The commission found little control over the access of vehicles and personnel to vessels, cargo receipt and delivery operations, and passenger processing operations. The main problem they were able to identify was the lack of a generally accepted standard for physical, procedural, and personnel security at

seaports that left seaports wide open for attack. This bill will allow the Department of Transportation, along with Federal, state and local law enforcement to take actions to close the security holes at ports nationwide.

The bill would authorize $1.18 billion for seaport safety and security. The bill would require, for the first time ever, the Department of Transportation to assess the security status of U.S. seaports and require each port and related facility to submit security plans for review and approval. The bill would also improve advance reporting requirements for entry into the United States, provide more funding for screening equipment, facilitate law enforcement coordination at U.S. seaports, and authorize grants and loan guarantees to seaports and marine terminal operators to help finance the purchase of security equipment and defray the costs of security infrastructure.

I want to mention that while the Congress has already worked to approve aviation security legislation, and we are now moving forward on port security, both Chairman HOLLINGS and I remain committed to continuing our agenda during the next session to address transportation security issues in all modes of transportation, including railroads and buses.

I urge my colleagues swift approval of this critical legislation.

Mr. KERRY. Mr. President, allow me to congratulate our distinguished chairman of the Commerce Committee, Senator HOLLINGS, for his outstanding work in putting together S. 1214, The Maritime and Port Security Improvement Act. I also wish to congratulate Senators GRAHAM and MCCAIN for all of their hard work in moving this very important legislation that is crucial to homeland defense.

I also wish to recognize Carl Bentzel of the Commerce Committee for his years of hard work in putting this legislation together.

I thank Senator HOLLINGS for including several provisions from S. 1589, the Port Threat and Security Act of 2001, in the final version of his bill. If I may, I would like to discuss the provisions from S. 1589 that were included in the final version of S. 1214.

Senator BREAUX and I recently held oversight hearings before our respective Subcommittees on the Coast Guard and its role in improving maritime security after the terrible attacks of September 11. As Senators HOLLINGS and BREAUX well know, even before September 11 our maritime and port security was in sorry shape. However, the attacks on New York and Washington made it clear we need to go farther afield to guard against terrorism and other crimes.

We need to improve our base of information to identify bad actors throughout the maritime realm. A provision of the bill would help us identify those nations whose vessels and vessel registration procedures pose potential threats to our national security. It would require the Secretaries of Transportation and State to prepare an annual report for the Congress that would list those nations whose vessels the Coast Guard has found would pose a risk to our ports, or that have presented our government with false, partial, or fraudulent information concerning cargo manifests, crew identity, or registration of the vessel. In addition the report would identify nations that do not exercise adequate control over their vessel registration and ownership procedures, particularly with respect to security issues. We need hard information like this if we are to force ''flag of convenience'' nations from providing cover to criminals and terrorists.

This is very important as Osama bin Laden has used flags of convenience to hide his ownership in various international shipping interests. In 1998 one of bin Laden's cargo freighters unloaded supplies in Kenya for the suicide bombers who later destroyed the embassies in Kenya and Tanzania. To that end, the bill requires the Administration to report on actions they have taken, or would recommend, to close these loopholes and improve transparency and registration procedures, either through domestic or international action—including action at the International Maritime Organization.

This legislation would also establish a national Sea Marshal program to protect our ports from the potential use of vessels as weapons of terror. Sea Marshals have recently been used in San Francisco and Los Angeles, and is supported strongly by the maritime pilots who, like airline pilots, are on the front lines in bringing vessels into U.S. ports. Sea Marshals would be used in ports that handle materials that are hazardous or flammable in quantities that make them potential targets of attack. The Coast Guard has taken a number of steps including using armed Coast Guard personnel to escort a Liquid Natural Gas, LNG, tankers into Boston since September 11. Prior to September 11 these vessels were escorted by Coast Guard vessels into the port but no armed guards were present on the vessel. I strongly believe that having armed personnel, such as Sea Marshals, on these high interest vessels is very important and will considerably increase security in our nation's ports, including Boston. The ability of terrorists to board a vessel and cause a deliberate release of LNG or gasoline for that matter is very real. Sea Marshals will make it much more difficult for this to happen. The Secretary of Transportation would be responsible for evaluating the potential use of Federal, State, or local government personnel as well as documented United States Merchant Marine personnel to supplement Coast Guard personnel as Sea Marshals. In addition it is my hope that the Secretary will establish training centers around the country for the Sea Marshal program. I further believe that the U.S. Merchant Marine Academy or any of the State maritime academies would make excellent locations for such training centers.

Lastly, this legislation would allow the President to prohibit any vessel, U.S. flagged or foreign, from transporting passengers or cargo to and from a foreign port that does not have adequate security measures as determined by the Secretary of Transportation. I would like to remind my colleagues that a similar provision exists in the airline industry and I see no reason why the President should not have the power to suspend vessel traffic to and from ports with inadequate security, just like he can now do with international airports. The stakes are simply too high Mr. President, we cannot allow shipping containers to enter this country unless adequate security exists in foreign ports to prevent weapons of mass destruction from being loaded. In addition we should not allow cruise ships carrying U.S. passengers to visit foreign passenger ports that do not have adequate security.

I again wish to congratulate Senator HOLLINGS on this landmark legislation and to thank him for including several provisions from S. 1589. This legislation will ensure that the United States has the tools, the information, and the personnel to guard against waterborne threats to our Nation and our citizens.

Mr. BREAUX. Mr. President, as many of my colleagues might know, my State of Louisiana depends heavily on maritime trade and transportation. After all, Louisiana is darn near close to being underwater, so I always have had an affinity for things that float.

Louisiana is fortunate to have the Mississippi River, along which barges haul grain, wheat and corn from the heartland of America, and coal from Wyoming. Our fortune extends to the fisheries resources of the Gulf of Mexico and our oil and gas resources in the outer continental shelf. We have invested in maritime-related oil and gas technologies to make that exploration as safe as possible. The Port of New Orleans, Lake Charles, and South Louisiana—as well as the other Louisiana ports—are major seaports handling containerized bulk and breakbulk cargoes, as well as passengers. The shipbuilding and repair industries employ thousands, as does the marine construction and dredging industry.

My constituents live close to waterways and the the Gulf of Mexico, and in many cases earn their living from our marine transportation system and its associated industries. So, as the Chairman of the Surface Transportation and Merchant Subcommittee—and as a resident of a State that relies so much on the smooth operation of its waterways and ports—maritime security is one of my primary concerns.

The security of our commercial sea and river ports has rarely been the focus of our national security plans. We have invested millions of dollars to

protect our airports and our land borders, but very little toward making sure that the goods and people arriving at our ports do not jeopardize our security. We know that Osama bin Laden controls a network of ships that hides his ownership. We have to assume that other terrorists and terrorist networks do, too. Therefore it is imperative that we take a more active Federal role in protecting the international boundaries of our seaports.

There is no unified Federal plan for overseeing security at the international borders of our sea ports. Right now the responsibility of building secure sea and river ports rests with states like Louisiana, its port authorities, and the private sector. That was a poor model for national security when we were fighting drugs and international smuggling—and it is totally inadequate after September 11 as we face the threat of terrorism.

That is why we must pass S. 1214, the Port and Maritime Security Act.

For the first time we will require Federal approval of port security programs. These plans will have to meet rigorous standards for security infrastructure, screening equipment, evacuation plans, access controls, and background checks for workers in security-sensitive areas.

We also will require more information about the cargo and passengers arriving at our ports. Right now we do not know enough about the ships and the cargo that call 24 hours a day. We need to change that immediately. We will require that ships electronically transmit their cargo manifests—and if the manifest does not match the cargo, it will not be unloaded. We also will check crew and passenger manifest information to identify people who could pose a security threat. My Subcommittee held a hearing on rail and maritime security in the aftermath of the events of September 11. At that hearing we heard testimony that the Republic of Panama had issued more than one thousand false documents that allow unauthorized personnel to operate on-board their vessels.

More information—and more reliable information—is the key to fighting crime and terrorism. The more we know about these ships, including who owns them and where they have been, the better we can target our law enforcement resources at our ports to check on the most suspicious loads. We need to know who is on these ships, and, eventually, be able to quickly check the names with a computer database of known terrorists or other associates of international criminal organizations.

This bill will require Federal, State and local law enforcement officials to better coordinate the sharing of that information. If a local police officer arrests someone for breaking into a secure area of the port, timely sharing of that information with State and Federal officials might help identify the person as part of a larger international network. It is critical that Customs agents work with the local police, that the State police work with Immigration officials, and that the FBI work with local port authorities. That type of cooperation will dramatically improve port security. Seaports have many different agencies and jurisdictions. So this bill attempts to harmonize their efforts, and will require the Coast Guard, in their role as Captain of the Port, to lead the coordination of law enforcement.

The businesses that operate in seaports also play a crucial security role. They must be brought into a cooperative environment in which a port's law enforcement information is communicated and shared confidentially with privately-hired security officers. In return, private security officers must have a direct line to share information with Federal, State, and local authorities.

To verify that the cargo loads match the manifests, we will need more Customs officials to check that cargo. Incredibly, only 2 percent of the cargo containers arriving at our ports are ever checked by Customs officials. That is a huge hole in our national security system that must be fixed. We seek to close this security hole by directly granting and authorizing more than $168 million for the purchase of non-intrusive screening and detection equipment to be used by U.S. Customs officers. These Customs officers are on the front lines of protecting our country from the importation of illegal and dangerous goods. We must give them the latest technology and the most modern cargo screening equipment available.

We also must help the private sector and the port authorities meet these national security challenges. This problem would be must more simple to solve it the United States had national seaports under the control of the Federal Government—or if the Federal Government directly funded seaport infrastructure. However, that is not the case. Maritime infrastructure is owned by States and by the private sector. But the Federal Government has a role to play here for homeland security. We cannot force States and the private sector to comply with security mandates, yet not provide funding. The legislation will directly fund and authorize $390 million in grants to local port security projects. The bill also will fund loan guarantees that could cover as much as $3.3 billion in long term loans to port authorities acting to improve their security infrastructure. Upgrading that infrastructure means installing modern gates and fencing, security-related lighting systems, remote surveillance systems, concealed video systems, and other security equipment that contributes to the overall level of security at our ports and waterfront facilities.

Some of our shipping companies may worry that these new procedures requiring more security and customs checks will slow the flow of international commerce. But as we did in the airline security bill, we can strike the balance between increased security and the convenience of our open country and economy. In Louisiana, our sea and river ports are a way of life, and an integral part of our economy. We have some of the largest seaports in America, and the Mississippi River runs through the heart of Louisiana. The river is a super-highway of commerce that helps drive our State's economy.

Security and the protection of our people from harm always will be our primary goal. However, we must do it in a way that does not dramatically slow the movement of goods that run our just-in-time-delivery economy. The answer to that problem is technology.

New scanners are now on the market that can x-ray and scan an entire 48-foot cargo container. Customs currently depends primarily on gamma-ray systems that are adequate for seeing through small vehicles or loosely-packed crates. But more powerful X-ray based machines—already used in Israel, the Netherlands, and Hong Kong—can pierce several inches of steel and peer through more densely packed boxes. These machines can see everything from false compartments down to the buttons on a remote control. And they can be programmed to spot ''density signatures'' that indicate explosive and nuclear materials. The more the Federal Government, ports and the private sector invest in using this new scanning technology, the fewer cargo containers and boxes will have to be opened and searched by hand. That will increase the efficiency of international commerce and trade—while at the same time making our nation more secure.

Investing in scanners is even more critical when you consider that the expanding global economy raises the volume of seaborne shipping by 7 to 10 percent each year. In other words, the amount of goods arriving and departing through our seaports is expected to double by 2020. While that increased trade will benefit our economy, it also poses a national security threat if we are unable to keep pace with the growing volume of goods and people passing through our ports.

That is why the private sector must get behind our efforts—and behind this bill. Before September 11, port security was something of an afterthought. We are now facing new threats. The more we invest in the infrastructure of making our ports secure, the less likely that your key products and supplies will be delayed at the ports due to increased security. As public officials, our primary duty is to protect public safety and national security. If the private sector engages and cooperates with our efforts, there will be less impact from that tightened security upon the free flow of goods and supplies through our major seaports. That is a public-private partnership that can work—and protect America at the same time.

We have made the investments at our airports and at our land borders to counter threats of terrorism and other international criminal organizations. It is now time to invest in the security of the international borders at our seaports, in order to protect our nation and our local seaport communities.

Mr. NELSON of Florida. Mr. President, I rise to thank Chairman HOLLINGS and ranking member MCCAIN for agreeing to include in S. 1214, the Port and Maritime Security Act, a Coast Guard and Navy study to evaluate the merits of establishing a Center for Coastal and Maritime Security.

The events of September 11 cruelly illustrated the challenges we face in providing comprehensive and reliable security for our homeland. There is no challenge more daunting than the integration of our Federal, State and Local law enforcement agencies and their coordinated efforts with our Armed Forces to protect our vast and complex maritime and industrial areas.

My amendment directs the administration to seriously consider establishing an institution that can provide integrated and coordinated training for the organization, planning and execution of security systems necessary to protect our vulnerable ports and coasts from potential terrorist attacks.

I am grateful for the inclusion of language directing this study because the U.S. Navy's Coastal Systems Station in Panama City, Florida is uniquely staffed with coastal security experts to help the Coast Guard conduct this assessment. In analyzing the costs and benefits of a Coastal and Maritime Security Center, I urge the Coast Guard to work closely with the Coastal Systems Station to ensure the best possible recommendation for the Administration and Congress.

Mr. President, I am confident that the study directed by this language will conclude that an investment in interagency integrated education and training to improve the protection of our ports and harbors is in the very best interests of our national security.

Mr. GRAHAM. Mr. President, this bill would take a significant step toward securing our Nation against future terrorist actions.

Just as we have unanimously decided to bolster security at our airports, we must also improve the overall security and cargo processing operations at U.S. seaports.

If nothing else, September 11 has demonstrated the need to do more to secure our Nation from terror—whether it comes from land, sky or sea. Before discussing the specifics of this legislation, it is important to describe the circumstances that have caused the security crisis at our seaports.

Seaports represent an important component of the Nation's transportation infrastructure.

Each year, thousands of ships, and millions of passengers, enter and leave the United States through seaports.

It is estimated that 95 percent of the cargo that enters the country from noncontiguous countries does so through the Nation's 361 coastal and inland ports.

Alarmingly, less than 2 percent of this enormous number of cargo containers are actually inspected.

Over the next 20 years, the total volume of imported and exported goods at seaports is expected to increase threefold.

Waterborne cargo alone contributes more than $750 billion to the U.S. gross domestic product and creates employment for 13 million people.

Despite the massive volume of cargo that moves through our Nation's ports, there are no Federal security standards or guidelines protecting our citizens from potentially lethal cargo.

The Federal Government does not provide the resources for technology that an adequately screen cargo moving through our ports, leaving them vulnerable to criminal activity—from smuggling to cargo theft to terrorism.

Security at our maritime borders is given substantially less Federal consideration than airports or land borders.

At U.S. seaports, the Federal Government invests nothing in infrastructure, other than the human presence of the U.S. Coast Guard, U.S. Customs Service and the Immigration and Naturalization Service, and whatever equipment those agencies have on-hand to accomplish their mandates.

Physical infrastructure is provided by State or local controlled port authorities, or by private sector marine terminal operators.

There are no controls, or requirements in place, except for the minimal standards promulgated by the Coast Guard for the protection of cruise ship passenger terminals.

Essentially, where seaports are concerned, we have abrogated the Federal responsibility of border control to the State and private sector.

In the face of these new challenges, it appears that the U.S. port management system has fallen behind the rest of world.

We lack a comprehensive, nationwide strategy to address the security issues that face our seaport system.

In early 1998—in response to the almost daily reports of crime and narcotics trafficking at Florida seaports, and following the day I spent working with the Customs Service at Tampa's Port Manatee on October 14, 1997—I began an investigation of the security situation at seaports throughout the nation. At that time, and perhaps even more so today, I was very concerned that our seaports, unlike our airports, lacked the advanced security procedures and equipment that are necessary to prevent acts of terrorism, cargo theft and drug trafficking.

Based on this workday, and subsequent investigation, I asked President Clinton to establish a Federal commission to evaluate both the nature and extent of crime and the overall state of security in seaports and to develop recommendations for improvement.

In response to my request, President Clinton established the Interagency Commission on Crime and Security in U.S. Seaports on April 27, 1999.

In October 2000, the Commission issued its final report, which outlines many of the common security problems discovered in U.S. seaports. Among other conclusions, the Commission found that: one, intelligence and information sharing among law enforcement agencies needs to be improved at many ports; two, that many ports do not have any idea about the threats they face, because vulnerability assessments are not performed locally;

Three, that a lack of minimum security standards at ports and at terminals, warehouses, and trucking firms leaves many ports and port users vulnerable to theft, pilferage, and unauthorized access by criminals; and four, advanced equipment, such as small boats, cameras, vessel tracking devices, and large scale X-rays, are lacking at many high-risk ports.

Our legislation addresses the problems of our seaports by instructing the Attorney General to coordinate the reporting of seaport related crimes with State law enforcement officials, so as to harmonize the reporting of data on cargo theft.

The bill would also increase the criminal penalties for cargo theft.

To address the lack of minimum security standards at America's seaports, the bill would require security programs to be developed by each port or marine terminal.

Each security program will be submitted to the Security of Transportation for review and approval.

These security programs would require maintenance of both physical and procedure security for passengers, cargoes, crew members, and workers; provisions for establishing secure areas within a waterfront; creation of a credentialing process to limit access to restricted areas so only authorized individuals gain admittance; restriction of vehicular access; development of an evacuation process from port areas in the event of a terrorist attack or other such emergency; and establish security awareness for all employees.

Our bill requires the Coast Guard, in consultation with the appropriate public and private sector officials and officials and organizations, develop a system of providing port security-threat assessments for U.S. seaports. The bill would authorize $60 million over 4 years to carry out this provision.

The Seaport Commission report found that current inspection levels of containerized cargo are insufficient to counter potential security risks.

This bill will authorized $168 million over five yeas, for the Customs Service to purchase non-intrusive screening and detection equipment for use at U.S. seaports.

It would also authorize $145 million for 1,200 new customs inspector positions, and 300 new customs agent positions.

The bill would also create a research and development grant program to provide grants up to 75 percent of the cost of construction, acquisition or deployment of technology to help develop non-intrusive inspection technologies.

The bill would authorize $15 million annually for fiscal year 2002 to fiscal year 2006 for this purpose.

Implementing the provisions of the Port and Maritime Security Act of 2001 will produce concrete improvements in the efficiency, safety, and security of our Nation's seaports, and will result in a demonstrable benefit for those who are currently pay tonnage duties.

This legislation is long overdue—that became all too apparent the morning of September 11. Not only is it required to facilitate future technological advances and the anticipated increases in international trade, but it would ensure that we have the sort of security controls necessary to protect our borders from threats of illegal aliens, drug smuggling and terrorism.

As we work to lift our Nation's fear of travel in our skies, we must also move to guarantee their safety on our seas.

This bill does not affect just those states with ports.

Each day 16,000 containers arrive in the United States. A single container can hold 30 tons.

These containers are either transported by truck or by rail throughout the United States.

To illustrate my point, I have a chart here which depicts a normal route of a cargo container entering the Port of Los Angeles and arriving in New York.

These containers travel across America, often more than a dozen States before reaching their destination.

Our seaports are our first line of defense in preventing a potential tragedy.

Seaports play one of the most critical roles in expanding our international trade and protecting our borders from international threats.

The ''Port and Maritime Security Act'' recognizes the importance of our seaports and devotes the necessary resources to move ports into the 21st century.

I urge my colleagues to look towards the future by supporting this critical legislation—and by taking action to protect one of our most valuable tools for promoting economic growth.

Mr. CLELAND. Mr. President, I rise today to express my strong support for S. 1214, the Port Security and Improvement bill. This legislation is overdue and absolutely needed in broadening our response to the threat of terrorism.

The Report of the Interagency Commission on Crime and Security in U.S. Seaports, issued in the fall of 2000, indicates that ''the state of security in U.S. seaports generally ranges from poor to fair, and in a few cases, good.'' Now that this country is acutely aware of the repercussions of overlooking transportation security weaknesses, Congress would be severely remiss if we did not act promptly to improve on the ''poor to fair'' rating at our ports.

I believe that technology can play an important role in ensuring the integrity, safety, and security of goods coming into this country via ship. To that end, my amendment that is included in S. 1214 establishes a pilot program run and defined by the Customs Service to examine different technologies and how they can be employed to verify that a container's contents are what they say they are and that they have not been tampered with during transport. Shippers and transporters using effective such technologies could then enter U.S. ports on an expedited basis. With 95 percent of foreign trade entering or leaving the U.S. via ship, allowing a quicker entrance by certain ''trusted shippers'' will allow a quicker conveyance to American consumers.

Already, I have seen outstanding demonstrations from people all over this country of their detection technologies and how they can be used to improve security. My amendment is a challenge to these innovators to develop such technologies for use in the shipping world.

Additionally, I have heard testimony from maritime experts that America needs to find ways to ''push its borders back.'' By ''pushing back'' our borders the intention is to ensure the integrity and inspection of goods entering the country at points farther out from our physical borders. If this process can be taken care of in a foreign port, confidence in the integrity of the goods increases and time is saved by domestic inspectors who can use their resources elsewhere. My amendment would allow the securing of goods in the port of origin so that when these goods arrive in the U.S. we can be assured of their safety.

I thank Senator HOLLINGS for his help with my amendment, and I look forward to working with Customs to implement this program, which I believe will be helpful to get goods to market in safe but timely manner.

NUCLEAR DEVICES DETECTION

Mrs. FEINSTEIN. Mr. President, I am encouraged that the Senate is poised to pass legislation bolstering security at our Nation's 361 seaports. I thank the members of the Senate Commerce Committee for their hard work on this bill.

While often out of the public eye, ports and harbors across the United States are America's economic gateways. Every year, U.S. ports handle over 800 million tons of cargo, valued at approximately $600 billion. If you exclude border commerce with Mexico and Canada, our ports handle 95 percent of U.S. trade. Two of the busiest ports of the nation are in California, at Long Beach and Oakland.

Yet, just 1 or 2 percent of the 11 million shipping containers reaching our ports are inspected each year. The Federal Government has taken steps to beef up security along our northern and southern borders. And we are addressing aviation security. But just about everything that arrives by ship is waved through.

This bill will strengthen law enforcement at our ports by establishing a federal port security task force and providing more funding for local efforts to boost port security. It is crucial that we increase cargo surveillance and inspections. And it is crucial that we provide our Customs agents and other port security forces with the equipment needed to detect chemical, biological, and nuclear weapons of mass destruction, WMD.

Osama bin Laden has stated that he considers it his ''religious duty'' to obtain such weapons.

Earlier this month, the director general of the International Atomic Energy Agency warned, ''The willingness of terrorists to commit suicide to achieve their evil aims makes the nuclear terrorism threat far more likely than it was before September 11th.'' According to the Agency, there have been 175 cases of trafficking in nuclear material since 1993 and 201 cases of trafficking in medical and industrial radioactive material. Sadly, it is no longer beyond the pale to imagine that bin Laden and his associates might try to smuggle a nuclear device or so-called ''dirty bomb'' onto a cargo ship entering one of our busy seaports and then detonate it.

I was prepared to offer an amendment to make it quite clear that references in the bill to chemical, biological, or other weapons of mass destruction include nuclear devices.

Mr. HOLLINGS. If the senior Senator from California will yield, I assure her that is our intent. Where was authorize activities or funding to step up surveilliance, inspection, and detection of WMDs at our seaports, we would want to target any kind of nuclear devices as well as chemical and biological weapons.

So, for instance, any authorizations in the bill for the purchase of detection equipment could be used to buy radiation pagers for the Customs agents who inspect cargo, or for radiation detectors on cargo X-ray machines, or to retrofit existing X-ray machines with sensitive sodium iodide detectors.

Mrs. FEINSTEIN. I thank the chairman for his clarification. It is absolutely vital that we upgrade our detection technology. Oakland's Howard Marine Terminal, for instance, is less than once-half mile from Jack London Square, a major tourist attraction. Ships that travel into and out of the Port of Oakland terminal pass within 400 yards of the Square.

Immediately following the September 11th attacks, a 920-foot tanker carrying 33 million gallons of liquefied natural gas (LNG) was prevented from entering Boston Harbor. The tanker was kept 6 to 8 miles offshore while authorities figured out a way to safeguard the Harbor. It was not until November 4—with Coast Guard escorts—that the tanker was allowed into the harbor.

Mr. HOLLINGS. The Senator from California has raised good points. I appreciate her interest in the matter and

her willingness to reach an accommodation with the Commerce Committee. We certainly want to interdict any nuclear devices as assuredly as we want to interdict other WMDs.

PORT AND MARITIME SECURITY ACT COLLOQUY

Mr. HOLLINGS. Mr. President, we worked hard with the Administration to incorporate many of their suggested changes in this bill to sharpen the policy and create a better legislative product. I had intended to work with Chairman LEAHY of the Judiciary Committee to modernize and update some of our maritime criminal laws to reflect the realities following the attacks of September 11th, and to strengthen our laws to protect against maritime terrorism. Unfortunately, the Administration did not consult or share with the Judiciary Committee the changes in criminal laws and other matters within the Judiciary Committee's jurisdiction that were provided to me. I would like to ask the Chairman of the Judiciary Committee, if he would be willing to work to work with me and Senator McCain next year to consider whether new criminal provisions are necessary to enhance seaport security?

Mr. LEAHY. Mr. President, I am also very concerned that we develop policies to more adequately protect our maritime vulnerabilities and protect the public from the threats emerging as a result of maritime trade. I would be happy to work with Chairman HOLLINGS and Ranking Member MCCAIN next year to evaluate whether any gaps in our criminal laws to protect our maritime safety and seaport security exist and the appropriate steps we should take to close those gaps and at the same time ensure that the rights of port employees are protected.

Mr. President, I have also expressed to Chairman HOLLINGS my concerns that we properly limit access to and use of sensitive law enforcement information relating to background checks which are provided for in this bill. Chairman HOLLINGS has assured me that the bill sets strict and appropriate limits as to both when such access will be required and how the information will be used once obtained. Additionally, the Chairman understands my continuing concern over the need for appropriate due process protections for employees of ports at all levels who may be subject to background checks. These would include a hearing that would consider mitigating and extenuating circumstances related to the individual in question. Am I correct that it is the intent of the Chairman to ensure that the Department of Transportation and the nation's ports carry out background checks with proper safeguards in place that ensure due process protections for employees. And will the Chairman commit to work with me to that end? I would like to ask Chairman HOLLINGS if he could explain these provisions?

Mr. HOLLINGS. Mr. President, we have included the important protections and limitations for such use in access in the bill. Background checks will be limited to those employees who have access to sensitive cargo information or unrestricted access to segregated ''controlled access areas,'' that is defined areas within ports, terminals, or affiliated maritime infrastructure which present a critical security concern. Such controlled access areas could be: locations where containers will be opened, points where vessels containing combustible or hazardous materials are berthed and port security stations. In addition, under this bill the use of background information, once it is obtained, will be restricted to the minimum necessary to disqualify an ineligible employee. In other words, only the minimum amount of law enforcement information necessary to make eligibility decisions will be shared with port authorities or maritime terminal operators.

Moreover, this legislation ensures appropriate due process protections for port employees who may be subject to a background check. In the legislation the Secretary is required to establish an appeals process that includes notice and an opportunity for a hearing for individuals found to be ineligible for employment as prescribed in Section 106. I also agree that this process should evaluate any extenuating and mitigating circumstances. I will work to ensure that we accomplish these objectives as the port security legislation moves forward.

SECURITY OF INLAND WATERWAYS

Mr. WYDEN. Mr. President, I rise to engage the distinguished chairman of the Commerce Committee in a colloquy on very important legislation he has sponsored—the Port and Maritime Security Act of 2001. This legislation, which I am pleased to have cosponsored, would establish new Federal safeguards for the security of our ports and maritime commerce. I would appreciate the chairman clarifying whether the intent of this legislation is to cover not only the security of ports but also inland waterways such as the Columbia-Snake River system. This is an important issue for the Pacific Northwest region because dams on the Columbia and Snake Rivers are not only critical for maritime transportation in our region but also a major source of our region's energy. Barges pass through the locks on these dams every day carrying gasoline and other explosive cargoes that could disrupt our waterways or energy production and even put residents downstream at risk of flooding if these cargoes exploded while in transit through one of the navigation locks. So I would ask my Chairman whether the authority provided to the Coast Guard and S. 1214 includes evaluating not just security for ports but also inland waterways like the Columbia/Snake River system?

Mr. HOLLINGS. I appreciate the Senator helping to clarify this point. I know it is especially important for the Senator's home State of Oregon and the Pacific Northwest region. The answer to the Senator's question is yes, the intention is to cover all areas affected by maritime transportation and commerce. The legislation covers not only seaports but also ''public or commercial structures located within or adjacent to the marine environment'' including navigation locks.

Mr. WYDEN. I thank the Senator for his clarification. I also ask him whether under his legislation, the Coast Guard would have authority to oversee dangerous cargoes transported along the Columbia/Snake River system as well as cargoes in port?

Mr. HOLLINGS. Under the legislation, the Secretary of Transportation would issue regulations for security programs for cargo as well for protecting passengers, crew members and other workers. The authority for security of cargo is broad enough to cover not only cargoes in port but also dangerous cargoes anywhere in the maritime navigation system including those in transit through navigation locks.

Mr. WYDEN. I thank the chairman again for answer and commend him for his leadership on this important issue.

FREIGHT RAIL SECURITY

Mr. ROCKEFELLER. Mr. President, will my friend, the distinguished chairman of the Senate Commerce Committee, the Senator from South Carolina, yield for the purpose of engaging in a colloquy?

Mr. HOLLINGS. I will be happy to yield for the purpose.

Mr. ROCKEFELLER. I thank the distinguished chairman of the Commerce Committee.

Mr. President, I would like to ask the Senator from South Carolina if he would agree that in the aftermath of the terrorist attacks of September 11th, this nation came to a number of stark realizations about our vulnerabilities and the overall state of our security?

We have become aware that glaring security gaps exist throughout our nation's transportation system. The Senator from South Carolina has been a leader in focusing the Senate's attention on the need to improve the safety of our ports, and he has been steadfast in his support for additional protections for our nation's rail passengers. I hope that he will agree with me that as important as improving the security in those areas is, our job is not complete until we pay similar attention to the security of our freight rail system.

One of the most serious vulnerabilities in the nation's transportation system is possibility that terrorists may target hazardous materials being transported across this nation's vast and largely unsecured freight rail network. I am sure the Senator is aware that several studies conclude that the chemical industry is particularly vulnerable to terrorist attacks, and point to the shipment of hazardous materials by rail as one of

the most serious threats to the industry. In fact, I believe that a study requested by the Senator's Appropriations Subcommittee and due to be published this month, will come to this very conclusion.

I do not mean to suggest that transportation of chemicals or other hazardous materials should be curtailed. While the transportation of hazardous materials poses risks to human health, the expeditious movement of certain products, like chlorine for municipal water systems, is absolutely essential for the protection of human health.

The railroad and chemical industries have acknowledged the risks, and have taken strides toward improving the security of their facilities, hazardous materials shipments, and rolling stock since the September 11th attacks. These security improvements, and additional security enhancements that are planned, will be inordinately costly, perhaps reaching as high as $150 million in this calendar year, and another $150 million in 2002. I hope the Senator will agree that the extraordinary and unforeseen nature of the costs being incurred by hazardous materials shippers, tank car owners, and railroads, combined with the benefit to human health and public safety that these security enhancements represent, justifies a program of short-term federal grants to reimburse or defray some of the post-September 11th security-related expenses these companies are incurring.

If the Senator from South Carolina does agree with the need to improve our nation's rail security, and understands the unprecedented outlays that railroads and shippers have made or will make in the near future, would he commit to this Senator to hold whatever hearings deemed necessary, and to schedule a prompt mark-up in the Commerce Committee early in 2002 for legislation of mine to require the Secretary of Transportation to conduct a comprehensive terrorism risk assessment, and to set up a Rail Security Fund to make the types of grants that we have discussed here today?

Mr. HOLLINGS. I thank the Senator for his comments on the state of our nation's transportation security, and I agree with his assertion that a complete treatment of our security needs would include legislation to improve the security of our rail network. I am aware that the need for the safe and expeditious rail transportation of chemicals and other hazardous materials is essential for our nation's economy, and that the movement of some chemicals, including chlorine, is necessary for the preservation of public health.

I am aware also of the security improvements that have been undertaken by railroads and hazardous materials shippers. I agree that the security-related expenses are extraordinary, and that in the interest of protecting the general public from the effects of a terrorist attack on hazardous materials shipped by rail, the federal government should help these companies on a short-term basis to defray their post-September 11th security-related expenses. I will promise the Senator from West Virginia that the Commerce Committee will take up the issue of rail security as early as possible during the next session of the Congress.

Mr. ROCKEFELLER. I thank the Senator from South Carolina, and I thank the Presiding Officer.

BUS SECURITY ACT

Mr. CLELAND. Mr. President, I appreciate the chairman's leadership in promoting safety in all modes of passenger and cargo transportation. In the Commerce Committee executive session on October 17, the committee addressed the important issue of passenger rail safety. The committee approved funding for the upgrading of Amtrak tunnels and bridges primarily along the much-used Northwest corridor. While I support and applaud the goal of increasing passenger rail safety and security—in fact I strongly support this legislation—at the same committee session I raised the issue of intercity bus security. Attention became acute on this issue after the October 3 incident on a Greyhound bus that resulted in the death of seven people. Since that event, there have been other attempts to cause mayhem on buses, but thankfully, none have resulted in deaths. With over 774 million intercity bus passengers annually with companies serving over 4,000 communities, we cannot wait to act on securing this important mode of transportation.

Mr. HOLLINGS. I appreciate the fact that the Senator from Georgia brought this matter to the committee's attention. Bus security is in fact an important issue which unfortunately cannot be appropriately addressed before the end of this year. I applaud the initiative of the Senator from Georgia and leadership on this issue and, in particular, his introduction of S. 1739, which establishes a competitive grant program to allocate funding to bus companies to increase security and safety and creates a research and development program for new technologies to increase bus security and safety. It is my intention to consider this legislation on the markup calendar of the Commerce Committee's first executive session of 2002.

Mr. CLELAND. I applaud the chairman's decision to advance the issue of bus safety. With bus terminals often sharing facilities with both airports and rail stations, omitting this critical component of the equation leaves a hole in the system. This mode of transportation is the largest domestic passenger service provider, and it has grown without the aid of federal support. Now that they need assistance to supplement their own efforts and protect our citizenry, it is time for Congress to act. This industry is made up of many small businesses, which may not be able to survive if assistance is not given to help boost security in order to bring passengers back to bus travel. Otherwise, these businesses may have to increase the cost to the customer to pay for the necessary security upgrades.

Mr. HOLLINGS. As chairman of the Commerce Committee, I am very aware of the need of the bus community. It is an important segment of our transportation infrastructure. I look forward to working with my colleague from Georgia on his legislation at the earliest opportunity in 2002.

Mr. CLELAND. I thank the Senator for his support and attention to this matter, and I look forward to working with you in the future on this issue of national importance.

Mr. SCHUMER. Mr. President, I seek unanimous consent to say a few words about the Port and Maritime Security Act of 2001 and the herculean efforts of the Senate Commerce Committee Chairman, Senator HOLLINGS, to get it passed.

In the aftermath of September 11, most of the legislation considered in this chamber has been reactive in nature. This bill, like Senator BYRD's homeland security package, is decidedly different.

This bill is designed to prevent a terrorist attack on one of our nation's most vulnerable pieces of infrastructure—our ports. This bill anticipates the possibility of an attack, and sets out to make that impossible. This is exactly the kind of legislation that we were sent to Congress to pass.

Yet it would not have passed without the dogged efforts of Senator HOLLINGS, who forced the issue as most members of Congress were leaving town.

Finally, I would just like to comment on Senator HOLLING's use of David Stockman's The Triumph of Politics, in his remarks today. I too remember those days in the early 1980's, when the Laffer Curve and trickle-down economics were coming into vogue. I was a young congressman then, and I didn't believe it would work.

I still don't. And I share the chairman's disbelief that even after September 11—when our Nation's vulnerabilities have been so explicitly exposed and the need for additional security resources has been made so evident— we would again travel down that path.

Mr. President, I thank the Chairman for his efforts on this vital piece of legislation.

PORT SECURITY, S. 1214

Mr. MURKOWSKI. Mr. President, I rise today to thank Chairman HOLLINGS and Senator MCCAIN for accepting my amendment to this important bill will promote security at our Nation's seaports.

America's ports provide invaluable links between American productivity and markets both here at home and abroad.

Ports are a critical cog in the wheels of our economy. But quite frankly, our ports are vulnerable.

History has taught us lessons in vulnerability before, whether it be the USS *Maine* in Havana Harbor, the attack on Pearl, or the USS *Cole* in Yemen, ships and shipping are always a risky proposition, especially in the confines of port.

These lessons have new meaning in today's reality of war.

A single attack, on a single ship, in a single U.S. port could render the entire facility immobile.

What does that mean? No exports of U.S. autos. No freighters carrying ore on the Great Lakes. No grain barges up or down the Mississippi Rover. Simply put, No trade.

And perhaps most troubling, no energy.

In my State the Port of Valdez, at the end of the Alaska Pipeline, is responsible for providing much of the West Coast and Hawaii with its oil. And in Kenai, the facility sees billions of cubic feet of Liquified Natural Gas transferred each year.

What would happen if these ports were closed by some horrific act? How could we move our Nation's domestically produced energy?

These facilities and others around the U.S. demand our best efforts to protect them.

But a large, and unfortunately growing, role for our ports is the importation of foreign-produced energy, crude oil, refined petroleum products and liquified natural gas.

As imported energy becomes a larger share of the U.S. energy supply, we become more vulnerable to terrorist attacks.

The energy trade itself creates new terrorist targets.

In the aftermath of September 11th, the Coast Guard was forced to suspend LNG shipments in to Boston Harbor for fear of those ships being used for terror.

What else is aboard those foreign flagged supertankers that enter our ports from the Middle East?

What is hidden in the holds? Biohazards? Chemical warfare?

What else has that crew been trained to do?

These situations take on a new sense of reality after September 11.

My colleagues are well aware of my efforts to reduce our dependence on foreign oil and foreign supertankers by using our own domestic resources.

The longer we wait, the more vulnerable we become.

The majority leader has used parliamentary tactics to subvert the will of the Senate and delay voting on our energy independence.

That is a debate that still lies before us.

But for today, as long as we remain dependent, we must do all we can to protect the safety of those ships and that energy.

My amendment which is now included in this bill makes certain that those who are the most knowledgeable in this most critically-important aspect of port operations are full participants in the effort to ensure port security.

It further ensures that when we talk port security, that we're talking about our Nation's energy security.

I greatly appreciate the willingness of the Chairman, Mr. HOLLINGS, and the Ranking Republican, Mr. MCCAIN, to accept this amendment.

This amendment will make a strong and much needed bill even stronger.

Mr. EDWARDS. Mr. President, I rise today to support the Port and Maritime Security Act of 2001 and to speak about the need to protect our seaports from terrorist attacks.

Our seaports are critically important to our national, and global, economy. Our seaports enable us to export our goods to the rest of the world and allow us to import the goods we do not produce domestically. Ninety-five percent of all U.S. overseas trade is conducted through our 361 public seaports. Roughly 45,000 cargo containers enter the U.S. every day.

Our seaports are also an important component of our national security. In the interest of promoting trade, we accept increasing traffic in and around our seaports as ships, crew and cargo move goods between our nation and others. Yet even as we do this, we must recognize that the very volume of cargo moving through our seaports makes it difficult to adequately guard against a potential terrorist attack.

Traditionally, our seaports are viewed as highly vulnerable targets for terrorist attacks. They are open spaces, full of traffic, and difficult to monitor. Yet an attack against one of our larger seaports could dramatically impact our domestic economy by destroying cargo, eliminating jobs, and shutting off trading routes to other shippers.

Unfortunately, we have let our guard down with respect to our seaports by failing to adequately address the potential for a terrorist attack. We know how important our seaports are to our national and global economy, yet at best, inspectors are able to examine only about two percent of the cargo that passes through our seaports. This means that the vast majority of cargo entering our seaports is not inspected before the containers are allowed to move throughout the country. We can, and must, do better.

We must improve the quality of and deployment of detection technology and we must make sure that those who guard our seaports are equipped to prevent an attack. We have technology that scans containers to look for suspicious materials and shipments. It is in place right now, but not at all our seaports and not even at all of the largest seaports. We need to expand the deployment of this type of technology, and make sure all our seaports are equipped with the best available scanning technology. We must also make sure that the Coast Guard has the manpower and equipment it needs to protect our coast and ports and to respond in the event of an attack.

I am so pleased that we are passing the Port Security Bill. This is an extremely important piece of legislation and an important component of our national defense.

I would like to take this moment to thank Chairman HOLLINGS for working with me on several amendments I had to this important bill.

When the Commerce Committee held hearings on port security back in July, I raised several issues with the witnesses about the security of our ports and the ability to protect against a possible terrorist threat. I have been working since then to develop legislation to address some of the concerns I had that were confirmed at the hearing.

When the Commerce Committee marked up its port security bill in early August, I received assurances from Chairman HOLLINGS that we would continue to work to make sure my concerns were addressed when the bill came to the Senate floor. At that time, we of course had no idea that our country was only a month away from such a horrendous terrorist attack.

But I am pleased that we are now taking up this bill. It will make our seaports and our nation safer. And I want to again thank the Chairman and Ranking Member for working with me on these amendments and for including them in the final bill.

Specifically, these amendments will: improve our ability to safely handle cargo entering our country; provide the Coast Guard with additional anti-terrorism resources to protect domestic ports; and provide for the most modern security technology to be deployed in seaports.

My first amendment is an anti-tampering amendment that will ensure that the cargo we accept in our country has not been altered or interfered with. The amendment improves port security by allowing Customs to work with ocean shippers to better coordinate the tracking of cargo in our ports and across our country. It will improve security by enabling Customs to better assist shippers in preventing cargo tampering and cargo theft. It will also improve security by enabling Customs to track containers as they move cross-country to ensure that they are not diverted for criminal or terrorist purposes.

My second amendment establishes Port and Maritime Security Teams, teams of Coast Guard personnel with training in anti-terrorism, drug interdiction, and navigation assistance. These units will operate high-speed boats that are equipped to patrol our coastal waters and respond immediately to terrorist or other criminal threats to our coast and seaports. Similar teams are already used to protect U.S. vessels in foreign ports, my amendment brings them to our domestic defense.

My final amendment will ensure that the best available technology is deployed in our seaports to improve security, identify threats, and prevent terrorist attacks. The grant program would cover technologies to deal with such security risks as: explosives, firearms, weapons of mass destruction, chemical and biological weapons, drug and illegal alien smuggling, and trade fraud. This amendment is so important, because the type of cargo and containers that move through seaports are entirely different than what moves through our airports, and we need to make sure we are developing technology that recognizes those differences. Only about 2 percent of the cargo entering our seaports is inspected, without better technology, we are leaving ourselves too vulnerable to those who would exploit our seaports for terrorist or criminal activity.

Again, I would like to express my thanks to Chairman HOLLINGS and Senator MCCAIN for helping make sure that these amendments were included in the final bill and for making sure that we take aggressive action to protect our seaports.

AMENDMENT NO. 2690

The PRESIDING OFFICER. Under the previous order, there is an amendment in order. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS], for himself, Mr. MCCAIN, and Mr. GRAHAM, proposes an amendment numbered 2690.

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

Mr. HOLLINGS. Mr. President, I urge the adoption of the amendment. It is a managers' amendment agreed to by Senators MCCAIN, GRAHAM, HUTCHISON, and myself.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2690.

The amendment (No. 2690) was agreed to.

Mr. HOLLINGS. I urge passage of the bill, as amended.

The PRESIDING OFFICER. Does the Senator yield back all time?

Mr. HOLLINGS. I yield back all time.

The PRESIDING OFFICER. All time having been yielded back, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The bill (S. 1214) was passed.

Mr. HOLLINGS. Mr. President, may I be recognized?

The PRESIDING OFFICER. The Senator from South Carolina.

ECONOMIC STIMULUS

Mr. HOLLINGS. Mr. President, with respect to the stimulus bill, let's go right to the point. It really was not a stimulus at all. Over a month ago, Joseph Stiglitz wrote an article entitled ''A Boost That Goes Nowhere.'' I ask unanimous consent that this article be printed in the RECORD.

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

[From the Washington Post, Nov. 11, 2001]

A BOOST THAT GOES NOWHERE

(By Joseph Stiglitz)

The United States is in the midst of a recession that may well turn out to be the worst in 20 years, and the Republican-backed stimulus package will do little to improve the economy-indeed it may make matters worse. In the short term, unemployment will continue to rise and output will fall. But the U.S. economy will eventually bounce back—perhaps in a year or two. More worrying is the threat a prolonged U.S. recession poses to the rest of the world.

Already we see inklings of the downward spiral that was part of the Great Depression of 1929: Recession in Japan and parts of East Asia and bare growth in Europe are contributing to and aggravating the U.S. downturn.

Emerging countries stand to lost the most. Globalization has been sold to people in the developing world as a promise of unbounded prosperity—or at least more prosperity than they have ever seen. Now the developing world, especially Latin America, will see the darker side of its links to the U.S. economy. It used to be said that when America sneezed, Mexico caught a cold. Now, when America sneezes, much of the world catches cold. And according to recent data, America is not just sneezing, it has a bad case of the flu.

October unemployment figures show the largest monthly increase in two decades. The gap between the United State's potential gross domestic product—what it would be if we had been able to maintain an unemployment rate of around 4 percent—and what is actually being produced is enormous. By my calculations, it is upwards of $350 billion a year! This is an enormous waste of resources, a waste we can ill afford.

It is widely held that every expansion has within it the seeds of its own destruction—and that the greater the excesses, the worse the downturn. The Great Boom of the 1990s had marked excesses. Irrational optimism has been followed by an almost equally irrational pessimism. Consumer confidence is at its lowest level in more than seven years. The low personal savings rate that marked the Great Boom may put even more pressure of consumers to cut back consumption now.

It seemed to me that we were headed for a recession even before Sept. 11. In the coming months we will have the numbers that make clear that we are squarely in one now. The economic cost of the attacks went well beyond the direct loss of property, or even the disruption to the airlines. Anxieties impede investment. The mood of the country discourages the consumption binge that would have been required to offset the reduction in investment.

In any case, monetary policy—the Federal Reserve's lowering of short-term interest rates to heat up the economy—has been vastly oversold. Monetary policy is far more effective in reining in the economy than in stimulating it in a downturn, a fact that is slowly becoming apparent as the economy continues to sink despite a massive number of rate cuts; Tuesday's was the 10th this year.

The Bush administration's tax cut, which was also oversold as a stimulus, is likely to haunt the economy for years. Now the consensus is that a new stimulus package is needed; the president has ordered Congress to have one on his desk by the end of the month. Much of the stimulus debate has focused on the size of the package, but that is largely beside the point. A lot of money was spent on the Bush tax cut. But the $300 and $600 checks sent to millions of Americans were put largely into savings accounts.

What worries me now is that the new proposals—particularly the one passed by the Republican-controlled House—are also likely to be ineffective. The House plan would rely heavily on tax cuts for corporations and upper-income individuals. The bill would put zero—yes, zero—into the hands of the typical family of four with an annual income of $50,000. Giving tax relief to corporations for past investments may pad their balance sheets but will not lead to more investment now when we need it. Bailouts for airlines didn't stop them from laying off workers and adding to the country's unemployment.

The Senate Republican bill, which the administration backs, in some ways would make things even worse by granting bigger benefits to very high earners. For instance, the $50,000 family would still get zero, but this plan would give $500,000 over four years to families making $5 million a year—and much of that after (one hopes) the economy has recovered. It directs very little money to those who would spend it and offers few incentives for investment now.

It would not be difficult to construct a program with a much bigger bang for the buck:

America's unemployment insurance system is among the worst in the advanced industrial countries; give money to people who have lost their jobs in this recession, and it would be quickly spent.

Temporary investment tax credits also would help the economy. They are like a sale—they induce firms to invest now, when the economy needs it.

In every downturn, states and localities have to cut back expenditures as their tax revenues fall, and these cutbacks exacerbate the downturn. A revenue-sharing program with the states could be put into place quickly and would prevent these cutbacks, thus preserving vitally needed public services. Many high-return public investments could be put into place quickly—such as renovating our dilapidated inner-city schools.

This may all sound like partisan (Democratic) economies, but it's not. It's just elementary economics. If you really don't think the economy needs a stimulus, either because you think the economy is not going into a tailspin or because you think monetary policy will do the trick, only then would you risk a minimal-stimulus package of the kind the Republicans have crafted in both the House and Senate.

But what matters is not just how I or other economists see this: It matters how markets, both here and abroad, see things. The fact that medium- and long-term bond rates (that is, bonds that reach maturity in five or 10 years or more) have not come down in tandem with short-term rates is not a good sign. Nor is the possibility that the interest rates some firms pay for borrowing for plant and equipment may actually have increased.

In 1993, a plan of tax increases and expenditure cuts that were phased in over time, providing, reassurances to the market that future deficits would be lower, led to lower long-term interest rates. It should come as no surprise, then, that the Bush package, with its tax decreases and expenditure increases, would do exactly the opposite. The Federal Reserve controls the short-term interest rates—not the medium- and long-term ones that firms pay when they borrow money to invest, or that consumers pay when they borrow to buy a house, which are still far

higher than the short-term rate, which now stands at its lowest level in 40 years. Whatever monetary policy does in lowering short-term rates can be largely undone by an administration's misguided fiscal policy, which can increase that gap between short and long rates; that gap has widened considerably.

Worse still, America has become dependent on borrowing from abroad to finance our huge trade deficits; and the reduction in the surplus is likely to exacerbate this (on average, the two move together). If foreigners become even less confident in America, they will shift their portfolio balance, putting more of the money elsewhere. That adjustment process itself could put strain on the U.S. economy. Before the terrorist attacks, confidence abroad in America and the American economy had eroded, with the bursting of the stock and dot-com bubbles. The two remaining pillars of strength were the quality of our economic management and our seeming safety. Both of these have now been questioned—and the stimulus package likely to become law has nothing to allay foreigners' fears.

As a former White House and then World Bank official, I have had the good (or bad) fortune to watch downturns and recessions around the world. Two features are worth noting.

First, standard economic models perform particularly badly at such times, they almost always underestimate the magnitude of the downturn. One relies on these models only at one's peril. The International Monetary Fund and the U.S. Treasury badly underestimated the magnitude of the Asian downturns of 1997—and this mistake was at least partly responsible for the disastrous IMF policies prescribed in Indonesia, Thailand and elsewhere.

Second, there are long lags and irreversibilities: Once it is clear that the downturn is deep, and a stronger dose of medicine is administered, it takes six months to a year for the effects to be fully felt. Meanwhile, the consequences can be severe. The bankrupt firms do not become unbankrupt and start functioning again.

Downturns are likely to be particularly severe when the economy is hit by a series of adverse shocks. Market economies such as ours are remarkably robust. They can withstand a shock or two. But even before terrorism came ashore, America had been hit badly. The attacks added political uncertainty to the already great economic uncertainty.

So here we are, facing a major downward spiral. This is where eroding confidence in economic management comes into play. John Maynard Keynes, the founder of modern macroeconomics, (including the notion of the stimulus) emphasized the importance and vagaries of *investers'* ''animal spirits''—that is, the unpredictability of their optimism and pessimism. But expectations, rational or irrational, about the future are of no less importance to consumers. Those who are worried about losing their jobs are more likely to cut back on their spending and to save the proceeds from any tax cuts.

It was great fun being part of the Great Expansion. Every week brought new records—the lowest unemployment rate in a quarter-century, the lowest inflation rate in two decades, the lowest misery index in three. The good news fed on itself, and the confidence helped fuel the expansion. We took credit where we could, but I knew that much of this was good luck—and the Clinton administration and Fed not messing things up.

Now, every week brings new records in the other direction—the largest increase in unemployment and decline in manufacturing in two decades, the first quarterly fall in consumer prices in nearly a half-century, the slowest growth in nominal GDP in any two consecutive years since the 1930's. Americans love records, but unfortunately, these new ones are contributing to the already pervasive sense of anxiety. The Bush administration will not try to claim credit for these new records; rather, it will blame Sept. 11. Osama bin Laden is a convenient excuse, but the data will show his murderous henchmen were aiding and abetting at best: The economy was already sliding toward recession.

I wish I could be more optimistic about our economy's prospect. I worry that all of this naysaying will simply contribute to the downturn. Perhaps I am wrong, and the economy will, on its own, recover quickly.

But perhaps I am right. Then, without an effective stimulus, the U.S. economy will sink deeper into recession, and the rest of the world with it. An ineffective stimulus could be even worse: It would harm budgetary prospects, raising medium- and long-term interest rates. And when we see the false claims for what they are, confidence in our economy and in our economic management will deteriorate further. We have had a first dose of this particular medicine. We hardly need another.

Mr. HOLLINGS. Mr. President, earlier this week USA Today had an editorial entitled ''Shopping for 2002 Votes, Dems, GOP Raid Surplus.''

I will read the last sentence:

In Washington, putting on a great show of activity to demonstrate concern for anyone's economic hurt may seem to be smart politics. But sometimes the best thing the government can do is nothing. This is one such time.

I ask unanimous consent that the editorial be printed in the RECORD.

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

[From the USA-Today, Dec. 17, 2001]

SHOPPING FOR 2002 VOTES, DEMS, GOP RAID SURPLUS

DESPITE SIGNS OF ECONOMIC RECOVERY, CONGRESS INSISTS ON 'STIMULUS'.

What's wrong with this picture?

Just two weeks ago, the White House announced that not only have last winter's predictions of massive budget surpluses evaporated, but major deficits are predicted for at least the next three years, as well.

State governors from both parties are warning that homeland-security needs are going unaddressed for lack of funding.

Yet, instead of recognizing these new realities, Congress and the White House are spending the last days before their holiday recess trying to enact a hugely expensive ''economic stimulus'' package that is packed with tax cuts and social spending. And they're doing so even as the economy is showing signs of recovering on its own.

Stimulus clearly is not more dangerous than the lack of one. yet, instead of spiking the idea, congressional Democrats and Republicans are seeking a compromise. Not because the economy needs a jolt, but because each party sees it as an opportunity to score some points in the 2002 congressional campaigns:

House Republicans, on a largely party-line vote, passed a $100-billion package of tax cuts targeted overwhelmingly at corporations and individuals with incomes in the top 5% of the nation, coincidentally among the biggest sources of political contributions. The biggest tax breaks for business weren't targeted at job creation but at refunding taxes already paid as long ago as 1986. Many of the cuts for individuals—questionable during a budget squeeze in any case—wouldn't take effect until 2003, when the recession is likely to be long over.

Senate Democrats are headlining a $600 tax rebate for working-poor families that didn't earn enough to benefit from last summer's income-tax rebates, as well as a one-month holiday from payroll taxes. It's a nice appeal to their blue-collar political base, but normally fractious economists almost all agree it's no stimulus: Repeated studies show one-shot cash windfalls are likely to go to reduce debt or bolster savings, not to spending that would stimulate the economy. Similarly, extending unemployment benefits and helping to pay for health insurance sound like noble objectives—but backdoor welfare, even if needed, is no kick-start for a troubled marketplace.

The Bush administration murmurs piously about compromise, but what the president and his aides are hinting at looks a lot like the old Washington game: doling out the political bonbons for both sides to claim victory, with little concern for economic justification.

Meanwhile, the money just isn't there. The return to red ink is so abrupt that the Treasury asked Tuesday for a hike in the government's borrowoing limit, to a whopping $6.7 trillion. The current ceiling, $5.95 trillion and just three months ago headed rapidly downward, may be reached as soon as February.

In Washington, putting on a great show of activity to demonstrate concern for anyone's economic hurt may seem to be smart politics. But sometimes the best thing the government can do is nothing. This is one such time.

Mr. HOLLINGS. Mr. President, the Wall Street Journal printed an article earlier this week on Monday entitled, ''The Stimulus Fiasco.'' I ask unanimous consent this article be printed in the RECORD.

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

[From the Wall Street Journal, Dec. 17, 2001]

THE STIMULUS FIASCO

In the not-so-epic battle over fiscal ''stimulus,'' the shouting has all come down to this: The White House is demanding that the 27% income-tax rate, be cut to 25%, while Senate Majority Leader Tom Daschle is insisting on a mere 26%. Only in Washington would anyone believe that either one is going to make much economic difference.

If this is all that the politicians can come up with, we have a modest proposal: Pack it in. The economy will be better off if President Bush calls the whole thing off and instead focuses on abosrbing the lessons of this political fiasco.

Not that we expect this to happen. The point of this exercise long ago stopped being economic growth and became political advantage. Mr. Bush wants to be able to sign something—anything—he can call ''stimulus'' to show voters he isn't like his father and cares about more than foreign policy. Mr. Daschle knows this, so he wants to deny Mr. Bush any tax cuts that might actually stimulate in favor of loading up on tax rebates, jobless benefits, health-care subsidies and other things that will redistribute income to his political constituencies. And it looks as if he's going to prevail.

This is clear from Mr. Bush's latest counter-offer last week to Mr. Daschle dictating the terms of his own surrender. Gone was the across-the-board acceleration of individual income-tax rates that he originally wanted and that his own economists believe would be the best economic medicine. Mr. Bush is still requesting some corporate tax

relief, such as a temporary speedup in depreciation and scaling back the corporate alternative minimum tax. But these will only pad business balance sheets for a while and do little to alter long-term incentives. Meanwhile, the President gave in to Mr. Daschle on tax rebates for low-in-come Americans who didn't get them last summer—that is, for people who pay little or no income tax anyway.

What really matters now is not whether a deal is struck this week but what lessons Mr. Bush learns from his looming defeat. We'd suggest at least two. The first is that only thing bipartisan abut Mr. Daschle is his smile. Like his mentor, George Mitchell, who destroyed Mr. Bush's father, Mr. Daschle wants to make Mr. Bush a one-term President. Rumors abound that the South Dakotan plans to run himself, but even if he doesn't he represents a Senate Caucus loaded with other potential candidates (John Kerry, Joe Lieberman, John Edwards, Hillary Clinton, Joe Biden).

All of them are pursuing the Daschle strategy of wrapping their arms around a popular President on the war. But on domestic policy they are competing against one another for advantage among the Democratic Party's liberal interest groups. This critical mass of Presidential ambition is inevitably pulling the entire Democratic Senate to the left. In the stimulus debate, it explains why Mr. Daschle established the absurd condition that any ''bipartisan'' compromise had to be supported by two-thirds of all Senate Democrats. That means any 17 Democrats can kill anything, and there are more than enough Caucus liberals to do that.

If Mr. Bush wants to know where Democrats will go next, all he had to do was watch Mrs. Clinton a week ago Sunday on NBC's ''Meet the Press.'' While praising Mr. Bush to the skies on the war, she also came out for repealing the tax cuts that the Congress already passed this summer. By not fighting harder to accelerate all of his rate cuts now, the President has left himself open to a three-year defensive battle to keep what he's already won.

Mr. Bush might as well recognize this now and plan accordingly. The only way he will get anything done in the Senate between now and 2004 is to move public opinion on the issues or beat Democrats at the polls in 2002. The worst habit in this environment is to negotiate with yourself, which is what has happened to Mr. Bush on ''stimulus.'' The President first gave Democrats $40 billion in new spending, but got no tax promises in return. Then he conceded on jobless benefits, but also got nothing, then on tax rebates, for which Mr. Daschle seems to have handed him only the token one-percentage point cut in the 27% rate.

The second lesson is that Mr. Bush's economic team failed him. Counselor Larry Lindsey gave him outdated Keynesian advice, assuring him against all evidence that tax rebates would spur growth. Treasury Secretary Paul O'Neill has provided no direction that we've noticed, offering only tentative counsel on policy and tripping over his own tongue on the politics. If this team were running the war in Afghanistan, the Marines would be the ones surrounded at Tora Bora.

The silver lining is that the economy may recover on its own without any fiscal stimulus. Ed Hymen of the ISI Group says he sees more signs of recovery by the week, oil prices are down and the Fed has provided ample liquidity (maybe too much if you look at the 10-year Treasury bond rate that hasn't fallen with Fed easing). This means Mr. Bush can afford to reject the phony stimulus that is now emerging from Congress. But in the long run he owes Americans coping with hard times a better domestic political strategy and a stronger economic team.

Mr. HOLLINGS. I will read the last sentence:

But in the long run [Mr. Bush] owes Americans coping with hard times a better domestic political strategy and a stronger economic team.

That is the first time I heard the Wall Street Journal ask for a stronger economic team. The reason is because we are in deep trouble.

We ended up last fiscal year, which ended just 3 months ago, on September 30 with a deficit of $141 billion. That was not as a result of September 11.

I ask unanimous consent to print in the RECORD a Wall Street Journal editorial dated August 16.

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

[From the Wall Street Journal, Aug. 16, 2001]

NASDAQ COMPANIES' LOSSES ERASE 5 YEARS OF PROFIT

(By Steve Liesman)

Mounting losses have wiped out all the corporate profits from the technology-stock boom of the late 1990s, which could make the road back to the previous level of profitability longer and harder than previously estimated.

The massive losses reported over the most recent four quarters by companies listed on the Nasdaq Stock Market have erased five years' worth of profits, according to figures from investment-research company Multex.com that were analyzed by The Wall Street Journal.

Put another way, the companies currently listed on the market that symbolized the New Economy haven't made a collective dime since the fall of 1995, when Intel introduced the 200-megahertz computer chip, Bill Clinton was in his first term in office and the O.J. Simpson trial obsessed the nation. ''What it means is that with the benefit of hindsight, the late '90s never happened,'' says Robert Barbera, chief economist at Hoenig & Co.

The Wall Street Journal analysis looked at earnings excluding extraordinary items going back to September 1995 for about 4,200 companies listed on Nasdaq, which is heavily weighted toward technology stocks but also includes hundreds of financial and other growth companies. For the most recently reported four quarters, those companies tallied $148.3 billion in losses. That roughly equaled the $145.3 billion in profit before extraordinary items these companies have reported since September 1995. Because companies have different quarter-ending dates, the analysis doesn't entirely correspond to calendar quarters.

Large charges that aren't considered extraordinary items were responsible for much of the red ink, including restructuring expenses and huge write-downs of inventories and assets acquired at high prices during the technology bubble.

Analysts, economists and accountants say these losses raise significant doubts about both the quality of past reported earnings and the potential future profit growth for these companies. Ed Yardeni, chief investment strategist at Deutsche Banc Alex. Brown, said the losses raise the question of ''whether the Nasdaq is still too expensive. These companies aren't going to give us the kind of awesome performance they did in the '90s, because a lot of it wasn't really sustainable.''

The Nasdaq Composite Index stood at around 1043 in September 1995, soared to 5048.62 in March 2000 and now stands at 1918.89. Because companies in the Nasdaq Composite Index now have a cumuluative loss, for the first time in memory the Nasdaq's value can't be gauged using the popular price-earnings ratio, which divides the price of stocks by their earnings. That means it is impossible to say whether the market is cheap or expensive in historical terms.

The extent of the losses surprised a senior Nasdaq official, who asked not to be named. ''I wouldn't have thought they were that high,'' he said.

Nasdaq spokesman Andrew MacMillan, while not disputing the losses, pointed to the $1.5 trillion in revenue Nasdaq companies generated over the past year, saying that represented ''a huge contribution to the economy, to productivity, and to people's lives . . . regardless of what's happening to the bottom line during a rough business cycle.''

Satya Pradhuman, director of small-capitalization research at Merrill Lynch, says the recent massive losses tell a story of a market where investors became focused on revenue instead of earnings. With billions of dollars in financing chasing every glimmer of an Internet idea, Mr. Pradhuman says, a lot of companies came to market long before they were ready.

''The underwriting was very aggressive, so earlier-stage companies came to market than the kind of companies that came to market five or 10 years ago,'' he adds. He believes there is plenty of potential profitability out there in this crop of young companies, But, he notes, ''only among those that survive.''

The data show that the very companies whose technology products were supposed to boost productivity and help smooth out the business cycle by providing better information have been among the hardest-hit in this economic slowdown. ''Management got caught up with how smart they were and completely forgot about the business cycle and competition,'' says Mr. Yardeni. ''They were managed for only ongoing success.''

To be sure, some of Nasdaq's largest star-powered companies earned substantial sums over the period. Intel led the pack with $37.6 billion in profit before extraordinary items since September 1995, followed closely by Microsoft's $34.6 billion in earnings. Together, the 20 most profitable companies earned $153.3 billion, compared with losses of $140.9 billion for the 20 least profitable. Included in the losses was a $44.8 billion write-down of acquisitions by JDS Uniphase and an $11.2 billion charge by VeriSign, also to reduce the value on its book of companies it had bought with its high-price stock.

These charges lead some analysts and economies to believe that including these losses overstates the magnitude of the decline. According to generally accepted accounting principles, these write-offs are treated as regular expenses. But corporate executives say they should be treated as one-time items. ''It's an accounting entry rather than a true loss,'' maintains Bill Dudley, chief U.S. economist at Goldman Sachs Group.

Removing these unusual charges, the losses over the most recently reported four quarters shrink to $6.5 billion on a before-tax basis. By writing down the value of assets, companies have used the slowdown to clean up their balance sheets, a move that should allow them to move forward with a smaller expense base and could pump up future earnings.

''It sets the table for future dramatic growth,'' says independent accounting analyst Jack Ciesielski. Because of the write-downs, ''when the natural cycle begins again,

the returns on assets and returns on equity will look fantastic.'' But Mr. Ciesielski adds that this benefit will be short-lived.

Cicso Systems in the first quarter took a $2.25 billion pretax inventory charge. This quarter, it partly reversed that write-down taking a gain of $187 million from the revaluation of the previously written-down inventory. The reversal pushed Cisco into the black.

But Mr. Barbera warns that investors shouldn't be so quick to ignore the unusual charges. For example, during good times it wasn't unusual for companies to book large gains from investments in other companies. Now that the value of those investments are under water, companies are calling the losses unusual. ''If they are going to exclude the unusual losses, then they should exclude the unusual gains,'' says Mr. Barbera.

Mr. HOLLINGS. I read from the article:

The Wall Street Journal analysis looked at earnings excluding extraordinary items going back to September 1995 for about 4,200 companies listed on Nasdaq, which is heavily weighted toward technology stocks, but also includes hundreds of financial and other growth companies. For the most recently reported four quarters those companies tallied $148.3 billion in losses. That roughly equaled the $145.3 billion in profit before extraordinary items these companies have reported since September 1995.

It is as if the last 5 years never occurred. What did I have to listen to as a long-time member of the Budget Committee? Surpluses as far as the eye can see, they said in June when the President signed the $2.3 trillion tax cut. I want to say it right as a Senator saying we ought to be increasing revenues, paying our way.

I see the distinguished former Governor of Florida in the Chamber. We could not get by as Governors in our States unless we had a triple-A credit rating. None of these industries are going to expand and come to us at all.

What really hearkened this particular Senator because we never seem to learn. The same act, same scene 20 years ago: David Stockman, the head of President Reagan's economic team, the Director of his Office of Management and Budget, in his book, ''The Triumph of Politics,'' talks about the Trojan horse, growth-growth, Kemp-Roth, and what we had entitled ''voodoo No. 1.'' Now we have voodoo No. 2. Referring to voodoo No. 1 on page 342, at the end of the year in November after they passed the tax cuts, we immediately went into recession, which is exactly what has happened in the year 2001.

I quote:

[President Reagan] had no choice but to repeal, or substantially dilute, the tax cut.

Can you imagine that?

He had no choice but to repeal, or substantially dilute, the tax cut. That would have gone far toward restoring the stability of the strongest capitalist economy in the world. It would have been a great act of statesmanship to have admitted the error back then, but in the end it proved too mean a test. In November 1981, Ronald Reagan chose not to be a leader but a politician, and in so doing he showed why passion and imperfection, not reason and doctrine, rule the world. His obstinacy was destined to keep America's economy hostage to the errors of his advisers for a long time.

That is exactly our dilemma now. For those who regret the non-passage of the stimulus bill, go to Sunday school and thank the Good Lord because—as Stiglitz said and as the USA Today said and as the Wall Street Journal said and now as Dave Stockman said 20 years ago—we ought to be removing those tax cuts, repealing that $2.3 trillion.

It is not the confidence of consumers, it is the confidence of the market. The money boys who really govern the economic affairs of this country—the $2 trillion is still going to be lost.

How much are we up? I ask unanimous consent to print in the RECORD, the deficit to the penny as included by none other than the Secretary of Treasury.

It is entitled the Public Debt to the Penny. That is the Secretary of the Treasury. I ask unanimous consent that this document be printed in the RECORD.

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

THE DEBT TO THE PENNY

	Amount
Current:	
12/19/2001	$5,883,339,152,814.48
Current Month:	
12/18/2001	5,881,570,635,636.22
12/17/2001	5,875,160,714,473.71
12/14/2001	5,875,869,812,211.80
12/13/2001	5,875,559,240,572.48
12/12/2001	5,877,463,679,105.98
12/11/2001	5,879,691,857,799.79
12/10/2001	5,877,125,427,843.37
12/07/2001	5,874,922,950,915.27
12/06/2001	5,877,883,213,016.24
12/05/2001	5,868,016,815,751.26
12/04/2001	5,867,886,281,057.86
12/03/2001	5,862,832,382,763.04
Prior months:	
11/30/2001	5,888,896,887,571.34
10/31/2001	5,815,983,290,402.24
Prior fiscal years:	
09/28/2001	5,807,463,412,200.06
09/29/2000	5,674,178,209,886.86
09/30/1999	5,656,270,901,615.43
09/30/1998	5,526,193,008,897.62
09/30/1997	5,413,146,011,397.34
09/30/1996	5,224,810,939,135.73
09/29/1995	4,973,982,900,709.39
09/30/1994	4,692,749,910,013.32
09/30/1993	4,411,488,883,139.38
09/30/1992	4,064,620,655,521.66
09/30/1991	3,665,303,351,697.03
09/28/1990	3,233,313,451,777.25
09/29/1989	2,857,430,960,187.32
09/30/1988	2,602,337,712,041.16
09/30/1987	2,350,276,890,953.00

Source: Bureau of the Public Debt.

THE DEBT TO THE PENNY AND WHO HOLDS IT

[Beginning 1/31/2001]

	Debt held by the public	Intragovernmental holdings	Total
Current:			
12/19/2001	3,410,253,888,547.10	2,473,085,264,267.38	5,883,339,152,814
Current month:			
12/18/2001	3,409,529,106,007.83	2,472,041,529,628.39	5,881,570,635,636
12/17/2001	3,409,404,133,952.59	2,465,756,580,521.12	5,875,160,714,473
12/14/2001	3,411,315,816,347.79	2,464,553,995,864.01	5,875,869,812,211
12/13/2001	3,411,300,511,893.02	2,464,258,728,679.46	5,875,559,240,572
12/12/2001	3,410,599,497,172.45	2,466,864,181,933.53	5,877,463,679,105
12/11/2001	3,410,412,991,136.99	2,469,278,866,662.80	5,879,691,857,799
12/10/2001	3,410,374,030,620.89	2,466,751,397,222.48	5,877,125,427,843
12/07/2001	3,410,332,012,889.24	2,464,590,938,026.03	5,874,922,950,915
12/06/2001	3,409,948,417,231.43	2,467,934,795,784.81	5,877,883,213,016
12/05/52001	3,399,263,255,412.91	2,468,753,560,338.35	5,868,016,815,751
12/04/2001	3,399,212,246,226.65	2,468,674,034,831.21	5,867,886,281,057
12/03/2001	3,399,094,184,616.49	2,463,738,198,146.55	5,862,832,382,763
Prior months:			
11/30/2001	3,404,026,838,038.17	2,484,870,049,533.17	5,888,896,887,571
10/31/2001	3,333,039,379,996.92	2,482,943,910,405.32	5,815,983,290,402
Prior fiscal years:			
09/28/2001	3,339,310,176,094.74	2,468,153,236,105.32	5,807,463,412,200

THE DEBT TO THE PENNY AND WHO HOLDS IT

[Thru 1/30/2001]

	Debt held by the public	Intragovernmental holdings	Total
Prior months:			
01/30/2001	3,369,903,111,703.32	2,370,388,014,843.13	5,740,291,126,546
12/29/2000	3,380,398,279,538.38	2,281,817,734,158.99	5,662,216,013,697
11/30/2000	3,417,401,544,006.82	2,292,297,737,420.18	5,709,699,281,427
10/31/2000	3,374,976,727,197.79	2,282,350,804,469.35	5,657,327,531,667
Prior fiscal years:			
09/29/2000	3,405,303,490,221.20	2,268,874,719,665.66	5,674,178,209,886
09/30/1999	3,636,104,594,501.81	2,020,166,307,131.62	5,656,270,901,633
09/30/1998	3,733,864,472,163.53	1,792,328,536,734.09	5,526,193,008,897
09/30/1997	3,789,667,546,849.60	1,623,478,464,547.74	5,413,146,011,397

Mr. HOLLINGS. We are already $76 billion in the red in addition to the $141 billion we ended up in the red this last fiscal year. We had to listen to Alan Greenspan say, ''Oh, wait a minute; we might pay off the debt too quick.''

We had $5.6 trillion and surpluses as far as the eye could see, and now what do they need to do? They need to increase the debt limit. They asked us the other day, let us increase the debt limit.

The debt limit, according to the budget and economic outlook for fiscal years at the beginning of the year, they said, and I quote: ''Under those projections, the debt ceiling would be reached in 2009.'' That is what they told us 11 months ago, that in 2009 the debt limit was going to be reached. The first order of business when we come back in January and February is to increase the debt limit, all on account of a rosy scenario, all on account of—what do they call it?—voodoo number two.

We better sober up and start paying the bill in Washington.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

LACK OF ACTION ON STIMULUS BILL

Mr. GRASSLEY. Mr. President, I am happy to be able to have some time to comment on the fact the Senate is not bringing up the stimulus package. It is to my chagrin, after all the hard work Senator BAUCUS and I have put into these negotiations. Albeit what we have in front of us is not a product of a conference committee, it is still a White House bipartisan compromise, a White House Centrist compromise, that would get a majority vote of the Senate if we had actually had an opportunity to vote on it.

In normal circumstances, I would not be one to say we ought to pass a House bill. These are, however, not normal times and this is not a normal process. Some will say this is a House product that needs to be amended and debated. That assertion, while technically accurate, does not capture the essence of our situation today or right now that we are in a war on terrorism.

The House bill is really the product of an agreement between the White House and Senate Centrists so I am going to call the House bill what it really is. It is a White House Centrist agreement, if you are looking for a bipartisan, bicameral product the President will sign. The President said he would sign this. This agreement is the only game in town.

To anyone opposing this agreement, including the Democrat leadership, I ask them to show me where they are being bipartisan. All I have seen from the leadership throughout this process is an iron fist cloaked in a velvet glove.

Today, we did witness, with the objection to consideration of the stimulus package, the iron fist clothed in an eloquent velvet glove, displayed once again, similar to what we have done on other issues like insurance and like a stimulus package earlier on.

Today that iron fist smashed the White House Centrist agreement. The American people will not be well served by the destruction of the White House Centrist agreement. All it means is that after 3 months of long meetings, committee action, floor debates, we, the Senate, will not deliver to the American people.

The House has delivered. The President has delivered. One has to wonder, then, why are we stuck? If we can get a bipartisan majority in the Senate, action by the House and a signature by the President, why does a partisan minority of the majority party decide to thwart the will of the people? Why, especially now?

Our Nation is in a state of war on terrorism. Our President is necessarily occupied as Commander in Chief to run that war. Why, on a matter of economic stimulus and aid to dislocated workers, did the President have to come to the Hill yesterday to try and break a logjam? Why did the Democratic leadership give his effort the back of their hand? Why did the bipartisan objectives go by the wayside? I will take a few minutes to talk about how we got here.

Shortly after September 11, we started out with meetings with Chairman Greenspan and other economic policymakers. For the most part, they were called by the good chairman of the Senate Finance Committee, Senator BAUCUS. In that period, right after September 11, the President took first steps and took the risk by committing to a stimulus package, fully aware we might be going in the budget ''red'' if we did.

We should not discount this leadership by the President. Certainly it took courage, and it was the right thing to do. Chairman Greenspan also took the lead and gave the ''Greenspan green light'' to pursue a stimulus package. It seemed everyone realized our responsibility was to heed the President's directive and Greenspan's advice. Both of these men said Congress should address the economic slowdown. They told us the slowdown started over 1 year ago. Subsequently, the National Board of Economic Research told us the economy might have recovered but for the September 11 attack.

The President took the lead in meeting needs of dislocated workers. He proposed extension of unemployment insurance benefits. He also proposed providing health care benefits through the National Emergency Grants.

In addition, the President proposed, as a concession to the other party, a new round of rebate collection to those who do not pay income tax.

Was there any reciprocation, any movement from the Democratic leadership? No.

President Bush, much to the consternation of many in the Republican Party, took capital gains tax off the table because it was not well received by Democrats. Was there any reciprocation on the part of the Democratic leadership? No.

This is not to say we did not agree on some things. Bonus depreciation, for instance, was agreed to by each side. Although we did not have it in our caucus position, Republicans agreed with Democrats on liberalizing the net operating loss rules and expensing for small business.

I do not also discount the ideologically based opposition to accelerating the reduction of the 27 percent bracket, but it is amazing to me that many on the other side see taxpayers in the 27 percent bracket as rich people.

A 2 percent rate cut for single folks earning between $27,000 and $65,000 is seen as a tax cut for the very wealthy by the Democrat leadership. Likewise, a married couple with incomes between $45,000 and $109,000 are considered rich. I recognize this tax cut proposal was difficult for the Democratic leadership to accept. After a series of bipartisan, bicameral talks, the House went its own way with a bill; too heavy for me on corporate AMT. It passed by just two votes.

The Senate Democratic leadership responded in kind. The result was a Democratic Caucus partisan position paper reduced to legislation they rammed through our Finance Committee on a party line vote. That bill dead ended in the Senate. The reason is the bill was designed for partisan point making. Its partisan design was its weakness in an institution like the Senate where one only gets things done on a bipartisan basis. That design guaranteed its failure.

We could have ended there, but the President forced us back into action. Frankly, the House also yielded on a very bad bill they first passed.

The result was a quasi-conference environment to work out differences. By virtue of this quasi-conference, my friends JAY ROCKEFELLER and MAX BAUCUS, our chairman, and I spent many long hours debating the merits of economic stimulus and aid to dislocated workers. In many ways, the discussions were vigorous exchanges of views with our House colleagues. A lot of that discussion was healthy, and some of it helped move the process along.

Little real progress was made. Once again, the President intervened and endorsed the Senate Centrist position. Eventually, the House leadership came toward the Centrist position because they wanted to find a way to get a bill through the Senate, and that can only be done if it is done on a bipartisan basis. Even with movement to the Centrist position, the quasi-conference was at an impasse. Senator DASCHLE's edict about 3 weeks ago that one-third of his caucus could veto a stimulus plan came into clear focus. The sentiments of the House or White House, let alone the sentiments of Joe Six-pack out there

working every day to pay taxes, were less important than the opinion of a minority of the Democratic Senators, which would be as few as 18. The failure to obtain a super-majority in the Democratic caucus then imperiled this Centrist package, this Centrist bipartisan package.

In the end, the impasse came not from tax cuts. Republicans moved far off their priorities so that tax cuts were not the deal breaker. The impasse was not over unemployment benefits. Republicans had largely moved to the Democratic position. The impasse was not over the amount of the health care benefit package. Again, though the benefit came in the form of a tax credit, Republicans moved toward a Democratic position on the costs of health care benefits.

Bizarre as it may seem, the whole agreement broke down over some ideological position on the eligibility of people for health insurance for the unemployed through just COBRA. The impasse came down not over whether to help these workers. The White House Centrist agreement covered these workers with a tax credit. The Senate Democratic bill covers these workers with a new entitlement. Basically, a super-majority of Democrats would not agree to let laid-off workers have the choice of where they wanted to get their health care benefits. But they could still get their health care benefits with the same tax credit.

The bottom line is the White House-Centrist agreement does not meet the two-thirds litmus test set for the Democratic caucus by the leader.

One has to wonder, why leave all of these good things in the White House-Centrist agreement on the Senate cutting room floor, as just happened about an hour ago? We have before the Senate revolutionary social policies. For the first time, Members have sign-able legislation that guarantees health care benefits for laid-off workers—the biggest change in policy for dislocated workers since unemployment insurance was passed in the 1930s.

We have, in the bill that was objected to, extended unemployment benefits as we have done several times in the last 50 years. We have a robust stimulus package with 30 percent bonus depreciation. We have an extension of expiring tax provisions for 2 years. We have the victims of terrorism tax relief and tax incentives to build New York City once again.

All of these are good provisions which enjoy broad bipartisan support. They are the foundation of the White House-Centrist agreement. Yet because of this ideological fixation, all of these good things now go by the wayside until we return 1 month from now on January 23. While we are going to be enjoying Christmas, these dislocated workers who could have been guaranteed health benefits and further unemployment compensation are going to go away empty handed.

I will look at each key player in the process and see how much movement there has been. Common sense says those who want a deal will show movement. By the same token, those who do not want a deal will not move.

Start with the President. As I said, he made several key moves. He put the dollars on the table, knowing it would complicate the fiscal year 2002 budget. He took capital gains off the table. He put the payroll tax rebates on the table. He put the unemployment insurance and health care benefits on the table. Finally, he endorsed even a plan that went much further in the case of health care benefits, from $3 billion up to $19 billion. That is in the White House-Centrist agreement.

When you look at the record, it is clear to me that the President of the United States wanted a deal, an economic security package for dislocated workers and to help create jobs for those who do not have jobs.

At the House of Representatives, I agree that the first bill, as I said before, from that body was too heavy on the corporate alternative minimum tax. But the chairman of the Ways and Means Committee made many gestures to the other side. For instance, he did not pick and choose among extenders. He included the payroll tax rebate that many of his Members in the other body opposed. The chairman of the Ways and Means Committee increased the resources for unemployment compensation and health care benefits. If you doubt me on the seriousness of that movement, ask many in my caucus their opinion of those proposals. If you look at the record, the House Republicans moved and ultimately ended up as part of the White House-Centrist agreement.

Senate Republicans had a caucus position very close to the President's plan. Like the President, Senate Republicans, especially our leader, Senator LOTT, constantly worked to try to get a deal. As the President moved, so did the Senate Republican caucus position move. That is in the Record.

That brings us to the last and ultimate critical player. Obviously, that is the Senate Democratic leadership. I ask, where has the Senate Democratic leadership really moved? At every stage of the process, whether it is the Finance Committee action, whether the action on the floor, or even the quasi-conference, ultimately we find this leadership position always saying ''no''. Everyone else was saying ''yes''.

Now there is a good game being talked by the other side. They say they want an agreement. That is the elegant velvet glove they are noted for, but where is the action? The action today was ''no'' on unanimous consent request. But look at the whole last 3 months on this issue. Where have they moved? If you want an agreement, you have to see movement. There has been none.

One has to ask, with so many good provisions in this White House-Centrist agreement, why should the Democratic leadership want to kill it? The President has expressed that polling data, political consultants, and union officials had a big impact on the Senate Democratic leadership strategy.

I ask unanimous consent to have printed in the RECORD an editorial from the Wall Street Journal that states in depth what the consultants say.

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

[From the Wall Street Journal]

PRESIDENT DASCHLE

One of the more amusing Washington themes of late has been the alleged revival of the Imperial Presidency, with George W. Bush said to be wielding vast, unprecedented powers. Too bad no one seems to have let Senate Majority Leader Tom Daschle in on this secret.

Because from where we sit Mr. Daschle is the politician wielding by far the most Beltway clout, and in spectacularly partisan fashion. The South Dakotan's political strategy is obvious if cynical: He's wrapping his arms tight around a popular President on the war and foreign policy, but on the domestic front he's conducting his own guerrilla war against Mr. Bush, blocking the President's agenda at every turn. And so far he's getting away with it.

Mr. Bush has asked Congress to pass three main items before it adjourns for the year: Trade promotion authority, and energy and economic stimulus bills. Mr. Daschle has so far refused to negotiate on any of them, and on two he won't even allow votes. Instead he is moving ahead with a farm bill (see below) the White House opposes, and a railroad retirement bill that is vital to no one but the AFL–CIO.

Just yesterday Mr. Daschle announced that ''I don't know that we'll have the opportunity'' to call up an energy bill until next year. One might think that after September 11 U.S. energy production would be a war priority. In September alone the U.S. imported 1.2 million barrels of oil a day from Iraq, which we soon may be fighting, the highest rate since just before Saddam Hussein invaded Kuwait in 1990.

But Mr. Daschle is blocking a vote precisely because he knows Alaskan oil drilling has the votes to pass; earlier this autumn he pulled the bill from Senator Jeff Bingaman's Energy Committee when he saw it had the votes. So much for the new spirit of Beltway cooperation.

We're not so naive as to think that war will, or should, end partisan disagreement. But what's striking now is that Mr. Daschle is letting his liberal Old Bulls break even the agreements they've already made with the White House. Mr. Bush shook hands weeks ago on an Oval Office education deal with Teddy Kennedy, but now we hear that Mr. Kennedy wants even more spending before he'll sign on. Mr. Daschle is letting Ted have his way.

The same goes for the $686 billion annual spending limit that Democrats struck with Mr. Bush after September 11. That's a 7% increase from a year earlier (since padded by a $40 billion bipartisan addition), and Democrats made a public fanfare that Mr. Bush had endorsed this for fear some Republicans might use it against them in next year's elections. But now Mr. Daschle is using the issue against Mr. Bush, refusing to even discuss an economic stimulus bill unless West Virginia Democrat Bob Byrd gets his demand for another $15 billion in domestic spending.

Mr. Byrd, a former majority leader who thinks of Mr. Daschle as his junior partner,

may even attach his wish list to the Defense spending bill. That would force Mr. Bush to either veto and forfeit much-needed money for defense, or sign it and swallow Mr. Byrd's megapork for Amtrak and Alaskan airport subsidies.

All of this adds to the suspicion that Mr. Daschle is only too happy to see no stimulus bill at all. He knows the party holding the White House usually gets most of the blame for a bad economy, so his Democrats can pad their Senate majority next year by blaming Republicans. This is the same strategy that former Democratic leader George Mitchell pursued in blocking a tax cut during the early 1990s and then blaming George H.W. Bush for the recession. Mr. Mitchell's conigliere at the time? Tom Daschle.

It is certainly true that Republicans have often helped Mr. Daschle's guerrilla campaign. Alaska's Ted Stevens is Bob Byrd's bosom spending buddy; he's pounded White House budget director Mitch Daniels for daring to speak the truth about his pork. And GPO leader Trent Lott contributed to the airline-security rout by letting his Members run for cover.

The issue now is whether Mr. Bush will continue to let himself get pushed around. Mr. Daschle is behaving badly because he's assumed the President won't challenge him for fear of losing bipartisan support on the war. But this makes no political sense: As long as Mr. Bush's war management is popular, Mr. Daschle isn't about to challenge him on foreign affairs.

The greater risk to Mr. Bush's popularity and success isn't from clashing with the Daschle Democrats over tax cuts or oil drilling. It's from giving the impression that on everything about the war, Tom Daschle might as well be President.

Mr. GRASSLEY. Mr. President, I also ask unanimous consent to have printed in the RECORD a portion of a November 13 memo from Democracy Corps regarding the economic stimulus proposals.

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

POLITICS AFTER THE ATTACK—A REPORT ON DEMOCRACY CORPS' NEW NATIONAL SURVEY AND FOCUS GROUPS

* * * * *

THE ECONOMIC STIMULUS

Voters do not currently bring a strong partisan filter to the various economic proposals being considered. Nonetheless, a majority support every Democratic proposal; in fact, two-thirds favor every Democratic proposal but one (the tax rebate). Overall, the Democratic proposal does better than the Republican—particularly those features that have led the public debate, like the Alternative Minimum Tax.

Across the Democratic and Republican packages, the strongest support is for unemployment benefits for the newly unemployed; delaying tax cuts for the wealthiest one percent in order to fund rebuilding and Social Security; funding ready-to-go infrastructure to create jobs; accelerating already scheduled broad middle class tax cuts; Cobra health insurance for the newly unemployed; and tax incentives for business if clearly linked to new investment.

The public rallies to four elements of the Democratic plan. The starting point is the immediate construction program, including airport improvements and school modernization to create jobs. That has the broadest support (85 percent) and nearly the most intense—48 percent strongly supportive.

There is strong support for delaying the tax cuts for the top one percent (those earning more than $375,000 a year) in order to fund the rebuilding and security and to make sure we do not keep borrowing from the Social Security trust fund. Two-thirds of the electorate favors this proposal, but most important, more than half (51 percent) strongly favor it—the highest for any Democratic proposal. One person noted that they used to laugh about the ''Social Security lock box,'' ''Well, there it goes. . . . Well, that's all our money.'' That sentiment reverberated across the groups: ''It's not their money anyhow''; ''that's what we paid into for our own security, [and] that's not something they should say, well, we got this money here, we can use it however we want.'' And some said, ''I mean don't delay, just eliminate that tax cut for these people.''

Cobra coverage health care for the newly unemployed stands out, on its own, as a very important thing to do at this moment. People understand the rising cost of health care and how expensive coverage can be for anyone.

It is important to underscore that three-quarters of the public favors a Democratic proposal for business tax incentives to encourage investment in new plants and equipment. The public wants tax breaks, including for business, if the provision is linked to investment, not simply consumption. People are looking for initiatives, consistent with this new period. One of the participants observed, ''The tax cut is tied to investment to encourage them to move forward, not just a blanket.''

Unemployment benefits for the newly unemployed are immensely popular. When offered by the Republicans and targeted at those who have lost their jobs after September 11th, 85 percent favor the idea, including 53 percent who strongly favor it. Presented with an expansive Democratic proposal—extending benefits to 26 weeks, while raising weekly benefits and covering part-time employees—more than two-thirds support it, but less enthusiastically.

In the focus groups, many participants worried that such an expansive proposal might re-open the old welfare system. That is why the unemployment proposals should be part of a broad Democratic economic package.

On taxes, voters offer a fairly consistent posture, whether offered by Democrats or Republicans. They support business tax cuts, even a capital gains tax cut, when it includes the wording, ''in order to encourage investment.'' Voters seem to support an accelerated schedule for tax cuts aimed at the middle class—such as the marriage penalty. But there is little enthusiasm for the tax rebate whether proposed by Democrats or by Republicans—just 56 percent. The weak reaction to the rebate reflects our earlier observations—a citizenry focused on addressing the community's crisis and long-term needs, rather than simply throwing money at individuals to consume now.

Cuts in corporate tax rates, with no immediate spur to investment, gets little support (46 percent). Repeal of the Alternative Minimum Tax, providing $25 billion in tax cuts for large businesses wins the support of only 28 percent. When presented specifically with tax cuts for IBM, GE and General Motors, voters are simply incredulous. Now the leading element of the House Republican package, this is likely to shape public perceptions of the Republicans' approach to the economy. This may become one of the substantive elements in the public's desire to balance the President's direction.

Mr. GRASSLEY. I was not in on the meetings with the Democratic consultant, so I do not know if it is was true or not, but Members can read it and make their own determination.

The theory from the articles is the political strategy of the Democratic leadership is to covertly thwart any stimulus and aid to dislocated workers. It is good to keep these issues as ''issues'' to beat up on the President next year and on Republicans, particularly if the economy does not recover. If the economy does recover, what is lost except stimulative tax relief and some worker aid? Better to keep the issue than to act now is the way it turns out.

So goes the theory, then. Apply the iron fist, but do it covertly, using the velvet glove so as to escape responsibility for your actions.

I hope this is a cynical political theory, but that it is not true. If it is, and only the Democratic leadership really knows if it is true. If it is true, it is sad and it is disappointing. If true, it is politics at its worst. I only hope the articles are not true. There is no better authority on this subject than the former distinguished majority leader, Senator George Mitchell, he said it best in an interview with John McLaughlin. Senator Mitchell said: Good policy results in good politics. Not the other way around. You don't get good policy because of good politics but good politics because of good policy.

I hope the Senate Democratic leadership heeds Senator Mitchell's advice here and doesn't get it backwards. I hope the press accounts and rumors around the Hill are not true. But we will have to wait and find out. Regrettably we are not taking up this consensus economic stimulus bill. That says to the workers dislocated because of September 11, at a time when we are in a war environment, that they can not have anything for Christmas. They do not have the 13 more weeks of unemployment compensation; they do not have the additional health insurance.

To reiterate, as most of you know, Senator DASCHLE has radically modified the economic stimulus proposal that the Democrats first tried to pass in the Senate.

Surprisingly, it looks a lot like our White House-Centrist stimulus package. It has adopted many measures initially promoted by Republicans. Perhaps some good has come from all these weeks of discussion.

I'd like to talk about some of the differences between the White House-Centrist package and the altered Democrat stimulus plan.

I want to explain why I believe our bipartisan package is better for America.

Let's start with the White House-Centrist plan's tremendous commitment to displaced workers.

Our unemployment insurance proposal represents an unprecedented commitment to American workers. We would provide up to 13 weeks of additional unemployment benefits to eligible workers who exhaust their regular benefits between March 15, 2001 and December 31, 2002.

An estimated 3 million unemployed workers would qualify for benefits averaging $230 a week. These benefits would be 100 percent federally funded at a cost of nearly $10 billion.

Our proposal would also transfer an additional $9 billion to state unemployment trust funds.

This transfer would provide the states with the flexibility to pay administrative costs, provide additional benefits, and avoid raising their unemployment taxes during the current recession.

The United States enjoyed a growing economy and declining unemployment for much of the previous decade. But, the economic slowdown that began last year—which was exacerbated by the terrorist acts on September 11—has resulted in substantial layoffs.

The unemployment rate has risen from 4.0 percent in November 2000 to 5.7 percent in November 2001.

By historical standards, the current unemployment rate is still substantially below the level at which Congress deemed it necessary to enact extended unemployment benefits.

Over the past 50 years, the federal government has provided temporary extended unemployment benefits only six other times. The average unemployment rate during those times was 7.3 percent.

Based on this historical record, the President originally suggested that extended unemployment benefits should be limited to those states that have a disaster declaration in effect as a result of September 11, or have a 30 percent increase in their unemployment rate.

However, a number of our colleagues on both sides of the aisle insisted that we provide immediate assistance to every state regardless of their unemployment rate. We have agreed to do exactly that in our proposal.

Unfortunately, some on the other side of the aisle continue to insist this is not enough. They insist we should go further by requiring every state to provide specific benefits and establish specific eligibility criteria as a condition of receiving federal assistance. We could not agree to these demands.

The Federal Government has always left decisions about benefit levels and eligibility criteria to the States.

The changes sought by those on the other side of the aisle would destroy this historic relationship and undermine the flexibility needed by the states to respond to their unique circumstances.

I would now like to discuss our bipartisan plan's commitment to providing health care for dislocated workers.

Now, Democrats have been saying since October that Republicans don't care about helping workers with health insurance. Senator DASCHLE himself said yesterday that his Republican colleagues, and I quote, ''so far have refused to come to the table and negotiate seriously.''

Mr. President, nothing could be farther from the truth. Since October when President Bush first called on Congress to pass a stimulus package, I have worked closely and seriously with both Democrats and Republicans to come up with a meaningful, bipartisan approach to helping people impacted by the events of September 11.

Compared to where we started on the issue of health care, we have come a very long way. Let me give you a little history first.

When this debate began, our proposal relied on the National Emergency Grant program to deliver health benefits to workers at a cost of about $3 billion. Over time, that number grew, and I said publicly that we could double, or even triple, that number.

I also invited the Democrats to modify the grant criteria to make the program more responsive to the needs of workers without health insurance.

They refused. But that didn't stop us from staying at the negotiating table.

Next, we proposed giving workers a refundable, advanceable tax credit towards the purchase of health insurance equal to 50 percent of the policy's cost.

And when Democrats objected to that, claiming that the credit was too small and that sicker people would have trouble buying policies in the individual market, we came back with yet another offer, which is reflected in this bill.

The new proposal, endorsed by the White House, the House of Representatives, and the centrists in this body, takes a three-pronged approach to getting health insurance assistance to people in need.

It goes farther and wider than any proposal on the table to date, and gets more help, to more people, more quickly than any other proposal to date.

What's more, it represents a giant leap in spending on health care. It includes over six times as much money for temporary health insurance assistance as our original Republican proposals.

And still the Democratic leadership tells us we are not negotiating seriously.

Mr. President, the White House/centrist proposal spends approximately $19 billion on temporary health insurance help in 2002. And it does it the right way, by using existing programs along with new ones designed to get people they help they need quickly.

Now let me take a minute to describe our three-pronged approach.

First, the White House/centrist proposal provides a refundable, advanceable tax credit to all displaced workers eligible for unemployment Insurance, not just those eligible for COBRA. The value of the credit is 60 percent of the premium, up from 50 percent in our original proposal. The credit has no cap, and is available to individuals for a total of 12 months between 2001 and 2003.

Individuals can stay in their employer COBRA coverage, or they can choose policies in the individual market that may better fit their family's needs. This only makes sense. Locking people into COBRA, as the Democratic leadership insists, forces people to stay with policies that may be too expensive for them to keep, even with a subsidy.

Our goal was to give dislocated workers access to all the health insurance choices available to them in the private marketplace, and we've done that in a responsible way.

This bill also includes a major, new insurance reforms to protect people who have had employer-sponsored coverage and go out into the private market for the first time after being laid off.

It makes the COBRA protections available to people who have had only 12 months of employer-sponsored coverage, rather than 18 months, as under current law. By doing this, we greatly expand the group of displaced workers who cannot be turned down for coverage or excluded because of a pre-existing condition.

The new 12 month standard is especially important for people with chronic conditions who have difficulty obtaining affordable coverage. It is a major step, and I'm surprised that the Democratic leadership doesn't want to take us up on these sweeping new reforms.

Let me turn to the mechanics of tax credit proposal. It is easier to implement than the direct subsidy approach of the Democratic leadership.

While their proposal requires employers to shoulder the burdens, our proposal relies on existing state unemployment insurance systems. So under this bill, workers will be able to access the credit, and begin applying it to their health insurance premiums in a timely way. Here's how it works:

Newly dislocated workers will receive vouchers from their state unemployment offices or ''one stop'' centers when they apply for unemployment insurance. Workers can then take those vouchers and submit them, along with their contribution to the premium, to their employer or insurer. Afterwards, insurers would submit the vouchers to the Treasury Department for reimbursement.

This approach works because it relies on existing systems to deliver the new benefits, and as a result delivers those benefits in a fast and reliable way.

I ask my colleagues: why would anyone insist on a mechanism that just won't work as well? I don't understand it.

The second prong of our proposal is $4 billion in enhanced National Emergency Grants for the States, which can be used to help all workers—not just those eligible for the tax credit—pay for health insurance. States have flexibility under our approach, and can use these grants to enroll their workers in high risk pools or other state-run plans, or even in Medicaid.

To address concerns raised by Democratic colleagues, our enhanced National Emergency Grant program requires all States to spend at least 30

percent of their grant funds on temporary health insurance assistance. In addition, we've included protection for states: a minimum grant level of $5 million for any state that meets the grant criteria.

Finally, the third prong of the proposal responds to Democratic requests by including $4.3 billion for a one-time temporary State health care assistance payment to the States to help bolster their Medicaid programs.

As we know, the Medicaid program is an important safety net program for low-income children and families and disabled individuals. Medicaid is a joint Federal and State program and accounts for a large part of State budgets.

So, in this time of budget constraints due to the recession, States are struggling to make ends meet.

As a result of the unique and extraordinary economic situation we now face, a number of states are considering scaling back Medicaid services, including my own state of Iowa. This provision provides a one-time, emergency cash injection that will help States avoid Medicaid cutbacks.

This feature was not part of our original plan, and I recognize that many of my colleagues have concerns about it. In fact, I share their reservations, and that is why I'm emphasizing that this is not simply a garden-variety increase in Medicaid funding, but a temporary, emergency payment.

The nation is calling for bipartisan compromise, and in that spirit, we've agreed to add this to our proposal.

Mr. President, we have made tremendous steps toward the Democratic position in order to find bipartisan compromise on health care. Those steps have not been reciprocated by the Democratic leadership.

Displaced workers deserve to be treated with respect by this body, and I believe those workers have earned a vote on this bill.

I would now like to discuss the individual income tax rate reductions in the White House-Centrist plan and the resuscitated Daschle plan.

The original House stimulus bill would have accelerated the reduction of the 27 percent rate to 25 percent which is scheduled to go into effect in 2007. The White House-Centrist package has adopted this approach.

Now, the revamped Democrat plan would reduce the 27 percent rate to 26 percent in 2002, and would not reduce the rate to 25 percent until 2006. Recall that the original Democrat plan did not provide one red cent of rate relief for working Americans.

Now think about this. The 1 percent higher rate under the Democrat plan will operate as a 4 percent rate increase until the 27 percent rate is finally lowered to 25 percent 4 years from now. That makes a huge difference to Americans who are struggling to make ends meet. Let's take a look at who will benefit from our plan's rate reduction.

The reduction of the 27 percent rate will benefit singles with taxable income over $27,000, heads of household with taxable income over $36,250, and married couples with taxable income over $45,000.

These are not wealthy individuals. These are middle class working Americans.

I have a chart which shows the median income of a four person family for every State in the Nation. Median income is the amount of income right in the middle, with half the incomes above it and half below it.

This chart shows that the average median income for a four person family in the United States is $62,098.

Now, reduction of the 27 percent rate will benefit married couples with taxable income over $45,000. So it will benefit working people who earn well below the national median income level.

This chart also lists those states that have a family median income that is higher than the national average. And look at where these people live.

Connecticut, New Jersey, Delaware, Michigan, Rhode Island, California, Washington State. These are the states where a family of four will benefit the most from our proposed tax cut.

The Democrat's revamped alternative would impose an additional 4 percent tax rate on these incomes over the next 4 years. That should concern representatives from those states.

For example, consider that an additional 4 percent tax on New Jersey's $78,000 median income results in more than $1,300 in additional taxes.

Michigan is the same: an additional $900 of tax. Washington State is hit with nearly $800 in additional tax.

These are significant numbers for a working family with two children. They would spend this money to meet their families' needs, which would stimulate the economy more than a bunch of liberal Democrat spending programs.

Mr. President, I ask unanimous consent that this chart be printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See Exhibit 1.)

Mr. GRASSLEY. The more surprising figures are shown in the next chart, which shows States with median income below the national average.

Recall that I said reducing the 27 percent rate to 25 percent will benefit married couples with taxable income over $45,000. Now look at the median income distributions on this chart.

There is not one State on here that has a median family income of less than $45,000.

So you can see that our proposal will benefit everyone, not just an elite few, from a few selected states.

Mr. President, I ask unanimous consent that my second chart be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See Exhibit 2.)

Mr. GRASSLEY. The Treasury Department has estimated that White House-Centrist plan's acceleration of the 27 percent rate reduction will yield $17.9 billion of tax relief in 2002 for over 36 million taxpayers, or one-third of all income tax payers.

Business owners and entrepreneurs account for 10 million, or 30 percent, of those benefitting from the rate reduction.

When you refuse to accelerate the rate cuts you harm farmers and small business persons. This is because most small business owners and farmers operate their businesses as sole proprietorships, partnerships or ''Sub S'' corporations.

The income of these types of entities is reported directly on the individual tax returns of the owners. Therefore, a rate reduction for individuals reduces taxes for farms and small businesses.

That is why the additional rate reduction under the White House-Centrist plan is so important. In 2002 alone, it injects $17.9 billion of stimulus into our ailing economy and small businesses.

So what would a small business do with these tax savings? Well, considering that most of the recent job growth has come from small businesses, I believe they would hire more people and make more business investments.

We know that 80 percent of the 11.1 million new jobs created between 1994 and 1998 were from businesses with less than 20 employees.

And 80 percent of American businesses have fewer than 20 employees.

This is what I refer to as the ''80–80 Rule'' for supporting rate reductions.

In addition, lowering taxes now would increase a business' cash flow during the current economic slowdown. The higher cash flow would increase the demand for investment and labor.

But don't just take my word for it. Take it from an October 2000 report by the National Bureau of Economic Research, a very well-regarded non-partisan organization, entitled ''Personal Income Taxes and the Growth of Small Firms.''

This report reaches the unambiguous conclusion that when a sole proprietor's marginal tax rate goes up, the rate of growth of his or her business enterprise goes down.

Simply stated, high personal income tax rates discourage the growth of small businesses. And right now, that is the last thing we need.

That is why it is important to do rate reductions the right way, and fully accelerate the 27% rate reduction. We are simply accelerating a decision this Senate made last summer.

We should have confidence in our decision. We know that tax cuts are stimulative.

When working Americans have more of their own income, they feel more financially secure and are more comfortable with spending.

A full reduction of the 27 percent rate to 25 percent is much more stimulative than a reduction that is deferred to 2007, as called for under the Democrat plan.

In closing, let me say who really loses when the Senate loses its right to vote on the White House-Centrist bill. It is our displaced workers, it is our fellow Americans who still have a job and the security of our jobs base; and it is the soundness of our nation's economy.

The Senate Democrat Leadership will not allow an up or down vote on our bipartisan White House-Centrist stimulus package. Why? Because it would pass. We have a majority of Senators who support this package.

Instead, the Senate Democrat Leadership has created a ''make-believe boogey-man'' over the issue of how health care benefits should be delivered to unemployed. But the majority of this Senate does not agree with them.

But voting on this issue and helping the economy recover is not really what is on their minds. It is not their political objective.

The Senate Democratic leadership is playing political brinkmanship, hoping that the American public buys into their excuses for inaction.

The Senate Democratic Leadership keeps their fingers crossed, hoping that our economic difficulties will last until next fall so they can blame it on the President in their campaign ads.

But the blame doesn't go to the President. He has bent over backwards to accommodate their demands. And it still is not enough. The Senate Democratic leadership would rather move the goal post than agree to a solution.

This is not what we were elected by to do. This is not in service of our country. It is in no one's best interest.

We are at war. Our economy is in crisis. And the only impediment to recovery is the refusal of the Senate Democratic leadership to allow this Senate to pass this economic stimulus package. A majority of our members will vote for this bill.

I hope the Senate leadership hears the pleas of the American people and stops blocking this bill through procedural technicalities. The Senate should be allowed to do its job.

EXHIBIT 1

Median income for 4-person families, by state, 2001

United States	$62,098
Connecticut	78,170
New Jersey	78,088
Maryland	77,447
Massachusetts	74,220
Alaska	72,775
Minnesota	69.031
Hawaii	68,746
Illinois	68,698
New Hampshire	68,211
Delaware	67,899
Michigan	67,778
Rhode Island	66,895
Virginia	66,624
Wisconsin	65,675
California	65,327
Colorado	65,079
Washington	64,828
District of Columbia	64,480

EXHIBIT 2

Median income for 4-person families, by state, 2001—Continued

New York	61,864
Pennsylvania	61,648
Nevada	61,579
Indiana	60,585
Iowa	60,125
Georgia	59,835
Vermont	59,750
Maine	59,567
Utah	59,272
Kansas	59,214
Missouri	58,674
Ohio	58,222
North Carolina	58,096
South Carolina	57,954
Nebraska	57,659
Wyoming	57,588
Florida	57,540
Oregon	55,812
Texas	55,172
Arizona	54,913
Alabama	54,255
Oklahoma	54,106
South Dakota	54,090
Kentucky	54,028
Tennessee	53,835
North Dakota	52,802
Montana	52,765
Louisiana	51,191
Mississippi	49,606
Idaho	49,387
Arkansas	48,318
West Virginia	46,798
New Mexico	46,534

Source: Census (inflated from 1999 date by GDP deflator).

The PRESIDING OFFICER. The Senator from Nevada.

TO EXTEND THE AVAILABILITY OF UNEMPLOYMENT ASSISTANCE IN THE CASE OF THE TERRORIST ATTACKS ON SEPTEMBER 11

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 274, S. 1622.

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

The assistant legislative clerk read as follows:

A bill (S. 1622) to extend the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the case of victims of the terrorist attacks of September 11, 2001.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I alert the Senator from New York and the Senator from Virginia; we can get this unanimous consent if they save their speeches for much later.

I ask unanimous consent the bill be read the third time, passed, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD.

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

The bill (S. 1622) was read the third time and passed, as follows:

S. 1622

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

SECTION 1. EXTENSION OF UNEMPLOYMENT ASSISTANCE.

Notwithstanding section 410(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5177(a)), in the case of any individual eligible to receive unemployment assistance under section 410(a) of that Act as a result of the terrorist attacks of September 11, 2001, the President shall make such assistance available for 52 weeks after the major disaster is declared.

TERRORIST VICTIMS' COURTROOM ACCESS ACT

Mr. REID. Mr. President, I ask unanimous consent the Judiciary Committee be discharged of further consideration of S. 1858, and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1858) to permit closed circuit televising of the criminal trial of Zacarias Moussaoui for the victims of September 11th.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2691

Mr. REID. I ask consent the Senate now proceed to the consideration of the Allen amendment that is at the desk, the amendment be agreed to, the bill be read the third time, passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. ALLEN, proposes an amendment numbered 2691.

The amendment is as follows:

(Purpose: To clarify the requirements of the trial court)

On page 2, line 5, strike ''including'' and insert ''in''.

On page 2, line 6, after ''San Francisco,'' insert: ''and such other locations the trial court determines are reasonably necessary,''.

The PRESIDING OFFICER. Is there objection to the various requests of the Senator from Nevada?

Without objection, it is so ordered.

The amendment (No. 2691) was agreed to.

The bill (S. 1858), as amended, was read the third time and passed, as follows:

S. 1858

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 ''Terrorist Victims' Courtroom Access Act''.

SEC. 2. TELEVISING OF THE TRIAL OF ZACARIAS MOUSSAOUI FOR THE VICTIMS OF SEPTEMBER 11TH.

(a) IN GENERAL.—Notwithstanding any provision of the Federal Rules of Criminal Procedure to the contrary, in order to permit victims of crimes associated with the terrorist acts of September 11, 2001 to watch criminal trial proceedings in the criminal case against Zacarias Moussaoui, the trial

court in that case shall order closed circuit televising of the proceedings to convenient locations, in Northern Virginia, Los Angeles, New York City, Boston, Newark, and San Francisco, and such other locations the trial court determines are reasonably necessary, for viewing by those victims the court determines have a compelling interest in doing so and are otherwise unable to do so by reason of inconvenience and expense of traveling to the location of the trial.

(b) PROCEDURES.—Except as provided in subsection (a), the terms and restrictions of section 235 of the Antiterrorism and Effective Death Penalty Act of 1996 (42 U.S.C. 10608) shall apply to the televising of court proceedings under this section.

FOREIGN OPERATIONS EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2002—CONFERENCE REPORT

Mr. REID. Mr. President, I submit a report of the committee of conference on the bill (H.R. 2506) and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2506), making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2002, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report can be found in the House proceedings of December 19, 2001.)

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, with American troops on the ground in Afghanistan, with an uneasy coalition of nations confronting an unprecedented war on terrorism, and with the possibility of all-out war looming over the Israelis and the Palestinians, the Foreign Operations Appropriations conference report before us today comes at a pivotal moment in our nation's history. Given the volatility of the situation in the Middle East in the midst of America's war on terrorism, it is vital that Congress and the Administration present a united foreign policy front to the rest of the world. For that reason, I will vote for the FY 2002 Foreign Operations conference report, I do so reluctantly and with reservation—and I do not often vote for Foreign Operations appropriations bills.

I believe it is time—I believe it is past time—to rethink our foreign aid policy and how relates to our national security priorities. September 11 was a wake up call on many fronts. As a result of the attack on America, we have made sweeping changes in our concept of national security. We have learned that national security also means homeland defense. We have learned that airplanes can be bombs and that letters in the mail can be lethal. We have learned that we must change our definition of defense to encompass defending our domestic infrastructure as well as defending against ballistic missile threats.

These changes reflect the realization that the September 11 terrorist attacks on U.S. soil may not be an isolated incident. At this moment, there may be people planning other terrorist acts against our homeland. We have already experienced three terrorism alerts in the U.S. since September 11. Almost daily, we hear grim predictions of what the future may bring. We are living in an age of global instability, disenfranchised and desperate peoples, and widespread proliferation of weapons of mass destruction. The volatility of the current world situation is without precedent.

And yet, in many ways, the major instrument of our foreign policy—the Foreign Operations Appropriations Act—reflects a distressing attitude of business-as-ususal. I do not fault the authors of this bill. Senator LEAHY and Senator MCCONNELL have done an excellent job in balancing the priorities of the Administration with the concerns of Congress and the needs of our allies throughout the world. They have done so with care and skill, and they are to be commended for their work.

No, the fault, I believe, lies with our inability as a nation to relinquish long held conventional wisdom about foreign aid and recognize that the changing global environment requires a revamping of our foreign policy. We must move away from using dollars to symbolize the strength of our relations with other countries, and instead focus our energies—and our resources on promoting a new understanding of foreign policy that complements and enhances our global war on terrorism.

Nowhere is this more true than in the Middle East, where renewed violence and antipathy have brought Israel and the Palestinian Authority to the brink of open warfare. Since September 29, 2000, the Israeli-Palestinian conflict, fueled by generations of hatred, has claimed nearly 1,000 lives. For the past 15 months, the unending cycle of violence has pitted the home-made bombs and deadly suicide missions of the Palestinians against the heavy armor and missile attacks of the Israelis. Many, perhaps most, of the victims have been young people barely on the cusp of adulthood. The sad fact is that the next generation of leaders of the Israelis and the Palestinians are being sacrificed to the blood feud of their elders.

The United States, like the rest of the world, has looked on this ceaseless carnage in horror. We have expressed dismay, regret, sorrow, and anger. We have wrung our hands in despair. We have condemned the violence in the strongest terms. But we have not suited our words to any meaningful action. In this bill, our foreign assistance to the Middle East virtually ignores the spiraling violence in the region. This bill provides $5.1 billion dollars in foreign assistance to the Middle East, primarily Israel and Egypt, a level almost identical to last year's funding. It is as if nothing has changed. There are no strings on the money. There is no requirement that the bloodshed abate before the funding is released. There is no motivation for Egypt to step up its effort to mediate between the sides, and there is no incentive whatsoever for Israel and the Palestinians to make meaningful progress toward a peaceful settlement of their differences.

In short, we are doing little more than offering a tacit acknowledgment that the United States is powerless to stop the bloodshed. We are sending the wrong signal to the Middle East. By not using our foreign assistance dollars as an instrument to effect change in the Mideast, we are inadvertently helping to fuel the continued cycle of violence. And what has this hands-off policy produced? Empty promises, escalating violence, and the prospect of war instead of peace between Israel and the Palestinians.

Now what? Where does the so-called peace process go from here? Can we really expect the Israelis to exercise restraint following the most recent escalation of violence against their citizens? Is there any point in urging Yassar Arafat to seize and punish the terrorists within his control when he is obviously unable to live up to his promises? Is there any hope that the Israelis and Palestinians will be able to re-engage in meaningful discussions in the foreseeable future?

In the current poisonous environment, neither side has any incentive to resume peace talks. To give his expressions of dismay any credibility, Mr. Arafat will have to conduct a swift and sweeping crackdown on the leaders of the Palestinian terrorist cells—something he has never been able to accomplish in the past. And even if Mr. Arafat could deliver on his promises, it will take masterful leadership on the part of Israeli Prime Minister Ariel Sharon to restrain his military options and to place Israel's settlements in disputed areas on the negotiating table—two difficult but necessary prerequisites for peace.

The Israelis and the Palestinians, riven by generations of hatred, cannot hope to accomplish these goals on their own. It is time for Egypt—with the assistance of Saudi Arabia and Jordan—to exercise its considerable influence in the region and place long term security interests over short term internal political costs. Such leadership will not be easy. President Mubarak will have to make hard choices and steel himself and his government against the predictable political backlash from the more radical elements of his own country. But President Mubarak's leadership is necessary to temper the emotions of his fellow members of the Arab League.

The United States has a similarly difficult task before it. Despite our clear alliance with Israel, the U.S. must regain the role of honest broker. We must stop rewarding the status quo with an uninterrupted flow of foreign aid dollars and instead use foreign assistance as a tool to leverage peace.

We are certainly not doing so now. Just a few weeks ago, the State Department confirmed the intended sale of 53 advanced anti-ship missiles to Egypt. Egypt contends that these missiles are needed to protect its borders, but the fact is, these deadly accurate missiles have the range to threaten Israel's ports and shipping. Given the tinderbox that is the Middle East today, why is the United States contemplating sending these weapons into the region at this time?

Meanwhile, we routinely sell advanced aircraft and missiles to Israel as part of our foreign assistance package. Some of these U.S.-made high-tech weapons have been used to target and assassinate Palestinian terrorists. Just days ago, we again saw television images of Israeli-operated, American-made jets and helicopters launching missiles at buildings used by the Palestinian Authority. You can be sure those images were seen throughout the Arab world. How can we demand peace on one hand when we are providing instruments of destruction with the other?

Israel and the United States are the staunchest of allies. No one should question our support of Israel's right to exist. But support need not translate into enabling. The United States, the Middle East, and the world would be better served if we changed our policy in the Middle East to reflect reality, not rhetoric. The Palestinians must stop the cycle of violence. The Israelis must practice restraint. The United States must back up its words with action.

We have a road map to restart the Middle East peace process, the Mitchell Report. This blueprint, drawn up by former Senator George Mitchell and issued last April, is a step-by-step plan to end the violence and resume negotiations between the Israelis and the Palestinians. The Mitchell Report is often cited as a practical and workable solution. It has strong support in both the Administration and the Congress. But to date, it is doing little more in real terms than gathering dust on a shelf. To date, there has been no incentive on either side to make the hard decisions that are required to actually implement the steps of the Mitchell Report.

It is time for the United States to provide some incentive. It is time to try to implement the Mitchell Report. Just as we must hold the Palestinians responsible for increasing the violence, so must we hold the Israelis responsible for the inflammatory expansion of settlements in disputed areas. The Mitchell Report provides a clear and unbiased insight into the realities of the dispute between the Israelis and the Palestinians. It is remarkable in its fairness and even-handedness in holding both sides accountable for their transgressions. Our foreign assistance policy should do no less. I call on the Administration and this body to take a fresh look at how we apply our foreign assistance to the Middle East before we take up another foreign policy measure in the Senate.

And when we take that fresh look at our Middle East policy, we should look at all facets—all facets—of our relationship both with Israel and its Arab neighbors. For example, if we are quick to condemn Iran for the transfer of missile technology to North Korea, how can we stand silent in the face of Israel's sale of advanced weapons and components to China—weapons that are based on U.S. technology or developed in Israel with U.S. tax dollars? China may not be in the same category as North Korea, but it defies logic to think that the sale of advanced American weapons technology to China is in the security interests of the United States. Foreign policy decisions do not exist in a vacuum. Our support for Israel affects the Arab world's policies toward the U.S. The weapons systems that Israel sells to China could effect China's capability to inflict harm on the United States. With the new urgency to protect our homeland, these are significant issues that should be dealt with honestly and openly in future foreign assistance programs.

In light of September 11, the P–3 incident of April 1 has almost faded from many memories. That was 5 months before 9–11, and our service men and women were put in harm's way by a brutal regime, which summarily executes dissidents and independence-seeking nationalists in Tibet and other occupied lands. Have the recipients of our fungible foreign aid dollars and other friends and allies been arming this potential adversary of ours, which in turn provides chemical and biological weapon delivery systems to terrorist-sponsoring states? The answer is yes. China is a known proliferator of chemical weapons and ballistic missiles capable of delivering chemical and biological warheads, and Britain, France, Russia, and Israel have been selling weapons and transferring advanced military and dual-use technologies to China. Regrettably, our record is not clean either. Our excessively profit-motivated corporations have also transferred technologies to the PRC, sometimes as the price of doing business there and sometimes even voluntarily. China is known to have provided missiles capable of being equipped with chemical and biological warheads to Iraq. Iraq is a terrorist state, a manufacturer and user of chemical and biological weapons, and a sponsor of terrorist groups. China has provided ballistic missiles to Saudi Arabia, to Syria, to Iran, and to Libya. It has provided nuclear weapons to Syria, to Japan, and to Iraq. It provided chemical weapons to Syria. It provided them to Iran.

Could these weapons be used against our personnel and our allies in the event of a future confrontation? The answer is yes. Are these weapons sales to China in the interests of American national security? Of course not. I was one of the initiators of the enabling legislation of the U.S.-China Security Review Commission, a bipartisan Congressional commission. One of its specific mandates is to analyze the transfer of our advanced military and dual-use technology by trade, procurement, or other means to China. The Commission is looking into technology transfers to the PRC through third parties. Another specific mandate to

The Commission is to look at the proliferation of weapons of mass destruction. The basic purpose of the Commission is to assess the impact of these and other acts on the national security interests of the United States. The Commission is to report its findings and recommendations to Congress and the President in May. I look forward to the report today, the United States is embroiled in a war of its own in the Middle East. Until recently, the Israeli-Palestinian conflict had largely vanished from the headlines, displaced by the specter of hand-to-hand combat between American troops and Taliban forces in Afghanistan. But the importance of seeking a peaceful solution to the violence between the Palestinians and the Israelis is no less urgent than it has always been. The recent terrorist attacks against innocent Israeli citizens and the possibility that Israel will launch its own war against Palestinian terrorists is all the proof—all the proof—that we need.

If this cycle of violence continues unabated, if the Israelis and the Palestinians are unable to come to terms themselves, then the United States should intervene by conditioning future foreign assistance to the Middle East—to all the major players, including Egypt, including Israel, including Jordan and including the Palestinians—on implementation of the Mitchell Report or something very like it.

U.S. interests are not served by the perpetuation of violence between the Israelis and the Palestinians. No one should be more cognizant of this fact than the citizens of Israel, where precious lives have once again fallen victim to Arab extremists bent on wreaking havoc. No one should be more cognizant of this fact than Yassar Arafat, who time and again has failed to moderate the extremist Palestinians who are determined to sabotage any movement toward peace. No one should be more cognizant of this fact than the United States, which has spent billions upon billions of tax dollars and sponsored countless rounds of peace talks, to no apparent avail.

The path to peace in the Middle East is a two-way street, and like most roads in that ancient part of the world, the path is steep and the path is rocky

and the path is difficult to traverse. But, with faith and perseverance, it need not be a dead end street. There is no ideal solution to the travail in the Middle East. There is no right answer, there is no fair solution, there is no justice for all those who have suffered. There is only accommodation and acceptance, giving ground and restraining hatred. But there is no other solution.

If the Palestinians and the Israelis continue to pursue hatred and revenge, the future of Israel will be written in blood, as the past pages are written in blood, and the dreams of a new Palestinian state will lie shattered in the dust. If the players in this tragedy cannot bring themselves to accept that fact, the United States should use its every tool—every tool—and I am including dollars, I am including the instrument of foreign assistance—to pressure the sides to negotiate a peace. To do otherwise makes us little more than an accessory to the violence.

Mr. President, these are strong words. They are intended to be. These are perilous times. This is not the time to mince words. As we saw on September 11, and as we all fear we may see again, allowing hatred to rage unfettered in the Middle East places our very homeland in jeopardy. The war that we are waging against terrorism is the first and most urgent step in protecting our homeland. But defeating the terrorists is only the first step. We must also work to eradicate terrorism, eradicate the causes, if we can. Abandoning conventional wisdom in these unconventional times and using our foreign assistance dollars to effect change instead of making a pro forma allotment of funds is the best, and perhaps the only, means that we have at hand to help shape a peaceful future for the Middle East.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CORZINE). The Republican leader.

Mr. LOTT. Mr. President, I see the Senator from Louisiana will be seeking recognition in a moment. I will be relatively brief.

Let me say to Senator BYRD from West Virginia, I stayed on the floor because even in all the tumult here this afternoon, as we were trying to get final agreement on a number of bills or establish disagreement, I learned that Senator BYRD was going to give a speech on foreign policy issues. I have heard him speak on this subject before and found it very interesting, thoughtful, and thought provoking. That is why I stayed and listened because I wanted to hear what the Senator from West Virginia had to say in this area.

As I suspected, I found it interesting and useful. I hope the administration will review these remarks, and I hope those in the Middle East who are involved in a very dangerous situation on all sides will take into consideration what has been said there.

For years I have been concerned that our policy didn't always make sense. We seemed to be giving money to all sides with no assurances and sometimes not even participation by those who received that aid. I have always thought it was almost contradictory, maybe even hypocritical. This is a volatile part of the world. It is a place where the pages of history do reflect conflict and bloodshed. We all hope and pray for a peaceful solution.

I do think it is going to take an extraordinary effort. First, the Palestinians have to be prepared to accept peace and security with Israel. Israel has to be prepared to seek a negotiated peace agreement. All have to be participants, including other Arab countries in the world receiving aid from America. And America has to be prepared to press these points on them.

I say to Senator BYRD, I appreciate his taking the time. More Senators should think about this subject and express themselves. We should take a look at our foreign operations appropriations process more closely, maybe consider making some changes next year.

We also need to take advantage of this time in which we find ourselves with support from countries that have not traditionally been our allies, a number of people who are working with us against whom we had been taking unilateral sanction actions. We should review all of that. The world is different now. It is an opportunity, as we move forward in fighting terrorism, completing the action in Afghanistan, and looking at where terrorism may be in other parts of the world. It is going to be an opportunity for this administration, under the leadership of President Bush and Secretary Powell and his other advisers, such as Condoleezza Rice, to change our thinking and to improve our position and our relationship with a number of countries around the world.

I thank Senator BYRD for his remarks this afternoon. I do commend them to all Senators when they have an opportunity.

Mr. BYRD. Will the distinguished Republican leader yield?

Mr. LOTT. I am glad to yield to Senator BYRD.

Mr. BYRD. I thank the leader for his comments and his observations. I thank him for remaining on the floor, and I thank him for what I accept to be an observation that we do need to use our foreign aid dollars as a tool to help bring about peace in the Middle East.

I am not attempting to take sides one way or the other. We give $3 billion to Israel every year. We give $2 billion to Egypt—$5 billion. And we seem to give this without asking the question. We ought to require both Israel and Egypt to work hard for peace and to be willing to give a little here and give a little there or else this money isn't going to be paid.

Could the leader imagine with me what we could do in this country for the American people with $5 billion more every year; what that would do for homeland security, $5 billion a year; what it would do for New York City? We give these dollars practically without asking a question. I think both those countries look upon this $5 billion—$3 billion in the case of Israel, $2 billion in the case of Egypt—I think they virtually look upon these $5 billion as entitlements. They put these figures into their budgets. They apparently have no doubts that the moneys are going to come. And the way we have been operating for several years, those moneys have come.

I think it is time to put some strings on those moneys: If you want this money to help, we want you to work for peace.

That is what I am saying today. I am not attempting to take any sides. But we hand this taxpayers' money out to the tune of $5 billion a year. That is $5 for every minute since Jesus Christ was born. We ought to make those dollars work for peace, and we can make them work for peace. That is what I am asking.

I thank the distinguished Republican leader.

Mr. CONRAD. Mr. President, I rise to offer for the RECORD the Budget Committee's official scoring for the conference report to H.R. 2506, the Foreign Operations, Export Financing, and Related Programs Appropriations Act for fiscal year 2002.

The conference report provides $15.346 billion in discretionary budget authority, which will result in new outlays in 2002 of $5.537 billion. When outlays from prior-year budget authority are taken into account, discretionary outlays for the conference report total $15.106 billion in 2002. By comparison, the Senate-passed version of the bill provided $15.524 billion in discretionary budget authority, which would have resulted in $15.138 billion in total outlays. H.R. 2506 is within its Section 302(b) allocation for both budget authority and outlays. In addition, it does not include any emergency designations.

I ask unanimous consent that a table displaying the Budget Committee scoring of H.R. 2506 be printed in the RECORD.

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

H.R. 2506, CONFERENCE REPORT TO THE FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2002

[Spending comparisons—Conference Report, in millions of dollars]

	General purpose	Mandatory	Total
Conference report:			
Budget Authority	15,346	45	15,391
Outlays	15,106	45	15,151
Senate 302(b) allocation:[1]			
Budget Authority	15,524	45	15,569
Outlays	15,149	45	15,194
President's request:			
Budget Authority	15,169	45	15,214
Outlays	15,081	45	15,126
House-passed:			
Budget Authority	15,167	45	15,212
Outlays	15,080	45	15,125
Senate-passed:			
Budget Authority	15,524	45	15,569
Outlays	15,138	45	15,183

H.R. 2506, CONFERENCE REPORT TO THE FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2002—Continued

[Spending comparisons—Conference Report, in millions of dollars]

	General purpose	Mandatory	Total
CONFERENCE REPORT COMPARED TO			
Senate 302(b) allocation:[1]			
Budget Authority	−178	0	−178
Outlays	−43	0	−43
President's request:			
Budget Authority	177	0	177
Outlays	25	0	25
House-passed:			
Budget Authority	179	0	179
Outlays	26	0	26
Senate-passed:			
Budget Authority	−178	0	−178
Outlays	−32	0	−32

[1] For enforcement purposes, the budget committee compares the conference report to the Senate 302(b) allocation.

Notes.—Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions.

Mr. BIDEN. Mr. President, the Foreign Operations appropriations bill is one of the most important appropriations related to national security that Congress makes during the course of the year. It is a little known fact to most Americans, but foreign assistance is among the first lines of defense in ensuring the safety and security of each and every American here and abroad.

Through this appropriation we fund anti-terrorism activities, we provide money to give jobs to Russian nuclear physicists who would otherwise be offering their services to whatever terrorist organizations were willing to pay them, we fund our antinarcotics efforts and provide money to combat the spread of deadly diseases before they reach our shores. Mr. President, we are in no way devoting the necessary resources to the front line.

I thank the Chairman and Ranking Member of the Foreign Operations Appropriation sub-Committee. They did the best they could with the allocation they were given. I know that if he had his druthers the chairman would have been working with a much bigger number. I do not intend to criticize the hard work that the subcommittee has done. And I will acknowledge that for its part, the Senate Budget Committee certainly exceeded the administration's grossly inadequate request when it made the initial allocation. I applaud that. And I applaud the fact that the conferees understood the importance of the Non-proliferation, AntiTerrorism, Demining and Related Programs, fully funding vitally important accounts such as those for Nonproliferation and Disarmament, the Comprehensive Nuclear Test Ban Treaty Organization Preparatory Commission, Antiterrorism, Terrorist Interdiction and the International Science and technology Centers.

What I would say to my colleagues, however, is that the conference report, although it is slightly more than the administration's request, makes it clear that we need to do much, much more. We need to stop thinking about foreign assistance as a handout, as welfare for the developing world, and consider it a strategic investment in America's security.

The tragic events of September 11 were a wake-up call. The United States is not isolated from the rest of the world in a sea of invulnerable tranquility. As we stand here today, there are radicals preaching anti-American sentiments around the globe. They are saying that democracy breeds corruption, and that globalization is the reason for poverty. These radicals take advantage of the desperation of the poor and the hopeless.

Poverty and ignorance are one of the most fertile breeding grounds of terrorism. By now my colleagues are aware of the fact that many members of the Taliban, the same group of radical fiends that harbored Osama bin Laden, were refugees in Pakistan who were too poor to afford school. They were educated in radical seminaries that they attended free of charge. Where were we and the rest of the international community with an alternative for these children? We were absent. It did not concern us. It was not our problem.

On the other side of the world in Mali, a Washington Post article dated September 30 states that Muslim missionaries have taken ''hundreds of recruits'' abroad for religious training. The story states that radical Islamic religious movements are gaining popularity due to corruption and rising poverty. Are we going to ignore the warning signs in west Africa as well? Will we let Mali, an emerging democracy struggling to hold on by the skin of its teeth, become a source of turmoil, unrest and violence? The government there is trying to do the right things in terms of economic and market reform. We should be empowering the Agency for International Development and the State Department to provide the country with the ability to make the transition to democracy in such a way that all people benefit. This appropriation in no way provides enough money to adequately do so.

Those who are hopeless and disaffected swell the ranks of terrorist organizations. Autocratic politically repressive regimes, where discontent and disagreement cannot be expressed, are fertile grounds for terrorist recruitment. In countries that prohibit free speech, freedom of association and political choice, violence becomes the only means through which to affect political change. The United States foreign policy apparatus has the mandate to push for change in these countries. It lacks the means to do so to the extent necessary.

I say to my colleagues that we have got to take heed. The problems in other countries are our problems. We need to engage, and it is impossible to do so on the cheap. We cannot adequately engage the world with the monies allocated in this appropriation. The United States cannot hope to participate meaningfully in the reconstruction of Afghanistan out of these meager funds. The cost of that alone is projected to be as much as $18–20 billion over the next 5 years. A cost which we must be prepared to share among the donor community.

As we speak there are students in the very schools in Pakistan that I spoke of learning to hate America. As we speak there are anti-Western sentiments being preached to people in some mosques in west Africa. What are we doing to expose them to American values and ideals so that they will not be the perpetrators of violence against U.S. citizens in the future?

The United States cannot be all things to all people everywhere. We cannot cure the ills of the world. And I do not believe that eliminating poverty will be the silver bullet that eradicates terrorism. There is no silver bullet or magic potion that will achieve that aim. But let's consider the state of our efforts today. President Bush has declared a war on terrorism. He has stated that we must fight terrorism on all fronts. I submit that foreign assistance is one important tool in our arsenal. We have just been rudely and shockingly awakened to the fact that we need to take advantage of each of these tools.

There is nothing we can do which would 100 percent guarantee that America will not be attacked by terrorists again. What we can do is mitigate the threat. We can help the UN and the government of Pakistan provide alternatives to the madrassass that refugee children in Pakistan attend because there is no other form of education available. We can help eliminate poverty and corruption in developing countries that radical elements seize on as a reason to attack so called western values and democracy.

The United States is spending a billion dollars a month on the war in Afghanistan. I do not begrudge a penny of that money. We must do whatever it takes for however long it takes to wipe Al-Qaida from the face of the earth. However, I strongly believe that we must do all we can to prevent ever having to fight such a war again. One of the ways we can do this is to invest more in preventative measures. We must foster the spread of democracy, bolster the judicial and law enforcement capabilities of developing countries and help strengthen the economies where necessary. What we have done to date is clearly not enough.

Mr. GRAHAM. Mr. President, I rise today to speak in support of adoption of the conference report on the Fiscal Year 2002 appropriations bill for Foreign Operations H.R. 2506.

The annual Foreign Operations appropriations bill is the primary legislative vehicle through which Congress reviews the U.S. foreign aid budget and influences executive branch foreign policy making generally. It contains the largest share—over two-thirds—of total U.S. international affairs spending.

I regret that I was forced to vote against the original Senate version of this bill on October 24th, after the Senate rejected my attempts to restore

funding for the Andean Regional Initiative to the level which the administration had requested.

The Andean Regional Initiative represents our best strategy for fighting terrorism in this hemisphere. President Andres Pastrana and his administration have been leading a valiant fight against the narcotraffickers who have been threatening the economy, the society, the very civilization of the Republic of Colombia for more than two decades now.

In 2000, Congress approved the first installment of our commitment to Plan Colombia. President Bush correctly requested $731 million for Fiscal Year 2002, which would have broadened our involvement beyond military support and expanded this assistance to Bolivia, Ecuador and Peru.

The Senate bill would have cut this important strategic initiative by 22 percent, from $731 million to $567 million, which would endanger the progress we have made.

The conferees have agreed to fund the initiative at $660 million, which represents a reduction of $71 million from the President's request, but that is $93 million above the Senate's level.

While I remain concerned about what the impact will be on the program at the level of funding, it is an improvement to the Senate's position, so I am willing to vote for this conference report.

I also want to emphasize my support for other important priorities that are funded by this conference report—priorities that I in no way intended to disavow when I voted against the Senate version of the bill.

They include $2.04 billion in military grants and $720 million in economic grants for Israel in Fiscal Year 2002.

We have no stronger ally in the global war on terrorism than the State of Israel, and this aid recognizes Israel's key role in helping us protect our interests in the Middle East and around the world. I am profoundly grateful for the support and assistance that our good friends have provided, and I have no doubt that their assistance will continue well into the future.

They include a 22 percent increase in disaster aid, to $235 million.

The Global Fund to Fight HIV/AIDS, Malaria, and Tuberculosis—a new initiative for Fiscal Year 2002—receives $435 million from the Child Survival and Health Programs Fund and $40 million in other accounts.

They include $3.5 billion for the Agency for International Development (AID). This is $350 million above the administration's request and $210 million above fiscal year 2001.

And finally, there are several terrorism-related issues addressed in the Foreign Operations bill, including direct funding for two counter-terrorism programs; increased resources to meet physical security needs at USAID's overseas missions; aid restrictions for countries engaged in terrorist activities, and aid allocations for nations helping combat terrorism.

I am pleased to support the conference report, and I encourage my colleagues to do so.

Mr. LEAHY. Mr. President, we are about to pass the foreign operations conference report for fiscal year 2002. I want to again thank Senator MCCONNELL, Chairman BYRD, and Senator STEVENS for their support throughout this process.

I also want to recognize Chairman KOLBE, who worked extraordinarily hard to get this conference report passed in the House, and Congresswoman LOWEY, who was extremely helpful. This was a collaborative effort in every sense of the word.

Mr. President, the attacks of September 11th hold important lessons that are relevant to this conference report. They showed us how our security is directly and indirectly linked to events and conditions around the world.

With the exception of the cost of deploying our Armed Forces, the $15.3 billion in this conference report is what we have available to protect our security outside our borders.

These funds are used to combat poverty, which engulfs a third of the world's people who barely survive, and often succumb, on less than $2 per day. The misery, despair and ignorance that poverty breeds is unquestionably one of the reasons for the resentment felt by so many people toward the United States.

The funds in this conference report are used to protect the environment and endangered wildlife, to strengthen democracy and the rule of law, and to help prevent the proliferation of chemical, biological, and nuclear weapons.

We support agriculture research at American universities, and we promote exports through loans and guarantees for American companies competing in foreign markets.

Mr. President, we call these programs ''foreign assistance.'' They are held up as proof of America's generosity. But anyone paying attention can see that is only part of the story. These funds directly, and indirectly, protect our economy, our democracy, our national security. It is in our self-interest, plain and simple.

This conference report contains 1 percent of the total federal budget. On a per capita basis that amounts to about $40 per American citizen per year—the cost of a pair of shoes.

To use another example, next year we plan to spend about $150 million on children's education in poor countries where many children, especially girls, receive only a few years of schooling. That is less than most American cities spend on children's education, yet that is all we have for the whole world.

A year ago, some might have asked what children's education in Afghanistan or other countries has to do with America's security. Today it should be obvious. People who are educated, who can earn money to feed and clothe their families, and participate meaningfully in the political process, are not training to be terrorists.

For years, organizations working on the front lines in poor countries have appealed to the Congress and the administration to significantly increase the amount of funding to address the inter-related problems of population growth, poverty, political and economic instability, corruption, environmental degradation, narco-trafficking, and terrorism. Year after year, the Congress and the administration have turned a deaf ear.

Is it any wonder that Afghanistan today is a destroyed country that became a haven for terrorists?

Part of the problem is misconceptions about the foreign operations budget. People think it's some kind of give-away, when in fact, we use it to protect our security.

Mr. President, since September 11th, a large majority of the American public, and a broad, bipartisan cross-section of Members of Congress—Democrats and Republicans, liberals and conservatives—have called for substantial increases in funding to address the causes of poverty and disillusionment that persists not only in many Muslin countries, but among a third of the world's population.

We can no longer pretend that spending 1 percent of our $2 trillion Federal budget is a serious response to these national security needs. The widening gap between rich and poor nations is the best evidence of that.

Many have made these points before. Today they are a common refrain. Senators FEINSTEIN, GORDON SMITH, and I have introduced a resolution calling for tripling the foreign assistance budget. Others have proposed similar legislation. There have been numerous speeches, editorials, and other commentary.

Yet we have yet to see any effective response from the political process. Our foreign assistance budget—I would prefer to call it our international security budget—has fallen in real terms since the 1980s. Rumor has it that the President's fiscal year 2003 budget request for International Affairs will be at about the fiscal year 2002 level—in other words, business as usual, despite the lessons of September 11.

That would be extraordinary short sighted. We cannot possibly deal a lasting blow to international terrorism without a multi-prong strategy—addressing the social and economic causes of terrorism and conflict with foreign assistance, diplomacy, and law enforcement, and when necessary, military force.

Mr. President, the security of an American citizen is worth a lot more than the price of a pair of shoes, yet that is how much we are spending on the prevention part of this strategy. It is, frankly, ludicrous.

We argue over a few million dollars to alleviate the suffering in refugee camps, which are fertile grounds for terrorist recruits. We debate about another $5 or $10 million to help the

world's poorest families start businesses, to work their way out of poverty. We rob Peter to pay Paul to get a few more millions for children's education or programs to improve health care. We struggle, year after year, to increase funding for family planning and reproductive health to the level it was six years ago.

Have we so soon forgotten the lessons of September 11? We are the richest, most powerful nation in history, yet we continue to act as though the rest of the world barely matters to us.

We cannot put those lessons into effect without Presidential leadership. If President Bush, today, were to ask every American to support a tripling of our foreign operations budget, and he explained why it is important too our national security and to combating international terrorism, does anyone think the Congress would not respond or that the public would object? The polls show unequivocally that the public understands these issues.

This conference report is the best we could do with what we had, and we owe a debt of gratitude to Chairman BYRD and Senator STEVENS. But we need a multi-prong strategy if we are going to combat international terrorism and protect our other security around the world. I hope someone in the White House is listening, because this is what the President should be saying to America and the world.

Mr. President, I want to briefly mention a few of the important provisions in this conference report.

It provides sufficient funding for the Export Import Bank to support export financing well above the fiscal year 2000 level. This is of great importance to American companies who compete for markets in developing countries.

It provides increases for the Foreign Military Financing and International Military Education and Training programs.

It includes additional funding for international peacekeeping and for assistance for the former Yugoslavia, including Serbia, Montenegro, and Macedonia.

It includes $475 million for the prevention and treatment of HIV/AIDS, including $50 million for the Global Fund to combat AIDS, TB and malaria. This falls short of what our country should be providing, but it is a significant increase above last year's level.

The conference report also increases funding for other infectious disease and children's health programs. These programs are desperately needed to strengthen the capacity of developing countries to conduct surveillance and respond to diseases like polio and measles. But they are equally important for combating the spread of biological agents used in acts of terrorism, like anthrax.

It includes $625 million for the Andean Counterdrug Initiative. This is in addition to the $1.3 billion for Plan Colombia that we appropriated last year. We include several conditions on our assistance to the Colombian Armed Forces, and on the aerial spraying of chemical herbicides which are used to eradicate coca.

The conference report provides $34 million for the UN Population Fund, and $446.5 million for USAID's family planning and reproductive health programs. Although still less than what the United States was providing for these activities in the mid-1990's, it is an increase above the fiscal year 2001 level. With 100 million new births each year—95 percent of which are in developing countries many of which cannot feed their people today, these programs are of vital importance in combating poverty.

The conference report contains the usual earmarks for the Middle East countries. It also continues various limitations or restrictions on assistance to several governments beyond those I have already mentioned, where there is a history of corruption or human rights violations that have gone unpunished.

Mr. President, I want to again thank Senator MCCONNELL for his invaluable help.

Mr. LEVIN. Mr. President, we have before us, the foreign operations, export financing, and related programs bill, H.R. 2506, for fiscal year 2002. This bill is the primary legislative means by which this body can review the U.S. foreign aid budget. That has always been an important task, but the events of September 11th have only enhanced the importance of examining our priorities and international commitments as we seek to stop international terrorism while continuing to promote democracy, the rule of law and free markets throughout the world.

The events of September 11th have caused the United States to re-examine its relations with many nations including Armenia and Azerbaijan. For nearly a decade, our relations with these two nations has been shaped by section 907 of the FREEDOM Support Act, 102–511. Section 907 has restricted aid to Azerbaijan until it ceases the blockade and use of force against Armenia and Nagorno-Karabagh. Section 907 has been seen as a vital tool in the efforts to encourage Armenia and Azerbaijan to resolve the dispute over Nagorno-Karabagh in a peaceful manner.

In spite of the vital role section 907 has played in trying to end the blockade of Nagorno-Karabagh, H.R. 2506 will allow the President to waive section 907 only with respect to our immediate crisis, the international was against terrorism. It is my hope that the President will not use this waiver given the important role section 907 plays in encouraging a cessation of this blockade that threatens the peace and stability of the entire Caucasus region.

I am heartened by the fact that Congress will review the waiver to section 907 in the FY 2003 Foreign Operations Appropriations bill and will be closely monitoring Azerbaijan's actions and progress in the Nagorno-Karabagh peace process.

In addition, I am particularly pleased that Armenia will receive significant military financing and training assistance and it is my hope that in the long run, this balanced approach will speed the Nagorno-Karabagh process.

I would like to express my gratitude to Senators LEAHY and MCCONNELL for their hard work with regard to this bill. In addition, I would like to recognize the input of those individuals and organizations from the Armenian-American community who understand the importance of America's efforts to combat terrorism in the aftermath of September 11th.

Mr. MCCONNELL. Mr. President, I thank my colleagues for their patience as the final negotiations on the FY 2002 foreign operations bill came to a conclusion only this week.

The conference report reflects a compromise between both sides of the aisle in the Senate, and with our House colleagues. Let me take a brief moment to underscore a few accomplishments in the bill:

Conferees accepted the Senate amendment—which was painstakingly reached with the help of Senator BROWNBACK—permitting counter terrorism assistance to Azerbaijan, while protecting the integrity of section 907 of the FREEDOM Support Act. This will ensure that America's war on terrorism can be waged effectively—but not at the expense of the ongoing negotiations between Armenia and Azerbaijan. I thank all the conferees for understanding the delicate balance struck on this important issue, and I want to recognize the unabashed patriotism of the Armenia-American community in supporting the Senate's language.

Conferees accepted, with modifications, the Senate amendment providing $10 million for programs and activities to promote democracy, human rights, the rule of law, women's development, and press freedoms in countries with a significant Muslim population, and where such programs would be important to America's war on terrorism. I strongly urge the administration to act quickly in supporting activities relating to the welfare and status of Afghan women, and to explore initiating women's development programs along border areas where Afghan refugees are located.

Conferees maintained, with modifications, House language requiring the President to report to Congress on whether the Palestinian Liberation Organization, PLO, has lived up to its 1993 commitments to renounce the use of violence against Israel. My colleagues may recall that the Senate did not offer a similar provision—at the request of Secretary of State Colin Powell—but inclusion of this provision in the conference report could not be more timely. I am disheartened and sickened by continued incidents of terrorism against the people of Israel. The stakes are high for Chairman Arafat, and his political life is on the line.

Arafat needs to get a grip on the extremists he has given free reign on the West Bank and Gaza. As we say in Kentucky, you reap what you sow.

Finally, I want to express my continued frustrations with Egypt over its less than enthusiastic support for America's war against terrorism, lackluster performance to further the peace process between Palestinians and Israelis, and continued anti-American and anti-Semitic drivel in its government-controlled press. I have said it before, and I will say it again: the Egyptians need to be a better ally to the United States. It is not acceptable to purchase No-Dong missiles from North Korea. It is appalling to accuse the United States of fattening up the people of Afghanistan before slaughtering them. And it is beyond the realm of human decency that the song ''I hate Israel'' by Shaaban Abdel Rahim is a popular hit in Egypt. Each of these actions will be carefully considered during next year's appropriations process.

Let me close my remarks by thanking Chairman BYRD, Senator STEVENS, and all the members of the Foreign Operations Subcommittee for their support of this bill. My staff and I look forward to working with Senator LEAHY and his capable crew—Tim Rieser and Mark Lippert—on the Fiscal Year 2003 foreign aid bill early next year. Finally, I extend my heartfelt thanks to Jennifer Chartrand, Billy Piper, and Paul Grove for their hard work throughout this challenging year.

Mrs. FEINSTEIN. Mr. President, I rise to express my sincere disappointment that the foreign operations conference report before us includes a provision that will suspend the certification process worldwide. This goes far beyond what this Senate passed just weeks ago.

The certification process is this Nation's best—and in many cases, only—mechanism to persuade problem nations to work with us as we try to stem the flow of illegal narcotics across our borders and onto our streets.

The purpose of the certification profess is not to punish any one individual country, but rather to hold all countries to a minimum standard of cooperation in the war against illegal drugs. In that regard, I believe it is the most effective system we have available to us. There simply is no alternative.

Many have tried to turn the certification issue into a simplistic clash between the United States and Mexico. To be sure, in the past that relationship has received the most attention.

But in fact, there are more than 30 countries that undergo an annual certification review under current law—including countries like Afghanistan, Syria, Iran, Burma, and even China.

Afghanistan, for instance, has been decertified 10 out of 12 times they have faced review. As a result, U.S. aid has been withheld from the Nation.

Burma, also, has been decertified 10 out of the 12 times it has faced review.

It is interesting to note that Mexico has never once been decertified.

So this is not a U.S.-Mexico issue. This is an issue affecting our global efforts to reduce the supply of drugs to the United States. Suspending the certification process worldwide means that countries failing to cooperate in the drug war will face no penalty for that failure. And that is a step we should not be taking.

Now is not the time to be letting up on the war on drugs.

The connection between terrorist and narcotics traffickers is real, and closer than ever before.

In Colombia, in Afghanistan, and in other places around the world, drug money helps terrorist organizations carry out violent, destructive, and even deadly acts of terror against citizens of the United States and other countries.

The Drug Enforcement Administration estimates that last year, Afghanistan supplied 70 percent of the world's opium. Money from the drug trade in Afghanistan helped keep the Taliban in power, and some of that money undoubtedly made it to the al Qaeda organization.

In Colombia, the FARC narco-terrorists make millions every year in extortion and protection money from drug traffickers. This money helps them maintain control over an area within Colombia the size of Switzerland, and funds activities that include kidnaping and even murder.

Even beyond the drug-terror connection, the drug trade around the world is ever-developing. Supplies of many drugs are near or at all time highs. In the last few years alone, the drug known as Ecstasy has become a virtual phenomenon among young people in this country, and is smuggled into the United States from countries as diverse as Mexico and the Netherlands, Belgium and Israel.

If anything, this administration and this Congress should be taking the certification process even more seriously—not moving to abandon it wholesale.

If anything, the real threat of decertification should be used more often as a tool to modify the behavior of problem nations, not less often.

To do as this conference report does and completely stop the certification process for all nations will essentially remove the one good means we have of encouraging foreign nations to work with us in reducing the supply of illegal drugs to the United States.

This moratorium is a mistake, plain and simple.

I do want to again stress that a partial moratorium is warranted, particularly for the government of Mexico. I believe that Mexican President Vicente Fox has shown a clear willingness to work with the United States in the drug war, much like the government of Colombia has over the last few years in the battle against strong drug cartels.

That is why a temporary moratorium on the certification process in this hemisphere makes some sense. And that is why I did not object to such a moratorium when this issue first came up on the floor of the Senate.

But expanding the moratorium to countries that have shown far less cooperation, and continue to do little to keep drug traffickers from producing drugs or moving drugs through their territory, is a step backward in the war against drugs.

I feel very strongly about this issue, and it is my belief that this provision may very well be an attempt by the opponents of the certification process to begin the process of dismantling certification altogether.

Well, let's just say that while I am happy to work with my colleagues to consider reasonable ways to address the certification issue—especially, in cases like Mexico, where the record may warrant changes—I intend to make sure that next year's foreign operations legislation does not reflect such a poorly conceived approach to this issue.

BIOTERRORISM

Mr. BYRD. While the Republican leader is on the floor, if I may change the subject, Senator PAT ROBERTS of Kansas proposed to me earlier seeking unanimous consent to pass a bioterrorism bill.

Mr. LOTT. Yes, bioterrorism.

Mr. BYRD. At that point, I didn't know about the bill and didn't know anything about it. I objected. I thought he was going to remain around. But I want to say to the Senate Republican leader that I have no objection. I have had my staff look at it, and I am advised by the staff and on reading this measure and contemplating it and understanding it, I certainly have no objection if the leader wants to call it up. That is the bill in which PAT ROBERTS of Kansas is interested.

Mr. LOTT. That is the bioterrorism legislation, I might say to the Senator from West Virginia. It has been very laboriously worked through by Senator CRAIG, Senator KENNEDY, and Senator FRIST. This is an area where we need to do more. This is only authorization. It would still be subject to the appropriations process. But it does authorize a great deal more activity in very critical areas such as public health service. And, of course, Senator ROBERTS also worked to get a food aspect of that in agriculture. Agriculture terrorism is an area where we have to be concerned, too.

I think it is good legislation. I appreciate Senator BYRD's making that observation and agreeing that we could move it. Once Senator REID returns to the floor, we will renew our unanimous consent request at that time.

Mr. BYRD. PAT ROBERTS came to my office earlier this year and explained the need for this kind of program.

Mr. LOTT. We need to do it because he has been in my office several times explaining it. I would like to get it done because I have heard enough to be convinced.

Mr. BYRD. I remove my objection.

VICTIMS' TAX RELIEF

Mr. LOTT. Mr. President, I do want to say on other matters that we passed this afternoon and on which we didn't get to comment too much, I am glad we did what we did with regard to victims' tax relief, the spouses who lost loved ones in the Twin Towers and at the Pentagon. I met with a group of them, most of them women, but a man also.

It was one of the most cheerful things I have experienced. These are women, most of them young women with children, some of them pregnant, some of them with no income right now; some of them hadn't gotten much in terms of charitable assistance. I was floored to learn that we taxed charitable contributions or receipts to individuals who had been hit by a disaster such as this. I think we should say as to the funds they receive from charitable contributions, these spouses who have lost their loved ones, not only should they not have to pay taxes on the charity they receive but no American should.

I have gone back and checked on the history now and found out how that happened. At one point there was a budget need for $10 billion. So they said, we can just do a tax on charitable receipts for 5 years and that will take care of this $10 billion hole.

So I am glad we did that. I appreciate that there were Senators from all over the country on other issues, such as Senator BAUCUS and the Senator from New York, who were willing to put aside very important issues to them to make sure we didn't leave this issue on the table.

TERRORISM REINSURANCE

Mr. LOTT. Mr. President, another issue I was very sorry we couldn't work out was the terrorism reinsurance. We should have moved that today. We should have moved it a month ago.

What happened was Senator GRAMM, Senator DODD, and Senator SARBANES came to agreement on a bill in the committee of jurisdiction, the Banking and Financial Services Committee. It had some limits on liability. But then it was basically taken away from those Senators, and they were told we were not going to do it that way.

The bill that Senator DASCHLE asked consent to move this afternoon did not have any limits on attorney's fees or any prohibitions on punitive damages. And Senator MCCONNELL then said: We should move the bill, but we should have at least a vote on whether or not there should be any limits on liabilities. That is all we were asking, not that it just be included, which it should have been because that was what was in the committee, but that we have an opportunity to vote on that.

And, by the way, as an old whip, I had counted the votes, and the votes were here in the Senate to pass that bill with no punitive damages allowed and some limits on liability.

Otherwise, we would have lawsuits being settled and attorney fees and punitive damages coming out of the Federal Treasury if we had a terrorist attack that invoked this terrorism reinsurance.

So I hope we don't have a situation at the end of the year where buildings will not be able to be built because they won't get loans because there won't be terrorism insurance. Maybe too much won't happen between now and the end of January or early February, but we need to address this issue. When we do, it should have some reasonable tort reform included, as the Federal tort claims law now provides.

One other brief point, and I will yield so others may speak. Mr. President, in the 29 years I have been in Congress, the House and the Senate, we have worked through a lot of difficult issues. We have committee action, we pass things in the House and Senate, we have intense negotiations in conference, but at some point we bring it to a conclusion and we pass it.

I have never seen an issue that more work went into than this stimulus package with no result. The President was personally involved. The President personally made concessions. The House and the Senate were involved. We set up a system of negotiators involving Senator BAUCUS, Senator GRASSLEY, and Senator ROCKEFELLER. We finally had a bill before us this afternoon that would provide stimulus for the economy, tax incentives for businesses, big and small, and for individuals to be able to keep a little more of their taxes, lowering the 27 percent tax bracket down to 25, helping people who make as low as $28,000 for an individual, and $40,000 for a couple—not exactly wealthy people, and not even middle income, if you get down to it—and assistance for unemployed, increased benefits for them, and a new precedent of health insurance coverage.

We could not even get it up to a vote. I believe if we would have had a vote on that issue today, there would have been 60 votes to override a point of order. I would not want to have to go back to my State and explain how I voted against a bill that provided additional unemployment compensation, health insurance coverage for the unemployed, expensing for small business men and women, and rate cuts for middle-income individuals. I don't think I could have defended that. Therefore, I would have voted for it, and I believe 60 or more Senators would have voted for it. But it is here.

I hope the economy begins to show continued growth. There is good news for the third week in a row. Unemployment claims are down. We have a robust, dynamic economy in America. Maybe it won't be needed. But if we come back in late January and February and it is still stumbling along, and we are not seeing positive signs of real recovery, we are going to have to revisit this issue.

We should also revisit the issue Senator DOMENICI raised—the payroll tax holiday—and put that in place of some of the other provisions in this bill. This bill is pretty expensive already. I think we need to take some things out of this bill. That would provide a quick, immediate impact on the economy. If we didn't collect that 12.4 percent payroll tax for 1 month on individuals and employers, that would have an impact immediately. So that may be something to which we will have to return.

There will be a lot of accusations back and forth as to why we didn't get it done, but I will say I think for the American people, no matter how it happened, it is a shame we didn't complete work on that piece of legislation.

I hope next year we will start on a positive note and pass a national energy policy bill, and pass an agriculture bill that has better policy in it than the one we considered, and also pass trade legislation that would help the economy. I think we can do those things, a lot of other good things, and a stimulus bill if the economy calls for it.

I yield the floor.

Mr. REID. Mr. President, on behalf of Senator BYRD, I yield back the 17 minutes he has. It is my understanding that Senator Lott has the authority to yield back the time of Senator MCCONNELL on the foreign operations bill.

Mr. LOTT. Yes, and I do so.

The PRESIDING OFFICER. Under the previous order, the conference report to accompany H.R. 2506 is agreed to and the motion to reconsider is laid upon the table.

Under the previous order, the Senator from Virginia is recognized for up to 5 minutes.

Mr. ALLEN. Mr. President, I spoke to Senator BAUCUS, and I know he has a measure he wants to discuss and, without objection, I would actually defer to Senator BAUCUS for his remarks he wanted to make if I may follow right behind Senator BAUCUS.

Ms. LANDRIEU. Reserving the right to object, I inquire of the Senator from Virginia and the Senator from Montana about the timeframe they are speaking of because I wanted to address the Senate on a matter different from the subject about which they want to speak.

Mr. BAUCUS. Mr. President, if I might answer the question posed, it is my intention that the matter I intend to bring up will probably consume 4, 5 minutes maximum.

Mr. REID. Mr. President, if I may ask the courtesy of my friends, Senator LOTT and I have something we have been trying to do all day. It will take a short time, a unanimous consent request.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Virginia?

Ms. LANDRIEU. I do object, Mr. President.

The PRESIDING OFFICER. Objection is heard.

Mr. ALLEN. Mr. President, I say to my friend from Montana, I would have liked to yield 5 minutes, but I had better take them.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

TERRORIST VICTIMS COURTROOM ACCESS ACT

Mr. ALLEN. Mr. President, I rise to discuss a bill we just passed, S. 1858. I thank my colleagues for their support: Senator KERRY, Senator NICKLES, Senator KENNEDY, and Senators WARNER, HATCH, and CLINTON. Particularly, I thank Senator NICKLES for he was of great help in getting this measure passed.

S. 1858 deals with the upcoming trial of Zacarias Moussaoui. Moussaoui has been charged in a six-count indictment with undertaking ''the same preparation for murder'' as the perpetrators of the September 11 attacks, but his alleged participation had been thwarted by his arrest the previous month in Minnesota. Now this measure is one that is helpful to all of us in that he is the only suspect with any direct connection with the most vile and horrific terrorist attack in our history.

There will be substantial interest in the trial of Mr. Moussaoui on the part of those who have been left behind, especially the families and loved ones of thousands who were killed on that dreadful day. By some estimates, there are as many as 10,000 or 15,000 victims who may have an interest in viewing this historic legal proceeding that will take place in the U.S. District Court for the Eastern District of Virginia in Alexandria.

The current policy of the Federal Judicial Conference does not permit the televising of court proceedings. I am supporting legislation that would give Federal judges such discretion. But until that legislation passes, we will not be able to address the interests of victims' families to view the proceedings in the Moussaoui trial.

In the past, exceptions have been made through congressional action, most notably allowing the closed circuit transmission of the trials of Timothy McVeigh and Terry Nichols from Denver to Oklahoma City, so that families in Oklahoma could witness the proceedings. That is where Senator NICKLES was especially empathetic and knowledgeable about how much this means to the victims' families.

This legislation, S. 1858, is modeled on the law that allowed the Oklahoma City victims to witness the McVeigh and Nichols trials, and this bill will extend the same compassionate access or benefit to the numerous victims and families of September 11.

The legislation calls for the closed circuit broadcast of the court proceedings to convenient locations in Northern Virginia; Los Angeles and San Francisco, CA; New York City; Boston; and Newark, NJ. Also ''with the amendment in such other locations as the court shall determine to be desirable,'' to use the exact language, and other locations the court may find desirable in their discretion.

The reason for the six places is that these are the sites of the terrorist attacks: the Pentagon and the World Trade Center, and the others are the sites where commandeered aircraft either departed or intended to arrive. Unfortunately, they did not. These locations obviously would have the greatest number of interested people and have victims in this attack.

The legislation allows those who the court determines to have a compelling interest but who are unable to attend because of expense and convenience or simply a lack of space in the courtroom to witness the trial.

The courtroom in Alexandria, VA, holds fewer than 100 people, and the sheer number of victims and others who meet the standard make it impossible for them to observe in person. While there is a great, deep wound for the larger society, the wound is deepest and most deeply and painfully felt by the survivors and families who lost loved ones.

I am glad we recognize in the Senate that we owe it to those victims' families to allow them to see this open proceeding which is directly related to the horrific event of September 11 that took the lives of their loved ones. In doing so, for those who want to watch the trials—others may not—for those who want to, it will begin to help them heal.

It is a right approach that a compassionate nation wants to provide to these victims' families. I thank the Senators for their support, not of this legislation but for their support of the families of these victims.

I yield back the remainder of my time. Thank you, Mr. President.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that following my unanimous consent requests the Senator from Montana be recognized for up to 5 minutes, the Senator from Louisiana for up to 5 minutes, and the Senator from Ohio for 10 minutes, as in morning business.

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

PUBLIC HEALTH SECURITY AND BIOTERRORISM RESPONSE ACT OF 2001

Mr. REID. Mr. President, with the attention of the Senator from Mississippi, Mr. LOTT, I ask unanimous consent that the Senate now proceed to H.R. 3448, which is at the desk.

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

The legislative clerk read as follows:

A bill (H. R. 3448) to improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies.

There being no objection, the Senate proceeded to consider the bill.

Ms. LANDRIEU. I am very concerned about help for for-profit hospitals if they must deal with bioterrorist attack. Their services are critical, and they face the same challenges as other hospitals. They should be eligible for Stafford Act assistance under certain circumstances.

Mr. KENNEDY. I understand the concerns of my colleague. In many places for-profit hospitals are the only providers. I will work with her to address these legitimate needs in conference.

FOOD SAFETY

Mr. DURBIN. Mr. President, I am pleased that the sponsors of the bill recognize the importance of strengthening our Nation's protections for food safety and of addressing potential bioterrorist threats against our food supply. Among the bill's provisions are new authorities for the Food and Drug Administration to require the maintenance of food records, to inspect such records, and to detain unsafe foods.

I would appreciate clarification regarding the standard of serious adverse health consequences or death, which applies to the authorities for inspection of records and administrative detention, among others. It is my understanding that some have suggested that foodborne pathogens such as salmonella, listeria monocytogenes, shigella dysenteriae, and cryptosporidium parvum, which in 1993 sickenened over 400,000 people in Wisconsin who drank contaminated water, may not pose a threat of serious adverse health consequences to healthy adults. Most of these pathogens have been identified by the CDC as possible biological agents that could be used in an attack against our citizens, and they could clearly pose a threat of serious adverse health consequences or death to vulnerable populations, such as children, pregnant women, the elderly, transplant recipients, persons with HIV/AIDS and other immunocompromised persons.

Do the sponsors intend for the standard in this bill, cited in the sections on inspection of records, administrative detention, debarment, and marking of refused articles, to enable the Food and Drug Administration to act when a foodborne pathogen presents a threat of serious adverse health consequences or death to such vulnerable populations mentioned above, even if healthy adults may not face the same risk? And do the sponsors agree that the pathogens I mentioned previously may present such a risk of serious adverse health consequences or death? I believe we must ensure that the law is fully protective of all American consumers. I hope that the sponsors share my concerns.

Mr. KENNEDY. Will the Senator from Illinois yield?

Mr. DURBIN. I am happy to yield to the Senator from Massachusetts.

Mr. KENNEDY. First, I commend my colleague for his longstanding advocacy for food safety. He has been a

leader, both in the House of Representatives and here in the Senate, in seeking the resources, the authority and the public awareness which will reduce the yearly epidemic of foodborne illness. The CDC has estimated that foodborne diseases cause approximately 76 million illnesses, 325,000 hospitalizations, and 5,000 deaths in the United States each year.

I also point out that he has played an instrumental role, with our colleagues, Senator MIKULSKI, Senator COLLINS, and Senator CLINTON, in assuring that food safety is addressed in this legislation.

In response to my colleague's inquiry, I fully concur with his interpretation of the food safety provisions in our legislation. It is precisely our intent, with respect to the food safety sections of this bill, that the standard of serious adverse health consequences or death with respect to these provisions in this bill should be understood to enable the FDA to protect all Americans, including vulnerable populations such as children and the elderly.

I agree that there are instances where foodborne pathogens, such as those mentioned by my colleague, whether accidentally or deliberately introduced into food, may threaten some more vulnerable individuals but not the healthy adult population. For that reason, my colleague is correct that the agency would be able to exercise these food safety authorities to protect such vulnerable populations.

Mr. FRIST. Will my colleague yield?

Mr. KENNEDY. With pleasure.

Mr. FRIST. I concur with Senator KENNEDY's remarks regarding this standard as it applies to the food safety provisions in this bill. As 21 C.F.R. 7.41 regarding health hazard evaluation makes clear, the FDA evaluation will take into account a list of factors, one of which is ''an assessment of hazard to various segments of the population, including children, livestock, etc. who are expected to be exposed to the product being considered with particular attention paid to the hazard to those individuals who may be at greatest risk.''

I believe these provisions will help protect the safety and security of our food supply.

Mr. DURBIN. I appreciate my colleagues' willingness to clarify these important points, and join them in supporting this important legislation.

ANTITRUST EXEMPTION

Mr. WELLSTONE. Mr. President, I am a cosponsor of this legislation because it is extremely important, but as I noted when the bill was originally introduced, I am concerned about the scope of the antitrust exemption.

I have three concerns in particular: There is no opportunity for public comment prior to the granting of an exemption; the period of exemption is too long; and the criteria for granting the exemption are too broad with respect to competitive impact on areas not directly related to the agreement.

Mr. KENNEDY. I understand my colleague's concerns and commend him for his commitment to protecting consumers. His concerns are legitimate and I will work to improve these provisions in response to his concerns in the conference.

COMBATING BIOTERRORISM

Mr. JEFFORDS. Mr. President, and my distinguished colleagues, I am pleased that we are moving so quickly on legislation to combat bioterrorism—this is certainly a timely issue.

I would like to engage my colleagues in a colloquy to clarify our commitment to another important issue—the security of our Nation's water supply. At the end of October of this year, I was joined by the ranking member of the Environment and Public Works Committee in introducing S. 1593 and S. 1608. S. 1593 authorizes the Administrator of the Environmental Protection Agency to establish a grant program to support research projects on critical infrastructure protection for water supply systems. S. 1608 establishes a program to provide grants to drinking water and wastewater facilities to meet immediate security needs.

I understand that the gentleman from Tennessee, the gentleman from Massachusetts and the gentleman from New Hampshire support the modified provisions of these bills. Is that correct?

Mr. FRIST. That is correct.

Mr. KENNEDY. Yes, that is correct.

Mr. GREGG. Yes, that is correct because in the interest of time, we are unable to change the bill prior to conference.

Mr. SMITH. I too would like to thank Senator FRIST, Senator KENNEDY, and Senator GREGG for agreeing to work with us to ensure these two proposals are included in the bioterrorism proposal. I regret that with the end of session quickly approaching, there is no time to incorporate these provisions into the underlying bill. As we all recognized in our support for these proposals, since the September 11 attacks, Americans throughout the country have become concerned about the security of our Nation's water supply. While it is widely believed that our water supply is safe, there are a few vulnerabilities that must be addressed. Our bills would provide resources for research into security at facilities and assessment tools while also providing seed money to encourage additional spending on security measures.

Mr. JEFFORDS. Our colleagues on the House side also recognized this need by including water security provisions in the bioterrorism bill, H.R. 3448, that was passed by the House on December 12. I would like my colleagues' assurance that during conference they will press for adoption of the modified versions of S. 1593 and S. 1608.

Mr. KENNEDY. I intend to press for adoption of these provisions. The security of our Nation's water supply is crucial to the health and well-being of our citizens.

Mr. GREGG. I concur, and I intend to press for adoption of these provisions.

Mr. FRIST. I agree and you have my commitment to do the same.

Mr. SMITH. I again would like to thank my colleagues for agreeing to fight for these provisions during conference. It was with great reluctance that Senator JEFFORDS and I agreed to allow S. 1765 to be brought to the floor without our legislation included so that we can move forward on this important bill and conference it with the House. However, it is important that these immediate needs be addressed and that our proposals be included in the final legislation. I look forward to working with my colleagues to ensure that the provisions we agreed to that comprise the modified versions of S. 1593 and S. 1608 are included in the bioterrorism bill.

Mr. JEFFORDS. Finally, I want to commend Senators KENNEDY, FRIST, and GREGG and say that I am looking forward to working with them during the conference on these measures.

Mr. KENNEDY. Mr. President, I urge the Senate to approve this important bipartisan legislation to respond to one of the most severe dangers our country faces, the grave threat of bioterrorist attacks. I commend my colleagues Senator FRIST and Senator GREGG for their impressive continuing leadership on this vital issue.

We are all well aware of the emergency we face. In recent weeks, a handful of anthrax cases stretched our health care system to the breaking point. A larger attack could be a disaster, and the attack of the past weeks has clearly sounded the alarm. The clock is ticking on America's preparedness for a future attack. We've had the clearest possible warning, and we can't afford to ignore it. We know that lives are at stake, and we're not ready yet.

The Department of Health and Human Services has made anthrax vaccine available to workers at risk for exposure to the deadly spores, but there has been few plans to distribute the vaccine and inform workers about the risks and benefits of vaccination. In a major outbreak, our public health agencies and hospitals would be strained to the breaking point by the task of providing vaccinations against anthrax, smallpox, or other deadly plagues to thousands or even millions of Americans. Some cities have already developed plans and procedures for providing care to patients affected by bioterrorism, but too few communities are adequately prepared.

The needs are great. A summit meeting of experts on bioterrorism and public health concluded that $835 million was needed just to address the most pressing needs for public health at the State and local levels.

The National Governors Association has said that States need $2 billion to improve readiness for bioterrorism. John Hopkins Hospital is spending $7.5 million to improve its ability to serve as a regional bioterrorism resource for

Baltimore. Equipping just one hospital to this level in each of 100 cities across America would cost $750 million.

The Appropriations Committee has recognized the importance of significant investments in bioterrorism preparedness. The Department of Defense conference bill provides as important down payment for the Nation's needs for bioterrorism preparedness. I commend Senator BYRD, Senator STEVENS, Senator INOUYE, Senator HARKIN, and Senator SPECTER for their impressive leadership in this area. In particular, they have begun to address the basic issue of State and local preparedness and the readiness of hospitals to deal with bioterrorism by providing $1 billion for these purposes.

The need for help at the State and local level is especially urgent. In the first 3 weeks of October alone, state health departments spent a quarter billion dollars responding to the anthrax attack. Many departments were forced to put aside other major public health responsibilities.

Massachusetts has suspended many public health activities other than bioterrorism, and has fielded over 2,000 calls from worried residents, each one taking half an hour of time for personnel. South Dakota has had to suspend an investigation of serious food poisoning outbreak to investigate rumors of anthrax attacks, even though no actual attack appears to have occurred. The Georgia Health Department has spent 3,000 person-hours just in 1 week on anthrax.

Hospitals across the country have immediate needs. According to the American Public Health Association, hospitals are hard-pressed even during a heavy flu season, and could not cope with a lethal contagious disease like smallpox.

The Bioterrorism Preparedness Act we are proposing will address these deficiencies. It provides new resources for bioterrorism preparedness to the States under a formula that guarantees help to each State. These resources will be available to improve hospital readiness, equip emergency personnel, enhance State planning, and strengthen the ability of public health agencies to detect and contain dangerous disease outbreaks.

The need is great at the State and local level, but gaps need to be addressed at the Federal level too.

So far, we have had only a handful of patients diagnosed with anthrax, but our resources have been stretched to the breaking point. We can't afford further delays in meeting these critical needs.

Ft. Detrick, one of our two national reference laboratories, processed over 19,000 samples after the attacks began, and they are already stretched to the limit.

The story was the same at CDC. Usually, a few dozen CDC experts respond to a disease outbreak. But CDC assigned nearly 500 specialists to the anthrax attacks. One out of eight employees at CDC headquarters in Atlanta is working on the current outbreak. Staffers worked round the clock and slept in hallways and only 18 cases of actual illness was known.

In a recent article, CDC Director Koplan summed up the situation this way:

> Right now, we are working flat out. I keep thinking, if you know you;re in a marathon, you pace yourself for a marathon; if you know you're in a sprint, ou pace yourself for a sprint. But our guys are sprinting, and the sprint distance is long over. We're sprinting a marathon.

The diversion of resources to anthrax has also led to the neglect of other important health priorities. According to a recent article in the Chicago Tribune, CDC has had to postpone programs to prevent meningitis among college students. They've delayed the development of vaccines urgently needed to combat diseases in the developing world. They've deferred activities to contain the spread of deadly infections resistant to antibiotics. Hawaii is facing a serious outbreak of dengue fever. When local health authorities asked CDC to analyze lab samples, they were told that no facilities were available due to the anthrax outbreak. Instead, the Hawaii doctors had to send their important samples to a lab in Puerto Rico for analysis.

Dr. David Satcher, the Surgeon General, recently said that the country ''should be ashamed of the condition of the laboratories of the CDC.'' These vital national resources, he said, were without power for 15 hours during the early days of the anthrax outbreak. Computers are covered in plastic to protect them from leaky roofs, and termites have chewed holes through laboratory floors.

Dr. Satcher is right to call this problem a national disgrace. We cannot continue to expect the CDC to do a first class job, if we provide only third-rate facilities.

Clearly, our legislation is an important downpayment on preparedness. But we must make sure that our commitment to achieving full readiness is sustained in the weeks and months to come.

Since September 11, the American people have supported our commitment of billions of dollars and thousands of troops to battle terrorism abroad. But Americans also want to be safe at home. We have an obligation to every American that we will do no less to protect them against terrorism at home than we do to fight terrorism abroad.

Federal stockpiles of antibiotics, vaccines, and other medical supplies are an essential part of the national response. We have a strategic petroleum reserve to safeguard our energy supply in times of crisis. We need a strategic pharmaceutical reserve as well, to ensure that we have the medicines and vaccines stockpiled to respond to bioterrorist attacks. Our legislation establishes this reserve, and authorizes the development of sufficient smallpox and other vaccines to meet the needs of the entire U.S. population.

The legislation will also help protect the safety of the food supply, through increased research and surveillance of dangerous agricultural pathogens.

Our legislation draws on the work and suggestions of numerous colleagues on both sides of the aisle. One of the important areas addressed in the legislation is the threat of agricultural bioterrorism. Deliberate introduction of animal diseases could pose rave dangers to the safety of the food supply. Such acts of agricultural bioterrorism would also be economically devastating. The outbreaks of ''mad cow'' disease in Europe cost over $10 billion, and the foot and mouth outbreak cost billions more. We must guard against this danger.

Protecting the safety of the food supply is a central concern in addressing the problem of bioterrorism. Senator CLINTON, Senator MIKULSKI, Senator HARKIN, Senator COLLINS, and Senator DURBIN have all contributed thoughtful proposals about food safety. Our bill will enable FDA and USDA to protect the Nation's food supply more effectively.

We are grateful for the leadership of other Senators who have made significant contributions to this legislation. Senator BAYH and Senator EDWARDS contributed important proposals on providing block grants to States, so that each State will be able to increase its preparedness. Their proposals ensure that each state will receive at least a minimum level of funding.

We are also grateful for the contributions that many of our distinguished colleagues have made to meet the special needs of children. Senator DODD, Senator COLLINS, Senator CLINTON, Senator DEWINE and Senator MURRAY have emphasized the crucial needs of children in any plan to deal with bioterrorism. The legislation includes significant initiatives to provide for the special needs of children and other vulnerable populations.

The events of recent weeks have also shown the importance of effective communication with the public. Our legislation incorporates proposals offered by several of our colleagues on improving communication. Senator CARNAHAN has recognized the importance of the internet in providing information to the public. The legislation includes the provisions of her legislation to establish the official Federal internet site on bioterrorism, to help inform the public.

Senator MIKULSKI also contributed provisions on improving communication with the public. A high-level, blue-ribbon task force can provide vitally needed insights on how best to provide information to the public. Senator MIKULSKI also recommended ways to ensure that states have coordinated plans for communicating information about bioterrorism and other emergencies to the public.

The Centers for Disease Control and Prevention have a leading role in responding to bioterrorism. Senator CLELAND has been an effective and skillful advocate for the needs of the CDC. Our legislation today incorporates many of the proposals in his legislation on public health authorities.

Hospitals are also one of the keys to an effective response to bioterrorism. We must do more to strengthen the ability of the Nation's hospitals to cope with such attacks. Senator CORZINE has proposed to strengthen designated hospitals to serve as regional resources for bioterrorism preparedness. I commend him for his thoughtful proposals, which we have incorporated in the legislation.

We must also ensure that we monitor dangerous biological agents that can be used for bioterrorism. There is a serious loophole in current regulations, and we are grateful for the proposals offered by Senator DURBIN and Senator FEINSTEIN to achieve more effective control of these pathogens.

In a biological threat or attack, mental health care will be extremely important. We are indebted to Senator WELLSTONE for his skillful and compassionate advocacy for the needs of those with mental illnesses. In the event of a terrorist attack, thousands of persons would have mental health needs, and our legislation includes key proposals by Senator WELLSTONE to meet these needs.

Mobilizing the Nation's pharmaceutical and biotech companies so that they can fully contribute to this effort is also critical. Senator LEAHY, Senator HATCH, Senator DEWINE, and Senator KOHL made thoughtful contributions to the antitrust provisions of the bill, which will help encourage a helpful public-private partnership to combat bioterrorism.

This legislation is urgent because the need to prepare for a bioterrorist attack is urgent. I urge my colleagues to approve this legislation, so that the American people can have the protection they need.

Mr. FRIST. Mr. President, I am thankful to be able to come to the floor today, along with many of my colleagues, to announce the Senate passage of the Frist-Kennedy Bioterrorism Preparedness Act of 2001. Over the past several weeks, we have been working in a bipartisan manner to address this critical issue, and I am grateful for the work of Senators GREGG, KENNEDY, and others. Everyone has worked very hard to get us to this point, and I will continue to work with them in conference to ensure final passage of this crucial legislation.

I am also thankful for the work of my colleagues to ensure that there is an appropriate level of funding for bioterrorism preparedness and response activities that will be available immediately. I commend Senators STEVENS, BYRD, SPECTER, INOUYE, and ROBERTS and others for their strong support in securing the necessary funding. With the passage of the latest appropriations bills, we have secured well over $2.5 billion for bioterrorism activities in addition to those provided for agroterrorism. I am also pleased with the level of funding for State and local preparedness and response activities—at least $1 billion—which is one of my top priorities.

However, our efforts cannot end when the funding is secured. We must provide greater guidance and authorities through an authorization bill, which is why final passage of a bioterrorism authorization bill is equally important. Both the House and the Senate have signaled the need for increased authorization with the passage of the Tauzin-Dingell Public Health Security and Bioterrorism Response Act of 2001 and the Frist-Kennedy Bioterrorism Preparedness Act of 2001. We must work together in conference to ensure final passage.

A variety of increased authorizations are necessary to protect our food supply, prevent agroterrorism, develop appropriate countermeasures, and ensure appropriate State and local preparedness and response. For example, in the Frist-Kennedy Bioterrorism Preparedness Act of 2001, we have greatly expanded the ability to protect our Nation's food supply by increasing authorities for the Department of Agriculture and the Food and Drug Administration.

We need to ensure that our food supply is safe. With 57,000 establishments under its jurisdiction and only 700–800 food inspectors, including 175 import inspectors for more than 300 ports of entry, the Food and Drug Administration (FDA) needs increased resources for inspections of imported food.

Our legislation grants FDA needed authorities to ensure the safety of domestic and imported food. It allows FDA to use qualified employees from other agencies and departments to help conduct food inspections. Any domestic or foreign facility that manufactures or processes food for use in the U.S. must register with FDA. Importers must provide at least four hours notice of the food, the country of origin, and the amount of food to be imported. FDA's authority is made more explicit to prevent ''port-shopping'' by marking food shipments denied entry at one U.S. port to ensure such shipments do not reappear at another U.S. port.

This bill also gives additional tools to FDA to ensure proper records are maintained by those who manufacture, process, pack, transport, distribute, receive, hold or import food. The FDA's ability to inspect such records will strengthen their ability to trace the source and chain of distribution of food and to determine the scope and cause of the adulteration or misbranding that presents a threat of serious adverse health consequences or death to humans or animals. Importantly, the bill also enables FDA to detain food for a limited period of time while FDA seeks a seizure order if such food is believed to present a threat of serious adverse health consequences or death to humans or animals. The FDA may also debar a person who engages in a pattern of seeking to import such food.

This important legislation also includes several measures to help safeguard the nation's agriculture industry from the threats of bioterrorism. Toward this end, it contains a series of grants and incentives to help encourage the development of vaccines and antidotes to protect the nation's food supply, livestock, or crops, as well as preventing crop and livestock diseases form finding their way to our fields and feedlots.

It also authorizes emergency funding to update and modernize USDA research facilities at the Plum Island Animal Disease Laboratory in New York, the National Animal Disease Center in Iowa, the Southwest Poultry Research Laboratory in Georgia, and the Animal Disease Research Laboratory in Wyoming. Also, it funds training and implements a rapid response strategy through a consortium of universities, the USDA, and agricultural industry groups.

No one has worked harder on these agricultural provisions than my colleague Senator ROBERTS. I know he understands deeply the threat that we face in these areas and has helped provide real leadership in pointing the way to solutions.

Additionally, the Frist-Kennedy ''Bioterrorism Preparedness Act of 2001'' expands our nation's stockpile of smallpox vaccine and critical pharmaceuticals and devices. The bill also expands research on biological agents and toxins, as well as new treatments and vaccines for such agents and toxins.

Since the effectiveness of vaccines, drugs, and therapeutics for many biological agents and toxins often may not ethically be tested in humans, this crucial legislation ensures that the FDA will finalize by a date certain its rule regarding the approval of new priority countermeasures on the basis of animal data. Priority countermeasures will also be given expedited review by the FDA.

Because of the limitations on a market for vaccines for these agents and toxins, our legislation gives the Secretary of HHS authority to enter into long-term contracts with sponsors to ''guarantee'' that the government will purchase a certain quantity of a vaccine at a certain price.

This legislation also provides a limited antitrust exemption to allow potential sponsors to discuss and agree upon how to develop, manufacture, and produce new priority countermeasures, including vaccines, and drugs. Federal Trade Commission and the Department of Justice approval of such agreements is required to ensure such agreements are not anti-competitive. I appreciate the work of Senator HATCH and his advice in crafting the antitrust language.

These FDA authorities and market incentives—which can only be provided

by additional authorizing legislation—are critical to the rapid development of vaccines and other countermeasures. I want to thank Senators HUTCHINSON and COLLINS for their important work with this portion of the bill.

Both the House and Senate bills also include protections, similar to those currently provided to those who join the National Guard, to help protect the employment rights of medication volunteers within the National Disaster Medical Response System (NDMS). The bills also extend necessary liability protections to those volunteers. Senator ENZI provided beneficial advice about how to craft this portion of the legislation.

Moreover, both bills contain additional measures to assist with the tracking and control of biological agents and toxins. With respect to the control of biological agents and toxins, the Secretary of Health and Human Services is required to review and update a list of biological agents and toxins that pose a severe threat to public health and safety and to enhance regulations regarding the possession, use and transfer to such agents or toxins.

Again, these needed protections will not go into effect until we pass authorizing language.

Although the ''Public Health Threats and Emergencies Act of 2000'' established basic grant programs to assist with strengthening the public health infrastructure, the language was based on the assumption that each year five more states would receive enough money to be prepared for a bioterrorist attack. Given the recent set of events, we cannot wait 10 more years for our public health infrastructure to be strengthened.

We must put in place a mechanism to ensure that every state has sufficient funding to improve their public health infrastructure so that they are able to respond to a potential biological attack.

I agree that we must provide resources necessary to develop smallpox and other needed vaccines, drugs, and biologics to counter potential biological agents. But it is even more important that we provide needed resources to those who will be on the front-lines in responding to a potential attack. Hospitals and other medical facilities must become better prepared to respond and to deal with the public health emergency after such an attack. And doctors, nurses, firefighters, police, and emergency medical response personnel need better training and equipment to combat biological threats and provide needed treatment.

Therefore, the two new grant programs included in the ''Bioterrorism Preparedness Act''—the State Bioterrorism grant program and the Designated Bioterrorism Response Medical Center program—are essential.

Finally, our legislation would also ensure that we enhance coordination among local, state and federal agencies responsible for responding to a biological attack, and that this response appropriately deals with the special needs of children and other vulnerable populations.

Almost half of all public health departments serve jurisdictions whose emergency response plans do not address incidents of bioterrorism. Agencies have not determined a single list of biological agents likely to be used in a biological attack, several agencies have not been consulted in crafting the list or determining an overall emergency response plan, and agencies have developed programs to provide assistance to state and local governments that are similar and potentially duplicative.

The Bioterrorism Preparedness Act of 2001 establishes an Assistant Secretary for Emergency Preparedness at HHS to coordinate all functions with the Department relating to emergency preparedness, including preparing for and responding to biological threats or attacks. It also creates a federal interdepartmental Working Group on Bioterrorism that consolidates and streamlines the functions of two existing working groups first established under the ''Public Health Threats and Emergencies Act of 2000.''

Recent reports regarding the treatment of children during the anthrax scare, including the cutaneous anthrax case in a 7 month old boy, have highlighted the need to more fully address the special needs of children when responding to bioterrorism attacks. Within the Frist-Kennedy ''Bioterrorism Preparedness Act of 2001,'' numerous provisions were added to specifically address this critical issue, with the emphasis on streamlining the language so that the children's health and welfare issues were considered in concert with the general provision of services. These provisions include a specific reference that the vaccines, therapies and medical supplies within the stockpile appropriately address the health needs of children and other vulnerable populations; requiring the Working Group to take into consideration the special needs of children and other vulnerable populations; establishing the National Task Force on Children and Terrorism—an advisory committee of child health experts on infectious disease, environmental health, toxicology, and other relevant professional disciplines—to offer advice to the Secretary; along with other crucial additions. I want to thank Senators DODD, DEWINE, COLLINS, and CLINTON for their assistance in crafting appropriate language to address the special needs of children and other vulnerable populations.

Along with my colleagues, I am appreciative of the steps we have taken thus far to ensure that we are prepared to respond to biological threats or attacks, and I look forward to continuing to work with them to ensure final passage of bioterrorism authorization legislation. I want to thank Senator JEFFORDS and Senator BOB SMITH for their input and advice regarding water safety and how we should more adequately protect our nation, Senators SESSIONS and SHELBY for their important input on the various training activities, and Senator LIEBERMAN for his crucial input regarding our disease surveillance and coordination infrastructure. I look forward to continuing to work with all of the Senators and their staff.

I must also commend Senator KENNEDY again for his efforts. He has been a true partner on this bill and the Frist-Kennedy ''Public Health Threats and Emergencies Act of 2000,'' which we signed into law last year.

Finally, I want to thank my staff—Allen Moore, Dean Rosen, Helen Rhee, Craig Burton, Allison Winnike, and Shana Christrup—as well as the staff of other Senate offices for all of their efforts, including Vince Ventimiglin, Katy French and Steve Irizarry of Senator GREGG's staff; David Nixon, David Bowen, David Dorsey, and Paul Kim of Senator KENNEDY's staff; John Mashburn of Senator LOTT's staff; Stacey Hughes of Senator NICHLES' staff; Abby Kral of Senator DEWINE's staff; Claire Bernard and Priscilla Hanley of Senator COLLINS' office; Kate Hull of Senator HUTCHINSON's staff; Raissa Geary of Senator ENZI's staff; Laura O'Neill of Senator SESSION's office; Debra Barrett and Jim Fenton of Senator DODD's staff; and Bruce Artim and Patty DeLoatche of Senator HATCH's staff. Their tireless work has been essential in assisting us in getting this far.

Mr. LIEBERMAN. Mr. President, I rise to discuss the Senate's action this evening on bioterrorism. Today, the Senate has taken an important step toward improving the Nation's ability to prepare for, and respond to, the threat of bioterrorism by adopting legislation, authored by Senator KENNEDY and Senator FRIST, and of which I am a cosponsor. The Senate bill, S. 1765, recognizes that any meaningful improvement in this area must begin with improvements in the Nation's public health system, a fact underscored by a series of hearings conducted by the Committee on Governmental Affairs on bioterrorism earlier this year. As a result of those hearings, I believe that there are several areas in which the Senate bill could be further strengthened especially in terms of the way the Federal Government's efforts to combat bioterrorism are organized. In anticipation of Senate consideration, I prepared an amendment to the original Kennedy/Frist bioterrorism bill, S. 1715, to address these concerns. However, given Senate's interest in acting on this important measure before adjournment, I agreed to defer offering this amendment at this time. I do, however, believe that the underlying issues need to be addressed

Specifically, I would like to see additional attention given to bioterrorism within the Centers for Disease Control and Prevention, CDC. The underlying bill recognizes the need to strengthen

CDC bioterrorism role. Currently, CDC's bioterrorism activities are currently coordinated by the Bioterrorism Preparedness and Response Program within the National Center for Infectious Diseases. While many of the agents of concern are infectious diseases, many are not, including toxins and chemical agents. Even more to the point, many of the elements of the CDC bioterrorism program actually reside in other Programs and Centers. The pharmaceutical stockpile program resides within the National Center of Environmental Health. The Health Alert Network is in the Public Health Practices Program. Surveillance and detection activities are in the Epidemiology Program Office. Coordination of these activities, competition for resources, and line authority is a major problem. The importance and unique nature of the bioterrorism mission also requires creation of a separate ''intellectual'' center.

The underlying bill also recognizes both the importance of expanding the role of HHS within the Government to provide leadership on bioterrorism preparedness and response. In addition, it recognizes the need to coordinate such activities within the many parts of HHS, including FDA, CDC, OEP, NIH, etc. The amendment would codify basic government management responsibilities and tools for the new Assistant Secretary position including agency performance measures, performance evaluation capability, technology verification.

Detection is key to responding to bioterrorism attacks. Although health agencies have surveillance systems, they do not rely upon standard methodologies or real-time data collection. Though some States and localities have also begun to incorporate ''syndromic'' indicators, this practice is not widespread or standardized and they are not integrated into other health data systems. CDC is working on development of a new internet-based system, the National Electronic Disease Surveillance System, NEDSS, but its deployment is many years in the future. The amendment establishes an accelerated deployment schedule, including the development of data collection and reporting protocols, in consultation with state and local health agencies.

CDC has initiated an internet-based Health Alert Network to provide real-time information to state and local health officials. Unfortunately, a number of States are not yet included in the network and very few county and municipal health departments are included. The amendment would establish an accelerated schedule for deployment.

Lack of interoperability of communication systems, and more recently in IT systems, is a long-standing problem in emergency response among federal agencies, much less between federal and state agencies. The underlying bill recognizes the need for better interagency coordination through the creation of an interagency working group. The amendment would specifically charge the group with addressing interoperability of IT and communication systems and give the Secretary of HHS authority to provide technical and financial support to resolve such problems.

The amendment would require the Secretary of HHS to contract with the Institute of Medicine to analyze the response of the public health system of the recent anthrax attacks and provide a ''lessons-learned'' report to help guide improvements at the federal, state, and local level.

Finally, I would note that the House bill also recognizes the need to improve our public health surveillance and communications systems. The House bill also seeks to incorporate performance measures as part of expanded bioterrorism program in a manner similar to what I propose. Now that Senate has acted, I look forward to working with the conferees to ensure that our Nation is prepared for meeting this new threat.

I ask unanimous consent that the amendment that I was prepared to submit, be printed in the RECORD.

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

AMENDMENT NO.—

On page 11, between lines 19 and 20, insert the following:

''(d) NATIONAL CENTER FOR BIOTERRORISM.—There is established within the Centers for Disease Control and Prevention a National Center for Bioterrorism, to develop, manage, and provide scientific and medical capabilities to prepare for, and respond to, bioterrorism attacks, including—

''(1) analyzing and applying intelligence and threat assessment information to the preparation, development and stockpile of vaccines, antibiotics and other pharmaceuticals, medical training, and other preparation and response capabilities;

''(2) detecting biological and chemical agents, detecting and conducting surveillance, and making a diagnosis of related diseases;

''(3) disease investigation and mitigation; and

''(4) the provision of guidance to Federal, State, tribal, and local officials, concerning preparation for and response to bioterrorism attacks.''.

On page 13, strike line 3.

On page 13, line 7, strike the period and insert a semicolon.

On page 13, between lines 7 and 8, insert the following:

''(3) coordinate the standards and interoperability of information technology and communications systems within the Department of Health and Human Services and among Federal, State, tribal, and local health officials and health service providers relevant to emergency preparedness and biological threats or attacks;

''(4) develop and maintain advanced health surveillance systems to provide early warning of natural disease outbreaks or bioterrorist attacks to Federal, State, tribal, and local health officials and to aid response management; and

''(5) develop and maintain a program to continuously evaluate the capabilities and vulnerabilities of the national health and emergency preparedness plans and systems to identify and respond to natural disease outbreaks or bioterrorist attacks, including the establishment of performance measures.

''(c) EVALUATION GROUP AND EXERCISES.—

''(1) IN GENERAL.—The Assistant Secretary for Emergency Preparedness shall establish an evaluation group, to be composed of at least 10 individuals who are experts on public health preparedness and bioterrorism from both within and without the federal government, to test and evaluate the capabilities and vulnerabilities of the national health and emergency preparedness plans and systems to identify and respond to natural disease outbreaks or bioterrorist attacks on a continuous basis, including the conduct of local, regional, and national-scale exercises.

''(2) ANNUAL REPORT.—At least annually, the evaluation group established under paragraph (1) shall prepare and submit to the Secretary and to the Committee on Health, Education, Labor and Pensions, the Committee on Governmental Affairs, and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce, Committee on Government Reform, and the Committee on Appropriations of the House of Representatives a report concerning the results of the tests and evaluations conducted under paragraph (1).

''(d) PERFORMANCE MEASURES.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Assistant Secretary for Emergency Preparedness, in cooperation with the evaluation group established under subsection (c)(1), shall establish a system of performance measures to evaluate responses to bioterrorism threats and vulnerabilities. Such system shall establish benchmarks and evaluate the corresponding roles and performances of agencies with responsibilities for bioterrorism responses in Federal, State, tribal, and local governments.

''(2) REPORT.—Not later than 30 days after the date on which the system is established under paragraph (1), the Assistant Secretary for Emergency Preparedness shall prepare and submit to the Secretary, and to the appropriate committees of Congress, a report concerning the performance measures and evaluations developed as a part of the system.

''(3) REVISIONS.—The Assistant Secretary for Emergency Preparedness, in cooperation with the Evaluation Group, shall periodically review and revise the performance measures developed under paragraph (1) and promptly report any revisions to the Committee on Health, Education, Labor and Pensions, the Committee on Governmental Affairs, and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce, the Committee on Government Reform, and the Committee on Appropriations of the House of Representatives.

''(e) TECHNOLOGY VERIFICATION.—The Assistant Secretary for Emergency Preparedness shall establish a technology verification group from among relevant agencies of the Federal Government, including the Department of Defense, the Centers for Disease Control and Prevention, the Federal laboratories, and the National Institute for Standards and Technology. Such group, in consultation with appropriate representatives of the private sector, shall—

''(1) evaluate, test, and verify the performance of promising technologies for reducing and responding to bioterrorism threats;

''(2) make recommendations to relevant Federal, State, and local agencies for the acquisition of successful technologies that can significantly reduce bioterrorism threats; and

''(3) prepare and submit to the Committee on Health, Education, Labor and Pensions,

the Committee on Governmental Affairs, and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce, the Committee on Government Reform, and the Committee on Appropriations of the House of Representatives, a report concerning the recommendations made under paragraph (2).

On page 17, between lines 8 and 9, insert the following:

''SEC. 2815. NATIONAL HEALTH SURVEILLANCE SYSTEM.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary, acting through the Assistant Secretary for Emergency Preparedness, shall establish a National Health Surveillance System that utilizes computerized information systems and the Internet to provide early warning of natural disease outbreaks or bioterrorist attacks to Federal, State, tribal, and local health officials and assist such officials in response management.

''(2) USE OF EXISTING SYSTEMS.—Such system, to the maximum extent feasible, shall utilize existing health care data systems of primary care providers, health insurance and reimbursement programs, and other sources of health information including those maintained by Federal, State, tribal and local health agencies.

''(b) DATA AND INFORMATION STANDARDS.—Not later than 12 months after the date of enactment of this title, the Assistant Secretary for Emergency Preparedness, in cooperation with medical providers and State and local public health officials, shall identify the nature and manner of health surveillance data to be compiled for purposes of subsection (a) and shall establish standards and procedures to ensure the standardization and interoperability of such data.

''(c) COLLECTION AND ANALYSIS CAPABILITY.—As soon as practicable, but not later than 36 months after the date of enactment of this title, the Assistant Secretary for Emergency Preparedness shall establish the mechanisms and information systems necessary for the collection and rapid real time evaluation of data transmitted for purposes of subsection (a) concerning public health and bioterrorist emergencies, and provide such evaluations on at least a daily basis to Federal, State, tribal, and local public health and emergency authorities.

''(d) ASSISTANCE TO STATE AND LOCAL HEALTH AGENCIES AND HEALTH CARE PROVIDERS.—The Assistant Secretary for Emergency Preparedness may provide technical, material, and financial assistance to State, tribal, and local public health agencies, health providers, and other entities that the Assistant Secretary recommends participate in the surveillance system developed under this section.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $120,000,000 for fiscal year 2002 to carry out this section.

''SEC. 2816. NATIONAL HEALTH ALERT NETWORK.

''(a) IN GENERAL.—The Secretary, acting through the Assistant Secretary for Emergency Preparedness, shall establish and maintain a National Health Alert Network, that utilizes, to the maximum extent practical, advanced information and Internet technology.

''(b) REQUIREMENTS.—The network established under subsection (a) shall—

''(1) be capable of the timely transmission of emergency medical information and information identifying potential and ongoing public health and bioterrorism emergencies to all appropriate Federal health authorities, to all State and local public health authorities, and to hospitals and other medical practitioners in affected areas; and

''(2) include data on the medical nature of the emergency, recognition of disease symptoms, the possible scope of infections, recommended treatments, the sources and availability of appropriate medicines, and such other data as may be recommended by the Secretary.

''(c) IMPLEMENTATION OBJECTIVES.—Not later than 180 days after the date of enactment of this title, the Secretary shall ensure that all State public health departments are connected to the network established under subsection (a). Not later than 1 year after such date of enactment, the Secretary shall ensure that all municipal public health agencies in municipalities with populations larger than 250,000 persons, as well as all county and tribal public health agencies, are included in the network.

''(d) ASSISTANCE TO STATE AND LOCAL HEALTH AGENCIES.—The Secretary may provide technical, material, and financial assistance to State and local public health agencies, health providers, and other entities that the Assistant Secretary for Emergency Preparedness recommends for participation in the network.

''(e) REPORTING REQUIREMENT.—The Secretary shall prepare and submit to the appropriate committees of Congress reports describing the progress made by the Secretary in implementing the network described in subsection (a). Such reports shall be submitted—

''(1) not later than 1 year after the date of enactment of this title;

''(2) at such times as the Secretary determines to be appropriate after the completion of each phase of the implementation objectives described in subsection (c); and

''(3) annually thereafter as determined appropriate by Congress.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $100,000,000 for fiscal year 2002 to carry out this section.''.

On page 19, line 3, strike ''Section'' and insert ''(a) IN GENERAL.—Section''.

On page 21, line 8, strike ''and''.

On page 21, line 11, strike the period and insert ''; and''.

On page 21, between lines 11 and 12, insert the following:

''(11) coordinate and standardize data and communication systems and requirements to ensure the interoperability and seamless data transmission necessary to prepare for, identify, assess, and respond to health emergencies and bioterrorist attacks, including the National Health Surveillance System and the National Health Alert Network.

On page 23, between lines 16 and 17, insert the following:

''(c) TECHNICAL ASSISTANCE AND GRANTS TO ENSURE INTEROPERABILITY.—

''(1) IN GENERAL.—The Secretary, in consultation with the working group, may provide technical and financial assistance to a public or private entity to ensure the interoperability and seamless transmission of data and communications deemed necessary to prepare for, identify, assess, or respond to a health emergency or bioterrorism attack.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $25,000,000 for fiscal year 2002 to carry out this subsection.''.

(b) FORMAL INQUIRY INTO ANTHRAX ATTACKS AND BIOTERRORISM PREPAREDNESS.—

(1) IN GENERAL.—Not later than 45 days after the date of enactment of this Act, the Secretary of Health and Human Services shall enter into a contract with the Institute of Medicine of the National Academy of Sciences for the conduct of a formal independent inquiry into the response of the United States to anthrax attacks throughout the United States Postal System and the state of preparedness for other biological and chemical threats, including the recommendations described in paragraph (2).

(2) COMPLETION AND REPORT.—The inquiry conducted under paragraph (1) shall be completed not later than 270 days after the date on which the contract under such paragraph is awarded. Not later than 30 days after the date on which such inquiry is completed, the Secretary of Health and Human Services shall submit to the appropriate committees of Congress a report concerning the results of such inquiry, including the recommendations of the Institute of Medicine concerning the preparedness of the United States for future bioterrorism attacks (including recommendations for both occupational and public safety).

Mr. BIDEN. Mr. President, the final day of a legislative session often brings a flurry of activity as bills get unjammed, compromises emerge, and the Senate produces progress on important issues. Depending upon one's perspective, these last-minute actions include both good things and bad things. Nevertheless, I think we all can agree that today's passage of the Bioterrorism Preparedness Act is a real accomplishment in improving America's homeland defense. This bill authorizes $3.25 billion for comprehensive measures to take the first step in improving our nation's capability, in the event of a biological weapons attack, to respond quickly, contain the attack, and treat the victims. I want to applaud Senators KENNEDY and FRIST for coming together in a bipartisan spirit and displaying real leadership in drafting this bill.

When Sam Nunn testified in early September before the Foreign Relations Committee on the threat posed by biological weapons, he was very clear—bioterrorism is a direct threat to the national security of the United States and we need to invest the necessary resources to counter this threat accordingly. As troubling as the recent spate of anthrax by mail attacks was, we were very fortunate that this was a comparatively small-scale attack. Eighteen Americans contracted inhalation or cutaneous anthrax; unfortunately, five individuals died. The next time a biological weapons attack occurs, we may not be so fortunate in dealing with a small number of victims who emerge over a period of weeks and months. Instead, we may face thousands of victims flooding local emergency rooms and overwhelming our hospitals in a matter of hours.

Let's be real here—the anthrax attacks, as small-scale as they may have been, have greatly stressed our national public health infrastructure. One out of eight Centers for Disease Control employees at their headquarters in Atlanta is working on the current anthrax outbreak, forcing the CDC to sideline other essential core activities for the time being. Folks, what we have just been through is small potatoes compared to what we potentially will face. Plain and simple, we can't afford to be so under-prepared in the future.

Among Sam Nunn's recommendations for countering biological terrorism, he declared, ''We need to recognize the central role of public health and medicine in this effort and engage these professionals fully as partners on the national security team.'' There are many good things in this bill, ranging from the expansion of the National Pharmaceutical Stockpile to efforts to enhance food safety, but I am especially pleased that the Bioterrorism Preparedness Act provides direct grants to improve the public health infrastructure at the state and local level. Our doctors, nurses, emergency medical technicians, and other public health personnel are our eyes and ears on the ground for detecting a biological weapons attack. We can't afford not to do everything we can to make sure they have the necessary tools and resources in containing any BW attack. This bill goes a long way toward fulfilling that core commitment.

So I am very pleased the Senate today has passed the Bioterrorism Preparedness Act and I look forward to a quick reconciliation of this bill with counterpart House legislation early next year. When this bill was introduced, I had expressed my serious concern that it was ignoring the international aspects to any effective response to potential bioterrorism. As Chairman of the Foreign Relations Committee, I know that we cannot address the threat of bioterrorism within the borders of the United States alone. A biological weapon attack need not originate in the United States to pose a threat to our nation. A dangerous pathogen deliberately released anywhere in the world can quickly spread to the United States in a matter of days, if not hours. The scope and frequency of international trade, travel, and migration patterns offer unlimited opportunities for pathogens to spread across national borders and even to move from one continent to another. Therefore, I continue to believe we need to view all infectious disease epidemics, wherever they occur, as a potential threat to all nations.

It is for this reason that, when the Bioterrorism Preparedness Act was being drafted, Senator HELMS, the distinguished Ranking Member on the Foreign Relations Committee, and I had worked together in seeking to insert provisions in this bill to enhance global disease monitoring and surveillance. With Senator KENNEDY's strong backing, we had sought to ensure the full availability of information (i.e., disease characteristics, pathogen strains, transmission patterns) on infectious epidemics overseas that may provide clues indicating possible illegal biological weapons use or research. Even if an infectious disease outbreak occurs naturally, improved monitoring and surveillance can help contain the epidemic and tip off scientists and public health professionals to new disease that may be used as biological weapons in the future.

The World Health Organization (WHO) established a formal worldwide network last year, called the Global Alert and Response Network, to monitor and track infectious disease outbreaks in every region of the world. The WHO has done an impressive job so far working on a shoestring budget. But this global network is only as good as its components—individual nations. Many developing nations simply do not possess the personnel, laboratory equipment or public health infrastructure to track disease patterns and detect traditional and emerging pathogens. In fact, these nations often just seek to keep up in treating those who have already fallen ill.

Doctors and nurses in many developing countries only treat a small fraction of the patients who may be ill with a specific infectious disease—in effect, they are only witnessing the tip of a potentially much larger iceberg. According to the National Intelligence Council, governments in developing countries in Africa and Asia have established rudimentary or no systems at all for disease surveillance, response or prevention. For example, in 1994, an outbreak of plague occurred in India, resulting in 56 deaths and billions of dollars of economic damage as trade and travel with India ground to a halt. The plague outbreak was so severe because Indian authorities did not catch the epidemic in its early stages. Authorities had ignored or failed to respond to routine complaints a flea infestation, a sure warning signal for plague.

Owing to the lack of resources, developing nations are the weak spots in global disease monitoring and surveillance. Without shoring up these nations' capabilities to detect and contain disease outbreaks, we are leaving the entire world vulnerable to either a deliberate biological weapons attack or an especially virulent naturally occurring epidemic.

For all of these reasons, Senator HELMS and I had worked together in proposing language to authorize $150 million in FY 1001 and FY 2003 to strengthen the capabilities of individual nations in the developing world to detect, diagnose, and contain infectious disease epidemics. The proposed title would have helped train entry-level public health professionals from developing countries and provide grants for the acquisition of modern laboratory and communications equipment essential to any effective disease surveillance network. Upon first glance, $150 million is chump change in a bill that authorizes more than $3 billion. But I have been assured by public health experts that $150 million alone can go a long ways in making sure that developing countries the basic disease surveillance and monitoring capabilities to effectively contribute to the WHO's global network. The bottom line is that these provisions would have offered an inexpensive, common-sense solution to a problem of global proportions.

I was greatly disappointed, therefore, when the White House expressed resistance to the language Senator HELMS and I had worked out and sought to drop it from the final bill. While voicing support for our ideas, the White House believed that the Bioterrorism Preparedness Act should only focus on domestic defenses against bioterrorism and was not the appropriate vehicle for the international programs we proposed.

I strongly disagreed. It doesn't make sense to draw artificial boundaries between ''domestic'' and ''international'' responses to bioterrorism. I have already pointed out that pathogens deliberately released in an attack anywhere in the world can quickly spread to the United States if we are unable to contain the epidemic at its source. The National Intelligence Council has concluded that infectious diseases are a real threat to U.S. national security. To ignore the international arena in favor of domestic solutions alone just doesn't make any sense.

Therefore, when the Bioterrorism Preparedness Act was introduced in November without any provisions to enhance global disease surveillance, I announced my intention to introduce an amendment to ensure this bill would enhance the capabilities of developing nations to track, diagnose, and contain disease outbreaks resulting from both BW attacks and naturally occurring epidemics. This week, the Senate leadership chose to move this bill under an unanimous consent procedure. I initially objected because I strongly believed the Senate should have an opportunity, at the very least, to vote on an amendment to incorporate global disease surveillance activities in the Bioterrorism Preparedness Act. But I understand the urgency of the moment. There is no greater vulnerability in our nation's defenses than against the threat of bioterrorism and it is the responsibility of Congress to act quickly to correct this deficiency.

Therefore, I have chosen, for now, to cease my effort to include this amendment in this bill. Office of Management and Budget Director Mitch Daniels today sent me a letter where he expresses appreciation for the proposals contained in this amendment and recognizes that ''International public health has a critical role to play in protecting the United States and our global partners''. Furthermore, Daniels highlights the Administration's intention to engage in discussions with myself and other interested colleagues on these proposals when the Congress reconvenes in January. I ask for unanimous consent that the full text of this letter be included at the end of this statement in the CONGRESSIONAL RECORD.

I expect the Administration to follow up on this letter by planning and budgeting for improved global pathogen surveillance in Fiscal Year 2003. The need is urgent and our ability to lessen the threat posed by bioterrorism is real.

The steps we take to combat bioterrorism overseas can keep diseases from reaching our shores and will give us vital early warning of new diseases and strains for which we must prepare.

Let me again salute today's passage by the Senate of the Bioterrorism Preparedness Act. While it does not include every essential proposal in enhancing our nation's bioterrorism defenses, it still accomplishes a great deal. If this bill becomes law, which I have no reason to doubt, it is my hope that the Congress will follow up next year with the necessary appropriations to carry out the programs authorized in this bill.

Let me close with an excerpt of testimony from the Foreign Relations Committee hearing on bioterrorism in September from Dr. D.A. Henderson, the man who spearheaded the international campaign to eradicate smallpox in the 1970's. Today, he is the director of the newly-formed Office of Emergency Preparedness in the Department of Health and Human Services, which has the mandate to help organize the federal government's response to future bioterrorist attacks. Dr. Henderson was very clear on the value of global disease surveillance: ''In cooperation with the WHO and other countries, we need to strengthen greatly our intelligence gathering capability. A focus on international surveillance and on scientist-to-scientist communication will be necessary . . .''

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC., December 20, 2001.

Hon. JOSEPH R. BIDEN, Jr.,
U.S. Senate,
Washington, DC.

DEAR SENATOR BIDEN: I very much appreciate the important proposals contained within Title VI of the Kennedy-Frist bioterrorism bill. International public health has a critical role to play in protecting the United States and our global partners from the threat of infectious disease.

As you are aware, the Administration supports the version of the Kennedy bill that does not include Title VI. These issues are critical, however, and I would very much like to resolve them outside the context of the current bioterrorism bill. Your willingness to discuss these matters in the future is critical to the movement of this important piece of legislation and I would welcome the opportunity to engage in these discussions at the beginning of the next session.

Thank you very much for your consideration of this request.

Sincerely,

MITCHELL E. DANIELS, Jr.,
Director.

ADDITIONAL BIOTERRORISM PREPAREDNESS ISSUES

Mr. HATCH. I would like to commend my colleagues, Senators FIRST, KENNEDY, and GREGG for their work in crafting the bipartisan Bioterrorism Preparedness Act. The Act takes a significant step forward in providing the necessary tools to combat future acts of bioterrorism.

Mr. FRIST. I thank the gentleman from Utah for his comments. On behalf of myself, Senator KENNEDY, and Senator GREGG, I also want to thank him for his significant contributions to the legislation, and for his support for this measure.

Mr. HATCH. I understand that there are efforts currently underway to pass this legislation by unanimous consent before the Senate adjourns for the year, and I strongly support those efforts. Because we are trying to clear this measure under a tight time frame, I also understand that there will not be an opportunity to make modifications to the text of the legislation prior to final Senate passage.

Mr. KENNEDY. That is correct.

Mr. FRIST. My friend from Utah is correct.

Mr. HATCH. Before Congress passes a final anti-bioterrorism law, I believe there are several important issues that must be addressed. Because there will not be an opportunity to address these matters before the Senate passes anti-bioterrorism legislation, I strongly believe that the House-Senate conference committee should: (1) permit the approval of priority countermeasures solely based on data from animal studies; (2) clarify the Health and Human Service Secretary's role and authority in distribution, and use of, priority countermeasures and other medical responses to bioterrorist attacks; and (3) provide additional enforcement provisions with respect to prohibiting the unlawful shipment, transportation, and possession of biological agents and toxins.

These issues have not been sufficiently addressed in the legislation before us. We must all recognize that this language the Senate is about to adopt has not been the subject of any congressional committee mark-up. While the extraordinary situation confronting our nation regarding biological attacks requires expeditious action, we also must ensure that there is flexibility in the conference committee to guarantee that novel and, frankly, evolving issues, concerning bioterrorism are adequately addressed. This is what happened during the House-Senate conference of the U.S.A. Patriot Act and, with diligence, we can duplicate that success again.

Mr. GREGG. I agree that the conference committee should address each of the issues that you have raised. I will actively work to ensure that these provisions are included.

Mr. KENNEDY. I concur with my colleague from New Hampshire.

Mr. FRIST. I also agree that these important issues should be addressed during a conference with the House of Representatives and we will call on the Senator from Utah to participate in discussions concerning these issues.

Mr. GREGG. I agree with my colleague from Utah that additional specificity with respect to the language on animal trials would be desirable, particularly with respect to clarifying that the FDA has the authority to promptly promulgate a final rule in this area. I also believe that the Secretary of Health and Human Services should have clear authority to prioritize the distribution of scarce countermeasures under certain circumstances. Finally, I believe there is great value in considering the inclusion in a final bill of intermediate enforcement authority with respect to the unlawful shipment, transport, possession, or other use of biological agents or toxins.

Mr. FRIST. I agree with Senator GREGG. The Senator from Utah can be assured that these issues will receive my active support during conference consideration of this measure.

Mr. KENNEDY. I also agree with Senator GREGG. I thank the Senator from Utah for bringing these important issues to the attention of the Senate. I will look forward to working with him in resolving these issues during the conference.

Mr. HATCH. I also request that my colleagues support the inclusion of provisions to establish an animal terrorism incident clearinghouse.

Mr. GREGG. I will actively support this provision.

Mr. FRIST. I concur with my colleague from New Hampshire.

Mr. KENNEDY. I also believe that this issue should be given serious consideration.

Mr. HATCH. I thank my colleagues for their comments. I look forward to working with them during the conference to ensure that this important legislation is passed by Congress so that our nation can be better prepared to meet the threat of bioterrorism and public health emergencies.

WATER SUPPLY SECURITY

Mr. JEFFORDS. Mr. President, and my distinguished colleagues, I am pleased that we are moving so quickly on legislation to combat bioterrorism—this is certainly a timely issue.

I would like to engage my colleagues in a colloquy to clarify our commitment to another important issue—the security of our Nation's water supply. At the end of October of this year, I was joined by the Ranking Member of the Environment and Public Works Committee in introducing S. 1593 and S. 1608. S. 1593 authorizes the Administrator of the Environmental Protection Agency to establish a grant program to support research projects on critical infrastructure protection for water supply systems. S. 1608 establishes a program to provide grants to drinking water and wastewater facilities to meet immediate security needs.

I understand that the Senator from Tennessee, the Senator from Massachusetts and the Senator from New Hampshire support the modified provisions of these bills. Is that correct?

Mr. FRIST. That is correct.

Mr. KENNEDY. Yes, that is correct.

Mr. GREGG. Yes, that is correct because in the interest of time, we re unable to change the bill prior to conference.

Mr. SMITH of New Hampshire. I too would like to thank Senator FRIST, Senator KENNEDY and Senator GREGG for agreeing to work with us to ensure these two proposals are included in the bioterrorism proposal. I regret that with the end of session quickly approaching, there is not time to incorporate these provisions into the underlying bill. As we all recognized in our support for these proposals, since the September 11th attacks, Americans throughout the country have become concerned about the security of our nation's water supply. While it is widely believed that our water supply is safe, there are a few vulnerabilities that must be addressed. Our bills would provide resources for research into security at facilities and assessment tools while also providing seed money to encourage additional spending on security measures.

Mr. JEFFORDS. Our colleagues on the House side also recognized this need by including water security provisions in the bioterrorism bill, H.R. 3448, that was passed by the House on December 12th. I would like my colleagues' assurance that during conference they will press for adoption of the modified versions of S. 1593 and S. 1608.

Mr. KENNEDY. I intend to press for adoption of these provisions. the security of our nation's water supply is crucial to the health and well-being of our citizens.

Mr. GREGG. I concur, and I intend to press for adoption of these provisions.

Mr. FRIST. I agree and you have my commitment to do the same.

Mr. SMITH of New Hampshire. I again would like to thank my colleagues for agreeing to fight for these provisions during conference. It was with great reluctance that Senator JEFFORDS and I agreed to allow S. 1765 to be brought to the floor without our legislation included so that we can move forward on this important bill and conference it with the House. However, it is important that these immediate needs be addresed and that our proposals be included in the the final legislation. I look forward to working with my colleagues to ensure that the provisions we agreed to that comprise the modified versions of S. 1593 and S. 1608 are included in the bioterrorism bill.

Mr. JEFFORDS. Finally, I want to commend Senators KENNEDY, FRIST, and GREGG and say that I am looking forward to working with them during the conference on these measures.

AMENDMENT NO. 2692

Mr. REID. Mr. President, I understand Senators FRIST, KENNEDY, and GREGG have a substitute amendment at the desk which is the text of S. 1765. I ask unanimous consent that the amendment be considered and agreed to and the motion to reconsider be laid upon the table; that the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table; that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate, without intervening action or debate.

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

The amendment (No. 2692) was agreed to.

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

Mr. LOTT. Mr. President, I thank Senator REID for moving this very important Bioterrorism Preparedness Act forward. I commend Senators FRIST, KENNEDY, and GREGG for their work. We intend to work with the House and get this passed quickly when we return. I thank Senator REID.

Mr. REID. I appreciate everyone's cooperation.

The Presiding Officer (Mr. CORZINE) appointed Mr. KENNEDY, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mr. JEFFORDS, Mr. GREGG, Mr. Frist, Mr. ENZI, and Mr. HUTCHINSON conferees on the part of the Senate.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period for morning business, with Senators allowed to speak for up to 10 minutes each.

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

TERRORISM INSURANCE

Mr. DASCHLE. Mr. President, it was regrettable today that we were unable to gain unanimous consent to take up H.R. 3210, the House terrorism insurance bill, and amend it with a substitute offered by the Senator from Connecticut, Mr. DODD. We made a good-faith effort to address a pressing need, but we found that some of our colleagues insisted on the consideration of amendments that would make it impossible to complete work on this issue in the short time this session of Congress had remaining.

In the wake of September 11th, a number of insurance companies are declining to provide coverage from losses that would result from a terrorist attack. Those policies that are available are often priced so high that they are unaffordable. Senator DODD's proposal would have given them the safety net they need to keep insuring against terrorist risks. In turn, that coverage would allow builders to keep building, businesses to keep growing, and, hopefully, prevent against further economic setbacks.

Our amendment was the product of extensive bipartisan negotiations. It was developed with extensive consultation with a number of Senate Democrats and Republicans—including Senator GRAMM—as well as the White House and the Treasury Department. I am especially appreciative of the enormous commitment of time and energy by the Senator from Connecticut, Mr. DODD, the Chairman of the Banking Committee, Mr. SARBANES, the Chairman of the Commerce Committee, Mr. HOLLINGS, the senior Senator from New York, Mr. SCHUMER, the junior Senator from New Jersey, Mr. CORZINE, and many others from both sides of the aisle.

While we were unable to reach agreement on every point, the proposal incorporated line-by-line suggestions by our colleagues from both sides of the aisle and the Administration. It represented a compromise.

It requires substantial payments by insurance companies before the federal government provides a backstop. The proposal would require the insurance industry to retain the responsibility to pay for up to $10 billion in losses in the first year, and up to $15 billion in losses in the second year or around 7 percent and 10 percent of their annual premiums for each affected company. This legislation would ensure stability in the insurance market so that businesses can afford to purchase insurance.

As this session of Congress drew to a close, and we were forced to operate in an environment that required unanimous consent agreements to do our business, I regret that we were unable to complete our work on this legislation.

Accordingly, the Senate will keep a watchful eye on the insurance market in the coming weeks, and we will take the appropriate action to respond to any problems that arise from the failure to gain approval for the measure we sought to pass today.

Mr. DODD. Mr. President, 3 months ago, our nation suffered devastating terrorist attacks. We are now confronted with one of the many aftereffects of the terrible events of September 11th on our nation. We are faced with the prospect that insurance protecting America's buildings, businesses, homes and workers from terrorist acts will no longer be available.

It is generally accepted that roughly 70 percent of insurance contracts are scheduled to be renewed by year's end. Already, many insurers have announced their intention to withdraw terrorism coverage from new insurance policies.

This is simply because primary insurers, who deal directly with policyholders, have been unable to, in the short term, purchase reinsurance from an unstable reinsurance market. Reinsurers are currently unwilling to write coverage in the face of future catastrophic losses equal in magnitude to those suffered at the World Trade Center.

Without the ability to purchase reinsurance, primary insurers cannot actuarially price policies that incorporate the assumption of catastrophic terrorist losses.

They are faced with two choices. They can seek permission from state

regulators to exclude terrorist acts from all of their policies. Or they can charge incredibly high premiums—rates are nearly certain to go up 500 to 1000 percent of what is presently required. No shareholder could be reasonably expected to allow their insurance company to underwrite the seemingly immeasurable exposure of a terrorist act without drastically raising rates.

Without federal action, we risk either the possibility that our Nation's economy will remain defenseless from a terrorist attack or the possibility that insurance companies will charge unaffordable rates to every American insurance consumer.

Several of us endeavored to draft legislation to provide a short-term remedy aimed to bring stability to the insurance market, to protect taxpayers, and to ensure that bank lending, construction, and other activities vital to our economic health would not be jeopardized.

It is deeply regrettable that this legislation will not be considered by the Senate prior to the end of this session. It is particularly regrettable because the reason that this legislation was not considered had nothing to due with the core issue of terrorism insurance; it had to do with liability reform. Deep-seated differences on the issue created an impasse. That is most unfortunate.

The legislation that Senator SARBANES, Senator SCHUMER and I offered was a modest proposal. It is based on three principles that must be included in any bill on this subject matter.

First, it makes the American taxpayer the insurer of last resort. The insurance industry maintains front-line responsibility to do what it does best: calculate risk, assess premiums, and pay claims to policyholders.

Second, it promotes competition in the current insurance marketplace. Competition is the best way to ensure that the private market assumes the entire responsibility for insuring against the risk of terrorism, without any direct government role, as soon as possible. This bill is a temporary measure only, lasting for 24 months at most.

Third, it ensures that all consumers and businesses can continue to purchase affordable coverage for terrorist acts. Without action, consumers may be unable to get insurance or the insurance available will be unaffordable.

I intend to watch the markets and the economy closely in the coming days and I am prepared to revisit this issue early next year if the need arises.

Mr. LIEBERMAN. Mr. President, I have one simple message regarding the terror insurance legislation. We need to act now, before we adjourn, and we need to get this right. I fear that if we don't act, or don't get this right, we will need to return early in January to address this problem. Unfortunately, it is now obvious that we won't enact this critical legislation. This is irresponsible.

Let me say clearly, my colleague from Connecticut, Senator DODD, should be commended for his valiant effort to secure an agreement. It is not his fault that this did not get done. He has had his eyes focused clearly on the goal line every day on this bill. He has been practical, energetic, tough, and patient. We are not able to act before we leave, but I want to congratulate Senator DODD for his valiant effort.

Let me explain why this issue is so important.

As part of their property and casualty insurance, many businesses have insurance against the costs that arise if their business is interrupted.

If we don't pass an effective terror insurance bill, the government will, in effect, cause massive interruption in the business community. We will create the interruption.

We could have avoided this result by passing this legislation.

Property and casualty insurance is not optional for most businesses.

Not every business owner buys life insurance, but nearly every business buys property and casualty insurance, to protect its property, to protect it against being sued, and to protect its employees under the state workers compensation laws.

Property and casualty insurance is required by investors and shareholders.

It is required by banks that lend for construction and other projects. We all know that home mortgage companies require the homeowners to maintain homeowners property insurance, and it's the same with business lending.

Maintaining property and casualty insurance is mandated as part of the fiduciary obligation to the business.

And if property and casualty insurance for major causes of loss is not available, businesses face a difficult choice about going forward with construction projects, and other ventures.

If no insurance is available, banks won't lend and the business activity that is depending on the loans will stop.

The impact on the real estate, energy, construction, and transportation sectors will be severe.

Insurance companies must be able to ''underwrite'' their policies. This means that they need to be able to assess their exposure or risk of a claim. They need to know if their exposure to claims is acceptable, excessive, or indeterminate.

In the case of claims for damages caused by terrorist strikes, there is no way to assess their risk and no way to underwrite the policy. There are too many uncertainties.

There is only one experience and the experience could not be more troubling.

One thing that is certain, as it was not before September 11, is that losses from terrorist acts can cost tens of billions of dollars. In fact, under worst-case scenarios, losses could easily reach hundreds of billions of dollars.

I recently introduced legislation focusing on the need to develop medicines to treat the victims of a bioterror attack. The Dark Winter exercise simulated a smallpox bioterror attack and it found that 15,000 Americans could die and 80 million could die worldwide. This is why it is so important to develop medicines we can use to contain the infections and deaths. My point here is that we could well have claims much larger than we had with the World Trade Center attack.

There are hundreds of insurers in any given market. It is a highly competitive industry.

But when reinsurers are not renewing their contracts without terrorism exclusions, many if not most of these companies will not be able to provide terrorism coverage—at any cost.

At the business decision level, each individual insurance company considering whether to issue policies that cover terrorism must assess the costs that might result if the terrorists succeed in massive and horrific attacks, perhaps in many areas at which the insurance company may insure various businesses.

Because no one knows where the terrorists might strike, insurers must ask questions like:

How much insured property value are we covering in a given location?

How many workers are we covering under workers' compensation laws, keeping in mind that workers' compensation death claims vary by state but are as high as $1 to 2 million dollars per claim in some jurisdictions, including here in the District.

What would we lose on business interruption claims if damage in a metropolitan area causes a large number of businesses to be shut down by the civil authorities?

What about multiple attacks in different locations?—keeping in mind the coordinated events on September 11.

Unfortunately, at the individual insurer level, capital is finite, and the companies that insure commercial businesses have already taken a major hit due to the September 11 losses, as well as having lost their reinsurance for terrorist acts.

Even a hypothetical good-sized company, one that would be in the top half dozen or so commercial insurers in the U.S., with perhaps 5 percent of the commercial lines market and capital of $7 or $8 billion, would have to ask, do we want to roll the dice on our very survival by writing terrorism coverage?

Because that is what they would be doing absent this legislation, particularly if they incurred a disproportionate share of the losses.

For example, if one or more events caused even $100 billion in insured losses, not that much more than the WTC, and they were lucky enough to have only 3–5 percent of the losses, they'd be severely crippled but might survive. But if their share of the losses was 8–9 percent, they'd be out of business.

That is not a risk that an insurance company can reasonably take. If we do

not pass this legislation, therefore, insurers will be forced to take whatever steps they consider necessary to ensure they do not drive themselves into bankruptcy.

Make no mistake about it. The insurance industry can protect itself by reducing its exposure to terrorism going forward.

There is nothing we can do in the Congress, within the limits of our Constitution, to require insurance companies to write policies.

They don't have to write policies.

If they don't write policies, the companies may not be as profitable in the short run, but they will at least be protecting themselves against insolvency, as any business has to do.

State regulators are already considering terrorism exclusions, as they must do, consistent with their responsibilities to oversee the solvency of the insurance industry.

And absent exclusions, in states where they might not be approved for one reason or another, the insurers will have no choice but to limit their business.

If insurance companies are permitted to write policies with no coverage for claims connected to terrorism, then businesses will have to decide if they will self-insure against these losses. Many of them will conclude that they cannot accept this exposure.

It is clear, therefore, that when we fail to pass this legislation, it will be both the insurance industry and everyone they insure that loses. Insurance companies can protect themselves by not writing policies, or writing only policies without any coverage for acts of terror. But companies that need insurance coverage may have even harsher options.

What will be the effect on individual businesses and ultimately the economic recovery if we do not pass this legislation?

At the individual company level, if a business in what appears to be a potential target area can only buy insurance with a terrorism exclusion, the owners would have to consider whether they want to commit new capital or even sell their current equity interests.

Banks would have to ask whether they could make new loans or perhaps even default existing loans and mortgages, based on their determinations that insurance without coverage for terrorism was unsatisfactory.

If insurers could not exclude terrorism and were forced to reduce their writing generally, the problem could be even worse, at least in whatever areas or for whatever types of business were considered most at risk.

Companies would find that they could not get coverage for their properties or their liability exposure or their workers' compensation liabilities, because insurers were no longer able to provide it.

This is why the real estate industry and a cross section of the business community have been pushing for this legislation.

So, the issue is how we enable insurance companies to determine that the risk of terrorist claims is a risk that they can assume.

That is what this legislation is all about, defining the risk so that insurers can assess and put a price on it.

This legislation is about facilitating insurance companies' ability to continue to write property and casualty insurance policies.

It is about providing business owners with the opportunity to buy insurance against terror claims and doing so in the private market to the extent that is possible.

This is, of course, not the first time we have faced this kind of an issue. The Federal Government has a history of partnering with the insurance industry to provide coverages for risks that are too big, too uninsurable, for the industry alone.

Current examples are the flood, crop, and nuclear liability programs, and in the past we've seen partnerships on vaccine liability and riot reinsurance. From an insurability standpoint, it is beyond dispute that these risks are far more insurable than terrorism, yet we continue to struggle on this bill.

First, the existing programs cover fortuitous or accidental events, unlike terrorism, in which the risk is manmade, with the perpetrators measuring success by how much damage they can cause and how many people they can kill. Second, the dollar exposures are far less under the existing programs. Average annual losses on these programs, flood, crop, and nuclear liability, are probably only about $5 billion combined, a full order of magnitude lower than the losses on September 11 alone.

Some might debate whether we should have passed the existing programs, or whether they are operated efficiently. But there should be no debate about the need for a terrorism program, and we have structured this one the right way, with retentions and loss sharing by the industry so the incentives are there for efficient operations.

This legislative effort has failed in part because there are some who would use this legislation as an opportunity to enact wide-ranging reform of the tort claims system. While I have supported tort reform in the past, it is clear that these reforms are not possible now. If these reforms are attached to the bill, as was the case in the House-passed bill and as proposed in the Senate, the bill will die. This is what has happened.

This legislative effort has failed in part because there are some who would use this legislation as an opportunity to use this legislation as an excuse to enact a wide-ranging and unprecedented venture in Federal regulation of the insurance industry. Some would, for example, seek to impose Federal Government price controls on the property and casualty insurance policies.

If such controls are added to this bill, it is clear that the bill will die. Price controls are obviously unacceptable to many in the Senate and clearly unacceptable to the other body.

A vote for price controls is a vote to collapse the property and casualty insurance market.

Price controls in this sector would distort markets, create incentives to vacate the marketplace, and stifle competition.

We do know that the cost of property and casualty insurance will rise.

The current rates do not contemplate claims for acts of terror. Like it or not, there will have to be price increases to cover the risk of terrorism. The World Trade Center attack was the biggest manmade casualty loss in history. It was the biggest by a multiple of 40 or 50.

The previous biggest manmade loss was the LA riots, which cost less than a billion dollars. The current estimates are that WTC will cost $40 to $50 billion or more.

The WTC losses exceeded the insurance industry's total losses for commercial property & liability coverage, general liability, and workers' compensation combined for the entire 2000 year.

Insurance companies cannot now cover this loss, and restore reserves, without price increases.

Insurance industry is one of the most competitive industries in the U.S.

If rates are rising too high, companies will be falling all over themselves to enter or re-enter the market.

But so far, all signs point in the opposite direction, with insurers and reinsurers running as fast as they can from this—hardly an indication that they're gouging and planning on realizing egregious profits.

There's a state regulatory system in place that can clamp down on rates if insurers overreach—and the bill leaves the state regulators with the full authority to disapprove rates that are excessive.

I can't think of a better way to do the opposite of what we want to do, to prevent the return of a terrorism insurance marketplace, than to impose price controls.

It is clear that the price of terror insurance will be less because of the Federal guarantee. If insurance companies were forced to write terror insurance without this guarantee, they would have to set a worst-case-scenario price. They would have to protect the company from insolvency. It is clear that these rates would make the insurance unaffordable.

Again, however, the problem is that companies would not be able to set a price because of the indeterminate nature of the risk.

This legislative effort has failed in part because there are some who would use this legislation as an opportunity to require the insurance companies to repay the government for its expenditures. This is the case in the House-passed bill.

While requiring payment is intuitively attractive, the financial assistance and payback mechanism in their

bill would discourage the return of a healthy private marketplace.

One of our most important objectives is to encourage the return to the marketplace of insurers and reinsurers. The problem with the House bill's financial assistance and payback approach is that it mutualizes the losses within the program itself, reducing incentives for private innovation in the development of pooling and reinsurance mechanisms. If we're going to sunset this program, we can't provide for mutualization of losses throughout its duration and then expect that there will be a healthy reinsurance market to the day after it terminates.

Even if we did not adopt the other body's first dollar mutualization concept, our objective of building a healthy marketplace, real work practicality considerations, and public policy all argue for not requiring industry payback.

First, a payback requirement would be contrary to our objective of developing a healthy marketplace. A payback requirement would, from day one, raise the specter that in the event of substantial terrorism losses, insurers would not only have to pay their share of the losses but would also have to go to their regulators for substantial rate increases to repay the government—with no guarantees that such rate increases would be allowed. That is not the way to facilitate a healthy marketplace.

Second, from a practical standpoint, let's also recognize that under our bill any government payments would not really go to insurers, that any repayments would not really come from insurers, and that it is the public in either event that will bear the cost of this program.

The government payments are all keyed to amounts paid to claimants, and any repayments would or at least should be funded by policyholders, either indirectly through subsequent rate increases or directly through policyholder surcharges.

Therefore, as long as an insurer's rates for terrorism coverage are based only on its deductible and quota share, government payments would not give a windfall to the insurers. That is of course how rates should be determined, since the state insurance commissioners will have the authority to disapprove excessive or unfairly discriminatory rates.

It is of course the public that will also bear the cost of this program whether or not we require insurers to pay back the government. The costs of any such repayments would ultimately be paid by commercial businesses, which would in turn pass the costs back to the customers, employees, and shareholders, which is to say back to the public.

Finally, from a public policy standpoint, I would refer you to the very simple fact that it is losses caused by terrorist attacks on our country that we are talking about here. It is the responsibility of the government to protect the people against attacks from without and within, and to the extent that terrorists succeed in causing losses that exceed our bill's insurance industry retentions, it is because the government has failed in this most fundamental responsibility. Of all the various programs through which the government and the insurance partner together to provide coverage for risks thought to be uninsurable, this one stands out as presenting the best case for a taxpayer role.

In terms of price, we know that every cent of any funds the Federal government contributes to pay claims will go to the insured, not to the insurance companies.

There is no Federal payment to any insurance company that does not go through to the victims.

This makes it very hard to understand the arguments some have made in the other body about the insurance companies repaying the amounts that the Federal government might contribute.

If the government contributions are passed through to the victims, what is the benefit to the insurance companies that needs to be paid?

Do the companies then increase their rates to cover the cost of the repayment?

If repayment is required, it would have to come, directly or indirectly, from the victims, not the insurance companies.

There are some who would seek to add provisions to the legislation focused on ''cherry-picking,'' that is seeking to reduce the risk of the portfolio of clients and load it with lower risk clients.

Insurance, like other financial services, is a very competitive business—and there are a variety of opportunities for large and small businesses to get coverage, with hundreds of insurers operating in any given market.

For the largest businesses, which are probably most at risk due to the staggering workers' compensation exposures they present, in addition to traditional insurers, there are sophisticated offshore, excess and non-admitted markets they can tap into, as well as other risk-spreading devices.

For the smaller companies, if coverage isn't available from standard private market insurers, most states have legislatively mandated market plans to provide workers' compensation and property insurance.

The insurance industry also has a long history of working together to form pools and reinsurance arrangements so risks that are too difficult for one company can be handled as they've done for aircraft, including those that were hijacked on September 11.

They can do this if we pass this bill to provide them the financial backstop they need.

The fact is that we do not have the expertise to step into this complex arena and set the controls to determine how coverage should be provided and to whom.

Since insurance regulation began, it's been the states that have done the job, and until such time as we're ready to change that and enact a federal regulatory scheme, we should be very careful about our involvement.

At the state level, insurance departments in each state are much closer to their markets, and they have the expertise and the leverage to assess the availability of insurance and to take appropriate steps if there are problems.

I am very disappointed in the failure to enact this legislation. I have supported my Connecticut colleague, Senator DODD, and will continue to work with him to enact this legislation as soon as possible in January. That we have failed to act in this session and may well see unfortunate consequences.

NEXTWAVE SETTLEMENT

Mr. HATCH. Mr. President, I rise to address the issue of wireless spectrum and the importance of its availability and utilization in a struggling economy. On November 28, 2001, the Administration forwarded proposed legislation to Congress to codify a proposed settlement in the NextWave wireless spectrum bankruptcy litigation. We needed to pass this legislation before December 31st in order to avoid nullifying the agreement. Unfortunately, it appears we will not be able to address this settlement before the end of the year because members of this body have expressed their intention to block its consideration on the floor. It is not certain that a similar settlement can be arranged next year—which leaves a significant financial return to the U.S. Treasury in doubt and denies viable industry actors access to essential wireless spectrum which could be a vital tool in jumpstarting the economy.

This is not the first time I have voiced my concerns about the NextWave spectrum controversy. In a letter to then Chairman Kennard of the Federal Communications Commission in October of 2000, I warned him that a premature re-auction of the NextWave licenses would be imprudent while litigation was still pending in the D.C. Circuit. The legal questions went directly to the possessory interests of the spectrum and the validity of the FCC's action to automatically cancel NextWave's licenses upon filing for bankruptcy. The FCC ignored my warning and, in so doing, created untold practical problems and a myriad of legal liability issues.

On June 22 of this year, the D.C. Circuit ruled in favor of NextWave, holding that the FCC violated Section 525 of the Bankruptcy Code. This order essentially nullified Auction 35 in which the FCC preemptively re-auctioned the spectrum licensed to NextWave. Presently, both sides have filed for certiorari with the Supreme Court to ask for

the final disposition of this case. However, there is no certainty that the Supreme Court will agree to review the case, or if it does, when or to whom it will ultimately award the licensing rights to the spectrum. In fact, given the D.C. Circuit's opinion and legal reasoning, there is a substantial likelihood that the FCC will not prevail, which may be why they were able to reach the settlement of this issue.

After extensive negotiations, the interested parties, including the Office of Management and Budget, the U.S. Department of Justice, and the FCC, reached a comprehensive Settlement Agreement to govern the disposition of the licenses in question and provide for their release into the marketplace and financial return to the Treasury.

This proposal is a chance to bring closure to litigation that has dragged on, and which, in all likelihood, could result in a net loss to the government if it were to continue. We have an opportunity to finalize this settlement, return money to the Treasury and release valuable spectrum for commercial use—something that is essential to help this struggling economy.

The current litigation has been prolonged unnecessarily. To continue it now, in my view would be a mistake, and the American taxpayer could be the loser. I certainly hope that the American taxpayer ultimately is not the victim of Congressional inaction.

FARM BILL

Mr. BAUCUS. Mr. President, I rise today to share my dissappointment about the farm bill with you. It is vital that we get a strong bill passed before we adjourn this year and, unfortunately, that isn't going to happen. To put it simply: Our farmers and ranchers deserve more from their representatives.

As long as I have been in the Senate, I have never seen the agricultural community more united than they were yesterday in invoking cloture and getting the Senate farm bill passed the floor this year.

The farm bill we passed out of committee is a good bill. It is not a great bill. But it's a good step in the right direction. We had the opportunity to work together to make this bill as comprehensive, full of common sense, and strong as possible. My sleeves were rolled up and I was dedicated to passing the farm bill this year. And I'm still dedicated to passing a bill when we get back next month.

We need to support our Nation's agricultural producers. Now. We can't wait until the current bill expires. We rely on our producers for a safe and affordable food supply. Now they are relying on us for survival.

Our agricultural producers are suffering. Years of low prices and drought have made it nearly impossible for farmers and ranchers to break even.

Low prices and drought have been disastrous not only to agricultural producers, but also to the surrounding rural communities. When producers are hurting, they can't invest in our economy. Agriculture is the backbone of Montana's economy. And the backbone of rural America's economy. The ripple effect is being felt throughout the country.

To help with the ongoing drought, it is important that we provide our farmers and ranchers with natural disaster assistance. I included more than $2 billion towards disaster assistance in my economic stimulus bill, but that bill has fallen to the same fate as the farm bill—it's at a stalemate this year. I'm dedicated to including disaster assistance in the farm bill, in another economic stimulus bill, or any other vehicle I see available. The assistance isn't something our ag community can wait for and I'll keep working to see that they don't have to.

The Senate's failure to pass a farm bill this year not only hurts our producers, it hurts our lenders and our rural businesses as well. The bill that we passed by the Senate Agriculture Committee includes a Rural Development Title that would have provided rural economies with much needed support. It's long overdue that we provide stability for our agricultural producers and our rural economies.

Lenders in Montana and across the country are getting nervous as the lean years of production are starting to add up. Their nervousness is compounded now that we failed to act this year.

The time has come. We can no longer wait to repair the current farm bill. The health and stability of our producers, of our rural communities, and of America is up to us. Our Nation depends upon our agricultural producers for a safe, affordable, and abundant food supply. Now our producers are depending on us to provide them with a safety net they can rely upon. The time is now. We must all dedicate ourselves to getting back to work on the farm bill in January. We must work together to pass a strong, stable, and comprehensive farm bill quickly.

Mr. VOINOVICH. Mr. President, over the past 2 weeks, the Senate has engaged in what is probably a first in the history of this body: it has worked to complete a task before a deadline. Even as appropriations bills remained unfinished 3 months into the fiscal year, we have, for the past couple of weeks, debated a farm bill a full 9 months before the current authorization lapses.

As admirable as it is to work ahead of schedule, this has been an unnecessary exercise. There is no reason that the Senate has had to debate the farm bill when these programs don't expire until the end of the fiscal year.

I joined in the successful effort here in the Senate to postpone debate on the farm bill until next year. It is my hope that we will do a better job at writing a bill that will address the needs of our farmers in a fiscally responsible way, rather than rushing a bill through Congress for the sake of passing a bill.

The only reason we have debated this bill a year ahead of schedule is because some fear that the fiscal year 2003 budget resolution won't have enough room in it to load up whatever farm bill the Senate considers with all the spending the majority desires.

Indeed, according to an article in the December 8th edition of Congressional Quarterly, ''lobbyists fear that if Congress waits until 2002, when the current authorization bill expires, then the $73.5 billion in new spending for agriculture programs over the next 10 years that was set aside by this year's budget resolution might vanish.''

Senator KENT CONRAD, the Chairman of the Senate Budget Committee, who clearly must understand our country's financial condition, has said, ''the money is in the budget now. If we do not use the money . . . it is very likely not going to be available next year.''

That does not sound like ''need'' to me, it sounds like opportunism, and opportunism is not sufficient reason for the majority to rush through a bill this important and this expensive.

I agree with the analysis of Senator LUGAR, the Agriculture Committee's Ranking Member, who correctly stated on the Senate floor last Tuesday, December 11, that, ''Proponents of the bill, S. 1731, fastening on to a budget resolution adopted earlier this year, said we have pinned down $172 billion over 10 years, $73.5 billion over baseline, over the normal expenditures that have been occurring year by year in the agriculture bills . . . I and others have pointed out that [the money] really is not there.''

Now, I take a back seat to no one in terms of my concern for the American farmer. When I was governor of Ohio, agribusiness was my number one economic development initiative.

Many people, even Ohioans, don't realize that food and agribusiness means more than $73 billion to Ohio's economy each year. In fact, one in six Ohioans is employed in one aspect of agriculture or another.

I gave agriculture more attention and priority than any governor in memory, and I continue my close relationship with Ohio's agribusiness community.

Nevertheless, I could not support the majority's farm bill as written, and honestly, I am disappointed at the apparent lack of respect some of my colleagues seem to have for the American farmer.

Every farmer worth his salt knows that if he or she wants to stay in business, they have to be fiscally responsible and make tough choices. They know that the United States has to do so as well. They understand that the majority's farm bill did not focus on proper planning and making the right choices, but rather ''getting while the getting is good.''

Some here in Washington think that viewpoint epitomizes the American

farmer, but for anyone in this body to think that the American farmer is only concerned about ''what's in it for him,'' is an insult to their patriotism and their own understanding of fiscal responsibility.

Let me make it abundantly clear, this bill was written and has been debated without any regard for the other obligations our nation now faces. It is heedless of America's national security needs and it does nothing to acknowledge the long-term fiscal responsibilities of our Nation. Instead, the Majority's Farm Bill really just helps the nation's agricultural conglomerates.

When Congress passed the last farm bill in 1996, it did so with the intention that it would gradually phase out the heavy reliance on subsidies characteristic of previous farm bills and move towards a more market-oriented approach. That bill was named Freedom to Farm.

However, had S. 1731 passed, it would have increased federal spending by over $70 billion over ten years, putting us back to where we were prior to Freedom to Farm, when farmers were more dependent on the federal government.

I remain supportive of market-based farm policies, but I believe important improvements must be made to the current system that will allow our farmers to adapt to a global marketplace. Unfortunately, that same marketplace has kept U.S. prices and income low for the past three to four years due to ever increasing world supplies coupled with low export demand.

The cost has been outrageous, with Congress appropriating more than $32 billion in emergency spending since Fiscal Year 1999 to offset low prices and assist farmers who suffered losses due to natural disasters. I have to ask: What happened to Freedom to Farm?

I have opposed these emergency measures, not only because they were not offset, which has added to our current budget crisis, but also because ''stop gap'' emergency measures only meet a temporary need, and do nothing to help the long-term outlook for the American farmer.

Unfortunately, the majority, in their bill, attempted to rectify this situation by making these emergency payments essentially permanent.

In a December 14 editorial titled ''A Piggy Farm Bill,'' the Washington Post labeled S. 1731 ''obscene,'' and pointed out that billions indeed have been made available in the past few years in ''emergency'' payments, however, the Post goes on to say ''the effect of the new bill would be to regularize those [payments], thereby abandoning the five-year experiment in supposed market reform.''

Another contention that I have with the majority's bill, is that passage of S. 1731 as written could very well have put the U.S. in violation of our obligations under the World Trade Organization and weakened our demands that Europe and other countries cut subsidy payments to their agricultural producers.

In an article that appeared in the December 18 edition of the Financial Times, former U.S. Secretary of Agriculture Mike Espy, noting Congress' apparent willingness to abandon a market-based approach to agriculture, stated ''It's very awkward. Here we are involved in a global effort to reduce subsidies, and this [bill] flies in the face of that effort.''

Current Agriculture Secretary, Ann Veneman, said in the same article that the legislation would ''exacerbate overproduction and perpetuate low commodity prices,'' which would undermine our ability to expand into new foreign markets.

That's because the majority's farm bill would put in place counter-cyclical payments, which pay farmers a subsidy as the price of their commodity falls. This approach most assuredly would run afoul of the WTO treaty.

What's more, the subsidies under the majority's proposal would go to millions of farmers and quite a few wealthy individuals and even some Fortune 500 corporations.

Again, the Financial Times article references an organization known as The Environmental Working Group, which has on its web-site a compilation of more than 2.5 million farmers who receive subsidies. Of that total, the largest farms get the most amount.

To quote the news article, ''just 1,290 farms have each received more than $1 million in the past five years; Tyler Farms of Arkansas, which grows cotton, rice and soybeans, led the list at more than $23 million. In addition, 11 Fortune 500 companies, including Chevron and International Paper, also received farm subsidies. In contrast, the average farm in the bottom 80 percent got just $5,830.''

While I would have voted against the bill proposed by the majority, the Cochran-Roberts Amendment that was considered on Tuesday provided a workable alternative.

Instead of creating a counter-cyclical program, the Cochran-Roberts Amendment would have created farm savings accounts for producers to participate in on a voluntary basis, with matching funds provided by the USDA. This money would help farmers make ends meet during the lean years and would be a great improvement over the current practice of relying on touch-and-go so-called ''emergency'' supplemental farm spending bills.

While I am still concerned with the expense of the Cochran-Roberts Amendment, it evenly divides its spending over the first and last five years, and is thus more fiscally responsible than the Majority's proposal which frontloads $45.3 billion of their $73.5 billion bill in the first five years. Unfortunately, the Cochran-Roberts amendment was defeated along party lines.

So we were left with the bill pushed by the majority with a price tag we cannot afford. It will most assuredly exceed the $73.5 billion, 10-year spending increase allowed by the fiscal year 2002 Budget Resolution.

As we near the end of this year, we find ourselves facing challenges that could never have been predicted a year ago. An economic slowdown that began in the spring of 2001 has now been deemed a full-fledged recession; a recession that was exacerbated by the events of September 11.

As Americans have responded generously to the needs of the victims and their families, the federal government has acted quickly and significantly as well. We've passed a $40 billion emergency supplemental bill, as well as $5 billion in grant funding to help prevent the collapse of the airline industry. In addition, we could spend another $100 billion for an economic stimulus package soon after we return from recess.

Add all that to the $25 billion that Appropriators and the White House agreed this summer to spend over and above the fiscal year 2002 budget resolution that Congress passed, and we could spend some $170 billion over the budget resolution.

To put that in perspective, $170 billion represents 30 percent of all the regular discretionary spending Congress enacted in fiscal year 2001.

Given this amount of spending, the Senate is poised to spend every last tax dollar, all of the Medicare surplus and the entire $174 billion projected Social Security surplus. Even that won't be enough.

To cover all of this spending, including the spending in the majority's farm bill if it passed, the federal government would have to issue tens of billions of dollars in new debt this fiscal year depending on the size of the stimulus bill, any additional defense spending we pursue, plus the inevitable emergency supplementals Congress will pass between now and the end of the fiscal year.

It's amazing that a few months ago, people here were worried we would run out of debt to repay. Now, we are in a far different situation.

In fact, Treasury Secretary O'Neill sent a letter to the Majority Leader last week requesting that the government's debt ceiling be raised. The Secretary indicated that the current borrowing limit of $5.95 trillion will be reached by February and that the administration requests that the national debt ceiling be raised to $6.7 trillion.

As recently as August, the administration projected that the current borrowing limit would not be reached until September 2003. This is disturbing.

I am pleased we are not going forward with a farm bill that we cannot afford at a time of fiscal crisis, and that we are not going forward with a bill that is frankly not in the best interest of our farmers and definitely not in the best interest of the American people. It is unfortunate, though, that we spent two weeks debating the majority's farm bill, when there are three

other pieces of legislation that I believe we should have been considering instead.

Our number one priority should be an economic stimulus bill, or ''jobs bill'' as it should be called.

Just last week, I was part of a six-member bipartisan group of senators who were invited to the White House by the President to discuss the stimulus bill and the package that the Centrist Coalition has been working on for the past seven weeks. After the meeting, President Bush announced his support for our stimulus package; a package that responds to the needs of those who are currently unemployed by extending benefits and health care coverage.

It also provides rebate checks to those Americans who pay Social Security taxes but who did not qualify for rebate checks earlier this year. It would truly be a wonderful holiday present for the working men and women of America as well as the nation itself since people would receive extra cash to help pay their holiday bills, and their spending would help spur the U.S. economy.

The bill also contains other stimulus functions, including 30 percent depreciation bonuses to encourage investment; a reduction in the 27 percent tax rate to 25 percent; and tax incentives to encourage small business owners to increase investment.

I won't sugarcoat the fact that it will take a lot of money to jumpstart our $10 trillion economy, and our approach may cost up to $100 billion. However, I believe that it is necessary to get our nation out of the recession we're in.

That's why I am somewhat dismayed that the Majority Leader did not bring the stimulus bill to the floor for consideration during these past couple of weeks. Early this morning the House passed a responsible bill based on the Centrist package which the President has agreed. It's a compromise package that reflects much of what the Majority Leader has said he wanted. However, that wish list seemed to shift when it became clear that a genuine willingness to compromise existed. The American public have expected us to pass such a bill, and I am disappointed that we have not yet done so.

The second bill we should consider is a terrorism reinsurance bill. This legislation would provide government backing to help cover the costs of damages incurred in the event of an act of terrorism. Without it, we are going to see many businesses with enormous increases in their insurance costs. And that's for companies that can get insurance.

As a result, projects that are on the table or in the planning process will not go forward and the economy will suffer.

There is a bipartisan proposal that is being worked on, and I can see no reason why we should not have pushed to get this bill onto the floor of the Senate before the end of the year.

The third bill is a comprehensive energy bill, one that will help our economy and harmonize our energy needs with our environmental needs.

While national energy policy is being held hostage to the demands of environmental groups, the United States must continue to rely on energy sources in the Middle East. Surely I don't have to remind my colleagues of the political instability that exists in this area of the world.

The most glaring example of how the lack of an energy policy is affecting us is the fact that we currently rely on Iraq for more than 750,000 barrels of oil per day. As my colleagues know, Iraq is a hotbed of terrorism, and I have no doubt the manufacturer of weapons of mass destruction, run by a man who would dearly like to inflict pain upon the United States if given the ability.

We have to put the interests of the American people in front of politics and special interest groups. I say to my colleagues that it is better to be able to know that we can rely upon ourselves to meet our energy needs than to rely on Saddam Hussein. We need to stand up and do the right thing and pass a comprehensive energy policy now, and to me, it is incredible that the Majority Leader placed it on the back-burner in favor of a farm bill that we can consider later this fiscal year.

Our farmers understand the need to enact these three bills because they use energy, because they feel the pinch of a soft economy, and, because farmers know the right thing to do.

It is my hope that we will be able to address these three issues quickly when we return next year and that we will do a better job of prioritizing all of the necessary work this body undertakes.

There was no compelling reason why we needed to consider the Farm Bill one week before Christmas. In fact, with one year left on the authorization of the Freedom to Farm Act, we will have almost all of 2002 to work on this legislation.

When we return next year, and after we take up the critical issues like energy, stimulus and terrorism insurance, we should follow the President's suggestion and sit down with real numbers and put together a farm bill that is fair to America's farmers, the men and women who really need help; fair to the American taxpayer; and fiscally responsible. I also would encourage my colleagues to take a look at other farm bill alternatives, such as Senator LUGAR's proposal, and the proposal put forth by Senators COCHRAN and ROBERTS. I believe they are on the right track.

Right now, we are facing tough times that affect all Americans, including farmers, and the Senate needs to make tough choices because that is what our constituents have elected us to do.

The majority's farm bill, S. 1731, was the wrong bill at the wrong time. We shouldn't have wasted precious time on flawed legislation. Our farmers deserve a bill that has been fully vetted, following a thoughtful and comprehensive debate. Sadly, S. 1731 offered our farmers precious little in that regard as the majority focused more on getting a bill done than getting the right bill done.

It is my hope that in the months ahead, we will craft a Farm Bill that will help farmers succeed while reflecting the other pressing fiscal needs that also face our nation. I look forward to working with my colleagues to enact such legislation.

I ask unanimous consent that the article be printed in the RECORD.

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

[From the Financial Times, Dec. 18, 2001]

US AGRICULTURAL BILL WILL GO AGAINST THE GRAIN WORLDWIDE

PROPOSALS TO INCREASE SUBSIDIES FOR FARMERS COULD VIOLATE WTO RULES

(By Edward Allen)

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

[From Financial Times, Dec. 18, 2001]

U.S. AGRICULTURAL BILL WILL GO AGAINST THE GRAIN WORLDWIDE: PROPOSALS TO INCREASE SUBSIDIES FOR FARMERS COULD VIOLATE WTO RULES

(By Edward Alden)

Five years ago, when the US Congress last passed a major bill to reform its farm policy, it pledged to wean farmers from two generations of government subsidies and reintroduce market pressures into US agriculture.

This week, the Senate is set to follow the House of Representatives in declaring that experiment a failure. Instead, Congress is close to approving legislation that will increase federal subsidies to farmers by more than $70bn over the next decade.

The sharp turnround has undermined the Bush administration's preparations for the launch of a new round of world trade talks that is supposed to cut sharply government supports for agriculture. The increase in subsidy payments to farmers could put the US in violation of World Trade Organisation rules, and will seriously weaken the credibility of US demands that Europe cut its farm subsidies.

''It's very awkward,'' said Mike Espy, a former secretary of agriculture. ''Here we are involved in a global effort to reduce subsidies, and this flies in the face of that effort.''

Over the past decade, the US government has tried to persuade farmers that their future lies in opening up markets for farm products abroad.

But instead, US exports fell sharply following the 1998 Asian financial crisis and commodity prices plummeted. This led Congress to approve billions of dollars in emergency payments to US farmers over the past three years. ''We have seen that export markets do not serve as a reliable safety net in and of themselves,'' said Tom Harkin, the Iowa senator who is the chief sponsor of the Senate bill. The new farm bill will entrench that philosophy by institutionalising so-called counter-cyclical payments—subsidies that rise as crop prices fall.

Such subsidies, which have the perverse effect of encouraging increased production when prices are falling, run directly counter to what the US has tried to achieve in the WTO. The Bush administration admitted earlier this year these counter-cyclical payments fall into the so-called amber box of

subsidies that must be reduced under WTO rules.

If crop prices continue to fall, automatically increasing government payments to farmers, the US could run up against the Dollar 19.1bn per year that is the maximum allowed under these restrictions.

The administration and some critics in Congress have tried to fight back.

Ann Veneman, agriculture secretary, said earlier this month the new farm bill would ''exacerbate overproduction and perpetuate low commodity prices'', and would compromise US efforts to open new markets abroad. Pat Roberts, the Kansas senator who was the chief author of the 1996 farm reform, was blunter.

He charged last week that the powerful farmers who will reap a windfall in new subsidies ''view the farm bill as an ATM machine'', the American term for automatic cash dispensers. The administration and its outmanned supporters in Congress are hoping to delay final passage of the bill until next year when the government will produce new budget numbers. Those figures, which will show the federal surplus vanishing as a result of recession, tax cuts and the war on terror, could create pressure to curb farm spending.

The bloated farm bill legislation has indeed cast an embarrassing new light on rural America's dependency on the federal government.

The Environmental Working Group, a nonprofit organisation, last month posted on its website a comprehensive list of the subsidies received by more than 2.5m American farmers.

The data, obtained under US freedom of information laws, shows that a small number of large farmers gets the vast majority of federal payments. Just 1,290 farms have each received more than Dollars 1m in the past five years; Tyler Farms of Arkansas, which grows cotton, rice and soybeans, led the list at more than Dollars 23m.

In addition, 11 Fortune 500 companies, including Chevron and International Paper, also received farms subsidies. In contrast, the average farm in the bottom 80 per cent got just Dollars 5,830.

The new bill would only increase that trend by linking payments firmly to production, thereby rewarding the country's largest farmers.

Other agricultural exporting countries like Australia and many Latin American nations are dismayed by the direction of US farm policy. Warren Truss, Australia's agriculture minister, said during a visit to Washington last week that the new bill would ''entrench a mentality of farm subsidies in the US.

''It is obvious that the US which once proudly boasted it had the most efficient farmers in the world, has now degenerated to a situation where US farmers are dependent upon the taxpayers for around half their income.''

The European Union, however, has been noticeably quiet on the farm bill debate. As the world's largest provider of agricultural subsidies—at least for the moment—the EU has the most to gain from a bill that will do much to erase any US claims to free market virtue.

Said one EU agricultural official: ''It has certainly taken the heat off us.''

FAITH-BASED INITIATIVE

Mr. DASCHLE. Mr. President, unfortunately, during this holiday season there has been a decline in charitable donations. In the land of plenty, having children going hungry during the holiday season is simply heartbreaking. But today too many charitable organizations are facing new funding constraints and cutting back on items like food vouchers. Many of us in Congress have been interested in looking for ways to resolve these problems and strengthen the partnership between charities and the Federal Government.

Senators LIEBERMAN and SANTORUM have been working throughout the year to develop just such a solution. Throughout their process they have consulted with my staff and the White House to ensure that the final product would be a consensus bill that would enjoy bipartisan support. I am pleased that the outlines to an agreement are now within reach. Had the Senate had more time, I would be very interested in seeing the package that has emerged introduced and debated by the full Senate.

The Lieberman-Santorum package is comprised of two limited components: one, a tax and technical assistance section; and two, a social services section that includes a title on equal treatment for non-governmental providers, authorization for a capital compassion fund, a program on mentoring for children of prisoners, and appropriations for funding Social Services Block Grants and Maternity Homes.

I am pleased that Senators LIEBERMAN and SANTORUM were able to resolve most of the problems that caused many to oppose H.R. 7. Their compromise package eliminated privatization and the voucherization of federal social service programs, as well as preemption of state and local civil rights laws. Their package also remained silent on Federal funding of pervasively sectarian organizations and expansion of the Title VII exemption.

I also support many of the tax and spending provisions that have been proposed. In particular, research shows that provisions like the IRA-rollovers and food and book donation provisions are effective in inducing new charitable giving. Additionally, increased funding for the Social Services Block Grant is an important provision to ensure that at long last we fulfill our commitment to providing adequate resources for community programs.

While much hard work has already been done on all sides to get a bill that can pass, some concerns remain with provisions of this package. Given the slowing economy and OMB Director Daniels' statement that the budget will be in deficit this year and for several years to come, the Senate must be careful about any new tax and spending measures that are unpaid for.

Therefore, while I strongly support increasing funding to charities, the changing economic outlook demands that fiscal responsibility be adhered to when enacting new tax cuts. As we move into the fiscal year 2003 budget cycle, I look forward to working with Senators LIEBERMAN and SANTORUM, as well as the White House, to identify workable offsets.

It is my hope that the work that Senators LIEBERMAN and SANTORUM have done will not go to waste. I believe that next year we can build on the bipartisan process that Senators LIEBERMAN and SANTORUM have created to resolve these outstanding issues. Once we do that I am confident the Senate will be able to quickly move a consensus bill. Finally, let me applaud Senators LIEBERMAN and SANTORUM for their work and dedication to this important issue.

JUDICIAL NOMINATIONS

Mr. BIDEN. Mr. President, as a former Chairman of the Senate Judiciary Committee, I would like to shed a bit of the light of history on the Committee's record this year with regard to judicial nominations. The first year of an Administration is always difficult, with a new Administration settling in and the need in the Senate to confirm a host of non-judicial officials to serve in that new Administration. As a result, the Senate's duty to ''advise and consent'' in judicial nominations is all the more difficult to fulfill. I was privileged to serve as Chairman of the Judiciary Committee the last two times a new Administration came into the White House. In 1993, when President Clinton arrived, we worked hard and confirmed 28 judges that first year, with the White House and the Senate controlled by the same party. In 1989, when the first President Bush took office, with an opposing Senate, we managed only 15 judicial confirmations in the first year.

This year, the White House got a late start on its executive branch nominees, due to the election battle. For this and other reasons, no judges were confirmed while the Republicans held the Senate this year. Since June, when the Democrats took control of the Senate, the White House and the Senate have been controlled by different parties, normally a recipe for stagnation on judicial confirmations. Still, by the end of this year, if all goes as expected, we will have confirmed more judges—more than twice the number confirmed in 1989, and even more than we accomplished in 1993, when the White House and the Senate were held by the same party. And as the guy who was running the Judiciary Committee in 1989 and 1993, I can tell you that we were not sitting on our hands back then. And clearly the Committee has not been dawdling this year.

Now, some people would come back and say ''well, what about appeals courts? Appellate judges are far more important than district court judges.'' As a matter of fact, we have confirmed more nominees to the appeals courts since June than were confirmed in all of 1993 or 1989.

Some people will come back and say ''but Joe, you know what really matters is whether the number of vacancies is growing or shrinking. Are we filling the slots?'' That's true—what

really matters is not the whole number of judges confirmed, but whether we are making progress on filling the vacancies that have opened up on the federal bench. Again, let's look at the numbers. In 1993, with the White House and Senate in the same hands, we barely managed to reduce the number of vacancies, by 3 slots. In 1989, with the White House and the Senate split between the Republicans and the Democrats, the number of vacancies grew over the course of the year by 14 slots—the Senate could not keep pace with the retirements and resignations of federal judges. (It's worth noting as well that, during the entire recent period when the Committee was chaired by the Republicans, judicial vacancies grew by 65 percent). By contrast, this year, we will have reduced the number of vacancies by 20, or 18 percent. And that's only since June. With the White House and the Senate controlled by different parties. And with the September 11 attacks happening right smack in the middle of that period!

I should point out that another hurdle was thrown into the Senate confirmation process this year, which was not there in previous years. The White House announced that it would no longer vet potential nominees with the American Bar Association's Standing Committee on the Judiciary. As a result, now the ABA's evaluation of nominees must happen as part of the Senate confirmation process, after the candidate has been nominated by the White House. This step adds weeks to any confirmation.

I should also point out that, not only did September 11 disrupt just about everything that was happening in this country, but it particularly affected the Senate; we had to turn immediately to legislation necessary to authorize the war on terrorism. Moreover, the arrival of anthrax on Capitol Hill displaced many Senators and staff, including Judiciary Committee staff. My own Judiciary Committee staff has not had access to their judicial nominations files—not to mention their office—for the past two months.

Despite all of these disruptions and delays, which I did not face when I chaired the Committee, and which the Republicans did not face during the past 6 years when they controlled the Committee, we will have confirmed more judges by the end of this year than in the first year of the Clinton Administration, and more than twice as many as in the first year of the first Bush Administration. And we will have significantly reduced the number of judicial vacancies from in just 6 months. So, let my friends on the other side of the aisle tone down their rhetoric, and consult their history books.

TECHNOLOGY AND TERRORISM

Mr. HATCH. Mr. President, it is becoming increasingly clear that American technological supremacy will be an invaluable asset in our efforts to combat international terrorism and protect our citizens from further attack. The technological advantages we now enjoy—in weapons, in communications infrastructure, and in detection systems—must be both aggressively pursued and zealously guarded.

For example, the recent anthrax attacks in this country highlight the need for the prompt deployment of effective technology to track the origins of the dangerous biochemical substances that threaten our security. This lack of important information hampers our ability to track down, capture, and punish terrorists and their supporters. The technology to accomplish this goal exists, and can be quickly and inexpensively modified to law enforcement and public safety requirements. However, the government needs to make this a priority.

Although we have long held concern for the impact of hazardous materials on the public, the terrorist attack of September 11 and subsequent attacks require a heightened response. The weaponization of Chemical, Biological, Radiological and Nuclear (''CBRN'') materials demands an accounting of these high-risk materials, particularly as they accumulate at seemingly innocent locations. Tracking CBRN materials is an important step in anticipating and preventing their misuse and thereby thwarting terrorist activity.

We currently have the capability for sophisticated materials management that connects people, places, processes, and products in a manner critical to security. The federal and local governments should work to put in service high-risk material tracking systems that provide the basis for powerful, instantaneous decision making. The government control centers can observe the global position of hazardous materials provided by producers and users in all our allied nations. In less accessible locations, the information could be collected through satellite technology.

Such a hazardous materials management system should: provide for data collection and for authorization at customs operations and border controls; use sophisticated bar code and embedded chip data transmitting devices; employ handheld capabilities to manage field operations and material logistics; have multi-language capability and global reach; integrate with e-solutions and Defense Department Enterprise Resource Planning systems; and make use of data mining and knowledge management principles.

Our Nation should immediately move to identify and track the movement or accumulation of CBRN materials. We must monitor CBRN materials at all global locations, including where they are produced, transported, used, staged and/or stored. And we must track, consolidate and analyze the CBRN material movements as the basis for a legitimate solution to the threats posed to Americans and our citizens abroad.

At the same time that we use technology to better protect Americans, we must make certain that our technological infrastructure is protected from attack. To that end, critical infrastructure should undergo automated electronic testing of their internal and external network assets on a frequent and recurring basis. This testing should include written or electronic reports detailing the methods of testing used and the results of all tests performed, so that trend-line analysis of network security posture can be conducted.

The Policy on Critical Infrastructure Protection: Presidential Decision Directive 63 (''PDD–63'') provided a starting point for addressing cyber risks against our Nation. This directive identified the critical sectors of our economy and assigned lead agencies to coordinate sector cyber security efforts. This directive presents the vision that ''the United States will take all necessary measures to eliminate swiftly any significant vulnerability to both physical and cyber attacks on our critical infrastructures, including especially our cyber systems.''

I believe that we can prepare a defense for our critical infrastructure much like we prepared for problems associated with the year 2000 computer bug. First, we need, as the President recently appointed, an executive agent for cyberspace security, who has the power necessary to cause mandatory private and public interaction and coordination. Second, we must consider empowering and funding each PDD–63 lead agency to establish quantitative baselines of the external and internal network security posture of their portion of critical industries. This can be done through automated electronic testing. Third, we must identify vulnerable critical systems within the critical infrastructures and secure them to the extent possible through software updates, patches, and other correcting configuration issues. Fourth, we should mandate continued automated electronic reassessment of systems, especially after upgrades or patches are applied. This will provide quantitative views of security over time. We must also enforce electronic documentation of reassessments and hold businesses and vendors accountable for failure to adhere to security mandates. Finally, we must expand our domestic partnerships to global public/private partnerships, including both coalition governments and multinational corporations. I would also think that the broadening of mandates in these partnerships should consider standards for layered security, penetration testing, and demonstrate a commitment to the development and installation of wireless equivalency protocols.

We must make use of every tool at our disposal in our fight against terrorism. We must take advantage of American ingenuity and our technological supremacy as we work to rid the world of terrorism. In addition, it is critical that we protect our critical

technological infrastructure from those who would use our technology against us.

CHANGES TO THE 2002 APPROPRIATIONS COMMITTEE ALLOCATION AND BUDGETARY AGGREGATES

Mr. CONRAD. Mr. President, section 314 of the Congressional Budget Act, as amended, requires the chairman of the Senate Budget Committee to adjust the budgetary aggregates and the allocation for the Appropriations Committee by the amount of appropriations designated as emergency spending pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. The 2001 Emergency Supplemental Recovery and Response to Terrorist Attacks (Public Law 107–38) contains funding that will result in $13.397 billion in outlays in fiscal year 2002. Because all budget authority in this measure was appropriated in fiscal year 2001, the adjustment made here is for outlays only.

Pursuant to section 302 of the Congressional Budget Act, I hereby revise the 2002 allocation provided to the Senate Appropriations Committee in the concurrent budget resolution in the following amounts.

Pursuant to section 311 of the Congressional Budget Act, I hereby revise the 2002 budget aggregates included in the concurrent budget resolution in the following amounts.

I ask unanimous consent to print tables 1 and 2 in the RECORD, which reflect the changes made to the committee's allocation and to the budget aggregates.

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

TABLE 1.—REVISED ALLOCATION FOR APPROPRIATIONS COMMITTEE, 2002

[In millions of dollars]

	Budget authority	Outlays
Current Allocation:		
General Purpose Discretionary	549,444	537,907
Highways	0	28,489
Mass Transit	0	5,275
Conservation	1,760	1,232
Mandatory	358,567	350,837
Total	909,771	923,740
Adjustments:		
General Purpose Discretionary	0	13,397
Highways	0	0
Mass Transit	0	0
Conservation	0	0
Mandatory	0	0
Total	0	13,397
Revised Allocation:		
General Purpose Discretionary	549,444	551,304
Highways	0	28,489
Mass Transit	0	5,275
Conservation	1,760	1,232
Mandatory	356,567	350,837
Total	358,567	937,137

TABLE 2.—REVISED BUDGET AGGREGATES, 2002

[In millions of dollars]

	Budget authority	Outlays
Current allocation: Budget Resolution	1,519,719	1,485,128
Adjustments: Emergency funds, Sept. 11	0	13,397
Revised allocation: Budget Resolution	1,519,719	1,498,525

TABLE 2.—REVISED BUDGET AGGREGATES, 2002—Continued

[In millions of dollars]

	Budget authority	Outlays
Current allocation: Budget Resolution	1,519,719	1,498,525
Adjustments: Emergency funds,	300	75
Revised allocation: Budget Resolution	1,520,019	1,498,600

ZIMBABWE

Mr. LEAHY. Mr. President, I want to take a few moments to discuss the deteriorating situation in Zimbabwe. Over the past several months, we have all watched with alarm as President Mugabe has placed his desire to remain in power above the best interests of his own people. In the process, Mr. Mugabe's government has destroyed the rule of law, contributed to food shortages, committed violations of human rights, and wrecked the economy—causing unemployment to rise to more than 60 percent.

The issue has received most of the attention is land reform. There is no question that land reform is badly needed to ensure long-term prosperity in Zimbabwe. As late as 1999, the process appeared to be moving in the right direction: Zimbabwe had presented a detailed plan for the inception phase of a land reform effort, the World Bank had made a $5 million pledge to assist with the resettlement of poor farmers, and several bilateral donors, including the United States, made pledges of assistance.

However, in an attempt to deflect attention from a failing economy, a misguided military intervention in the Congo, widespread government corruption, and a host of other domestic problems, President Mugabe decided to support the sudden occupation of large farms. In the wake of this ill-conceived policy, several farmers have been killed, the independence of the judicial system has been seriously undermined, and agricultural production has been sharply reduced, contributing to widespread food shortages throughout the country.

As the land seizure crisis continues, other forms of harassment and political violence in Zimbabwe—carried out primarily by members of the ZANU–PF party against members of the Movement for Democratic Change (MDC), journalists, and other critics of the government—have steadily escalated. A number of recent events clearly indicate that the situation is a risk of spiraling out of control: the MDC office in Bulawayo was invaded and burnt down with a petrol bomb, as the police stood by and watched; there are reports that MDC members have been illegally taken into custody and tortured; the government announced the humanitarian organizations will not be permitted to distribute food aid in rural areas where it is acutely needed; and after two journalists were arrested, the minister of information compared the international media to terrorists and began notifying foreign journalists that they would not be allowed to work in the country for the foreseeable future.

There are also serious concerns about the upcoming Presidential election scheduled for early next year. As a Gallup poll shows President Mugabe running behind MDC candidate Morgan Tsvangirai, many outside observers believe that Mr. Mugabe and ZANU–PF will stop at nothing to remain in power, and are engaged in activities to undermine the democratic process and illegally alter the outcome of the election. In addition to the campaign of harassment and violence against MDC supporters, the government has prevented non-governmental organizations from carrying out voter education campaigns and has refused to allow observers from international organizations, including the European Union, to monitor the elections. Moreover, the government is pushing through electoral reforms that will effectively withhold absentee ballots from Zimbabweans living abroad, with the exception of diplomats and soldiers, and require voters to present proof of residency. These are measures that could eliminate thousands from the voter rolls.

Because of the serious situation in Zimbabwe, I have joined with Senator FEINGOLD and sponsored a provision which was included in FY 2002 Foreign Operations Appropriations Conference Report that requires U.S. executive directors to international financial institutions to vote against loans, except those for basic human needs or democracy-building purposes, to the Government of Zimbabwe, unless the Secretary of State determines and reports that the rule of law has been restored.

I would also like to point out that earlier this session the House and Senate passed S. 494, the Zimbabwe Democracy and Economic Recovery Act of 2001, and I look forward to President Bush signing it into law, as soon as possible. S. 494 contains several provisions similar to section 560 in the Foreign Operations Conference Report, although section 560 does not provide waiver authority.

Mr. President, I continue to strongly support the Administration's request for assistance to Zimbabwe for health care programs, strengthening civil society that is not affiliated with the ruling party, peace corps activities, and humanitarian purposes. However, the

request for funds to restart the International Military Education and Training is premature, and would send the wrong message at this critical juncture.

BANKRUPTCY OF AMERICAN CLASSIC VOYAGES AND THE FAILURE OF ''PROJECT AMERICA''

Mr. MCCAIN. Mr. President I want to bring to the attention of may colleagues a short article that appeared in Sunday's New York Times that points out just how awry a project based on pork barrel politics can go. The article, title ''A Venture in Ships Is a Rare Zell Flop,'' gives a short chronicle of the rise and fall of American Classic Voyages (AMCV), its largest shareholder, and the government support for American Classic Voyages that has now left the taxpayers holding the proverbial bag for a whopping $366.9 million in defaults on title XI maritime loan guarantees.

On October 19, 2001, American Classic Voyages (AMCV) voluntarily filed a petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. The petition lists total assets of $37.4 million and total liabilities of $452.8 million. The cruise line's reorganization petition indicated it has more than 1,000 creditors, including the Department of Transportation. The Department of Transportation in this case, means the American taxpayer whose exposure on a total of six title XI maritime loan guarantees made to AMCV totals $366,897,000. The loans cover five vessels that were in service in Hawaii, the East Coast, and the Northwest Coast and the partially completed ''Project America'' vessel at Northrup Grumman's Ingalls Shipbuildings in Pascagoula, Mississippi.

In order for my colleagues to fully understand what this article in the business section of the New York Times represents, we really need to look back at the brief history of the American Classic Voyages rise and the political push for AMCV's ''Project America.'' The ''Project America'' initiative included building two 1,900 passenger cruise ships that were to enter service in Hawaii in 2004 and 2005. These were to be the largest cruise ships ever built in the United States. To help push the program, the U.S. Maritime Administration (MARAD), in the face of strong political support for the project, approved a $1.1 billion title XI loan guarantee for the construction of these two vessels on April 8, 1999.

The New York Times article reports just how that political pressure was felt at MARAD when it quotes a former top MARAD official who insisted on anonymity saying. ''We were supported to be promoting shipbuilding.'' ''The maritime trade unions wanted jobs. So there was a lot of political support.''

''Project America'' did indeed receive considerable political support over the last several years as noted further in the New York Times article: ''In 1996 and 1997, American Classic executives met with members of Congress, labor leaders and shipyard owners in an all our effort to promote the project in Washington.'' My colleagues may recall that this promotion paid off in the form of political support which translated into language being included in the Fiscal Year 1998 Department of Defense Appropriation Bill granting a legal monopoly for American Classic Voyages to operate as the only U.S.-flagged operator among the Hawaiian islands.

My colleagues may recall that I questioned the merits of the ''Project America'' at the time the special legislation was considered and went as far as to introduce an amendment to the fiscal year 1998 Department of Defense appropriations bill to remove the monopoly language. Based on the information available at the time, I believed then that the project was more likely to fail than to succeed and I called the monopoly language, and I quote an ''egregious example of porkbarrel spending,'' and asked ''How many times has the U.S. Senate so blatantly set up a monopoly set-aside for any individual or business?'' I would ask now, how many times will we do this in the future?

There were early warnings signs that something was going seriously wrong with the project. During the first year of construction, ''Project America'' fell a year to a year-and-one-half behind schedule. Both American Classic Voyages and Ingalls Shipbuilding were crying foul over construction problems and months of non-binding mediation over contract disputes led to no resolution. Accusations of default came from both sides. However, on September 21 of this year a resolution was announced. Yet, here we are three months later and it is still unclear who was at fault as both sides have refused to discuss the dispute. This is important since, the settlement agreement between Ingalls and AMCV, which was reviewed and agreed to by the U.S. Maritime Administration, kept the American taxpayer holding all the risk.

To highlight just how critical the problems with Project America were at the time this agreement was reached, I want to read from a two-page summary on the status of the project at that time that a lobbyist representing American Classic Voyages inadvertently faxed to my office. It highlights the lagging construction schedule, the claims for additional payments by Ingalls, and the problems of dealing with a yard used to doing work under the typically higher-cost DOD procurement standards.

One statement in the summary hints at AMCV's recognition that a shipyard accustomed to dealing with the U.S. Navy was ill-prepared for the commercial project, is very telling of how the customer views the shipyard's ability to meet the demands of commercial work. The faxed summary reads, ''For U.S. shipyards to succeed in commercial construction, they must use commercial procedures to maintain costs and ensure timely delivery schedules. Cost increases and schedule delays have significant impact on commercial customers—increased capital costs, higher marketing costs, lost revenue from employment of the vessel, and market uncertainties.''

In March 1999, the contract for Project America was signed with great fanfare in the rotunda of this very building and now we have one of the signatories calling into question the shipyard's ability to succeed at commercial ship construction. If a customer of the shipyard is questioning Ingalls Shipbuilding's ability to meet its obligations, shouldn't MARAD also have raised this question before it approved the settlement agreement that allowed for the continuation of the project?

We all know the answer now.

In signing off on the Settlement Agreement between AMCV and Northrop Grumman's Ingalls Shipbuilding, MARAD, on behalf of the taxpayer, agreed to assume the outstanding Title XI debt of $185 million on the first of the two cruise ships under construction at Ingalls in the event of an AMCV bankruptcy and complete the vessel, after the issue of the remaining Title XI debt of $350 million. Fortunately, AMCV filed bankruptcy before the remaining debt was issued. Otherwise, MARAD would have been legally obligated to complete the vessel at an additional loss to the taxpayers.

On October 29, MARAD formally announced that it was not legally required to fully fund the construction of the first ship at Ingalls Shipbuilding. However, in a sign of just how deep the political support of AMCV is, and despite the overwhelming evidence that the project was in serious trouble and was unlikely ever to be completed, 14 members of Congress signed a letter urging Secretary Mineta to reconsider and move to complete construction of the Project America vessel. This would involve an additional $350 million in Title XI loan guarantees and the vessel, upon completion, would be sold by MARAD.

It is important to note, that with more than 80,000 new cruise ship berths coming on line in the next four years, MARAD expects that the vessel would sell for $150 to $200 million less than it would cost the American taxpayer to build.

This week, MARAD will pay out $267.4 million in the first of several payments to be made to American Classic Voyages' creditors. The remaining $105.7 million will be paid off in the next 30 days as required waiting periods expire. I note for my colleagues this totals $366.7 million of the American taxpayers' money. And what do we have to show them for these expenditures? A growing U.S.-flagged cruise

ship fleet? NO. A growing and competitive U.S. shipbuilding industry? NO. More U.S. mariner jobs at sea? NO.

As a matter of act we have just the opposite. We have a smaller U.S.-flagged cruise ship fleet, struggling shipyards, and fewer mariners at sea than ever before. As I have said many times before, we owe it to the taxpayer to do better and make wiser decisions.

AMCV is but one example to Title XI loan guarantee defaults. The Title XI maritime loan guarantee program has experienced many problems and suffered financial difficulties throughout its history. Since the beginning of this year, the program has cost taxpayers more than $339.1 million due to defaults.

Let me provide some background for the record: Title XI of the Merchant Marine Act of 1936 authorizes the Secretary of Transportation to make loan guarantees to finance the construction, reconstruction, or reconditioning of eligible export vessels and the modernization and improvement of shipyards. Under regulations governing the Title XI loan guarantee process, applicants must meet certain economic soundness criteria before receiving a commitment from MARAD. Even with controls in place, loan defaults during the 1980's reached into the billions of dollars and the program was halted. In 1986, the worst year on record, defaults in pay-outs of $1.2 billion.

The title XI program was revived in 1993 following the enactment of the Federal Credit Reform Act and the National Shipbuilding and Shipyard Conversion Act. According to figures recently provided by MARAD, the title XI program has cost taxpayers $400 million in default payments since 1993. Of that cost, MARAD has been able to recover roughly 10 percent or $40 million through the disposition of assets.

Currently, the title XI program has an outstanding loan guarantee portfolio of approximately $4.7 billion consisting of 86 projects covering more than 100 vessels, several hundred barges, and 7 shipyard modernization projects. What that means is the American taxpayer could, as happened in the 1980's, be burdened with billions of dollars in debt if an industry downturn occurs. With that much at risk, I think we owe it to the American taxpayers to do all we can to ensure that adequate protections are in place.

Our Nation has had a strong and proud maritime history. I fear our maritime future, in the U.S. however, is jeopardized due to a dependence on government programs that do not foster a progressive and competitive attitude in what has clearly become a global market. This is especially true of our larger shipyards.

According to MARAD, the purpose of the title XI program is to promote the growth and modernization of the U.S. merchant marine and U.S. shipyards. Yet, there is little if any evidence that either has occurred. Since 1993, when the title XI program was resurrected following the heavy loan losses in the 1980s, the program has cost taxpayers $400 million in default pay-outs and an additional $296.4 million in appropriated funds as required by the Federal Credit Reform Act.

Over the same period, the number of vessels in our oceangoing fleet shrank considerably. The number of bulk carriers in the U.S. merchant fleet dropped from 81 to 71, the number of container ships dropped from 85 to 75, and the number of tankers dropped from 205 to 154.

If the tale of AMCV's losses is not enough to stop pork barrel spending on pet projects that unfairly put taxpayers' dollars at risk, the figures on the U.S. fleet size should clearly show us that a program that artifically props up a U.S. shipbuilding industry that is struggling to find its way in a tough world market is not working.

I am sure my colleagues know I oppose any program that unnecessarily burdens American taxpayers and subsidizes industry. But, I am not alone in this view. I encourage my colleagues to look at the Administrations' FY 2002 budget request and its ''Explanation of Program Changes'' for Title XI Loan Guarantee Program. It states, ''In an effort to trim corporate subsidies, the President's Budget seeks no new funding for the Maritime Guaranteed Loan Subsidy Program.''

I wrote to President Bush in June to express my support for his proposal to zero-out the title XI program. In a response to my letter prepared for the President by Mitchell Daniels, Director of the Office of Management and Budget, Mr. Daniels stated: ''The Administration concurs with your view that the Maritime Administration's Maritime Guaranteed Loan Program constitutes an unwarranted corporate subsidy.''

The problems with AMCV's loan guarantees raise serious questions that should be answered before we allow additional taxpayer funding to be committed in the form of loan guarantees. I have written to the Department of Transportation Inspector General (IG), Kenneth Mead, twice this year requesting his office look into Title XI loan guarantee defaults, including American Classic Voyages, and MARAD's oversight of the title XI program.

I understand that the Inspector General has directed such investigations to get underway. I hope he will be able to determine if MARAD has acted appropriately to protect the taxpayer in these matters. We need to learn if Ingalls, Northrop Grumman, and American Classic voyages fully and accurately presented the difficulties they faced in building Project America to MARAD while seeking to both secure and restructure the title XI loan guarantee for this project.

I want to close by making one last point on the New York Times article. It quotes AMCV's largest investor saying, ''Everyone talks about taxpayers' losses. But they never mention the fact that others lost significant amounts of money as well.'' That may be true; however, unlike investors who chose to put their money at risk on American Classic Voyages, the American taxpayer did not have a choice. They depend on us to do the right thing, but instead they have been saddled with an expenditure $366.7 million. I don't personally know all of AMCV's investors, but I would be willing to bet they won't make this same mistake again. The question then becomes ''will we?''

I ask unanimous consent to print the New York Times article in the RECORD.

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

[From the New York Times, Dec. 16, 2001]

A VENTURE IN SHIPS IS A RARE ZELL FLOP

(By Leslie Wayne)

Sam Zell may have the Midas touch when it comes to investing in real estate. But his efforts on the high seas—with cruise ships—have ended in a debacle that has cost him over $100 million and taxpayers at least three times that.

Mr. Zell is the chairman and largest shareholder of American Classic Voyages, which filed for bankruptcy protection in October. This came after the failure of an ambitious project by Mr. Zell to build two 1,900-passenger cruise ships, the first that were to be constructed in this country in 40 years. It also came despite a boatload of government aid to Mr. Zell, including $1.08 billion in federal loan guarantees. When it came to playing the Washington game, Mr. Zell walked away a big winner in the mid-1990's. His cruise ship plan—called Project America—wrapped up patriotism and politics and allowed him to construct his two huge ships by putting government money, not his, at risk. He also secured a 30-year monopoly on all cruise-ship traffic within the Hawaiian islands.

Helping him get this sweet deal were Senator Trent Lott, the Republican minority leader, who wanted to land a big project for the Ingalls shipyard in his home state of Mississippi, and Senator Daniel K. Inouye, the Hawaii Democrat, who engineered the exclusivity pact. Mr. Zell's ships, American-made and with American crews, would be the only ones allowed to sail port-to-port within Hawaii; others must stop at foreign ports first, eating up time.

''Obviously, I lost a lot of money,'' Mr. Zell said. ''Everyone talks about the taxpayer losses. But they never mention the fact that others lost significant amounts of money as well. Shareholders lost a lot of money, and that's very unfortunate.''

Last year, with American Classic shares trading at $36, Mr. Zell's 3.8 million shares were worth $137 million. This fall, the shores were delisted from Nasdaq when they were trading at 45 cents, chopping Mr. Zell's stake to $1.7 million. The government, meanwhile, is looking at losses of $367 million from American Classic, which also operates four paddlewheel steamboats through its Delta Queen Steamboat subsidiary.

The failure has incurred the wrath of Senator John McCain, Republican of Arizona, who called for an investigation, which the inspector general of the Transportation Department has undertaken.

Rob Freeman, a staff member of the Senate Commerce Committee, where Mr. McCain is the ranking Republican, said: ''It was a bad idea. The taxpayer took all the risk.''

Mr. Zell got such government largess by being the right person in the right place

when the United States Maritime Administration wanted to revive the domestic shipbuilding industry, which had been beaten down by lower-cost foreign competitors. Without aid, American Classic executives say, their project would never have gotten off the ground.

''We were supposed to be promoting shipbuilding,'' said a former top Maritime Administration official, who insisted on anonymity. ''Inouye and the whole state wanted to grow the cruise business. The maritime trade unions wanted jobs. So there was a lot of political support.''

Mr. Zell never lobbied the administration directly; his top executives did. In 1996 and 1997, American Classic executives met with members of Congress, labor leaders and shipyard owners in an all-out effort to promote the project in Washington. That effort was backed by campaign contributions from Mr. Zell and American Classic to Mr. Lott, Mr. Inouye and other crucial members of Congress.

It paid off. The $1.08 billion loan guarantee was the largest the Maritime Administration had ever approved, and it allowed American Classic to enter debt markets that would otherwise be closed to it—and at rates comparable to government debt. American Classic was also allowed to buy an old foreign-made ship and use it for Hawaii cruises while the two new ship were under construction, giving the company an exemption from a law prohibiting foreign carriers from that route.

But the souring economic picture of 2001 halted these ambitions. By last summer, the company had cash-flow problems, and the downturn in tourism after the terrorist attacks pushed it over the edge. ''Sept. 11 just put it away,'' Mr. Zell said. http://www.nytimes.com

THE JUSTICE DEPARTMENT'S DETENTION OF OVER 1,100 INDIVIDUALS IN CONNECTION WITH THE SEPTEMBER 11 INVESTIGATION

Mr. FEINGOLD. Mr. President, I was pleased to hear the Attorney General's announcement of the first indictment of a co-conspirator to the terrorist attacks on our Nation on September 11. Zacarias Moussaoui, who was detained by the FBI for carrying a false passport before September 11 and has been in custody since that time, has been indicted by a federal grand jury in Virginia. I commend the Justice Department, the FBI, and our intelligence services, for their tireless work in seeking to bring Moussaoui and other terrorists to justice.

We have known about Mr. Moussaoui since a few short days after September 11, but we still do not know the identities of hundreds of other individuals still held in detention, the vast majority of whom have no link to September 11 or al-Qaida.

And so I rise today to speak about the Justice Department's detention of these individuals in connection with its investigation of the September 11 attacks and the administration's continued refusal to provide a full accounting of who these people are and why they have been detained.

On October 31, along with Senator LEAHY, Senator KENNEDY, Representative CONYERS, Representative NADLER, Representative SCOTT, and Representative JACKSON-LEE, I sent a letter to Attorney General Ashcroft requesting basic information about the detention of over 1,100 individuals in connection with the investigation of the September 11 attacks. We wanted to know who is being detained and why; the basis for continuing to hold individuals who have been cleared of any connection to terrorism; and the identity and contact information for lawyers representing detainees. We also wanted information regarding the government's efforts to seal or close proceedings and its legal justification for doing so.

I thank and commend Senator LEAHY, the distinguished Chairman of the Judiciary Committee, for his efforts and leadership. Chairman LEAHY held four oversight hearings on the Justice Department's actions, including one hearing that I chaired focusing on the Department's detention of individuals. Those hearings culminated with the testimony of the Attorney General himself before the Committee.

I come to the floor today because I remain dissatisfied with the Administration's response to our request for information about the detainees. Seven weeks after our letter, the Department of Justice has given flimsy and contradictory excuses but no convincing legal justification for keeping secret the identities of the over 550 people it now holds in custody for minor immigration violations.

In addition, the Department has not yet provided any information on perhaps hundreds of additional people who have been detained. These people might still be being held on state or local charges, or without charges, or they might have been released. Nor has the Department given definite information on the number of individuals held as material witnesses.

After our hearings last week, I am more convinced than ever that Congress and the American people are entitled to this information to assess the Justice Department's assertions that everyone in custody has access to legal counsel and is being treated fairly.

In the days and weeks after the attacks, the Department made announcements about the status of the investigation, including tallies of the number of individuals detained. In fact, on October 25, the Attorney General announced that ''[t]o date, our anti-terrorism offensive has arrested or detained nearly 1,000 individuals as part of the September 11 investigation.''

In early November, however, the Department reversed course and decided it would no longer publicly release comprehensive tallies of the number of individuals detained in connection with the September 11 investigation and that it would limit its counts to those held on federal criminal or immigration violations. Thus, it would no longer keep track of those held on state or local charges, nor would it indicate how many people have been released after being detained or have been held without charges being filed.

s÷According to some recent news reports relying on sources in the Justice Department, other than Zacarias Moussaoui, none of the over 1,100 individuals who have been detained are believed to be involved with the September 11 attacks. It now appears that the Department believes that at least Mr. Moussaoui is connected to September 11. And only 10–15 of the detainees are believed to have any links to the al-Qaida organization. Furthermore, according to senior Justice Department officials quoted in the press, apart from Moussaoui, not a single one of the over 550 people detained on immigration charges is linked to al-Qaida. This leads us to a simple, critical question: Who are the remaining hundreds of people and why have they been detained?

The Attorney General undoubtedly faces an enormous challenge: He must work to find the perpetrators of the September 11 attacks and bring them to justice, while, at the same time, protect Americans from future attacks. I fully support our law enforcement officials in their tireless efforts to leave no stone unturned as they investigate the September 11 attacks and strive to protect our nation from future attacks.

But, as the Attorney General moves forward in our fight against terrorism, he has a responsibility to ensure that the constitutional foundations of our nation are not eroded. The torch of Lady Liberty must continue to shine on our Nation.

This is not just an abstract or theoretical concern. Our Constitution protects the people of this country from the arbitrary or unfair deployment of the awesome power of the Federal Government. The Federal Government has the power to ruin the lives of innocent people. The checks and balances of our Constitution are crucial in protecting the governed from an unfair government.

While the Justice Department recently began releasing some information about the people who have been detained on federal criminal charges or immigration violations, we still do not have a full picture of who is being detained and why. And there are reports that detainees have been denied their fundamental right to due process of law, including access to counsel, and have suffered serious bodily injury. We simply cannot tell if those cases are aberrations or an indication of systemic problems, if the Justice Department will not release further information about those being held in custody.

The Attorney General has repeatedly and emphatically asserted that he is acting with constitutional restraint. He even went so far as to suggest last week that those who question his actions are giving aid and comfort to the terrorists. I reject that charge in the strongest terms. And I further believe that the Department of Justice has a responsibility to release sufficient information about the investigation and the detainees to allow Congress and the

American people to decide whether the Department has acted appropriately and consistent with the Constitution. It is not disloyal to view the government's assertions with skepticism. It is the American way.

Just before Thanksgiving, in response to our October 31 letter, the Department provided copies of the complaints or indictments for about 46 people held on federal criminal charges. It also provided similar information on about 49 people held on immigration violations, but edited out their identities. Then, three weeks ago, the Attorney General announced the number and identities of all persons held on federal criminal charges and the number, but not the identities, of persons held on immigration charges. The total number of detainees is roughly 600 individuals. But the Department continues to refuse to identify the over 550 persons held for immigration violations, or provide the number and identity of persons held without charge, the number and identities of persons held on state or local charges, or even the number of material witnesses.

In statements to the press and in the Attorney General's and his associates' testimony before Congress, the Justice Department has cited a number of reasons for its refusal to provide additional information.

Very troubling is the Department's assertion that those being held for immigration violations have violated the law and therefore ''do not belong in the country.'' Without full information about who is being detained and why, we cannot accept blindly this suggestion that each and every immigration detainee does not deserve to be in the country. Do all of these immigration violations merit detention without bond and deportation? I doubt it, as the hearing on detainees the Judiciary Committee held showed that some are very minor violations, which under normal circumstances can be cleared up with a phone call or by completing some additional paperwork.

Another reason the Attorney General has cited for refusing to disclose information about detainees is that he does not want to aid Osama bin Laden in determining which of his associates we have in custody. Yet, the Attorney General and Assistant Attorney General Michael Chertoff have said nothing prevents the detainees from ''self-identifying.'' This, it strikes me, entirely undercuts the argument that giving out this information will help bin Laden. If the Justice Department really thought it would, it would never permit self-identification and would not have released the names of those 93 individuals who have been charged with Federal crimes.

Nor would the Department have released the name of Zacarias Moussaoui and the basis for his detention. The public has known about Moussaoui and his alleged role in September 11 and al-Qaida since shortly after the attacks. The Department never tried to keep his identity or why he was being detained a secret or try to prevent its disclosure.

Moreover, the claim that detainees can self-identify rings somewhat hollow, since we heard during the hearing on detainees that some of these individuals have been denied access to lawyers or family, for days or weeks at a time. Ali Al-Maqtari, a Yemeni national married to a U.S. citizen, testified that for most of the nearly two months he was detained, he was allowed only one phone call, of no more than 15 minutes, per week. He was never charged with perpetrating, aiding or abetting terrorism or with any crime whatsoever, and was eventually released on bond.

Dr. Al Bader Al-Hazmi was held incommunicado—denied access to his lawyer or family—for seven days. After nearly two weeks in detention, Dr. Al-Hazmi was released with no charges filed against him.

Tarek Mohamed Fayad is an Egyptian national and dentist residing in California. He was picked up by the FBI on September 13 and then transferred to the Brooklyn Detention Center in New York City, where he remains to this day. According to the Wall Street Journal, it took his lawyer one month before she was able to locate and talk to him.

Unfortunately, there could be many more cases like these three I have mentioned. But if the Justice Department will not tell the public who is in detention, we can never know the circumstances of their cases.

It is apparent that the option of 'self-identification' is not a real option. Indeed, it borders on the fanciful to suggest that all the detainees are in a position to self-identify. Rather, there are serious questions about whether the Department has denied those detained their due process rights, including access to counsel.

The Department has also said that it is prohibited by law from disclosing the information. But when I questioned both Assistant Attorney General Chertoff and later the Attorney General himself, they admitted that there is no law that provides for a blanket prohibition on the disclosure of information about individuals who have been detained.

The Attorney General cited a section of the Privacy Act, as justification for not providing this information. The Privacy Act, however, only applies to citizens and legal permanent residents. It does not apply to aliens who are not legal permanent residents. From the information provided by the Department thus far, we know the vast majority of the detainees are not permanent residents.

Furthermore, case law under the Freedom of Information Act explicitly allows the government to release private information about even citizens and legal permanent residents where that information reflects on the performance of the agency.

And that's exactly why this information has been requested. There are serious questions about whether individuals who have been detained have been denied their constitutional right to due process of law. And the kind of information we have requested will help Congress evaluate whether the Justice Department has deprived any detainee of his or her constitutional rights. We seek this information not to embarrass or harass the detainees but to provide oversight of the Justice Department's treatment of them.

To make matters worse and further thwart public or congressional scrutiny of the Department's actions, we also learned during the oversight hearings that the Attorney General has taken the extraordinary step of closing all immigration proceedings involving about 550 of the 1,100 or more individuals who have been detained. This means no visitors, no family and no press are allowed. As Mr. Al-Maqtari's attorney Michael Boyle has said, this secrecy taints the proceedings, even when, in cases like Mr. Al-Maqtari's, the FBI has cleared the immigrant of any link to terrorism whatsoever. This should give us all pause. People innocent of any connection to terrorism are being branded terrorists and being evaluated in secret proceedings. This is not right.

In sum, the various reasons cited by the Department for not disclosing information about the detainees are contradictory and lack legal justification. I once again urge the Administration to release basic information about the people now held in federal custody, except for the identities of material witnesses. And the Administration should also give us whatever help it can in identifying people who may be held in state custody. Rather than expending its resources trying to keep these detentions secret, the Administration should show that it has confidence in what it is doing by opening up its actions to public scrutiny.

This is not simply a question of constitutional rights, it is a question of effective law enforcement. It became clear during our hearing on the detainees that the roadblocks to individuals consulting with counsel not only cause great hardship to the detainees and violate their rights, but also hinder the investigation and waste the resources of law enforcement on people who have no connection with terrorism. As Mr. Goldstein, an attorney for Dr. Al-Hazmi, testified:

> Dr. Al Hazmi's attorneys had notified the appropriate law enforcement agencies and the Department of Justice in writing, requesting the whereabouts of their client and expressing their desire to communicate with him. Despite these efforts—and despite Dr. Al Hazmi's repeated requests to consult with his counsel—Federal authorities stonewalled and continued to interrogate Dr. Al Hazmi in the absence of his counsel.

Mr. Goldstein added:

> By denying Dr. Al-Hazmi access to his retained counsel, Federal law enforcement officials not only violated my clients rights,

they deprived themselves of valuable information and documentation that would have eliminated many of their concerns. Their obstructionism prolonged the investigative process, wasting valuable time and precious resources.

I was gratified that a number of my colleagues expressed concern about the treatment of Mr. Al Maqtari and Mr. Al-Hazmi, and particularly about the difficulties they had in communicating with counsel. I have focused in recent weeks on the issue of access to counsel because I believe this issue is at the center of how our justice system is treating these detainees. This is the issue that takes the concern over the fate of the detainees from an abstract debate over civil liberties versus security to a very specific and very important inquiry about how our government actions affect the lives of hundreds of people.

What happened to Mr. Al Maqtari and his wife Tiffany had a severe impact on their well being. What has happened to hundreds of other detainees has similarly affected them. We are not just engaged in a hypothetical law school exam question or a mock crisis where we each play a role. We are talking about taking the liberty of real people, with real families and real lives. It is not enough to say that some liberties have to be sacrificed in these difficult times. Rather, we must be able to determine whether the actions of the Department have been reasonable, and whether the sacrifices that are being requested are justified.

That is where lawyers come in. With a lawyer, a detainee can much more readily answer concerns about his behavior, provide documents to show his whereabouts during crucial periods, and generally provide information to show that he is not a terrorist. Lawyers can help determine whether the extreme step of detention without bond is warranted. And they can explain what is going on to the detainee and the public. I asked the Attorney General at our hearing to take steps to ensure that everyone under detention who wants a lawyer can obtain one. And I asked him to determine how many of the detainees are not represented by counsel. I hope he will follow through on our discussion. It is essential that anyone who is being held have counsel and be able to communicate with counsel.

The Attorney General has said reasoned discourse should prevail. I agree. But in order to have that reasoned discourse, the Justice Department should provide Congress and the American people with enough information to promote a fair and open dialogue and make our oversight meaningful. Our hearings showed that not all the detainees have adequate access to counsel. They showed, at least, that the Congress has reason to test and examine the Administration's assertions that everyone's constitutional rights are being respected in this investigation. By continually saying in the face of this evidence that we should take its assertions about the treatment of the detainees on faith, the Administration furthers the appearance that it has something to hide.

I hope that we are not in some sense following those who rounded up over 120,000 Japanese Americans and thousands of German and Italian Americans during World War II. The rhetoric we hear today rings awfully familiar. We must not return to the time when immigrants who provided so much to our nation were suddenly branded ''enemy aliens'' and deprived of their liberty and other fundamental rights.

Let us not repeat these mistakes of history. I again call on the Administration to fulfill its responsibility to protect the Constitution in its pursuit of liberty and justice for all. It can begin by identifying those now held in Federal Custody and providing the other information requested in our October 31 letter.

INVESTOR AND CAPITAL MARKETS FEE RELIEF ACT

Mr. SARBANES. Mr. President, I rise to address an issue which I believe may merit the attention of the Securities and Exchange Commission following enactment of H.R. 1088, the Investor and Capital Markets Fee Relief Act.

That bill has two main impacts. It authorizes the commission to raise the salaries of its staff to levels that are on a par with the compensation paid by other Federal financial regulators. Our securities markets are the envy of the world. It is important that the regulator of those markets be in a favorable position to attract and retain qualified employees. Enacting pay parity contributes towards this goal and will result in enhanced supervision of the securities markets.

In addition, the bill reduces certain fees charged to investors and issuers. Section 11 of the bill provides an effective date for reduction of transaction fees on the later of, one, the first day of fiscal year 2002; or two, 30 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted. Because the regular appropriation to the Commission (H.R. 2500) was signed into law on November 28, 2001, Public Law 107–77, the effect of Section 11 is to provide an effective date for transaction fee reduction of December 28, 2001, regardless of when the bill is enacted.

The legislation was passed by the Senate on December 20, 2001, and still must be signed by the President. Thus, the industry will have at most only a few days to comply with the law. I have been informed by some market participants that this may not allow them adequate time to re-program and test their computers to make certain that the transition to the new fee structure goes smoothly and without flaws.

I believe it would be appropriate, and consistent with the intent of this legislation, for the commission to review this situation and determine whether it is necessary or appropriate in the public interest, and consistent with the protection of investors, to use the commission's general exemptive authority to extend the effective date for the reduction of transaction fees for a brief period as may be reasonably necessary in order for market participants to comply with the new law fully and without disruption.

Mr. GRAMM. I believe that the commission can and should alleviate this problem. When the Senate passed its version of fee reduction legislation in March, the bill, S. 143, provided for a delay of 30 days in the effective date for transaction fee reduction in order to provide securities firms and markets the necessary time to adjust their computer systems to accommodate the rate change. This language was changed when the bill was passed by the House in June, in order to comply with budget-scoring requirements. At that time, it was envisioned that congressional action on the bill would be completed well before the start of the new fiscal year in October, and that the effective date provision would not cause administrative problems for the securities industry.

It is not our intention to impose an administrative requirement that would be impossible for industry to meet. In order to comply with congressional intent and to make this provision workable, I hope that the commission will consider using its general exemptive authority under Section 36 of the Securities Exchange Act of 1934 to extend the effective date for reduction of transaction fees.

Mr. KERRY. Mr. President, I speak today on S. 1499, the American Small Business Emergency Relief and Recovery Act of 2001. This legislation provides help to small businesses hurt by the events of September 11th and to small businesses suffering in the weakened economy. Senator BOND and I have spent months trying to uncover who is behind the serial holds that have been placed on this emergency legislation and work out disagreements.

This bill hasn't been ''hustled through,'' as some contend. It was drafted with the input of small business organizations, trade associations and SBA's lending and counseling partners through more than 30 meetings and conference calls—conference calls because we couldn't ask folks to fly in the immediate weeks after the attacks. It is cosponsored by 18 of the Small Business Committee's 19 members. And overall 62, senators, including 20 Republicans, have joined me in cosponsoring S. 1499.

On the House side, the Committee on Small Business passed the companion to S. 1499. We attempted to move this bill quickly because it is emergency legislation. It is a good bill because it can do a lot for a lot of people. It is being held because of shameful politics.

I say let's bring this bill up for a vote. Small businesses have a right to know exactly who is working against them and who is working for them.

So what happened? On October 15th, when this legislation had cleared both cloakrooms for passage, the Administration had the Republican cloakroom put a last-minute hold on the bill so the Administration could announce its approach the next day. The next morning, the Administration lifted its hold, but a new hold was immediately placed by the junior Senator from Arizona, which he stated in the press was on behalf of the Administration. Last week, the Senator from Arizona lifted his hold, and I thank him for that, but unfortunately, we then learned that there was one or more anonymous Republican holds on the bill. This approach makes it very difficult to try to work out objections. Two other Republican senators told me that their objections were solely based on the Administration's problems with the bill. Therefore, I directed my staff to meet with the Administration, learn their concerns and try to reach a compromise so that this bill could pass before the recess.

Last night, Senator BOND and I joined our staffs as they met with representatives of the Administration for the eighth time. I am very disappointed to report that the Administration came to the table and said that, although we had made some progress, it would not negotiate further. The ultimatum was for us to strike entire sections and provisions critical to the relief provisions of our bill.

Specifically the Administration's representatives said:

''We cannot work with you on Section 6.'' That is the entire stimulus portion of S. 1499. As such, we were asked to eliminate the provision that would make it less expensive for small businesses to get loans and provide incentives to lenders to make these loans. We were told that, in their view, there is no credit crunch for small businesses.

''We cannot work with you on Section 10.'' Section 10 establishes a fund to help small businesses that were shut out of their Federal work sites or have suffered delays in accessing those sites because of national security measures. We offered to set it up in any way they thought it could work and to reduce its $100 million authorization level, but the Administration refused to work with us on that section.

''We cannot work with you on refinancing non-SBA business debt.'' This was an important part of the disaster relief that S. 1499 targets to those at ground zero in NY and VA, those located in airports and those adversely affected by Federal security actions. The Administration was unwilling to make this help available to these disaster victims.

The administration can not go further in providing an incentive to small business lenders by reducing the lenders' loan fee by more than one-tenth of one percent. Despite numerous articles in reputable newspapers such as the New York Times, it is the Administration's view that lenders do not need incentives to make small business loans in this economic downturn. Senator Bond and I, as well as the 61 other cosponsors of S. 1499 believe that both lenders and small business borrowers need a break to encourage these loans to be made. With this capital, small businesses will stay in business and continue to employ people. Without it, we can expect greater business failures and bankruptcies.

Senator BOND and I asked them to meet us halfway, and they said no. We asked them to give us alternative language, and they didn't give us any. We spent more than 20 hours negotiating on this bill and it appears as if the Administration never had any intention of finding common ground. It appears as if it was an exercise in delay.

Let me describe briefly where I disagree with the administration about how to help small businesses battling bankruptcy and employee layoffs triggered by the terrorist attacks and economic downturn. The administration believes that all assistance should be delivered through the SBA's disaster loans, which are administered through only four regional offices. From talking to small businesses and SBA lenders, Senator BOND and I have concluded that small businesses would be better served through a combination of disaster loans and government guaranteed loans. Government guaranteed loans are almost five times cheaper than what the administration has proposed, have less exposure for the taxpayer, and can reach more small business owners because they are delivered through more than 5,000 private sector lenders who know their communities and have experience making SBA loans. Our proposal combines public and private sector approaches to ensure small businesses receive the maximum amount of assistance.

We will never agree on each other's approach, mostly because the administration has told us in meeting after meeting that it does not believe there's a credit crunch and that small businesses are not having difficulty in accessing credit. They don't acknowledge articles, surveys and testimonials that state it has become harder and more expensive for small businesses, particularly minority and women-owned small businesses, to get loans over the past year.

They ignore the surveys by the Federal Reserve that say, ''40 percent of domestic banks reported tighter standards [when lending to small businesses] over the past three months, up from 32 percent in August.'' Please keep in mind that this survey was released in October and doesn't even capture the affects of September 11.

They ignore articles from economic authorities such as the Wall Street Journal. I read this last week on the floor but think it is absolutely worth repeating. Wall Street Journal, Tuesday, November 6th, 2001. Here are the words of Mr. John Rutledge, Chairman of Rutledge Capital in New Canaan, CT, and a former economic advisor to the Reagan administration:

> Interest rate reductions alone are not enough to jump-start this economy. We need to make sure cheaper credit reaches the companies that need it. . . . The Fed is cutting interest rates—but the money isn't reaching capital-starved small businesses because Treasury regulators are cracking down on bank loans. Credit rationing, not interest rates, is the real problem with the economy. . . . This problem didn't start on September 11th. For more than a year U.S. banks have been closed for business lending. Unless the current Bush administration takes steps to restore bank lending to small businesses and heal the asset markets now, the economy will stay weak.

They ignore surveys published in the American Banker. On October 31, a survey of 80 lenders of all sizes by Phoenix Management Services found that 42 percent ''would be less likely to lend to small businesses, which they view as more risky because they foresee no improvement in the economy until late 2002 at the earliest.'' The article from November validated what before was characterized as ''less likely to lend to small businesses,'' by reporting lenders had actually ''tightened their standards'' to small firms by more than 40 percent.

Still, the administration maintains there's no credit crunch and that provisions in S. 1499 to provide improved access to credit are too expensive and unnecessary.

The administration has also raised concerns about the cost of the legislation, which has been unofficially scored by Congressional Budget Office at $860 million. Let me be clear, that's million, not billion. $860 million to help all of our Nation's small businesses. Yet the administration objects to this, when they have sent up requests for billions in tax cuts for a select few large corporations, and when the administration's approach costs almost five times as much to help fewer small businesses. The bill's $860 million cost is too much to invest in the nation's small businesses, according to the administration's position.

I regret very much for small businesses and their employees that their needs are being trivialized. I admire Senator BOND and the Chairman of the House Committee on Small Business for showing leadership in their party to help small businesses. I am very glad that we can work in such a strong bipartisan fashion to fight for small businesses. I thank the 62 members of this body who have come together in a bipartisan fashion to support this legislation and our nation's small businesses.

Let me note here that the White House said in our meetings that 62 cosponsors ''means nothing—that it happens all the time up here.'' I find that cavalier considering that, according to the Congressional Research Service,

only 13 out of 1,839 bills introduced in the 107th Congress have more than 60 cosponsors.

The support for this bill is strong and bipartisan. I am very sorry that those Senators supporting S. 1499 have not had the chance to cast a vote in favor of this emergency legislation before they go home for the holidays and visit with the small businesses in their states. Small businesses deserve some good news. As for right now, we can only tell them what I told the administration in our meetings last night: When we come back in January, we intend to file cloture on this bill and take a vote.

In closing, let me thank the many groups who have fought so hard on behalf of their members to get this legislation enacted. They have demonstrated all that is great about grassroots action and active involvement in the political and legislative process.

In addition to including for the record the list of these groups, I also ask unanimous consent to have printed articles and letters from small business groups regarding the current credit crunch, the need for equitable adjustment provisions for our small business contractors and other provisions of S. 1499 be printed in the RECORD.

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

S. 1499 SUPPORTERS

Airport Ground Transportation Association, American Bus Association, American Subcontractors Association, Associated General Contractors of America, Association of Women's Business Centers, CDC Small Business Finance, Chicago Association of Neighborhood Development Organizations, Citizens Financial Group, RI, Clovis Community Bank, CA, Coastal Enterprises, ME.

County of San Diego, Delaware Community Reinvestment Act Council, Fairness in Rural Lending, Florida Atlantic University Small Business Development Center, Helicopter Association, HUBZone Contractors National Council, National Association of Government Guaranteed Lenders, National Community Reinvestment Coalition, National League of Cities, National Limousine Association.

National Restaurant Association, National Small Business United, National Tour Association, New Jersey Citizen Action, Rural Housing Institute, Rural Opportunities, Self Help Credit Union, Small Business Legislative Council.

U.S. Conference of Mayors, United Motorcoach Association, United States Air Tour Association, United States Chamber of Commerce, United States Tour Operator Association, Women's Business Development Center.

[From the Wall Street Journal, Tues., Nov. 6, 2001]

A CREDIT CRUNCH IMPERILS THE ECONOMY

(By John Rutledge)

When the Federal Open Market Committee meets today it won't be arguing over whether we are in recession. The economy is weaker today than at any time since 1982. It will almost certainly end the meeting by voting to reduce interest rates again. This will bear the same results as all the previous rate cuts this year: none.

Interest rate reductions alone are not enough to jump-start this economy. We need to make sure cheaper credit reaches the companies that need it. Credit rationing, not interest rates, is the real problem with the economy.

The Fed's monetary stimulus has been hijacked by the bank regulators. these credit highwaymen aren't bad guys, they are just doing their jobs. The Treasury Department's Office of the Comptroller of the Currency (OCC), which is charged with regulating federally chartered banks, has a different agenda from the Fed. Its job is to protect bank capital, period. It does so with an army of bank examiners, who wield the blunt instrument of credit rationing inside banks. For more than a year, these regulators have been diverting bank reserves into Treasury securities instead of business loans, in hopes of restoring bank capital that was damaged by technology lending. Companies that rely on banks for working capital have been sucking air.

To restore growth we need a functioning banking system. This will require a level of coordination the Treasury and the Fed have seldom achieved. But the current consensus for growth could give President Bush the political Roto-Rooter he needs to clear out the conduit.

This problem didn't start on Sept. 11. For more than a year U.S. Banks have been closed for business lending. The story reads a lot like the real-estate blowout of the early 1990s that ended with Resolution Trust Corp. auctions, except this time it was undisciplined technology investments that did us in. In the three years leading up to 2000, commercial banks loaned enormous sums of money to telecom, cable and technology companies to finance, capital-spending programs. These loans weren't backed by assets, but were based on projections that all three sectors would have sales growth rates several times that of the economy for many years to come.

Last summer it became clear that sales growth would not meet those heady projections. Instead of the 14% growth projected by analysts for telecoms this year, for example, actual sales will shrink. Companies without revenues don't make interest payments. And so by the fall of 2000, OCC teams were forcing regional banks to downgrade loans and reduce business lending.

The Fed is cutting interest rates—but the money isn't reaching capital-starved small businesses because Treasury regulators are cracking down on bank loans.

Here's the catch. The loans to technology companies were generally unrecoverable. The tech firms had spent the funds on current operating expenses or to purchase assets with lots of goodwill but little resale value. So the banks turned to the one place they could get money back: reducing the revolving credit facilities of their small business customers.

I got a personal glimpse of all this last October, when a team of bankers visited our office to inform us their bank had decided to reduce the credit rating of, as well as cash-flow loans to, one of the private companies we own, in preparation for a bank examiner audit the following week. Our loan went from a ''five'' to a ''six'' on their 10-point internal risk management system, which meant the company could no longer use its acquisition credit line. This caused the company to halt discussions with an acquisition target and to book the costs incurred up to that point as current expenses.

Other companies had it worse, with reduced revolving credit facilities and increased fees. Some companies, under pressure from their banks to raise equity capital, have been forced to sell control in an illiquid equity market. Others have been forced into filing for bankruptcy protection or liquidation.

Deprived of working capital, U.S. companies have been trying to shrink their way to solvency, by reducing inventory, stretching vendors and laying off workers. This has created the sharpest drop in industrial output in 20 years.

Ironically, when the Fed became alarmed at the shrinking economy and began to cut interest rate sin January, the bank examiners, who report to a different master, tightened further. The business loan market is far tighter today than it was then. Two years ago banks were willing to lend a good company four to five times Ebitda, or earnings before interest, taxes, depreciation and amortization. Today banks quote a market of just over two times Ebitda but money is not, in fact available even at that level.

A further irony is that although banks have refused to lend to businesses, they have been throwing money at the consumer through mortgage and equity credit lines. This has produced a two-speed economy that has left many companies unable to produce products or to ship orders for lack of working capital. Stimulating consumer spending won't solve this problem; we need a functioning bank market.

The last period of nonprice credit rationing was the 1990–92 credit crunch. It caused tremendous damage to the economy and cost the first President Bush his re-election bid. It ended only after the RTC had finished its auctions and the property and banking markets had stabilized.

The lesson of that experience—that the economy is only as healthy as its balance sheets—is as true today as it was a decade ago. Unless the current Bush administration takes steps to restore bank lending to small businesses and heal the asset markets now, the economy will stay weak.

The White House can do three things to put the economy back on sound footing.

First, it should bring the Fed and the Comptroller of the Currency together to coordinate efforts to restore bank lending. This can be done very quickly and would not require new legislation.

Second, it should introduce legislation to transfer the regulation of federally chartered banks from the Treasury to the Fed, which would make monetary policy function more smoothly and prevent future credit-crunch situations.

Third, the White House should make it, clear to Congressional Democrats that the price for support of their huge spending projects is fast action on a lower capital-gains tax rate and further action to lower marginal income tax rates, both of which would increase asset market values and improve bank capital.

Forceful action to Roto-Rooter the business loan pipeline is one thing we can do to make the economy grow again.

[From The American Banker, Wed., Nov. 14, 2001]

(By Rob Garver)

The slowdown in lending activity, evident through much of the year, sharpened in recent months through diminished demand and tighter lending standards even as banks addressed a new round of credit quality problems in their loan portfolios.

According to the Federal Reserve Board's latest survey of senior loan officers, which was released Tuesday, nearly half the banks had lowered internal ratings on at least 5% of their commercial lending portfolios.

Internal loan ratings reflect a bank's assessment of the risk that the borrower will default. The most likely borrowers to be downgraded in the three-month period through October were commercial airlines and nondefense aerospace firms, followed

closely by travel and leisure-related businesses such as hotels and restaurants. The survey of the chief credit officers of 57 domestic banks and 22 U.S. branches of foreign institutions also found that most U.S. banks tightened their underwriting standards for commercial loans, and that commercial borrowers, for their part, were less willing to go into debt. Terms and conditions for consumer loans tightened slightly, the survey found, and demand for consumer loans fell.

The survey, taken four to six times a year, typically contains a number of ''special questions'' in addition to standard queries about loan terms, conditions, and demand. The special questions, which usually address typical issues, focused on the recent downgrading of commercial credits and the changes in the loan market as a result of the Sept. 11 terrorist attacks on New York and Washington.

After noting that debt rating agencies ''have revised their ratings for a substantial number of firms'' recently, the survey asked banks what portion of their commercial loan portfolios, by dollar volume, had been downgraded in the past three months.

Among domestic institutions, 10.5% said they had downgraded less than 1% of their portfolios, while 40.4% reported downgrading between 1% and 5%. Banks that downgraded between 6% and 20% of commercial loans made up 42.1% of the total, and an additional 7% of respondents reported downgrading between 21% and 30%.

The standard elements of the survey, which deal with underwriting standards and loan demand, found that 50.9% of banks had tightened their standards for large and midsize firms. For loans to small firms, 40.4% reported higher standards.

The tightening of standards most frequently took the form of premiums charged for making risky loans, and higher interest rates. Loans to large firms were also likely to have tighter loan covenants, while loans to small firms were likely to carry higher collateralization requirements.

The main reasons for the tougher underwriting standards were a ''less favorable or more uncertain economic outlook'' and a ''worsening of industry-specific problems.''

While banks were tightening their standards, commercial borrowers were reducing their demand for loans, the survey found. Loan demand from large and middle-market firms was down at 72% of banks in the survey, while demand form small businesses was down 55.4%. The most common reason reported for the decreased demand was a reduced investment by customers in their plants and equipment.

After noting that, in the aftermath of the attacks, the Securities and Exchange Commission had relaxed its rules on stock repurchases by public companies, the survey asked if demand for loans to finance such repurchases had increased, and if banks had altered the terms of such loans. In both cases, more than 90% of respondents reported little or no change.

The survey also asked if the dislocation of businesses after Sept. 11 had affected liquidity in the secondary loan market. Two-thirds of the respondents reported decreased loan trading volume, and 64.4% reported that since the attacks, bid-ask had widened.

[From the Arizona Daily Star]

KYL ACCUSED OF BLOCKING AID BILL

(By Tiffany Kjos and Aaron J. Latham)

Arizona Sen. Jon Kyl and an anonymous lawmaker are being accused of blocking a bill that would provide low-income loans to small businesses suffering as a result of the country's economic downturn.

The bill would provide financial help through existing loan programs administered by the Small Business Administration: 7(a) working capital loans; and 504 loans for equipment and building improvements. It would also lower fees for borrowers and SBA lenders.

Sen. John Kerry, a Democrat from Massachusetts and chairman of the Senate small-business committee, introduced the bill more than two months ago in hopes of moving it through quickly. It has 60 co-sponsors in the Senate and dozens of backers in small-business associations.

''I'm asking my Republican colleague to stop obstructing this legislation,'' Kerry said.

The Congressional Budget Office estimates the bill's cost at $860 million, but it would result in $25 billion in government-guaranteed loans and venture capital for businesses, Kerry said. If the bill passes, Congress would have to figure out where the money would come from.

''As each day passes, more and more small businesses are left behind, facing financial hardships that are forcing them to close their doors as a result of inadequate disaster assistance, stifled availability of loans and limited access to capital,'' Kerry said.

Kyl, a Republican, has said the bill is too expensive, and he told the Washington Post he is not blocking the bill but acting as an agent for the Republican steering committee in reviewing it.

Kyl's anonymous colleague on the bill can remain unidentified because Senate rules allow members to oppose legislation without going public.

The federal government already has in place a disaster loan program that offers low-interest loans to businesses that suffered directly or indirectly as a result of the Sept. 11 attacks. The Small Business Emergency Relief and Recovery Act of 2001 would help those firms, plus any small business that needs money to survive in the lagging economy.

Like thousands of other small businesses across the country, Tucsonan Maggie Johnson has seen a dropoff since Sept. 11. Johnson's Malkia African Arts & Gifts at 272 E. Congress St. is filled with African masks, fabric and clothing, Egyptian beaded scarves, and colorful greeting cards she makes by hand.

''I'm not selling necessities. I'm selling things people buy with their disposable income. And everyone's sitting on their disposable income now,'' she said.

The consumer response to the attacks was immediate and nationwide, she said.

''People are pulling back, retrenching—waiting is a good word,'' she said. ''They're spending money on things they have to have, food and basics.''

The U.S. Chamber of Commerce is a strong supporter of the measure. Giovanani Coratolo, director of small-business policy for the Washington, D.C.-based group, was careful not to criticize Kyl but did not say the chamber has been working hard to get the bill through the Senate.

''We respect his opinion but we are not with him on this,'' Coratolo said. ''We've been actively working to get co-sponsors and, quite frankly, it could have 80 co-sponsors, (but) he is still determined to block it.''

Normally the chamber would not endorse legislation that would expand the government's role in small business, Corato said—but these are special circumstances.

''Given the times and what we see from small businesses, there's a lot of hurting going on and they do need help. They're not looking for handouts. They're looking for access to capital that will give them the ability to help them hang in there,'' he said.

Coratolo said the opposition's strategy has been to run out the clock. The Senate will probably adjourn by the end of this week and not return until late January, Coratolo said.

''Small businesses need the relief now, and actually they needed it last month,'' he said. ''The existing programs and loan programs that were meant to act as a safety net—some are not there and some don't reach out far enough to help those that really need the help.''

SBA loans are guaranteed by the government, so lenders are more apt to give them, Kerry said.

While he opposes the small-business bill, Kyl is backing a $500 per person tax credit for travel-related expenses.

''Sen. Kyl has a travel incentive bill going through that's $10 billion, but he says our bill is too expensive. Understanding how important small businesses are to our economy, we are not denying that travel is important as well, but we do need to get these small businesses some assistance,'' said Dayna Hanson, Kerry's press secretary for the small-business committee.

Kerren Vollmer, who owned Nava-Hopi Tours in Flagstaff with her husband, Roger, agrees. The couple closed their bus tour business Oct. 26 because so many people canceled their travel plans after Sept. 11. The Vollmers owned 10 tour buses and operated charter tours as well as regular trips to Phoenix and the Grand Canyon from Flagstaff.

''You still have to run regular schedules,'' she said. ''You can't quit just because you have only three or four people.''

Vollmer is a lifelong Republican who voted for Kyl, ran for county superintendent, and has worked in the voting precinct. She tried to contact Kyl's office but received no response.

''I've sent e-mail, I've sent him a fax, begging him, offering to talk with him or any of his staff, this is what's going on,'' Vollmer said. ''When it's your own senator, it hurts. Because I don't feel like he even recognizes what's going on under his own nose.''

Vollmer said the company tried to get a disaster loan but couldn't even get the application, even with the help of the Arizona Department of Revenue and the local community college's small business development center. Whether the latest measure will make it through the Senate is very much up in the air, Coratolo said.

''Am I optimistic? It's about a 50-50 chance, and if it does, it will be by the skin of its teeth,'' he said. ''Sen. Kyl has been very, very effective at blocking it.''

THE NATIONAL ASSOCIATION OF GOVERNMENT GUARANTEED LENDERS, INC.,

December 20, 2001.

Hon. JOHN KERRY,

Chairman, Senate Committee on Small Business and Entrepreneurship, Russell Senate Building, Washington, DC.

DEAR SENATOR KERRY, On behalf of the members of the National Association of Government Guaranteed Lenders (NAGGL), the SBA's 7(a) lending partners, thank you for your continuing efforts to improve capital access for small businesses in this time of sharply heighted need. We strongly support your efforts and the efforts of Senator Bond to enact S. 1499.

It is clear, especially in light of events of September 11, that banks' profits continue to plunge. According to a November 30 article in the Washington Post, ''Earnings for the nation's banks dropped nearly 10 percent in the third quarter because of the largest increase in expected loan losses in more than a decade.'' The report goes on to say that ''the dip in earnings can be partly attributed to losses from the Sept. 11 terrorist attacks, with more expected to be reported in the fourth quarter.''

This drop in profits has resulted in an every-tightening credit crunch, as can be inferred from just the headline of a November 14 Wall Street Journal article that reads, ''Banks Tighten Credit, Loan Standards In Past Months Amid Uncertain Outlook.'' This article cities a Federal Reserve study that ''aids fuel to growing concerns that an unwillingness among bankers to lend is threatening to choke off investment, hampering chances of a quick economic recovery.''

In this economic climate, it has become exceedingly difficult for even the most qualified small businesses to access the capital they need for survival, and to help spur the American economy to recovery and renewed prosperity.

This is why the passage of S. 1499 is so important. While the SBA's Disaster Loan Program is a necessary ingredient of economic recovery, it cannot possibly provide the sweeping help that the 7(a) program can, and S. 1499 addresses this problem. S. 1499 creates a more attractive 7(a) program for cautious lenders, and a more affordable 7(a) program for hurting borrowers for one year's time—when both of them need it most. And it utilizes private sector lenders that are already in place and ready to provide necessary capital immediately.

We encourage you and your Senate colleagues to expeditiously pass S. 1499 while it is still possible to help small businesses and the American economy in their time of greatest need.

Sincerely,

ANTHONY R. WILKINSON,
NAGGL President & CEO.

A PLEA FOR SENSIBLE GUN SAFETY LEGISLATION

Mr. LEVIN. Mr. President, on April 27, 1999, we paused in the Senate to observe a moment of silence in tribute to those who died at Columbine High School and to express our sympathy for their loved ones. Since the Littleton tragedy, over 60,000 people have been killed by guns, criminals continue to gain easy access to guns and, according to the Brady Campaign, there is an unlocked gun in one of every eight family homes. Several strong pieces of gun safety legislation have been introduced in the 107th Congress to address these problems. None, however has been adopted. In fact, none has even been voted on in the Senate.

In 1994, the Brady law established the National Instant Criminal Background Check System, NICS. This check system allows federally licensed gun sellers to determine whether a person is allowed to buy a gun. Since its inception, NICS checks have prevented more than 156,000 felons, fugitives and others not eligible from purchasing a firearm without infringing upon any law-abiding citizen's ability to purchase a gun.

However, a loophole in the law allows unlicenced private gun sellers to sell guns without conducting a NICS check. A 1999 study by the Bureau of Alcohol, Tobacco and Firearms found 314 cases of fraud at gun shows, involving 54,000 guns. Felons and suspected terrorists have reportedly used gun shows to purchase firearms, and smuggle them out of the United States. On April 24, 2001, Senator REED introduced the Gun Show Background Check Act. I cosponsored that bill because I believe it is an important tool to prevent guns from getting into the hands of criminals and foreign terrorists. This bill, which is supported by major law enforcement organizations including the International Association of Chiefs of Police, simply applies existing law governing background checks to persons buying guns at gun shows. We should stand with our Nation's law enforcement community and take this common sense step to reduce gun violence.

In January, regulations issued by the Department of Justice directed the FBI to retain NICS check information for a 90-day period. This 90-day period allows local law enforcement and the FBI to check NICS for illegal guns sales, identify purchasers using fake IDs and screens for gun dealers misusing the system. However, in June, the Attorney General proposed reducing the length of time that law enforcement agencies can retain NICS data to 24 hours. This is simply not a sufficient amount of time for law enforcement to audit and review the NICS database for patterns of illegal activity. This change will create another potential loophole for criminals to purchase guns.

I was greatly concerned by the Attorney General's action and I was pleased to cosponsor the ''Use NICS in Terrorist Investigations Act'' introduced by Senators KENNEDY and SCHUMER. This legislation would reinstate the 90-day period for law enforcement to retain and review NICS data. The need for this legislation was highlighted just a couple of weeks ago when the Attorney General denied the FBI access to the NICS database to review for gun sales to individuals they had detained in response to the September 11th terrorist attacks and refused to take a position on an amendment which would authorize that access. I believe it is imperative that law enforcement is given the authority to review the NICS database. The Schumer-Kennedy bill is commonsense legislation that deserves floor action.

The Brady law has been effective in keeping guns out of the hands of criminals, but the number of children killed in suicides, unintentional deaths and school violence remains unacceptably high. This is the case because kids still have all too easy access to guns. Young children are too often killed or severely injured because adults do not store their firearms properly. A recent National Institute for Justice survey found that 20 percent of all gun-owning households had an unlocked and loaded gun in the home. To prevent easy access to guns, Senator DURBIN introduced the Children's Firearm Prevention Act. Under this bill, adults who fail to lock up a loaded firearm or an unloaded firearm with ammunition would be held liable if the weapon is taken by a child and used to kill or injure themself or another person. The bill also increases the penalties for selling a gun to a juvenile and creates a gun safety education program that includes parent-teacher organizations, local law enforcement and community organizations. This bill is similar to a bill President Bush signed into law during his tenure as the Governor of Texas. I support this bill and hope the Senate will act on it during this Congress.

We know kids and criminals should not have access to guns, but there are certain types of guns that simply do not belong on the street. One example is .50 caliber sniper guns. These weapons are among the most powerful weapons legally available. In fact, according to one rifle catalogue, a .50 caliber manufacturer touted his product's ability to wreck ''several million dollars, worth of jet craft with one or two dollars worth of cartridge.'' This is a disturbing assertion, particularly in the wake of September 11th. Even more disturbingly, there are fewer restrictions placed on purchases of long-range .50 caliber sniper weapons than there are on handguns. In fact, according to a 1999 GAO report, since the end of the Gulf War, .50 caliber sniper guns have ended up in the hands of many suspected terrorists, including al-Qaeda. Senator FEINSTEIN's Military Sniper Weapon Regulation Act would change the way .50 caliber guns are regulated by placing them under the requirements of the National Firearms Act. This is a necessary step to assuring the safety of Americans.

More than 2 years ago, two young men brought terror to Columbine High School. Of the four guns used by the two Columbine shooters, three were reportedly acquired at a gun show. The teenage shooters took full advantage of the gun show loophole, which allowed their friend to buy them two rifles and a shotgun without ever submitting to a background check. The tragedy in Littleton, Colorado struck a chord with every American. About a month ago, it was discovered in New Bedford, Massachusetts that a 17-year-old was plotting a massacre at his school. He told police he wanted the event to be like the 1999 slaughter at Columbine High School. Since the events of September 11th, several states, including my home state of Michigan, have experienced significant increases in applications for concealed weapons permits and background checks for gun permits. The gun show loophole remains open, law enforcement lacks access to the NICS database, kids continue to gain access to guns and .50 caliber military sniper guns remain uncontrolled. It is long past time to adopt sensible gun safety legislation.

LEGISLATION IN BEHALF OF VETERANS

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly on legislation acted upon during the first session of the 107th Congress which will make a dramatic difference in the lives of hundreds of thousands of

service members and veterans, and in the lives of every American. Four bills relating to veterans benefits now await the President's signature. These bills, coupled with another major piece of legislation adopted by the Congress immediately prior to Memorial Day of this year, will substantially enhance veterans' benefits in the areas of health care, education, homeless assistance, disability compensation, and other areas. They are a testament to the good which can come when House and Senate, Republicans and Democrats, come together to achieve a common end.

The first bill now awaiting the President's signature, the ''Veterans' Compensation Rate Amendments of 2001'', H.R. 2540, provides a 2.6 percent increase in the rates of veterans' disability compensation and survivors' compensation. The increase, effective December 1, 2001, reflects inflation which occurred during the preceding 12 months, and is the same percentage increase Social Security recipients most recently received. H.R. 2540 will ensure that the purchasing power of compensation and survivor benefits is not compromised by inflation.

A second bill, the ''Veterans Education and Benefits Expansion Act of 2001'', H.R. 1291, is a comprehensive bill which enhances education, disability compensation, housing, burial, and other benefits that veterans have earned through service to the Nation. The education provisions of H.R. 1291 build on legislation, S. 1114, which I introduced earlier this year, by increasing the Montgomery GI Bill, ''MGIB'', monthly educational assistance benefit from $672 to $985, a 47 percent increase, over the next 3-year period. With the opportunity to ''buy-up'' an additional $150 per month in benefits as a result of legislation I authored during the 106th Congress, veterans the potential will now exist for a monthly benefit in excess of $1,100 per month for veterans attending school in the Fall of 2003. Such a benefit level will pay the average cost of tuition, fees, books, room and board, and travel expenses at a 4-year public college or university. These improvements are not just good for veterans; they are good for the Nation. The national security dictates that the services attract well-qualified, highly motivated men and women to serve. As was most recently recognized by the United States Commission on National Security/21st Century, enhancements in Montgomery GI Bill benefits are necessary to attract such recruits.

The ''Veterans Education and Benefits Expansion Act of 2001'' will further enhance educational assistance benefits by providing needed flexibility to students by allowing veterans to claim benefits on an accelerated basis so that they can pay the significant ''up front'' expenses of high-cost technology courses. It will also expand distance learning and independent study benefits. Further, this legislation incorporates provisions from a bill authored by Senator THOMPSON to allow certain Vietnam-era veterans the ability to use benefits, and it expands work-study opportunities available to veterans while they're attending college. And it will provide increased educational assistance benefits to the spouses and children of service members killed in the line of duty or who are permanently disabled as a result of service. Finally, this legislation preserves the suspended education entitlement of service members or reservists who had to leave school as a result of being called to active duty, such as a call to active duty participation in Operation Enduring Freedom.

In addition to these improvements in educational assistance benefits, the ''Veterans Education and Benefits Expansion Act of 2001'' keeps faith with veterans who served in past conflicts by expanding the eligibility of Vietnam and Gulf War veterans for presumptive compensation based on exposures and experiences which occurred during those conflicts. A Persian Gulf War veteran will now be eligible for compensation if he or she has a medically unexplained, chronic, multi-symptom illnesses such as chronic fatigue syndrome or irritable bowel syndrome, in addition to undiagnosed illnesses already covered in law. Further, this legislation gives VA explicit authority to compensate Gulf War veterans for any diagnosed condition. Given the Secretary's December 10, 2001, announcement of the increased prevalence of Lou Gehrig's disease among Gulf War veterans, this provision is particularly timely.

For veterans who served in the Vietnam war, the ''Veterans Education and Benefits Expansion Act of 2001'' will repeal the 30-year limit on the time period during which a Vietnam veteran must have contracted a respiratory cancer if he or she is to be presumed eligible for compensation based on exposure to Agent Orange. According to a recent National Academy of Science/Institute of Medicine report, there is no scientific evidence which suggests an upper limit can be placed on respiratory cancer latency. Given this, I believe the formerly-existing 30-year limit was arbitrary; this bill removed it. I owe thanks to Mr. Joseph R. Mancuso, a Vietnam veteran from Pennsylvania who was stricken by, and who, very sadly, has succumbed to, lung cancer for bringing this legal anomaly to my attention. This provision is a memorial to him. I just wish the Congress might have acted while Mr. Mancuso was still alive.

I should mention a few of this legislation's other important provisions. It increases VA's home loan guaranty to enable veterans living in high-cost regions of the country to afford a home with little or no down payment. It increases burial benefits available to the families of veterans who die due to a service-connected cause, and it increases grants provided to severely disabled veterans so they may purchase an automobile or make modifications to their homes to accommodate disabilities. The legislation also expands outreach and information services for departing service members, veterans, and family members, and it streamlines the eligibility determination process for low-income, disabled veterans seeking non service-connected pension benefits.

A third major piece of veterans' legislation which now awaits the President's signature, the ''Homeless Veterans Comprehensive Assistance Act of 2001'', H.R. 2716, is an additional step toward achieving the goal of ending chronic homelessness among America's veterans. This legislation would authorize VA to provide grants and per diem payments of up to $60 million in 2002, rising to $75 million in 2003, to entities which provide outreach, rehabilitative, vocational counseling and training, and transitional housing services to homeless veterans. It would expand mental health services, and direct each VA primary care facility to develop and carry out a plan to provide mental health services to veterans who need them. This legislation would also authorize the provision of dental care to homeless veterans by VA in recognition of the fact that such care is a necessary prerequisite if a homeless veteran is to gain, or regain, meaningful employment. Finally, this bill would ensure proper oversight of these programs through the creation of a VA Advisory Committee on Homeless Veterans.

A fourth and final bill which is now pending executive action, the ''Department of Veterans Affairs Health Care Programs Enhancement Act of 2001'', H.R. 3447, would address a number of critical issues affecting veterans' health care. First, this legislation addresses the looming, and in some places already-present, VA nursing shortage by permanently authorizing the Employee Incentive Scholarship Program, a program which allows VA to provide up to $10,000 per year, for up to three years, to employees engaged in full-time academic studies. Additionally, this legislation reduces the minimum period of employment required for eligibility in the program from two years to one year, and extends authority to increase the award amounts based on federal national comparability increases in pay. Further, in an effort to encourage nurses who have already completed school to come work for VA, the bill would permanently authorize the Employee Debt Reduction Program, EDRP, extend to five the number of years that a VA employee might participate in the EDRP, and increase the gross award limit to any participant to $44,000. The EDRP program allows VA to assist employees with the repayment of education debt, and it allows VA to compete with private sector health care systems that offer similar programs. Finally, this legislation creates the National VA Commission on Nursing, which will consist of experts

in the nursing profession as well as economists and education professionals. The Commission will report findings and recommendations relating to nurse recruitment and retention and other nurse employment issues within two years.

The ''Department of Veterans Affairs Health Care Programs Enhancement Act of 2001'' also contains elements of a bill, S. 1188, which I introduced earlier this year to provide priority access to VA care to poor veterans residing in relatively high cost areas like Philadelphia or Pittsburgh. Currently, VA provides priority access to care, and it waives co-payments, only for veterans whose incomes are below a nationally-determined annual amount. This ''one-size-fits-all'' formula does not take into account local variations in the cost of living. As a consequence, veterans in high-cost areas, typically urban areas, who are poor by most standards, do not qualify for priority access for VA care. And they must pay the full amount of co-payments charged to other, much better off, veterans. This legislation would relieve much of the burden of co-payments on, and raise the relative priority for VA health care of, these near-poor veterans.

The ''Department of Veterans Affairs Health Care Programs Enhancement Act of 2001'' also addresses other important health issues. It provides service-dogs, trained to accomplish tasks such as opening doors and retrieving clothing, to disabled veterans. It directs VA to focus its attention on the maintenance of special programs in each geographic region of the country, and it creates a program for chiropractic care in the VA. Finally, this legislation authorizes the construction of a power plant in Miami, FL, that was destroyed over one year ago by a fire that left two employees critically injured.

Finally, I note the enactment of the ''Veterans' Survivor Benefits Improvements Act of 2001,'' Public Law 107–14, which was signed by the President on June 5, 2001. This legislation retroactively increased insurance benefits provided to, and guaranteed additional health care coverage for, the survivors of service members killed in the line of duty. This legislation also expanded health care coverage to the spouses of veterans who have permanent and total disabilities due to military service and to the spouses of veterans who have died as a result of wounds incurred in service. Further, this Act extended life insurance benefits to service members' spouses and children, and authorized, and directed, VA to conduct outreach efforts to contact these survivors, and other eligible dependents, to apprize them of the benefits to which they are entitled. Finally, the ''Veterans' Survivor Benefits Improvements Act of 2001,'' made technical improvements to Montgomery GI Bill education benefits, and make other purely technical amendments to title 38, United States Code.

This first session of the 107th Congress has produced five outstanding bills benefitting veterans. The enhancements contained within them send an unmistakable message to Americans that this Nation values military service and honors those who risk their lives so that we may be free. I complement all those who worked so hard to make these legislative accomplishments a reality.

THE EQUAL PROTECTION OF VOTING RIGHTS ACT OF 2001

Mr. TORRICELLI. Mr. President, when the Voting Rights Act was signed into law over 30 years ago, many thought it was the end of a long journey to recognize that the ideals on which this country was founded were more than just abstract notions. The Voting Rights Act and before it the 14th amendment were definitive expressions by our Nation's government that liberty and equality in theory is only as meaningful as liberty and equality in practice. As my colleague from Connecticut noted yesterday in this Chamber, Thomas Paine captured the essence of our Nation's democracy when he stated that the right to vote is ''the primary right by which all other rights are protected.''

The immediate consequence of the 2000 elections and its unsettling aftermath was a realization that even 30 years after the Voting Rights Act became law, the Nation's election system was not what people thought it was. The election brought to light many problems with the Nation's voting system, including the impact that outdated voting machines, undertrained poll workers, and poorly-designed ballots can have on an election.

Throughout the past year, Congress and the Nation have evaluated how best to ensure that future elections are ones in which Americans can have faith in the results. I have spent countless hours devoted to the subject. A year ago last week, Senator MCCONNELL and I introduced one of the first bills seeking to improve election systems and procedures. Others soon followed with their own ideas about how to best bring about change to what we had learned was a clearly flawed system.

With so much at stake, the process has not been without disagreement and at times it seemed that little would be changed. Both the House of Representatives and the Senate, however, have finally made progress in crafting bipartisan legislation seeking to make elections more fair for all Americans. The House of Representatives has passed legislation supported by a majority of both parties. Yesterday, Senators DODD, MCCONNELL, BOND, SCHUMER and I introduced bipartisan legislation to modernize the Nation's election procedures.

The Equal Protection of Voting Rights Act of 2001 represents a balance between establishing national standards for voting and giving States the flexibility to make improvements tailored to their State's needs. First, this bill creates a permanent Federal system of analysis and assistance. This legislation establishes an Election Administration Commission, consisting of two commissioners from each party who will serve 4-year terms. The commission will bring expertise to modernizing elections and provide States and localities with advice for their enhancing voting procedures. This permanent commission was the cornerstone of election reform legislation that Senator MCCONNELL and I introduced over a year ago and I am extraordinarily pleased to see it included in this landmark legislation.

Second, this legislation establishes three minimum national requirements for voting procedures to ensure that voting across the Nation is uniform and nondiscriminatory. These minimum national standards include requiring States and localities across the Nation to utilize voting systems that enable voters to verify how they voted and ensure accessibility to language minorities and individuals with disabilities, requiring States and localities to provide for provisional balloting, and requiring States and localities to establish a statewide voter registration list with the names and addresses of eligible voters.

Perhaps most importantly, however, this legislation provides $3 billion in Federal grants for States and localities to update voting systems, improve accessibility to polling places, and train poll workers, among other things. States and communities must show that they comply with the three national requirements to be eligible for the grants. An additional $400 million is authorized for providing early funds so that States and localities can implement some improvements quickly; $100 million of the bill's funding is directed to provide grants to make polling places physically accessible to those with disabilities. This funding ensures that for the first time in our Nation's history, the Federal Government will contribute our share to the cost of administering elections for Federal office.

I hope that this legislation completes our Nation's journey to ensuring that all eligible Americans are able to cast their vote fairly, accurately, and without interference. To some, this legislation may not be perfect, but I can assure my colleagues that it is the result of reasoned compromise and is a balanced response to all that our Nation has learned from the 2000 elections. I hope that when my colleagues and I return in January, we can work with the Senate leadership to ensure that bringing this legislation to the Senate floor is one of our top priorities.

EXPIRATION OF TRADE PROVISIONS

Mr. BAUCUS. Mr. President, in the whirlwind of activity that always accompanies the end of a legislative session, many critical legislative decisions are made and critical legislation passes. Often it takes some time to tote up the wins and losses and arrive at a final evaluation of what has been achieved and what remains to be done.

Despite the efforts of those in the Senate, one of the losses for the session is the expiration of three key trade programs, the Generalized System of Preferences (GSP), the Andean Trade Preferences Act (ATPA), and Trade Adjustment Assistance program.

What is surprising about the expiration of these programs is all three of them have nearly universal support. They expire not because of a legitimate difference in policies and not because the programs have served their purpose. They expire because of political maneuvering in the House.

In my view, it always reflects poorly on the Congress when needed programs expire due to political machinations or simply lack of attention. It sends poor signals to those that depend on these programs. In this case, the U.S. companies that import products under GSP and ATPA and the foreign countries we are attempting to aid through these programs can hardly avoid the impression that these programs are a low priority for Congress.

In the case of ATPA, there are those that believe that expiration will spur a rapid move to expand ATPA. I support an expansion of ATPA, but I believe such brinkmanship is far more likely to result in a long break in ATPA than it is a quick expansion.

Fortunately, in the case of both GSP and ATPA it is possible to extend these tariff benefits retroactively. If the U.S. importers are able to shift funds and wait, there is a good chance they will ultimately receive the promised benefits from these programs.

Sadly, this is not the case with the expiration of the Trade Adjustment Assistance program. This program provides income support and training benefits to workers who have lost their jobs due to trade. It provides them the opportunity to train for a new job and rebuild their lives. Given that they are unemployed, they are generally not in a position to absorb a three month or a six month break in benefits.

I understand that the Department of Labor plans to advise the state agencies that work with them to administer TAA plan to advise those agencies to keep paying benefits because they expect the program to be reauthorized. The Department of Labor's advise is sound; indeed, I hope to win passage for a considerable expansion of TAA.

Unfortunately, there is no guarantee that state agencies will keep operating based upon this federal promise and borrow money from other programs to support TAA. In fact, in at least 5 states, state law prohibits such fund shifting.

This raises the prospect that some of the 35,000 TAA recipients around the United States will receive a very nasty Christmas present—the unexpected halt of the benefits on which they depend to rebuild their lives and support their families.

Mr. President, I believe Congress is sometimes criticized unfairly. Sometimes, however, the rush of events diverts attention from some of the glaring errors we make.

The stubborn obstinance of some of the other body to extend TAA is, in my view, a shameful example of playing politics with the interest of those citizens that can least afford it. I hope this example is not lost on journalists, editorial writers, and, ultimately, voters. Someone should be held accountable.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of this year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in May 1995 in West Palm Beach, FL. A gay man was robbed and brutally murdered. The attacker, Ronald Knight, 27, was convicted of first-degree murder, armed robbery, and a hate crime in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

THE NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY AND CULTURE PRESIDENTIAL COMMISSION

Mr. CLELAND. Mr. President, I rise today to discuss legislation that establishes the National Museum of African American History and Culture Presidential Commission. On Monday, December 17, 2001, the Senate passed, with my support, H.R. 3442 which establishes the National Museum of African American History and Culture Presidential Commission. The Presidential Commission will develop and recommend a legislative plan of action for creating a national museum on the National Mall that recognizes the unique historical and cultural legacy of African Americans. The U.S. House of Representatives passed the legislation, introduced by Representative JOHN LEWIS, on December 11, 2001 by voice vote.

The African American legacy is one of gradual steps that have moved this group of Americans from slavery to full partnership in our society and culture. African Americans have played a central part in the development of our country's democratic institutions and our commitment to individual freedom and equal rights. Despite this history, there is currently no national museum located in Washington, D.C. on the National Mall devoted to telling the African American story. I believe this museum is the next stage in recognizing the burdens born by African Americans and celebrating their unique contributions to our nation.

Many notable African Americans have made contributions in the areas of science, medicine, the arts and humanities, sports, music and dance. It is right to honor this legacy on a national level. I believe that by establishing this museum this nation will be able to finally honor the legacy of African Americans properly. By placing this museum on the National Mall, we will finally place the history of African Americans in a national light, where it belongs.

The legislation creates a 23 member commission made up of individuals who specialize in African American history, education and museum professionals. The commission has nine months to present its recommendations to the President and Congress regarding an action plan for creating a national museum honoring African Americans. The Commission will decide the structure and make-up of the museum, devise a governing board for the museum, and among other action items, will decide whether to place the museum within the Smithsonian's Arts and Industries Building, which is the last existing space on the National Mall.

This museum will commemorate and honor the 400 years of African American history in this country and beyond. Legislation was introduced just about every session of Congress between 1919 and 1929 to create a memorial building to house exhibits demonstrating the achievements of African Americans in art, science, invention and all aspects of life. I am both proud and pleased to be associated with this project and look forward to seeing this legislation signed into law by the President in the near future.

THE POLICE CORPS PROGRAM

Mr. LOTT. It is my understanding there are concerns with the Police Corps Program. It appears that funding from within the current fiscal year is not being made available to certain States.

Mr. GREGG. I appreciate the minority leader's concerns with Police Corps. I have been told that OMB and the Department of Justice have rectified this situation. Both organizations have agreed that any funds available for Police Corps in fiscal year 2002 and unexpended balances from prior fiscal years will be made available for new programs if currently eligible participants have not used the funding provided for their State.

Mr. STEVENS. I have the same understanding. OMB and Justice have decided that available funds can be used from the current balances. I am glad this issue has been worked out.

Mr. KERRY. I very much appreciate the comments of Senators LOTT, STEVENS, and GREGG concerning the Police Corps program, which provides scholarships on a competitive basis to students who earn their bachelor's degrees, complete approved Police Corps training, and then serve for four years on patrol with law enforcement agencies in areas of great need. The Police Corps gives States funding to provide residential police training and to provide local and State agencies that hire Police Corps officers $10,000 a year for each of an officer's first 4 years of service. The fiscal year 2002 Senate Commerce, Justice, State and Judiciary Appropriations bill, under the leadership of Chairman HOLLINGS and Ranking Member GREGG, included $30 million for the Police Corps program. However, I was very disappointed that this amount was reduced to $14.435 million in the conference report, which included legislative language that the Police Corps program has sufficient unobligated balances available to allow the program to maintain its activities in fiscal year 2002 at the prior year level.

I am very concerned that the Office of Justice Programs is not planning to provide appropriate funding for the Police Corps program in fiscal year 2002. It is my understanding that the Office of Justice Programs' plan for the Police Corps program could limit the ability of local law enforcement agencies to address violent crime by decreasing the number of officers with advanced education and training who serve on community patrol in high-crime areas. This could negatively affect the Police Corps program in my home State of Massachusetts, which is currently updating its training curriculum to provide the rigorous physical and moral police training that will help Police Corps recruits work effectively in high-crime areas within Massachusetts. As our nation remains on high alert due to recent terrorist attacks, the Police Corps program will play a crucial role in training future policemen and policewomen to stop terrorist activities before they hurt innocent Americans.

It is my understanding that there are unobligated funds available to provide the Police Corps program with the funding necessary to increase the number of recruits above the modest demonstration level of approximately 25 trainees per state per year and to assist in resolving the current backlog of funding requests for the program.

I believe that the Department of Justice should provide such funds as are necessary to maintain the current level of activity in Police Corps operations and to begin to resolve the current backlog of funding requests for the program. I look forward to working with Chairman HOLLINGS, Ranking Member GREGG and others to assure that the Police Corps program is treated fairly by the Office of Justice Programs this year and in future years, and to insure that this important program receives adequate funding in the future.

BIOTERRORISM

Mr. NELSON of Florida. Mr. President, I rise to recognize the important achievement the Senate has made today in defending our homeland. Just over two months ago, my state of Florida was the site of the first in a series bioterrorist attacks on our Nation that culminated here in Washington, DC. While the repercussions evolving out of the anthrax attacks on our mail system pale in comparison to the enormous tragedy of September 11, the families of those who suffered tragic deaths after being exposed to anthrax laced letters and those of us who continue to be displaced on Capitol Hill understand the very real dangers associated with the elusive threat of bioterrorism.

In the wake of the anthrax attacks, we, as a Nation, began to realize that we were not fully prepared to effectively and comprehensively respond to biological threats. The attack in Boca Raton, FL elicited an array of missteps and symptoms of inadequate preparation at all levels of government. Because Floridians, and Americans, had never faced such a threat before, the necessary communication lines had not been formed and many emergency responders were not properly equipped to handle this new type of crisis. The Bioterrorism Preparedness Act of 2001, passed by the Senate today, is an important first step at increasing our ability to respond to, and prevent, future biological attacks at the Federal, State, and local levels. It will enhance our ability to detect an attack by improving disease surveillance systems and public health laboratories. It will improve our ability to treat victims of an attack by increasing hospital capacity for disease outbreaks. It will also enhance our ability to contain an attack by expanding pharmaceutical stockpiles and accelerating the development of new treatments. Finally, this bill seeks to target future bioterrorist threats in a comprehensive manner by protecting our food sources and other potential targets.

I would like to take this opportunity to highlight a portion of the bill that I believe is essential to our Nation's coordinated prevention and response initiative. Like many Americans, I sought out additional information about the threat of bioterrorism after anthrax was discovered in Florida, New York, New Jersey, and Washington, DC. In the course of my research efforts, I had the opportunity to visit with some of the professors, researchers, and scientists that work for the University of South Florida Center for Biological Defense. The Center for Biological Defense is a joint project of the University of South Florida College of Public Health and the Florida Department of Health. The Center focuses on a full spectrum of studies and programs, ranging from research and development to outreach and educational seminars. The Center has implemented a multifaceted approach to biological defense research that utilizes a number of universities throughout the state of Florida to implement its studies and projects. The Center for Biological Defense has laboratory programs that are dedicated to improving surveillance systems, developing early detection capabilities, rapidly identifying pathogens, and fully understanding the factors that affect the toxicity of biological agents. Moreover, the Center concentrates on efforts to enhance health care preparedness, to strengthen hospital hygiene and containment capabilities, and to coordinate vital educational and training programs for emergency management and health professionals, which has proven to be a crucial component of the response efforts to the anthrax contamination occurring over the course of the past 2 months.

While the preeminent focus of the Bioterrorism Preparedness Act of 2001 is on our government agencies and their crucial missions, a portion of this bill recognizes our Nation's universities as a critical component of the United States bioterrorism defense plan. Centers across the Nation, like Florida's Center for Biological Defense, do critical bio-defense work at the local, State, and national level everyday. In fact, it is these programs that have coordinated first responder training programs, developed products capable of identifying biological contamination on site, and developed new techniques for containing disease and preventing the spread of contagious pathogens. I am delighted that the Senate has been proactive in acknowledging the tremendous value of these programs in an effort to encourage their receipt of additional Federal grants in the future.

I am pleased that I was able to be part of the effort to draft and pass the Bioterrorism Preparedness Act of 2001 and I am thankful to my fellow Senators for ensuring the passage of this vital bi-partisan legislation prior to the holiday recess. I look forward to passing a final version of this bill at the conclusion of the conference between the House and Senate, as I believe that implementation of this bill will not only ensure our preparedness for any future biological threats, but will also quell the concerns and fears of the American people.

MTBE

Mr. SMITH of New Hampshire. Mr. President, for the third day this week, I have come to the floor to speak about MTBE.

This is the gas additive that has become a huge concern for millions

across the Nation because of the contamination it has caused.

That is certainly true of many communities throughout New Hampshire where it has become a crisis. And the crisis will continue to escalate unless it is dealt with.

I was pleased last week when the majority leader made a commitment to me that the Senate will vote on MTBE legislation before the end of February.

Until the day of that vote arrives, I will continue to come to the floor to remind Senators of the terrible impact that MTBE is having on the Nation. And remind them why it is important that we act now.

In 1990, the Clean Air Act was amended to include a clean gasoline program. That program mandated the use of an oxygenate in our fuel—MTBE was one of two options to be used.

The program with MTBE is that when it is leaked or spilled, it moves through the ground very quickly and into the water table.

Many homes in New Hampshire and across the nation have lost use of their water supply because of MTBE contamination.

Many others have had to install expensive water treatment systems in order to drink the water or even shower.

According to the New Hampshire Department of Environmental Services, there may be up to 40,000 private wells with some MTBE contamination. Of those, up to 8,000 may have MTBE contamination over state health standards.

So far this week, I have talked about the problems faced by families and small businesses throughout the regions of New Hampshire.

Today I want to talk about the Sojka family who have a home on Cobbetts Pond in Windham.

The water supply for the home is a deep, bedrock on-site well.

Just about two years ago, the Sojkas began noticing that the water had a strange odor and that it left a residue on their hands.

So they did a little test of their own to see if there really was anything unusual with their water. Their son Brian filled up a bowl full of tap water and let it sit overnight. They were horrified with their finding next morning. The water had a slick oily film floating on top—the same water that the family had been drinking, bathing in, and cleaning their food with.

As a result, the Sojkas had their water tested. The test revealed MTBE contamination at a level twice as high as the State standard.

They contacted the State of New Hampshire for help—by now, it had become quite common for the state to get this type of request.

The state began providing bottled water to the family. Just like the Miller family I spoke of yesterday, the Sojka's pointed out similar concern—that while bottled water is fine for drinking, it doesn't help with other daily needs such as: bathing; washing fruits and vegetables; and cooking.

Within a few months of the initial tests at the Sojka home, the MTBE contamination levels in the well jumped up by almost 8,000 percent.

Unbelievable contamination!

Last summer, the State installed an elaborate and cumbersome water treatment system on the Sojka's property. Unlike the Millers that I spoke of yesterday, who had a system installed in their home, the system needed for the Sojka's was too large to fit in the home

The State had to build a shed separate from the house for the commercial water treatment system. The system consists of an enormous commercial air stripper and two 6 cubic foot carbon units.

Such a system costs in the neighborhood of $20,000.

Fortunately for the family, the state is providing the system and cost of operation and maintenance to the tune of an additional $5,000 per year.

Can you imagine having a large chuck of your back yard being occupied by a commercial water treatment system.

It is terrible that this has to happen to any family. And it is horribly wrong for federal mandate to cause such pain.

This problem isn't unique to New Hampshire—it exists in Maine, California, Nevada, Texas, New York, Rhode Island, and on and on.

We would be delinquent in our duties as United State Senators if we were to sit back and do nothing about this.

We must act soon.

I have a bill that has been reported out of committee two years in a row that will address these problems.

Mr. President, the time to act is now—it is time to help out the families who have fallen victim to a Federal mandate.

Mr. CLELAND. Mr. President, the far-reaching education package before us today makes significant strides toward meeting three of America's most important education goals: improved student achievement, increased accountability, and enhanced teacher quality. I am very pleased that the conference report includes two of the amendments I offered to the Senate BEST Act—my Immigrants to New Americas amendment and my amendment to establish a National Center for School and Youth Safety. I thank the distinguished managers of the Senate bill, Senator KENNEDY and Senator JEFFORDS, for their support and their willingness to assist me. I also want to express my appreciation to the staff of the Senator from Massachusetts for the courtesies and counsel they showed to me and to my staff.

Finally, I want to thank the ''education team'' on my own staff, led by Lynn Kimmerly, my superb deputy legislative director, and Donni Turner, my outstanding chief staff counsel, who helped not only in developing and winning support for my amendments but in analyzing and advising me on all of the details of this landmark legislation. They have served our State and our Nation well, and our country's children will be the beneficiaries.

My Immigrants to New Americans language addresses the explosion of immigrants coming to this country over the past decade. Information from the 2000 Census shows that the impact from this wave of immigration is having a dramatic impact on schools and communities across America, including non-traditional immigrant communities in states like Wisconsin, Iowa, Nebraska, Oklahoma, Georgia and the Carolinas. My amendment will provide resources to these communities to help ensure that these children—and their families—are being served appropriately. Specifically, it would expand the use of funds under the Emergency Immigrant Education set-aside to include activities which, one, assist culturally and linguistically diverse children achieve success in America's schools and, two, allow local educational agencies to partner with community-based organizations to provide the families of these children access to comprehensive community services.

My second amendment incorporated in this landmark legislation addresses the deeply troubling issue of violence at Columbine and Heritage High and in other schools across the country. My School Safety Enhancement Amendment, based on the best research in the field of school violence prevention, would create a National Center for School and Youth Safety tasked with the mission of providing schools with adequate resources to prevent incidents of violence. The National Center would offer emergency assistance to local communities to respond to school safety crises, including counseling for victims, assistance to law enforcement to address short-term security concerns, and advice on how to enhance school safety and prevent future incidents. It would also operate a toll-free, anonymous nationwide hotline for students to report criminal activity and other high-risk behaviors, such as substance abuse, gang or cult affiliation, depression, or other warning signs of potentially violent behavior. Finally, the National Center would compile information about the best practices in school violence prevention, intervention, and crisis management. The goal of the National Center for School and Youth Safety is to involve the entire community—parents, school officials, law enforcement officers, and local governments and agencies—to make them aware of the resources, grants and expertise available to enhance school safety and prevent school crime.

In closing, I would like to quote former British Prime Minister Benjamin Disraeli, who once said: ''Upon the education of the people of this country, the fate of this country depends.'' One of the most important investments this nation can make is an investment in the education of its future leaders. It is my fervent hope that

Members of Congress, on both sides of the aisle, will see the wisdom in investing adequate dollars to carry out the worthy goals of this critically important piece of legislation—improved student achievement, increased accountability, and enhanced teacher quality. It is an investment in the future of America, and the future, after all, is in very small hands.

ON REAUTHORIZATION OF THE PROMOTING SAFE AND STABLE FAMILIES PROGRAM

Mr. GRASSLEY. Mr. President, the Senate recently passed legislation reauthorizing an important child welfare program known as Promoting Safe and Stable Families. Under the auspices of this Social Security Act grant program, States are able to provide services to at-risk families to prevent the need for children to enter the foster care system.

Four types of services are included in the program: family preservation; community-based family support; time-limited family reunification; and adoption promotion and support. In addition, the program provides funding for state court improvement projects. I cannot proceed without praising Iowa's court improvement project which, under the leadership of Judge Terry Huitink and Judge Stephen Clarke, has produced valuable research to streamline the court process for children waiting to be adopted. The Iowan project also provides training for judges in order to increase understanding of the needs of children in the foster care system.

The reauthorization passed by the Senate ensures that money will be available for the next five years at an annual minimum of $305 million per year. An additional $200 million is authorized to be spent from discretionary funds determined annually by Senate appropriators. I am also pleased the 2002 Senate Labor, Health and Human Services, and education appropriations legislation included $70 million in discretionary spending for the Safe and Stable program, for a total funding level of $375 million in fiscal year 2002. In fact, I and some of my Senate colleagues are sending a letter to President Bush tomorrow requesting that full funding of $505 million for the program be included in the Administration's fiscal year 2003 budget.

The Promoting Safe and Stable Families program is a valuable weapon in the fight against child abuse and neglect. The Federal Government spends billions of dollars each year to provide services to children who have already been placed in the foster care system. Much less money is spent on providing services before removal from the home is necessary. In fact, the Congressional Budget Office estimates that between 1999 and 2003, money spent on removing children from their homes and placing them in foster and adoptive homes will exceed by nine times the amount of money spent on services and prevention. Furthermore, annual spending during this period for removal and placement is expected to increase by thirty-five percent, from $4.8 billion to $6.5 billion, while annual spending for prevention and services is expected to increase by only nine percent, from $0.57 billion to $0.62 billion.

More than one hundred thirty thousand children are waiting to be adopted out of foster care in the United States, and at least 4,500 of those children live in Iowa. Each child deserves a loving family and a safe environment. Promoting Safe and Stable Families grants provide critical services to vulnerable families and children, and I am pleased the Senate fulfilled its duty and acted to reauthorize the program.

Ms. CANTWELL. Mr. President, I rise today in support of the Enhanced border Security Act of 2001. We must take the long term steps to strengthen the security at our borders. I want to commend my colleagues, Senators KENNEDY and FEINSTEIN, BROWNBACK and KYL, for their tireless work to address border security issues.

The bill we will be voting on today, the Enhanced Border Security Act of 2001, was a product of the thoughtful merging of two bills. As an original cosponsor of Senators KENNEDY and BROWNBACK's initial version of this bill, I have worked closely with the four principal sponsors to integrate the best of each of these two pieces of legislation, and have been very please with the outcome of this effort.

This bill addresses what I consider to be one of the most important issues in our fight against terorism—how we can effectively secure our borders from terrorists. This bill address border security by increasing the number of border patrol and immigration personnel at the borders; improving the quality and sharing of identity information; improving the screening of foreign nations seeking to enter the U.S. on visas; and improving awareness of the comings and goings of these foreign nationals as they enter or exit our country.

As a member of the Judiciary Committee, I have been honored to work closely with Senators KENNEDY and FEINSTEIN to find ways to better protect our borders and provide necessary support to the men and women who work for the State Department, the Immigration and Naturalization Service and the U.S. Customs Agency.

I, along with many of my colleagues, am currently pressing for funding to triple the number of Immigration and Naturalization Service and U.S. Customs personnel on our northern border and improve border technology, the authorization for which was included in the USA Patriot Act. In the past, a severe lack of resources at our northern border has compromise the ability of border control officials to execute their duties. I am pleased that Congress made the tripling of these resources a priority for national security, and I will continue to fight for full funding of this measure. This bill also addresses these needs by increasing INS inspectors and border patrol staffing each by 200 persons per year for the fiscal year 2002–2006. The bill also authorizes $150 million in spending for improving technology and facilities at our borders.

The Enhanced Border Security Act of 2001 addresses several other critical issues. In hearings this session before the Immigration Subcommittee and the Technology and Terrorism Subcommittee, as well as the full Judiciary Committee, we heard repeated calls for better sharing of law enforcement and intelligence information as it relates to admitting aliens into the United States. The bill addresses this problem by mandating INS and Department of State access to relevant FBI information within one year. I am pleased that the authors of the bill have included provisions to protect the privacy and security of this information, and require limitations on the use and repeated dissemination of the information.

Two of the most important provisions of this legislation address international cooperation in enhancing border security. Protecting U.S. borders requires the assistance and cooperation of our closest allies. Indeed, we share an interest in protecting our respective borders. Citizens of several countries, including most European countries, Japan and Canada, can enter the U.S. without visas. And this is as it should be. But the U.S. must, with new urgency, continue to engage Canada, Mexico and other countries that may be interested in sharing law enforcement and intelligence information to protect our respective borders. We must improve information sharing, and must improve the technology to make sure information is shared with the right people and in a timely manner.

In October, we passed a major anti-terrorism bill that contained a number of provisions that will enable our law enforcement community and the intelligence community to obtain and share vital information regarding persons who are a threat to the U.S. One of the most important new tools I was pleased to have had included in USA Patriot Act is a requirement that State and Justice develop a visa technology standard to help secure our border and make certain each individual who seeks entry into our country on a visa is the person he or she claims to be and there is no known reason to keep that person out.

We must work with our allies to take advantage of this technology standard to improve interoperability on an international scale. We should do what we can to eliminate technological barriers to information-sharing regarding dangerous individuals and to address our mutual concern for border security. To this end, this bill requires the Department of State to report to Congress within six months on how best we

can undertake ''perimeter'' screening with our partners, Canada and Mexico. Further, the bill requires the Department of State, the Immigration and Naturalization Service and the Office of Homeland Security to report to Congress within 90 days on how best to facilitate sharing of information that may be relevant to determining whether to issue a U.S. visa. Our borders are only as secure as the borders of those countries whose citizens we allow into our country without a visa.

The provisions we have achieved in the USA Patriot Act laid the foundation for more specific provisions to assure the best use of technology to improve the security at our borders. This bill fulfills the promise of the USA Patriot Act to assure information sharing will be thoughtfully implemented in short order.

With the enactment of the USA Patriot Act of 2001, the federal government committed to developing a visa technology standard that would facilitate the sharing of information related to the admissibility of aliens into the United States. I proposed this language recognizing that, for many years, the U.S law enforcement and intelligence communities have maintained numerous, but separate, non-interoperable databases. These databases are not easily or readily accessible to front-line federal agents responsible for making the critical decisions of whether to issue a visa or to admit an alien into the United States.

To build on and fulfill the goals of establishing this standard, this bill will do three things. First, it will require technology be implemented to track the initial entry and exit of aliens travelling on a U.S. visa. We know now that several of the terrorists who attacked America on September 11th were traveling on expired visas. We have had the law in place for several years now, but due to concerns about maintaining the flow of trade and tourism across our borders—concerns I share—the provisions of Section 110 have not been fully implemented. Technology will address those concerns, allowing electronic recordation and verification of entry and exit data in an instant.

Second, I believe it is necessary to require the Department of State and Justice to work with the Office of Homeland Security to build a cohesive electronic data sharing system. The system must incorporate interoperability and compatibility within and between the databases of the various agencies that maintain information relevant to determining whether a visa should be issued or whether an alien should be admitted into the United States. This legislation will require interoperable real-time sharing of law enforcement and intelligence information relevant to the issuance of a visa or an alien's admissibility to the U.S. The provision will require that information is made available, although with the appropriate safeguards for privacy and the protection of intelligence sources, to the front-line government agents making the decisions to issue visas or to admit visa-holding aliens to the United States.

Keeping terrorists out of the U.S. in the first place will reduce the risks of terrorism within the U.S. in the future. Aliens known to be affiliated with terrorists have been admitted to the U.S. on valid visas simply because one agency in government did not share important information with another department in a timely fashion. We must make sure that this does not happen again.

Until now, we had hoped that agencies would voluntarily share this information on a realtime and regular basis. This has not happened, and although I know that the events of September 11 have led to serious rethinking of our information-sharing processes and procedures, I think it is time to mandate the sharing of fundamental information.

Advancements in technology have provided us with additional tools to verify the identity of individuals entering our country without impairing the flow of legitimate trade, tourism, workers and students. It is time we put these tools to use.

Improving our national security is vitally important, but I will not support measures that compromise America's civil liberties. The bill we are voting on today includes a number of safeguards to protect individuals' rights to privacy. The bill provides that where databases are created or shared, there must be protection of privacy and adequate security measures in place, limitations on the use and re-dissemination of information, and mechanisms for removing obsolete or erroneous information. Even in times of urgent action, we must protect the freedoms that make our country great.

I urge a favorable vote.

TRIBUTE TO COMMISSIONER JOHN F. TIMONEY

Mr. BIDEN. Mr. President, I rise today to pay tribute to the long and distinguished career of one of our Nation's top police executives, Philadelphia Police Commissioner John F. Timoney.

Commissioner Timoney will leave the Philadelphia Police Department in early January, and I want to highlight some of his achievements. I believe John's record of achievement will benefit America's police officers for years to come.

John Timoney immigrated to the United States from Ireland at the age of 13. In 1969, after graduating from high school, he joined the ranks of the New York Police Department. He spent the first twelve years of his career as a patrol officer and later a narcotics investigator on the streets of Harlem and the South Bronx. As his reputation for integrity, innovation, and perseverance grew, he rose through the department's management structure, eventually assuming the position of Chief of Department, the highest ranking uniformed position in the department. It was during Mr. Timoney's tenure in the upper echelons of the NYPD that New York's crime rate began to drop precipitously, due in no small part to the new management structure he instituted, merging the Housing and Transit Police Department with the NYPD. In 1996, upon his departure from the NYPD, then-Chief Timoney had accrued over 65 Department Medals, including the prestigious Medal of Valor.

After retiring from the NYPD, John entered the world of private security consulting, and offered his expertise and advice to law enforcement authorities all across the country and around the world. He served as Vice Chairman of the Irish Commission on Domestic Violence, and he advised Britain's Patton Commission, which focused on policing Northern Ireland.

In March of 1998, Philadelphia Mayor Ed Rendell appointed John Commissioner of the Philadelphia Police Department. His tenure in that position was marked by the same commitment to excellence and improvement which characterized his career in New York. John brought the innovative Compstat system to Philadelphia, and helped to reinvigorate the department. Running a department of 7,000 officers and 900 civilian employees is no easy task, and Commissioner Timoney's efforts to modernize the department have been rewarded by a decline in Philadelphia's crime rate.

While I thank John profusely for what he has done to make the streets safer for millions of New Yorkers and Philadelphians, I rise today for another reason: to thank Commissioner Timoney for the lessons that his expertise and experience have taught the entirety of the law enforcement community. While his achievements as a cop on the beat deserve our thanks, I want to make special mention of the contribution he has made to our understanding of how police departments can better employ their resources to combat crime across the country.

Commissioner Timoney's career in the upper echelons of law enforcement have been marked by two major paradigm shifts. Without them, law enforcement would not be nearly as successful. And because Commissioner Timoney's work represents what I think is the best of law enforcement—because I believe that we at the Federal level ought to encourage and promote police departments around the nation to promote just this kind of progress—I want to draw special attention to it.

First, Commissioner Timoney was at the forefront of efforts to get both the New York and Philadelphia Police Departments to embrace Compstat, a high-tech system which allows police departments to monitor and analyze crime data better, empowering them to re-deploy resources as needed.

Compstat was revolutionary policing in both New York and Philadelphia, contributing to dramatic crime reductions in both cities.

Second, Commissioner Timoney has been an outspoken proponent of community policing, which was an integral portion of 1994's crime bill. The Commissioner has set a high standard in the practice of policing multi-ethnic and multi-racial communities by empowering precinct captains and other officers in local areas to develop constructive relationships with members of the communities they police. I've always believed that the more integrated cops are with the communities they serve the better. Commissioner Timoney has lived that principle, and the great accomplishments of his career are due in no small part to his promotion of community policing.

I am grateful to be able to call John Timoney a friend. The people of Philadelphia will miss his law enforcement expertise, the police officers of his department will miss his extraordinary leadership, and the nation's law enforcement executives will lose one of their brightest lights. Good luck in your future endeavors John. A grateful and safer nation thanks you for your service.

WHISPERS OF LIBERTY

Mr. HATCH. Mr. President, I would like to take a minute to bring to the attention of this great body the words of Rachel Bennett. Rachel is a 13-year old constituent who has written ''Whispers of Liberty,'' a moving poem about the events of September 11. These terrorist attacks had a profoundly sobering effect on most of the world. As Americans we were forcefully reminded of the ideals and principles which unite us as a nation. I have read and heard many explain the significance and aftermath of September 11, but few have done so as well as Rachel. She poignantly reminds us of the dreams that were shattered by the terrorists, while at the same time she reminds us of the values and ideas that have rallied Americans to help one another deal with these tragedies. I would like to read this poem for the record:

WHISPERS OF LIBERTY

(By Rachel Bennett)

How could a moment
So change everything?
A speechless nation
Cried out in despair
In unison as one.
How could in a moment
So many lives be put out,
Like a field of flowers
Closing in the mid of summer
Never to bloom again?
And in that moment,
How many chances
Of being a grandfather,
A husband, a mother
Of knowing the joys
Of life and love
Be gone?
Like a candle
Doused with tears of despair,
Our nation wept
For the twin brothers
Who know lie in a
Silent reverie
As two lions
Suddenly tamed
A ghastly graveyard
Of pride and greatness.
Yet buried within
The solid and proud
Red, white, and blue
Of American pride.
A stoic symbol
Of freedom and unity
In a world
Of stricken terror.
Its red, the blood of
The innocent whose
Lives were stolen from them;
Its white,
Purity and strength;
And its blue, the melancholy tears
Of sadness.
These bands of red
And white
Bring us together
As one.
A single
Voice declaring freedom
And a fearless life
For all the world.
Strength resonating
From the richness
Of the colors
Bind us together
In a single dance
Of peace and
A single whispered word—
Liberty.

WILLIAMSON, WEST VIRGINIA

Mrs. CLINTON. Mr. President, I rise today to express my deepest gratitude to and admiration for the citizens of Williamson in Mingo County, West Virginia for their generosity and sacrifice on behalf of others. Their donation of approximately $26,000 to the ''Families of Freedom Scholarship Fund,'' to aid the children of those lost in the terrorist attacks on our country over three months ago, is symbolic of the tremendous compassion and unity of the American people. I would like to thank the citizens of Williamson on behalf of all the families who will be able to take advantage of this scholarship fund. They have reached deep into their hearts and pockets to send the children affected by the September 11 attacks a truly beautiful gift.

Earlier this month, I met with Williamson Mayor Estil ''Breezy'' Bevins, Fire Chief Grover ''Curt'' Philips and Police Chief Roby Pope when they presented $26,000 in donations in Senator BYRD's office. Shortly after September 11, the City Council voted to donate $5,000 to the victims of the attacks on the World Trade Center. Over $15,000 was collected on September 14 through a ''boot drive'' where police officers, firefighters and others took to the streets to stop cars to collect money. As I told Mayor Bevins, Williamson's trememdous efforts and energy symbolize the spirit of ''small-Town America.''

I suggested that the town consider sending their donations to the ''Families of Freedom Scholarship Fund,'' which former President Clinton and former Majority Leader Bob Dole chair together. The Fund provides educational assistance for the children and spouses of those killed or permanently disabled in the terrorist attacks of September 11. I would like to thank my friend and colleague Senator ROCKEFELLER for contacting my office to seek guidance on directing the donations. I am very grateful to Senators BYRD and ROCKEFELLER for joining me in receiving the people of Williamson's donation earlier this month.

This small town in southern West Virginia, thousands of miles away from the Twin Towers, has experienced its own share of adversity, including a devastating flood in 1977. Perhaps Williamson's struggle to overcome its own set of hurdles has made the citizens there especially sympathetic to the tremendous obstacles that the people of New York City are facing. At the same time as Williamson has reached out to those affected by the terrorist attacks in New York City, they are working to tackle financial difficulties in their own backyard and I applaud their efforts. An aggressive economic development effort is underway to secure a wood products park, most aquaculture and a stronger market for coal.

Many Americans have felt a personal need in their everyday lives to reach out to their neighbors, coworkers or even strangers to offer assistance, both large and small. We saw it in New York with people standing in line for hours to donate blood, and with families donating food to rescue workers who were toiling around the clock, or companies who wanted to contribute funding and resources. ''What can I do to help?'' is a common, if not universal refrain that Americans have spoken, or thought quietly to themselves, since the attacks. The people of Williamson have matched those noble words with action, and New Yorkers thank them from the bottom of our hearts for their outpouring of compassion.

Winston Churchill once said, ''We make a living by what we get. We make a life by what we give.'' During this time of tremendous grief and anxiety that's being felt in all corners of the world, the citizens' of Williamson efforts to ensure that children who have been affected by these terrible attacks are not forgotten will provide comfort to many and inspiration for us all.

RETIREMENT OF U.S. ATTORNEY JAMES TUCKER

Mr. COCHRAN. Mr. President, one of the best and most respected attorneys to have ever served in our State as an assistant U.S. Attorney is retiring. James Tucker has served the U.S. Department of Justice in the Southern District of Mississippi for 30 years.

I have an enormous amount of respect and appreciation for the way James Tucker has carried out the important responsibilities of his job. He

was a true professional in every respect. He was completely honest and trustworthy, and he was tenacious in bringing to justice those who violated the laws of the United States.

I commend him for a job well done and wish him much continued success and satisfaction in the years ahead.

I ask unanimous consent that an article from the Clarion Ledger of December 17, highlighting his illustrious career be printed in the RECORD.

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

TOP CORRUPTION FIGHTER LEAVING POST

(By Jerry Mitchell)

Mississippi's top corruption fighter over the past 30 years—Assistant U.S. Attorney James Tucker—is leaving the U.S. attorney's office to go into private practice.

''If you could combine honor, integrity, courage and expertise in the same person, what you'd have is James Tucker,'' Attorney General Mike Moore said ''they don't make 'em that way anymore. He is the ultimate professional.''

Jan. 3 will mark Tucker's last day of work at the U.S. attorney's office, where he has worked since 1971. After that, he'll join the Butler Snow law firm in Jackson, where he'll be part of the litigation division.

Tucker said he is sad to be leaving on one hand but is enthused about his new job. ''After 30 years with the Department of Justice, it hurts a little to cut the string, but I'm looking forward to a challenging new career.''

A no-nonsense retired Naval Reserve officer, Tucker has shunned the limelight, despite taking on very public prosecutions of Mississippi public officials, including Operation Pretense, which led to convictions of 43 county supervisors and 11 vendors on corruption charges.

His long list of those prosecuted has included members of the Mississippi Senate, the Highway Commission, the Public Service Commission and the Jackson City Council.

His work also helped put former Biloxi Mayor Pete Halat behind bars on federal charges in connection with the 1987 killing of Halat's former law partner, Vincent Sherry and his wife, Margaret.

''I've always had strong feelings about public officials violating the trust,'' Tucker said. ''I always felt if I had the power to right those kinds of wrongs, I ought to do it.''

In 1983 and 1998, the Provine High School graduate received the highest award an assistant U.S. attorney can receive from the Justice Department—the Superior Performance Award.

''That's one of my great honors,'' Tucker said, ''winning that award twice.''

Perhaps better than an award was the comment he said he received the other day from a current county supervisor: ''He said, 'You don't realize it, but what y'all did in Pretense has helped us honest supervisors for years and years and will for years to come. Because of that, we can threaten people with another Pretense if they fool around (with corruption).' ''

Moore credited Tucker with cleaning up corruption in Mississippi: ''He's helped return integrity to public office.''

Tucker's expertise has helped pave the way for many other lawyers, including Moore, who first go to know Tucker when as a district attorney in Pascagoula he pursued corruption cases against local supervisors.

''He really helped me through those tough times, and he's continued to be my friend,'' Moore said. ''He was a mentor to me.''

Defense lawyer John Colette of Jackson said what makes Tucker special is his ability to remain calm, even amidst a storm, such as during the 1990 trial of Newton Alfred Winn, convicted in connection with the disappearance of Jackson socialite Annie Laurie Hearin.

But that calmness belies a quiet ruthlessness, he said.

As someone has remarked, Colette said, Tucker is the kind of prosecutor who slits the throat of a defense lawyer, who doesn't realize it until his head is in his lap.

Now that Tucker's gone, he joked, ''I'm going to start trying all my cases in federal court.''

What may say the most about Tucker is that he has the admiration of not only the defense bar, but judges as well, Colette said.

''He's probably the most competent prosecutor I ever heard,'' said U.S. District Judge William H. Barbour Jr. ''The district was lucky to have him for so many years.''

Even as Mississippi has changed U.S. attorneys in the Southern District, Tucker has remained as the chief of the criminal division.

Former U.S. Attorney Brad Pigott said he relied on Tucker during his tenure.

''He's an ideal public servant,'' Pigott said. ''He's personally modest and quiet. I've spent some time with him in the foxhole, I can vouch for his integrity in every way. He deserves a very wonderful reputation.''

Defense lawyers say Tucker helped provide continuity to the sometimes revolving door of the U.S. attorney's office, serving once as interim U.S. attorney.

''Many people, including me, felt that with him there, there was somebody to talk to who would listen,'' said defense lawyer Tom Royals of Jackson.

''It's a real loss to our justice system to see James Tucker leave,'' said defense lawyer Dennis Sweet of Jackson. ''He's a tremendous lawyer, and he's been tremendously fair. I just hope whoever replaces him does as good a job for the U.S. attorney's office as he has.''

Current U.S. Attorney Dunn Lampton said he is certainly going to miss Tucker. ''He's an institution,'' Lampton said. ''He knows more off the top of his head than you can find out doing research in books.''

Because of Tucker, Lampton said he never worried about the criminal side of his office.

Now he'll have to find a replacement, which he'll probably choose from within his office, he said. ''We'll all have to work together to take up the slack.''

Those outside legal circles also praise Tucker.

''There was a time when James Tucker was the only defense standing between us and total corruption in Mississippi,'' said veteran journalist Bill Minor, who wrote about Tucker in his new book, Eyes on Mississippi: A Fifty-Year Chronicle of Change. ''In my estimation, he ranks among the true heroes that I've known over my 54-year career.''

Former Public Safety Commissioner and FBI agent Jim Ingram said Tucker will be sorely missed by all of Mississippi. ''Almost all of us can be replaced. He can't.''

ADDITIONAL STATEMENTS

RECOGNIZING THE CAREER OF DENIS GALVIN UPON HIS RETIREMENT FROM THE NATIONAL PARK SERVICE

● Mr. BINGAMAN. Mr. President, I would like to take a moment to recognize and thank Denis Galvin, the Deputy Director of the National Park Service, who will be retiring at the end of this year after a career of almost 40 years with the Park Service. The Committee on Energy and Natural Resources has jurisdiction over national park issues, and we have been fortunate to have had the opportunity to work closely with Mr. Galvin over the years.

Since beginning his tenure with the Park Service in 1963 as a civil engineer at Sequoia National Park, Mr. Galvin has held several positions with the Park Service throughout the country, including a period in the Southwest Regional Office in Santa Fe. He also worked for several years in Boston in the Northeast Regional Office, and as the Director of the Denver Services Center, the planning, design, and construction arm of the Park Service. Since 1985 Mr. Galvin has held two positions that brought him into frequent contact with the Congress and our Committee, as the Associate Director for Planning and Development from 1989 to 1997, and twice as the Deputy Director of the National Park Service, from 1985 to 1989, and again from 1997 until now.

In his capacity as Associate Director and Deputy Director, Mr. Galvin has been involved in every major policy issue facing the National Park Service. He has been one of the National Park Service's greatest resources, and his knowledge and judgment about national park issues is very much respected, both within the agency and here in Congress. Whenever the Committee held a hearing on an especially important legislative issue affecting the National Park Service, we would often request that Mr. Galvin testify, so that the members of the Committee could benefit from his expertise and advice. Because of his broad and varied background, he could speak with as much knowledge on the merits of particular construction project within a park as he could on general policy issues affecting the entire park system.

I would like to recognize his efforts, especially in his role in the National Park Service leadership, to maintain and protect the integrity of the National Park System. The Park Service has been fortunate to have had many strong and far-sighted leaders in its history. We have been extremely fortunate that Denis Galvin has continued in that great tradition. As he embarks on a new chapter in his life I would like to take this opportunity to thank Denny for all of his assistance to me and to other members of the Senate, and I extend my best wishes upon his retirement.●

TRIBUTE TO CARAN KOLBE MCKEE

● Mr. GRASSLEY. Mr. President, I rise to pay tribute to a loyal friend and trusted advisor who left my staff in late August. Caran Kolbe McKee came to work for me 14 years ago. She served the people of Iowa in a number of capacities in my office. In every case, Caran demonstrated remarkable leadership qualities, steadfastness of purpose, and the kind of problem-solving

ability that can make our Government work for the people in the best way possible.

Caran came to the Senate in 1987, when she joined my staff as assistant press secretary. Two years later, she became my press secretary. During this time, she dealt with a range of important issues, including the Gulf War, Supreme Court nominations, whistleblower protections, a farm bill, civil rights legislation, a campaign to apply labor and employment laws to Congress, and the budget battle of 1990. She made certain that Iowans had access to accurate and timely information through the news media and fostered a better understanding of the way in which the issues addressed by Congress affect the lives of individuals and families.

In 1994, Caran took on new challenges as a special assistant. She developed initiatives and reached out to the grassroots. Caran brought to her work a great appreciation for the people who make Iowa the extraordinary place that it is. She grew up on a farm in Western Iowa, graduated from Iowa State University, and maintains many close family ties in Iowa.

Caran is the kind of person who is always looking ahead and making a plan to improve things for others no matter what their stage and place in life. Just last week, President Bush signed into law legislation re-authorizing the Drug Free Communities Act, a bill I sponsored in the Senate. During his remarks, the President took time to recognize a coalition I launched in Iowa to address our state's growing drug problem. Called ''Face It Together''—or FIT—it is the first-ever community-based, statewide anti-drug coalition. The goal is to help Iowans work together to keep their neighborhoods, schools, workplaces and communities drug-free. I hope to see this productive effort continue in the years ahead. No individual deserves more credit for making FIT a reality and a success than Caran Kolbe McKee. Her vision for the project, gift for bringing people together and dedication to making the program happen were vitally important.

In recent years, Caran also managed my correspondence with Iowans. In the Senate, I work hard to made the process of representative government work. I keep in close touch with Iowans by returning home when the Senate is not in session. And since 1981, I have conducted a meeting in each of Iowa's 99 counties at least one time every year. I am committed to an active dialogue with constituents, so at town meetings I always say representative government is a two-way street. While I have come to them for a meeting about the issues, they also have a responsibility to write to me expressing concerns and views and asking questions. Well, each and every one of these letters or e-mail messages deserves and receives as answer from me. Caran made sure that Iowans who wrote or called received a reply that was not just a piece of paper but a substantive, informative response. In this way, she helped representative government work for the people in a fundamental, meaningful way.

Caran Kolbe McKee was a true public servant. She was a mentor to many of her fellow staff members. And she was an inspiration for the way she handled challenges—both professional and personal—with compassion, strength and courage. Now Caran has decided to spend more time with her family. She will be greatly missed, but I admire her decision and wish her the very best. Above all, I extend to her my deepest thanks.●

RETIREMENT OF NOAA SPECIAL AGENT IN CHARGE, EUGENE PROULX

● Mr. HOLLINGS. Mr. President, I rise today to express appreciation and congratulations to Eugene Proulx on the occasion of his retirement as the Special Agent in Charge of the Southeast Enforcement Division of NOAA's National Marine Fisheries Service. For over 28 years, Gene has dedicated himself to the protection of our nation's oceans and living marine resources. His service of 3 years with the United States Coast Guard and 25 years with the National Marine Fisheries Service's Office for Law Enforcement (OLE) have been exemplary, and he is being appropriately honored for this service at an event to be held on December 21st in the Southeast region.

His commitment and leadership with the OLE have been reflected through his service as a Special Agent, National Training Coordinator, Assistant Special Agent in Charge, Deputy Special Agent in Charge, and as Special Agent in Charge and Acting Chief. Gene's service as a Special Agent in Charge included assignments in both the Southwest and Southeast Divisions in addition to his many years of service as an agent at various duty posts in the Northeast Division as well as several assignments to Headquarters in Silver Spring as both an agent and as the Acting Chief of the Office for a period of three months.

Gene has been the example of a public servant who routinely gives 100 percent towards his responsibilities. His enthusiasm, dedication and energy level are widely known. His corporate knowledge, fisheries expertise, common sense, interpersonal skills and gracious humility are all traits that are exemplary and have facilitated his contributions to NOAA and our nation's resource missions. The accomplishments of the Office of Law Enforcement in the areas of Vessel Monitoring Systems, Sanctuaries Enforcement, Accreditation, and Cooperative Enforcement were all strongly facilitated through the support of Gene's vision and leadership.

Gene's work with the national Cooperative Enforcement program and the State Joint Enforcement Agreements have provided a long-lasting foundation for this important program. In particular, the state of South Carolina and its fisheries resources have benefited greatly through his work. In large part, Gene was responsible for convincing South Carolina that working jointly with NMFS could serve to substantially improve protection of our fishery resources far beyond the level we could achieve working separately. His initiative led to a Joint Enforcement Agreement that is improving the management and protection of South Carolina's precious marine resources. This program has proven so successful that it is now the ''gold standard'' model of marine resource enforcement, and it is being established in coastal states around the nation. These cooperative programs and relationships will be the legacy of Gene's leadership.

In closing, although we hate to see him go, I once again wish to congratulate Agent Proulx on his exemplary career. Through his tireless efforts, he has made a difference in protecting the marine resources of South Carolina and the Nation.●

IN MEMORY OF THE HONORABLE DERAN KOLIGIAN

● Mrs. BOXER. Mr. President, I rise today to recognize the recent passing of Fresno County Supervisor Deran Koligian, an extraordinary public servant and Californian who died on December 11th at the age of 74, after a two-year battle with cancer.

Deran Koligian was a Fresno County icon, having served as a Supervisor for two decades. He faithfully served his constituents up until the day of his death.

Deran Koligian set a high standard of integrity and decency. He was a man of great determination and dedication who worked tirelessly for Fresno County and California and was loved and respected by so many. He was a farmer, a World War II veteran, a family man and an honorable Fresno County Supervisor. He will be greatly missed by all.

I ask that the Fresno Bee editorial from December 13, 2001, be printed in the RECORD. And, on behalf of the Senate, I extend our thoughts and prayers to the Koligian Family on the loss of an extraordinary man.

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

[From the Fresno Bee, Dec. 13, 2001]

DERAN KOLIGIAN—A POWERFUL VOICE IN FRESNO COUNTY, STATE POLITICS FALLS SILENT

The odds suggest we shall not soon see the likes of Deran Koligian in public life. The longtime Fresno County supervisor, who died Tuesday at the age of 74, embodied a rare set of skills and virtues. He was a bluntly honest farmer, a man of the soil who so deeply loved his roots he lived his entire life on his family's original 40-acre homestead. He was also a talented and shrewd politician, in the very best sense: clear about his philosophy and

objectives, civil in his behavior and capable of inspired compromise when conditions demanded it.

Koligian spent most of his adult life in public service. He enlisted in the Army at age 18, fought in the Philippines in World War II, and came home to attend Fresno State. The family farm sustained him, but could not contain him. He served many years on local school boards and was first elected to the county Board of Supervisors in 1982. In doing so, he became the first Armenian-American elected to public office in the county.

Defending Valley agricultural lands against urban encroachment was among Koligian's most important principles. He almost single-handedly pushed Fresno's growth away from his district, mostly lying to the west of Freeway 99, and out to the northeast. He was immensely popular among farmers for his defense of agriculture. He wasn't able to stop westward sprawl completely—no one individual could—but it is only recently that significant residential development has taken place on his turf.

Koligian was deeply opposed to the county using bonds to raise money for capital expenditures, arguing that it was fiscally irresponsible. He usually managed to persuade the rest of the board to support that position. It was one of the bones of contention between Koligian and The Bee, and he won the argument more often than he lost.

But—as with most of his adversaries—we always had a deep respect for Koligian. His combination of honesty and political savvy is one we do not often see, and we are all the poorer for that.●

HONORING DR. DONALD J. COHEN

● Mr. LIEBERMAN. Mr. President, today I honor Dr. Donald J. Cohen, a doctor, an author, an outstanding psychiatrist, a true professional, and caregiver and friend to the thousands of people who had the good fortune of knowing him. Today I grieve for my friend, as he recently passed away after only 61 short years on this Earth. I could think of no better tribute to this great man than to name the very program he envisioned so many years ago to help the victims of violence-related stress in his honor. Thus, I submitted an amendment to the Labor, Health and Human Services appropriations bill to amend Section 582 of the Public Health Service Act to rename this critically important grant program, the ''Donald J. Cohen National Child Traumatic Stress Initiative.'' I am proud to say that this amendment has been accepted by both the House and Senate and for that I thank my colleagues.

Dr. Cohen did more in his 61 years than most anyone else could ever hope to accomplish in a lifetime. He started at Brandeis University in 1961 on the course to a medical career and then went on to graduate from Yale University School of Medicine in 1966. Over the following 35 years, Dr. Cohen dedicated his life to helping children and adolescents. Donald spent virtually all of his adult life working tirelessly to develop and promote programs to assist children. I recently learned from my colleague, Senator DODD, that Dr. Cohen was the first person to suggest a special health insurance program for children that ultimately became the Childrens' Health Insurance Program. Today, this program throughout the Nation provides health care for millions of children who would otherwise go without the basic care they need to grow up healthy and flourish.

Dr. Cohen was a well-respected and world-renowned physician and teacher. Over the course of his illustrious career, he held many faculty positions at the Yale University School of Medicine, culminating with his appointment as the child Psychiatrist-in-Chief of the Yale Children's Hospital and Director of the Child Study Center at Yale School of Medicine. He held these positions for the past 18 years, which, as anyone in medicine will tell you, is an incredible testimony to his stature and leadership.

He has been honored by the Institute of Medicine, the National Academy of Sciences, the National Commission on Children, and the American Psychiatric association for his outstanding work. He received numerous lifetime research awards, including the Strecker Award from the Institute of the Pennsylvania Hospital and the Agnes Purcell McGavin Award for Prevention from the APA. He was recognized as a Sterling Professor of Child Psychiatry, Pediatrics and Psychology. He served as President of the International Association of Child and Adolescent Psychiatry and Allied Professions since 1993 and published over 300 papers and books. Dr. Cohen was also awarded a Doctor of Philosophy, Honoris Causa, from the Bar Ilan University in Israel.

As you can see, Dr. Donald Cohen was quite a remarkable man. So many people have been touched in some way by this great man's dedication.

It can be said that Dr. Cohen indeed achieved what most of us strive for, to make a difference. For those of us who knew him, for those of us in whose life Donald made a difference, his passing comes painfully too soon. We mourn and pray that Donald's soul will be embraced in the warmth of eternal life and that God will comfort and strengthen Phyllis, his wife, their children and grandchildren, and all of the family, friends, colleagues and patients who will miss him. I know the spirit and warmth of Dr. Donald J. Cohen will burn on in the hearts of those who grieve him. It is with spirit that I ask my colleagues to honor this man with the dedication of the Donald J. Cohen National Child Traumatic Stress Initiative.●

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

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

MESSAGES FROM THE HOUSE

At 9:33 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has agreed to the amendment of the Senate to the bill (H.R. 2199) to amend the National Capital Revitalization and Self-Government Improvement Act of 1997 to permit any Federal law enforcement agency to enter into a cooperative agreement with the Metropolitan Police Department of the District of Columbia to assist the Department in carrying out crime prevention and law enforcement activities in the District of Columbia if deemed appropriate by the Chief of the Department and the United States Attorney for the District of Columbia, and for other purposes.

The message also announced that the House has agreed to the amendment of the Senate to the bill (H.R. 2657) to amend title 11, District of Columbia Code, to redesignate the Family Division of the Superior Court of the District of Columbia as the Family Court of the Superior Court, to recruit and retain trained and experienced judges to serve in the Family Court, to promote consistency and efficiency in the assignment of judges to the Family Court and in the consideration of actions and proceedings in the Family Court, and for other purposes.

The message further announced that the House has agreed to the amendment of the Senate to the concurrent resolution (H. Con. Res. 289) directing the Clerk of the House of Representatives to make technical corrections in the enrollment of the bill H.R. 1.

The message also announced that pursuant to section 3(b) of the Public Safety Officer Medal of Valor Act of 2001 (42 U.S.C. 15202), the Speaker has appointed the following members on the part of the House of Representatives to the Medal of Valor Review Board for a term of 4 years: Mr. Tim Bivens of Dixon, Illinois and Mr. William J. Nolan of Chicago, Illinois.

The message further announced that the House has passed the following bill, without amendment:

S. 1741. An act to amend title XIX of the Social Security Act to clarify that Indian women with breast or cervical cancer who are eligible for health services provided under a medical care program of the Indian Health Service or of a tribal organization are included in the optional medicaid eligibility category of breast or cervical cancer patients added by the Breast and Cervical Prevention and Treatment Act of 2000.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2739. An act to amend Public Law 107–10 to authorize a United States plan to endorse and obtain observer status for Taiwan at the annual summit of the World Health Assembly in May 2002 in Geneva, Switzerland, and for other purposes.

H.R. 2751. An act to authorize the President to award a gold medal on behalf of the Congress to General Henry H. Shelton and to provide for the production of bronze duplicates of such medal for sale to the public.

H.R. 2869. An act to provide certain relief for small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to amend such Act to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes.

H.R. 3275. An act to implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes.

H.R. 3525. An act to enhance the border security of the United States, and for other purposes.

H.R. 3529. An act to provide tax incentives for economic recovery and assistance to displaced workers.

At 12:05 p.m., a message from the House of Representatives, delivered by Ms. Kelaher, one of its clerks, announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3338) making appropriations for the Department of Defense for the fiscal year ending September 30, 2002, and for other purposes.

The message also announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 79. A joint resolution making further continuing appropriations for the fiscal year 2002, and for other purposes.

H.J. Res. 80. A joint resolution appointing the day for the convening of the second session of the One Hundred Seventh Congress.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 295. Concurrent resolution providing for the sine die adjournment of the first session of the One Hundred Seventh Congress.

At 12:28 p.m., a message from the House of Representatives, delivered by Ms. Kelaher, one of its clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 643. An act to reauthorize the African Elephant Conservation Act.

H.R. 645. An act to reauthorize the Rhinoceros and Tiger Conservation Act of 1994.

H.R. 2199. An act to amend the National Capital Revitalization and Self-Government Improvement Act of 1997 to permit any Federal law enforcement agency to enter into a cooperative agreement with the Metropolitan Police Department of the District of Columbia to assist the Department in carrying out crime prevention and law enforcement activities in the District of Columbia if deemed appropriate by the Chief of the Department and the United States Attorney for the District of Columbia, and for other purposes.

H.R. 2657. An act to amend title 11, District of Columbia Code, to redesignate the Family Division of the Superior Court of the District of Columbia as the Family Court of the Superior Court, to recruit and retain trained and experienced judges to serve in the Family Court, to promote consistency and efficiency in the assignment of judges to the Family Court and in the consideration of actions and proceedings in the Family Court, and for other purposes.

S. 1438. An act to authorize appropriations for fiscal year 2002 for military activities of the Department of Defense, for military constructions, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

The enrolled bills were signed subsequently by the president pro tempore (Mr. BYRD).

At 12:43 p.m., a message from the House of Representatives, delivered by Ms. Kelaher, one of its clerks, announced that the House has passed the following bills, without amendment:

S. 1202. An act to amend the Ethics in Government Act of 1978 (5 U.S.C. App.) to extend the authorization of appropriations for the Office of Government Ethics through fiscal year 2006.

S. 1714. An act to provide for the installation of a plaque to honor Dr. James Harvey Early in the Williamsburg, Kentucky Post Office Building.

S. 1793. An act to provide the Secretary of Education with specific waiver authority to respond to conditions in the national emergency declared by the President on September 14, 2001.

The message also announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 1432. An act to designate the facility of the United States Postal Service located at 3698 Inner Perimeter Road in Valdosta, Georgia, as the ''Major Lyn McIntosh Post Office Building''.

H.R. 2561. An act to increase the rate of special pension for recipients of the medal of honor, to authorize those recipients to be furnished an additional medal for display purposes, to increase the criminal penalties associated with misuse or fraud relating to the medal of honor, and for other purposes.

H.R. 3423. An act to amend title 38, United States Code, to enact into law eligibility of certain veterans and their dependents for burial in Arlington National Cemetery.

H.R. 3487. An act to amend the Public Health Service Act with respect to health professions programs regarding the field of nursing.

H.R. 3504. An act to amend the Public Health Service Act with respect to qualified organ procurement organizations.

H.R. 3507. An act to authorize appropriations for the Coast Guard for fiscal year 2002, and for other purposes.

H.J. Res. 75. A joint resolution regarding the monitoring of weapons development in Iraq, as required by United Nations Security Council Resolution 687 (April 3, 1991).

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 279. Concurrent resolution recognizing the service of the crew members of the USS Enterprise Battle Group during its extended deployment for the war effort in Afghanistan.

H. Con. Res. 292. Concurrent resolution supporting the goals of the Year of the Rose.

MEASURES REFERRED

The following bills and joint resolution were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 38. An act to provide for additional lands to be included within the boundaries of the Homestead National Monument of America in the State of Nebraska, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2561. An act to increase the rate of special pension for recipients of the medal of honor, to authorize those recipients to be furnished an additional medal for display purposes, to increase the criminal penalties associated with misuse of fraud relating to the medal of honor, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 2739. An act to amend Public Law 107–10 to require a United States plan to endorse and obtain observer status for Taiwan at the annual summit of the World Health Assembly in May 2002 in Geneva, Switzerland, and for other purposes; to the Committee on Foreign Relations.

H.R. 2776. An act to designate buildings 315, 318, and 319 located at the Federal Aviation Administration's William J. Hughes Technical Center in Atlantic City, New Jersey, as the ''Frank R. Lautenberg Aviation Security Complex''; to the Committee on Commerce, Science, and Transportation.

H.R. 3160. An act to amend the Antiterrorism and Effective Death Penalty Act of 1996 with respect to the responsibilities of the Secretary of Health and Human Services regarding biological agents and toxins, and to amend title 18, United States Code, with respect to such agents and toxins; to the Committee on the Judiciary.

H.R. 3275. An act to implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes; to the Committee on the Judiciary.

H.R. 3391. An act to amend title XVIII of the Social Security Act to provide regulatory relief and contracting flexibility under the Medicare Program; to the Committee on Finance.

H.R. 3423. An act to amend title 38, United States Code, to enact into law eligibility of certain veterans and their dependents for burial in Arlington National Cemetery; to the Committee on Veterans' Affairs.

H.R. 3525. An act to enhance the border security of the United States, and for other purposes; to the Committee on the Judiciary.

H.J. Res. 75. Joint resolution regarding the monitoring of weapons development in Iraq, as required by United Nations Security Council Resolution 687 (April 3, 1991); to the Committee on Foreign Relations.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 279. Concurrent resolution recognizing the service of the crew members of the USS Enterprise Battle Group during its extended deployment for the war effort in Afghanistan; to the Committee on Armed Services.

MEASURES PLACED ON THE CALENDAR

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

H.R. 3507. An act to authorize appropriations for the Coast Guard for fiscal year 2002, and for other purposes.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 400. An act to authorize the Secretary of the Interior to establish the Ronald Reagan Boyhood Home National Historic Site, and for other purposes.

H.R. 1432. An act to designate the facility of the United States Postal Service located in 3698 Inner Perimeter road in Valdosta, Georgia, as the ''Major Lyn McIntosh Post Office Building''.

H.R. 2362. An act to establish the Benjamin Franklin Tercentenary Commission.

H.R. 2742. An act to authorize the construction of a Native American Cultural Center and Museum in Oklahoma City, Oklahoma.

H.R. 3441. An act to amend title 49, United States Code, to realign the policy responsibility in the Department of Transportation, and for other purposes.

H.R. 3487. An act to amend the Public Health Service Act with respect to health professions programs regarding the field of nursing.

H.R. 3504. An act to amend the Public Health Service Act with respect to qualified organ procurement organizations.

H.R. 3529. An act to provide tax incentives for economic recovery and assistance to displaced workers.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, December 20, 2001, she had presented to the President of the United States the following enrolled bill:

S. 1438. An act to authorize appropriations for fiscal year 2002 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to perscribe personnel strengths for such fiscal year for the Armed Forces, 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–4965. A communication from the Chief Financial Officer of the Export-Import Bank of the United States, transmitting, pursuant to law, the annual report which includes the Management Report on Financial Statements and Internal Accounting Controls, the Report of Independent Accountants and the Report on Compliance and on Internal Control over Financial Reporting for Fiscal Year 2001; to the Committee on Governmental Affairs.

EC–4966. A communication from the General Counsel of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report of a nomination confirmed for the position of Controller, Office of Federal Financial Management, received on December 20, 2001; to the Committee on Governmental Affairs.

EC–4967. A communication from the Deputy Associate Administrator of the Office of Acquisition Policy, General Service Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulations; Federal Acquisition Circular 2001–02'' (FAC2001–02) received on December 18, 2001; to the Committee on Governmental Affairs.

EC–4968. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification regarding the proposed transfer of major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more to Australia, Canada, Finland, Kuwait, Malaysia, Spain and Switzerland; to the Committee on Foreign Relations.

EC–4969. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed manufacturing license agreement with France; to the Committee on Foreign Relations.

EC–4970. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed manufacturing license agreement with Japan; to the Committee on Foreign Relations.

EC–4971. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed license for the export of defense articles or services sold commercially under a contract in the amount of $50,000,000 or more to Denmark and Belgium; to the Committee on Foreign Relations.

EC–4972. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed license for the export of defense articles or services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–4973. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed license for the export of defense articles or services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–4974. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed license for the export of defense articles or services sold commercially under a contract in the amount of $50,000,000 or more to Germany; to the Committee on Foreign Relations.

EC–4975. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed license for the export of defense articles or services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–4976. A communication from the Assistant Secretary of Indian Affairs, Division of Transportation, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Distribution of Fiscal Year 2002 Indian Reservation Roads Funds'' (RIN1076–AE28) received on December 20, 2001; to the Committee on Indian Affairs.

EC–4977. A communication from the Assistant Secretary of Indian Affairs, Department of the Interior, transmitting, pursuant to law, a report relative to Judgement Fund Use and Distribution Plan; to the Committee on Indian Affairs.

EC–4978. A communication from the Acting Director of the Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''West Virginia Regulatory Program'' (WV–093–FOR) received on December 19, 2001; to the Committee on Energy and Natural Resources.

EC–4979. A communication from the Acting Director of the Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Iowa Regulatory Program'' (IA–012–FOR) received on December 19, 2001; to the Committee on Energy and Natural Resources.

EC–4980. A communication from the Acting Director of the Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Pennsylvania Regulatory Program'' (PA–122–FOR) received on December 19, 2001; to the Committee on Energy and Natural Resources.

EC–4981. A communication from the Acting Director of the Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Kentucky Regulatory Program'' (KY–221–FOR) received on December 18, 2001; to the Committee on Energy and Natural Resources.

EC–4982. A communication from the Chairman of the Commission on the Future of the United States Aerospace Industry, transmitting, pursuant to law, a report relative to aerospace research and development, and procurement budgets; to the Committee on Commerce, Science, and Transportation.

EC–4983. A communication from the Assistant Secretary for Communication and Information, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Notice of Solicitation of Grant Applications'' (RIN0660–ZA06) received on December 19, 2001; to the Committee on Commerce, Science, and Transportation.

EC–4984. A communication from the Director of the Bureau of Transportation Statistics, Department of Transportation, transmitting, pursuant to law, the Transportation Statistics Annual Report for 2000; to the Committee on Commerce, Science, and Transportation.

EC–4985. A communication from the Regulations Officer, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled ''The Ticket to Work and Self–Sufficiency Program'' (RIN0960–AF11) received on December 19, 2001; to the Committee on Finance.

EC–4986. A communication from the Director of the Policy Directives and Instructions Branch, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Adjustment of Certain Fees of the Immigration Examinations Fee Account'' (RIN1115–AF61) received on December 20, 2001; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JEFFORDS, from the Committee on Environment and Public Works, with amendments:

S. 950: A bill to amend the Clean Air Act to address problems concerning methyl tertiary butyl ether, and for other purposes. (Rept. No. 107–131).

By Mr. JEFFORDS, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 1206: A bill to reauthorize the Appalachian Regional Development Act of 1965, and for other purposes. (Rept. No. 107–132).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LEVIN for the Committee on Armed Services.

*Joseph E. Schmitz, of Maryland, to be Inspector General, Department of Defense.

Army nominations beginning Brigadier General Donna F. Barbisch and ending Colonel Bruce E. Zukauskas, which nominations were received by the Senate and appeared in the Congressional Record on December 5, 2001.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

(*Nomination was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee on the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DORGAN (for himself and Mr. HAGEL):

S. 1860. A bill to reward the hard work and risk of individuals who choose to live in and help preserve America's small, rural towns, and for other purposes; to the Committee on Finance.

By Mr. LUGAR:

S. 1861. A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Russia; to the Committee on Finance.

By Mr. DURBIN:

S. 1862. A bill to provide for grants to assist States and communities in developing a comprehensive approach to helping children 5 and under who have been exposed to domestic violence or a violent act in the home or community; to the Committee on the Judiciary.

By Mr. GRAHAM:

S. 1863. A bill to amend the Internal Revenue Code of 1986 to clarify treatment for foreign tax credit limitation purposes of certain transfers of intangible property; to the Committee on Finance.

By Ms. MIKULSKI (for herself, Mr. HUTCHINSON, Mr. KERRY, Mr. JEFFORDS, Mr. GREGG, Mr. DASCHLE, Mr. FRIST, Mr. KENNEDY, Ms. COLLINS, Mr. LIEBERMAN, Mr. ENZI, Mrs. CLINTON, Mr. WARNER, Mr. JOHNSON, Mr. ROBERTS, Mrs. LINCOLN, Mrs. HUTCHISON, Mrs. MURRAY, Mr. SMITH of Oregon, Mr. SARBANES, Mr. HAGEL, Mr. TORRICELLI, Mr. COCHRAN, Mr. DAYTON, Mr. CHAFEE, Mr. GRAHAM, Mr. LUGAR, Ms. CANTWELL, Mr. HATCH, Mr. LEAHY, Mrs. CARNAHAN, Mr. ROCKEFELLER, Ms. STABENOW, Mr. CORZINE, Mr. SCHUMER, Mr. INOUYE, Mr. MILLER, Mr. WELLSTONE, Mr. HARKIN, Mr. SANTORUM, Mr. REED, and Mr. BOND):

S. 1864. A bill to amend the Public Health Service Act to establish a Nurse Corps and recruitment and retention strategies to address the nursing shortage, and for other purposes; considered and passed.

By Mrs. BOXER:

S. 1865. A bill to authorize the Secretary of the Interior to study the suitability and feasibility of establishing the Lower Los Angeles River and San Gabriel River watersheds in the State of California as a unit of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. LINCOLN:

S. 1866. A bill to amend title XVIII of the Social Security Act to phase in the fee schedule for ambulance services to provide for equitable treatment of suppliers of such services that are required to equip all ambulances to provide advanced life support services; to the Committee on Finance.

By Mr. LIEBERMAN (for himself and Mr. MCCAIN):

S. 1867. A bill to establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes; to the Committee on Governmental Affairs.

By Mr. BIDEN:

S. 1868. A bill to establish a national center on volunteer and provider screening to reduce sexual and other abuse of children, the elderly, and individuals with disabilities; to the Committee on the Judiciary.

By Mrs. LINCOLN (for herself, Mr. BAYH, Mr. DURBIN, Mr. HOLLINGS, and Mr. HUTCHINSON):

S. 1869. A bill to amend the Tariff Act of 1930 to provide for an expedited antidumping investigation when imports increase materially from new suppliers after an antidumping order has been issued, and to amend the provision relating to adjustments to export price and constructed export price; to the Committee on Finance.

By Mr. CORZINE (for himself, Mr. JEFFORDS, and Mr. LIEBERMAN):

S. 1870. A bill to amend the Clean Air Act to establish an inventory, registry, and information system of United States greenhouse gas emissions to inform the public and private sector concerning, and encourage voluntary reductions in, greenhouse emissions; to the Committee on Environment and Public Works.

By Mr. ROCKEFELLER:

S. 1871. A bill to direct the Secretary of Transportation to conduct a rail transportation security risk assessment, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BAYH:

S. 1872. A bill to amend the Employee Retirement Income Security Act of 1974 to require the Pension Benefit Guaranty Corporation to notify plan participants and beneficiaries of the commencement of proceedings to terminate such plan; to the Committee on Health, Education, Labor, and Pensions.

By Ms. SNOWE:

S. 1873. A bill to amend the Internal Revenue Code of 1986 to allow credits for the installation of energy efficiency home improvements, and for other purposes; to the Committee on Finance.

By Mr. SESSIONS (for himself and Mr. HATCH):

S. 1874. A bill to reduce the disparity in punishment between crack and powder cocaine offenses, to more broadly focus the punishment for drug offenders on the seriousness of the offense and the culpability of the offender, and for other purposes; to the Committee on the Judiciary.

By Mr. LEAHY (for himself and Ms. SNOWE):

S. 1875. A bill to amend the Clean Air Act to establish requirements concerning the operation of fossil fuel-fired electric utility steam generating units, commercial and industrial boiler units, solid waste incineration units, medical waste incinerators, hazardous waste combustors, chlor-alkali plants, and Portland cement plants to reduce emissions of mercury to the environment, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. CLINTON (for herself, Mr. SMITH of Oregon, Mr. STEVENS, Mr. SPECTER, Mrs. BOXER, Mr. FITZGERALD, Mr. SCHUMER, and Mr. DODD):

S. 1876. A bill to establish a National Foundation for the Study of Holocaust Assets; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HARKIN:

S. 1877. A bill to clarify and reaffirm a cause of action and Federal court jurisdiction for certain claims against the Government of Iran; to the Committee on Foreign Relations.

By Mrs. HUTCHISON (for herself and Mr. BINGAMAN):

S. 1878. A bill to establish programs to address the health care needs of residents of the United States-Mexico Border Area, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 1879. A bill to resolve the claims of Cook Inlet Region, Inc., to lands adjacent to the Russian River in the State of Alaska; to the Committee on Energy and Natural Resources.

By Mr. WELLSTONE:

S. 1880. A bill to provide assistance for the relief and reconstruction of Afghanistan, and for other purposes; to the Committee on Foreign Relations.

By Mr. DODD (for himself and Mr. MILLER):

S. 1881. A bill to require the Federal Trade Commission to establish a list of consumers who request not to receive telephone sales calls; to the Committee on Commerce, Science, and Transportation.

By Mr. SMITH of Oregon:

S. 1882. A bill to amend the Small Reclamation Projects Act of 1956, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SMITH of Oregon (for himself and Mr. WYDEN):

S. 1883. A bill to authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. WELLSTONE (for himself, Mr. DEWINE, Mr. DAYTON, Mr. SPECTER, Mr. BAYH, Ms. MIKULSKI, and Mr. VOINOVICH):

S. 1884. A bill to amend the Emergency Steel Loan Guarantee Act of 1999 to revise eligibility and other requirements for loan guarantees under that Act, and for other purposes; to the Committee on Appropriations.

By Mr. DODD:

S. 1885. A bill to establish the elderly housing plus health support demonstration program to modernize public housing for elderly and disabled persons; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DODD:

S. 1886. A bill to amend the Internal Revenue Code of 1986 to allow a business credit for supported elderly housing; to the Committee on Finance.

By Ms. SNOWE:

S. 1887. A bill to provide for renewal of project-based assisted housing contracts at reimbursement levels that are sufficient to sustain operations, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. STEVENS (for himself, Mr. BENNETT, Mr. CAMPBELL, Mr. HATCH, and Mr. SPECTER):

S. 1888. A bill to amend title 18 of the United States Code to correct a technical error in the codification of title 36 of the United States Code; considered and passed.

By Mr. HATCH:

S. 1889. A bill to provide for work authorization for nonimmigrant spouses of intracompany transferees, and to reduce the period of time during which certain intracompany transferees have to be continuously employed before applying for admission to the United States; to the Committee on the Judiciary.

By Mr. HATCH:

S. 1890. A bill to provide for work authorization for nonimmigrant spouses of treaty traders and treaty investors; to the Committee on the Judiciary.

By Mr. HATCH:

S. 1891. A bill to extend the basic pilot program for employment eligibility verification, and for other purposes; to the Committee on the Judiciary.

By Mr. SPECTER:

S.J. Res. 30. A joint resolution proposing an amendment to the Constitution of the United States regarding the appointment of individuals to serve as Members of the House of Representatives in the event a significant number of Members are unable to serve at any time because of death or incapacity; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. BROWNBACK:

S. Res. 194. A resolution congratulating the people and government of Kazakhstan on the tenth anniversary of the independence of the Republic of Kazakhstan; considered and agreed to.

By Mr. DASCHLE (for himself and Mr. LOTT):

S. Res. 195. A resolution tendering the thanks of the Senate to the Vice President for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. DASCHLE (for himself and Mr. LOTT):

S. Res. 196. A resolution tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. LOTT:

S. Res. 197. A resolution to commend the exemplary leadership of the Majority Leader; considered and agreed to.

By Mr. DASCHLE:

S. Res. 198. A resolution to commend the exemplary leadership of the Republican Leader; considered and agreed to.

ADDITIONAL COSPONSORS

S. 94

At the request of Mr. DORGAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 94, a bill to amend the Internal Revenue Code of 1986 to provide a 5-year extension of the credit for electricity produced from wind.

S. 162

At the request of Ms. COLLINS, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 162, a bill to amend the Internal Revenue Code of 1986 to provide a business credit against income for the purchase of fishing safety equipment.

S. 188

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 188, a bill to amend the Internal Revenue Code of 1986 to modify the tax credit for electricity produced from certain renewable resources.

S. 345

At the request of Mr. ALLARD, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 345, a bill to amend the Animal Welfare Act to strike the limitation that permits interstate movement of live birds, for the purpose of fighting, to States in which animal fighting is lawful.

S. 530

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 530, a bill to amend the Internal Revenue Code of 1986 to provide a 5-year extension of the credit for producing electricity from wind.

S. 540

At the request of Mr. DEWINE, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 540, a bill to amend the Internal Revenue Code of 1986 to allow as a deduction in determining adjusted gross income the deduction for expenses in connection with services as a member of a reserve component of the Armed Forces of the United States, to allow employers a credit against income tax with respect to employees who participate in the military reserve components, and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

S. 550

At the request of Mr. DASCHLE, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 550, a bill to amend part E of title IV of the Social Security Act to provide equitable access for foster care and adoption services for Indian children in tribal areas.

S. 677

At the request of Mr. HATCH, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 677, a bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financing to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income, and for other purposes.

S. 756

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 756, a bill to amend the Internal Revenue Code of 1986 to extend and modify the credit for electricity produced from biomass, and for other purposes.

S. 762

At the request of Mr. CONRAD, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 762, a bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for information technology training expenses and for other purposes.

S. 950

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 950, a bill to amend the Clean Air Act to address problems concerning methyl tertiary butyl ether, and for other purposes.

S. 1082

At the request of Mr. TORRICELLI, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1082, a bill to amend the Internal Revenue Code of 1986 to expand the expensing of environmental remediation costs.

S. 1125

At the request of Mr. MCCONNELL, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 1125, a bill to conserve global bear populations by prohibiting the importation, exportation, and interstate trade of bear viscera and items, products, or substances containing, or labeled or advertised as containing, bear viscera, and for other purposes.

S. 1214

At the request of Mr. HOLLINGS, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 1214, a bill to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes.

S. 1329

At the request of Mr. JEFFORDS, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1329, a bill to amend the Internal Revenue Code of 1986 to provide a tax incentive for land sales for conservation purposes.

S. 1346

At the request of Mr. SESSIONS, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 1346, a bill to amend the Federal Food, Drug, and Cosmetic Act with regard to new animal drugs, and for other purposes.

S. 1478

At the request of Mr. SANTORUM, the names of the Senator from California (Mrs. BOXER), the Senator from New York (Mrs. CLINTON), and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 1478, a bill to amend the Animal Welfare Act to improve the treatment of certain animals, and for other purposes.

S. 1500

At the request of Mr. KYL, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1500, a bill to amend the Internal Revenue Code of 1986 to provide tax and

other incentives to maintain a vibrant travel and tourism industry, to keep working people working, and to stimulate economic growth, and for other purposes.

S. 1556

At the request of Mr. DOMENICI, his name was added as a cosponsor of S. 1556, a bill to establish a program to name national and community service projects in honor of victims killed as a result of the terrorist attacks on September 11, 2001.

S. 1566

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 1566, a bill to amend the Internal Revenue Code of 1986 to modify and expand the credit for electricity produced from renewable resources and waste products, and for other purposes.

S. 1655

At the request of Ms. MIKULSKI, her name was added as a cosponsor of S. 1655, a bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals.

S. 1707

At the request of Mr. JEFFORDS, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 1707, a bill to amend title XVIII of the Social Security Act to specify the update for payments under the medicare physician fee schedule for 2002 and to direct the Medicare Payment Advisory Commission to conduct a study on replacing the use of the sustainable growth rate as a factor in determining such update in subsequent years.

S. 1745

At the request of Mrs. LINCOLN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1745, a bill to delay until at least January 1, 2003, any changes in medicaid regulations that modify the medicaid upper payment limit for non-State Government-owned or operated hospitals.

S. 1749

At the request of Mr. KYL, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 1749, a bill to enhance the border security of the United States, and for other purposes.

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 1749, supra.

S. 1766

At the request of Mr. BINGAMAN, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from North Dakota (Mr. DORGAN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from South Dakota (Mr. JOHNSON), and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 1766, a bill to provide for the energy security of the Nation, and for other purposes.

S. 1767

At the request of Mr. KENNEDY, the names of the Senator from Maine (Ms. COLLINS) and the Senator from Florida (Mr. GRAHAM) were added as cosponsors of S. 1767, a bill to amend title 38, United States Code, to provide that certain service in the American Field Service ambulance corps shall be considered active duty for the purposes of all laws administered by the Secretary of Veteran's Affairs, and for other purposes.

S. 1786

At the request of Mr. DURBIN, the names of the Senator from New York (Mr. SCHUMER), the Senator from Hawaii (Mr. INOUYE), the Senator from Missouri (Mrs. CARNAHAN), and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. 1786, a bill to expand aviation capacity in the Chicago area.

S. 1819

At the request of Mr. BIDEN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1819, a bill to provide that members of the Armed Forces performing services in the Republic of Korea 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. 1858

At the request of Mr. ALLEN, the names of the Senator from Oklahoma (Mr. NICKLES), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Virginia (Mr. WARNER), and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. 1858, a bill to permit the closed circuit televising of the criminal trial of Zacarias Moussaoui for the victims of September 11th.

S. 1859

At the request of Mr. SCHUMER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1859, a bill to extend the deadline for granting posthumous citizenship to individuals who die while on active-duty service in the Armed Forces.

S. CON. RES. 3

At the request of Mr. FEINGOLD, the name of the Senator from Nebraska (Mr. HAGEL) was added as cosponsor of S. Con. Res. 3, a concurrent resolution expressing the sense of Congress that a commemorative postage stamp should be issued in honor of the USS *Wisconsin* and all those who served aboard her.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LUGAR:

S. 1861. A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Russia; to the Committee on Finance.

Mr. LUGAR. Mr. President, at the request of the Administration, I rise today to offer legislation to repeal the Jackson-Vanik amendment to Title IV of the 1974 Trade Act and to authorize the extension of normal trade relations to the products of the Russian Federation.

Congress passed the Jackson-Vanik amendment as a means to deny Permanent Normal Trade Relations to communist countries that restricted emigration rights and were not market economies. Jackson-Vanik continues to apply to the Russian Federation today despite the findings of successive Administrations that Russia had come into full compliance with requirements of freedom of emigration, including the absence of any tax on emigration. Furthermore, although Russia's transformation has been imperfect, substantial progress has been made toward the creation of a free-market economy.

Since the fall of the Soviet Union, there have been dramatic changes in all aspects of life in Russia. It is clear that the Jackson-Vanik amendment played a role in bringing about these changes and in promoting freedom of emigration in many countries in the former Soviet Union.

But, the time has come to move beyond the Cold War era.

Since 1991, Congress has authorized the removal of Jackson-Vanik restrictions from Estonia, Latvia, Lithuania, the Czech Republic, the Slovak Republic, Hungary, Bulgaria, Romania, Kyrgyszstan, Albania, and Georgia. Because Russia continues to be subject to Jackson-Vanik conditions, the Administration must submit a semi-annual report to the Congress on that government's continued compliance with freedom of emigration requirements. The Administration reports that this requirement continues to be a major irritant is U.S. relations with Russia. The changed circumstances that have permitted the removal of other communist countries from Title IV reporting now apply equally to Russia.

I understand there remain those with concerns about extending nondiscriminatory treatment to the products of the Russian Federation. But I would simply point out that the U.S. and Russia concluded a bilateral trade agreement on June 17, 1992 and that Russia is currently in the process of acceding to the World Trade Organization. In other words, the time has come to take the next step in the U.S.-Russian bilateral relationship, namely, Permanent Normal Trade Relations. It is for that purpose that I introduce this legislation today.

By Mr. GRAHAM:

S. 1863. A bill to amend the Internal Revenue Code of 1986 to clarify treatment for foreign tax credit limitation purposes of certain transfers of intangible property; to the Committee on Finance.

Mr. GRAHAM. Mr. President, today I am introducing legislation that will clarify the proper tax treatment of intangible assets transferred to foreign corporations. This bill is necessary to avoid trapping unwary taxpayers who relied on Congressional intent when it made changes to this area of the tax code in 1997.

Transfers of intangible property from a U.S. person to a foreign corporation

in a transaction that would be tax-free under Code section 351 or 361 are subject to special rules. Pursuant to section 367(d), the U.S. person making such a transfer is treated as 1. having sold the intangible property in exchange for payments that are contingent on the productivity, use, or disposition of such property and 2. receiving amounts that reasonably reflect the amounts that would have been received annually over the useful life of such property. The deemed royalty amounts included in the gross income of the U.S. person by reason of this rule are treated as ordinary income and the earnings and profits of the foreign corporation to which the intangible property was distributed are reduced by such amounts.

Prior to the Taxpayer Relief Act of 1997 (the ''1997 Act''), the deemed royalties under section 367(d) were treated as U.S.-source income and therefore were not eligible for foreign tax credits. The 1997 Act eliminated this special ''deemed U.S. source rule'' and provided that deemed royalties under section 367(d) are treated as foreign-source income to the same extent that an actual royalty payment would be so treated. The 1997 Act reflected a recognition that the previous rule was intended to discourage transfers of intangible property to foreign corporations, relative to licenses of such intangible property, but that the enhanced information reporting included in the 1997 Act made it unnecessary to continue to so discourage transfers relative to licenses.

The 1997 Act intended to eliminate the penalty provided by the prior-law deemed U.S. source rule under section 367(d) and that had operated to discourage taxpayers from transferring intangible property in a transaction that would be covered by section 367(d). Prior to the 1997 Act, in order to avoid this penalty, taxpayers licensed intangible property to foreign corporations instead of transferring such property in a transaction that would be subject to section 367(d). With the 1997 Act's elimination of the penalty source rule of section 367(d), it was intended that taxpayers could transfer intangible property to a foreign corporation in a transaction that gives rise to deemed royalty payments under section 367(d) instead of having to structure the transaction with the foreign corporation as a license in exchange for actual royalty payments.

The 1997 Act's goal of eliminating the penalty treatment of transfers of intangible property under section 367(d) is achieved only if the deemed royalty payments under section 367(d) not only are sourced for foreign tax credit purposes in the same manner as actual royalty payments, but also are characterized for foreign tax credit limitation purposes in the same manner as actual royalty payments. Without a clarification that the deemed royalty payments under section 367(d) are characterized for foreign tax credit limitation purposes in the same manner as an actual royalty, there is a risk in many cases that such deemed royalties would be characterized in a manner that leads to a foreign tax credit result that is equally as disadvantageous as the result that arose under the penalty source rule that was intended to be eliminated by the 1997 Act. The bill I am introducing today provides the needed clarification of the foreign tax credit limitation treatment of a deemed royalty under section 367(d), ensuring that the penalty that was intended to be eliminated with the 1997 Act is in fact eliminated.

The bill clarifies that the deemed income inclusions under section 367(d) upon a transfer of intangible property to a foreign corporation are characterized for purposes of the foreign tax credit limitation rules in the same manner as an actual royalty is characterized. The tax treatment of such a transfer of intangible property to a foreign corporation thus would be the same as the tax treatment that applies if the intangible property is made available to the foreign corporation through a license arrangement.

The bill's provision would be effective for income inclusions under section 367(d) on or after August 5, 1997, which is the effective date of the 1997 Act provision eliminating the special deemed U.S. source rule under section 367(d). Like the 1997 Act provision, the bill's provision would be effective for transfers made, and for royalties deemed received, on or after August 5, 1997.

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. 1863

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

SECTION 1. CLARIFICATION OF TREATMENT OF CERTAIN TRANSFERS OF INTANGIBLE PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 367(d)(2) of the Internal Revenue Code of 1986 (relating to transfer of intangibles treated as transfer pursuant to sale of contingent payments) is amended by adding at the end the following new sentence: ''For purposes of applying the various categories of income described in section 904(d)(1), any such amount shall be treated in the same manner as if such amount were a royalty.''.

(b) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 1131(b) of the Taxpayer Relief Act of 1997.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the application of the amendment made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claimed therefor is filed before the close of such period.

By Ms. MIKULSKI (for herself, Mr. HUTCHINSON, Mr. KERRY, Mr. JEFFORDS, Mr. GREGG, Mr. DASCHLE, Mr. FRIST, Mr. KENNEDY, Ms. COLLINS, Mr. LIEBERMAN, Mr. ENZI, Mrs. CLINTON, Mr. WARNER, Mr. JOHNSON, Mr. ROBERTS, Mrs. LINCOLN, Mrs. HUTCHISON, Mrs. MURRAY, Mr. SMITH of Oregon, Mr. SARBANES, Mr. HAGEL, Mr. TORRICELLI, Mr. COCHRAN, Mr. DAYTON, Mr. CHAFEE, Mr. GRAHAM, Mr. LUGAR, Ms. CANTWELL, Mr. HATCH, Mr. LEAHY, Mrs. CARNAHAN, Mr. ROCKEFELLER, Ms. STABENOW, Mr. CORZINE, Mr. SCHUMER, Mr. INOUYE, Mr. MILLER, MR. WELLSTONE, Mr. HARKIN, Mr. SANTORUM, Mr. REED, and Mr. BOND):

S. 1864. A bill to amend the Public Health Service Act to establish a Nurse Corps and recruitment and retention strategies to address the nursing shortage, and for other purposes; considered and passed.

Ms. MIKULSKI. Mr. President, I rise to introduce the Nurse Reinvestment Act. This bill is a down payment to help address the nursing shortage in this country by bringing more people into the nursing profession and by retaining nurses. This bill combines the Nursing Employment and Education Development Act, S. 721, introduced by Senator TIM HUTCHINSON and myself and the Nurse Reinvestment Act, (S. 1597), introduced by Senators KERRY and JEFFORDS. We have all worked together to bring this important legislation before the Senate today.

This bill is sorely needed, because we have a nursing shortage. In Maryland, 15 percent of the nursing jobs are vacant. Last year, it took an average of 68 days to fill a nurse vacancy, and we need about 1,600 more full-time nurses to fill those vacancies. There were 2,000 fewer nurses in Maryland in 1999 than there were in 1998. The shortage exists across the United States, and will get worse in the future. Nationwide, we need 1.7 million nurses by the year 2020, but only about 600,000 will be available. The need for this bill was clear at the Subcommittee on Aging's hearing on the nursing shortgage earlier this year.

We depend on nurses every day to care for millions of Americans, whether in a hospital, nursing home, community health center, hospice, or through home health. They are the backbone of our health care system. If we don't effectively address the crisis in nursing, those hospitals, nursing homes and clinics will soon be on life support.

This bill is a down payment. It doesn't address the fact that nurses are underpaid, overworked, and undervalued, but it does focus on education and other important areas. This bill seeks to help bring men and women into the nursing profession, and help them to advance within it. The bill does this under five major approaches:

Creates a National Nurse Service Corps Scholarship Program, which provides scholarships in exchange for at least two years of service in a critical nursing shortage area or facility

Provides grants for outreach at primary and secondary schools; scholarships or stipends to nursing students from disadvantaged backgrounds, education programs for students who need assistance with math, science, or other areas; dependent care and transportation assistance; establishment of partnerships between schools of nursing and health care facilities to improve access to care in underserved areas

Creates state and national public awareness and education campaigns to enhance the image of nursing, promote diversity in the nursing workforce, and encourage people to enter the nursing profession

Creates ''career ladder'' programs with schools of nursing and health care facilities to encourage individuals to pursue additional education and training to enter and advance within the nursing profession

Enables Area Health Education Centers, AHECs, to expand their junior and senior high school mentoring programs for nurses and develop ''models of excellence'' for community-based nurses

Trains individuals to provide long-term care to the elderly and expands educational opportunities in gerontological nursing

Creates internship and residency programs that encourage mentoring and the development of specialties

Provides grants to improve workplace conditions, reduce workplace injuries, promote continuing nursing education and career development, and establish nurse retention programs

Provides scholarships, loans, and stipends for graduate-level education in nursing in exchange for teaching at an accredited school of nursing, to help ensure that we have enough teachers at our nursing schools.

Creates a National Commission on the Recruitment and Retention of Nurses to study and make recommendations to the health care community and Congress on how to address: the nursing shortage in the long-term, nursing recruitment and retention, career advancement within the profession and attracting individuals into the profession.

This bill is about nursing education, but it's also about empowerment. We can empower people to have a better life and go into a career to save lives.

The bill will empower the single mom who has been working in a minimum wage job to forge a better life for herself and her family. It will help her get a scholarship to help pay for tuition, books, and lab fees, and by funding child care programs to help her balance work and family.

The bill will empower the nurse who has a baccalaureate degree, but wants to get a Master's degree so she can teach nursing at a community college. It will help her get loans or scholarships and living stipends to pursue that degree.

This bill will also fund partnerships between schools of nursing and health care facilities to train individuals who will provide long-term care for the elderly. Our population is aging, more than 70 million Americans will be over age 65 by 2030. This means more people will need care provided by nurses and other individuals specifically trained to care for the unique health needs of older Americans.

I look forward to the Senate's speedy passage of this important legislation and to working with our colleagues in the House of Representatives to enact a strong bill that gets behind our Nation's nurses. I also want to thank Senators KENNEDY, GREGG, and FRIST for their hard work in moving this legislation forward, as well as Senators LIEBERMAN and CLINTON for their important contributions to this bill.

Mr. HUTCHINSON. Mr. President, I am proud to be a lead cosponsor of the legislation we are introducing today to address the critical shortage of nurses in our country. After holding two hearings earlier this year to examine the nurse shortage and its impact on our health care delivery system. I introduced S. 721, the Nurse Employment and Education Development Act, NEED Act. This bipartisan legislation seeks to encourage individuals to enter the nursing profession, provide continued education and opportunities for advancement within the profession, and to bolster the number of nurse faculty to teach at our nursing schools. Most importantly, its legislation would establish a Nurse Service Corps, which would provide financial assistance to individuals for nurse education in exchange for 2 years of service in a nurse shortage area.

The NEED Act won unanimous approval by the Senate Health, Education, Labor and Pensions Committee on November 1, and I am pleased that it has served as the basis for the legislation we are introducing today.

The nursing profession is suffering from a serious decline in practicing nurses due to a shrinking pipeline. The nursing profession as a whole is aging, the average age of Registered Nurses is 43.3 years, while nurses under age 30 comprise less than 10 percent of today's nurse workforce. Large numbers of nurses are retiring or leaving the profession, and only a small number of nurses and nurse educators are taking their place. By the year 2020, when millions of Baby Boomers will retire, it is projected that nursing needs will be unmet by at least 20 percent. For this reason, we need to employ innovative recruitment techniques, including a Nurse Service Corps, public service announcements, and outreach efforts at elementary and secondary schools to promote nursing as a viable, fulfilling career option. To address the needs of the elderly, the bill will provide grants for gerontological education and training.

Hospitals, nursing homes, community health centers and other health care facilities are desperately seeking nurses to fill vacant positions so they can continue to provide safe, quality health care. In Arkansas, hospitals have reported over 750 nursing vacancies. To encourage nurses to stay and advance within the profession, the nursing bill provides for a career ladder program and encourages hospitals and other employers to develop innovative retention strategies. The bill also encourages speciality training and mentors through an internship and residency program, in order to fill the void created by experienced nurses leaving the profession.

Finally, the bill addresses the critical need for nurse educators. The number of nursing school graduates in Arkansas is at its lowest in a decade, and nursing students have been turned away because of the lack of faculty to teach them. There are approximately four hundred nurse faculty vacancies in nursing schools nationwide. Therefore we include two provisions, a nurse faculty fast-track loan repayment program and a stipend and scholarship program, both of which provide financial assistance to masters and doctoral students who will teach at an accredited school of nursing for each year of assistance.

This has been a team effort. I want to thank Senators MIKULSKI, KERRY, and JEFFORDS for their contributions to this important legislation, and I urge my colleagues to support its passage.

Mr. KERRY. Mr. President, I am pleased to join my colleagues Senators JEFFORDS, HUTCHINSON and MIKULSKI in re-introducing the Nurse Reinvestment Act. This legislation will increase the number of nurses in our country, and also ensure that every nurse in the field has the skills he or she needs to provide the quality care patients deserve.

We are in the midst of a serious nursing workforce shortage. Every type of community, urban, suburban and rural, is touched by it. No sector of our health care system is immune to it. Across the country, hospitals, nursing homes, home health care agencies and hospices are struggling to find nurses to care for their patients. Patients in search of care have been denied admission to facilities and told that there were ''no beds'' for them. Often there are beds, just not the nurses to care for the patients who would occupy them.

Our Naiton has suffered from nursing shortages in the past. However, this shortage is particularly severe because we are losing nurses at both ends of the pipeline. Over the past five years, enrollment in entry-level nursing programs has declined by 20 percent. Lured to the lucartive jobs of the new economy, high school graduates are not pursuing careers in nursing in the numbers they once had. Consequently, nurses under the age of 30 represent only 10 percent of the current workforce. By 2010, 40 percent of the nursing

workforce will be over the age of 50, and nearing retirement. If these trends are not reversed, we stand to lose vast numbers of nurses at the same time that they will be needed to care for the millions of baby boomers enrolling in Medicare.

The Nurse Reinvestment Act will support the recruitment of new students into our Nation's nursing programs. The bill will fund national and local public service announcements to enhance the profile of the nursing profession and encourage students to commit to a career in nursing. Our legislation will also expand school-to-career partnerships between health care facilities, nursing colleges, middle schools and high schools to show our youth the value of a nursing degree.

Our legislation will ensure that barriers to higher education do not dissuade Americans who are interested in nursing from pursuing a degree in the field. The Nurse Reinvestment Act will support education for students who need help getting-up to speed on math, science and medical English. Our legislation will also ensure that there is support for single moms and dads with children who need a hand in daycare or a lift in getting to their classroom because they are without transportation.

Still, is it not enough to simply encourage more individuals to enter the nursing profession, we must also ensure that our schools of nursing have enough professors to teach them. The Nurse Reinvestment Act provides for a fast-track facility development program, which encourages master's and doctoral students to rapidly complete their studies through loans and scholarships. Individuals receiving financial assistance through the fast-track faculty program must agree to teach at an ascredited school of nursing in exchange for this assistance.

In addition to recruiting new nurses, our legislation will reinvest in nurses who are already practicing by providing them with education and training at every step of the career ladder and at every health care facility in which they work. It will ensure that nurses can obtain advanced degrees, from a B.S. in Nursing to a PhD in Nursing. It will enable nurses to access the specialty training they require to learn how to treat a specific disease or utilize a new piece of technology. Our bill will also help colleges and universities develop curriculum in gerontology and long-term care so that nursing students can pursue concentrations, minors and majors in this growing field of health care and be ready to apply their knowledge to the current and future senior population.

To assist institutions in providing advanced education and training for nurses across the career ladder, our bill will strengthen the partnerships between colleges of nursing and health care facilities. Grants will be available to support such initiatives as the teaching of a course in gerontology in the conference rooms of a hospital or nurusing home. Grants will also support the use of distance learning technology to extend education and training to rural areas, and specialty education and training to all areas.

The Nurse Reinvestment Act will authorize, for the first time in history, a National Nurse Service Corps. Separate from, though modeled after, the National Health Service Corps, the NNSC will administer scholarships to students who commit to working in a health care facility that is experiencing a shortage of nurses. In urban, suburban and rural communities across the country, where facilities turn away patients due to staff shortages, the NNSC will send qualified nurses to serve and provide the care that patients deserve.

Our country boasts the best health care system in the world. But, that health care system is being jeopardized by the shortage plaguing our nursing workforce. Indeed, state-of-the-art medical facilities are of no use if their beds go unfilled and their floors remain empty because the nurses needed to staff them are not available. The Nurse Reinvestment Act not only seeks to increase the numbers of new nurses in our country, but also ensures that all nurses have the skills they need to provide the high quality care that makes our health care system the best in the world.

Mr. JEFFORDS. Mr. President, I am especially pleased that the Senate is scheduled to consider and vote on the Nurse Reinvestment Act. When we pass this measure, it will represent a good day for the future of nursing in America and a good day for the future for patient-care. I want to take this opportunity to tell our colleagues a little about this legislation and to congratulate and complement my fellow Senators who worked so hard to see this effort through. My good friend from Massachusetts, Senator KERRY, was the original sponsor of the Nurse Reinvestment Act and with me crafted an innovative set of solutions to the nursing shortage problem. Since then, this bill has been strengthened significantly by the inclusion of a complimentary measure authored by my colleagues on the HELP Committee, Senator HUTCHINSON and Senator MIKULSKI. The measure we are considering today has been benefited by this collaboration.

As I have stated before, we are facing a looming crisis in this country. The size of our nursing workforce remains stagnant, while the average age of the American nurse is on the rise. Over the past five years, enrollment in entry-level nursing programs has declined by 20 percent. Nurses under the age of 30 represent only 10 percent of the current workforce. By 2010, 40 percent of the nursing workforce will be over the age of 50, and nearing retirement. In Vermont we are facing an even greater crisis because these numbers are worse. Only 28 percent of nurses are under the age of 40 and Vermont schools and colleges are producing 31 percent fewer nurses today than they did just five years ago.

We have a compelling need to encourage more Americans to enter the nursing profession and to strengthen it so that more nurses choose to stay in the profession. All facets of the health care system will have a role to play in ensuring a strong nursing workforce. Nurses, physicians, hospitals, nursing homes, academia, community organizations and state and federal governments all must accept responsibility and work towards a solution. Part of the responsibility to launch that effort begins with us today as we make a decision on the vote for the Nurse Reinvestment Act.

The Nurse Reinvestment Act expands and improves the federal government's support of ''pipeline'' programs, which will maintain a strong talent pool and develop a nursing workforce that can address the increasingly diverse needs of America's population. The Nurse Reinvestment Act provides for a comprehensive public awareness and education campaign on a national, state and local level that will bolster the image of the profession, encourage diversity, attract more nurses to the workforce, and lead current nurses to take advantage of career development opportunities.

The legislation creates a National Nursing Service Corps Scholarship Program authorized at $40 million that will provide scholarships to individuals to attend nursing schools in exchange for a commitment to serve two years in a health facility determined to have a critical shortage of nurses. This scholarship program is designed to greatly help the recruitment of nursing students by providing them tuition, other reasonable and necessary educational fees and a monthly stipend paid to the student.

The Act also authorizes the ''Nurse Recruitment Grant Program'' to support outreach efforts by nursing schools and other eligible healthcare facilities to inform students in primary, junior and secondary schools of nursing educational opportunities and to attract them to the nursing profession. The grant program provides appropriate student support services to individuals from disadvantaged backgrounds and creates community-based partnerships to recruit nurses in medically underserved rural and urban areas. Further, the ''Area Health Education Centers Program'' will award grants to nursing schools that work in partnership in the community to develop models of excellence.

The ''Career Ladder Programs'' will assist schools of nursing, health care facilities or partnerships of the two to develop programs that will encourage current nursing students in active nurses alike, to pursue further education and training. This will be achieved through scholarships, stipends, career counseling, direct training and distance learning programs.

And, in light of our aging baby-boomer generation, specific grants are offered to schools and health care facilities so that they might place a further emphasis upon encouraging students to study long-term care for the elderly.

In addition to the provisions that were included in the original bill I cosponsored with my colleague Senator KERRY, there are provisions added by our colleagues which, I am happy to have included in this final piece of legislation. Those provisions will provide for the development of internship and residency programs to encourage the development of specialties and student, loan, stipend and scholarship programs for those who would like to seek a masters or doctorate degree at a school of nursing. The final bill was also strengthened by provisions added through the efforts of Senator LIEBERMAN and Senator CLINTON.

Once again, I want to applaud my colleagues Senator KERRY, Senator MIKULSKI and Senator HUTCHINSON for their tireless work on the Nurse Reinvestment Act and for the work of their staffs. In particular, I want to recognize the efforts of Kelly Bovio in Senator KERRY,'s office, Kate Hull in Senator HUTCHINSON's office and Rhonda Richards with Senator MIKULSKI. This effort was also advanced with the help of Sarah Bianchi and Jackie Gran who are members of Senator KENNEDY's staff, Steve Irizarry with Senator GREGG and Shana Christrup with Senator FRIST. Finally, in my own office, I want to note the efforts of Philo Hall, Angela Mattie, Eric Silva and Sean Donohue.

Adequate health care services cannot survive any further diminishing of the nursing workforce. All patients depend on the professional care of nurses, and we must make sure it will be there for them. I urged my colleagues to join me and the bill's cosponsors in support of this measure.

Mr. FRIST. Mr. President, I rise today to discuss the introduction of a very important bill to address the nursing workforce shortage. At the beginning of November, we reported two different bills from the Senate HELP Committee designed to address the nursing shortage in this country, the Hutchinson-Mikulski ''Nursing Employment and Education Development Act'' and the Kerry-Jeffords ''Nursing Reinvestment Act.'' I was an original cosponsor of the Hutchinson legislation and a strong supporter of that bill. At that time, I voiced my concern that we are marking up two rather similar proposals to deal with the nursing shortage, and I requested that the differences be worked out before the bill was discussed on the Senate floor. I am happy today to report the the final reconciliation is complete, and we have a consensus bill that firmly addresses the nursing workforce shortage issue. I thank Senator HUTCHINSON for his hard work in ensuring that we could reach this point.

We are in the midst of a direct care workforce shortage. Not only are fewer people entering and staying in the nursing profession, but we are losing experienced nurses at a time of growing need. Today, nurses are needed in a greater number of settings, such as nursing homes, extended care facilities, community and public health centers, professional education, and ambulatory care facilities. Nationwide, health care providers, ranging from hospitals and nursing homes to home health agencies and public health departments, are struggling to find qualified nurses to provide safe, efficient, quality care for their patients. That's why it is important to have a new Nursing Corps, which will provide scholarships to qualified individuals in exchange for direct care service in a variety of settings as well as to allow others to know about the numerous possibilities within the profession by authorizing public service announcements.

Though we have faced nursing shortages in the past, this looming shortage is particularly troublesome because it reflects two trends that are occurring simultaneously: 1. A shortage of people entering the profession; and 2. The retirement of nurses who have been working in the profession for many years. Over the past five years, enrollment in entry-level nursing programs has declined by twenty percent, mirroring the declining awareness of the nursing profession among high school graduates. Consequently, nurses under the age of thirty represent only ten percent of the current workforce. By 2010, forty percent of the nursing workforce will be older than fifty years old and nearing retirement. If these trends continue, we stand to lost vast numbers of nurses at the very time that they will be needed to care for the millions of baby boomers reaching retirement age. To deal with the increased need for nurses to care for the elderly, this bill has a provision to assist with both the necessary training and educational development of gerontological nurses as well as to strengthen the ability of nurses to obtain additional training and certification through the career ladders program.

Further, greater efforts must be made to recruit more men and minorities to this noble profession. Currently, only ten percent of the registered nurses in the United States are from racial or ethnic minority backgrounds, even though these individuals comprise twenty-eight percent of the total United States population. In 2000, less than six percent of the registered nurses were men. We must work to promote diversity in the workforce, not only to increase the number of individuals within the profession, but also to promote culturally competent and relevant care. Within the combined nursing shortage bill, one grant program directly addresses the need to increase funding for the training of minority and disadvantaged students to make it easier for individuals to enter the nursing profession.

Even if nursing schools could recruit more students to deal with the shortage, many schools could not accommodate higher enrollments because of faculty shortages. There are nearly four hundred faculty vacancies at nursing schools in this country. And, an even greater faculty shortage looms in the next ten to fifteen years as many current nursing faculty approach retirement and fewer nursing students pursue academic careers. Therefore, I strongly support the two provisions to assist with faculty development and training, the fast track nursing faculty loan program and the stipend and scholarship program.

In addressing these direct care staffing shortages, we must work together to develop innovative solutions to address this growing issue. As reported in the Memphis Commercial Appeal on May 10, there are steps that Congress can take to increase funding for specific programs and reduce regulatory requirements. However, a comprehensive strategy must also include other sectors of the health care system, hospitals, health care professionals, educators, and the general public, to successfully deal with this looming shortage. That's why it is important to also include a provision to deal with developing retention strategies and best practices in nursing staff management.

I am extremely supportive of this legislation, and I want to thank Senator HUTCHINSON again for his hard work in addressing this critical issue. I also want to commend my other colleagues, including Senator MIKULSKI, for her efforts. Senator HUTCHINSON clearly has shown tremendous leadership in this area. He understands the need to address the nursing shortage issue, and he is largely responsible for getting us to this point today.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues in introducing the Nurse Reinvestment Act. Our goal in this bipartisan legislation is to do as much as we can to alleviate the nursing shortage experienced by health care facilities across the United States. Increasing the number of nurses is an essential part of the ongoing effort to reduce medical errors, improve patient outcomes, and encourage more Americans to become and remain nurses.

The Nation's nurses provide care for Americans at the most vulnerable times in the lives. We must act now to halt the decline in the number of nurses. Enrollment in schools of nursing is falling, and the average age of the nursing workforce is rising. Across the country, communities are losing vast numbers of nurses, just as we need more to care for the millions of aging baby boomers and deal with the many medical challenges facing our hospitals.

The current shortage means that too many nurses now have to care for too many patients at once, undermining the high quality of care that nurses want to give, and patients deserve. A

recent survey by the American Nurses Association showed that 75 percent of nurses believe that the quality of nursing care at their facility has declined. More than half of those surveyed said that the time they can spend with patients has decreased. A nurse in Massachusetts said that she would not go the hospital where she worked, if she needed care.

Nationally, the shortfall is expected to rise to 20 percent in the coming years. Yet nurses themselves are already seriously questioning the quality of bedside treatments now being provided on intensive care units, in emergency rooms, and at the bedsides of patients where they work.

Their questions are call for help. This legislation can be significant in strengthening the nursing profession, and responding to the urgent need.

The Nurse Reinvestment Act will recruit new students into schools of nursing through outreach programs, public awareness and education campaigns, and area health education centers. It establishes a national nurse service corps, which will offer scholarships to bring individuals into the profession and place them in medically underserved areas and facilities. The Act expands school-to-career partnerships to show youths the high value and importance of a nursing degree. It invests in today's nurses by providing education and training at every step of the career ladder, and by helping them obtain advanced degrees, from a B.S. in Nursing to a Ph.D. in Nursing. It includes provisions developed by Senator LIEBERMAN and Senator CLINTON to help health care facilities retain nurses.

Our country has the best health care system in the world. But that system is being jeopardized today by the shortages plaguing the nursing workforce. Even our best medical facilities are in deep trouble if their beds go unfilled and their floors remain empty because there are no nurses to staff them.

I commend Senator MIKULSKI, Senator KERRY, Senator HUTCHINSON, and Senator JEFFORDS for their leadership in this initiative. Bringing more nurses into the profession will help to ensure that nurses are ready and able to provide the highest quality of care to their patients. The Nurse Reinvestment Act is a significant step that Congress can take to support the Nation's nurses, and I urge my colleagues to support it.

Mr. LIEBERMAN. Mr. President, I am proud to be an original cosponsor of the Nurse Reinvestment Act of 2001. I want to congratulate my colleagues, particularly Senators MIKULSKI, HUTCHINSON, KERRY and JEFFORDS, for their extraordinary efforts to put together this excellent bill. I also want to thank the Committee for including the provisions of the LIEBERMAN-ENSIGN ''Hospital Based Nursing Initiative Act of 2001'' in the bill.

By now, everyone knows that the nation faces a critical shortage of nurses. The shortage has already severely impacted states in many areas of the country, including Connecticut, and I fear it will jeopardize our ability to provide quality health care to patients. A recent report by the Government Accounting Office projected that the growing national nursing shortage will hit a peak in ten years.

While pay is a major factor cited in the report, it is not the primary reason nurses are leaving the profession. The study also cites poor or unsafe working conditions, lack of respect from physicians and patients, barriers to participation in the hospital administration decision-making process, lack of opportunity to continue their education, and lack of recognition for accomplishments. We must do more to attract new people to the nursing profession and retain the quality nurses who currently provide us care. The Nurse Reinvestment Act will do just that.

I want to take just a minute to talk about the specific provisions that were part of the ''Hospital Based Nursing Initiative Act.'' This legislation contained two proposals to help retain nurses in the hospital setting: a competitive grant program that would provide funding to hospitals that actively work to retain their nurses and a scholarship program for registered nurses who hold an associates or diploma degree who wish to obtain a bachelor's degree in nursing.

As part of the Nurse Reinvestment Act, these incentives have been broadened to apply to the nursing workforce in all health care facilities, providing a critical stimulus for these facilities to retain their nurses.

While the ominous projections about the growing nursing shortage looms over the health care industry, it is clear that now is the time to act. I am encouraged that Congress is acting quickly and decisively to actively add to the nurse workforce and to provide critical incentives to keep nurses on the job.

By Mrs. BOXER:

S. 1865. A bill to authorize the Secretary of the Interior to study the suitability and feasibility of establishing the Lower Los Angeles River and San Gabriel River watersheds in the State of California as a unit of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. BOXER. Mr. President, I am pleased to be introducing today a bill that will take an important first step in restoring the San Gabriel River and Lower LA River, which run through Los Angeles, CA. These two rivers have suffered from years of abuse and neglect. For far too long, we have channeled, redirected, constricted, polluted, and simply ignored these two rivers. The result is that substantial portions of these rivers look nothing like their natural form. Instead of soft bottoms covered with aquatic grasses, stream banks lined with trees and bushes, and waters teaming with fish, these rivers have cement bottoms, cement banks, and little remaining wildlife.

Today, we begin what will be a long, slow process in turning the tide for these two urban waterways. This bill directs the Secretary of Interior to conduct a study of the suitability and feasibility of protecting and restoring these two rivers by making them a part of our national park system. The long term vision I have is to see these rivers restored to a more natural state so that they can be a home to southern California's unique fish and wildlife.

Just as important to me is that these rivers be restored so they can serve as a source of outdoor recreation for one of our Nation's most congested urban areas. Most communities in Los Angeles are desperate for open space. They seek outdoor areas where children can play, adults can meet, and people of all ages can find respite from the daily hustle and bustle of some of our most economically and socially stressed neighborhoods.

What I am proposing would be an unprecedented urban restoration effort. But that does not mean it is impossible. Far from it. This vision is shared by Congresswoman HILDA SOLIS, who first introduced this bill in the House of Representatives. I look forward to working hand in hand with her to ensure that this dream becomes a reality.

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. 1865

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 ''Lower Los Angeles River and San Gabriel River Watersheds Study Act of 2001''.

SEC. 2. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) WATERSHED.—The term ''watershed'' means—

(A) the Lower Los Angeles River and its tributaries below the confluence of the Arroyo Seco;

(B) the San Gabriel River and its tributaries in Los Angeles County and Orange County, California; and

(C) the San Gabriel Mountains located within the territory of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (as defined in section 32603(c)(1)(C) of the State of California Public Resource Code).

SEC. 3. AUTHORIZATION OF STUDY.

(a) IN GENERAL.—The Secretary shall carry out a study on the suitability and feasibility of establishing the watershed as a unit of the National Park System.

(b) APPLICABLE LAW.—Section 8(c) of Public Law 91–383 (16 U.S.C. 1a–5(c)) shall apply to the conduct and completion of the study required by subsection (a).

(c) CONSULTATION WITH STATE AND LOCAL GOVERNMENTS.—In carrying out the study authorized by subsection (a), the Secretary shall consult with—

(1) the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy; and

(2) any other appropriate State or local governmental entity.

SEC. 4. REPORT.

Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the findings, conclusions, and recommendations of the study required by section 3(a).

By Mr. LIEBERMAN (for himself and Mr. MCCAIN):

S. 1867. A bill to establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes; to the Committee on Governmental Affairs.

Mr. LIEBERMAN. Mr. President, I rise to introduce with my colleague Senator MCCAIN legislation to establish the National Commission on Terrorist Attacks Upon the United States. This Commission will have a broad mandate to examine and report upon the facts and causes relating to the September 11, 2001 terrorist attacks occurring at the World Trade Center and at the Pentagon, and it will be charged with making a ''full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks.'' It will ''investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.''

Certain events stand out in our history for having left an indelible mark of pain and sorrow on America. The infamous attack on Pearl Harbor not only roused a slumbering giant, but also raised difficult questions about why our great Navy had been caught unawares. The tragic assassination of President John F. Kennedy evoked powerful feelings of sorrow and loss, but also searching questions about the identity and motives of the assassin. And on this past September 11, the United States suffered assaults on its territory unparalleled in their cruelty, destruction and loss of life. Americans were stunned both by the magnitude of the loss and the maliciously simple plan that had caused the carnage. Here too, alongside their grief and rage, the American people have been asking questions: Why was this plan so successful in achieving its evil goals? Were opportunities missed to prevent the destruction? What additional steps should be taken now to prevent any future attacks?

In the immediate aftermath of both Pearl Harbor and the Kennedy assassination, special commissions were formed to conduct investigations and answer similar questions. These precedents provide us with important models as we seek answers to such questions, and then use the findings to move forward with strategies to respond to the scourge of terrorism. Like many of my constituents, I too want to know how September 11 happened, why it happened, and what corrective measures can be taken to prevent it from ever occurring again. The American people deserve answers to these very legitimate questions about how the terrorists succeeded in achieving their brutal objectives, and in so doing, forever changing the way in which we Americans lead our lives.

To be successful, this Commission must have a number of resources, including enough time, a top level staff, ample investigatory powers, and adequate funding, all of which we have provided for in this legislation. But most critically, it must have broad bipartisan support. This Commission must not become a witch-hunt. The events of September 11 were so cataclysmic that there is enough responsibility to be shouldered by multiple parties. The overriding purpose of the inquiry must be a learning exercise, to understand what happened without preconceptions about its ultimate findings.

Just as Presidents Roosevelt and Johnson turned to national leaders of their day, Justice Roberts and Chief Justice Warren, to spearhead the Pearl Harbor and Kennedy assassination inquiries, respectively, this Commission must also draw upon the great reservoir of bipartisan talent that our nation possesses to answer crucial and fundamental questions. We expect that members appointed to this blue-ribbon Commission will be prominent U.S. citizens, though not currently serving in public office, with ''national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.''

To help ensure that members of the Commission will possess some of these substantive areas of expertise, which are so critical to understanding and analyzing the events of September 11, 10 of its 14 members will be appointed by the Senate and House chairmen, in consultation with their ranking minority members, of the Congressional committees that oversee Intelligence, Foreign Affairs, Armed Services, Judiciary, and Commerce. President Bush will appoint the four remaining members of the Commission, including the Chairman, who in turn will appoint the staff. In an effort to mandate bipartisanship, or perhaps more accurately, non-partisanship, no more than 7 of the Commission's 14 members may be from one political party.

Though some of the Commission's recommendations may include ''proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations,'' we cannot wait for the findings of this report to begin the process of strengthening our Nation's homeland defense. That process, of course, is already underway, and must continue to occur at a rapid pace to ensure the continued protection of American lives and property. This Commission will not issue its first report until six months after its first meeting, and its final report will be issued another year after that. Rather than wait for these reports to be researched and submitted, we must continue the process we have already started to pro-actively address vulnerabilities that undermine our daily safety. We have already received the valuable input of numerous other experts and Commissions, some of which even issued their prescient warnings before the events of September, such as the Hart-Rudman Commission. When this proposed Commission completes its investigation and makes its final recommendations, those suggestions and conclusions will augment the record we have already developed on ways we can continue to safeguard our nation.

The Commission is not only the right thing to do, but this is the right time to do it. Understandably, the initial months after September 11 were preoccupied first with mourning, and then with prosecution of the war. There were legitimate concerns that a robust investigation into the causes of September 11 would siphon resources from the ongoing war effort. But with the first stage of the war against terrorism now drawing to a close, and with many perplexing questions still before us, we must now begin in earnest the process of finding answers to how it happened. This Commission should not be at odds with the war effort of any federal agency; rather, its efforts will complement the internal review processes some agencies are undergoing.

Determining the causes and circumstances of the terrorist attacks will ensure that those who lost their lives on this second American ''day of infamy'' did not die in vain. In so doing, this Commission will not only pay tribute to those who perished, but it will ensure that their survivors, and all the citizens of this great nation, continue to live life secure in the knowledge that the U.S. government is doing all within its powers to preserve their lives, liberties, and pursuits of happiness.

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. 1867

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

SECTION 1. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Terrorist Attacks Upon the United States (in this Act referred to as the ''Commission'').

SEC. 2. PURPOSES.

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks; and

(4) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

SEC. 3. COMPOSITION OF THE COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 14 members, of whom—

(1) 4 members shall be appointed by the President;

(2) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on Armed Services of the Senate ;

(3) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on Commerce, Science, and Transportation of the Senate;

(4) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on the Judiciary of the Senate;

(5) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Select Committee on Intelligence of the Senate;

(6) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on Foreign Relations of the Senate;

(7) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on Armed Services of the House of Representatives;

(8) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on Energy and Commerce of the House of Representatives;

(9) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on the Judiciary of the House of Representatives;

(10) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Permanent Select Committee on Intelligence of the House of Representatives; and

(11) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on International Relations of the House of Representatives.

(b) CHAIRPERSON.—The President shall select the chairperson of the Commission.

(c) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 7 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.

(4) INITIAL MEETING.—If 60 days after the date of enactment of this Act, 8 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff.

(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairperson or a majority of its members. Eight members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 4. FUNCTIONS OF THE COMMISSION.

The functions of the Commission are to—

(1) conduct an investigation into relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, practice, or procedure;

(2) review and evaluate the lessons learned from the terrorist attacks of September 11, 2001 regarding the structure, coordination, and management arrangements of the Federal Government relative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this Act containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

SEC. 5. POWERS OF THE COMMISSION.

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this Act—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—Subpoenas issued under paragraph (1)(B) may be issued under the signature of the chairperson of the Commission, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the chairperson, subcommittee chairperson, or member. Sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section.

(b) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this Act.

(c) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this Act. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(d) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(e) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(f) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 6. STAFF OF THE COMMISSION.

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 7. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 8. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

SEC. 9. REPORTS OF THE COMMISSION; TERMINATION.

(a) INITIAL REPORT.—Not later than 6 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) ADDITIONAL REPORTS.—Not later than 1 year after the submission of the initial report of the Commission, the Commission shall submit to the President and Congress a second report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this Act, shall terminate 60 days after the date on which the second report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission to carry out this Act $3,000,000, to remain available until expended.

Mr. MCCAIN. Mr. President, I am pleased to join my friend JOE LIEBERMAN in introducing legislation calling for a blue-ribbon commission to examine the facts surrounding the September 11th attacks, and to propose reforms to better defend our country in the future.

After Pearl Harbor and President Kennedy's assassination, the President and Congress established boards of inquiry to investigate these tragedies and recommend measures to prevent their recurrence.

The terrorist attacks in New York and Washington represent a watershed in American history—the end of an era of general peace and prosperity, and a terrible awakening to the threats against our people that lurk within, and beyond, our shores.

To prevent future tragedies, we need to know how September 11th could have happened, and explore what we can do to be sure America never again suffers such an attack on her soil.

I believe President Bush and his team have responded forcefully, admirably, and with a sense of purpose in this time of trial. But neither the Administration nor Congress is capable of conducting a thorough, nonpartisan, independent inquiry into what happened on September 11th, or to propose far-reaching reforms needed to protect our people and our institutions against the enemies of freedom.

As we did after Pearl Harbor and the Kennedy assassination, we need a blue-ribbon team of distinguished Americans from all walks of life to thoroughly investigate all evidence surrounding the attacks, including how prepared we were and how well we responded to this unprecedented assault.

It will require digging deep into the resources of the full range of government agencies. It will demand objective judgment into what went wrong, what we did right, and what else we need to do to deter and defeat depraved assaults against innocent lives in the future.

This is no witch hunt. Our enemies would be strengthened if their attacks caused us to turn on ourselves, consumed not with the malevolence of our foes but with our own failings.

We are a proud nation, a strong nation. However horrible, September 11th reminded us of our love of country, our fierce patriotic pride. It highlighted the distinctive accomplishments of our civilization, and the sacrifices we will endure to defend it against evil. It made us stronger.

That said, if there were serious failures on the part of individuals or institutions within the government or the private sector, we have a right to know, indeed a need to know. But to work, this must be a learning exercise, without preconceptions about the inquiry's ultimate findings.

The commission's members should include leading citizens not now holding public office, but with broad experience in national affairs. The commission should have an adequate budget, a top-level staff, and ample investigatory resources—including subpoena power, if it is needed to uncover the truth.

To be effective and legitimate, the commission should be given a broad mandate to discover facts and recommend corrective actions. It should be given time to proceed with care and deliberation. It should have the stature and significance afforded by its grave mission of telling the whole truth about September 11th, and telling us what we need to know to protect against future tragedy.

To be credible, this inquiry must be independent from ongoing government operations, but it must of necessity draw on the resources of government. The commission's conclusions and recommendations will have enduring meaning only if they are valued by those of us who can set them in motion—the President, the Congress, and all concerned Americans.

Our best defense now lies in pursuing our enemy overseas, and working here at home to adapt to the challenges of this new day. We can rid the world of terrorism's scourge. But it will take time, and our campaign will likely inspire further, desperate tests of our resolve.

More Americans may die before we are through. In this moment when we enjoy peace at home, even as brave Americans risk their lives for us overseas, let us marshal our resolve to defend our homeland, not merely through force of arms, but through reasoned introspection into how September 11th happened, what we've learned, and how we can apply those lessons to the defense of the American people.

More than 2 years ago, the bipartisan Hart-Rudman Commission on National Security envisioned a time when terrorists and rogue nations would acquire weapons of mass destruction and ''mass disruption.''

''Americans will likely die on American soil,'' the commission warned, ''possibly in large numbers.''

That time has come. The worst has happened. But it must not happen again. We hope history will judge America well for her response to September 11th—the incredible bravery of so many Americans, and the measures we have already put in place to prevent future acts of catastrophic terrorism.

The commission is an integral part of our response to the attacks of September 11. Its mission is urgent. The American people clearly share our sense of urgency about protecting our country. I hope our proposed commission can channel that sense of urgency into a mandate for reform of the way we defend America.

By Mr. BIDEN:

S. 1868. A bill to establish a national center on volunteer and provider screening to reduce sexual and other abuse of children, the elderly, and individuals with disabilities; to the Committee on the Judiciary.

Mr. BIDEN. Mr. President, I rise today to introduce the National Child Protection Improvement Act of 2001.

Today, 87 million of our children are involved in provided by child and youth organizations which depend heavily on volunteers to deliver their services. Millions more adults are also served by public and private voluntary organizations. Organizations across the country, like the Boys and Girls Clubs, often rely solely on volunteers to make these safe havens for kids a place where they can learn. The Boys and Girls Clubs and others don't just provide services to kids, their work reverberates throughout our communities, as the after-school programs they provide help keep kids out of trouble. This is juvenile crime prevention at its best, and I salute the volunteers who help make these programs work.

Unfortunately, some of these volunteers come to their jobs with less than the best of intentions. According to the National Mentoring Partnership, incidents of child sexual abuse in child care settings, foster homes and schools ranges from 1 to 7 percent. Volunteer organizations have tried to weed out bad apples, and today most conduct background checks on applicants who seek to work with children. Unfortunately, these checks can often take months to complete, can be expensive, and many organizations do not have access to the FBI's national fingerprint

database. These time delays and scope limitations are dangerous: a prospective volunteer could pass a name-based background check in one state, only to have a past felony committed in another jurisdiction go undetected.

Today I am introducing a bill designed to solve some of these problems. The National Child Protection Improvement Act of 2001 creates a new, FBI national center to conduct criminal history fingerprint checks at the request of volunteer organizations. Funds are authorized so that volunteer organizations could have the national checks performed at no cost to them, the Federal government ought to be supporting those groups who seek to safeguard our kids, and this is a modest investment that deserves to be made. Other child-serving organizations who sought the services of the new national center would have checks conducted at a minimal cost. My bill envisions as many as 10 million background checks conducted per year at this center, enough to prevent felons and other dangerous members of society from getting anywhere near our kids. States perform many of these checks today, so to help them do their jobs better my bill authorizes $5 million per year to hire personnel and improve fingerprint technology so that they can update information in national databases.

All of us understand the positive impact that volunteer organizations are making. Now we need to give these groups the tools and resources they need to ensure absolute safety for the children they serve.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1868

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 ''National Child Protection Improvement Act''.

SEC. 2. ESTABLISHMENT OF A NATIONAL CENTER ON VOLUNTEER AND PROVIDER SCREENING.

The Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) is amended by adding at the end the following:

''TITLE VI—NATIONAL CENTER ON VOLUNTEER AND PROVIDER SCREENING

''SEC. 601. SHORT TITLE.

''This title may be cited as the 'National Child Protection Improvement Act'.

''SEC. 602. FINDINGS.

''Congress finds the following:

''(1) More than 87,000,000 children are involved each year in activities provided by child and youth organizations which depend heavily on volunteers to deliver their services.

''(2) Millions more adults, both the elderly and individuals with disabilities, are served by public and private voluntary organizations.

''(3) The vast majority of activities provided to children, the elderly, and individuals with disabilities by public and private nonprofit agencies and organizations result in the delivery of much needed services in safe environments that could not be provided without the assistance of virtually millions of volunteers, but abuses do occur.

''(4) Estimates of the incidence of child sexual abuse in child care settings, foster care homes, and schools, range from 1 to 7 percent.

''(5) Abuse traumatizes the victims and shakes public trust in care providers and organizations serving vulnerable populations.

''(6) Congress has acted to address concerns about this type of abuse through the National Child Protection Act of 1993 and the Violent Crime Control Act of 1994 to set forth a framework for screening through criminal record checks of care providers, including volunteers who work with children, the elderly, and individuals with disabilities. Unfortunately, problems regarding the safety of these vulnerable groups still remain.

''(7) While State screening is sometimes adequate to conduct volunteer background checks, more extensive national criminal history checks using fingerprints or other means of positive identification are often advisable, as a prospective volunteer or nonvolunteer provider may have lived in more than one State.

''(8) The high cost of fingerprint background checks is unaffordable for organizations that use a large number of volunteers and, if passed on to volunteers, often discourages their participation.

''(9) The current system of retrieving national criminal background information on volunteers through an authorized agency of the State is cumbersome and often requires months before vital results are returned.

''(10) In order to protect children, volunteer agencies must currently depend on a convoluted, disconnected, and sometimes duplicative series of checks that leave children at risk.

''(11) A national volunteer and provider screening center is needed to protect vulnerable groups by providing effective, efficient national criminal history background checks of volunteer providers at no-cost, and at minimal-cost for employed care providers.

''SEC. 603. DEFINITIONS.

''In this Act—

''(1) the term 'qualified entity' means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services designated by the National Task Force;

''(2) the term 'volunteer provider' means a person who volunteers or seeks to volunteer with a qualified entity;

''(3) the term 'provider' means a person who is employed by or volunteers or who seeks to be employed by or volunteer with a qualified entity, who owns or operates a qualified entity, or who has or may have unsupervised access to a child to whom the qualified entity provides care;

''(4) the term 'national criminal background check system' means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

''(5) the term 'child' means a person who is under the age of 18;

''(6) the term 'individuals with disabilities' has the same meaning as that provided in section 5(7) of the National Child Protection Act of 1993;

''(7) the term 'State' has the same meaning as that provided in section 5(11) of the National Child Protection Act of 1993; and

''(8) the term 'care' means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

''SEC. 604. ESTABLISHMENT OF A NATIONAL CENTER FOR VOLUNTEER AND PROVIDER SCREENING.

''(a) IN GENERAL.—The Attorney General, by agreement with a national nonprofit organization or by designating an agency within the Department of Justice, shall—

''(1) establish a national center for volunteer and provider screening designed—

''(A) to serve as a point of contact for qualified entities to request a nationwide background check for the purpose of determining whether a volunteer provider or provider has been arrested for or convicted of a crime that renders the provider unfit to have responsibilities for the safety and well-being of children, the elderly, or individuals with disabilities;

''(B) to promptly access and review Federal and State criminal history records and registries through the national criminal history background check system—

''(i) at no cost to a qualified entity for checks on volunteer providers; and

''(ii) at minimal cost to qualified entities for checks on non-volunteer providers;

with cost for screening non-volunteer providers will be determined by the National Task Force;

''(C) to provide the determination of the criminal background check to the qualified entity requesting a nationwide background check after not more than 15 business days after the request;

''(D) to serve as a national resource center and clearinghouse to provide State and local governments, public and private nonprofit agencies and individuals with information regarding volunteer screening; and

''(2) establish a National Volunteer Screening Task Force (referred to in this title as the 'Task Force') to be chaired by the Attorney General which shall—

''(A) include—

''(i) 2 members each of—

''(I) the Federal Bureau of Investigation;

''(II) the Department of Justice;

''(III) the Department of Health and Human Services;

''(IV) representatives of State Law Enforcement organizations;

''(V) national organizations representing private nonprofit qualified entities using volunteers to serve the elderly; and

''(VI) national organizations representing private nonprofit qualified entities using volunteers to serve individuals with disabilities; and

''(ii) 4 members of national organizations representing private nonprofit qualified entities using volunteers to serve children;

to be appointed by the Attorney General; and

''(B) oversee the work of the Center and report at least annually to the President and Congress with regard to the work of the Center and the progress of the States in complying with the provisions of the National Child Protection Act of 1993.

''SEC. 605. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—To carry out the provisions of this title, there are authorized to be appropriated $80,000,000 for fiscal year 2003 and $25,000,000 for each of the fiscal years 2004, 2005, 2006, and 2007, sufficient to provide no-cost background checks of volunteers working with children, the elderly, and individuals with disabilities.

''(b) AVAILABILITY.—Sums appropriated under this section shall remain available until expended.''.

SEC. 3. STRENGTHENING AND ENFORCING THE NATIONAL CHILD PROTECTION ACT OF 1993.

Section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119 et seq.) is amended to read as follows:

"SEC. 3. NATIONAL BACKGROUND CHECKS.

''(a) IN GENERAL.—Requests for national background checks under this section shall be submitted to the National Center for Volunteer Screening which shall conduct a search using the Integrated Automated Fingerprint Identification System, or other criminal record checks using reliable means of positive identification subject to the following conditions:

''(1) A qualified entity requesting a national criminal history background check under this section shall forward to the National Center the provider's fingerprints or other identifying information, and shall obtain a statement completed and signed by the provider that—

''(A) sets out the provider or volunteer's name, address, date of birth appearing on a valid identification document as defined in section 1028 of title 18, United States Code, and a photocopy of the valid identifying document;

''(B) states whether the provider or volunteer has a criminal record, and, if so, sets out the particulars of such record;

''(C) notifies the provider or volunteer that the National Center for Volunteer Screening may perform a criminal history background check and that the provider's signature to the statement constitutes an acknowledgement that such a check may be conducted;

''(D) notifies the provider or volunteer that prior to and after the completion of the background check, the qualified entity may choose to deny the provider access to children or elderly or persons with disabilities; and

''(E) notifies the provider or volunteer of his right to correct an erroneous record held by the FBI or the National Center.

''(2) Statements obtained pursuant to paragraph (1) and forwarded to the National Center shall be retained by the qualified entity or the National Center for at least 2 years.

''(3) Each provider or volunteer who is the subject of a criminal history background check under this section is entitled to contact the National Center to initiate procedures to—

''(A) obtain a copy of their criminal history record report; and

''(B) challenge the accuracy and completeness of the criminal history record information in the report.

''(4) The National Center receiving a criminal history record information that lacks disposition information shall, to the extent possible, contact State and local record-keeping systems to obtain complete information.

''(5) The National Center shall make a determination whether the criminal history record information received in response to the national background check indicates that the provider has a criminal history record that renders the provider unfit to provide care to children, the elderly, or individuals with disabilities based upon criteria established by the National Task Force on Volunteer Screening, and will convey that determination to the qualified entity.

''(b) GUIDANCE BY THE NATIONAL TASK FORCE.—The National Task Force, chaired by the Attorney General shall—

''(1) encourage the use, to the maximum extent possible, of the best technology available in conducting criminal background checks; and

''(2) provide guidelines concerning standards to guide the National Center in making fitness determinations concerning care providers based upon criminal history record information.

''(c) LIMITATIONS OF LIABILITY.—

''(1) IN GENERAL.—A qualified entity shall not be liable in an action for damages solely for failure to request a criminal history background check on a provider, nor shall a State or political subdivision thereof nor any agency, officer or employee thereof, be liable in an action for damages for the failure of a qualified entity (other than itself) to take action adverse to a provider who was the subject of a criminal background check.

''(2) RELIANCE.—The National Center or a qualified entity that reasonably relies on criminal history record information received in response to a background check pursuant to this section shall not be liable in an action for damages based upon the inaccuracy or incompleteness of the information.

''(d) FEES.—In the case of a background check pursuant to a State requirement adopted after December 20, 1993, conducted through the National Center using the fingerprints or other identifying information of a person who volunteers with a qualified entity shall be free of charge. This subsection shall not affect the authority of the FBI, the National Center, or the States to collect reasonable fees for conducting criminal history background checks of providers who are employed as or apply for positions as paid employees.''.

SEC. 4. ESTABLISHMENT OF A MODEL PROGRAM IN EACH STATE TO STRENGTHEN CRIMINAL DATA REPOSITORIES AND FINGERPRINT TECHNOLOGY.

(a) ESTABLISHMENT.—A model program shall be established in each State and the District of Columbia for the purpose of improving fingerprinting technology which shall grant to each State $50,000 to either—

(1) purchase Live-Scan fingerprint technology and a State-vehicle to make such technology mobile and these mobile units shall be used to travel within the State to assist in the processing of fingerprint background checks; or

(2) purchase electric fingerprint imaging machines for use throughout the State to send fingerprint images to the National Center to conduct background checks.

(b) ADDITIONAL FUNDS.—In addition to funds provided in subsection (a), $50,000 shall be provided to each State and the District of Columbia to hire personnel to—

(1) provide information and training to each county law enforcement agency within the State regarding all National Child Protection Act requirements for input of criminal and disposition data into the national criminal history background check system; and

(2) provide an annual summary to the National Task Force of the State's progress in complying with the criminal data entry provisions of the National Child Protection Act of 1993 which shall include information about the input of criminal data, child abuse crime information, domestic violence arrests and stay-away orders of protection.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—To carry out the provisions of this section, there are authorized to be appropriated a total of $5,100,000 for fiscal year 2003 and such sums as may be necessary for each of the fiscal years 2004, 2005, 2006, and 2007, sufficient to improve fingerprint technology units and hire data entry improvement personnel in each of the 50 States and the District of Columbia.

(2) AVAILABILITY.—Sums appropriated under this section shall remain available until expended.

By Mr. CORZINE (for himself, Mr. JEFFORDS, and Mr. LIEBERMAN):

S. 1870. A bill to amend the Clean Air Act to establish an inventory, registry, and information system of United States greenhouse gas emissions to inform the public and private sector concerning, and encourage voluntary reductions in, greenhouse emissions; to the Committee on Environment and Public Works.

Mr. CORZINE. Mr. President, I rise today to introduce a bill that represents an important step towards the goal of addressing the threats posed by global climate change. I am pleased to be joined on this bill by Senator JEFFORDS and Senator LIEBERMAN. They are recognized environmental leaders in the Senate, and are long-standing, outspoken advocates for taking action to mitigate climate change. I appreciate their help in introducing this legislation today.

Climate change is an enormously complex issue in every aspect. Scientifically. Economically. Politically. But complexity is no excuse for inattention or inaction. Because the health and viability of the global ecosystems upon which we all depend are at stake. The time to act is now.

Earlier this year, the Intergovernmental Panel on Climate Change recently released its Third Assessment Report, and the science is increasingly clear and alarming. We know that human activities, primarily fossil fuel combustion, have raised the atmospheric concentration of carbon dioxide to the highest levels in the last 420,000 years. We know that the planet is warming, and that the balance of the scientific evidence suggests that most of the recent warming can be attributed to increased atmospheric greenhouse gas levels. We know that without concerted action by the U.S. and other countries, greenhouse gases will continue to increase.

Finally, we know that climate models have improved, and that these models predict warming under all scenarios that have been considered. Even the smallest warming predicted by current models, 2.5 degrees Fahrenheit over the next century, would represent the greatest rate of increase in global mean surface temperature in the last 10,000 years.

If these trends continue, the results may be devastating. People in my home State of New Jersey treasure their Jersey Shore. Like all coastal areas, the Jersey Shore is threatened by projected changes in sea levels due to climate change. I am concerned about this impact. And I am concerned about other climate change impacts across New Jersey, the country and the globe.

I believe we need to take reasonable steps today start dealing with this issue. And I think this bill will make an important incremental step.

The main provisions of the bill establish a system that would require companies to estimate and report their emissions of greenhouse gases, as well

as a place where companies can register greenhouse gas emissions reductions. In addition, the bill would require an annual report on U.S. greenhouse gas emissions. I'd like to go through each of these components in more detail.

First, the bill requires EPA to work with the Secretaries of Energy, Commerce and Agriculture, as well as the private sector and non-governmental organizations to establish a greenhouse gas emission information system. For the purposes of the bill, greenhouse gases are carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. EPA is directed to establish threshold quantities for each of these gases. The threshold quantities will trigger the requirement for a company to report to the system, and are included to enable exclusion of most small businesses from the reporting requirements. Companies that emit more than a threshold quantity of each gas will be required to report their emissions on an annual basis to EPA. The requirements will be phased in, beginning with stationary source emissions in 2003. The following year, in 2004, companies subject to the reporting requirements will need to submit to EPA estimates of other types of greenhouse gas emissions, such as process emissions, fugitive emissions, mobile source emissions, forest product-sector emissions, and indirect emissions from heat and steam.

Just as important as the reporting system is the greenhouse gas registry established by the bill. The bill requires EPA to work with the same set of actors to establish this greenhouse gas registry, which will enable companies to register greenhouse gas reductions. Many companies are voluntarily implementing projects to reduce emissions or sequester carbon. The registry would establish a place for companies to be able to put these projects on public record in a consistent and reliable way.

Taken together, these provisions of the bill will accomplish several important goals. First, they will create a reliable record of the sources of greenhouse gas emissions within our economy. This will provide the public and private sector with important information that, if necessary, can be used to identify the most cost-effective ways to reduce greenhouse gas emissions.

Perhaps more importantly, these provisions will provide a powerful incentive for companies to continue to make voluntary greenhouse gas reductions. By requiring emissions reporting, and making that information available to the public, companies may face increased scrutiny with respect to their greenhouse gas emissions. But they will also have a place where they can register their greenhouse gas reductions project in a consistent and uniform way. This will enable companies to demonstrate the actions that they are taking to reduce their emissions, and will assist them in making the case for credits if a mandatory greenhouse gas emission reduction program is ever enacted.

Finally, the bill requires EPA to annually publish a greenhouse gas emissions inventory. This will be a national account of greenhouse gas emissions for our Nation, and will incorporate the information submitted to the greenhouse gas information system and registry. EPA has issued such a report for several years now, and this provision is intended to explicitly authorize and expand the scope of this report.

I know that there are technical challenges associated with measuring greenhouse gas emissions and reductions. But many advances have been made in recent years, often in a cooperative way, with industry, environmental groups and governments at the table. It's my intent that the systems and protocols developed under this bill conform to the best practices that have been and continue to be developed in this fashion.

I urge my colleagues to join with me in this legislation. Let's start taking reasonable steps to address the threat of climate change. 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. 1870

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 ''National Greenhouse Gas Emissions Inventory and Registry Act of 2001''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) human activities have caused rapid increases in atmospheric concentrations of carbon dioxide and other greenhouse gases in the last century;

(2) according to the Intergovernmental Panel on Climate Change and the National Research Council—

(A) the Earth has warmed in the last century; and

(B) the majority of the observed warming is attributable to human activities;

(3) despite the fact that many uncertainties in climate science remain, the potential impacts from human-induced climate change pose a substantial risk that should be managed in a responsible manner; and

(4) to begin to manage climate change risks, public and private entities will need a comprehensive, accurate inventory, registry, and information system of the sources and quantities of United States greenhouse gas emissions.

(b) PURPOSE.—The purpose of this Act is to establish a mandatory greenhouse gas inventory, registry, and information system that—

(1) is complete, consistent, transparent, and accurate;

(2) will create accurate data that can be used by public and private entities to design efficient and effective greenhouse gas emission reduction strategies; and

(3) will encourage greenhouse gas emission reductions.

SEC. 3. GREENHOUSE GAS EMISSIONS.

The Clean Air Act (42 U.S.C. 1701 et seq.) is amended by adding at the end the following:

''TITLE VII—GREENHOUSE GAS EMISSIONS

''SEC. 701. DEFINITIONS.

''In this title:

''(1) COVERED ENTITY.—The term 'covered entity' means an entity that emits more than a threshold quantity of greenhouse gas emissions.

''(2) DIRECT EMISSIONS.—The term 'direct emissions' means greenhouse gas emissions from a source that is owned or controlled by an entity.

''(3) ENTITY.—The term 'entity' includes a firm, a corporation, an association, a partnership, and a Federal agency.

''(4) GREENHOUSE GAS.—The term 'greenhouse gas' means—

''(A) carbon dioxide;

''(B) methane;

''(C) nitrous oxide;

''(D) hydrofluorocarbons;

''(E) perfluorocarbons; and

''(F) sulfur hexafluoride.

''(5) GREENHOUSE GAS EMISSIONS.—The term 'greenhouse gas emissions' means emissions of a greenhouse gas, including—

''(A) stationary combustion source emissions, which are emitted as a result of combustion of fuels in stationary equipment such as boilers, furnaces, burners, turbines, heaters, incinerators, engines, flares, and other similar sources;

''(B) process emissions, which consist of emissions from chemical or physical processes other than combustion;

''(C) fugitive emissions, which consist of intentional and unintentional emissions from—

''(i) equipment leaks such as joints, seals, packing, and gaskets; and

''(ii) piles, pits, cooling towers, and other similar sources; and

''(D) mobile source emissions, which are emitted as a result of combustion of fuels in transportation equipment such as automobiles, trucks, trains, airplanes, and vessels.

''(6) GREENHOUSE GAS EMISSIONS RECORD.—The term 'greenhouse gas emissions record' means all of the historical greenhouse gas emissions and project reduction data submitted by an entity under this title, including any adjustments to such data under section 704(c).

''(7) GREENHOUSE GAS REPORT.—The term 'greenhouse gas report' means an annual list of the greenhouse gas emissions of an entity and the sources of those emissions.

''(8) INDIRECT EMISSIONS.—The term 'indirect emissions' means greenhouse gas emissions that are a consequence of the activities of an entity but that are emitted from sources owned or controlled by another entity.

''(9) NATIONAL GREENHOUSE GAS EMISSIONS INFORMATION SYSTEM.—The term 'national greenhouse gas emissions information system' means the information system established under section 702(a).

''(10) NATIONAL GREENHOUSE GAS EMISSIONS INVENTORY.—The term 'national greenhouse gas emissions inventory' means the national inventory of greenhouse gas emissions established under section 705.

''(11) NATIONAL GREENHOUSE GAS REGISTRY.—The term 'national greenhouse gas registry' means the national greenhouse gas registry established under section 703(a).

''(12) PROJECT REDUCTION.—The term 'project reduction' means—

''(A) a greenhouse gas emission reduction achieved by carrying out a greenhouse gas emission reduction project; and

''(B) sequestration achieved by carrying out a sequestration project.

''(13) REPORTING ENTITY.—The term 'reporting entity' means an entity that reports to the Administrator under subsection (a) or (b) of section 704.

''(14) SEQUESTRATION.—The term 'sequestration' means the long-term separation, isolation, or removal of greenhouse gases from the atmosphere, including through a biological or geologic method such as reforestation or an underground reservoir.

''(15) THRESHOLD QUANTITY.—The term 'threshold quantity' means a threshold quantity for mandatory greenhouse gas reporting established by the Administrator under section 704(a)(3).

''(16) VERIFICATION.—The term 'verification' means the objective and independent assessment of whether a greenhouse gas report submitted by a reporting entity accurately reflects the greenhouse gas impact of the reporting entity.

''SEC. 702. NATIONAL GREENHOUSE GAS EMISSIONS INFORMATION SYSTEM.

''(a) ESTABLISHMENT.—In consultation with the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Energy, States, the private sector, and nongovernmental organizations concerned with establishing standards for reporting of greenhouse gas emissions, the Administrator shall establish and administer a national greenhouse gas emissions information system to collect information reported under section 704(a).

''(b) SUBMISSION TO CONGRESS OF DRAFT DESIGN.—Not later than 180 days after the date of enactment of this title, the Administrator shall submit to Congress a draft design of the national greenhouse gas emissions information system.

''(c) AVAILABILITY OF DATA TO THE PUBLIC.—The Administrator shall publish all information in the national greenhouse gas emissions information system through the website of the Environmental Protection Agency, except in any case in which publishing the information would reveal a trade secret or disclose information vital to national security.

''(d) RELATIONSHIP TO OTHER GREENHOUSE GAS REGISTRIES.—To the extent practicable, the Administrator shall ensure coordination between the national greenhouse gas emissions information system and existing and developing Federal, regional, and State greenhouse gas registries.

''(e) INTEGRATION WITH OTHER ENVIRONMENTAL INFORMATION.—To the extent practicable, the Administrator shall integrate information in the national greenhouse gas emissions information system with other environmental information managed by the Administrator.

''SEC. 703. NATIONAL GREENHOUSE GAS REGISTRY.

''(a) ESTABLISHMENT.—In consultation with the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Energy, States, the private sector, and nongovernmental organizations concerned with establishing standards for reporting of greenhouse gas emissions, the Administrator shall establish and administer a national greenhouse gas registry to collect information reported under section 704(b).

''(b) AVAILABILITY OF DATA TO THE PUBLIC.—The Administrator shall publish all information in the national greenhouse gas registry through the website of the Environmental Protection Agency, except in any case in which publishing the information would reveal a trade secret or disclose information vital to national security.

''(c) RELATIONSHIP TO OTHER GREENHOUSE GAS REGISTRIES.—To the maximum extent feasible and practicable, the Administrator shall ensure coordination between the national greenhouse gas registry and existing and developing Federal, regional, and State greenhouse gas registries.

''(d) INTEGRATION WITH OTHER ENVIRONMENTAL INFORMATION.—To the maximum extent practicable, the Administrator shall integrate all information in the national greenhouse gas registry with other environmental information collected by the Administrator.

''SEC. 704. REPORTING.

''(a) MANDATORY REPORTING TO NATIONAL GREENHOUSE GAS EMISSIONS INFORMATION SYSTEM.—

''(1) INITIAL REPORTING REQUIREMENTS.—

''(A) IN GENERAL.—Not later than April 30, 2003, in accordance with this paragraph and the regulations promulgated under section 706(e)(1), each covered entity shall submit to the Administrator, for inclusion in the national greenhouse gas emissions information system, the greenhouse gas report of the covered entity with respect to—

''(i) calendar year 2002; and

''(ii) each greenhouse gas emitted by the covered entity in an amount that exceeds the applicable threshold quantity.

''(B) REQUIRED ELEMENTS.—Each greenhouse gas report submitted under subparagraph (A)—

''(i) shall include estimates of direct stationary combustion source emissions;

''(ii) shall express greenhouse gas emissions in metric tons of the carbon dioxide equivalent of each greenhouse gas emitted;

''(iii) shall specify the sources of greenhouse gas emissions that are included in the greenhouse gas report;

''(iv) shall be reported on an entity-wide basis and on a facility-wide basis; and

''(v) to the maximum extent practicable, shall be reported electronically to the Administrator in such form as the Administrator may require.

''(C) METHOD OF REPORTING OF ENTITY-WIDE EMISSIONS.—Under subparagraph (B)(iv), entity-wide emissions shall be reported on the bases of financial control and equity share in a manner consistent with the financial reporting practices of the covered entity.

''(2) FINAL REPORTING REQUIREMENTS.—

''(A) IN GENERAL.—Not later than April 30, 2004, and each April 30 thereafter (except as provided in subparagraph (B)(vii)), in accordance with this paragraph and the regulations promulgated under section 706(e)(2), each covered entity shall submit to the Administrator the greenhouse gas report of the covered entity with respect to—

''(i) the preceding calendar year; and

''(ii) each greenhouse gas emitted by the covered entity in an amount that exceeds the applicable threshold quantity.

''(B) REQUIRED ELEMENTS.—Each greenhouse gas report submitted under subparagraph (A) shall include—

''(i) the required elements specified in paragraph (1);

''(ii) estimates of indirect emissions from imported electricity, heat, and steam;

''(iii) estimates of process emissions described in section 701(5)(B);

''(iv) estimates of fugitive emissions described in section 701(5)(C);

''(v) estimates of mobile source emissions described in section 701(5)(D), in such form as the Administrator may require;

''(vi) in the case of a covered entity that is a forest product entity, estimates of direct stationary source emissions, including emissions resulting from combustion of biomass;

''(vii) in the case of a covered entity that owns more than 250,000 acres of timberland, estimates, by State, of the timber and carbon stocks of the covered entity, which estimates shall be updated every 5 years; and

''(viii) a description of any adjustments to the greenhouse gas emissions record of the covered entity under subsection (c).

''(3) ESTABLISHMENT OF THRESHOLD QUANTITIES.—For the purpose of reporting under this subsection, the Administrator shall establish threshold quantities of emissions for each combination of a source and a greenhouse gas that is subject to the mandatory reporting requirements under this subsection.

''(b) VOLUNTARY REPORTING TO NATIONAL GREENHOUSE GAS REGISTRY.—

''(1) IN GENERAL.—Not later than April 30, 2004, and each April 30 thereafter, in accordance with this subsection and the regulations promulgated under section 706(f), an entity may voluntarily report to the Administrator, for inclusion in the national greenhouse gas registry, with respect to the preceding calendar year and any greenhouse gas emitted by the entity—

''(A) project reductions;

''(B) transfers of project reductions to and from any other entity;

''(C) project reductions and transfers of project reductions outside the United States;

''(D) indirect emissions that are not required to be reported under subsection (a)(2)(B)(ii) (such as product transport, waste disposal, product substitution, travel, and employee commuting); and

''(E) product use phase emissions.

''(2) TYPES OF ACTIVITIES.—Under paragraph (1), an entity may report activities that reduce greenhouse gas emissions or sequester a greenhouse gas, including—

''(A) fuel switching;

''(B) energy efficiency improvements;

''(C) use of renewable energy;

''(D) use of combined heat and power systems;

''(E) management of cropland, grassland, and grazing land;

''(F) forestry activities that increase carbon stocks;

''(G) carbon capture and storage;

''(H) methane recovery; and

''(I) carbon offset investments.

''(c) ADJUSTMENT FACTORS.—

''(1) IN GENERAL.—Each reporting entity shall adjust the greenhouse gas emissions record of the reporting entity in accordance with this subsection.

''(2) SIGNIFICANT STRUCTURAL CHANGES.—

''(A) IN GENERAL.—A reporting entity that experiences a significant structural change in the organization of the reporting entity (such as a merger, major acquisition, or divestiture) shall adjust its greenhouse gas emissions record for preceding years so as to maintain year-to-year comparability.

''(B) MID-YEAR CHANGES.—In the case of a reporting entity that experiences a significant structural change described in subparagraph (A) during the middle of a year, the greenhouse gas emissions record of the reporting entity for preceding years shall be adjusted on a pro-rata basis.

''(3) CALCULATION CHANGES AND ERRORS.—The greenhouse gas emissions record of a reporting entity for preceding years shall be adjusted for—

''(A) changes in calculation methodologies; or

''(B) errors that significantly affect the quantity of greenhouse gases in the greenhouse gas emissions record.

''(4) ORGANIZATIONAL GROWTH OR DECLINE.—The greenhouse gas emissions record of a reporting entity for preceding years shall not be adjusted for any organizational growth or decline of the reporting entity such as—

''(A) an increase or decrease in production output;

''(B) a change in product mix;

''(C) a plant closure; and

''(D) the opening of a new plant.

''(5) EXPLANATIONS OF ADJUSTMENTS.—A reporting entity shall explain, in a statement included in the greenhouse gas report of the reporting entity for a year—

''(A) any significant adjustment in the greenhouse gas emissions record of the reporting entity; and

''(B) any significant change between the greenhouse gas emissions record for the preceding year and the greenhouse gas emissions reported for the current year.

''(d) QUANTIFICATION AND VERIFICATION PROTOCOLS AND TOOLS.—

''(1) IN GENERAL.—The Administrator and the Secretary of Commerce, the Secretary of Agriculture, and the Secretary of Energy shall jointly work with the States, the private sector, and nongovernmental organizations to develop—

''(A) protocols for quantification and verification of greenhouse gas emissions;

''(B) electronic methods for quantification and reporting of greenhouse gas emissions; and

''(C) greenhouse gas accounting and reporting standards.

''(2) BEST PRACTICES.—The protocols and methods developed under paragraph (1) shall conform, to the maximum extent practicable, to the best practice protocols that have the greatest support of experts in the field.

''(3) INCORPORATION INTO REGULATIONS.—The Administrator shall incorporate the protocols developed under paragraph (1)(A) into the regulations promulgated under section 706.

''(4) OUTREACH PROGRAM.—The Administrator, the Secretary of Commerce, the Secretary of Agriculture, and the Secretary of Energy shall jointly conduct an outreach program to provide information to all reporting entities and the public on the protocols and methods developed under this subsection.

''(e) VERIFICATION.—

''(1) PROVISION OF INFORMATION BY REPORTING ENTITIES.—Each reporting entity shall provide information sufficient for the Administrator to verify, in accordance with greenhouse gas accounting and reporting standards developed under subsection (d)(1)(C), that the greenhouse gas report of the reporting entity—

''(A) has been accurately reported; and

''(B) in the case of each project reduction, represents actual reductions in greenhouse gas emissions or actual increases in net sequestration, as applicable.

''(2) INDEPENDENT THIRD-PARTY VERIFICATION.—A reporting entity may—

''(A) obtain independent third-party verification; and

''(B) present the results of the third-party verification to the Administrator for consideration by the Administrator in carrying out paragraph (1).

''(f) ENFORCEMENT.—The Administrator may bring a civil action in United States district court against a covered entity that fails to comply with subsection (a), or a regulation promulgated under section 706(e), to impose a civil penalty of not more than $25,000 for each day that the failure to comply continues.

''SEC. 705. NATIONAL GREENHOUSE GAS EMISSIONS INVENTORY.

''Not later than April 30, 2002, and each April 30 thereafter, the Administrator shall publish a national greenhouse gas emissions inventory that includes—

''(1) comprehensive estimates of the quantity of United States greenhouse gas emissions for the second preceding calendar year, including—

''(A) for each greenhouse gas, an estimate of the quantity of emissions contributed by each key source category;

''(B) a detailed analysis of trends in the quantity, composition, and sources of United States greenhouse gas emissions; and

''(C) a detailed explanation of the methodology used in developing the national greenhouse gas emissions inventory; and

''(2) a detailed analysis of the information reported to the national greenhouse gas emissions information system and the national greenhouse gas registry.

''SEC. 706. REGULATIONS.

''(a) IN GENERAL.—The Administrator may promulgate such regulations as are necessary to carry out this title.

''(b) BEST PRACTICES.—In developing regulations under this section, the Administrator shall seek to leverage leading protocols for the measurement, accounting, reporting, and verification of greenhouse gas emissions.

''(c) NATIONAL GREENHOUSE GAS EMISSIONS INFORMATION SYSTEM.—Not later than January 31, 2003, the Administrator shall promulgate such regulations as are necessary to establish the national greenhouse gas emissions information system.

''(d) NATIONAL GREENHOUSE GAS REGISTRY.—Not later than January 31, 2004, the Administrator shall promulgate such regulations as are necessary to establish the national greenhouse gas registry.

''(e) MANDATORY REPORTING REQUIREMENTS.—

''(1) INITIAL REPORTING REQUIREMENTS.—Not later than January 31, 2003, the Administrator shall promulgate such regulations as are necessary to implement the initial mandatory reporting requirements under section 704(a)(1).

''(2) FINAL REPORTING REQUIREMENTS.—Not later than January 31, 2004, the Administrator shall promulgate such regulations as are necessary to implement the final mandatory reporting requirements under section 704(a)(2).

''(f) VOLUNTARY REPORTING PROVISIONS.—Not later than January 31, 2004, the Administrator shall promulgate such regulations and issue such guidance as are necessary to implement the voluntary reporting provisions under section 704(b).

''(g) ADJUSTMENT FACTORS.—Not later than January 31, 2004, the Administrator shall promulgate such regulations as are necessary to implement the adjustment factors under section 704(c).''.

Mr. JEFFORDS. Mr. President, we are now near the end of the first session of the 107th Congress. It has been an exceedingly long and difficult year. There have been many changes, surprises and tragedies.

One politically significant event that particularly dismayed me was the President's modification of his campaign pledge to reduce emissions of four major pollutants, sulfur dioxide, nitrogen oxides, mercury and carbon dioxide, emitted by power plants. In March, he wrote to several Senators telling them he would no longer support mandatory emissions reductions for carbon dioxide, an important greenhouse gas. This struck me as a return to a 1950s-style energy and environmental policy.

On a more optimistic role, however, that reversal and the administration's unilateral withdrawal and disengagement from the international negotiations to implement the United Nations Framework Convention on Climate Change and the Kyoto Protocol has created more interest and activity on this matter than ever on Capitol Hill and in the media.

Now, many Members are asking themselves whether Congress should just proceed without the Administration. In fact, the Daschle-Bingaman energy legislation contains a significant climate change title that does just that. This subject will contain to receive a great deal of attention in the Environment and Public Works Committee and elsewhere as we try to implement through statute our existing national commitment to reduce greenhouse gas emissions to 1990 levels.

Today, I am joining with Senators CORZINE and LIEBERMAN in introducing a bill to amend the Clean Air Act to require reporting of greenhouse gas emissions from major sources and to create a voluntary registry for those sources to document their emissions reduction efforts. This new system will be maintained and operated by the Environmental Protection Agency, which has the greatest Federal agency experience and capability in monitoring enforcing and tracking air emissions. The information generated by this system will be of great assistance in developing a national trading system in carbon emission credits. The U.S. is a global leader in the creation and operation of such systems and must not lag behind doors in the international community.

We have been waiting some time for the Administration to make known the results of its climate change policy review and for a constructive multi-pollutant legislative proposal. There is no question that the terrible events of September 11, have had a devastating effect on our citizenry and the government. But, we are a great nation and the Federal Government must be capable of working on a variety of domestic and international fronts, even in the face of great adversity. There are few, if any, environmental issues more compelling than global warming and its effects.

As many Senators may recall, Congress and the previous Bush Administration worked together and were very productive during the Gulf War on many pieces of environmental legislation, not the least of which was the Clean Air Act Amendments of 1990. That was a different time, but that situation demonstrates that given the right level of attention and resources, we can accomplish a great deal working together even under stressful circumstances.

The Administration's unilateral approach to this important subject is puzzling. The U.S. is responsible for approximately 25 percent of the total carbon loading to the atmosphere. This man-made pollution is leading to a warming of the entire planet through the greenhouse effect, according to the National Academy of Sciences. Surely, we should do our share to reduce these emissions to protect our environmental and economy, and our global neighbors. That is the most certain way to protect our long-term interests and reduce the impacts of proceeding with business as usual.

We have asked a great deal of our friends across the globe as part of our

response to terrorism, particularly of our friends in the European Union. We must not forget that they too have an agenda for the international community and that agenda includes concerted action on climate change. Ignoring that agenda for too long may create unnecessary trade and tariff barrier problems for U.S. goods and services. Already, the pending adoption of the Kyoto Protocol in European Union countries and elsewhere poses, complex accounting and trade issues for U.S. multi-nationals operating in Annex I countries.

The Administration's silence on this clearly growing problem is also puzzling. The National Oceanic and Atmospheric and the World Meteorological Organization say that 2001 will be the second warmest year on record since records have been kept in the mid-1800s. Recently, the Washington Post reported on the New England Regional Assessment of the Potential Consequence of Climate Variability and Change.

The Assessment, which is one of the many regional assessments being conducted pursuant to the Global Change Research Act of 1990, found that the Northeast's climate is likely to become hotter and more flood-prone. The region may see a 6–9 degrees fahrenheit overall temperature increase over the next 100 hundreds due to the global warming caused by greenhouse gas emissions. This would cause sugar maples to disappear from Vermont forests, threaten coastal areas with rising sea levels, exacerbate existing air pollution problems and harm cold-weather-dependent industries like skiing.

There are varying claims about the economic effects related to global warming and climate change. Effects that will occur beyond the normal economic forecasting period are difficult to determine. But, some studies have suggested that when a doubling of atmospheric CO_2 occurs, sometime in the next 50–70 years according to most models, the cost to the U.S. economy could be between 0.3 percent–6 percent of GDP in 2000 dollars. While the nature of the exact impacts of climate change on forestry, construction, hydropower, and agriculture are disputed, most sectors will see losses, according to studies for the U.S. Environmental Protection Agency, Pennsylvania Academy of Science, Oak Ridge National Laboratory, Massachusetts Institute of Technology, Yale University, Pew Center on Global Climate Change, and the Institute for International Economics.

These effects can be lessened by purposeful and strong leadership in the Congress and the White House. We have the technological ability to revolutionize our use of fossil fuels through efficiency and process changes, and to radically increase our production of renewable energy in all forms. These steps can dramatically and cost-effectively reduce carbon emissions in the near term, according to studies done by the Department of Energy and various think-tanks. However, we must do something soon to stimulate that revolution.

Providing information on waste generation and release into the environment has been a great success of the Toxic Release Inventory. Educating the public and the market about wasteful behavior has stimulated major emissions reductions. The bill we are introducing today should be similarly successful in promoting innovation and efficiency in all major carbon emitting sectors, in addition to preparing the appropriate infrastructure for a national carbon credit trading system.

Early in the next session, the Senate Environment and Public Works Committee will mark up S. 556, the Clean Power Act, which requires reductions in greenhouse gas emission from the power generating sector. That sector's emissions have risen approximately 26 percent above 1990 levels and are expected to grow 1.8 percent annually without some Federal action. This is well beyond our international treaty commitments on a sector basis. The majority of those facilities are already required to report their carbon dioxide emissions to EPA.

I am hopeful that we can proceed with a tri-partisan, consensual markup of the Clean Power Act. But, two elements may preclude our ability to achieve some agreement. First, the Administration may go forward with proposals to modify the New Source Review, NSR, program. This possibility gravely concerns me and other Members of the Committee, given the lack of transparency in the Administration's proceedings on the pending NSR enforcement actions and the ''consistency'' review by the Department of Justice. And, second, perhaps more importantly, there is a distinct lack of constructive engagement with the Committee on a multi-pollutant bill or any clear progress on an Administration proposal.

Next year promises to be very busy in the energy and environmental policy arena. We cannot afford to simply recreate the debates that occurred during the Energy Policy Act of 1992. We know the world to be a much different place now and fraught with greater and more complex dangers like global warming. It would be irresponsible in the extreme for Congress or the White House to take actions that increase, rather than decrease, the likelihood of those dangers.

I look forward to working with the Administration and my colleagues on a variety of actions to make progress in adapting to the climate change we have already caused and on reducing greenhouse gas emissions to prevent greater future damage that our great-grandchildren will have to face.

I ask unanimous consent to print the article to which I referred in the RECORD.

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

[From the Washington Post, Dec. 17, 2001]

NORTHEAST SEEN GETTING BALMIER

(By Michael Powell)

NEW YORK.—New England's maple trees stop producing sap. The Long Island and Cape Cod beaches shrink and shift, and disappear in places. Cases of heatstroke triple.

And every 10 years or so, a winter storm floods portions of Lower Manhattan, Jersey city and Coney Island with seawater.

The Northeast of recent historical memory could disappear this century, replaced by a hotter and more flood-prone region where New York could have the climate of Miami and Boston could become as sticky as Atlanta, according to the first comprehensive federal studies of the possible effects of global warming on the Northeast.

''In the most optimistic projection, we will end up with a six- to nine-degree increase in temperature,'' said George Hurtt, a University of New Hampshire scientist and co-author of the study on the New England region. ''That's the greatest increase in temperature at any time since the last Ice Age.''

Commissioned by Congress, the separate reports on New England and the New York region explore how global warming could affect the coastline, economy and public health of the Northeast. The language is often technical, the projections reliant on middle-of-the-road and sometimes contradictory predictive models.

But the predications are arresting.

New England, where the regional character was forged by cold and long, dark winters, could face a balmy future that within 30 to 40 years could result in increased crop production but also destroy prominent native tree species.

''The brilliant reds, oranges and yellows of the maples, birches and beeches may be replaced by the browns and dull greens of oaks,'' the New England report concludes. Within 20 years, it says, ''the changes in climate could potentially extirpate the sugar maple industry in New England.''

The reports' origins date to 1990, when Congress passed the Global Change Research Act. Seven years later, the Environmental Protection Agency appointed 16 regional panels to examine global warming, and how the nation might adapt. These Northeast reports, completed about two months ago, are among the last to be released. (The mid-Atlantic report, which includes Washington, was completed a year go.)

The scientists on the panels employed conventional assumptions, such as an annual 1 percent increase in greenhouse gases in the atmosphere. They conclude that global warming is already occurring, noting that, on average, the Northeast became two degrees warmer in the past century. And they say that the temperature rise in the 21st century ''will be significantly larger than in the 20th century.'' One widely used climate model cited in the report predicted a six-degree increase, the other 10 degrees.

The Environmental Protection Agency summarizes the findings on its Web site.

''Changing regional climate could alter forests, crop yields, and water supplies,'' the EPA states. ''It could also threaten human health, and harm birds, fish, and many types of ecosystems.''

Yale economist Robert O. Mendelsohn is more skeptical. He agrees that mild global warming seems likely to continue—but argues that a slightly hotter climate will make the U.S. economy in general, and the Northeast in particular, more rather than less productive. A greater risk comes from spending billions of dollars to slow emissions of greenhouse gases.

''Even in the extreme scenarios, the northern United States benefits from global

warming,'' said Mendelsohn, editor of the forthcoming ''Global Warming and the American Economy.'' ''To have New England lead the battle against global warming would be deeply ironic, because it will be beneficial to our climate and economy.''

The scientists on the Northeastern panels estimated that Americans have a grace period of a decade or two, during which the nation can adapt before global warming accelerates.

''We will face an increasingly hazardous local environment in this century,'' said William Solecki, a professor of geography at Montclair State University in New Jersey and a co-author of the climate change report covering the New York metropolitan region. ''We're in transition right now to something entirely new and uncertain.''

HEAT ISLAND

New York City, the nation's densest urban center, is armored with heat-retaining concrete and stone, and so its median temperature hovers five to six degrees above the regional norm. The city, the New York report predicts, will grow warmer still. Within 70 years, New York will have as many 90-degree days a year as Miami does now.

If temperatures and ozone levels rise, the report says, the poor, the elderly and the young—especially those in crowded, poorly ventilated buildings—could suffer more heatstroke and asthma.

But such problems might have relatively inexpensive solutions, from subsidizing the purchase of air conditioners to planting trees and painting roofs light colors to reflect back heat.

''The experience of southern cities is that you can cut deaths and adapt rather easily,'' said Patrick Kinney of the Mailman School of Public Health at Columbia University, who authored a section of the report.

Rising ocean waters present a more complicated threat. The seas around New York have risen 15 to 18 inches in the past century, and scientists forecast that by 2050, waters could rise an additional 10 to 20 inches.

By 2080, storms with 25-foot surges could hit New York every three or four years, inundating the Hudson River tunnels and flooding the edges of the financial district, causing billions of dollars in damage.

''This clearly is untenable,'' said Klaus Jacob, a senior research scientist with Columbia University's Lamont-Doherty Earth Observatory, who worked on the New York report and is an expert on disaster and urban infrastructure. ''A world-class city cannot afford to be exposed to such a threat so often.''

Jacob recommends constructing dikes and reinforced seawalls in Lower Manhattan, and new construction standards for the lower floors of offices.

Sea-level rise could reshape the entire Northeast coastline, turning the summer retreats of the Hamptons and Cape Cod into landscapes defined by dikes and houses on stilts. Should this come to pass, government would have to decide whether to allow nature to have its way, or to spend vast sums of money to replenish beaches and dunes. Complicating the issue is the fact that some wealthy coastal communities exclude nonresident taxpayers from their beaches.

''Multimillionaires already are armoring their property with sandbags, but they can't do it on their own,'' said Vivian Gornitz of Columbia's Center for Climate Systems Research, author of the report's section on sea rise. ''You would be asking taxpayers to pay for restoring beaches they can never walk on, and they might demand access.''

MILD NEW ENGLAND

Farther north, global warming could change flora and fauna, and perhaps the culture itself.

Compared with a century ago, the report notes, ice melts a week earlier on northern lakes. Ticks carrying Lyme disease range north of what scientists once assumed was their natural habitat. Moist, warm winters have led to large populations of mosquitoes, with an accompanying risk of encephalitis and even malaria.

''The present warming trend has led to another growing health problem,'' the report states, ''in the incidence of red tides, fish kills and bacterial contamination.''

Hot, dry summer months, the report continues, ''are ideal for converting automobile exhaust . . . into ozone.'' Because winds flow west to east, New England already serves as something of a tailpipe for the nation. The report notes that a study of ozone pollution and lung capacity found that hikers on Mount Washington, New Hampshire's highest peak, ended their treks in worse condition than when they started.

These findings are not definitive. Rising temperatures could exacerbate the effects of harmful ozone—but anti-pollution laws are also cutting emissions.

''There is a little tendency to be alarmist in global warming studies,'' Kinney said. ''We could keep ozone in check.''

A warmer New England could help some economic sectors. As oak and hickory replace maples and birch, so commercial forestry might grow. Shorter winters could translate into longer growing seasons, lower fuel bills and less money spent on frost-heaved roads. The foliage and ski industries would suffer, but lingering autumns could bring more tourists and dollars to the coastal towns of Maine and Massachusetts.

''People complain that we'll lose the sugar maple, but 100 years ago, New England was 80 percent farmland,'' said Yale economist Mendelsohn. ''In fact, an entire landscape has shifted in the past 100 years, and most people have no idea it was once so different.''

Perhaps—though cold has defined New England for almost 400 years, and some historians caution that the cultural shift could prove disorienting. The region reflects its climate; the literature is austere, the houses stout. For the 19th century naturalists of the region, a clammy southern heat represented moral slackness.

''Surviving winter has become our self-selecting filter,'' said Vermont archivist Gregory Sanford. ''What will we brag about if we live in a temperate zone and go around in Hawaiian shirts and sandals?''

By Mr. ROCKEFELLER:

S. 1871. A bill to direct the Secretary of Transportation to conduct a rail transportation security risk assessment, and for other purposes; to the Committee on Commerce, Science, and Transportation

Mr. ROCKEFELLER. Mr. President, it is my pleasure today to introduce the Safe Rails Act of 2001. This bill will protect the lives of millions of Americans by providing our Nation's freight railroads and hazardous materials shippers with the ability to enhance the security of hazardous materials shipped on the Nation's freight rail network.

The Safe Rails Act will require the Department of Transportation to focus its attention on the significant potential for harm to human health and public safety posed by terrorist attacks on our Nation's freight rail infrastructure. In performing the risk assessment called for in the bill, the Secretary of Transportation will be able to make use of the expertise of the various companies and industries involved in the transportation of hazardous materials. Upon completion of the assessment, the Secretary will administer a 2-year Rail Security Fund to assist railroads and hazardous materials shippers in paying the extraordinary costs associated with their post-September 11 activities to secure rail infrastructure and rolling stock.

Among the painful lessons we have learned from the sad and alarming events of the past three months, one of the most obvious is that security measures for much of our Nation's transportation infrastructure needs immediate improvement. Americans had, for the most part, taken for granted that life in the United States was safe from the senseless violence that occurs all too often elsewhere on the planet. When terrorists used hijacked airlines as missiles against our people, or transformed the mail into a means of spreading illness and death, we awoke in this country to the potential for harm that exists in the misuse of things we depend upon every day.

We depend on few things like we depend on our transportation system. I hope my colleagues in the Senate will agree with me that to adequately protect our homeland security, it is absolutely necessary that Congress, the administration, and the various transportation industries cooperate on a comprehensive evaluation and enhancement of transportation security. I believe we must act soon, and not wait for our ocean-going vessels, our long-haul trucks, or our passenger rail system to be used as tools of terrorist aggression against our fellow citizens.

I have offered this legislation today because the threat to Americans from a terrorist act against a freight railroad carrying hazardous materials may be greater than the threats against all of those other modes combined. Several analyses undertaken even before September 11 point to the chemical industry and the railroads that carry the bulk of its products as likely targets of terrorism. Our economy, and indeed, our public health, depend on the movement of these chemicals. In the days immediately after September 11, for example, a disruption of rail traffic resulted in some major cities having only a few days' supply of water-purifying chlorine at their disposal. It is quite obvious, I believe, that we must safeguard movement of these life-saving, although potentially dangerous, chemicals.

There is legislation before the Senate that would protect the 21 million passengers Amtrak carries every year. I would encourage all my colleagues to support this common-sense legislation. Before we enact that legislation and think we have completed our job, I would just say to my colleagues that the passenger rail traffic in this Nation covers only about one-sixth of the 140,000 miles in the country's freight rail network.

The freight rail network, which passes through or near virtually every

small town and large city in the country, carries more than 1.7 million carloads, many millions of tons, of chemicals and other hazardous materials each year. More than 50,000 carloads of ''poison by inhalation'' chemicals, including chlorine, are transported within a few miles of a huge percentage of our population. It is not my purpose to alarm my colleagues or the public at large. The simple fact is, however, the Safe Rails Act will protect millions of Americans living or working in proximity to the facilities manufacturing these hazardous materials, or the trains carrying them.

Very briefly, the Safe Rails Act would require the Secretary of Transportation to conduct a comprehensive analysis of the security risks on our entire rail system, with special emphasis given to a security needs assessment for the transportation of hazardous materials.

The bill creates a Rail Security Fund, to be administered by the Secretary, to reimburse or defray the costs of increased or new security measures taken by railroads, hazardous materials shippers, or tank car owners, in the wake of the terrorist attacks on September 11. In conducting the required assessments, the Secretary will consult with and may use materials prepared by the railroad, chemical, and tank car leasing industries, as well as any relevant security analyses or assessments prepared by Federal or State law enforcement, public safety, or regulatory agencies.

The Secretary will develop criteria to determine the appropriateness of full or partial reimbursement for various security-related activities. The Secretary may consider, but will not be limited to, using the Fund to help pay for costs incurred due to the following security-related activities: unanticipated rerouting or switching of trains or cargoes, and the express movement of hazardous materials to address security risks; hiring additional manpower required to increase security of the entire rail network, including rail cars on leased track; the purchase of equipment or improved training to enhance emergency response in hazardous materials transportation incidents; improvements in critical communications essential for rail operations and security, including: Development and deployment of global positioning tracking systems on all tank cars transporting high hazard materials; and development of secure network to provide hazardous materials shippers and tank car owners information regarding credible threats to shipments of their products or rolling stock; investment in the physical hardening of critical railroad infrastructure to enable it to withstand terrorist attacks; tank car modifications, or storage of additional tank cars in excess of the number normally stored on-site at shippers' facilities, as mandated by federal regulators; research and development supporting enhanced safety and security of hazardous materials transportation along the freight rail network, including: technology for sealing rail cars; techniques to transfer hazardous materials from rail cars that are damaged or otherwise represent an unreasonable risk to human life or public safety; systems to enhance rail car security on shipper property.

Mr. President, the Safe Rails Act is crucially important legislation for the safety and security of our country, and for the protection of human health all along our Nation's rail network. I thank the chairman of the Commerce Committee for his commitment to mark this bill up early next year. I strongly urge the leadership of the Senate to schedule consideration of this legislation early in the next session of the 107th Congress, and I encourage my colleagues to support its passage.

By Mr. SESSIONS (for himself and Mr. HATCH):

S. 1874. A bill to reduce the disparity in punishment between crack and powder cocaine offenses, to more broadly focus the punishment for drug offenders on the seriousness of the offense and the culpability of the offender, and for other purposes; to the Committee on the Judiciary.

Mr. SESSIONS. Mr. President, I send to the desk a bill entitled the Drug Sentencing Reform Act of 2001. This bill provides a measured and balanced approach to improving the statutory and guidelines system that governs the sentencing of drug offenders.

This bill makes two important changes to our Federal sentencing system for drug offenders: First, it reduces the disparity in sentences for crack and powder cocaine from a ratio of 100-to-1 to 20-to-1. It does so by reducing the penalty for crack and increasing the penalty for powder cocaine.

Second, the bill shifts some of the sentencing emphasis from drug quantity to the nature of the criminal conduct, the degree of the defendant's criminality. The bill increases penalties for the worst drug offenders that use violence and employ women and children as couriers to traffic drugs. The bill decreases mandatory penalties on those who play only a minimal role in a drug trafficking offense, such as a girlfriend or child of a drug dealer who receives little compensation.

In short, this bill will make measured and balanced improvements in the current sentencing system to ensure a more just outcome, tougher sentences on the worst and most violent drug offenders and lighter sentences on lower-level, nonviolent offenders.

To understand the changes that I propose, it is necessary to review how we got to the present system.

Prior to the promulgation of the Sentencing Guidelines in 1984, judges in the Federal court system had very broad discretion to sentence drug offenders. Because judges had different views on sentencing, one defendant who committed a crime could receive parole while another defendant guilty of the exact same criminal conduct could receive literally 20 years in prison. See, e.g., United States Sentencing Commission, Guidelines Manual 2 (Nov. 2000).

Further, because of the existence of the parole system, convicts generally served only one-third of the sentence announced by the judge. Id. There was no truth in sentencing. Thus, the old sentencing system lacked uniformity, honesty, and certainty.

In 1984, a bipartisan Congress enacted and President Reagan signed the Sentencing Reform Act as part of the Comprehensive Crime Control Act, Pub. L. No. 98–473, Title II, 98 Stat. 2019 (1984). The Sentencing Reform Act created the Sentencing Commission and instructed it to promulgate sentencing guidelines that would provide more effective, more uniform, and more fair sentences. See generally United States Sentencing Commission, Guidelines Manual 2 (Nov. 2000). As part of this reform, Congress abolished the parole system and substantially reduced good behavior adjustments. Id. at 1.

The Sentencing Commission went to work in studying empirical data on average sentences imposed for various crimes prior to the Sentencing Reform Act. See United States Sentencing Commission, Guidelines Manual 9–10 (Nov. 2000). It then made adjustments for acceptance of responsibility and provision of substantial assistance to the government. Id. at 10.

On April 13, 1987, the Sentencing Commission submitted its first set of Sentencing Guidelines to Congress. See United States Sentencing Commission, Guidelines Manual 1 (Nov. 2000). After the prescribed period, the Guidelines took effect on November 1, 1987, and applied to all offenses committed on or after that date. Id. at 1.

In applying the Guidelines to a particular case, a judge must generally:

1. Determine the base offense level for the offense of conviction;
2. Apply applicable adjustments for the type of victim, the defendant's role in the offense, and whether the defendant obstructed justice;
3. Determine the defendant's criminal history category; and
4. Determine the guideline range based on the defendant's offense level and criminal history category. See U.S.S.G. §1B1.1 (2000).

After all the factors are considered, the judge is required to sentence within a narrow range.

Thus, the promulgation of the Sentencing Guidelines and the repeal of the parole system promoted uniformity, honesty, and certainty in sentencing.

In 1989, in *Mistretta* v. *United States*, 488 U.S. 361 (1989), the Supreme Court upheld the constitutionality of the Sentencing Guidelines. Thus, Federal prosecutors, criminal defense attorneys, and Federal judges have been applying the Sentencing Guidelines for over a decade.

In setting the guideline ranges for particular offenses, the Sentencing Commission has to take into account any minimum or maximum sentences established by Congress.

In 1986, Senator Dole introduced on behalf of the Reagan administration the Drug-Free Federal Workplace Act of 1986. S. 2849, 99th Cong. 2d Sess. §502 (1986). See United States Sentencing Commission, Special Report to Congress: Cocaine and Federal Sentencing Policy 117 (1995). That bill proposed several mandatory minimum sentences for drug trafficking offenses based on the quantity of the drug involved in the offense.

Under the bill, 500 grams of powder cocaine would have triggered a 5-year mandatory minimum, while it would have taken 25 grams of crack to trigger the same 5-year mandatory minimum. This was a 20-to-1 ratio of powder to crack.

Ultimately, Congress passed and President Reagan signed the Omnibus Anti-Drug Abuse Act of 1986 that set tough mandatory minimum sentences for various quantities of illegal drugs. Pub. L. No. 99–570, 100 Stat. 3207 (1986). With respect to cocaine, the law was amended to provide that a 5-year mandatory minimum sentence would be triggered by trafficking just 5 grams of crack cocaine or by trafficking 500 grams of powder—a 100-to-1 ratio. 21 U.S.C. §841(b)(1)(B)(ii) & (iii). A 10-year mandatory minimum sentence was imposed for trafficking 50 grams of crack or 5 kilograms of powder cocaine, again a 100-to-1 ratio. 18 U.S.C. §841(b)(a)(A)(ii) & (iii).

Congress, and those of us in the law enforcement field at the time believed that there was substantial justification for a large differential between crack and powder cocaine. Because crack was cheap, addictive, and believed to serve as a catalyst for crime, Congress wanted to keep it off the streets and out of poor neighborhoods, which were largely minority neighborhoods. Congress sought to accomplish this with stiff penalties. See United States Sentencing Commission, Special Report to Congress: Cocaine and Federal Sentencing Policy 115–21 (1995) (discussing legislative reasons for crack and powder cocaine sentences). Congressman CHARLES RANGEL of New York, stated in 1986:

> We all know that crack is the newest and most insidious addition to the drug culture. It is cheaper than cocaine, and more addictive. Young people who experiment with crack often become habitual users because of its highly concentrated narcotic effect. They become addicts before they know what is happening.—132 Cong. Rec. H3515–02 (1986) statement of Rep. RANGEL).

Congressman RANGEL, who chaired the Select Committee on Narcotics Abuse and Control, called drug dealers

> the entrepreneurs of dealing with the sale of death on the installment plan. (They) have now, in a very sophisticated way, packaged crack which allows our younger people for smaller amounts of money to become addicted.—''Crack,'' Cocaine Derivative, Called Serious Health Threat, Houston Chronicle, July 16, 1986.

Senator Lawton Chiles of Florida was one of the leaders in the Senate on the fight against crack. He stated:

> The whole Nation now knows about crack cocaine. They know it can be bought for the price of a cassette tape, and make people into slaves. It can turn promising young people into robbers and thieves, stealing anything they can to get the money to feed their habit.—132 Cong. Rec. S 26446, 26447 (1986) (statement of Sen. Chiles).

Senator Chiles also stated with regard to the bill imposing the heavy penalties on crack,

> The Senate bill contained the Democratic three-tiered penalty system which will impose mandatory sentences and large fines against major drug traffickers and kingpins. . . . I am very pleased that the Senate bill recognizes crack as a distinct and separate drug from [powder] cocaine. . . .—132 Cong. Rec. S14270–01 (1986) (statement of Sen. Chiles).

A principal reason for the 1986 crack law was to keep crack from spreading across America and to keep it out of our neighborhoods, especially minority neighborhoods.

Congress continued to follow this line of reasoning in 1988, when it passed and President Reagan signed into law the Anti-Drug Abuse Act. Pub. L. No. 100–690, 102 Stat. 4181 (1988). In addition to the mandatory minimum penalties enacted in 1986 for the trafficking in crack cocaine and other drugs, this act added a mandatory minimum sentence of 5 years for the simple possession of crack cocaine. 21 U.S.C. §844.

Mandatory minimum sentences at the Federal and State levels for various crimes have generally been successful. They have reflected the seriousness with which we as a society take certain crimes and they have reduced crime by keeping recidivist criminals off the streets for longer periods of time. A 1982 Rand study reported that some repeat offenders committed 232 burglaries per year and some committed 485 thefts per year. See Jan M. Chaiken & Marcia R. Chairken, Varieties of Criminal Behavior 44 (Rand 1982). By locking up these repeat offenders, we could prevent a crime a day in some cases.

This effort to lock up the worst offenders has resulted in a substantial increase in Federal and State prison populations. In fact, since 1990 our State and Federal prison populations have increased by a total of 79 percent. See Bureau of Justice Statistics, Prisoners in 2000 1 (2001).

And mandatory minimums did not operate alone. We also made progress in reducing drug use, a cause of crime, down to very low levels. With solid leadership and antidrug education programs we drove drug use by young people down. The University of Michigan's Monitoring the Future Study showed that drug use among 12th grade school children dropped by 76 percent from 1986 to 1992. Lloyd D. Johnston, et al. Monitoring the Future: National Results on Adolescent Drug Use 14 (Univ. of Mich. 2000).

This dual approach of locking up recidivists and reducing drug use drove crime rates down. From 1990 to 1999, the crime index offenses reported by the FBI, including property crimes and violent crimes, fell to their lowest level since 1973. See Federal Bureau of Investigation, Crime in the United States—1999 6(2000) (stating that crime index offenses for 1999 were the lowest since 1973); Federal Bureau of Investigation, Uniform Crime Reports 2000 1(2001), stating that during 2000, crime index offenses remained stable. Thus, the War on Drugs and the War on Crime that began in the mid and late 1980s bore fruit in the 1990s.

That the system put in place in the 1980s produced good results in general, does not mean that it is perfect. With respect to drug sentencing in particular, the primary focus of the mandatory minimums and the Sentencing Guidelines on quantity has resulted in a blunt instrument that data now shows is in need of refinement.

Since the establishment of mandatory minimums for drug trafficking, the Bureau of Prisons published a study on the recidivism of federal prisoners convicted for various offenses. Federal Bureau of Prisons, Recidivism Among Federal Prison Releases in 1987: A Preliminary Report (1994). For those prisoners convicted of general drug crimes and released after serving their terms, 34.2 percent were rearrested within 3 years. Id. at 12. For those convicted of firearm and explosive crimes, 48.6 percent were rearrested. Id. For those who committed crimes against the person, such as robbery or violent assault, 65 percent were rearrested. Id. Thus, possession of dangerous weapons and violence appear to be better indicators of recidivism than the quantity of drugs possessed or distributed.

The 1986 mandatory minimums based on the quantity of crack cocaine sold or possessed, while appropriately reflecting that drug's more serious effects, failed to keep crack off the streets. The use of crack had grown rapidly in the early and mid-1980s and by 1987 and 1988, crack was available across America, including my home town of Mobile, AL, and small towns all over Alabama. See, e.g., Lloyd D. Johnston, et al. Monitoring the Future: National Results on Adolescent Drug Use 16 (Univ. of Mich. 2000) (noting that crack use grew rapidly from 1983–1986); James Coates & Robert Blau, Big-City Gangs Fuel Growing Crack Crisis, Chicago Tribune, Sept. 13, 1989, at C1, noting that crack use began in Fort Wayne, IN, in 1986 and spread rapidly through that city. Though the tough penalties did not stop the geographical spread of crack, they did, in my opinion, play a role in slowing the rate of increase in use that would have occurred without the tough penalties.

The mandatory minimums for crack were intended to protect minority neighborhoods from the spreading influence of crack. Still, the tough penalties for crack created the appearance

of racial bias because the distributors and users of crack are largely African-American.

Parenthetically, let me note that criminal statutes, as they are written, are not biased, they simply required punishment for those who break them regardless of race, sex, nationality, or religion. Thus, just because more males commit Federal crimes than females, it is not unfair or sexist to punish males with all the severity society concludes is necessary to stop or reduce crimes that both sexes commit. See United States Sentencing Commission, 2000 Sourcebook of Federal Sentencing Statistics 15 (Table 5) (reporting that 85.7 percent of Federal offenders are male and 14.3 percent are female).

Because everyone knows that crack carries heavy penalties, I cannot conclude that it is discriminatory to punish all who possess or distribute it with equal severity. My experience does lead me to conclude, however, that where an overwhelming majority of those convicted of crack offenses are African-American, and the penalties for crack offenses are the most severe, we should listen to fair-minded people who argue that these sentences fall too heavily on African-Americans.

One of the facts used in the argument for changing crack sentences is the percentage of crack defendants that are African-American. In 1995, the Sentencing Commission issued report showing that of the defendants convicted for crack cocaine offenses, 88.2 percent were African-American. United States Sentencing Commission, Cocaine and Federal Sentencing Policy 152 (1995). Of the persons sentenced for powder cocaine offenses, 32 percent where white, 27.4 percent African-American, and 37 percent Hispanic, Id.

This generated stories in newspapers, like one from the Birmingham Post-Herald that reported:

> At first, many of the nation's black leaders supported the hard line against drugs. Inner-city church ministers decried the crack epidemic that seemed to blaze through their neighborhoods. But as the disparities in jail sentences became increasingly obvious, support for the policy dried up among many blacks. . . .''—Thomas Hargrove, *Drug's Form Influences Length of Sentence*, Birmingham Post-Herald, Nov. 17, 1997, at A1, A9 (describing differences in punishments for crack and powder cocaine).

As data from the Sentencing Commission became available during the mid-1990s, many federal and state officials, including myself, began to doubt whether the 100-to-1 ratio between powder and crack cocaine continued to be justifiable.

We in the public service asked ourselves: ''If in light of our experience, we can conclude that crack sentences are disproportionately severe, why should we not act to improve them?''

In 1995 and 1997, the Sentencing Commission unanimously concluded that the crack-powder disparity was no longer justified. See United States Sentencing Commission, Cocaine and Federal Sentencing Policy 198–200 (1995); United States Sentencing Commission, Special Report to the Congress: Cocaine and Federal Sentencing Policy 2 (1997).

Moreover, in 1995, the Sentencing Commission, most of the members of which are federal judges, passed two amendments to the Guidelines to reduce the disparity in sentences between crack and powder cocaine. Specifically, the amendments would have adopted a starting point for the guidelines of equal amounts of crack and powder cocaine—a 1-to-1 ratio at the 500-gram level, and would have provided a sentencing enhancement for violence and other harms associated with crack cocaine. See United States Sentencing Commission, Cocaine and Federal Sentencing Policy 1 (1997). Congress, however, passed and President Clinton signed a law that rejected the amendments and directed the Sentencing Commission to study the issue more thoroughly. Pub. L. No. 104–38, 109 Stat. 334 (1995).

In 1997, the Sentencing Commission responded with a study entitled, ''Cocaine and Federal Sentencing Policy.'' The study recommended a reduction in the crack-powder differential from 100-1 to approximately 5-to-1. United States Sentencing Commission, Cocaine and Federal Sentencing Policy 9 (1997). Specifically, the Commission recommended to Congress that the trigger points for the 5-year mandatory minimum for powder be lowered from 500 grams to a range of 125 to 375 grams and for crack be raised from 5 grams to a range of 25 to 75 grams. Id.

Moreover, some judges who did not sit on the Sentencing Commission began speaking out against the crack-powder differential. See, e.g., Pete Bowles, Judge Known for Unusual Sentences, Newsday, May 22, 1998, at A39 (quoting Judge Jack Weinstein as characterizing the Sentencing Guidelines as ''cruel, excessive and unnecessary,'' and saying, ''I simply cannot sentence another impoverished person whose destruction has no discernible effect on the drug trade''). And some have said that judges may have used downward departures more often than they should have to reduce drug sentences to a level that they view as more just. Indeed, Professors Frank Bowman and Michael Heise, citing a downward trend in drug sentences have stated, ''a pervasive disposition toward discretionary evasion of Guideline and statutory law has important implications for the ongoing struggle among the courts, the Justice Department, the Congress, and the Sentencing Commission for control of sentencing policy.'' See Frank O. Bowman III & Michael Heise, Quiet Rebellion? Explaining Nearly a Decade of Declining Federal Drug Sentences, 86 Iowa L. Rev. 1043, 1049–50 (2001).

To date, however, Congress has declined to address the issue. Many say it is because of a fear of being called ''soft on crime.'' Regardless, we can wait no longer. Based on our experience, the strong position of the Sentencing Commission, which is not a ''soft on crime'' group, and plain fairness, we must act. Congress' refusal to act, in my view, has been unfortunate.

And in light of our experience, we can conclude that crack sentences are disproportionately severe, why should we not act to improve them? To improve these guidelines, to fix them where they are broken, is to strengthen the system, to reduce judicial manipulation, and to restore confidence in the system's fairness.

We must remember, however, that the goals of the drug sentencing are still valid today, to save babies from being addicted to the drugs their mothers take during pregnancy, to save teenagers from wasting their youth on drugs that lead to crime, to save young girls from being forced into prostitution to feed a habit, and to save adults from wasting their lives on nonproductive and damaging drugs.

I challenge any of you to visit a drug court and look at the defendants before and after the drug court program. The transformation from a hopeless criminal on drugs to productive citizen off of drugs will convince anyone of the danger and destructiveness of illegal drugs.

Does an easing of these tough sentences, but not gutting of them, carry risks. Some, but not much:

1. Some will say that it represents proof that the war against drugs is a failure, but as I just explained, the War on Drugs is just as worthy a cause today as it used to be;

2. Some will say that we are less serious, but a balanced reform will treat dangerous crimes more seriously;

3. Some will say that it may ease a bit the pressure a prosecutor can put on a drug dealer to cooperate, but a balanced approach will retain sufficient leverage for a prosecutor to do his job justly;

4. Some will say that heavy sentences have had some ability to reduce distribution, but of course, after a modest decrease the penalties will remain tough.

After thoughtful review, and consideration in light of my own experience in prosecuting drug offense, I have concluded that we must reform the justness of our means to match the legitimacy of our goals. We must restore justness to sentencing for crack trafficking and other drug crimes which will maintain public confidence in the federal government's anti-drug efforts and make those efforts more rational and justifiable.

Today, I propose a bill to make two modest changes to the current sentencing system:

First, the bill will reduce the crack-powder sentencing disparity from the current 100-to-1 ratio to a 20-to-1 ratio—the same ratio proposed by the Reagan Administration in 1986. This bill would trigger the 5-year mandatory minimum sentence for trafficking at 20 grams of crack—not 5 grams—and at 400 grams of powder cocaine—not 500

grams. The 10-year mandatory minimum would be triggered by trafficking 200 grams of crack and by trafficking 4 kilograms of powder.

The reduction in the amount of powder cocaine required to trigger the mandatory minimum from 500 grams to 400 grams reflects that 400 grams is almost a pound of cocaine—a large amount—worth well over $10,000. Also, this increase in the penalty for powder cocaine reflects that powder cocaine is imported and used as the raw material used to make crack. United States Sentencing Commission, Special Report: Cocaine and Federal Sentencing Policy vi (1995). Finally, the increased penalty responds to the powder cocaine use rates among high school students.

According to the University of Michigan Study entitled Monitoring the Future, powder cocaine use among 12th grade students had risen by 61.3 percent from 1992 to 2000, although there was a slight decline from 1999 to 2000. Further, more than twice as many 12th grade students used powder cocaine than crack in 1992 and in 2000.

12TH GRADERS DRUG USE

[In percent]

Drug	1992	2000	Change
Powder	3.1	5.0	61.3
Crack	1.5	2.2	46.7
Percent Greater	106.7		127.2

See Lloyd D. Johnston, Monitoring the Future: National Results on Adolescent Drug Use 14 (Univ. of Mich. 2000) (Table 2).

We need to discourage those who are dealing powder cocaine to our high school students and those who are providing a supply market of powder cocaine that enable the manufacture of crack. This bill does this by providing a small increase in the penalty for powder cocaine.

The bill's decrease in the penalty for crack reflects that a principal reason for creating the much more severe sentence on crack, to prevent the spread of crack use, has failed. Crack is used throughout America.

The bill's approach of narrowing, but not eliminating, the sentencing disparity between crack and powder cocaine by changing the penalties for both drugs parallels the 1997 Sentencing Commission recommendation of increasing penalties and decreasing penalties on crack. United States Sentencing Commission, Special Report to Congress: Federal Sentencing Policy 9 (1997). Further, it is consistent with the bipartisan Act of Congress that President Clinton signed in 1995 rejecting the Sentencing Commission's attempt to equalize the penalties for crack and powder cocaine. That act stated, ''the sentence imposed for trafficking in a quantity of crack cocaine should generally exceed the sentence imposed for trafficking a like quantity of powder cocaine.'' Pub. L. No. 104–38, 104th Cong. 1st Sess. §2(a)(1)(A) (1995). The bill changes the penalties for crack and powder to reduce the 100-to-1 disparity, but retains a reasonable distinction, a 20-to-1 ratio, between crack and powder.

The bill also reduces the 5-year mandatory minimum penalty for the simple possession of 5 grams of crack to just 1 year. This reflects that crack is a more serious drug than most other drugs, but that the sentence need not be unjustifiably harsh.

Second, the bill increases emphasis on defendant's criminality, as opposed to a heavy emphasis on the quantity of drug involved. This bill requires a sentencing enhancement for violence or possession of a firearm, or other dangerous weapon, associated with a drug trafficking offense. This reflects that use of a dangerous weapon or violent action results in higher recidivism rates than drug use along. See Federal Bureau of Prisons, Recidivism Among Federal Prison Releases in 1987: A Preliminary Report 12 (1994).

Further, the bill requires an additional enhancement if the defendant is an organizer, leader, manager, or supervisor in the drug trafficking offense and a ''superaggravating'' factor applies. Superaggravating factors include using a girlfriend or child to distribute drugs, maintaining a crack house, distributing a drugs to minor, an elderly person, or a pregnant woman, bribing a law enforcement official, importing drugs in the United States from a foreign country, or committing the drug offense as a part of a pattern of criminal conduct engaging in as a livelihood. These sentencing enhancements will apply to offenses involving cocaine, methamphetamines, marijuana, and all illegal drugs.

Aside from the girlfriend factor, many of the superaggravating factors are already available in certain cases. The bill would employ these punishments in drug cases as sentencing enhancements, instead of statutory penalties, thus allowing a Federal prosecutor to obtain the tougher penalty by proving the superaggravating criminal conduct by a preponderance of the evidence rather than beyond a reasonable doubt. Further, the bill will make some enhancements easier to establish. For example instead of proving that a victim had a particular vulnerability to a crime, a prosecutor could simply show that the victim was 16 years old.

The offenders to which these sentencing enhancements apply are the most culpable members of the drug trade that prey on young women, school children, and the elderly, and bring violence into our neighborhoods. Their sentences should reflect the criminality of their conduct, not simply the quantity of drugs with which they are caught.

While providing sentencing increases for the worst offenders, the bill limits the impact of mandatory minimums on the least dangerous offenders. The bill caps the drug quantity portion of a sentence for a defendant who plays a minimal role at 10 years, base offense level 32 under the Sentencing Guidelines. This is very significant because couriers, who are often low-level participants in a drug organization, can have disproportionate sentences of 20 or 30 years simply because they are caught with a large amount of drugs in their possession. By capping the impact of drug quantity on the minimal role offenders, the bill allows a greater role for the criminality, or lack of criminality, of their conduct in determining their ultimate sentence.

For example, the bill provides a decrease for the super-mitigating factor of the girlfriend or child who plays a minimal role in the offense. These are often the most abused victims of the drug trade, and we should not punish them as harshly as the drug dealer who used them.

Existing adjustments could then be made for factors such as the role in the offense, acceptance of responsibility, and provision of substantial assistance to the government.

The bill also establishes a 3-year pilot program for placing elderly, nonviolent prisoners in home detention in lieu of prison. It allows the Attorney General to designate 1 or more Federal prisons at which prisoners who meet the following criteria could be placed in home detention.

The prisoner: 1. is at least 65 years old; 2. has served the greater of 10 years or one-half of his sentence; 3. has never committed a Federal or State crime of violence; 4. is not determined by the Bureau of Prisons to have a history of violence or to have committed a violent infraction while in prison; and 5. has not escaped or attempted to escape.

My experience tells me, that elderly prisoners who are nonviolent and who have served a substantial amount of their sentence generally pose no threat to the community. Removing them from prison and placing them in home detention could save the federal government money and free up space to house the most dangerous criminals.

The bill, however, would require an independent study on recidivism and cost savings. At the end of 3 years, Congress could decide whether to continue or expand the pilot program.

There are those on the Left of the political spectrum who want to substantially restrict or even repeal mandatory minimums for some drug offenders and oppose all drug penalty increases. I firmly disagree with such an approach. The Sentencing Guidelines and mandatory minimum statutes have been a critical component of a criminal justice system that treats equal conduct equally. It increases deterrence because criminals know they will not be able to talk themselves out of jail. It is a great system. By following the balanced approach that I have proposed, we improve the guidelines and improve sentencing. My goal is to have our sentencing system consistently impose the right sentence to incapacitate, deter, punish, and rehabilitate the criminal. Because Congress has set the rules, we

must act to improve them. The courts cannot do it for us.

There are those on the Right side of the political spectrum, however, who do not want to decrease any drug penalty whatsoever. While I respect their view, I can not embrace it. The mandatory minimums have been in effect since 1986 and the Sentencing Guidelines have been in effect since 1987. We are not in a position to reflect on what the effects have been.

As we have seen from experience, the 100-to-1 disparity in sentencing between crack cocaine and power cocaine, which falls the hardest on African-Americans, is not justifiable. See, e.g., 145 Cong. Rec. S. 14452–14453 (1999), (statement of Sen. SESSIONS,to-1 ratio is a movement in the right direction,'' but questioning whether solely increasing penalties on crack was justifiable). It is simply unjust.

Further, the focus of the drug sentencing system on quantity of drugs, which has sent the girlfriends of drug dealers, who act as mere couriers, to prison for long terms, should be adjusted to increase the emphasis on the criminality of conduct. This will free up prison space for violent drug offenders.

Trust me on this. The federal drug sentences are tough. In practice—as they play out in actual time served, they are tougher than any State drug sentences that I know of. This legislation will in no way change the seriousness with which drugs are taken. Please know that I will resist with all the force I can muster any attempt to destroy or undermine the integrity or effectiveness of the Sentencing Guidelines. This bill simply targets the toughest sentences to those who deserve it most.

The Drug Sentencing Reform Act of 2001 takes a measured and balanced approach to modifying the sentencing system that we have used for over a decade. By increasing penalties on the worst offenders and decreasing penalties on the least dangerous offenders, we will increase the focus of our law enforcement resources on the drug traffickers that endanger our families and decrease the focus on those defendants who pose less danger.

I commend this bill to my colleagues to study and debate. I challenge them to cast aside the politics of the Left and the Right and to support this bill on the merits as a matter of plain, simple justice.

Mr. HATCH. Mr. President, I rise today to speak briefly on the legislation that my good friend from the State of Alabama, Senator SESSIONS, has introduced today. That legislation, the ''Drug Sentencing Reform Act of 2001,'' addresses the disparity between sentences handed down to those who traffic in power cocaine and those who traffic in crack cocaine. I am proud to cosponsor this bill, and I hope that we can promptly act on it when we return next year.

This legislation provides a balanced and measured solution to the disparity problem without undermining our efforts to pursue relentlessly those who make their living peddling these poisons. At the same time that we reduce the crack-powder sentence ratio from 100 to 1 to 20 to 1 and reduce sentences for girlfriends and children who play truly minimal roles in drug crimes, we increase sentences for those who play leadership roles in trafficking organizations. The bill also increases sentences for those who use firearms or violence in carrying out their drug crimes.

As a former federal prosecutor, United States Attorney, and Attorney General of Alabama, Senator SESSIONS is uniquely qualified to lead the Senate on this issue. Since at least 1998, he has done just that. Both in the Judiciary Committee and on the floor of the Senate, Senator SESSIONS has worked tirelessly to bring about a more just sentencing structure for cocaine offenses. This legislation represents the right approach, and it deserves the support of all of my colleagues.

By Mrs. CLINTON (for herself, Mr. SMITH of Oregon, Mr. STEVENS, Mr. SPECTER, Mrs. BOXER, Mr. FITZGERALD, Mr. SCHUMER, and Mr. DODD):

S. 1876. A bill to establish a National Foundation for the Study of Holocaust Assets; to the Committee on Banking, Housing, and Urban Affairs.

Mr. SMITH of Oregon. Mr. President, I am proud to introduce with Senator CLINTON, the Holocaust Victims' Assets Restitution Policy and Remembrance Act. This legislation will create a public/private Foundation dedicated to educating and to completing the necessary research in the area of Holocaust-era assets and restitution policy and to promote innovative solutions to restitution issues. The Foundation is authorized for ten years at a cost of $100 million, after which it will sunset and ''spin off'' its research results and materials to private entities. It is able to accept private funds as well as public dollars.

The need for the Foundation comes from the work of the Presidential Advisory Commission on Holocaust Assets in the United States. I was proud to have served as a Commissioner along with several of my colleagues in the Senate. The Commission identified a number of policy initiatives that require U.S. leadership, including: further research and review of Holocaust-era assets in the United States and world-wide; providing for the dissemination of information about restitution programs; creating a simple mechanism to assist claimants in obtaining resolution of claims; and, supporting a modern database of Holocaust victims' claims for the restitution of personal property.

The Commission determined that ''our government performed in an unprecedented and exemplary manner in attempting to ensure the restitution of assets to victims of the Holocaust. However, even the best intentioned and most comprehensive policies were unable, given the unique circumstances of the time, to ensure that all victims' assets were restituted.''

I believe this Foundation will provide a focal point for work between Federal and State governments to cross-match property records with lists of Holocaust victims. It will work with the museum community to further stimulate provenance research into European paintings and Judaica. It will promote and monitor the implementation by major banking institutions of the agreement developed in conjunction with the New York Bankers Association. Finally, it will work with the private sector to develop and promote common standards and best practices for research on Holocaust-era assets.

I look forward to working with my colleagues in creating this Foundation to finish the work of the Holocaust Assets Commission. I urge all my colleagues to co-sponsor this important legislation that will solve restitution issues and engender needed research on Holocaust assets in the United States.

By Mr. HARKIN:

S. 1877. A bill to clarify and reaffirm a cause of action and Federal court jurisdiction for certain claims against the Government of Iran; to the Committee on Foreign Relations.

Mr. HARKIN. Mr. President, we all remember the dark days of the Iran hostage crisis between 1979 and 1981. Fifty-two Americans were taken hostage in the U.S. Embassy in Tehran and held in captivity by the Ayatollah Khomeini and his followers for the ensuing 444 days in the newly-established Islamic Republic of Iran. They were brutalized by their captors and the pain and suffering of these brave Americans and their families throughout that ordeal cannot be over-estimated.

A constituent of mine, Ms. Kathryn Koob, from Waverly, IA, is one of two women former hostages who endured this nightmarish experience. Last December, she joined the other 51 American heroes taken hostage and their families in filing a lawsuit in the Federal District Court of the District of Columbia seeking redress of this grievous miscarriage of justice and payment by the Government of Iran for the damages and injuries they incurred. If these plaintiffs are successful, the Federal courts could order payment from Iranian cash and assets still frozen in the United States.

Incredibly, the U.S. Justice and State Departments in mid-October and, at the latest possible hour, intervened in this case, *Roeder v. the Islamic Republic of Iran*, seeking to vacate the Federal judge's default judgment in favor of the former hostages and their families and to have this lawsuit dismissed altogether. De facto the Bush Administration is siding with the Government of Iran and against our own people who were taken hostage and treated so cruelly during the Embassy takeover. How could this be, especially when we are

united as a Nation in a war against terrorism and the U.S. State Department itself continues to document and declare the Government of Iran as the number one state sponsor of terrorism in the world today?

The Government of Iran has never had to pay one cent to any of the Americans taken hostage or their families. If U.S. Justice and State Department attorneys get their way, the Government of Iran will never have to pay anything and the hostages and their families will never be given their day in Federal court to pursue justice and be awarded compensation.

That is why I am today introducing legislation, The Justice for Former U.S. Hostages in Iran Act, to prevent this grave injustice from being compounded. My bill would reaffirm the clear intent of this Congress expressed in four prior enactments and make crystal clear that this group of hostages and their families have the right to pursue their Federal lawsuit to its rightful conclusion and to be eligible to receive compensatory damage awards from the Government of Iran, should the Federal courts so determine on the merits.

The position of the U.S. Justice and State Departments, contrary to the claims and interests of the American hostages and their families, is that the U.S. Government must honor a little-known executive agreement called the Algiers Accords that Presidents Carter and Reagan entered into in January, 1981 in order to get our hostages released from captivity inside Iran. The Algiers Accords, among other provisions, required the U.S. to immediately transfer to Iran through

Algeria $7.9 billion in frozen assets in exchange for the freedom of our people. But also buried in the fine print of the Algiers Accords is one very specific provision which singularly strips the hostages and their families of their rights and flatly prohibits any of them from ever being able to sue the Government of Iran and make that regime pay for their pain and suffering. Ironically, under the terms of the Algiers Accords, U.S. companies can take the Iranians before an international tribunal at The Hague and recover damages for their lost property, but the Americans actually taken hostage and their families alone, are prohibited from doing the same. This is patently unfair to those American heroes and their families who suffered the most from this hellish experience.

The Algiers Accords is not a treaty. It was never submitted to the Senate for ratification for obvious reasons. It is a shabby executive agreement that was negotiated under extreme duress and entered into between the executive branch of our government and the Government of Iran because the Government of Iran, at that time, was daily threatening otherwise to put all of our hostages on trial in Iran as ''spies'' and to execute them. In fact, the Algiers Accords, from their inception, have functioned as little more than a ransom pact with kidnappers acting in the name and under the sponsorship of the Government of Iran.

Last week, the Federal judge hearing this case expressed a reluctance to make a final judgment and to order the Government of Iran to pay damages unless the Congress takes further legislative action to clearly and irrefutably abrogate the Algiers Accords insofar as necessary to allow the Americans held hostage and their families to sue in federal court and recover damages from the Government of Iran. The next court proceeding is this unresolved matter has been scheduled for January 14.

I appeal to my colleagues on both sides of the aisle to co-sponsor this legislation with a sense of urgency and fairness. Unless the Congress acts promptly to reaffirm and clarify our prior enactments, the U.S. Justice and State Departments will block the only path still open to the hostages and their families to pursue justice, to get a federal court judgment against the Government of Iran for its brutal and criminal misconduct, and to require this on-going state sponsor of international terrorism to pay for the pain, suffering and injuries they inflicted on Kathryn Koob and these other courageous Americans.

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. 1877

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

SECTION 1. FEDERAL COURT JURISDICTION OF CERTAIN CLAIMS AGAINST THE GOVERNMENT OF IRAN.

(a) CAUSE OF ACTION.—Notwithstanding the Algiers Accords, any other international agreement, or any other provision of law, a former Iranian hostage or immediate relative thereof shall have a cause of action for money damages against the Government of Iran for the hostage taking and any death, disability, or other injury (including pain and suffering and financial loss) to the former Iranian hostage resulting from the former Iranian hostage's period of captivity in Iran.

(b) JURISDICTION OF THE FEDERAL COURTS.—Notwithstanding the Algiers Accords, any other international agreement, or any other provision of law, no United States court shall decline to hear or determine on the merits a claim under subsection (a) against the Government of Iran.

(c) DEFINITIONS.—In this section:

(1) ALGIERS ACCORDS.—The term ''Algiers Accords'' means the Declarations of the Government of the Democratic and Popular Republic of Algeria concerning commitments and settlement of claims by the United States and Iran with respect to resolution of the crisis arising out of the detention of 52 United States nationals in Iran, with Undertakings and Escrow Agreement, done at Algiers January 19, 1981.

(2) FORMER IRANIAN HOSTAGE.—The term ''former Iranian hostage'' means any United States personnel held hostage in Iran during the period of captivity in Iran.

(3) IMMEDIATE RELATIVE.—The term ''immediate relative'' means, with respect to a former Iranian hostage, the parent, spouse, son, or daughter of the former Iranian hostage.

(4) PERIOD OF CAPTIVITY IN IRAN.—The term ''period of captivity in Iran'' means the period beginning on November 4, 1979, and ending on January 20, 1981.

(d) EFFECTIVE DATE.—This section shall apply to—

(1) any action brought before the date of enactment of this Act and being maintained on such date; and

(2) any action brought on or after the date of enactment of this Act.

By Mrs. HUTCHISON (for herself and Mr. BINGAMAN):

S. 1878. A bill to establish programs to address the health care needs of residents of the United States-Mexico Border Area, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. HUTCHISON. Mr. President, I rise today to introduce the U.S./Mexico Border Health Improvement Act. The issue of public health along the U.S./Mexico Border is as vast and varied as the 2000-mile Border itself. With the enactment of the NAFTA agreement, and the tremendous growth in population in the region, the Border represents, for both countries, the area of both greatest potential and enormous challenge. From San Yisidro to Brownsville, and from Tijuana to Matamoros, over 10 million people call the Border region home. At the same time, the U.S. Border population is growing three times as fast as the rest of the Nation's, and the population of Mexico's border cities is expected to double over the next decade. For this reason, I am pleased to be joined by Senator BINGAMAN to offer legislation on the critical issue of improving U.S./Mexico Border Health.

The Border region is like a ''top ten'' list of substandard living conditions: the highest poverty rate; the lowest education rate; highest unemployment; worst environmental degradation; and the worst record for all major public health indicators.

The statistics are mind-numbing, but it is the sad reality of the human suffering and of the individuals, families, and communities behind those numbers that is so heart wrenching. Diabetes, HIV, hepatitis, tuberculosis, and birth defects all remain disproportionately and unacceptably high. Meanwhile, childhood immunizations, screenings, health education, and the ratio of health care providers to the general population all remain unacceptably low.

This legislation that I offer today provides for a comprehensive border health program to address this woeful situation that includes the creation of an office of Border Health within Health and Human Services, authorizations for community health centers, and dental outreach programs. This bill also directs the Secretary of Health and Human Services to recruit and retain quality members of the National Health Service Corps for service

in the border region, while requesting authorization for the recruitment, training and retaining of bilingual health professionals, ''promotor(a)s.''

As a member of the United States Senate, I have worked very hard to improve the health of Border residents in the short term, but more important, to putting in place the infrastructure and institutions necessary to ensure a good, healthful life for our Nation's people well into the twenty-first century.

I commend the Senator from New Mexico for his support on this issue, and I urge other Senators to join us in this effort.

I ask unanimous consent the bill be printed in the RECORD.

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

S. 1878

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 ''United States/Mexico Border Health Improvement Act of 2001''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The United States-Mexico Border Area is the area located in the United States within 100 kilometers of the border between the United States and Mexico.

(2) In the United States, the United States-Mexico Border Area encompasses 46 counties in California, Arizona, New Mexico, and Texas.

(3) Presently, the United States-Mexico Border Area is experiencing explosive population growth. In the United States, this region currently has 11,500,000 residents. However, this number is expected to exceed 22,000,000 by the year 2025. The population of the region in Mexico is growing at an ever faster rate. In total, the population of the communities in both countries is expected to double between the years 2020 and 2025.

(4) With 11,500,000 residents and a 2,000-mile expanse, the United States-Mexico Border Area has the population and size of a State of the United States. If the region was such a State, it would rank—

(A) last in access to health care;

(B) second in death rates (due to hepatitis);

(C) third in deaths related to diabetes;

(D) first in the number of tuberculosis cases;

(E) first in schoolchildren living in poverty; and

(F) last in per capita income.

(5) In addition to the specific health problems listed in paragraph (5), hundreds of thousands of Area residents also each day face increased health risks due to being exposed to the polluted water, soil, and air of the region.

(6) Every county in the United States-Mexico Border Area in the United States has at least a partial health professional shortage area designation. Twenty-five percent of such counties have severe shortages and lack adequate primary care physicians. The shortage of dentists is also severe in many Area localities.

(7) According to GAO, the United States-Mexico Border Area contains hundreds of colonias. Colonias are substandard developments that typically lack running water, sewerage systems, and electricity. Many of the residents of colonias are migrant farmworker families.

(8) Due to the poor living conditions in the colonias, the United States-Mexico Border Area has a much higher rate of waterborne infectious diseases. The occurrence of hepatitis A, for example, is 3 times the national rate, and the occurrence of salmonella and shigella dysentery occur is 2 to 4 times the national rate.

SEC. 3. DEFINITIONS.

In this Act:

(1) UNITED STATES-MEXICO BORDER AREA.—The term ''United States-Mexico Border Area'' means the area located in the United States within 100 kilometers of the border between the United States and Mexico.

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

SEC. 4. OFFICE OF BORDER HEALTH.

(a) IN GENERAL.—There is established within the Department of Health and Human Services an Office of Border Health (referred to in this section as the ''Office'').

(b) DIRECTOR.—The Secretary shall appoint a Director of the Office to administer and oversee the functions of such Office.

(c) AUTHORITY.—In overseeing the Office, the Secretary, acting through the Director—

(1) shall be responsible for the overall direction of the Office and for the establishment and implementation of general policies respecting the management and operation of programs and activities of the Office;

(2) shall establish programs and activities to study and monitor border health service delivery in general, the coordination of Federal and State and Federal and local border health activities, the health education available for border residents, existing outreach for residents and the success of such outreach, health service activities, particularly prevention, and early intervention activities, and any other activity that the Secretary determines is appropriate to improve the health of United States-Mexico Border Area residents, including the health of Native American tribes located within the primary Area;

(3) shall review Federal public health programs and identify opportunities for collaboration with other Federal, State, and local efforts to address border health issues;

(4) shall coordinate activities with the United States-Mexico Border Health Commission and State offices;

(5) shall award grants to States, local governments, nonprofit organizations, or other eligible entities as determined by the Secretary, in the United States-Mexico border area to address priorities and recommendations established by—

(A) the United States-Mexico Border Health Commission on a binational basis, including the Healthy Border 2010 Program Objectives; and

(B) the Director, to improve the health of border region residents;

(6) shall award grants to programs that seek to improve the health care of Area residents, with priority given to applicants such as the Health Resources and Services Administration and other applicants that seek to provide telemedicine and telehealth services; and

(7) shall collaborate with appropriate counterparts in Mexico to coordinate actions and programs to improve health for residents of the United States-Mexico border area.

(d) REPORT.—Not later than 1 year after the date of enactment of this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report describing Federal health programs' limitations in addressing United States-Mexico Border Area health concerns and recommending solutions to better address such concerns.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 5. UNITED STATES-MEXICO BORDER AREA ENVIRONMENTAL HEALTH PROGRAM.

(a) IN GENERAL.—The Secretary shall award grants to eligible entities as determined by the Secretary to establish environmental health hazard programs for the United States-Mexico Border Area.

(b) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to eligible entities that propose to establish and carry out programs that address environmental health hazards in the United States-Mexico Border Area for pregnant women and children.

(c) DUTIES.—An eligible entity that receives a grant under this section, shall use funds received through such grant to—

(1) establish an environmental health program that addresses health hazards along the United States-Mexico Border Area;

(2) identify and eliminate environmental health hazards;

(3) coordinate its program with any environmental health programs, if applicable, administered by the Environmental Protection Agency, the National Institute of Environmental Health Sciences, the International Consortium for the Environment (ICE), other relevant Federal, State, and local agencies, and nongovernmental organizations;

(4) recruit and train health professionals and environmental health specialists to identify and address environmental health hazards in the United States-Mexico Border Area; or

(5) support State and local public health, food safety, and building inspection agencies to reduce environmental health hazards, including hazards existing in or around private residences in the United States-Mexico Border Area.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 6. COMMUNITY HEALTH CENTERS.

Part D of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by adding at the end the following:

''SEC. 330I. UNITED STATES-MEXICO BORDER AREA GRANTS.

''(a) IN GENERAL.—The Secretary shall award grants to eligible entities as determined by the Secretary to establish community health centers in medically underserved areas of the United States-Mexico Border Area.

''(b) DEFINITIONS.—The term ''United States-Mexico Border Area'' means the area located in the United States within 100 kilometers of the border between the United States and Mexico.

''(c) DUTIES.—An eligible entity that receives a grant under this section shall establish and fund community health centers in medically underserved areas of the United States-Mexico Border Area, and as designated by the Secretary.

''(d) APPLICATION.—An eligible entity desiring a grant under this section shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.''.

SEC. 7. NATIONAL HEALTH SERVICE CORPS.

Subpart II of the Public Health Service Act (42 U.S.C. 254d et seq.) is amended by adding at the end the following:

''SEC. 339. UNITED STATES-MEXICO BORDER HEALTH SERVICE CORPS.

''(a) IN GENERAL.—The Secretary shall establish a loan repayment program and recruit National Health Service Corps members to provide health services for United States-Mexico Border Area residents in exchange for participation in such program.

''(b) PREFERENCE.—In selecting Corps members to participate, the Secretary shall give preference to pediatricians and pediatric specialists who are fluent in English and Spanish, and to applicants who agree to serve along the United States-Mexico Border Health Area for at least 2 years.

''(c) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall establish a loan repayment program described in subsection (a).

''(2) CONTRACT.—Under such program, the Secretary shall enter into written agreements with individuals selected by the Secretary to provide the health services described in subsection (a) in exchange for the Secretary providing payment for the individual for the principal, interest, and related expenses on government and commercial loans received by the individual regarding the graduate or undergraduate education of the individual (or both).

''(3) PAYMENT FOR YEARS SERVED.—For every 2 years of service that an individual contracts to serve under this section the Secretary may pay for 1 year of educational expenses, including tuition, living expenses, and any other such reasonable educational expenses.

''(d) UNITED STATES-MEXICO BORDER AREA.—The term ''United States-Mexico Border Area'' means the area located in the United States within 100 kilometers of the border between the United States and Mexico.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.''.

SEC. 8. PROMOTOR(A) GRANT PROGRAMS.

(a) PROGRAM AUTHORIZED.—The Secretary shall award grants to eligible entities to establish promotor(a) programs to recruit, train, and retain bilingual lay health advisers to provide culturally appropriate health education and other services for medically underserved populations in the United States-Mexico Border Area.

(b) DEFINITION.—The term ''eligible entity'' means a school of public health, an academic health sciences center, a Federally qualified health center, a public health agency, a border health office, or a border health education training center or any other entity determined by the Secretary that is located in or that serves the United States-Mexico Border Area.

(c) DUTIES.—An eligible entity that receives a grant under this section shall, in addition to the duties described in subsection (a), develop bilingual promotor(a) and other border-specific health training programs.

(d) APPLICATION.—An eligible entity desiring a grant under this section, shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 9. GRANTS FOR DISTANCE LEARNING.

(a) PROGRAM AUTHORIZED.—The Secretary shall award grants to United States-Mexico Border Area State and local health agencies, community health centers, and other appropriate organizations to fully participate in the provider education distance learning/information dissemination network of the Health Services and Resources Administration.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 10. PREVENTION AND TREATMENT OF HIV/AIDS.

(a) PROGRAM AUTHORIZED.—The Secretary shall carry out a study to review agency activities regarding reducing the spread of HIV/Aids affecting the residents in the United States-Mexico Border Area.

(b) COORDINATIONS.—In carrying out such study, the Secretary shall coordinate activities with the appropriate Federal and State agencies and with appropriate agencies in Mexico to develop early intervention and treatment efforts to curb the spread of HIV/AIDS.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 11. PREVENTION AND TREATMENT OF TUBERCULOSIS.

(a) PROGRAM AUTHORIZED.—The Secretary shall carry out a study to review agency activities regarding reducing the spread of tuberculosis, particularly multi-drug resistant tuberculosis, affecting the residents in the United States-Mexico Border Area.

(b) COORDINATION.—In carrying out such study, the Secretary shall coordinate activities with the Immigration and Naturalization Service and other appropriate Federal and State agencies and with appropriate agencies in Mexico to develop diagnosis, detection, and early intervention and treatment efforts to curb the spread of tuberculosis, particularly multi-drug resistant tuberculosis.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 12. CHILDREN'S HEALTH INSURANCE PROGRAM.

The Secretary shall establish a targeted campaign of public education and awareness in the United States-Mexico Border Area that is culturally relevant to the residents of that Area.

SEC. 13. INTERVENTION AND TREATMENT GRANTS.

(a) PROGRAM AUTHORIZED.—The Secretary shall award grants to eligible entities as determined by the Secretary to carry out intervention and treatment programs for diabetes.

(b) USE OF FUNDS.—An entity that receives a grant under this section shall use funds received through such grant to—

(1) develop intervention programs oriented towards increasing access to diabetes health care;

(2) increase venues and opportunities for physical activity and exercise in the border area;

(3) address obesity as a risk factor for diabetes, especially in juvenile populations;

(4) improve health choices in school nutrition; and

(5) develop diabetes networks and coalitions to encourage communities to address diabetes risk factors.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 14. CENTERS FOR DISEASE CONTROL AND PREVENTION.

(a) PROGRAM AUTHORIZED.—The Centers for Disease Control and Prevention shall establish a National Border Health Databank (referred to in this section as the ''Databank'') to gather and retain data and other information on the health of United States-Mexico Border Area residents and on past, present, and emerging health issues in such Area.

(b) CONTENT.—The Databank shall include an Epidemiological Information System that shall be linked, where feasible, to all relevant State and local health agencies and other relevant national and international health organizations.

(c) AVAILABILITY OF DATA.—All information gathered and retained by the Databank shall, where practicable, be made available for the public via the Internet. The Centers for Disease Control and Prevention shall publish no less than quarterly a publication reporting on activities, studies, and trends regarding United States-Mexico Border Area health issues, including, the resources available from the Databank.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 15. CENTER FOR DISEASE CONTROL PREVENTION.

(a) PROGRAM AUTHORIZED.—There is established within the Centers for Disease Control and Prevention a Border Health Surveillance Network (referred to in this section as the ''Network'').

(b) DUTIES.—The Network shall—

(1) carry out activities to develop and electronically link the health surveillance, assessment, and response capabilities of the Centers for Disease Control and Prevention and all border State and local health agencies; and

(2) award grants to State and local public health agencies, medical schools, schools of public health, Border Health Education Training Centers, or other entities as determined by the Secretary located in or serving the United States-Mexico Border Area for the development of border health epidemiology training programs and to build upon the existing Health Alert Network, the Information Network for Public Health Officials, the Border Infectious Disease Surveillance (''BIDS'') Project, and a Noncommunicable Disease Surveillance System.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 16. BORDER AREA BREAST AND CERVICAL CANCER SCREENING.

Section 1501 of the Public Health Service Act (42 U.S.C. 300k) is amended by adding at the end the following:

''(e) SPECIAL CONSIDERATION FOR BORDER AREA RESIDENTS.—In making grants under subsection (a), the Secretary shall set-aside certain funds described in give special consideration to any State that proposes to increase the number of United States-Mexico Border Area residents who are screened for breast and cervical cancer.''.

SEC. 17. GRANTS FOR BORDER AREA HEALTH TESTING.

(a) IN GENERAL.—The Director of the Centers for Disease Control and Prevention shall award grants to United States-Mexico Border Area State and local health agencies to upgrade public health laboratories and conduct rapid tests for disease organisms and toxic chemicals.

(b) COORDINATION.—A State or local health agency that receives a grant under this section shall, to the extent possible, coordinate its activities carried out with funds received under this section with activities carried out under programs administered by the National Laboratory Training Network.

(c) APPLICATION.—A State or local health agency desiring a grant under this section shall submit an application to the Director

at such time, in such manner, and containing such information as the Director may reasonably require.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 18. HEALTH PROMOTION ACTIVITIES.

(a) IN GENERAL.—The Secretary shall establish new, comprehensive guidelines for community- and family-oriented prevention and health promotion activities focused on Guidelines under The Healthy Border 2010 Guidelines. The Director shall disseminate these guidelines in both English and Spanish to all United States-Mexico Border Area health professionals, utilizing all available tools, including the CDC Prevention Guidelines Database.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 19. GENERAL ACCOUNTING OFFICE.

(a) PROGRAM AUTHORIZED.—The General Accounting Office shall conduct a comprehensive study of Federal and Federal and State border health programs.

(b) CONTENT.—The study described in subsection (a) shall review border health care programs to determine the manner in which such programs may be improved. Such study shall also review any problematic limitations of medicare and medicaid programs in serving United States-Mexico Border Area residents.

(c) REPORT.—Not later than 1 year after the date of enactment of this section, the General Accounting Office shall prepare and submit to Congress a report describing the findings of the study described in subsection (a) and recommending certain courses of action to improve such border health care programs, with particular emphasis on recommendations for improving Federal and State and Federal and local coordinations. Such report shall also make recommendations for changes with regard to medicare and medicaid payment laws and policies for telemedicine and telehealth activities.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 20. AGENCY FOR HEALTH CARE RESEARCH AND QUALITY.

(a) IN GENERAL.—The Agency for Health Care Research and Quality shall conduct a comprehensive study of border health needs, trends, and areas of needed improvement and shall utilize border academic institutes to carry out such study and share the results of such study with such institutes.

(b) CONTENT.—The study described in subsection (a) shall study the health needs of United States-Mexico Border Area residents and—

(1) residents' access to health care services;

(2) communicable disease control in the Area;

(3) environmental problems in the Area that contribute to health care problems;

(4) health research being done on residents' health care needs;

(5) make recommendations regarding environmental improvements that may be made to improve health conditions of Area residents; and

(6) make recommendations regarding long range plans to improve the quality and availability of health care of Area residents.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 21. GRANTS TO INCREASE RESOURCES FOR COMMUNITY WATER FLUORIDATION.

(a) IN GENERAL.—The Secretary, acting through the Director of the Division of Oral Health of the Centers for Disease Control and Prevention, may make grants to Southwestern border States or localities for the purpose of increasing the resources available for community water fluoridation.

(b) USE OF FUNDS.—A State or locality shall use amounts provided under a grant under subsection (a)—

(1) to purchase fluoridation equipment;

(2) to train fluoridation engineers; or

(3) to develop educational materials on the advantages of fluoridation.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 22. COMMUNITY WATER FLUORIDATION.

(a) IN GENERAL.—The Secretary, acting through the Director of the U.S. Mexico Border Health Commission and the Director of the Centers for Disease Control and Prevention, shall establish a demonstration project that is designed to assist rural water systems in Texas, New Mexico, Arizona and California in successfully implementing the Centers for Disease Control and Prevention water fluoridation guidelines entitled ''Engineering and Administrative Recommendations for Water Fluoridation'' (referred to in this section as the ''EARWF'').

(b) REQUIREMENTS.—

(1) COLLABORATION.—The Director of the U.S. Mexico Border Health Commission shall collaborate with the Director of the Centers for Disease Control and Prevention in developing the project under subsection (a). Through such collaboration the Directors shall ensure that technical assistance and training are provided to sites located in each of the 4 States referred to in subsection (a). The Director of the U.S. Mexico Border Health Commission shall provide coordination and administrative support to tribes under this section.

(2) GENERAL USE OF FUNDS.—Amounts made available under this section shall be used to assist small water systems in improving the effectiveness of water fluoridation and to meet the recommendations of the EARWF.

(3) FLUORIDATION SPECIALISTS.—

(A) IN GENERAL.—In carrying out this section, the Secretary shall provide for the establishment of fluoridation specialist engineering positions in each of the Dental Clinical and Preventive Support Centers through which technical assistance and training will be provided to tribal water operators.

(B) CDC.—The Director of the Centers for Disease Control and Prevention shall appoint individuals to serve as the fluoridation specialists.

(4) IMPLEMENTATION.—The project established under this section shall be planned, implemented and evaluated over the 5-year period beginning on the date on which funds are appropriated under this section and shall be designed to serve as a model for improving the effectiveness of water fluoridation systems of small rural communities.

(c) EVALUATION.—In conducting the ongoing evaluation as provided for in subsection (b)(4), the Secretary shall ensure that such evaluation includes—

(1) the measurement of changes in water fluoridation compliance levels resulting from assistance provided under this section;

(2) the identification of the administrative, technical and operational challenges that are unique to the fluoridation of small water systems;

(3) the development of a practical model that may be easily utilized by other tribal, State, county or local governments in improving the quality of water fluoridation with emphasis on small water systems; and

(4) the measurement of any increased percentage of Southwestern border residents who receive the benefits of optimally fluoridated water.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 23. COMMUNITY-BASED DENTAL SEALANT PROGRAM.

(a) IN GENERAL.—The Secretary, acting through the Director of the Maternal and Child Health Bureau of the Health Resources and Services Administration, may award grants to eligible entities determined by the Secretary to provide for the development of innovative programs utilizing mobile van units to carry out dental sealant activities to improve the access of children to sealants as well as for prevention and primary care.

(b) USE OF FUNDS.—An entity shall use amounts received under a grant under subsection (a) to provide funds to eligible community-based entities to make available a mobile van unit to provide children in second or sixth grade with access to dental care and dental sealant services. Such services may be provided by dental hygienists so long as a formalized plan for the referral of a child for treatment of dental problems is established.

(c) ELIGIBILITY.—To be eligible to receive funds under this section an entity shall—

(1) prepare and submit to the Secretary an application at such time, in such manner and containing such information as the Secretary may require; and

(2) be a community-based entity that is determined by the Secretary to provide an appropriate entry point for children into the dental care system and be located within 100 kilometers of the United States Mexico Border.

(d) COORDINATION WITH OTHER PROGRAMS.—An entity that receives funds from a State under this section shall serve as an enrollment site for purposes of enabling individuals to enroll in the State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or in the State Children's Health Insurance Program under title XXI of such Act (42 U.S.C. 1397aa et seq.).

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 24. UNITED STATES HISPANIC NUTRITION EDUCATION AND RESEARCH CENTER.

(a) ESTABLISHMENT.—The Secretary shall establish a United States Hispanic Nutrition Education and Research Center (referred to in this section as the ''Center'') at a regional academic health center.

(b) PURPOSE.—The general purpose of the Center shall be to undertake nutrition research and nutrition education activities that sustain and promote the health of United States Hispanics, particularly those United States Hispanics in the United States-Mexico Border Area. The Center shall serve as a national clearinghouse for research, and for data collection and information dissemination on nutrition in the United States Hispanic population. In addition, the Center shall serve as an educational resource on United States Hispanic nutrition for students, universities, and academic and research institutions throughout the United States.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 1879. A bill to resolve the claims of Cook Inlet Region, Inc., to lands adjacent to the Russian River in the State of Alaska; to the Committee on Energy and Natural Resources.

Mr. MURKOWSKI. Mr. President, I am pleased today to introduce the

''Russian River Land Act''. The purpose of this legislation is to ratify an agreement that settles a land ownership issue at the Russian River on the Kenai Peninsula in Alaska between the U.S. Forest Service, the U.S. Fish and Wildlife Service, and Cook Inlet Region, Inc., CIRI, an Alaska Native Corporation.

The legislation ratifies an agreement reached between CIRI and the agencies after three years of negotiations and it covers the lands at the confluence of the Kenai and Russian Rivers in Alaska.

The area surrounding the confluence of the Russian and Kenai Rivers is rich in archaeological cultural features. It is also the site of perhaps the most heavily used public sports fishery in Alaska. Because of the archaeological resources at Russian River, Cook Inlet Region, Inc., made selections at Russian River under the section of the Alaska Native Claims Settlement Act that allowed for selections of historical places and cemetery sites. The lands at the confluence are managed in part by the U.S. Forest Service and in part by the U.S. Fish and Wildlife Service.

Seeking to protect the public's access to the sport fishery at Russian River, the two federal agencies and Cook Inlet Region, Inc., reached an agreement that requires the Federal legislation in order to become effective. Because this agreement provides for continuing ownership and management by the two Federal agencies of the vast majority of lands at Russian River, the public's right to continue fishing remains unchanged from its current status.

I congratulate the U.S. Forest Service, the Fish and Wildlife Service and CIRI for finding a way to fulfill the intent of the Alaska Native Claims Settlement Act in a way that fully protects the interests of the public. I also congratulate all three parties on reaching final accord on the longstanding unresolved issue of land ownership at Russian River.

By Mr. WELLSTONE:

S. 1880. A bill to provide assistance for the relief and reconstruction of Afghanistan, and for other purposes; to the Committee on Foreign Relations.

Mr. WELLSTONE. Mr. President, I am introducing the Afghanistan Freedom and Reconstruction Act of 2001. This legislation is a comprehensive framework for U.S. bilateral and multilateral assistance for the humanitarian relief and long-term reconstruction and rehabilitation of Afghanistan. It is a companion to H.R. 3427, introduced by Representatives LANTOS and ACKERMAN in the House.

The last pockets of Taliban resistance are being routed, and the new interim administration of Afghanistan is set to assume power in Kabul in 2 days. Freedom is returning to Afghanistan. Its men and women are listening to music again and women are leaving their homes unescorted, cautiously optimistic about their future after enduring years of repressive rule.

Now is the time for decisive action by Congress and by the administration to demonstrate to the people of Afghanistan and throughout the Muslim world that the war against the al-Qaida and the Taliban was neither a war against Muslims, nor against ordinary Afghans. The United States has led the effort to eliminate the terrorist network in Afghanistan, and now it must lead the peace effort by helping the Afghan people reclaim their country and rebuild their lives.

The United States did not live up to its commitment to the Afghan people after the Soviets were defeated in the 1980s. I regret to say we walked away. If we break or commitment again, Afghanistan is likely to remain an isolated incubator of terrorist activities, and regional instability will continue. We would not now be focused on Afghanistan had the events of September 11 not occurred. Those horrific events have driven home the truth that the indivisibility of human security is not just an empty slogan, but a fact, which we ignore at our peril.

The causes of the Afghan tragedy include nearly all the horrors that stalk failed states: meddling and invasion by neighboring states, internecine warfare leading to a takeover by brutal fanatics, oppression of a majority of the population, especially women and, finally, the Taliban's fateful decision to host international terrorists.

The cures for Afghanistan's agony are less obvious, but one is clear. The rival political and ethnic groups must take advantage of the historic opportunity that emerged in Bonn and make a genuine commitment to the peaceful sharing of power. They must establish a government broad and effective enough to meet the basic needs of the people. The same narrow-minded factionalism that originally left the country vulnerable to backward mullahs, greedy warlords and predatory neighbors continues to pose a threat to the country now.

One other thing is clear: the United States must lead the international community in moving quickly and decisively in a long-term commitment to the reconstruction of Afghanistan. The people of Afghanistan have endured 23 years of war and misery. The conflict has threatened international stability and placed enormous burdens on the people's limited means. The Bush administration has said that it will not let Afghanistan descend into chaos. But, talk is not enough. We must act by committing significant resources. We must show Afghans that our commitments are not hollow. We must show genuine solidarity and real generosity now.

It is time to reverse more than a decade of neglect. The United States, in partnership with the international community, must be willing to make a multi-year, multinational effort to rebuild Afghanistan. Current estimates of the cost of assisting Afghanistan range from $5 billion over 5 years to $40 billion over a decade. The United States should be the lead financial contributor to the rehabilitation and reconstruction effort in Afghanistan, and we believe should contribute as much as $5 billion to this effort over the next 5 years.

The reconstruction effort must focus on education, particularly for girls, which has proven to give the greatest return for each assistance dollar. Creation of secular schools will help break the stranglehold of extremism and allow both boys and girls to make positive contributions to the development of their society. The effort must also focus on rebuilding basic infrastructure, repairing shattered bridges and roads, removing land mines, reconstructing irrigation systems and drilling wells. We must also rebuild the health infrastructure by establishing basic hospitals and village clinics.

Over the past few months, I have held a series of hearings in the Senate Foreign Relations Committee's Subcommittee on Near Eastern and South Asia Affairs regarding the humanitarian and reconstruction needs of Afghanistan. Based on these hearings, I am convinced we must help the Afghan people live in a society where they can feed their children, live in safety and participate fully in their country's development regardless of gender, religious belief or ethnicity.

The Afghan Freedom and Reconstruction Act of 2001 does just that. That bill:

Expresses a sense of Congress on the U.S. policy towards Afghanistan, including promoting its independence, supporting a broad-based, multi-ethnic, gender-inclusive, fully representative government, and maintaining a significant U.S. commitment to the relief, rehabilitation and reconstruction of Afghanistan.

Authorizes $400 million for humanitarian assistance to Afghanistan in fiscal year 03, including $75m for refugee assistance and $175m for food aid.

Authorizes such sums as may be necessary for a multinational security force in Afghanistan, in fiscal year 02 and fiscal year 03.

Authorizes $1.175 billion for rehabilitation and reconstruction assistance for fiscal years 2002–2006, to be distributed by USAID, with conditions for each year to ensure that benchmarks laid out in the December 5, 2001, Bonn Agreement between the various Afghan factions are being met; assistance for agriculture, health care, education, vocational training, disarmament and demobilization, and anticorruption and good governance programs; a special emphasis on assistance to women and girls; a report on assistance actually provided; and authority to provide some of this assistance through a multilateral fund and/or international foundation.

Authorizes the President to furnish such sums as may be necessary to finance a multilateral fund or international foundation, to assist in security, rehabilitation, and reconstruction

efforts in Afghanistan, as described above.

Authorizes $60 million for Democracy and human rights initiatives for FY02 through FY04.

Authorizes $62.5 for a contribution to the U.N. Drug Control Program for FY02 through FY04 to reduce or eliminate the trafficking of illicit drugs in Afghanistan.

Authorizes $65 million for a new secure diplomatic facility in Afghanistan.

The legislation's message is simple: the United States is not only a great Nation, but a generous Nation. We keep our word, and stand ready to match our words with our actions. We must not turn our backs again on the people of Afghanistan.

By Mr. DODD (for himself and Mr. MILLER):

S. 1881. A bill to require the Federal Trade Commission to establish a list of consumers who request not to receive telephone sales calls; to the Committee on Commerce, Science and Transportation.

Mr. DODD. Mr. President, today I am introducing legislation along with my friend and colleague from Georgia, Senator MILLER, to help individuals whose personal time is interrupted by the constant annoyance of telephone solicitors. Our bill, modeled after a Connecticut statute, would require the Federal Trade Commission to establish a ''no-call'' list of consumers who do not wish to receive unsolicited telemarketing calls.

A Department of Labor survey reports that 84 percent of Americans would trade income for more free time. People want to spend more time in the evening with their families, whether it be sitting down to dinner together, relaxing in front of the television, helping children with homework, or catching up with household chores. I suspect most people do not want to be inconvenienced with intrusive, unsolicited telemarketing calls during the evening or anytime throughout the day.

Telemarketing revenue increased from $492.3 billion in 1998 to $585.9 billion in 2000, which translates into millions of phone calls every year. While many sales pitches are made on behalf of legitimate organizations and businesses, consumers still lose more than $40 billion a year to fraudulent sales of goods and services over the telephone. It is time to empower consumers with the ability to stop most unsolicited calls, legitimate or otherwise, from entering their homes and disturbing their lives.

In Connecticut, people now have the right to place their name on a ''do not call'' list and more than 225,000 households have contacted the Department on Consumer Protection to take advantage of the new law. All telemarketers are required to consult that list and are prohibited from contacting households on the list. Other states, including Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Kentucky, Missouri, New York, North Carolina, Oregon, and Tennessee, have enacted similar laws.

States are taking this action because a 1994 Federal law to curb unsolicited telemarketing, while a good beginning, has not fully succeeded in protecting families' privacy. In fact, individual consumers must keep track of every telemarketer they have contacted to determine if a solicitation call was made in violation. There are numerous exemptions to the Federal law, as well, as because there are no penalties for calls made in ''error,'' it has proved difficult to enforce.

Direct Marketing Association members do not oppose the Connecticut law. It is their belief that consumers placing their name on a list would never buy a product from a telemarketer anyway, and thus the list saves telemarketers time and resources.

Our legislation would take much of the burden off of consumers. At the same time, a comprehensive and universal law actually could help telemarketers by streamlining the process. The legislation we are introducing today would require the Federal Trade Commission to establish a ''no sales solicitation calls'' listing of consumers who do not wish to receive unsolicited calls. Although certain types of calls would be exempt, including calls from any company with whom a consumer currently does business, non-profits looking for donations, pollsters, and those publishing telephone directories, a violation of the ''no call'' list would be deemed an unfair or deceptive trade practice and the telemarketer could be fined.

I urge my colleagues to cosponsor this important consumer legislation and I ask that the bill be printed in the RECORD.

I think the chair and 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. 1881

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 ''Telemarketing Intrusive Practices Act of 2001''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CALLER IDENTIFICATION SERVICE OR DEVICE.—The term ''caller identification service or device'' means a telephone service or device that permits a consumer to see the telephone number of an incoming call.

(2) CHAIRMAN.—The term ''Chairman'' means the Chairman of the Federal Trade Commission.

(3) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(4) CONSUMER.—The term ''consumer'' means an individual who is an actual or prospective purchaser, lessee, or recipient of consumer goods or services.

(5) CONSUMER GOODS OR SERVICES.—The term ''consumer good or service'' means an article or service that is purchased, leased, exchanged, or received primarily for personal, family, or household purposes, including stocks, bonds, mutual funds, annuities, and other financial products.

(6) MARKETING OR SALES SOLICITATION.—

(A) IN GENERAL.—The term ''marketing or sales solicitation'' means the initiation of a telephone call or message to encourage the purchase of, rental of, or investment in, property, goods, or services, that is transmitted to a person.

(B) EXCEPTION.—The term does not include a call or message—

(i) to a person with the prior express invitation or permission of that person;

(ii) by a tax-exempt nonprofit organization;

(iii) on behalf of a political candidate or political party; or

(iv) to promote the success or defeat of a referendum question.

(7) STATE.—The term ''State'' means each of the several States of the United States and the District of Columbia.

(8) TELEPHONE SALES CALL.—

(A) IN GENERAL.—The term ''telephone sales call'' means a call made by a telephone solicitor to a consumer for the purpose of—

(i) engaging in a marketing or sales solicitation;

(ii) soliciting an extension of credit for consumer goods or services; or

(iii) obtaining information that will or may be used for the direct marketing or sales solicitation or exchange of or extension of credit for consumer goods or services.

(B) EXCEPTION.—The term does not include a call made—

(i) in response to an express request of the person called; or

(ii) primarily in connection with an existing debt or contract, payment, or performance that has not been completed at the time of the call.

(9) TELEPHONE SOLICITOR.—The term ''telephone solicitor'' means an individual, association, corporation, partnership, limited partnership, limited liability company or other business entity, or a subsidiary or affiliate thereof, that does business in the United States and makes or causes to be made a telephone sales call.

SEC. 3. FEDERAL TRADE COMMISSION NO CALL LIST.

(a) IN GENERAL.—The Commission shall—

(1) establish and maintain a list for each State, of consumers who request not to receive telephone sales calls; and

(2) provide notice to consumers of the establishment of the lists.

(b) STATE CONTRACT.—The Commission may contract with a State to establish and maintain the lists.

(c) PRIVATE CONTRACT.—The Commission may contract with a private vendor to establish and maintain the lists if the private vendor has maintained a national listing of consumers who request not to receive telephone sales calls, for not less than 2 years, or is otherwise determined by the Commission to be qualified.

(d) CONSUMER RESPONSIBILITY.—

(1) INCLUSION ON LIST.—Except as provided in subsection (d)(2), a consumer who wishes to be included on a list established under subsection (a) shall notify the Commission in such manner as the Chairman may prescribe to maximize the consumer's opportunity to be included on that list.

(2) DELETION FROM LIST.—Information about a consumer shall be deleted from a list upon the written request of the consumer.

(e) UPDATE.—The Commission shall—

(1) update the lists maintained by the Commission not less than quarterly with information the Commission receives from consumers; and

(2) annually request a no call list from each State that maintains a no call list and update the lists maintained by the Commission at that time to ensure that the lists maintained by the Commission contain the same information contained in the no call lists maintained by individual States.

(f) FEES.—The Commission may charge a reasonable fee for providing a list.

(g) AVAILABILITY.—

(1) IN GENERAL.—The Commission shall make a list available only to a telephone solicitor.

(2) FORMAT.—The list shall be made available in printed or electronic format, or both, at the discretion of the Chairman.

SEC. 4. TELEPHONE SOLICITOR NO CALL LIST.

(a) IN GENERAL.—A telephone solicitor shall maintain a list of consumers who request not to receive telephone sales calls from that particular telephone solicitor.

(b) PROCEDURE.—If a consumer receives a telephone sales call and requests to be placed on the do not call list of that telephone solicitor, the solicitor shall—

(1) place the consumer on the no call list of the solicitor; and

(2) provide the consumer with a confirmation number which shall provide confirmation of the request of the consumer to be placed on the no call list of that telephone solicitor.

SEC. 5. TELEPHONE SOLICITATIONS.

(a) TELEPHONE SALES CALL.—A telephone solicitor may not make or cause to be made a telephone sales call to a consumer—

(1) if the name and telephone number of the consumer appear in the then current quarterly lists made available by the Commission under section 3;

(2) if the consumer previously requested to be placed on the do not call list of the telephone solicitor pursuant to section 4;

(3) to be received between the hours of nine o'clock p.m. and nine o'clock a.m. and between five o'clock p.m. and seven o'clock p.m., local time, at the location of the consumer;

(4) in the form of an electronically transmitted facsimile; or

(5) by use of an automated dialing or recorded message device.

(b) CALLER IDENTIFICATION DEVICE.—A telephone solicitor shall not knowingly use any method to block or otherwise circumvent the use of a caller identification service or device by a consumer.

(c) SALE OF CONSUMER INFORMATION TO TELEPHONE SOLICITORS.—

(1) IN GENERAL.—A person who obtains the name, residential address, or telephone number of a consumer from a published telephone directory or from any other source and republishes or compiles that information, electronically or otherwise, and sells or offers to sell that publication or compilation to a telephone solicitor for marketing or sales solicitation purposes, shall exclude from that publication or compilation, and from the database used to prepare that publication or compilation, the name, address, and telephone number of a consumer if the name and telephone number of the consumer appear in the then current quarterly list made available by the Commission under section 3.

(2) EXCEPTION.—This subsection does not apply to a publisher of a telephone directory when a consumer is called for the sole purpose of compiling, publishing, or distributing a telephone directory intended for use by the general public.

SEC. 6. REGULATIONS.

The Chairman may adopt regulations to carry out this Act that shall include—

(1) provisions governing the availability and distribution of the lists established under section 3;

(2) notice requirements for a consumer who requests to be included on the lists established under section 3; and

(3) a schedule for the payment of fees to be paid by a person who requests a list made available under section 3.

SEC. 7. CIVIL CAUSE OF ACTION.

(a) ACTION BY COMMISSION.—

(1) UNFAIR OR DECEPTIVE TRADE PRACTICE.—A violation of section 4 or 5 is an unfair or deceptive trade practice under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(2) CUMULATIVE DAMAGES.—In a civil action brought by the Commission under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to recover damages arising from more than one alleged violation, the damages shall be cumulative.

(b) PRIVATE RIGHT OF ACTION.—

(1) IN GENERAL.—A person or entity may, if otherwise permitted by the laws or the rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of section 4, 5, or 6 to enjoin the violation;

(B) an action to recover for actual monetary loss from a violation of section 4, 5, or 6, or to receive $500 in damages for each violation, whichever is greater; or

(C) an action under paragraphs (1) and (2).

(2) WILLFUL VIOLATION.—If the court finds that the defendant willfully or knowingly violated section 4, 5, or 6, the court may, in the discretion of the court, increase the amount of the award to an amount equal to not more than 3 times the amount available under paragraph (1)(B) of this subsection and to include reasonable attorney's fees.

SEC. 8. EFFECT ON STATE LAW.

Nothing in this Act shall be construed to prohibit a State from enacting or enforcing more stringent legislation in the regulation of telephone solicitors.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as necessary to carry out the provisions of this Act.

By Mr. WELLSTONE (for himself, Mr. DEWINE; Mr. DAYTON, Mr. SPECTER, Mr. BAYH, Ms. MIKULSKI, and Mr. VOINOVICH):

S. 1884. A bill to amend the Emergency Steel Loan Guarantee Act of 1999 to revise eligibility and other requirements for loan guarantees under that Act, and for other purposes; to the Committee on Appropriations.

Mr. WELLSTONE. Mr. President, today I introduce, on behalf of myself and Senators DEWINE, DAYTON, SPECTER, MUKULSKI and BAYH the ''Emergency Steel Loan Guarantee Amendments of 2001.'' These amendments to the Steel Loan Guarantee Act of 1999 are designed to make the loan guarantee program more accessible to companies in urgent need of assistance as they attempt to recover from the devastating impacts of enormous, unfair import surges, as well as the effects of the current recession.

A strong domestic steel industry is essential to our national security. To ensure the continuing viability of this critical industry and to deal with the current crisis, we must act quickly, and we must act comprehensively.

First, the Administration must provide immediate and decisive strong relief in the pending Section 201 steel import surge investigation. That relief needs to include substantial tariffs as well as quotas.

Second, we need a formula for industry-wide sharing of the huge retiree health-care cost burdens resulting from the massive layoffs during the 1970's and 1980's. We must protect retirees health care needs without undermining the ability of companies attempting to compete in an increasingly challenging marketplace. Several colleagues and I have previously introduced legislation to accomplish this, and we have urged the Administration to support us in this effort as past of a comprehensive solution to the steel crisis we face today.

Finally, companies urgently need access to capital to sustain their operations. This is precisely what the Emergency Steel Loan Guarantee Act of 1999 was designed to insure. The tireless efforts and foresight of Senator BYRD led to the creation of the Emergency Steel Loan Guarantee Board in 1999, but since then massive import surges, the current economic downturn and apparently overly-restrictive interpretations of the Board's authority have made it all but impossible for struggling steel firms to meet the Board's eligibility criteria.

The bill we introduce today is designed to address these concerns. It provides the Board with the necessary flexibility to provide these essential loan guarantees. In particular, the bill would do the following: 1. Clarify that a company that has placed its facilities on ''hot idle status'' is eligible to receive a loan guarantee. 2. Increase the amount of loans guaranteed with respect to a single qualified steel company to $350,000,000. 3. Permit the Steel Loan Guarantee Board to guarantee a loan where there is a fair likelihood of repayment, assuming vigorous and timely enforcement of our trade laws and general economic prosperity. 4. Provide flexibility to the Board in structuring security arrangements to maximize participation of lenders. 5. Expand the scope of lenders permitted to participate in a loan subject to the guarantee to include public and private institutions, including the company's existing lenders. 6. Require the Board to adopt form of guarantee regulations no less favorable than those used in other government programs, including the Export-Import bank. 7. Include as a requirement for loan guarantees that the company's business plan maximize both retention of jobs and capacity consistent with the long-term economic viability of the company. 8. Increase the loan guarantee level for all loans to 95 percent.

The recent economic conditions facing the U.S. iron ore and steel industry are of particular concern in Minnesota. We are extremely proud of our State's history as the Nation's largest producer of iron ore. The taconite mines on the Iron Range in Minnesota and in our sister State of Michigan have provided key raw materials to the Nation's steel producers for over a century.

You will not find a harder-working, more committed group of workers anywhere in this country than you find in the iron ore and taconite industry. This is a group of people who work under the toughest of conditions, are absolutely committed to their families, and who now face dire circumstances, through no fault of their own. Unfairly traded iron ore, semi-finished steel and finished steel products are taking their jobs.

Earlier this year, LTV Steel Mining Company halted production at its Hoyt Lakes, MN mine, leaving 1,400 workers out of good paying jobs and affecting nearly 5,000 additional workers. We need to act and we need to act now. Workers in the steel, iron ore and taconite industries want nothing more than the chance to do their jobs. The bill we introduce today is one part of the answer. I urge my colleagues to join with me in moving this legislation as quickly as possible.

Mr. DEWINE. Mr. President, I rise today with my colleague and friend from Minnesota, Senator WELLSTONE, to introduce the Emergency Steel Loan Guarantee Amendments Act. This legislation would improve the Emergency Steel Loan Guarantee program.

Our steel industry is on the brink of financial collapse because of unfair and illegal trade practices. To date, some 25 U.S. steel companies, including LTV Steel in Cleveland, Ohio, have filed bankruptcy. These companies employ thousands of workers and are responsible for providing benefits to their retirees. If our steel industry goes under, the consequences to our nation, and particularly Ohio, would be grave. Steel is vitally important to our military and economic security. During times of crisis, the industry has been a source of strength for America. With our economy sputtering and our nation fighting a new war on terrorism, we need a healthy steel industry now more than ever.

In 1998, more than 41 million tons of steel found their way to U.S. markets. This was an 83 percent increase over the 23 million net ton average for the previous eight years. While in 1999 some claimed that the steel import crisis was over, they were soon reminded how volatile the situation really is. In 2000, 37.8 million tons of steel flooded U.S. markets. This was almost as high as the record 1998 import levels.

For almost 50 years, foreign steel producers have received direct and often illegal assistance from their governments in the form of subsidies or market intervention. This has contributed to a worldwide over production of steel. In 1999, the Organization for Economic Cooperation and Development, OECD, found that world steel making capacity remained ''well-above'' production between 1985 and 1999. Much of this excess steel has been shipped to the United States and priced well below U.S. steel. In some cases, these imports were dumped, subsidized, and shipped in such increased quantities as to inflict serious financial harm to U.S. producers.

As a key supporter of the Emergency Steel Loan Guarantee program, I believe that we must modify the program to make it work better. It is true that we have changed it this year; extending its life and increasing the portion of the loan covered by the guarantee from 85 percent to in some cases 95 percent. However, we need to do more. The Wellstone/DeWine legislation would clarify that a company, such as LTV, which has placed its facilities on ''hot idle status'' is eligible to receive a loan guarantee. It would also increase the amount of loans guaranteed with respect to a single qualified steel company to $350,000,000; permit the Steel Loan Guarantee Board to guarantee a loan where there is a fair likelihood of repayment, assuming vigorous and timely enforcement of our trade laws and general economic prosperity; provide flexibility to the Board in structuring security arrangements to maximize participation of lenders; expand the scope of lenders permitted to participate in a loan subject to the guarantee to include public and private institutions, including the company's existing lenders; require the Board to adopt a form of guarantee regulations no less favorable than those used in other government programs, including the Export-Import bank, and; increase the loan guarantee level for all loans to 95 percent.

We in the steel community are grateful for the President's leadership in initiating the Section 201 trade investigation, and we were generally pleased with the International Trade Commission's recommendations. I was pleased to see the Customs Service proceeding in a timely manner with the release of dumping and subsidy offset payments to the victims of illegal trade practices, including LTV, under the Continued Dumping and Subsidy Offset Act. However, without these changes to the Emergency Steel Loan program, many of our steel companies will not survive. We have an opportunity to send a powerful message to the world that America is standing by our steel industry in its time of need just as the industry has stood by America in her time of need.

By Mr. DODD:

S. 1885. A bill to establish the elderly housing plus health support demonstration program to modernize public housing for elderly and disabled persons; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DODD:

S. 1886. A bill to amend the Internal Revenue Code of 1986 to allow a business credit for supported elderly housing; to the Committee on Finance.

Mr. DODD. Mr. President, I rise today to introduce two bills that will help address a growing problem in America, our ability to provide safe and affordable housing that meets the needs of older Americans. Currently there are 35 million Americans over 65 years old. That number will double within the next thirty years. By 2030, 20 percent of the U.S. population will be over 65 years old.

Both of the bills that I am introducing will promote the development of assisted living programs to provide a wide range of services, including medical assistance, housekeeping services, hygiene and grooming, and meals preparation. Providing these services will in turn give older Americans greater opportunities to decide for themselves where they live and how they exercise their independence.

The first bill I am introducing is the ''Elderly Plus Supportive Health Support Demonstration Act,'' which will provide Federal grants to allow public housing authorities around the country to develop new strategies for providing better housing for senior citizens. Nearly one third of all public housing units are occupied by senior citizens. This figure has been steadily growing in recent years and will undoubtedly continue to grow in the future. It is critically important that we remain committed to providing low-income seniors with safe and affordable housing.

Unfortunately, as we examine the public housing stock across the country, we find a bleak situation. Over 66 percent of existing public housing units are more than 30 years old and most are not designed to meet the needs of older Americans. For example, too few of our housing units are equipped with equipment and features that facilitate mobility for those in wheelchairs. Even such simple things as having a kitchen counter top that can be reached from a wheelchair may make the difference between a senior being able to stay in her home or having to leave, often to be sent to an institution where seniors have less independence and control over their lives. The ''Elder Housing Plus Health Support Demonstration Act'' will give public housing authorities the tools they need to improve our public housing stock so our seniors will not be prematurely forced out of their homes.

The second bill that I am introducing is the ''Assisted Living Tax Credit Act,'' which will provide a tax incentive to help construct assisted living housing for low- and moderate-income Americans. The current stock of assisted living facilities is inadequate to meet demand in certain places around the country and the stock of moderately-priced units is even tighter. The demand for assisted living units will only increase as our population ages and this highly desired housing choice should be available to all Americans. The ''Assisted Living Tax Credit Act'' will help make assisted living arrangements available to those who have previously been priced out of the market.

The scarceness of affordable assisted living units has social costs that we

must consider as we set national housing policies for the future. Often, the cost of taking care of an aging family member can be devastating to American families. Too often, working men and women are torn between the need to maintain their jobs and the desire to provide the best possible care to their aging family members.

Advances in medicine are allowing us to live longer, healthier lives. Longevity is a great blessing, but it also poses significant challenges for individuals, families, and society as whole. One of the largest challenges we will face in the decades ahead is the challenge of defining new kinds of housing that respond to the needs of our growing elderly population.

It is my hope that the bills I am introducing today will generate earnest discussion on these important matters and will ultimately lead to action to ensure that every American senior can live in security and dignity.

I ask unanimous consent that the text of the ''Elderly Housing Plus Health Support Demonstration Act'' be printed in the RECORD. I also ask unanimous consent that the ''Assisted Living Tax Credit Act'' be printed in the RECORD.

S. 1885

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

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 ''Elderly Housing Plus Health Support Demonstration Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) there are not fewer than 34,100,000 Americans who are 65 years of age and older, and persons who are 85 years of age or older comprise almost one-quarter of that population;

(2) the Bureau of the Census of the Department of Commerce estimates that, by 2030, the elderly population will double to 70,000,000 persons;

(3) according to the Department of Housing and Urban Development report ''Housing Our Elders—A Report Card on the Housing Conditions and Needs of Older Americans'', the largest and fastest growing segments of the older population include many people who have historically been vulnerable economically and in the housing market—women, minorities, and people over the age of 85;

(4) many elderly persons are at significant risk with respect to the availability, stability, and accessibility of affordable housing;

(5) one third of public housing residents are approximately 62 years of age or older, making public housing the largest Federal housing program for senior citizens;

(6) the elderly population residing in public housing is older, poorer, frailer, and more racially diverse than the elderly population residing in other assisted housing;

(7) two-thirds of the public housing developments for the elderly, including those that also serve the disabled, were constructed before 1970 and are in dire need of major rehabilitation and reconfiguration, such as rehabilitation to provide new roofs, energy-efficient heating, cooling, utility systems, accessible units, and up-to-date safety features;

(8) many of the dwelling units in public housing developments for elderly and disabled persons are undersized, are inaccessible to residents with physical limitations, do not comply with the requirements under the Americans with Disabilities Act of 1990, or lack railings, grab bars, emergency call buttons, and wheelchair accessible ramps;

(9) a study conducted for the Department of Housing and Urban Development found that the cost of the basic modernization needs for public housing for elderly and disabled persons exceeds $5,700,000,000;

(10) a growing number of elderly and disabled persons face unnecessary institutionalization because of the absence of appropriate supportive services and assisted living facilities in their residences;

(11) for many elderly and disabled persons, independent living in a non-institutionalization setting is a preferable housing alternative to costly institutionalization, and would allow public monies to be more effectively used to provide necessary services for such persons;

(12) congregate housing and supportive services coordinated by service coordinators is a proven and cost-effective means of enabling elderly and disabled persons to remain in place with dignity and independence; and

(13) the effective provision of congregate services and assisted living in public housing developments requires the redesign of units and buildings to accommodate independent living.

(b) PURPOSES.—The purposes of this Act are—

(1) to establish a demonstration program to make competitive grants to provide state-of-the-art health-supportive housing with assisted living opportunities for elderly and disabled persons;

(2) to provide funding to enhance, make safe and accessible, and extend the useful life of public housing developments for the elderly and disabled and to increase their accessibility to supportive services;

(3) to provide elderly and disabled public housing residents a readily available choice in living arrangements by utilizing the services of service coordinators and providing a continuum of care that allows such residents to age in place;

(4) to incorporate congregate housing service programs more fully into public housing operations; and

(5) to accomplish such purposes and provide such funding under existing provisions of law that currently authorize all activities to be conducted under the program.

SEC. 3. DEFINITIONS.

In this Act:

(1) ELDERLY AND DISABLED FAMILIES.—The term ''elderly and disabled families'' means families in which 1 or more persons is an elderly person or a person with disabilities.

(2) ELDERLY PERSON.—The term ''elderly person'' means a person who is 62 years of age or older.

(3) PERSON WITH DISABILITIES.—The term ''person with disabilities'' has the same meaning as in section 3(b)(3)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(3)(E)).

(4) PUBLIC HOUSING AGENCY.—The term ''public housing agency'' has the same meaning as in section 3(b)(6)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)(A)).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

SEC. 4. AUTHORITY FOR ELDERLY HOUSING PLUS HEALTH SUPPORT PROGRAM.

The Secretary shall establish an elderly housing plus health support demonstration program (referred to in this Act as the ''demonstration program'') in accordance with this Act to provide coordinated funding to public housing projects for elderly and disabled families selected for participation under section 5, to be used for—

(1) rehabilitation or reconfiguration of such projects;

(2) the provision of space in such projects for supportive services and community and health facilities;

(3) the provision of service coordinators for such projects; and

(4) the provision of congregate services programs in or near such projects.

SEC. 5. PARTICIPATION IN PROGRAM.

(a) APPLICATION AND PLAN.—To be eligible to be selected for participation in the demonstration program, a public housing agency shall submit to the Secretary—

(1) an application, in such form and manner as the Secretary shall require; and

(2) a plan for the agency that—

(A) identifies the public housing projects for which amounts provided under this Act will be used, limited to projects that are designated or otherwise used for occupancy—

(i) only by elderly families; or

(ii) by both elderly families and disabled families; and

(B) provides for local agencies or organizations to establish or expand the provision of health-related services or other services that will enhance living conditions for residents of public housing projects of the agency, primarily in the project or projects to be assisted under the plan.

(b) SELECTION AND CRITERIA.—

(1) SELECTION.—The Secretary shall select public housing agencies for participation in the demonstration program based upon a competition among public housing agencies that submit applications for participation.

(2) CRITERIA.—The competition referred to in paragraph (1) shall be based upon—

(A) the extent of the need for rehabilitation or reconfiguration of the public housing projects of an agency that are identified in the plan of the agency pursuant to subsection (a)(2)(A);

(B) the past performance of an agency in serving the needs of elderly public housing residents or non-elderly, disabled public housing residents given the opportunities in the locality;

(C) the past success of an agency in obtaining non-public housing resources to assist such residents given the opportunities in the locality; and

(D) the effectiveness of the plan of an agency in creating or expanding services described in subsection (a)(2)(B).

SEC. 6. CONFIGURATION AND CAPITAL IMPROVEMENTS.

(a) GRANTS.—

(1) IN GENERAL.—The Secretary shall make grants to public housing agencies selected for participation under section 5, to be used only—

(A) for capital improvements to rehabilitate or reconfigure public housing projects identified in the plan submitted under section 5(a)(2)(A); and

(B) to provide space for supportive services and for community and health-related facilities primarily for the residents of projects identified in the plan submitted under section 5(a)(2)(A).

(2) SOURCE OF FUNDS.—Grants shall be made under this section from funds made available for the demonstration program in accordance with subsection (c).

(3) INAPPLICABILITY OF OTHER PROVISIONS.—Section 9(c)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437g(c)(1)) does not apply to grants made under this section.

(b) ALLOCATION.—Grants funded in accordance with this section shall—

(1) be allocated among public housing agencies selected for participation under section 5 on the basis of the criteria established under section 5(b)(2); and

(2) be made in such amounts and subject to such terms as the Secretary shall determine.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the demonstration program, to make grants in accordance with this section—

(1) $100,000,000 for fiscal year 2002; and

(2) such sums as may be necessary for fiscal year 2003 and each subsequent fiscal year.

SEC. 7. SERVICE COORDINATORS.

(a) GRANTS.—

(1) IN GENERAL.—The Secretary shall make grants to public housing agencies selected for participation under section 5, to be used only—

(A) for public housing projects for elderly and disabled families for whom capital assistance is provided under section 6; and

(B) to provide service coordinators and related activities identified in the plan of the agency pursuant to section 5(a)(2), so that the residents of such public housing projects will have improved and more economical access to services that support the health and well-being of the residents.

(2) SOURCE OF FUNDS.—Grants shall be made under this section from funds made available for the demonstration program in accordance with subsection (c).

(3) INAPPLICABILITY OF OTHER PROVISIONS.—Section 9(c)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437g(c)(1)) does not apply to grants made under this section.

(b) ALLOCATION.—The Secretary shall provide a grant pursuant to this section, in an amount not to exceed $100,000, to each public housing agency that is selected for participation under section 5.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the demonstration program, to make grants in accordance with this section—

(1) $2,000,000 for fiscal year 2002; and

(2) such sums as may be necessary for fiscal year 2003 and each subsequent fiscal year.

SEC. 8. CONGREGATE HOUSING SERVICES PROGRAMS.

(a) GRANTS.—

(1) IN GENERAL.—The Secretary shall make grants to public housing agencies selected for participation under section 5, to be used only—

(A) in connection with public housing projects for elderly and disabled families for which capital assistance is provided under section 6; and

(B) to carry out a congregate housing service program identified in the plan of the agency pursuant to section 5(a)(2) that provides services as described in section 202(g)(1) of the Housing Act of 1959 (12 U.S.C. 1701q(g)(1)).

(2) SOURCE OF FUNDS.—Grants shall be made under this section from funds made available for the demonstration program in accordance with subsection (c).

(3) INAPPLICABILITY OF OTHER PROVISIONS.—Other than as specifically provided in this section—

(A) section 9(c)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437g(c)(1)) does not apply to grants made under this section; and

(B) section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) does not apply to grants made under this section.

(b) ALLOCATION.—The Secretary shall provide a grant pursuant to this section, in an amount not to exceed $150,000, to each public housing agency that is selected for participation under section 5.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the demonstration program, to make grants in accordance with this section—

(1) $3,000,000 for fiscal year 2003; and

(2) such sums as may be necessary for fiscal year 2005 and each subsequent fiscal year.

SEC. 9. SAFEGUARDING OTHER APPROPRIATIONS.

Amounts authorized to be appropriated under this Act to carry out this Act are in addition to any amounts authorized to be appropriated under any other provision of law, or otherwise made available in appropriations Acts, for rehabilitation of public housing projects, for service coordinators for public housing projects, or for congregate housing services programs.

S. 1886

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 ''Assisted Living Tax Credit Act''.

SEC. 2. SUPPORTED ELDERLY HOUSING CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following:

SEC. 42A. SUPPORTED ELDERLY HOUSING CREDIT.

''(a) AMOUNT OF CREDIT.—For purposes of section 38, the amount of the supported elderly housing credit determined under this section for any taxable year in the credit period shall be an amount equal to the sum of—

''(A) 9 percent of the qualified basis of each qualified supported elderly building, plus

''(B) 4 percent of such qualified basis with respect to any qualified supported elderly building providing qualified supported elderly services.

''(b) QUALIFIED BASIS; QUALIFIED SUPPORTED ELDERLY BUILDING; CREDIT PERIOD.—For purposes of this section—

''(1) QUALIFIED BASIS.—

''(A) DETERMINATION.—The qualified basis of any qualified supported elderly building for any taxable year is an amount equal to—

''(i) the applicable fraction (determined as of the close of such taxable year) of

''(ii) the eligible basis of such building (determined under rules similar to the rules under section 42(d)).

''(B) APPLICABLE FRACTION.—For purposes of subparagraph (A), the term 'applicable fraction' means the smaller of the unit fraction or the floor space fraction.

''(C) UNIT FRACTION.—For purposes of subparagraph (B), the term 'unit fraction' means the fraction—

''(i) the numerator of which is the number of supported elderly units in the building, and

''(ii) the denominator of which is the number of residential rental units (whether or not occupied) in such building.

''(D) FLOOR SPACE FRACTION.—For purposes of subparagraph (B), the term 'floor space fraction' means the fraction—

''(i) the numerator of which is the total floor space of the supported elderly units in such building, and

''(ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

''(E) QUALIFIED BASIS TO INCLUDE PORTION OF BUILDING USED TO PROVIDE QUALIFIED SUPPORTED ELDERLY SERVICES.—In the case of a qualified supported elderly building described in subsection (a)(2), the qualified basis of such building for any taxable year shall be increased by the less of—

''(i) so much of the eligible basis of such building as is used through the year to provide qualified support elderly services, or

''(ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

''(2) QUALIFIED SUPPORTED ELDERLY BUILDING.—The term 'qualified supported elderly building' means any building which is part of a qualified supported elderly housing project at all times during the period—

''(A) beginning on the 1st day in the compliance period on which such building is part of such a project, and

''(B) ending on the last day of the compliance period with respect to such building.

Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the Stewart B. McKinney Homeless Assistance Act (as in effect on the date of the enactment of this sentence)).

''(3) CREDIT PERIOD.—The term 'credit period' means, with respect to any building, the period of 10 taxable years beginning with—

''(A) the taxable year in which the building is placed in service, or

''(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified supported elderly building as of the close of the 1st year of such period. The election under subparagraph (B), once made, shall be irrevocable.

''(4) APPLICABLE RULES.—

''(A) For treatment of certain rehabilitation expenditures as separate new buildings, subsection (e) of section 42 shall apply.

''(B) For rules regarding the application of the credit period, paragraph (2) through (5) of section 42(f) shall apply.

''(c) QUALIFIED SUPPORTED ELDERLY HOUSING PROJECT.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified supported elderly housing project' means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

''(A) 20–50 TEST.—The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

''(B) 40–90 TEST.—The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 90 percent or less of area median gross income.

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

''(2) RENT-RESTRICTED UNITS.—

''(A) IN GENERAL.—For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 65 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified supported elderly housing project.

''(B) GROSS RENT.—For purposes of subparagraph (A), gross rent—

''(i) includes any fee for a qualified supported elderly service which is paid to the

owner of the unit (on the basis of the supported elderly status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services.

''(ii) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),

''(iii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937, and

''(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

''(C) IMPUTED INCOME LIMITATION APPLICABLE TO UNIT.—For purposes of this paragraph, the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

''(i) In the case of a unit which does not have a separate bedroom, 1 individual.

''(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7), the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

''(D) TREATMENT OF UNITS OCCUPIED BY INDIVIDUALS WHOSE INCOMES RISE ABOVE LIMIT.—

''(i) IN GENERAL.—Except as provided in clause (ii), notwithstanding an increase in the income of occupants of a supported elderly unit above the income limitation applicable under paragraph (1), such unit shall continue to be treated as a supported elderly unit if the income of such occupants initially met such income limitation and such unit continues to be rent restricted.

''(ii) NEXT AVAILABLE UNIT MUST BE RENTED TO SUPPORTED ELDERLY TENANT IF INCOME RISES ABOVE 140 PERCENT OF INCOME LIMIT.—If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting '170 percent' for '140 percent' and by substituting 'any supported elderly unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income' for 'any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation'.

''(E) UNITS WHERE FEDERAL RENTAL ASSISTANCE IS REDUCED AS TENANT'S INCOME INCREASES.—If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if—

''(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

''(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—

''(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

''(II) such units were rent-restricted within the meaning of subparagraph (A).

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

''(3) QUALIFIED SUPPORTED ELDERLY SERVICE.—The term 'qualified supported elderly service' means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (h)(2)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

''(4) DATE FOR MEETING REQUIRMENTS.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, a building shall be treated as a qualified supported elderly building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

''(B) BUILDINGS WHICH RELY ON LATER BUILDINGS FOR QUALIFICATION.—

''(i) IN GENERAL.—In determining whether a building (in this subparagraph referred to as the 'prior building') is a qualified supported elderly building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

''(ii) TREATMENT OF ELECTED BUILDINGS.—In the case of a building which the taxpayer elects to take into account under clause (i), the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

''(iii) DATE PRIOR BUILDING IS TREATED AS PLACED IN SERVICE.—For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

''(C) SPECIAL RULE.—A building—

''(i) other than the 1st building placed in service as part of a project, and

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with the respect to a prior building which becomes a qualified supported elderly building,

shall in no event be treated as a qualified supported elderly building unless the project is a qualified supported elderly housing project (without regard to such building) on the date such building is placed in service.

''(D) PROJECTS WITH MORE THAN 1 BUILDING MUST BE IDENTIFIED.—For purposes of this section a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (d)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

''(5) CERTAIN RULES MADE APPLICABLE.—Paragraphs (2) (other than subparagraph (A) thereof), (3), (4), (5), (6), and (7) of section 142(d), and section 6652(j), shall apply for purposes of determining whether any project is a qualified supported elderly housing project and whether any unit is a supported elderly unit; except that, in applying such provisions for such purposes, the term 'gross rent' shall have the meaning given such term by paragraph (2)(B) of this subsection.

''(6) ELECTION TO TREAT BUILDING AFTER COMPLIANCE PERIOD AS NOT PART OF A PROJECT.—For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified supported elderly housing project for any period beginning after the compliance period for such building.

''(7) SPECIAL RULE WHERE DE MINIMIS EQUITY CONTRIBUTION.—Proeprty shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

''(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

''(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted.

''(8) SCATTERED SITE PROJECTS.—Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

''(9) WAIVER OF CERTAIN DE MINIMIS ERRORS AND RECERTIFICATIONS.—On application by the taxpayer, the Secretary may waive—

''(A) any recapture under subsection (i) in the case of any de minimis error in complying with paragraph (1), or

''(B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by supported elderly tenants.

''(d) LIMITATION ON AGGREGATE CREDIT ALLOWABLE WITH RESPECT TO PROJECTS LOCATED IN A STATE.—

''(1) CREDIT MAY NOT EXCEED CREDIT AMOUNT ALLOCATED TO BUILDING.—The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the supported elderly housing credit dollar amount allocated to such building under rules similar to the rules of paragraph (1) of section 42(h).

''(2) ALLOCATED CREDIT AMOUNT TO APPLY TO ALL TAXABLE YEARS ENDING DURING OR AFTER CREDIT ALLOCATION YEAR.—Any supported elderly housing credit dollar amount allocated to any building for any calendar year—

''(A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

''(B) shall reduce the aggregate supported elderly housing credit dollar amount of the allocating agency only for such calendar year.

''(3) SUPPORTED ELDERLY HOUSING CREDIT DOLLAR AMOUNT FOR AGENCIES.—

''(A) IN GENERAL.—The aggregate supported elderly housing credit dollar amount which a

supported elderly housing credit agency may allocate for any calendar year is the portion of the State supported elderly housing credit ceiling allocated under this paragraph for such calendar year to such agency.

''(B) STATE CEILING INITIALLY ALLOCATED TO STATE SUPPORTED ELDERLY HOUSING CREDIT AGENCIES.—Except as provided in subparagraphs (D) and (E), the State supported elderly housing credit ceiling for each calendar year shall be allocated to the supported elderly housing credit agency of such State. If there is more than 1 supported elderly housing credit agency of a State, all such agencies shall be treated as a single agency.

''(C) STATE SUPPORTED ELDERLY HOUSING CREDIT CEILING.—The State supported elderly housing credit ceiling applicable to any State and any calendar year shall be an amount equal to the sum of—

''(i) the unused State supported elderly housing credit ceiling (if any) of such State for the preceding calendar year,

''(ii) $1.25 multiplied by the State population,

''(iii) the amount of State supported elderly housing credit ceiling returned in the calendar year, plus

''(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i), the unused State supported elderly housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (i) through (iv) over the aggregate supported elderly housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State supported elderly housing credit ceiling returned in the calendar year equals the supported elderly housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under section 42(h)(1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified supported elderly housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is canceled by mutual consent of the supported elderly housing credit agency and the allocation recipient.

''(D) UNUSED SUPPORTED ELDERLY HOUSING CREDIT CARRYOVERS ALLOCATED AMONG CERTAIN STATES.—

''(i) IN GENERAL.—The unused supported elderly housing credit carryover of a State for any calendar year shall be assigned to the secretary for allocation among qualified states for the succeeding calendar year.

''(ii) UNUSED SUPPORTED ELDERLY HOUSING CREDIT CARRYOVER.—For purposes of this subparagraph, the unused supported elderly housing credit carryover of a State for any calendar year is the excess (if any) of—

''(I) the unused State supported elderly housing credit ceiling for the year preceding such year, over

''(II) the aggregate supported elderly housing credit dollar amount allocated for such year.

''(iii) FORMULA FOR ALLOCATION OF UNUSED SUPPORTED ELDERLY HOUSING CREDIT CARRYOVERS AMONG QUALIFIED STATES.—The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused supported elderly housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

''(iv) QUALIFIED STATE.—For purposes of this subparagraph, the term 'qualified State' means, with respect to a calendar year, any State—

''(I) which allocated its entire State supported elderly housing credit ceiling for the preceding calendar year; and

''(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

''(E) SPECIAL RULE FOR STATES WITH CONSTITUTIONAL HOME RULE CITIES.—For purposes of this subsection—

''(i) IN GENERAL.—The aggregate supported elderly housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State supported elderly housing credit ceiling for such calendar year as—

''(I) the population of such city, bear to

''(II) the population of the entire State.

''(ii) COORDINATION WITH OTHER ALLOCATIONS.—In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to supported elderly housing credit agencies in such State other than constitutional home rule cities, the State supported elderly housing credit ceiling for any calendar year shall be reduced by the aggregate supported elderly housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

''(iii) CONSTITUTIONAL HOME RULE CITY.—For purposes of this paragraph, the term 'constitutional home rule city' has the meaning given such term by section 146(d)(3)(C).

''(F) STATE MAY PROVIDE FOR DIFFERENT ALLOCATION.—Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

''(G) POPULATION.—For purposes of this paragraph, population shall be determined in accordance with section 146(j).

''(4) CREDIT FOR BUILDINGS FINANCED BY TAX-EXEMPT BONDS SUBJECT TO VOLUME CAP NOT TAKEN INTO ACCOUNT.—

''(A) IN GENERAL.—Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if—

''(i) such obligation is taken into account under section 146, and

''(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.

''(B) SPECIAL RULE WHERE 50 PERCENT OR MORE OF BUILDING IS FINANCED WITH TAX-EXEMPT BONDS SUBJECT TO VOLUME CAP.—For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

''(5) PORTION OF STATE CEILING SET-ASIDE FOR CERTAIN PROJECTS INVOLVING QUALIFIED NONPROFIT ORGANIZATIONS.—

''(A) IN GENERAL.—Not more than 90 percent of the State supported elderly housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified supported elderly housing projects described in subparagraph (B).

''(B) PROJECTS INVOLVING QUALIFIED NONPROFIT ORGANIZATIONS.—For purposes of subparagraph (A), a qualified supported elderly housing project is described in this subparagraph if a qualified nonprofit organization is to materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period.

''(C) QUALIFIED NONPROFIT ORGANIZATION.—For purposes of this paragraph, the term 'qualified nonprofit organization' means any organization if—

''(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a),

''(ii) such organization is determined by the State supported elderly housing credit agency not to be affiliated with or controlled by a for-profit organization; and

''(iii) 1 of the exempt purposes of such organization includes the fostering of supported elderly housing.

''(D) TREATMENT OF CERTAIN SUBSIDIARIES.—

''(i) IN GENERAL.—For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

''(ii) QUALIFIED CORPORATION.—For purposes of clause (i), the term 'qualified corporation' means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

''(E) STATE MAY NOT OVERRIDE SETASIDE.—Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

''(6) BUILDINGS ELIGIBLE FOR CREDIT ONLY IF MINIMUM LONG-TERM COMMITMENT TO SUPPORTED ELDERLY HOUSING.—

''(A) IN GENERAL.—Under rules similar to the rules under section 42(h)(6), no credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended supported elderly housing commitment is in effect as of the end of such taxable year.

''(B) EXTENDED SUPPORTED ELDERLY HOUSING COMMITMENT.—For purposes of this paragraph, the term 'extended supported elderly housing commitment' has the meaning given the term 'extended low-income housing commitment' under section 42(h)(6).

''(7) APPLICATION OF CERTAIN RULES.—For purposes of this section, rules similar to the rules of section 42(h)(7) shall apply.

''(8) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) SUPPORTED ELDERLY HOUSING CREDIT AGENCY.—The term 'supported elderly housing credit agency' means any agency authorized to carry out this subsection.

''(B) POSSESSIONS TREATED AS STATES.—The term 'State' includes a possession of the United States.

''(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) COMPLIANCE PERIOD.—The term 'compliance period' means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

''(2) SUPPORTED ELDERLY UNIT.—

''(A) IN GENERAL.—The term 'supported elderly unit' means any unit in a building if—

''(i) such unit is rent-restricted (as defined in subsection (c)(2)), and

''(ii) the individuals occupying such unit meet the income limitation applicable under subsection (c)(1) to the project of which such building is a part.

''(B) EXCEPTION.—

''(i) IN GENERAL.—A unit shall not be treated as a supported elderly unit unless the unit

is suitable for occupancy and used other than on a transient basis.

''(ii) SUITABILITY FOR OCCUPANCY.—For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

''(iii) TRANSITIONAL HOUSING FOR HOMELESS.—For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building—

''(I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

''(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (d)(5)(C)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

''(iv) SINGLE-ROOM OCCUPANCY UNITS.—For purposes of clause (i), a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

''(C) SPECIAL RULE FOR BUILDINGS HAVING 4 OR FEWER UNITS.—In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a supported elderly unit if the units in such building are owned by—

''(i) any individual who occupies a residential unit in such building, or

''(ii) any person who is related (within the meaning of section 42(d)(2)(D)(iii)) to such individual.

''(D) OWNER-OCCUPIED BUILDING HAVING 4 OR FEWER UNITS ELIGIBLE FOR CREDIT WHERE DEVELOPMENT PLAN.—

''(i) IN GENERAL.—Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (d)(5)(C)).

''(ii) LIMITATION ON CREDIT.—In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

''(iii) CERTAIN UNRENTED UNITS TREATED AS OWNER-OCCUPIED.—In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

''(3) APPLICATION TO ESTATES AND TRUSTS.—In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (i) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

''(4) IMPACT OF TENANTS RIGHT OF 1ST REFUSAL TO ACQUIRE PROPERTY.—

''(A) IN GENERAL.—No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified supported elderly building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (d)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B).

''(B) MINIMUM PURCHASE PRICE.—For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of—

''(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

''(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).

''(f) RECAPTURE OF CREDIT.—

''(1) IN GENERAL.—If—

''(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than.

''(B) the amount of such basis as of the close of the preceding taxable year,

then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount determined under rules similar to the rules of section 42(j).

''(g) APPLICATION OF AT-RISK RULES.—For purposes of this section, rules similar to the rules of section 42(k) shall apply.

''(h) RESPONSIBILITIES OF TAXPAYERS AND SUPPORTED ELDERLY HOUSING CREDIT AGENCIES.—For purposes of this section, subsections (l) and (m) of section 42 shall apply.

''(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

''(1) dealing with—

''(A) projects which include more than 1 building or only a portion of a building,

''(B) buildings which are placed in service in portions,

''(2) providing for the application of this section to short taxable years,

''(3) preventing the avoidance of the rules of this section, and

''(4) providing the opportunity for supported elderly housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.''.

(b) CURRENT YEAR BUSINESS CREDIT CALCULATION.—Section 38(b) of the Internal Revenue Code of 1986 (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting '', plus'', and by adding at the end the following:

''(14) the supported elderly housing credit determined under section 42A(a).''.

(c) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 of the Internal Revenue Code of 1986 (relating to carryback and carryforward of unused credits) is amended by adding at the end the following:

''(10) NO CARRYBACK OF SUPPORTED ELDERLY HOUSING CREDIT BEFORE EFFECTIVE DATE.—No amount of unused business credit available under section 42A may be carried back to a taxable year beginning on or before the date of the enactment of this paragraph.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 55(c)(1) of the Internal Revenue Code of 1986 is amended by inserting ''or subsection (f) or (g) of section 42A'' after ''section 42''.

(2) Subsections (i)(c)(3), (i)(c)(6)(B)(i), and (k)(1) of section 469 of such Code are each amended by inserting ''or 42A'' after ''section 42''.

(3) Section 772(a) of such Code is amended by striking ''and'' at the end of paragraph (10), by redesignating paragraph (11) as paragraph (12), and by inserting after paragraph (10) the following:

''(11) the supported elderly housing credit determined under section 42A, and''.

(4) Section 774(b)(4) of such Code is amended by inserting '', 42A(f),'' after ''section 42(j)''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 42 the following:

''Sec. 42A. Supported elderly housing credit.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures made in taxable years beginning after the date of the enactment of this Act.

By Ms. SNOWE:

S. 1887. A bill to provide for renewal of project-based assisted housing contracts at reimbursement levels that are sufficient to sustain operations, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Ms. SNOWE. Mr. President, I rise today to introduce legislation intended to correct serious inequities created by existing statutes affecting owners, financing agencies, and low-income residents participating in one of HUD's Section 8 multifamily rental subsidy programs.

I have worked closely with the Maine Congressional Delegation on this matter, as well as the Maine State Housing Authority and several housing projects in Maine, and the U.S. Department of Housing and Urban Development—HUD. At issue is HUD's interpretation of Section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 as it relates to the renewal of Section 8 ''moderate rehabilitation'' contracts in Maine and elsewhere.

The effect of HUD's interpretation of current law results in the application of HUD ''published Fair Market Rents.'' Such rents are often well below the actual comparable market rent. If this problem is not addressed, and addressed soon, I am very concerned that we could lose this affordable rental housing stock in Maine, resulting in the displacement of the residents of these properties.

The Maine Delegation worked with HUD over the last year to try to identify an administrative solution to this problem, but have been advised by HUD that we must pursue a change in law to enable the projects to obtain reimbursements at a level sufficient to sustain operations. Accordingly, the legislation I am introducing today will correct the portion of the statute that could result in the loss of this critical housing stock.

The program involved is the Section 8 Moderate Rehabilitation program, which is administered by local and state housing agencies throughout the nation. Existing law, contained in Section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended—MAHRA—regarding renewal of expiring project-based Section 8 contracts, treats contracts under the Moderate Rehabilitation

Program in a fundamentally different way from contracts under the New Construction, Substantial Rehabilitation, and Loan Management Set-Aside programs.

Section 524(b)(3) of MAHRA provides a separate and distinct formula for calculating renewal rents for expiring contracts under the Moderate Rehabilitation program. The formula is more restrictive than the formula applicable to expiring contracts under other Section 8 programs, based on an assumption that the debt service payments on the original moderate rehabilitation financing would not be a continuing obligation of the project owner after expiration of the original subsidy contract.

The assumption was correct as to many projects under the Moderate Rehabilitation program, but it is not true as to some significant projects serving particularly vulnerable populations, including two very important community projects located in Maine, which I will describe later.

Perhaps an even greater concern than the formula itself, however, is a ruling by HUD's Office of General Counsel that Section 524(b)(3) presents the exclusive method for renewal of expiring contracts under the Moderate Rehabilitation program. In order to appreciate the drastic and problematic results of this opinion, it is necessary to understand the relationship between the Section 8 renewal legislation and the Mark-to-Market program, also enacted by MAHRA.

According to HUD, housing subsidy contracts are expiring on thousands of privately owned multifamily properties with federally insured mortgages. Many of these contracts set rents at amounts higher than those of the local market. As these subsidy contracts expire, the Mark-to-Market program will reduce rents to market levels and will restructure existing debt to levels supportable by these rents.

The basic principle of this integrated legislative structure is that for projects financed by FHA-insured mortgages, expiring Section 8 contracts which are subsidizing rents higher than market rents in the area will be renewed at rents reduced to a level not higher than the market rents. Where this reduced rent will not support debt service on the FHA-insured mortgage, the mortgage will be restructured pursuant to Mark-to-Market. The basic tradeoff is that while the Federal Government may bear some cost in the FHA insurance fund, it will be a lesser cost than continuing to subsidize above-market rents.

However, not all Section 8 projects are financed by FHA-insured mortgages. Many, instead, are financed by State housing agency bond-financed mortgages without FHA insurance, and some are even conventionally financed. The legislation provides, therefore, for an important ''exception'' to the requirement that rents be reduced upon renewal to market rents. Under Sections 524(b)(1) and (2), Section 8 contracts for ''exception'' projects—which are principally projects not eligible for Mark-to-Market because their mortgages are not FHA-insured—may be renewed at rents not exceeding the lower of current rents, as adjusted by an operating cost adjustment factor, and a ''budget-based rent'' approved by HUD, notwithstanding that such rents may exceed market rents in the area.

The effect of the HUD ruling that Section 524(b)(3) provides the exclusive authority for renewing expiring contracts in the Moderate Rehabilitation program is that ''exception'' project treatment under Section 524(b)(1) and (2) is made unavailable for Moderate Rehabilitation projects. The irony of this is that while the majority of Section 8 New Construction and Substantial Rehabilitation projects, and of course all Loan Management Set-Aside projects, are financed by FHA-insured mortgages—and therefore non-insured projects are truly the ''exception'' under those programs—the opposite is true in the Moderate Rehabilitation program.

Information provided by HUD indicates that not more than approximately 13 percent of all units ever subsidized under the Moderate Rehabilitation program were in projects financed by FHA-insured mortgages. Non-insured mortgages, therefore, were the rule, not the exception, in the Moderate Rehabilitation program.

The impact of this circumstance is well illustrated by two projects in Maine, both of which represent vital community resources for highly vulnerable low-income populations.

Loring House is a 104-unit development in Portland. The building originally was the Portland City Hospital, which was closed by the City in the early 1980s. It was converted to a residential facility for elderly and handicapped residents with significant public participation and support, including tax-exempt bond first mortgage financing by the Maine State Housing Authority, Moderate Rehabilitation Section 8 rental subsidies from the Portland and Westbrook public housing authorities, and second mortgage operating deficit financing by the Portland Housing Development Corporation.

The Loring House Section 8 contract expired in stages commencing December 31, 2000. The Loring House mortgage financing is not FHA-insured, but based on the HUD opinion I described, ''exception'' project treatment was denied. Under the Section 524(b)(3) formula, the Section 8 contract rents were reduced approximately 14 percent on renewal—this notwithstanding that the project was already incurring substantial operating deficits, supported by public operating deficit financing, even under the previous rents. The ultimate financial risk on this development is borne by the Maine State Housing Authority.

Loring House is an important community resource aside from the substantial public stake in its financing. Since 1985, the resident population has undergone a significant transformation, attributable largely to deinstitutionalization of two state mental institutions and concentration of State-supported comprehensive mental health services in the Portland area.

It is estimated that currently 70 percent of the tenant population are impacted by mental health, mental retardation and/or substance abuse issues. This change in population served has increased the total independence of the project on project-based assistance if it is to continue to serve this population. The only feasible avenue to financial survival of this facility, much less to its continued ability to serve its special population, is availability of ''exception'' project treatment.

Maison Marcotte is a 128-unit congregate care facility located in Lewiston. The building was built originally in the 1920s as a nursing home on a health care campus owned by the Sisters of Charity Health System.

Following construction of a new nursing home on the campus in the early 1980s, the Health System ground leased the former nursing home to a for-profit development group which renovated the facility into several discrete uses, including a kitchen and cafeteria facility for the health care campus, a wing of physician offices, and 128 one-bedroom congregate care units. The renovation was assisted by a 110-unit Moderate Rehabilitation award by the Lewiston Housing Authority; 18 units are private-pay.

A nonprofit subsidiary of Sisters of Charity Health System took over possession and operation of the facility following a Chapter 11 reorganization of the for-profit developer in the late 1980s. The bank debt on the facility was refinanced in 1993 by a tax-exempt bond financed first mortgage loan made by the Maine State Housing Authority which matures in 2023. The mortgage financing is not FHA-insured. The Moderate Rehabilitation HAP Contract expires October 31, 2001.

The current Moderate Rehabilitation contract rents for the one-bedroom units are substantially lower than the private-pay rents for similar units in the facility. Nevertheless, contract renewal pursuant to the existing Section 524(b)(3) formula would result in a 20-percent rent reduction, which clearly would threaten survival of the project. The financial risk, again, is borne solely by the Maine State Housing Authority.

The property might appear to have the option of opting out and converting to all private-pay units at the higher rental, but that is not the desire of the nonprofit operator nor would it be consistent with the low-income use restrictions arising from the tax-exempt bond issue. The only feasible outcome for this facility which would permit continuance of its commitment to very low-income elderly residents is renewal at ''exception rent'' pursuant to Section 524(b)(1).

I find it inconceivable that Congress consciously intended to impose the financial impact of Section 8 rent reductions in cases such as these onto State housing finance agencies. I also have no reason to think that the circumstances of these two projects, in which state housing agencies have undertaken the financing risk of long-term mortgages backed by short-term rental subsidy contracts because of the important public purposes of the projects, are unique to the State of Maine.

The legislation I am introducing today, therefore, would correct this inequity by simply striking subsection (b)(3) of Section 524. Under this legislation, the renewal of expiring contracts in the Moderate Rehabilitation program would be governed by the same renewal rent provisions as are applicable to expiring contracts in the New Construction and Substantial Rehabilitation programs, including the availability of ''exception'' project rents where the project financing is not FHA-insured.

Finally, the legislation would also strike one other current provision of the Section 8 renewal legislation which singles out Moderate Rehabilitation projects for unfavorable treatment and, more importantly, excludes Moderate Rehabilitation projects from the important policy preference for encouraging Section 8 project owners to continue their participation in the program and thereby maintain the availability of the units for low-income occupancy.

An essential tool for the preservation program, as strengthened by amendments to MAHRA enacted in 1999, is the ability to permit Section 8 owners currently receiving below-market rents under expiring contracts to receive rent increases upon renewal up to the level of market rents in the area, in exchange for a commitment to remain in the program for not less than an additional 5 years. Expiring contracts under the Moderate Rehabilitation program were excluded from this authority. However, from the standpoint of lower-income families needing subsidized housing opportunities in their communities, I believe the preservation of units which happen to be subsidized under the Moderate Rehabilitation program is no less vital than preservation of units under other subdivisions of the Section 8 program.

The Section 8 Moderate Rehabilitation program, while relatively small in comparison to the New Construction or Substantial Rehabilitation programs, is nevertheless widespread throughout the nation, in both large and small communities. It also has suffered a marked attrition of units, presumably due in large part to owner opt-outs in recent years. Information provided by HUD indicates that out of the total of approximately 120,000 units that we assisted under the Moderate Rehabilitation program, 52,000 units remained in the program in May 2000.

HUD information also indicated that 113 separate housing agencies in 42 States across the nation plus Puerto Rico, including State as well as local agencies, had 100 or more units under contract in May 2000. Since many if not most Moderate Rehabilitation project owners receive rents under their original contracts that are lower than market rents, it cannot be doubted that the ability to receive market rents could encourage many owners to remain in the program and to continue to provide affordable housing opportunities for their communities.

Accordingly, the legislation I am introducing today would also strike the current exclusion of contracts under the Moderate Rehabilitation program from the ability to receive renewal rents increased to market rent levels.

The overall effect of my legislation is to place expiring contracts under the Moderate Rehabilitation program on an equal footing with other expiring Section 8 contracts having similar characteristics in terms of comparison of contract rents with market rents and in terms of financing source—HUD-insured or non-insured.

I believe that preservation of these critical housing units is an imperative to my constituents and the communities I represent, as well as communities and projects elsewhere. As such, I urge my colleagues to join me in supporting this important legislation.

By Mr. HATCH:

S. 1889. A bill to provide for work authorization for nonimmigrant spouses of intracompany transferees, and to reduce the period of time during which certain intracompany transferees have to be continuously employed before applying for admission to the United States; to the Committee on the Judiciary.

By Mr. HATCH:

S. 1890. A bill to provide for work authorization for nonimmigrant spouses of treaty traders and treaty investors; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I wish to introduce companion measures to two House bills that would end the barring of the spouses of 'E' and 'L' nonimmigrant visa holders from work authorization while they are in the United States. The House of Representatives passed H.R. 2277 and H.R. 2278 with broad bipartisan support earlier this year and the Senate Judiciary Committee approved the House versions of both bills by unanimous consent earlier today.

The companion to H.R. 2277 amends the Immigration and Nationality Act to authorize the husbands and wives of treaty traders or treaty investors working in the United States, or E visa holders, to work themselves. The companion to H.R. 2278 is very similar, granting employment authorization to the spouses of intracompany transfers, or L visa holders. This measure would also allow individuals to apply for L visas after six months, rather than one year, of employment with the company with which they are working in the United States. I believe that both of these bills are very reasonable and deserve the support of the Senate.

Both pieces of legislation would end practices that deserve change as they currently stand. It is not right to force one spouse in a family to forgo employment simply because the other is working in the United States. Granting employment authorization to the spouses of E and L visa recipients makes it easier for foreign countries and multinational companies to persuade highly qualified employees, who are used to having both spouses actively employed, to relocate to the United States.

The time requirement for L visa applicants also warrants change. Current law requires that an L visa not be granted unless the applicant has been employed for at least 1 year with the employer in question. In many situations, this is too restrictive. This requirement inhibits firms who wish to hire individuals with specialized skills to meet the needs of clients in the United States. A shorter prior employment period would allow companies to meet the needs of their clients in a more timely manner.

I thank the House of Representatives and especially Congressman GEKAS, Chairman of the House Subcommittee on Immigration and Claims, for their hard work on these bills. Given the work between the House and Senate on these bills, I feel comfortable urging my colleagues to give these issues all due attention and support these measures.

By Mr. HATCH:

S. 1891. A bill to extend the basic pilot program for employment eligibility verification, and for other purposes; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I stand to introduce a companion bill to H.R. 3030, the House bill that would extend a pilot program for employment eligibility verification of non-citizens. This bill would extend the program, set to expire this year, for two more years.

This basic pilot program, available to employers in California, Florida, Illinois, Nebraska, New York, and Texas, was authorized in 1996, and has proved to be an incredibly effective resource since them. The program allows participating employers to electronically access certain government databases in order to verify the employment authorization of non-citizens. Electronic confirmation of this information provides a critical tool for employers to ensure that they are not hiring unauthorized aliens. This program allows employers to protect themselves from the employer sanction provisions of the Immigration and Nationality Act, while providing meaningful deterrence to would-be employers who lack appropriate authorization from the INS.

During this time of increased national security, we can all appreciate any tool that will facilitate enforcement of our immigration laws. After communication between the House and the Senate on this issue, and the favorable report from the Senate Judiciary Committee this morning, I have little doubt that my colleagues in the Senate will recognize the useful nature of the Pilot Program and support its extension.

By Mr. SPECTER:

S.J. Res. 30. A joint resolution proposing an amendment to the Constitution of the United States regarding the appointment of individuals to serve as Members of the House of Representatives in the event a significant number of Members are unable to serve at any time because of death or incapacity; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I have sought recognition today to discuss language for a proposed constitutional amendment that would provide for the appointment of temporary Representatives by a Governor if fifty percent or more of the members of the House were killed or incapacitated. I place this

language in the RECORD not with the intention of urging its passage this session, but rather to afford my colleagues an opportunity to offer their comments and suggestions, and to afford them the opportunity to consider co-sponsoring this proposed amendment.

The events of September 11 and the subsequent anthrax attacks directed against members of Congress and other Americans highlight the very real possibility that the Senate and House of Representatives could suffer catastrophic casualties that would prevent either or both bodies from fulfilling their essential roles in the governance of our Nation. Despite the morbidity of such a scenario, it is essential that we put in place a contingency plan for the effective continuance of our democracy. The Seventeenth Amendment to the Constitution allows for the temporary replacement of Senators by appointment by the Governor of their respective States. However, no such provision applies to members of the House. Only a proposed amendment to the United States Constitution would remedy this deficiency.

The only means to replace members of the House is by special election. Article 1, Section 2, clause 14, states that ''[w]hen vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.'' My legislative language proposes that if at any time, fifty percent or more of the Members of the House of Representatives are unable to carry out their duties because of death or incapacity, each Governor of a State represented by such Member would have the power to appoint an otherwise qualified individual to take the place of the Member as soon as practicable after certification of the Member's death or incapacity. Article I, Section 4, clause I states that ''a Majority of each [House] shall constitute a Quroum to do Business.'' Accordingly, this extraordinary measure giving a Governor the power of appointment of a replacement Member would be triggered, when due to death or incapacity, the House would not have a quorum to conduct business.

My proposed amendment requires an individual appointed to take the place of the Member to serve until a Member is elected to fill the vacancy by a special election to be held at any time during the 90-day period which begins on the date of the individual's appointment, except that if a regularly schuled general election for the office was scheduled to be held during such period or 30 days thereafter, no special election would be held, and the Member elected in such regularly scheduled general election would fill the vacancy upon election. Further, my proposed amendment allows for the appointed individual to be a candidate in the special election or regularly scheduled general election.

The Governor would be required to appoint a person of the same party as the ''replaced'' member. This stipulation would ensure that the citizens of a congressional district would continue to be represented by a Congressperson from the same party.

While I understand that this is an issue we would rather not grapple with, it is imperative that we deliberate and ensure that, in case of a catastrophe, our system of governance will continue to remain strong and stable. Similar legislation has been introduced in the House of Representatives. I welcome comments from my colleagues in both the House and Senate and look forward to passing meaningful legislation when Congress returns from its winter recess.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 194—CONGRATULATING THE PEOPLE AND GOVERNMENT OF KAZAKHSTAN ON THE TENTH ANNIVERSARY OF THE INDEPENDENCE OF THE REPUBLIC OF KAZAKHSTAN

Mr. BROWNBACK submitted the following resolution; which was considered and agreed to:

S. RES. 194

Whereas, on December 16, 2001, Kazakhstan will celebrate 10 years of independence;

Whereas, since gaining its independence, Kazakhstan has made significant strides in becoming a stable and peaceful nation that provides economic opportunity for its people;

Whereas Kazakhstan continues to face political, ethnic, economic, and environmental challenges;

Whereas Kazakhstan plays an important role in Central Asia by virtue of its large territory, ample natural resources, and strategic location;

Whereas the Department of Energy estimates that Kazakhstan has up to 17,600,000,000 barrels of proven petroleum reserves and up to 83,000,000,000,000 cubic feet of proven natural gas reserves;

Whereas Kazakhstan has successfully partnered with United States companies in the development of its petroleum and natural gas resources;

Whereas in November 2001, the Caspian Pipeline Consortium was inaugurated, providing the first major pipeline to bring the Caspian energy resources to the world market;

Whereas the United States private sector contributed nearly 50 percent of the $2,600,000,000 Caspian Pipeline Consortium investment;

Whereas Kazakhstan, under the leadership of President Nursultan Nazarbaev, has fully cooperated with the United States on national security concerns, including combating nuclear proliferation, international crime, and narcotics trafficking;

Whereas, since September 11, 2001, cooperation with Kazakhstan and other Central Asian States, specifically Tajikistan and Uzbekistan, has become even more important to the ability of the United States to protect the United States homeland; and

Whereas Kazakhstan has extended all due cooperation to the United States in fighting a war against international terrorism: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the people of Kazakhstan and its government, on the tenth anniversary of its independence;

(2) welcomes the partnership between the Government of Kazakhstan and United States companies in developing its natural resources in an environmentally sustainable manner;

(3) applauds the cooperation between the Government of Kazakhstan and the Government of the United States on matters of national security and is grateful for the full cooperation of Kazakhstan in the war against international terrorism;

(4) encourages the Government of Kazakhstan to continue to make progress in the areas of institutionalizing democracy, respecting human rights, reducing corruption, and implementing broad-based market reforms; and

(5) looks forward to further enhancing the economic, political, and national security cooperation between Kazakhstan and the United States.

SENATE RESOLUTION 195—TENDERING THE THANKS OF THE SENATE TO THE VICE PRESIDENT FOR THE COURTEOUS, DIGNIFIED, AND IMPARTIAL MANNER IN WHICH HE HAS PRESIDED OVER THE DELIBERATIONS OF THE SENATE

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following resolution; which was considered and agreed to:

S. RES. 195

Resolved, That the thanks of the Senate are hereby tendered to the Honorable RICHARD B. CHENEY, Vice President of the United States and President of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the first session of the One Hundred Seventh Congress.

SENATE RESOLUTION 196—TENDERING THE THANKS OF THE SENATE TO THE PRESIDENT PRO TEMPORE FOR THE COURTEOUS, DIGNIFIED, AND IMPARTIAL MANNER IN WHICH HE HAS PRESIDED OVER THE DELIBERATIONS OF THE SENATE

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following resolution; which was considered and agreed to:

S. RES. 196

Resolved, That the thanks of the Senate are hereby tendered to the Honorable ROBERT C. BYRD, President pro tempore of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the first session of the One Hundred Seventh Congress.

SENATE RESOLUTION 197—TO COMMEND THE EXEMPLARY LEADERSHIP OF THE MAJORITY LEADER

Mr. LOTT submitted the following resolution; which was considered and agreed to:

S. RES. 197

Resolved, That the thanks of the Senate are hereby tendered to the distinguished Majority Leader, the Senator from South Dakota,

the Honorable THOMAS A. DASCHLE, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the first session of the 107th Congress.

SENATE RESOLUTION 198—TO COMMEND THE EXEMPLARY LEADERSHIP OF THE REPUBLICAN LEADER

Mr. DASCHLE submitted the following resolution; which was considered and agreed to:

S. RES. 198

Resolved, That the thanks of the Senate are hereby tendered to the distinguished Republican Leader, the Senator from Mississippi, the Honorable TRENT LOTT, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the first session of the 107th Congress.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2689. Mr. DASCHLE proposed an amendment to the bill H.R. 2884, An act to amend the Internal Revenue Code of 1986 to provide tax relief for victims of the terrorist attacks against the United States, and for other purposes.

SA 2690. Mr. HOLLINGS (for himself, Mr. MCCAIN, and Mr. GRAHAM) proposed an amendment to the bill S. 1214, to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes.

SA 2691. Mr. REID (for Mr. ALLEN) proposed an amendment to the bill S. 1858, to permit the closed circuit televising of the criminal trial of Zacarias Moussaoui for the victims of September 11th.

SA 2692. Mr. REID (for Mr. FRIST (for himself, Mr. KENNEDY, and Mr. GREGG)) proposed an amendment to the bill H.R. 3448, to improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies.

SA 2693. Mr. REID (for Mr. BROWNBACK) proposed an amendment to the bill S. Res. 194, congratulating the people and government of Kazakhstan on the tenth anniversary of the independence of the Republic of Kazakhstan.

SA 2694. Mr. REID (for Mr. SMITH, of New Hampshire) proposed an amendment to the bill S. 990, to amend the Pittman-Robertson Wildlife Restoration Act to improve the provisions relating to wildlife conservation and restoration programs, and for other purposes.

SA 2695. Mr. REID (for Mr. BIDEN (for himself and Mr. HELMS)) proposed an amendment to the bill S. 1803, to authorize appropriations under the Arms Export Control Act and the Foreign Assistance Act of 1961 for security assistance for fiscal years 2002 and 2003, and for other purposes.

SA 2696. Mr. REID (for Mrs. CLINTON) proposed an amendment to the bill S. 1637, to waive certain limitations in the case of use of the emergency fund authorized by section 125 of title 23, United States Code, to pay the costs of projects in response to the attack on the World Trade Center in New York City that occurred on September 11, 2001.

SA 2697. Mr. REID (for Mr. LEAHY (for himself, Mr. KENNEDY, and Mr. HATCH)) proposed an amendment to the bill H.R. 2215, to authorize appropriations for the Department of Justice for fiscal year 2002, and for other purposes.

TEXT OF AMENDMENTS

SA 2689. Mr. DASCHLE proposed an amendment to the bill H.R. 2884, an act to amend the Internal Revenue Code of 1986 to provide tax relief for victims of the terrorist attacks against the United States, and for other purposes; as follows:

In lieu of the matter proposed to be inserted by the House amendment to the text of the bill, insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Victims of Terrorism Tax Relief Act of 2001''.

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

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I——VICTIMS OF TERRORISM TAX RELIEF

Subtitle A—Relief Provisions for Victims of Terrorist Attacks

SEC. 101. INCOME TAXES OF VICTIMS OF TERRORIST ATTACKS.

(a) IN GENERAL.—Section 692 (relating to income taxes of members of Armed Forces on death) is amended by adding at the end the following new subsection:

''(d) INDIVIDUALS DYING AS A RESULT OF CERTAIN ATTACKS.—

''(1) IN GENERAL.—In the case of a specified terrorist victim, any tax imposed by this chapter shall not apply—

''(A) with respect to the taxable year in which falls the date of death, and

''(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds, injury, or illness referred to in paragraph (3) were incurred.

''(2) $10,000 MINIMUM BENEFIT.—If, but for this paragraph, the amount of tax not imposed by paragraph (1) with respect to a specified terrorist victim is less than $10,000, then such victim shall be treated as having made a payment against the tax imposed by this chapter for such victim's last taxable year in an amount equal to the excess of $10,000 over the amount of tax not so imposed.

''(3) TAXATION OF CERTAIN BENEFITS.—Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to the amount of any tax imposed by this chapter which would be computed by only taking into account the items of income, gain, or other amounts attributable to—

''(A) deferred compensation which would have been payable after death if the individual had died other than as a specified terrorist victim, or

''(B) amounts payable in the taxable year which would not have been payable in such taxable year but for an action taken after September 11, 2001.

''(4) SPECIFIED TERRORIST VICTIM.—For purposes of this subsection, the term 'specified terrorist victim' means any decedent—

''(A) who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on April 19, 1995, or September 11, 2001, or

''(B) who dies as a result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002.

Such term shall not include any individual identified by the Attorney General to have been a participant or conspirator in any such attack or a representative of such an individual.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 5(b)(1) is amended by inserting ''and victims of certain terrorist attacks'' before ''on death''.

(2) Section 6013(f)(2)(B) is amended by inserting ''and victims of certain terrorist attacks'' before ''on death''.

(c) CLERICAL AMENDMENTS.—

(1) The heading of section 692 is amended to read as follows:

''SEC. 692. INCOME TAXES OF MEMBERS OF ARMED FORCES AND VICTIMS OF CERTAIN TERRORIST ATTACKS ON DEATH.''.

(2) The item relating to section 692 in the table of sections for part II of subchapter J of chapter 1 is amended to read as follows:

''Sec. 692. Income taxes of members of Armed Forces and victims of certain terrorist attacks on death.''.

(d) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending before, on, or after September 11, 2001.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

SEC. 102. EXCLUSION OF CERTAIN DEATH BENEFITS.

(a) IN GENERAL.—Section 101 (relating to certain death benefits) is amended by adding at the end the following new subsection:

''(i) CERTAIN EMPLOYEE DEATH BENEFITS PAYABLE BY REASON OF DEATH OF CERTAIN TERRORIST VICTIMS.—

''(1) IN GENERAL.—Gross income does not include amounts (whether in a single sum or otherwise) paid by an employer by reason of the death of an employee who is a specified terrorist victim (as defined in section 692(d)(4)).

''(2) LIMITATION.—

''(A) IN GENERAL.—Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to amounts which would have been payable after death if the individual had died other than as a specified terrorist victim (as so defined).

''(B) EXCEPTION.—Subparagraph (A) shall not apply to incidental death benefits paid from a plan described in section 401(a) and exempt from tax under section 501(a).

''(3) TREATMENT OF SELF-EMPLOYED INDIVIDUALS.—For purposes of paragraph (1), the term 'employee' includes a self-employed individual (as defined in section 401(c)(1)).''.

(b) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending before, on, or after September 11, 2001.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

SEC. 103. ESTATE TAX REDUCTION.

(a) IN GENERAL.—Section 2201 is amended to read as follows:

''SEC. 2201. COMBAT ZONE-RELATED DEATHS OF MEMBERS OF THE ARMED FORCES AND DEATHS OF VICTIMS OF CERTAIN TERRORIST ATTACKS.

''(a) IN GENERAL.—Unless the executor elects not to have this section apply, in applying sections 2001 and 2101 to the estate of a qualified decedent, the rate schedule set forth in subsection (c) shall be deemed to be the rate schedule set forth in section 2001(c).

''(b) QUALIFIED DECEDENT.—For purposes of this section, the term 'qualified decedent' means—

''(1) any citizen or resident of the United States dying while in active service of the Armed Forces of the United States, if such decedent—

''(A) was killed in action while serving in a combat zone, as determined under section 112(c), or

''(B) died as a result of wounds, disease, or injury suffered while serving in a combat zone (as determined under section 112(c)), and while in the line of duty, by reason of a hazard to which such decedent was subjected as an incident of such service, and

''(2) any specified terrorist victim (as defined in section 692(d)(4)).

''(c) RATE SCHEDULE.—

''If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over $150,000	1 percent of the amount by which such amount exceeds $100,000.
Over $150,000 but not over $200,000.	$500 plus 2 percent of the excess over $150,000.
Over $200,000 but not over $300,000.	$1,500 plus 3 percent of the excess over $200,000.
Over $300,000 but not over $500,000.	$4,500 plus 4 percent of the excess over $300,000.
Over $500,000 but not over $700,000.	$12,500 plus 5 percent of the excess over $500,000.
Over $700,000 but not over $900,000.	$22,500 plus 6 percent of the excess over $700,000.
Over $900,000 but not over $1,100,000.	$34,500 plus 7 percent of the excess over $900,000.
Over $1,100,000 but not over $1,600,000.	$48,500 plus 8 percent of the excess over $1,100,000.
Over $1,600,000 but not over $2,100,000.	$88,500 plus 9 percent of the excess over $1,600,000.
Over $2,100,000 but not over $2,600,000.	$133,500 plus 10 percent of the excess over $2,100,000.
Over $2,600,000 but not over $3,100,000.	$183,500 plus 11 percent of the excess over $2,600,000.
Over $3,100,000 but not over $3,600,000.	$238,500 plus 12 percent of the excess over $3,100,000.
Over $3,600,000 but not over $4,100,000.	$298,500 plus 13 percent of the excess over $3,600,000.
Over $4,100,000 but not over $5,100,000.	$363,500 plus 14 percent of the excess over $4,100,000.
Over $5,100,000 but not over $6,100,000.	$503,500 plus 15 percent of the excess over $5,100,000.
Over $6,100,000 but not over $7,100,000.	$653,500 plus 16 percent of the excess over $6,100,000.
Over $7,100,000 but not over $8,100,000.	$813,500 plus 17 percent of the excess over $7,100,000.
Over $8,100,000 but not over $9,100,000.	$983,500 plus 18 percent of the excess over $8,100,000.
Over $9,100,000 but not over $10,100,000.	$1,163,500 plus 19 percent of the excess over $9,100,000.
Over $10,100,000	$1,353,500 plus 20 percent of the excess over $10,100,000.

''(d) DETERMINATION OF UNIFIED CREDIT.—In the case of an estate to which this section applies, subsection (a) shall not apply in determining the credit under section 2010.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 2011 is amended by striking subsection (d) and by redesignating subsections (e), (f), and (g) as subsections (d), (e), and (f), respectively.

(2) Section 2053(d)(3)(B) is amended by striking ''section 2011(e)'' and inserting ''section 2011(d)''.

(3) Paragraph (9) of section 532(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

(c) CLERICAL AMENDMENT.—The item relating to section 2201 in the table of sections for subchapter C of chapter 11 is amended to read as follows:

''Sec. 2201. Combat zone-related deaths of members of the Armed Forces and deaths of victims of certain terrorist attacks.''.

(d) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents—

(A) dying on or after September 11, 2001, and

(B) in the case of individuals dying as a result of the April 19, 1995, terrorist attack, dying on or after April 19, 1995.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

SEC. 104. PAYMENTS BY CHARITABLE ORGANIZATIONS TREATED AS EXEMPT PAYMENTS.

(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986—

(1) payments made by an organization described in section 501(c)(3) of such Code by reason of the death, injury, wounding, or illness of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002, shall be treated as related to the purpose or function constituting the basis for such organization's exemption under section 501 of such Code if such payments are made in good faith using a reasonable and objective formula which is consistently applied, and

(2) in the case of a private foundation (as defined in section 509 of such Code), any payment described in paragraph (1) shall not be treated as made to a disqualified person for purposes of section 4941 of such Code.

(b) EFFECTIVE DATE.—This section shall apply to payments made on or after September 11, 2001.

SEC. 105. EXCLUSION OF CERTAIN CANCELLATIONS OF INDEBTEDNESS.

(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986—

(1) gross income shall not include any amount which (but for this section) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of any taxpayer if the discharge is by reason of the death of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or as the result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002, and

(2) return requirements under section 6050P of such Code shall not apply to any discharge described in paragraph (1).

(b) EFFECTIVE DATE.—This section shall apply to discharges made on or after September 11, 2001, and before January 1, 2002.

Subtitle B—Other Relief Provisions

SEC. 111. EXCLUSION FOR DISASTER RELIEF PAYMENTS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 139 as section 140 and inserting after section 138 the following new section:

''SEC. 139. DISASTER RELIEF PAYMENTS.

''(a) GENERAL RULE.—Gross income shall not include any amount received by an individual as a qualified disaster relief payment.

''(b) QUALIFIED DISASTER RELIEF PAYMENT DEFINED.—For purposes of this section, the term 'qualified disaster relief payment' means any amount paid to or for the benefit of an individual—

''(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,

''(2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster,

''(3) by a person engaged in the furnishing or sale of transportation as a common carrier by reason of the death or personal physical injuries incurred as a result of a qualified disaster, or

''(4) if such amount is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare,

but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

''(c) QUALIFIED DISASTER DEFINED.—For purposes of this section, the term 'qualified disaster' means—

''(1) a disaster which results from a terroristic or military action (as defined in section 692(c)(2)),

''(2) a Presidentially declared disaster (as defined in section 1033(h)(3)),

''(3) a disaster which results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature, or

''(4) with respect to amounts described in subsection (b)(4), a disaster which is determined by an applicable Federal, State, or local authority (as determined by the Secretary) to warrant assistance from the Federal, State, or local government or agency or instrumentality thereof.

''(d) COORDINATION WITH EMPLOYMENT TAXES.—For purposes of chapter 2 and subtitle C, a qualified disaster relief payment shall not be treated as net earnings from self-employment, wages, or compensation subject to tax.

''(e) NO RELIEF FOR CERTAIN INDIVIDUALS.—Subsections (a) and (f) shall not apply with respect to any individual identified by the Attorney General to have been a participant or conspirator in a terroristic action (as so defined), or a representative of such individual.

''(f) EXCLUSION OF CERTAIN ADDITIONAL PAYMENTS.—Gross income shall not include any amount received as payment under section 406 of the Air Transportation Safety and System Stabilization Act.''

(b) CONFORMING AMENDMENTS.—The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 139 and inserting the following new items:

''Sec. 139. Disaster relief payments.

''Sec. 140. Cross references to other Acts.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after September 11, 2001.

SEC. 112. AUTHORITY TO POSTPONE CERTAIN DEADLINES AND REQUIRED ACTIONS.

(a) EXPANSION OF AUTHORITY RELATING TO DISASTERS AND TERRORISTIC OR MILITARY ACTIONS.—Section 7508A is amended to read as follows:

''SEC. 7508A. AUTHORITY TO POSTPONE CERTAIN DEADLINES BY REASON OF PRESIDENTIALLY DECLARED DISASTER OR TERRORISTIC OR MILITARY ACTIONS.

''(a) IN GENERAL.—In the case of a taxpayer determined by the Secretary to be affected by a Presidentially declared disaster (as defined in section 1033(h)(3)) or a terroristic or military action (as defined in section 692(c)(2)), the Secretary may specify a period of up to one year that may be disregarded in determining, under the internal revenue laws, in respect of any tax liability of such taxpayer—

''(1) whether any of the acts described in paragraph (1) of section 7508(a) were performed within the time prescribed therefor (determined without regard to extension under any other provision of this subtitle for periods after the date (determined by the Secretary) of such disaster or action),

''(2) the amount of any interest, penalty, additional amount, or addition to the tax for periods after such date, and

''(3) the amount of any credit or refund.

''(b) SPECIAL RULES REGARDING PENSIONS, ETC.—In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a disaster or action described in subsection (a), the Secretary may specify a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this title. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.

''(c) SPECIAL RULES FOR OVERPAYMENTS.—The rules of section 7508(b) shall apply for purposes of this section.''.

(b) CLARIFICATION OF SCOPE OF ACTS SECRETARY MAY POSTPONE.—Section 7508(a)(1)(K) (relating to time to be disregarded) is amended by striking ''in regulations prescribed under this section''.

(c) CONFORMING AMENDMENTS TO ERISA.—

(1) Part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131 et seq.) is amended by adding at the end the following new section:

''SEC. 518. AUTHORITY TO POSTPONE CERTAIN DEADLINES BY REASON OF PRESIDENTIALLY DECLARED DISASTER OR TERRORISTIC OR MILITARY ACTIONS.

''In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1033(h)(3) of the Internal Revenue Code of 1986) or a terroristic or military action (as defined in section 692(c)(2) of such Code), the Secretary may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this Act. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.''.

(2) Section 4002 of Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302) is amended by adding at the end the following new subsection:

''(i) SPECIAL RULES REGARDING DISASTERS, ETC.—In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1033(h)(3) of the Internal Revenue Code of 1986) or a terroristic or military action (as defined in section 692(c)(2) of such Code), the corporation may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this Act. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.''.

(d) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 6404 is amended—

(A) by striking subsection (h),

(B) by redesignating subsection (i) as subsection (h), and

(C) by adding at the end the following new subsection:

''(i) CROSS REFERENCE.—

''For authority to suspend running of interest, etc. by reason of Presidentially declared disaster or terroristic or military action, see section 7508A.''.

(2) Section 6081(c) is amended to read as follows:

''(c) CROSS REFERENCES.—

''For time for performing certain acts postponed by reason of war, see section 7508, and by reason of Presidentially declared disaster or terroristic or military action, see section 7508A.''.

(3) Section 6161(d) is amended by adding at the end the following new paragraph:

''(3) POSTPONEMENT OF CERTAIN ACTS.—

''For time for performing certain acts postponed by reason of war, see section 7508, and by reason of Presidentially declared disaster or terroristic or military action, see section 7508A.''.

(d) CLERICAL AMENDMENTS.—

(1) The item relating to section 7508A in the table of sections for chapter 77 is amended to read as follows:

''Sec. 7508A. Authority to postpone certain deadlines by reason of Presidentially declared disaster or terroristic or military actions.''.

(2) The table of contents for the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 517 the following new item:

''Sec. 518. Authority to postpone certain deadlines by reason of Presidentially declared disaster or terroristic or military actions.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to disasters and terroristic or military actions occurring on or after September 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after the date of the enactment of this Act.

SEC. 113. APPLICATION OF CERTAIN PROVISIONS TO TERRORISTIC OR MILITARY ACTIONS.

(a) DISABILITY INCOME.—Section 104(a)(5) (relating to compensation for injuries or sickness) is amended by striking ''a violent attack'' and all that follows through the period and inserting ''a terroristic or military action (as defined in section 692(c)(2)).''.

(b) EXEMPTION FROM INCOME TAX FOR CERTAIN MILITARY OR CIVILIAN EMPLOYEES.—Section 692(c) is amended—

(1) by striking ''outside the United States'' in paragraph (1), and

(2) by striking ''SUSTAINED OVERSEAS'' in the heading.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after September 11, 2001.

SEC. 114. CLARIFICATION OF DUE DATE FOR AIRLINE EXCISE TAX DEPOSITS.

(a) IN GENERAL.—Paragraph (3) of section 301(a) of the Air Transportation Safety and System Stabilization Act (Public Law 107–42) is amended to read as follows:

''(3) AIRLINE-RELATED DEPOSIT.—For purposes of this subsection, the term 'airline-related deposit' means any deposit of taxes imposed by subchapter C of chapter 33 of such Code (relating to transportation by air).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in section 301 of the Air Transportation Safety and System Stabilization Act (Public Law 107–42).

SEC. 115. TREATMENT OF CERTAIN STRUCTURED SETTLEMENT PAYMENTS.

(a) IN GENERAL.—Subtitle E is amended by adding at the end the following new chapter:

''CHAPTER 55—STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

''Sec. 5891. Structured settlement factoring transactions.

''SEC. 5891. STRUCTURED SETTLEMENT FACTORING TRANSACTIONS.

''(a) IMPOSITION OF TAX.—There is hereby imposed on any person who acquires directly or indirectly structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the

factoring discount as determined under subsection (c)(4) with respect to such factoring transaction.

''(b) EXCEPTION FOR CERTAIN APPROVED TRANSACTIONS.—

''(1) IN GENERAL.—The tax under subsection (a) shall not apply in the case of a structured settlement factoring transaction in which the transfer of structured settlement payment rights is approved in advance in a qualified order.

''(2) QUALIFIED ORDER.—For purposes of this section, the term 'qualified order' means a final order, judgment, or decree which—

''(A) finds that the transfer described in paragraph (1)—

''(i) does not contravene any Federal or State statute or the order of any court or responsible administrative authority, and

''(ii) is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, and

''(B) is issued—

''(i) under the authority of an applicable State statute by an applicable State court, or

''(ii) by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

''(3) APPLICABLE STATE STATUTE.—For purposes of this section, the term 'applicable State statute' means a statute providing for the entry of an order, judgment, or decree described in paragraph (2)(A) which is enacted by—

''(A) the State in which the payee of the structured settlement is domiciled, or

''(B) if there is no statute described in subparagraph (A), the State in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130) or the person issuing the funding asset for the structured settlement is domiciled or has its principal place of business.

''(4) APPLICABLE STATE COURT.—For purposes of this section—

''(A) IN GENERAL.—The term 'applicable State court' means, with respect to any applicable State statute, a court of the State which enacted such statute.

''(B) SPECIAL RULE.—In the case of an applicable State statute described in paragraph (3)(B), such term also includes a court of the State in which the payee of the structured settlement is domiciled.

''(5) QUALIFIED ORDER DISPOSITIVE.—A qualified order shall be treated as dispositive for purposes of the exception under this subsection.

''(c) DEFINITIONS.—For purposes of this section—

''(1) STRUCTURED SETTLEMENT.—The term 'structured settlement' means an arrangement—

''(A) which is established by—

''(i) suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2), or

''(ii) agreement for the periodic payment of compensation under any workers' compensation law excludable from the gross income of the recipient under section 104(a)(1), and

''(B) under which the periodic payments are—

''(i) of the character described in subparagraphs (A) and (B) of section 130(c)(2), and

''(ii) payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

''(2) STRUCTURED SETTLEMENT PAYMENT RIGHTS.—The term 'structured settlement payment rights' means rights to receive payments under a structured settlement.

''(3) STRUCTURED SETTLEMENT FACTORING TRANSACTION.—

''(A) IN GENERAL.—The term 'structured settlement factoring transaction' means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration.

''(B) EXCEPTION.—Such term shall not include—

''(i) the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights, or

''(ii) a subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

''(4) FACTORING DISCOUNT.—The term 'factoring discount' means an amount equal to the excess of—

''(A) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over

''(B) the total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

''(5) RESPONSIBLE ADMINISTRATIVE AUTHORITY.—The term 'responsible administrative authority' means the administrative authority which had jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

''(6) STATE.—The term 'State' includes the Commonwealth of Puerto Rico and any possession of the United States.

''(d) COORDINATION WITH OTHER PROVISIONS.—

''(1) IN GENERAL.—If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

''(2) NO WITHHOLDING OF TAX.—The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.''.

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle E is amended by adding at the end the following new item:

''Chapter 55. Structured settlement factoring transactions.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section (other than the provisions of section 5891(d) of the Internal Revenue Code of 1986, as added by this section) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into on or after the 30th day following the date of the enactment of this Act.

(2) CLARIFICATION OF EXISTING LAW.—Section 5891(d) of such Code (as so added) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into before, on, or after such 30th day.

(3) TRANSITION RULE.—In the case of a structured settlement factoring transaction entered into during the period beginning on the 30th day following the date of the enactment of this Act and ending on July 1, 2002, no tax shall be imposed under section 5891(a) of such Code if—

(A) the structured settlement payee is domiciled in a State (or possession of the United States) which has not enacted a statute providing that the structured settlement factoring transaction is ineffective unless the transaction has been approved by an order, judgment, or decree of a court (or where applicable, a responsible administrative authority) which finds that such transaction—

(i) does not contravene any Federal or State statute or the order of any court (or responsible administrative authority), and

(ii) is in the best interest of the structured settlement payee or is appropriate in light of a hardship faced by the payee, and

(B) the person acquiring the structured settlement payment rights discloses to the structured settlement payee in advance of the structured settlement factoring transaction the amounts and due dates of the payments to be transferred, the aggregate amount to be transferred, the consideration to be received by the structured settlement payee for the transferred payments, the discounted present value of the transferred payments (including the present value as determined in the manner described in section 7520 of such Code), and the expenses required under the terms of the structured settlement factoring transaction to be paid by the structured settlement payee or deducted from the proceeds of such transaction.

SEC. 116. PERSONAL EXEMPTION DEDUCTION FOR CERTAIN DISABILITY TRUSTS.

(a) IN GENERAL.—Subsection (b) of section 642 (relating to deduction for personal exemption) is amended to read as follows:

''(b) DEDUCTION FOR PERSONAL EXEMPTION.—

''(1) ESTATES.—An estate shall be allowed a deduction of $600.

''(2) TRUSTS.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, a trust shall be allowed a deduction of $100.

''(B) TRUSTS DISTRIBUTING INCOME CURRENTLY.—A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of $300.

''(C) DISABILITY TRUSTS.—

''(i) IN GENERAL.—A qualified disability trust shall be allowed a deduction equal to the exemption amount under section 151(d), determined—

''(I) by treating such trust as an individual described in section 151(d)(3)(C)(iii), and

''(II) by applying section 67(e) (without the reference to section 642(b)) for purposes of determining the adjusted gross income of the trust.

''(ii) QUALIFIED DISABILITY TRUST.—For purposes of clause (i), the term 'qualified disability trust' means any trust if—

''(I) such trust is a disability trust described in subsection (c)(2)(B)(iv) of section 1917 of the Social Security Act (42 U.S.C. 1396p), and

''(II) all of the beneficiaries of the trust as of the close of the taxable year are determined by the Commissioner of Social Security to have been disabled (within the meaning of section 1614(a)(3) of the Social Security Act, 42 U.S.C. 1382c(a)(3)) for some portion of such year.

A trust shall not fail to meet the requirements of subclause (II) merely because the

corpus of the trust may revert to a person who is not so disabled after the trust ceases to have any beneficiary who is so disabled.''

''(3) DEDUCTIONS IN LIEU OF PERSONAL EXEMPTION.—The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending on or after September 11, 2001.

TITLE II—DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS

SEC. 201. DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS.

(a) DISCLOSURE WITHOUT A REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—Paragraph (3) of section 6103(i) (relating to disclosure of return information to apprise appropriate officials of criminal activities or emergency circumstances) is amended by adding at the end the following new subparagraph:

''(C) TERRORIST ACTIVITIES, ETC.—

''(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. The head of the agency may disclose such return information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

''(ii) DISCLOSURE TO THE DEPARTMENT OF JUSTICE.—Returns and taxpayer return information may also be disclosed to the Attorney General under clause (i) to the extent necessary for, and solely for use in preparing, an application under paragraph (7)(D).

''(iii) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

''(iv) TERMINATION.—No disclosure may be made under this subparagraph after December 31, 2003.''.

(b) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—Subsection (i) of section 6103 (relating to disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration) is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—

''(A) DISCLOSURE TO LAW ENFORCEMENT AGENCIES.—

''(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (iii), the Secretary may disclose return information (other than taxpayer return information) to officers and employees of any Federal law enforcement agency who are personally and directly engaged in the response to or investigation of any terrorist incident, threat, or activity.

''(ii) DISCLOSURE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.—The head of any Federal law enforcement agency may disclose return information obtained under clause (i) to officers and employees of any State or local law enforcement agency but only if such agency is part of a team with the Federal law enforcement agency in such response or investigation and such information is disclosed only to officers and employees who are personally and directly engaged in such response or investigation.

''(iii) REQUIREMENTS.—A request meets the requirements of this clause if—

''(I) the request is made by the head of any Federal law enforcement agency (or his delegate) involved in the response to or investigation of any terrorist incident, threat, or activity, and

''(II) the request sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

''(iv) LIMITATION ON USE OF INFORMATION.—Information disclosed under this subparagraph shall be solely for the use of the officers and employees to whom such information is disclosed in such response or investigation.

''(B) DISCLOSURE TO INTELLIGENCE AGENCIES.—

''(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (ii), the Secretary may disclose return information (other than taxpayer return information) to those officers and employees of the Department of Justice, the Department of the Treasury, and other Federal intelligence agencies who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning any terrorist incident, threat, or activity. For purposes of the preceding sentence, the information disclosed under the preceding sentence shall be solely for the use of such officers and employees in such investigation, collection, or analysis.

''(ii) REQUIREMENTS.—A request meets the requirements of this subparagraph if the request—

''(I) is made by an individual described in clause (iii), and

''(II) sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

''(iii) REQUESTING INDIVIDUALS.—An individual described in this subparagraph is an individual—

''(I) who is an officer or employee of the Department of Justice or the Department of the Treasury who is appointed by the President with the advice and consent of the Senate or who is the Director of the United States Secret Service, and

''(II) who is responsible for the collection and analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity.

''(iv) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

''(C) DISCLOSURE UNDER EX PARTE ORDERS.—

''(i) IN GENERAL.—Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under clause (ii), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal law enforcement agency or Federal intelligence agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity. Return or return information opened to inspection or disclosure pursuant to the preceding sentence shall be solely for the use of such officers and employees in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceedings, pertaining to such terrorist incident, threat, or activity.

''(ii) APPLICATION FOR ORDER.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, or any United States attorney may authorize an application to a Federal district court judge or magistrate for the order referred to in clause (i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—

''(I) there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity, and

''(II) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

''(D) SPECIAL RULE FOR EX PARTE DISCLOSURE BY THE IRS.—

''(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (C)(i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that the requirements of subparagraph (C)(ii)(I) are met.

''(ii) LIMITATION ON USE OF INFORMATION.—Information disclosed under clause (i)—

''(I) may be disclosed only to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity, and

''(II) shall be solely for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

The head of such Federal agency may disclose such information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

''(E) TERMINATION.—No disclosure may be made under this paragraph after December 31, 2003.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 6103(a)(2) is amended by inserting ''any local law enforcement agency receiving information under subsection (i)(7)(A),'' after ''State,''.

(2) Section 6103(b) is amended by adding at the end the following new paragraph:

''(11) TERRORIST INCIDENT, THREAT, OR ACTIVITY.—The term 'terrorist incident, threat, or activity' means an incident, threat, or activity involving an act of domestic terrorism (as defined in section 2331(5) of title 18, United States Code) or international terrorism (as defined in section 2331(1) of such title).''.

(3) The heading of section 6103(i)(3) is amended by inserting ''OR TERRORIST'' after ''CRIMINAL''.

(4) Paragraph (4) of section 6103(i) is amended—

(A) in subparagraph (A) by inserting ''or (7)(C)'' after ''paragraph (1)'', and

(B) in subparagraph (B) by striking ''or (3)(A)'' and inserting ''(3)(A) or (C), or (7)''.

(5) Paragraph (6) of section 6103(i) is amended—

(A) by striking ''(3)(A)'' and inserting ''(3)(A) or (C)'', and

(B) by striking ''or (7)'' and inserting ''(7), or (8)''.

(6) Section 6103(p)(3) is amended—

(A) in subparagraph (A) by striking ''(7)(A)(ii)'' and inserting ''(8)(A)(ii)'', and

(B) in subparagraph (C) by striking ''(i)(3)(B)(i)'' and inserting ''(i)(3)(B)(i) or (7)(A)(ii)''.

(7) Section 6103(p)(4) is amended—

(A) in the matter preceding subparagraph (A)—

(i) by striking ''or (5),'' the first place it appears and inserting ''(5), or (7),'', and

(ii) by striking ''(i)(3)(B)(i),'' and inserting ''(i)(3)(B)(i) or (7)(A)(ii),'', and

(B) in subparagraph (F)(ii) by striking ''or (5),'' the first place it appears and inserting ''(5) or (7),''.

(8) Section 6103(p)(6)(B)(i) is amended by striking ''(i)(7)(A)(ii)'' and inserting ''(i)(8)(A)(ii)''.

(9) Section 6105(b) is amended—

(A) by striking ''or'' at the end of paragraph (2),

(B) by striking ''paragraphs (1) or (2)'' in paragraph (3) and inserting ''paragraph (1), (2), or (3)'',

(C) by redesignating paragraph (3) as paragraph (4), and

(D) by inserting after paragraph (2) the following new paragraph:

''(3) to the disclosure of tax convention information on the same terms as return information may be disclosed under paragraph (3)(C) or (7) of section 6103(i), except that in the case of tax convention information provided by a foreign government, no disclosure may be made under this paragraph without the written consent of the foreign government, or''.

(10) Section 7213(a)(2) is amended by striking ''(i)(3)(B)(i),'' and inserting ''(i)(3)(B)(i) or (7)(A)(ii),''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures made on or after the date of the enactment of this Act.

TITLE III—NO IMPACT ON SOCIAL SECURITY TRUST FUNDS

SEC. 301. NO IMPACT ON SOCIAL SECURITY TRUST FUNDS.

(a) IN GENERAL.—Nothing in this Act (or an amendment made by this Act) shall be construed to alter or amend title II of the Social Security Act (or any regulation promulgated under that Act).

(b) TRANSFERS.—

(1) ESTIMATE OF SECRETARY.—The Secretary of the Treasury shall annually estimate the impact that the enactment of this Act has on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401).

(2) TRANSFER OF FUNDS.—If, under paragraph (1), the Secretary of the Treasury estimates that the enactment of this Act has a negative impact on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401), the Secretary shall transfer, not less frequently than quarterly, from the general revenues of the Federal Government an amount sufficient so as to ensure that the income and balances of such trust funds are not reduced as a result of the enactment of this Act.

SA 2690. Mr. HOLLINGS (for himself, Mr. MCCAIN, and Mr. GRAHAM) proposed an amendment to the bill S. 1214, to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes; as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Port and Maritime Security Act of 2001''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—PORT AND MARITIME SECURITY

SEC. 101. FINDINGS.

The Congress makes the following findings:

(1) There are 361 public ports in the United States which have a broad range of characteristics, and all of which are an integral part of our Nation's commerce.

(2) United States ports conduct over 95 percent of United States overseas trade. Over the next 20 years, the total volume of imported and exported goods at ports is expected to more than double.

(3) The variety of trade and commerce that are carried out at ports has greatly expanded. Bulk cargo, containerized cargo, passenger transport and tourism, intermodal transportation systems, and complex domestic and international trade relationships have significantly changed the nature, conduct, and complexity of port commerce.

(4) The United States is increasingly dependent on imported energy for a substantial share of supply, and a disruption of supply would seriously harm consumers and our economy.

(5) The top 50 ports in the United States account for about 90 percent of all the cargo tonnage. Twenty-five United States ports account for 98 percent of all container shipments. Cruise ships visiting foreign destinations embark from 16 ports. Ferries in the United States transport 113,000,000 passengers and 32,000,000 vehicles per year.

(6) In the larger ports, the activities can stretch along a coast for many miles, including public roads within their geographic boundaries. The facilities used to support arriving and departing cargo are sometimes miles from the coast.

(7) Ports often are a major locus of Federal crime, including drug trafficking, cargo theft, and smuggling of contraband and aliens. The criminal conspiracies often associated with these crimes can pose threats to the people and critical infrastructures of port cities. Ports that accept international cargo have a higher risk of international crimes like drug and alien smuggling and trade fraud.

(8) Ports are often very open and exposed and, by the very nature of their role in promoting the free flow of commerce, are susceptible to large scale terrorism that could pose a threat to coastal, Great Lake, or riverain populations. Port terrorism could pose a significant threat to the ability of the United States to pursue its national security objectives.

(9) United States ports are international boundaries, however, unlike United States airports and land borders, United States ports receive no Federal funds for security infrastructure.

(10) Current inspection levels of containerized cargo are insufficient to counter potential security risks. Technology is currently not adequately deployed to allow for the non-intrusive inspection of containerized cargo. Additional promising technology is in the process of being developed that could inspect cargo in a non-intrusive and efficient fashion.

(11) The burgeoning cruise ship industry poses a special risk from a security perspective.

(12) Effective physical security and access control in ports is fundamental to deterring and preventing potential threats to port operations, and cargo shipments.

(13) Securing entry points, open storage areas, and warehouses throughout the port, controlling the movements of trucks transporting cargo through the port, and examining or inspecting containers, warehouses, and ships at berth or in the harbor are all important requirements that should be implemented.

(14) Identification procedures for arriving workers are important tools to deter and prevent port cargo crimes, smuggling, and terrorist actions.

(15) On April 27, 1999, the President established the Interagency Commission on Crime and Security in United States Ports to undertake a comprehensive study of the nature and extent of the problem of crime in our ports, as well as the ways in which governments at all levels are responding.

(16) The Commission has issued findings that indicate the following:

(A) Frequent crimes in ports include drug smuggling, illegal car exports, fraud (including Intellectual Property Rights and other trade violations), and cargo theft.

(B) Data about crime in ports has been very difficult to collect.

(C) Internal conspiracies are an issue at many ports, and contribute to Federal crime.

(D) Intelligence and information sharing among law enforcement agencies needs to be improved and coordinated at many ports.

(E) Many ports do not have any idea about the threats they face from crime, terrorism, and other security-related activities because of a lack of credible threat information.

(F) A lack of minimum physical, procedural, and personnel security standards at ports and at terminals, warehouses, trucking firms, and related facilities leaves many ports and port users vulnerable to theft, pilferage, and unauthorized access by criminals.

(G) Access to ports and operations within ports is often uncontrolled.

(H) Coordination and cooperation between law enforcement agencies in the field is often fragmented.

(I) Meetings between law enforcement personnel, carriers, marine terminal operators, and port authorities regarding security are not being held routinely in the ports. These meetings could increase coordination and cooperation at the local level.

(J) Security-related equipment such as small boats, cameras, and vessel tracking devices is lacking at many ports.

(K) Detection equipment such as large-scale x-ray machines is lacking at many high-risk ports.

(L) A lack of timely, accurate, and complete manifest (including in-bond) and trade (entry, importer, etc.) data negatively impacts law enforcement's ability to function effectively.

(M) Criminal organizations are exploiting weak security in ports and related intermodal connections to commit a wide range of cargo crimes. Levels of containerized cargo volumes are forecasted to increase significantly, which will create more opportunities for crime while lowering the statistical risk of detection and interdiction.

(17) United States ports are international boundaries that—

(A) are particularly vulnerable to threats of drug smuggling, illegal alien smuggling, cargo theft, illegal entry of cargo and contraband;

(B) may present weaknesses in the ability of the United States to realize its national security objectives; and

(C) may serve as a vector or target for terrorist attacks aimed at the population of the United States.

(18) It is in the best interests of the United States—

(A) to be mindful that United States ports are international ports of entry and that the primary obligation for the security of international ports of entry lies with the Federal government;

(B) to be mindful of the need for the free flow of interstate and foreign commerce and the need to ensure the efficient movement of cargo in interstate and foreign commerce and the need for increased efficiencies to address trade gains;

(C) to increase United States port security by establishing a better method of communication amongst law enforcement officials responsible for port boundary, security, and trade issues;

(D) to formulate requirements for physical port security, recognizing the different character and nature of United States ports, and to require the establishment of security programs at ports;

(E) to provide financial incentives to help the States and private sector to increase physical security of United States ports;

(F) to invest in long-term technology to facilitate the private sector development of technology that will assist in the non-intrusive timely detection of crime or potential crime;

(G) to harmonize data collection on port-related and other cargo theft, in order to address areas of potential threat to safety and security;

(H) to create shared inspection facilities to help facilitate the timely and efficient inspection of people and cargo in United States ports;

(I) to improve Customs reporting procedures to enhance the potential detection of crime in advance of arrival or departure of cargoes; and

(J) to promote private sector procedures that provide for in-transit visibility and support law enforcement efforts directed at managing the security risks of cargo shipments.

SEC. 102. NATIONAL MARITIME SECURITY ADVISORY COMMITTEE.

(a) IN GENERAL.—Section 7 of the Ports and Waterways Safety Act (33 U.S.C. 1226) is amended by adding at the end the following:

''(d) NATIONAL MARITIME SECURITY ADVISORY COMMITTEE.—

''(1) IN GENERAL.—The Secretary shall establish a National Maritime Security Advisory Committee, comprised of not more than 21 members appointed by the Secretary. The Secretary may require that a prospective member undergo a background check or obtain an appropriate security clearance before appointment.

''(2) ORGANIZATION.—The Secretary—

''(A) shall designate a chairperson of the Advisory Committee;

''(B) shall approve a charter, including such procedures and rules as the Secretary deems necessary for the operation of the Advisory Committee;

''(C) shall establish a law enforcement subcommittee and, with the consent of the Secretary of the Treasury and the Attorney General, respectively, include as members of the subcommittee representatives from the Customs Service and the Immigration and Naturalization Service;

''(D) may establish other subcommittees to facilitate consideration of specific issues, including maritime and port security, border protection, and maritime domain awareness issues, the potential effects on national energy security, the United States economy, and the environment of disruptions of crude oil, refined petroleum products, liquified natural gas, and other energy sources; and

''(E) may invite the participation of other Federal agencies and of State and local government agencies of State, including law enforcement agencies, with an interest or expertise in anti-terrorism or maritime and port security and safety related issues.

''(3) MATERIAL AND MISSION SUPPORT.—In carrying out this subsection, the Secretary may accept contributions of funds, material, services, and the use of personnel and facilities from public or private entities, by contract or other arrangement, if the confidentiality of security-sensitive information is maintained and access to such information is limited appropriately. The Secretary shall deposit any funds accepted under this paragraph as miscellaneous receipts in the general fund of the Treasury.

''(4) FUNCTIONS.—The Advisory Committee shall—

''(A) advise, consult with, report to, and make recommendations to the Secretary on ways to enhance the security and safety of United States ports; and

''(B) provide advice and recommendations to the Secretary on matters related to maritime and port security and safety, including—

''(i) longterm solutions for maritime and port security issues;

''(ii) coordination of security and safety operations and information between and among Federal, State, and local governments and area and local port security committees and harbor safety committees;

''(iii) conditions for maritime security and safety loan guarantees and grants;

''(iv) development of a National Maritime Transportation Security Plan;

''(v) development and implementation of area and local maritime security plans;

''(vi) protection of port energy transportation facilities; and

''(vii) helping to ensure that the public and area and local port security committees are kept informed about maritime security enhancement developments.

''(5) TERMINATION.—The Advisory Committee shall terminate on September 30, 2005.''.

(b) FUNDING FOR FYS 2003-2005.—Of the amounts made available under section 122(b) there may be made available to the Secretary of Transportation for activities of the National Maritime Security Advisory Committee established under section 7(d) of the Ports and Waterways Safety Act (33 U.S.C. 1226(d)) $1,000,000 for each of fiscal years 2003 through 2005, such sums to remain available until expended.

(c) AUTHORIZATION OF APPROPRIATIONS FOR FY 2002.—There are authorized to be appropriated to the Secretary of Transportation $1,000,000 for fiscal year 2002 for activities of the Advisory Committee, such sums to remain available until expended.

SEC. 103. INITIAL SECURITY EVALUATIONS AND PORT VULNERABILITY ASSESSMENTS.

(a) IN GENERAL.—Section 7 of the Ports and Waterways Safety Act (33 U.S.C. 1226), as amended by section 102, is further amended by adding at the end the following:

''(e) INITIAL SECURITY EVALUATIONS AND PORT VULNERABILITY ASSESSMENTS.—

''(1) DEVELOPMENT OF STANDARDS.—The Secretary, in consultation with appropriate public and private sector officials and organizations, shall develop standards and procedures for conducting initial security evaluations and port vulnerability assessments.

''(2) INITIAL SECURITY EVALUATIONS.—The Secretary shall conduct an initial security evaluation of all port authorities, waterfront facilities, and public or commercial structures located within or adjacent to the marine environment. The Secretary shall consult the local port security committee while developing the initial security evaluation, and may require each port authority, waterfront facility operator, or operator of a public or commercial structure located within or adjacent to the marine environment to submit security information for review by the local port security committee.

''(3) PORT VULNERABILITY ASSESSMENTS.—The Secretary shall review initial security evaluations and conduct a port vulnerability assessment for each port for which the Secretary determines such an assessment is appropriate. If a port vulnerability assessment has been conducted within 5 years by or on behalf of a port authority or marine terminal operator, and the Secretary determines that it was conducted in a manner that is generally consistent with the standards and procedures specified under this subsection, the Secretary may accept that assessment rather than conducting another port vulnerability assessment for that port.

''(4) REVIEW AND COMMENT OPPORTUNITY.—The Secretary shall make each initial security evaluation and port vulnerability assessment for a port available for review and comment by the local port security committee, officials of the port authority, marine terminal operator representatives, and representatives of other entities connected to or affiliated with maritime commerce or port security as the Secretary determines to be appropriate, based on the recommendations of the local port security committee.

''(5) UNAUTHORIZED DISCLOSURE.—The Secretary shall ensure that all initial security evaluations, port vulnerability assessments, and any associated materials are properly safeguarded from unauthorized disclosure.

''(6) MATERIAL AND MISSION SUPPORT.—In carrying out responsibilities under this Act, the Secretary may accept contributions of funds, material, services, and the use of personnel and facilities from public and private entities by contract or other arrangement if the confidentiality of security-sensitive information is maintained and access to such information is limited appropriately. The Secretary shall deposit any funds accepted under this section as miscellaneous receipts in the general fund of the Treasury.''.

(b) FUNDING.—Of the amounts made available under section 122(b) there may be made available to the Secretary $10,000,000 for each of fiscal years 2003 through 2006 to carry out section 7(e) of the Ports and Waterways Safety Act (33 U.S.C. 1226(e)), such sums to remain available until expended.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $20,000,000 for fiscal year 2002 to carry out section 7(e) of the Ports and Waterways Safety Act (33 U.S.C. 1226(e)), such sums to remain available until expended.

SEC. 104. ESTABLISHMENT OF LOCAL PORT SECURITY COMMITTEES.

(a) IN GENERAL.—Section 7 of the Ports and Waterways Safety Act (33 U.S.C. 1226), as amended by section 103, is further amended by adding at the end the following:

''(f) LOCAL PORT SECURITY COMMITTEES.—

''(1) ESTABLISHMENT.—The Secretary shall establish local port security committees.

''(2) FUNCTIONS.—A local port security committees established under this subsection shall—

''(A) help coordinate planning and other port security activities;

''(B) help make use of, and disseminate the information made available under this section;

''(C) make recommendations concerning initial security evaluations and port vulnerability assessments by identifying the unique characteristics of each port;

''(D) assist in the review of port vulnerability assessments promulgated under this section;

''(E) assist in implementing the guidance promulgated under this section;

''(F) annually review maritime security plans for each local port authority, waterfront facility operator, or operator of a public or commercial structure located within or adjacent to the marine environment; and

''(G) assist the Captain-of-the-Port in conducting a field security exercise at least once every 3 years to verify the effectiveness of one or more maritime security plans for a local port authority, waterfront facility operator, or operator of a public or commercial structure located within or adjacent to the marine environment.

''(3) USE OF EXISTING COMMITTEES.—In establishing these local port security committees, the Secretary may use or augment any existing port or harbor safety committee or port readiness committee, if the membership of the port security committee includes representatives of—

''(A) the port authority or authorities;

''(B) Federal, State and local government;

''(C) Federal, State, and local law enforcement agencies;

''(D) longshore labor organizations or transportation workers;

''(E) local port-related business officials or management organizations;

''(F) shipping companies, vessel owners, terminal owners and operators, truck, rail and pipeline operators, where such are in operation;and

''(G) other persons or organizations whose inclusion is deemed beneficial by the Captain of the Port or the Secretary.

''(4) CHAIR.—Each local port security committee shall be chaired by the Captain-of-the-Port.

''(5) JURISDICTION.—Each port may have a separate port security committee or, at the discretion of the Captain-of-the-Port, a Captain-of-the-Port zone may have a single port security committee covering all ports within that zone.

''(6) QUARTERLY MEETINGS.—The port security committee shall meet at least 4 times each year at the call of the Chairperson.

''(7) FACA NOT APPLICABLE.—The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to a port security committee established under this subsection.

''(8) MATERIAL AND MISSION SUPPORT.—In carrying out responsibilities under this Act, the Secretary may accept contributions of funds, material, services, and the use of personnel and facilities from public and private entities by contract or other arrangement if the confidentiality of security-sensitive information is maintained and access to such information is limited appropriately. The Secretary shall deposit any funds accepted under this section as miscellaneous receipts in the general fund of the United States Treasury.''.

(b) FUNDING.—Of the amounts made available under section 122(b) there may be made available to the Secretary $3,000,000 for each of fiscal years 2003 through 2006 to carry out section 7(f) of the Ports and Waterways Safety Act (33 U.S.C. 1226(f)), such sums to remain available until expended.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $5,000,000 for each of fiscal years 2002 and 2003 to carry out section 7(f) of the Ports and Waterways Safety Act (33 U.S.C. 1226(f)), such sums to remain available until expended.

SEC. 105. MARITIME FACILITY SECURITY PLANS.

Section 7 of the Ports and Waterways Safety Act, (33 U.S.C. 1226), as amended by section 104, is further amended by adding at the end the following:

''(g) MARITIME FACILITY SECURITY PLANS.—

''(1) REGULATIONS TO ESTABLISH REQUIREMENT.—The Secretary, after consultation with the Secretary of the Treasury and the Attorney General, shall issue regulations establishing requirements for submission of a maritime facility security plan, as the Secretary determines necessary, by each port authority, waterfront facility operator, or operator of a public or commercial structure located within or adjacent to the marine environment (as defined in section 2101(15) of title 46, United States Code). The Secretary shall ensure that the local port security committee is consulted in the development of a maritime facility security plan under those regulations.

''(2) PURPOSE; SPECIFICITY; CONTENT.—

''(A) PURPOSE.—A maritime facility security plan shall provide a law enforcement program and capability at the port that is adequate to safeguard the public and to improve the response to threats of crime and terrorism.

''(B) SPECIFICITY.—Notwithstanding other provisions of this Act, the Secretary may impose specific, or different requirements on individual ports, port authorities, marine terminal operators or other entities required to submit a maritime facility security plan under regulations promulgated under this subsection.

''(C) CONTENT.—A maritime facility security plan shall include—

''(i) provisions for establishing and maintaining physical security for port areas and approaches, including establishing, as necessary, controlled access areas and secure perimeters within waterfront facilities and other public or commercial structures located within or adjacent to the marine environment;

''(ii) provisions for establishing and maintaining procedural security for processing passengers, cargo, and crewmembers, and security for employees and service providers;

''(iii) a credentialing requirement to limit access to waterfront facilities and other public or commercial structures located within or adjacent to the marine environment, designed to ensure that only authorized individuals and service providers gain admittance;

''(iv) a credentialing requirement to limit access to controlled areas and security-sensitive information;

''(v) provisions for restricting vehicular access, as necessary, to designated port areas or facilities;

''(vi) provisions for restricting the introduction of firearms and other dangerous weapons, as necessary, to designated port areas or facilities;

''(vii) provisions for the use of appropriately qualified private security officers or qualified State, local, or private law enforcement personnel;

''(viii) procedures for evacuation of people from port areas in the event of a terrorist attack or other emergency;

''(ix) a process for assessment and evaluation of the safety and security of port areas before port operations are resumed after a terrorist attack or other emergency; and

''(x) any other information the Secretary requires.

''(3) INCORPORATION OF EXISTING SECURITY PLANS.—The Secretary may approve a maritime facility security plan, or an amendment to an existing program or plan, that incorporates—

''(A) a security program of a marine terminal operator tenant with access to a secured area of the port, under such conditions as the Secretary deems appropriate; or

''(B) a maritime facility security plan of a port authority that incorporates a State or local security program, policy, or law.

''(4) APPROVAL PROCESS.—

''(A) IN GENERAL.—The Secretary shall review and approve or disapprove each maritime facility security plan submitted under regulations promulgated under this subsection.

''(B) RESUBMISSION OF DISAPPROVED PLANS.—If the Secretary disapproves a maritime facility security plan—

''(i) the Secretary shall notify the plan submitter in writing of the reasons for the disapproval; and

''(ii) the submitter shall submit a revised maritime facility security plan within 180 days after receiving the notification of disapproval.

''(5) PERIODIC REVIEW AND RESUBMISSION.—Whenever appropriate, but no less frequently than once every 5 years, each port authority, marine terminal operator or other entity required to submit a maritime facility security plan under regulations promulgated under this subsection shall review its plan, make necessary or appropriate revisions, and submit the results of its review and revised plan to the Secretary.

''(6) INTERIM SECURITY MEASURES.—The Secretary shall require each port authority, waterfront facility operator, or operator of a public or commercial structure located within or adjacent to the marine environment, to implement any necessary security measures, including the establishment of a secure perimeter and positive access controls, until the maritime facility security plan for that port authority, waterfront facility operator,

or operator of a public or commercial structure located within or adjacent to the marine environment is approved.''.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $3,500,000 for each of fiscal years 2002 through 2006 to carry out section 7(g) of the Ports and Waterways Safety Act (33 U.S.C. 1226(g)), such sums to remain available until expended.

SEC. 106. EMPLOYMENT INVESTIGATIONS AND RESTRICTIONS FOR SECURITY-SENSITIVE POSITIONS.

Section 7 of the Ports and Waterways Safety Act, (33 U.S.C. 1226), as amended by section 105, is further amended by adding at the end the following:

''(h) DESIGNATION OF CONTROLLED ACCESS AREAS; PROTECTION OF SECURITY-SENSITIVE INFORMATION; EMPLOYMENT INVESTIGATIONS AND CRIMINAL HISTORY RECORD CHECKS.—

''(1) ACCESS AREAS; RESTRICTED INFORMATION REGULATIONS.—The Secretary, after consultation with the Secretary of the Treasury and the Attorney General, shall prescribe regulations to—

''(A) require, as necessary, the designation of controlled access areas in the maritime facility security plan for each waterfront facility and other public or commercial structure located within or adjacent to the marine environment; and

''(B) limit access to security-sensitive information, such as passenger and cargo manifests.

''(2) SCREENING; BACKGROUND CHECKS.—In prescribing access limitations under this section, the Secretary may—

''(A) require that persons entering or exiting secure, restricted, or controlled access areas undergo physical screening;

''(B) require appropriate escorts for persons without proper clearances or credentials; and

''(C) require employment investigations and criminal history record checks to ensure that individuals who have unrestricted access to controlled areas or have access to security-sensitive information do not pose a threat to national security or to the safety and security of maritime commerce.

''(3) DISQUALIFICATION FROM NEW OR CONTINUED EMPLOYMENT.—An individual may not be employed in a security-sensitive position at any waterfront facility or other public or commercial structure located within or adjacent to the marine environment if—

''(A) the individual does not meet other criteria established by the Secretary; or

''(B) a background investigation or criminal records check reveals that—

''(i) within the previous 7 years the individual was convicted, or found not guilty by reason of insanity of an offense described in paragraph (4); or

''(ii) within the previous 5 years was released from incarceration for committing an offense described in paragraph (4).

''(4) DISQUALIFYING OFFENSES.—The offenses referred to in paragraph (3)(B) are the following:

''(A) Murder.

''(B) Assault with intent to murder.

''(C) Espionage.

''(D) Sedition.

''(E) Treason.

''(F) Rape.

''(G) Kidnaping.

''(H) Unlawful possession, sale, distribution, importation, or manufacture of an explosive or weapon.

''(I) Extortion.

''(J) Armed or felony unarmed robbery.

''(K) Importation, manufacture, or distribution of, or intent to distribute, a controlled substance.

''(L) A felony involving a threat.

''(M) A felony involving willful destruction of property.

''(N) Smuggling.

''(O) Theft of property in the custody of the United States Customs Service.

''(P) Attempt to commit, or conspiracy to commit any of the offenses referred to in subparagraphs (A) through (O).

''(5) ALTERNATIVE ARRANGEMENTS.—Notwithstanding paragraph (1), an individual may be employed in a security-sensitive position although that individual would otherwise be disqualified from such employment if the employer establishes alternate security arrangements acceptable to the Secretary.

''(6) APPEALS PROCESS.—The Secretary shall establish an appeals process under this section for individuals found to be ineligible for employment under paragraph (3) that includes notice and an opportunity for a hearing.

''(7) ACCESS TO DATABASES.—Notwithstanding any other provision of law to the contrary, but subject to existing or new procedural safeguards imposed by the Attorney General, the Secretary is authorized to access the Federal Bureau of Investigation's Integrated Automatic Fingerprinting Identification System, the Fingerprint Identification Record System, the Interstate Identification Index, the National Crime Identification System, and the Integrated Entry and Exit Data System for the purpose of conducting or verifying the results of any background investigation or criminal records check required by this subsection.

''(8) RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.—

''(A) SECRETARY MAY GIVE RESULTS OF INVESTIGATION TO EMPLOYERS.—The Secretary may transmit the results of a background check or criminal records check to a port authority, marine terminal operator, or other entity the Secretary determines necessary for carrying out the requirements of this subsection.

''(B) FOIA NOT TO APPLY.—Information obtained by the Secretary under this subsection may not be made available to the public under section 552 of title 5, United States Code.

''(C) CONFIDENTIALITY.—Except to the extent necessary to carry out this subsection, any information other than criminal acts or offenses constituting grounds for ineligibility for employment under paragraph (3) shall be maintained confidentially by the Secretary and may be used only for making determinations under this section.

''(9) EFFECTIVENESS AUDITS.—The Secretary shall provide for the periodic audit of the effectiveness of employment investigations and criminal history record checks required by this subsection.

''(10) USER FEES.—

''(A) IN GENERAL.—The Secretary and the Attorney General shall establish and collect reasonable fees to pay expenses incurred by the Federal government in carrying out any investigation, criminal history record check, fingerprinting, or identification verification services provided for under this subsection.

''(B) DEPOSIT OF AMOUNT RECEIVED.—Amounts received by the Attorney General or Secretary under this section shall be credited to the account in the Treasury from which the expenses were incurred as offsetting collections and shall be available to the Attorney General and the Secretary upon the approval of Congress.

''(11) SUBSECTION NOT IN DEROGATION OF OTHER AUTHORITY.—Nothing in this subsection restricts any agency, instrumentality, or department of the United States from exercising, or limits its authority to exercise, any other statutory or regulatory authority to initiate or enforce port security standards.''.

SEC. 107. MARITIME DOMAIN AWARENESS.

(a) IN GENERAL.—The Secretary shall conduct a study on ways to enhance maritime domain awareness through improved collection and coordination of maritime intelligence and submit a report on the findings of that study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(b) SPECIFIC MATTERS TO BE ADDRESSED.—In the study, the Secretary shall—

(1) identify actions and resources necessary for multi-agency cooperative efforts to improve the maritime security of the United States;

(2) specifically address measures necessary to ensure the effective collection, dissemination, and interpretation of maritime intelligence and data, information resource management and database requirements, architectural measures for cross-agency integration, data sharing, correlation and safeguarding of data, and cooperative analysis to identify and effectively respond to threats to maritime security;

(3) estimate the potential costs of establishing and operating such a new or linked database and provides recommendations on what agencies should contribute to the cost of its operation;

(4) evaluate the feasibility of establishing a joint interagency task force on maritime intelligence;

(5) estimate of potential costs and benefits of utilizing commercial supercomputing platforms and data bases to enhance information collection and analysis capabilities across multiple Federal agencies; and

(6) provide a suggested time frame for the development of such a system or database.

(c) PARTICIPATION OF OTHER AGENCIES.—The Secretary shall consult with the Director of Central Intelligence, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Energy, the Director of the Federal Emergency Management Agency, and the heads of other departments and agencies as necessary and invite their participation in the preparation of the study and report required by subsection (a).

(d) DEADLINE.—The Secretary shall submit the report required by subsection (a) within 180 days after the date of enactment of this Act.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $500,000 in fiscal year 2002 to carry out this section.

SEC. 108. INTERNATIONAL PORT SECURITY.

(a) IN GENERAL.—Part A of subtitle II of title 46, United States Code, is amended by adding at the end the following:

''CHAPTER 25. INTERNATIONAL PORT SECURITY.

''§ 2501. Assessment

''(a) IN GENERAL.—At intervals the Secretary of Transportation considers necessary, the Secretary shall assess the effectiveness of the security measures maintained at—

''(1) a foreign port—

''(A) served by vessels of the United States;

''(B) from which foreign vessels serve the United States; or

''(C) that poses a high risk of introducing danger to United States ports and waterways, United States citizens, vessels of the United States or any other United States interests; and

''(2) any other foreign port the Secretary considers appropriate.

''(b) PROCEDURES AND STANDARDS.—The Secretary shall conduct an assessment under subsection (a) of this section—

''(1) in consultation with appropriate authorities of the government of the foreign country concerned and operators of vessels of the United States serving the foreign port for which the Secretary is conducting the assessment;

''(2) to establish the extent to which a foreign port effectively maintains and carries out internationally recognized security measures; and

''(3) by using a standard based on the standards for port security and recommended practices of the International Maritime Organization and other appropriate international organizations.

''(c) CONSULTATION.—In carrying out this section, the Secretary shall consult with—

''(1) the Secretary of State—

''(A) on the terrorist or relevant criminal threat that exists in each country involved; and

''(B) identify foreign ports that—

''(i) are not under the de facto control of the government of the foreign country in which they are located; and

''(ii) pose a high risk of introducing danger to international maritime commerce; and

''(2) the Secretary of the Treasury and coordinate any such assessment with the United States Customs Service.

''§ 2502. Notifying foreign authorities

''(a) DISSEMINATION OF INFORMATION ABOUT THE PROGRAM.—The Secretary shall work with the Secretary of State to facilitate the dissemination of port security program information to port authorities and marine terminal operators in other countries.

''(b) SPECIFIC NOTIFICATIONS.—If the Secretary of Transportation, after conducting an assessment under section 2501, finds that a port does not maintain and carry out effective security measures, the Secretary, through the Secretary of State, shall notify the appropriate authorities of the government of the foreign country of the finding and recommend the steps necessary to bring the security measures in use at the port up to the standard used by the Secretary of Transportation in making the assessment.

''§ 2503. Actions when ports not maintaining and carrying out effective security measures

''(a) IN GENERAL.—If the Secretary of Transportation finds that a port does not maintain and carry out effective security measures—

''(1) the Secretary shall—

''(A) in consultation with the Secretaries of State, Treasury, Agriculture, and the Attorney General, develop measures to protect the safety and security of United States ports from risks related to vessels arriving from a foreign port that does not maintain an acceptable level of security;

''(B) publish the identity of the port in the Federal Register;

''(C) have the identity of the port posted and displayed prominently at all United States ports at which scheduled passenger carriage is provided regularly to that port; and

''(D) require each United States and foreign vessel providing transportation between the United States and the port to provide written notice of the decision, on or with the ticket, to each passenger buying a ticket for transportation between the United States and the port;

''(2) the Secretary may, after consultation with the Secretaries of State and of the Treasury, prescribe conditions of port entry into the United States for any vessel arriving from a port determined under this subsection to maintain ineffective security measures, or any vessel carrying cargo originating from or transshipped through such a port, including refusing entry, inspection, or any other condition as the Secretary determines may be necessary to ensure the safety of United States ports and waterways; and

''(3) the Secretary may prohibit a United States or foreign vessel from providing transportation between the United States and any other foreign port that is served by vessels navigating to or from a port found not to maintain and carry out effective security measures.

''(b) EFFECTIVE DATE FOR SANCTIONS.—Any action taken by the Secretary under subsection (a) for a particular port shall take effect—

''(1) 90 days after the government of the foreign country with jurisdiction or control of that port is notified under section 2502 unless the Secretary finds that the government has brought the security measures at the port up to the standard the Secretary used in making an assessment under section 2501 before the end of that 90-day period; or

''(2) immediately upon the determination of the Secretary under subsection (a) if the Secretary finds, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, vessels, or crew traveling to or from the port.

''(c) STATE DEPARTMENT TO BE NOTIFIED.—The Secretary immediately shall notify the Secretary of State of a finding that a port does not maintain and carry out effective security measures so that the Secretary of State may issue a travel advisory.

''(d) CONGRESSIONAL NOTIFICATION REQUIRED.—The Secretary promptly shall submit to Congress a report (and classified annex if necessary) identifying any port that the Secretary finds does not maintain and carry out effective security measures and describe any action taken under this section with regard to that port.

''(e) ACTION CANCELED.—An action required under this section is no longer required if the Secretary, in consultation with the Secretary of State, decides that effective security measures are maintained and carried out at the port. The Secretary shall notify Congress when the action is no longer required.

''§ 2504. Travel advisories concerning security at foreign ports

''(a) IN GENERAL.—Upon being notified by the Secretary of Transportation that the Secretary has determined that a condition exists that threatens the safety or security of passengers, passenger vessels, or crew traveling to or from a foreign port which the Secretary has determined under this chapter to be a port which does not maintain and administer effective security measures, the Secretary of State shall immediately issue a travel advisory with respect to the port. The Secretary of State shall take the necessary steps to publicize the travel advisory widely.

''(b) WHEN TRAVEL ADVISORY MAY BE CANCELED.—The travel advisory required to be issued under subsection (a) of this section may be lifted only if the Secretary of Transportation, in consultation with the Secretary of State, has determined that effective security measures are maintained and administered at the port with respect to which the Secretary of Transportation had made the determination.

''(c) CONGRESSIONAL NOTIFICATION.—The Secretary of State shall immediately notify Congress of any change in the status of a travel advisory imposed pursuant to this section.

''§ 2505. Suspensions

''(a) IN GENERAL.—The President, without prior notice or a hearing, shall suspend the right of any vessel of the United States, and the right of a person to trade with the United States, to provide foreign sea transportation, and the right of a person to operate vessels in foreign sea commerce, to or from a foreign port, if the President finds that—

''(1) a condition exists that threatens the safety or security of passengers, vessels, or crew traveling to or from that port; and

''(2) the public interest requires an immediate suspension of trade between the United States and that port.

''(b) DENIAL OF ENTRY.—If a person operates a vessel in violation of this section, the President may deny the vessels of that person entry to United States ports.

''(c) PENALTY FOR VIOLATION.—A person violating this section is liable to the United States Government for a civil penalty of not more than $50,000. Each day a vessel utilizes a prohibited port shall be a separate violation of this section.

''§ 2506. Acceptance of contributions; joint venture arrangements

''In carrying out responsibilities under this chapter, the Secretary may accept contributions of funds, material, services, and the use of personnel and facilities from public and private entities by contract or other arrangement if the confidentiality of security-sensitive information is maintained and access to such information is limited appropriately. The Secretary shall deposit any funds accepted under this section as miscellaneous receipts in the general fund of the United States Treasury.''.

(b) CONFORMING AMENDMENT.—The table of chapters at the beginning of subtitle II of title 46, United States Code, is amended by inserting the following new item in part A after the item for chapter 23:

''25. International Port Security .....2501''.

(c) REPEALS.—Sections 902, 905, 907, 908, 909, 910, 911, 912, and 913 of the International Maritime and Port Security Act (46 U.S.C. App. 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, and 1809), are repealed.

(d) FOREIGN-FLAG VESSELS.—Within 6 months after the date of enactment of this Act and every year thereafter, the Secretary, in consultation with the Secretary of State, shall provide a report to the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate, and the Committees on Transportation and Infrastructure and International Relations of the House of Representatives that lists the following information:

(1) A list of all nations whose flag vessels have entered United States ports in the previous year.

(2) Of the nations on that list, a separate list of those nations—

(A) whose registered flag vessels appear as Priority III or higher on the Boarding Priority Matrix maintained by the Coast Guard;

(B) that have presented, or whose flag vessels have presented, false, intentionally incomplete, or fraudulent information to the United States concerning passenger or cargo manifests, crew identity or qualifications, or registration or classification of their flag vessels;

(C) whose vessel registration or classification procedures have been found by the Secretary to be noncompliant with international classifications or do not exercise

adequate control over safety and security concerns; or

(D) whose laws or regulations are not sufficient to allow tracking of ownership and registration histories of registered flag vessels.

(3) Actions taken by the United States, whether through domestic action or international negotiation, including agreements at the International Maritime Organization under section 902 of the International Maritime and Port Security Act (46 U.S.C. App. 1801), to improve transparency and security of vessel registration procedures in nations on the list under paragraph (2).

(4) Recommendations for legislative or other actions needed to improve security of United States ports against potential threats posed by flag vessels of nations named in paragraph (2).

SEC. 109. COUNTER-TERRORISM AND INCIDENT CONTINGENCY PLANS.

(a) IN GENERAL.—The Secretary, in coordination with the Director of the Federal Bureau of Investigation, shall ensure that all area maritime counter-terrorism and incident contingency plans are reviewed, revised, and updated no less frequently than once every 3 years.

(b) LOCAL PORT SECURITY COMMITTEES.—The Secretary shall ensure that port security committees established under section 7(f) of the Ports and Maritime Safety Act (33 U.S.C. 2116(f)) are involved in the review, revision, and updating of the plans.

(c) SIMULATION EXERCISES.—The Secretary shall ensure that—

(1) simulation exercises are conducted annually for all such plans; and

(2) actual practice drills and exercises are conducted at least once every 3 years.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $1,000,000 for each of fiscal years 2002 through 2006 to carry out this section, such sums to remain available until expended.

SEC. 110. MARITIME SECURITY PROFESSIONAL TRAINING.

(a) IN GENERAL.—

(1) DEVELOPMENT OF STANDARDS.—Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall develop standards and curriculum to allow for the training and certification of maritime security professionals. In developing these standards and curriculum, the Secretary shall consult with the National Maritime Security Advisory Committee established under section 7(d) of the Ports and Maritime Safety Act (33 U.S.C. 2116(d)).

(2) SECRETARY TO CONSULT ON STANDARDS.—In developing standards under this section, the Secretary may, without regard to the Federal Advisory Committee Act (5 U.S.C. App.), consult with the Federal Law Enforcement Training Center, the United States Merchant Marine Academy's Global Maritime and Transportation School, the Maritime Security Council, the International Association of Airport and Port Police, the National Cargo Security Council, and any other Federal, State, or local government or law enforcement agency or private organization or individual determined by the Secretary to have pertinent expertise.

(b) MINIMUM STANDARDS.—The standards established by the Secretary under subsection (a) shall include the following elements:

(1) The training and certification of maritime security professionals in accordance with accepted law enforcement and security guidelines, policies, and procedures, including, as appropriate, recommendations for incorporating a background check process for personnel trained and certified in foreign ports.

(2) The training of students and instructors in all aspects of prevention, detection, investigation, and reporting of criminal activities in the international maritime environment.

(3) The provision of off-site training and certification courses and certified personnel at United States and foreign ports used by United States-flagged vessels, or by foreign-flagged vessels with United States citizens as passengers or crewmembers, to develop and enhance security awareness and practices.

(c) TRAINING PROVIDED TO LAW ENFORCEMENT AND SECURITY PERSONNEL.—The Secretary is authorized to make the training opportunities provided under this section available to any Federal, State, local, and private law enforcement or maritime security personnel in the United States or in foreign ports used by United States-flagged vessels with United States citizens as passengers or crewmembers.

(d) USE OF CONTRACT RESOURCES.—The Secretary shall employ existing Federal and contract resources to train and certify maritime security professionals in accordance with the standards and curriculum developed under this Act.

(e) ANNUAL REPORT.—The Secretary shall transmit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the expenditure of appropriated funds and the training under this section.

(f) FUNDING.—Of the amounts made available under section 122(b), there may be made available to the Secretary to carry out this section—

(1) $2,500,000 for each of fiscal years 2003 and 2004, and

(2) $3,000,000 for each of fiscal years 2005 and 2006,

such sums to remain available until expended.

(g) AUTHORIZATION OF APPROPRIATIONS—There are authorized to be appropriated to the Secretary to carry out this section—

(1) $5,500,000 for fiscal year 2002;

(2) $3,000,000 for each of fiscal years 2003 and 2004; and

(3) $2,500,000 for each of fiscal years 2005 and 2006.

SEC. 111. PORT SECURITY INFRASTRUCTURE IMPROVEMENT.

(a) IN GENERAL.—The Merchant Marine Act, 1936 (46 U.S.C. App. 1101 et seq.) is amended by adding at the end the following:

"TITLE XIV—PORT SECURITY INFRASTRUCTURE IMPROVEMENT

"SEC. 1401. LOAN GUARANTEES FOR PORT SECURITY INFRASTRUCTURE IMPROVEMENTS.

''(a) IN GENERAL.—The Secretary of Transportation, subject to the terms the Secretary shall prescribe and after consultation with the United States Coast Guard, the United States Customs Service, and the National Maritime Security Advisory Committee established under section 102 of the Port and Maritime Security Act of 2001, may guarantee or make a commitment to guarantee the payment of the principal of, and the interest on, an obligation for port security infrastructure improvements for an eligible project at any United States port.

''(b) LIMITATIONS.—Guarantees or commitments to guarantee under this section are subject to the extent applicable to all the laws, requirements, regulations, and procedures that apply to guarantees or commitments to guarantee made under title XI, except that—

''(1) guarantees or commitments to guarantee made under this section are eligible for not more than 87.5 percent of the actual cost of the security infrastructure improvement;

''(2) notwithstanding section 1104A(d), determination of economic soundness for a security infrastructure project shall be based upon the economic soundness of the applicant and not the project;

''(3) guarantees or commitments to guarantee may be made under this section to persons who are not citizens of the United States as defined in section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

''(c) TRANSFER OF FUNDS.—The Secretary may accept the transfer of funds from any other department, agency, or instrumentality of the United States Government and may use those funds to cover the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 61a)) of making guarantees or commitments to guarantee loans entered into under this section.

''(d) ELIGIBLE PROJECTS.—A project is eligible for a loan guarantee or commitment under subsection (a) if it is for the construction or acquisition of new security infrastructure that is—

''(1) equipment or facilities to be used for port security monitoring and recording;

''(2) security gates and fencing;

''(3) security-related lighting systems;

''(4) remote surveillance systems;

''(5) concealed video systems; or

''(6) other security infrastructure or equipment that contributes to the overall security of passengers, cargo, or crewmembers.

"SEC. 1402. GRANTS.

''(a) FINANCIAL ASSISTANCE.—The Secretary may provide financial assistance for eligible projects (within the meaning of section 1401(d).

''(b) MATCHING REQUIREMENTS.—

''(1) 75-PERCENT FEDERAL FUNDING.—Except as provided in paragraph (2), Federal funds for any eligible project under this section shall not exceed 75 percent of the total cost of such project.

''(2) EXCEPTIONS.—

''(A) SMALL PROJECTS.—There are no matching requirements for grants under subsection (a) for projects costing not more than $25,000.

''(B) HIGHER LEVEL OF SUPPORT REQUIRED.—If the Secretary determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, then the Secretary may approve grants under this section with a matching requirement other than that specified in paragraph (1).

''(c) ALLOCATION.—The Secretary shall ensure that financial assistance provided under subsection (a) during a fiscal year is distributed so that funds are awarded for eligible projects that address emerging priorities or threats identified by the National Maritime Security Advisory Committee established under section 7(d) of the Ports and Waterways Safety Act (33 U.S.C. 1226(d)).

''(d) PROJECT PROPOSALS.—Each proposal for a grant under this section shall include the following:

''(1) The name of the individual or entity responsible for conducting the project.

''(2) A comprehensive description of the need for the project, and a statement of the project's relationship to the security plan.

''(3) A description of the qualifications of the individuals who will conduct the project.

''(4) An estimate of the funds and time required to complete the project.

''(5) Evidence of support of the project by appropriate representatives of States or territories of the United States or other government jurisdictions in which the project will be conducted.

''(6) Information regarding the source and amount of matching funding available to the applicant, as appropriate.

''(7) Any other information the Secretary considers to be necessary for evaluating the

eligibility of the project for funding under this title.

"SEC. 1403. ALLOCATION OF RESOURCES.

''In carrying out this title, the Secretary may ensure that not less than $2,000,000 in loans and loan guarantees under section 1401, and not less than $6,000,000 in grants under section 1402, are made available for eligible projects (as defined in section 1401(d)) located in any State to which reference is made by name in section 607 of this Act during each of the fiscal years 2002 through 2006.''.

(b) ANNUAL ACCOUNTING.—The Secretary of Transportation shall submit an annual summary of loan guarantees and commitments to make loan guarantees under section 1401 of the Merchant Marine Act, 1936, and grants made under section 1402 of that Act, to the Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure and the Advisory Committee through appropriate media of communication, including the Internet.

(c) FUNDING.—Of amounts made available under section 122(b), there may be made available to the Secretary of Transportation—

(1) $9,000,000 for each of the fiscal years 2003, 2004, 2005, and 2006 as guaranteed loan costs (as defined in section 502(5) of the Federal Credit Reform Act of 1990; 2 U.S.C. 661a(5)) under section 1401 of the Merchant Marine Act, 1936,

(2) $10,000,000 for each of such fiscal years for grants under section 1402 of the Merchant Marine Act, 1936, and

(3) $1,000,000 for each such fiscal year to cover administrative expenses related to loan guarantees under section 1401 of the Merchant Marine Act, 1936, and grants under section 1402 of that Act,

such amounts to remain available until expended.

(d) ADDITIONAL APPROPRIATIONS AUTHORIZED.—In addition to the amounts made available under subsection (c)(2), there are authorized to be appropriated to the Secretary of Transportation—

(1) $26,000,000 for each of fiscal years 2002 through 2006 to the Secretary as guaranteed loan costs (as defined in section 502(5) of the Federal Credit Reform Act of 1990; 2 U.S.C. 661a(5)) under section 1401 of the Merchant Marine Act, 1936;

(2) $70,000,000 for each of fiscal years 2002 through 2006 to the Secretary for grants under section 1402 of the Merchant Marine Act, 1936; and

(3) $4,000,000 for each of fiscal years 2002 through 2006 to the Secretary to cover administrative expenses related to loan guarantees and grants under paragraphs (8) and (9),

such sums to remain available until expended.

SEC. 112. SCREENING AND DETECTION EQUIPMENT.

(a) FUNDING.—Of amounts made available under section 122(b), there may be made available to the Commissioner of Customs for the purchase of nonintrusive screening and detection equipment for use at United States ports—

(1) $15,000,000 for fiscal year 2003,

(2) $16,000,000 for fiscal year 2004,

(3) $18,000,000 for fiscal year 2005, and

(4) $19,000,000 for fiscal year 2006,

such sums to remain available until expended.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commissioner $20,000,000 for each of fiscal years 2002 through 2006 to the Commissioner of Customs for the purchase of non-intrusive screening and detection equipment for use at United States ports, such sums to remain available until expended.

(c) FUNDING FOR FISCAL YEAR 2002.—There are authorized to be appropriated $145,000,000 for the United States Customs Service for fiscal year 2002 for 1,200 new customs inspector positions, 300 new customs agent positions, and other necessary port security positions, and for purchase and support of equipment (including camera systems for docks and vehicle-mounted computers), canine enforcement for port security, and to update computer systems to help improve customs reporting procedures.

SEC. 113. REVISION OF PORT SECURITY PLANNING GUIDE.

The Secretary of Transportation, acting through the Maritime Administration and after consultation with the Advisory Committee and the United States Coast Guard, shall publish a revised version of the document entitled ''Port Security: A National Planning Guide'', incorporating the requirements promulgated under section 7(g) of the Ports and Waterways Security Act (33 U.S.C. 2116(g)), within 3 years after the date of enactment of this Act, and make that revised document available on the Internet.

SEC. 114. SHARED DOCKSIDE INSPECTION FACILITIES.

(a) IN GENERAL.—The Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Transportation, the Attorney General, and the Administrator of the General Services Administration shall work with each other, the Advisory Committee, and the States to establish shared dockside inspection facilities at United States ports for Federal and State agencies.

(b) FUNDING.—Of the amounts made available under section 122(b), there may be made available to the Secretary of the Transportation, $1,000,000 for each of fiscal years 2003, 2004, 2005, and 2006, such sums to remain available until expended, to establish shared dockside inspection facilities at United States ports in consultation with the Secretary of the Treasury, the Secretary of Agriculture, and the Attorney General.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $1,000,000 for fiscal year 2002 to establish shared dockside inspection facilities at United States ports in consultation with the Secretary of the Treasury, the Secretary of Agriculture, and the Attorney General.

SEC. 115. MANDATORY ADVANCED ELECTRONIC INFORMATION FOR CARGO AND PASSENGERS AND OTHER IMPROVED CUSTOMS REPORTING PROCEDURES.

(a) CARGO INFORMATION.—

(1) IN GENERAL.—Section 431(b) of the Tariff Act of 1930 (19 U.S.C. 1431(b)) is amended—

(A) by striking ''Any manifest'' and inserting ''(1) Any manifest''; and

(B) by adding at the end the following new paragraph:

''(2)(A) In addition to any other requirement under this section, for every land, air, or vessel carrier required to make entry or obtain clearance under the customs laws of the United States, the pilot, master, operator, or owner of such carrier (or the authorized agent of such owner or operator) shall provide by electronic transmission cargo manifest information described in subparagraph (B) in advance of such entry or clearance in such manner, time, and form as the Secretary shall prescribe. The Secretary may exclude any class of land, aircraft, or vessel for which he concludes the requirements of this subparagraph are not necessary.

''(B) The information described in this subparagraph is as follows:

''(i) The port of arrival or departure, whichever is applicable.

''(ii) The carrier code, prefix code, or both.

''(iii) The flight, voyage, or trip number.

''(iv) The date of scheduled arrival or date of scheduled departure, as the case may be.

''(v) The request for permit to proceed to the destination, if applicable.

''(vi) The numbers and quantities from the carrier's master air waybill, bills of lading, or ocean bills of lading.

''(vii) The first port of lading of the cargo.

''(viii) A description and weight of the cargo or, for a sealed container, the shipper's declared description and weight of the cargo.

''(ix) The shippers name and address from all air waybills and bills of lading.

''(x) The consignee's name and address from all air waybills and bills of lading.

''(xi) Notice that actual boarded quantities are not equal to air waybill or bills of lading quantities, except that a carrier is not required by this clause to verify boarded quantities of cargo in sealed containers.

''(xii) Transfer or transit information for the cargo while it has been under the control of the carrier.

''(xiii) Warehouse or other location of the cargo while it has been under the control of the carrier.

''(xiv) Any additional information that the Secretary by regulation determines is reasonably necessary to ensure aviation, maritime, and surface transportation safety pursuant to those laws enforced and administered by the Customs Service.

''(3) The Secretary by regulation shall require nonvessel operating common carriers to meet the requirements of subparagraphs (A) and (B).''.

(2) CONFORMING AMENDMENTS.—Subparagraphs (A) and (C) of section 431(d)(1) of such Act are each amended by inserting ''or subsection (b)(2)'' before the semicolon.

(b) DOCUMENTATION OF CARGO.—Part II of title IV of the Tariff Act of 1930 is amended by inserting after section 431 the following new section:

"SEC. 431A. DOCUMENTATION OF WATERBORNE CARGO.

''(a) APPLICABILITY.—This section shall apply to all cargo to be exported moving by a vessel common carrier from a port in the United States.

''(b) DOCUMENTATION REQUIRED.—(1) No shipper of cargo subject to this section (including an ocean transportation intermediary that is a nonvessel-operating common carrier (as defined in section 3(17)(B) of the Shipping Act of 1984 (46 U.S.C. App. 1702(17)(B)) may tender or cause to be tendered to a vessel common carrier cargo subject to this section for loading on a vessel in a United States port, unless such cargo is properly documented pursuant to this subsection.

''(2) For the purposes of this subsection, cargo shall be considered properly documented if the shipper submits to the vessel common carrier or its agent a complete set of shipping documents no later than 24 hours after the cargo is delivered to the marine terminal operator.

''(3) A complete set of shipping documents shall include—

''(A) for shipments for which a shipper's export declaration is required a copy of the export declaration or, if the shipper files such declarations electronically in the Automated Export system, the complete bill of lading, and the master or equivalent shipping instructions including the shipper's Automated Export System instructions; or

''(B) for those shipments for which a shipper's export declaration is not required, such other documents or information as the Secretary may by regulation prescribe.

''(4) The Secretary shall by regulation prescribe the time, manner, and form by which

shippers shall transmit documents or information required under this subsection to the Customs Service.

''(c) LOADING UNDOCUMENTED CARGO PROHIBITED.—

''(1) No marine terminal operator (as defined in section 3(14) of the Shipping Act of 1984 (46 U.S.C. App. 1702(14))) may load, or cause to be loaded, any cargo subject to this section on a vessel unless instructed by the vessel common carrier operating the vessel that such cargo has been properly documented in accordance with this section.

''(2) When cargo is booked by one vessel common carrier to be transported on the vessel of another vessel common carrier, the booking carrier shall notify the operator of the vessel that the cargo has been properly documented in accordance with this section. The operator of the vessel may rely on such notification in releasing the cargo for loading aboard the vessel.

''(d) REPORTING OF UNDOCUMENTED CARGO.—A vessel common carrier shall notify the United States Customs Service of any cargo tendered to such carrier that is not properly documented pursuant to this section and that has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal, and the location of the cargo in the marine terminal. For vessel common carriers that are members of vessel sharing agreements (or any other arrangement whereby a carrier moves cargo on another carrier's vessel), the vessel common carrier accepting the booking shall be responsible for reporting undocumented cargo, without regard to whether it operates the vessel on which the transportation is to be made.

''(e) ASSESSMENT OF PENALTIES.—Whoever violates subsection (b) of this section shall be liable to the United States for civil penalties in a monetary amount up to the value of the cargo, or the actual cost of the transportation, whichever is greater.

''(f) SEIZURE OF UNDOCUMENTED CARGO.—

''(1) Any cargo that is not properly documented pursuant to this section and has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal operator shall be subject to search, seizure, and forfeiture.

''(2) The shipper of any such cargo is liable to the marine terminal operator and to the ocean carrier for demurrage and other applicable charges for any undocumented cargo which has been notified to or searched or seized by the Customs Service for the entire period the cargo remains under the order and direction of the Customs Service. The marine terminal operator and the ocean carrier shall have a lien on the cargo for the amount of the demurrage and other charges.

''(g) EFFECT ON OTHER PROVISIONS.—Nothing in this section shall be construed, interpreted, or applied to relieve or excuse any party from compliance with any obligation or requirement arising under any other law, regulation, or order with regard to the documentation or carriage of cargo.''.

(c) PASSENGER INFORMATION.—Part II of title IV of the Tariff Act of 1930, as amended by subsection (b), is further amended by inserting after section 431A the following new section:

''SEC. 431B. PASSENGER AND CREW MANIFEST INFORMATION REQUIRED FOR CARRIERS.

''(a) IN GENERAL.—For each person arriving or departing on an air or land carrier or vessel required to make entry or obtain clearance under the customs laws of the United States, the pilot, master, operator, or owner of such carrier (or the authorized agent of such owner or operator) shall provide by electronic transmission manifest information described in subsection (b) in advance of such entry or clearance in such manner, time, and form as the Secretary shall prescribe.

''(b) INFORMATION DESCRIBED.—The information described in this subsection shall include for each person:

''(1) Full name.

''(2) Date of birth and citizenship.

''(3) Gender.

''(4) Passport number and country of issuance.

''(5) United States visa number or resident alien card number, as applicable.

''(6) Passenger name record.

''(7) Such additional information that the Secretary, by regulation, determines is reasonably necessary to ensure aviation and maritime safety pursuant to the laws enforced or administered by the Customs Service.''.

(d) DEFINITION.—Section 401 of the Tariff Act of 1930 is amended by adding at the end the following new subsections:

''(t) LAND AIR AND VESSEL CARRIER.—The terms 'land carrier', 'air carrier', and 'vessel carrier' mean a carrier that transports by land, air, or water, respectively, goods or passengers for payment or other consideration, including money or services rendered.

''(u) VESSEL COMMON CARRIER.—The term 'vessel common carrier' has the meaning given the term 'ocean common carrier' in section 3(16) of the Shipping Act of 1984 (46 U.S.C. App. 1702(16)) and the term 'common carrier by water in interstate commerce' as defined in section 1 of the Shipping Act, 1916 (46 U.S.C. App. 801).''.

(e) OTHER REQUIREMENTS FOR IMPROVED REPORTING PROCEDURES.—In addition to the promulgation of manifesting information, the United States Customs Service shall improve reporting of goods arriving at United States ports—

(1) by promulgating regulations to require, notwithstanding sections 552 and 553 of the Tariff Act of 1930 (19 U.S.C. 1552 and 1553), at such times as Customs may require prior to the arrival of an in-bond movement of goods at the initial port of unlading, that—

(A) information shall be filed electronically identifying the consignor, consignee, country of origin, and the Harmonized Tariff Schedule of the United States 6-digit classification of the goods; and

(B) such information shall be to the best of the filer's knowledge, and shall not be considered the entry for the goods under section 484 of that Act (19 U.S.C. 1484) or subject to section 592 or 595a of that Act (19 U.S.C. 1592 or 1595a); and

(2) by distributing the information reported under the regulations promulgated under paragraph (1) or section 431(b)(2), 431A, or 431B of the Tariff Act of 1930 on a real-time basis to any Federal, State, or local government agency that has a regulatory or law-enforcement interest in the goods.

(f) EFFECTIVE DATE.—The amendments made by subsections (a) through (d) of this section shall take effect 45 days after the date of enactment of this Act.

(g) PILOT PROGRAM FOR PRE-CLEARING INBOUND SHIPMENTS OF WATERBORNE CARGO.—

(1) IN GENERAL.—If the Commissioner of Customs determines that information from a pilot program for inspecting, monitoring, tracking, and pre-clearing inbound shipments of waterborne cargo would improve the security and safety of ports, the Commissioner may develop and implement such a pilot program.

(2) PROGRAM CHARACTERISTICS.—

(A) IN GENERAL.—Any such pilot program shall—

(i) take into account, and may be organized on the basis of, prearrival information that commercial vessels entering the territorial waters of the United States or destined for United States ports are required to transmit under section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) and the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.); and

(ii) be designed to meet the requirements of United States customs laws and other laws regulating the importation of goods into the United States and to accommodate mechanisms for the collection of applicable duties upon entry or removal from warehouse of such goods.

(B) CUSTOMS CLEARANCE WAIVER.—The Commissioner may grant a waiver of any United States Customs Service post-arrival clearance requirement for goods inspected, monitored for security and integrity in transit, tracked, and pre-cleared under any such pilot program.

(3) CONSULTATION WITH OTHER INTERESTED AGENCIES.—In developing and implementing a pilot program under paragraph (1) the Commissioner of Customs shall consult with representatives of other Federal agencies with responsibilities related to the entry of commercial goods into the United States to ensure that those agencies' missions are not compromised by the pre-clearance.

(4) PILOT PROGRAM TO BE TESTED AT MULTIPLE PORTS.—Any such pilot program developed and implemented by the Commissioner may be conducted at several different ports in a manner that permits analysis and evaluation of different technologies and takes into account different kinds of goods and ports with different harbor, infrastructure, climatic, geographical, and other characteristics.

(5) REPORT TO THE CONGRESS.—Within a year after a pilot program is implemented under paragraph (1), the Commissioner of Customs shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that—

(A) evaluates the pilot program and its components;

(B) states the Commissioner's view as to whether any procedure, system, or technology evaluated as part of the program offers a higher level of security than requiring imported goods to clear customs under existing procedures;

(C) states the Commissioner's view as to the integrity of the procedures, technology, or systems evaluated as part of the pilot program;

(D) makes a recommendation with respect to whether the pilot program, or any procedure, system, or technology should be incorporated in a nationwide system for preclearance of imports of waterborne goods;

(E) describes the impact of the pilot program on staffing levels at the Customs Service and the potential effect full implementation of the program on a nationwide basis would have on Customs Service staffing level; and

(F) states the Commissioner's views as to whether there is a method by which the United States could validate foreign ports so that cargo from those ports is pre-approved for United States Custom Service purposes on arrival at United States ports.

SEC. 116. PRE-ARRIVAL MESSAGES FROM VESSELS DESTINED TO UNITED STATES PORTS.

The Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.) is amended—

(1) by striking ''environment'' in section 2(a) (33 U.S.C. 1221(a)) and inserting ''environment, and the safety and security of United States ports and waterways,'';

(2) by striking paragraph (5) of section 4(a) (33 U.S.C. 1223(a)) and inserting the following:

''(5) require—

''(A) the receipt of pre-arrival messages from any vessel destined for a port or place subject to the jurisdiction of the United States;

''(B) the message to include any information the Secretary determines to be necessary for the control of the vessel and the safety and security of the port, waterways, facilities, vessels, and marine environment; and

''(C) the message to be transmitted in electronic form, or otherwise as determined by the Secretary, in sufficient time to permit review before the vessel's entry into port, and deny port entry to any vessel that fails to comply with the requirements of this paragraph.'';

(3) by striking ''environment'' in section 5(a) (33 U.S.C. 1224(a)) and inserting ''environment, and the safety and security of United States ports and waterways,''; and

(4) by adding at the end of section 5 (33 U.S.C. 1224) the following:

''Nothing in this section interferes with the Secretary's authority to require information under section 4(a)(5) before a vessel's arrival in a port or place subject to the jurisdiction of the United States.''.

SEC. 117. MARITIME SAFETY AND SECURITY TEAMS.

(a) IN GENERAL.—To enhance the domestic maritime security capability of the United States, the Secretary shall establish such maritime safety and security teams as are needed to safeguard the public and protect vessels, harbors, ports, waterfront facilities, and cargo in waters subject to the jurisdiction of the United States from destruction, loss or injury from crime, or sabotage due to terrorist activity, and to respond to such activity in accordance with security plans developed under section 7 of the Ports and Waterways Safety Act (33 U.S.C. 2116).

(b) MISSION.—Each maritime safety and security team shall be trained, equipped and capable of being employed to—

(1) deter, protect against, and rapidly respond to threats of maritime terrorism;

(2) enforce moving or fixed safety or security zones established pursuant to law;

(3) conduct high speed intercepts;

(4) board, search, and seize any article or thing on a vessel or waterfront facility found to present a risk to the vessel, facility or port;

(5) rapidly deploy to supplement United States armed forces domestically or overseas;

(6) respond to criminal or terrorist acts within the port so as to minimize, insofar as possible, the disruption caused by such acts;

(7) assist with port vulnerability assessments required under this Act; and

(8) carry out other such missions as are assigned to it in support of the goals of this Act.

(c) COORDINATION WITH OTHER AGENCIES.—To the maximum extent feasible, each maritime safety and security team shall coordinate its activities with other Federal, State, and local law enforcement and emergency response agencies.

SEC. 118. RESEARCH AND DEVELOPMENT FOR CRIME AND TERRORISM PREVENTION AND DETECTION TECHNOLOGY.

(a) GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary, in consultation with the Advisory Committee, shall establish a grant program to fund eligible projects for the development, testing, and transfer of technology to enhance security at United States ports with respect to security risks, including—

(A) explosives or firearms;

(B) weapons of mass destruction;

(C) chemical and biological weapons;

(D) drug and illegal alien smuggling;

(E) trade fraud; and

(F) other criminal activity.

(2) MATCHING FUNDS REQUIRED.—The maximum amount of any grant of funds made available under the program to a participant other than a department or agency of the United States for a technology development project may not exceed 75 percent of costs of that project.

(b) ELIGIBLE PROJECTS.—A project is eligible for a grant under subsection (a) if it is for the construction, acquisition, testing, or deployment of surveillance equipment and technology capable of preventing or detecting terrorist or other criminal activity as determined by the Secretary.

(c) ANNUAL ACCOUNTING; DISSEMINATION OF INFORMATION.—The Secretary shall submit an annual summary of grants under subsection (a), together with a general description of the tests and any technology transfers under the program, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $15,000,000 for each of fiscal years 2002 through 2006, such sums to remain available until expended.

SEC. 119. EXTENSION OF SEAWARD JURISDICTION.

(a) DEFINITION OF TERRITORIAL WATERS.—Section 1 of title XIII of the Act of June 15, 1917 (50 U.S.C. 195) is amended—

(1) by striking ''The term 'United States' as used in this Act includes'' and inserting the following:

''In this Act:

''(a) UNITED STATES.—The term 'United States' includes'';

(2) by adding at the end the following:

''(b) TERRITORIAL WATERS.—The term ''territorial waters of the United States'' includes all waters of the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988.''.

(b) CIVIL PENALTY FOR VIOLATION OF ACT OF JUNE 15, 1917.—Section 2 of title II of the Act of June 15, 1917 (50 U.S.C. 192), is amended—

(1) by striking ''IMPRISONMENT'' in the section heading and inserting ''IMPRISONMENT; CIVIL PENALTIES'';

(2) by inserting ''(a) IN GENERAL.—'' before ''If'' in the first undesignated paragraph;

(3) by striking ''(a) If any other'' and inserting ''(b) APPLICATION TO OTHERS.—If any other''; and

(4) by adding at the end the following:

''(c) CIVIL PENALTY.—

''(1) IMPOSITION.—A person who is found, after notice and an opportunity for a hearing, to have violated any rule, regulation or order issued under this Act, or found to have knowingly obstructed or interfered with the exercise of any power conferred by this Act, shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Secretary, or the Secretary's designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

''(2) COMPROMISE, ETC.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this subsection.

''(3) COLLECTION.—If a person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.''.

SEC. 120. SUSPENSION OF LIMITATION ON STRENGTH OF COAST GUARD.

(a) PERSONNEL END STRENGTHS.—Section 661(a) of title 14, United States Code, is amended by adding at the end the following: ''If at the end of any fiscal year there is in effect a declaration of war or national emergency, the President may defer the effectiveness of any end-strength and grade distribution limitation with respect to that fiscal year prescribed by law for any military or civilian component of the Coast Guard, for a period not to exceed 6 months after the end of the war or termination of the national emergency.''.

(b) OFFICERS IN COAST GUARD RESERVE.—Section 724 of title 14, United States Code, is amended by adding at the end thereof the following:

''(c) DEFERRAL OF LIMITATION.—If at the end of any fiscal year there is in effect a declaration of war or national emergency, the President may defer the effectiveness of any end-strength and grade distribution limitation with respect to that fiscal year prescribed by law for any military or civilian component of the Coast Guard Reserve, for a period not to exceed 6 months after the end of the war or termination of the national emergency.''.

SEC. 121. ADDITIONAL REPORTS.

(a) ADDITIONAL SECURITY NEEDS.—Within 1 year after the date of enactment of this Act, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the need for any additional security requirements or measures under this title in order to provide for national security and protect the flow of commerce.

(b) ANNUAL STATUS REPORT TO CONGRESS.—

(1) IN GENERAL.—Notwithstanding section 7(c) of the Ports and Waterways Safety Act (33 U.S.C. 1226(c)), the Secretary shall report annually to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the status of port security in a form that does not compromise, or present a threat to the disclosure of security-sensitive information about, the port security vulnerability assessments conducted under this Act. The report may include recommendations for further improvements in port security measures and for any additional enforcement measures necessary to ensure compliance with the port security plan requirements of this title.

(2) SPECIFIC PORT EVALUATION.—The Secretary shall select a port for the purpose of evaluating security plans and enhancements and, in the first annual report under this subsection, the Secretary shall report on the progress and enhancements of security plans at that port and on how this Act has improved security at that port. The Secretary shall provide annual updates for that port in subsequent annual reports.

(c) ANNUAL REPORT ON MARITIME SECURITY AND TERRORISM.—Section 905 of the International Maritime and Port Security Act (46 U.S.C. App. 1802) is amended by adding at the end thereof the following: ''Beginning with the first report submitted under this section after the date of enactment of the Port and Maritime Security Act of 2001, the Secretary shall include a description of activities undertaken under title I of that Act and an analysis of the effect of those activities on port security against acts of terrorism.''.

(d) ANNUAL REPORT OF EXPENDITURE OF FUNDS FOR TRAINING OF MARITIME SECURITY

PROFESSIONALS.—The Secretary shall transmit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the expenditure of appropriated funds and the development of training and certification programs under section 111 of this title.

(e) ACCOUNTING.—The Commissioner of Customs shall submit a report for each of fiscal years 2002 through 2006 to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the expenditure of funds appropriated pursuant to section 113 of this title.

(f) REPORT ON TRAINING CENTER.—The Commandant of the United States Coast Guard, in conjunction with the Secretary of the Navy, shall submit to Congress a report, at the time they submit their fiscal year 2004 budget, on the life cycle costs and benefits of creating a Center for Coastal and Maritime Security. The purpose of the Center would be to provide an integrated training complex to prevent and mitigate terrorist threats against coastal and maritime assets of the United States, including ports, harbors, ships, dams, reservoirs, and transport nodes.

SEC. 122. 4-YEAR REAUTHORIZATION OF TONNAGE DUTIES.

(a) IN GENERAL.—

(1) EXTENSION OF DUTIES.—Section 36 of the Act of August 5, 1909 (36 Stat. 111; 46 U.S.C. App. 121), is amended by striking ''through 2002,'' each place it appears and inserting ''through 2006,''.

(2) CONFORMING AMENDMENT.—The Act entitled ''An Act concerning tonnage duties on vessels entering otherwise than by sea'', approved March 8, 1910 (36 Stat 234; 46 U.S.C. App. 132), is amended by striking ''through 2002,'' and inserting ''through 2006,''.

(b) AVAILABILITY OF FUNDS.—Amounts deposited in the general fund of the Treasury as receipts of tonnage charges collected as a result of the amendments made by subsection (a) shall be made available, only to the extent provided in advance in appropriations Act, in each of fiscal years 2003 through 2006 to carry out this title, as provided in sections 102(b), 103(b), 104(b), 110(f), 111(c), 112(a) and 114(b) of this title.

(c) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, United States Code, duties collected under section 36 of the Act of August 5, 1909 (36 Stat. 111; 46 U.S.C. App. 121) as amended by subsection (a)(1) of this section—

(1) shall be credited as offsetting collections to the account that finances the activities and services authorized by sections 110, 112, and 114 of this Act, section 7(d), (e), and (f) of the Ports and Waterways Safety Act (33 U.S.C. 2116(d), (e), and (f)) (as added by sections 102, 103, and 104 of this Act), and sections 1401 and 1402 of the Merchant Marine Act, 1936 (as added by section 111 of this Act);

(2) shall be available for expenditure only to pay the costs of such activities and services; and

(3) shall remain available until expended.

(c) LIMITATION; DEPOSIT OF FEES.—No amounts may be collected under section 36 of the Act of August 5, 1909 (36 Stat. 111; 46 U.S.C. App. 121) as amended by subsection (a)(1) of this section, or credited as provided by subsection (b), except to the extent provided in advance in appropriations Acts. Such amounts shall be used in each of fiscal years 2003 through 2006 as provided in sections 102(b), 103(b), 104(b), 110(f), 111(c), 112(a) and 114(b) of this title.

SEC. 123. DEFINITIONS.

In this title:

(1) CAPTAIN-OF-THE-PORT.—The term ''Captain-of-the-Port'' means the United States Coast Guard's Captain-of-the-Port.

(2) SECRETARY.—Except as otherwise provided, the term ''Secretary'' means the Secretary of Transportation.

(4) ADVISORY COMMITTEE.—The term ''Advisory Committee'' means the National Maritime Security Advisory Committee established under section 7(d) of the Ports and Waterways Safety Act (33 U.S.C. 1226(d)).

(5) MARINE TERMINAL OPERATOR.—The term ''marine terminal operator'' has the meaning given that term in section 1702(14) of title 46, United States Code.

TITLE II—ADDITIONAL MARITIME SAFETY AND SECURITY RELATED MEASURES

SEC. 201. EXTENSION OF DEEPWATER PORT ACT TO NATURAL GAS.

The following provisions of the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.) are each amended by inserting ''or natural gas'' after ''oil'' each place it appears:

(1) Section 2(a) (33 U.S.C. 1501(a)).

(2) Section 3(9) (33 U.S.C. 1502(9)).

(3) Section 4(a) (33 U.S.C. 1503(a)).

(4) Section 5(c)(2)(G) and (H) (33 U.S.C. 1504(c)(2)(G) and (H)).

(5) Section 5(i)(2)(B) (33 U.S.C. 1504(i)(2)(B)).

(6) Section 5(i)(3)(C) (33 U.S.C. 1504 (i)(3)(C)).

(7) Section 8 (33 U.S.C. 1507).

(8) Section 21(a) (33 U.S.C. 1520(a)).

SEC. 202. ASSIGNMENT OF COAST GUARD PERSONNEL AS SEA MARSHALS AND ENHANCED USE OF OTHER SECURITY PERSONNEL.

(a) IN GENERAL.—Section 7(b) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)) is amended—

(1) by striking ''and'' after the semicolon in paragraph (1);

(2) by striking ''terrorism.'' in paragraph (2) and inserting ''terrorism;'' and

(3) by adding at the end the following:

''(3) dispatch properly trained and qualified armed Coast Guard personnel aboard government, private, and commercial structures and vessels to deter, prevent, or respond to acts of terrorism or otherwise provide for the safety and security of the port, waterways, facilities, marine environment, and personnel; and

''(4) require the owner and operator of a commercial structure or the owner, operator, charterer, master, or person in charge of a vessel to provide the appropriate level of security as necessary, including armed security.''.

(b) REPORT ON USE OF NON-COAST GUARD PERSONNEL.—The Secretary of the department in which the Coast Guard is operating shall evaluate and report to the Congress on—

(1) the potential use of Federal, State, or local government personnel, and documented United States Merchant Marine personnel, to supplement Coast Guard personnel under section 7(b)(3) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)(3));

(2) the possibility of using personnel other than Coast Guard personnel to carry out Coast Guard personnel functions under that section and whether additional legal authority would be necessary to use such personnel for such functions; and

(3) the possibility of utilizing the United States Merchant Marine Academy or State maritime academies to provide training carrying out duties under that section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the department in which the Coast Guard is operating $13,000,000 in each of the fiscal years 2002-2006 to carry out section 7(b) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)), all such funds to remain available until expended.

SEC. 203. NATIONAL MARITIME TRANSPORTATION SECURITY PLAN.

Section 7 of the Ports and Waterways Safety Act (33 U.S.C. 1226), as amended by section 106 of this Act, is amended by adding at the end the following:

''(i) NATIONAL MARITIME TRANSPORTATION SECURITY PLAN.—

''(1) IN GENERAL.—The Secretary, in consultation with appropriate Federal agencies, shall prepare and publish a National Maritime Transportation Security Plan for prevention and response to maritime crime and terrorism. The Secretary shall consult with the National Maritime Security Advisory Committee in preparation of the National Maritime Transportation Security Plan.

''(2) CONTENTS OF PLAN.—The Plan shall provide for efficient, coordinated, and effective action to prevent and respond to acts of maritime crime or terrorism, and shall include—

''(A) allocation of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies and port authorities;

''(B) identification, procurement, maintenance, and storage of equipment and supplies;

''(C) procedures and techniques to be employed in preventing and responding to acts of crime or terrorism;

''(D) establishment of procedures for effective liaison with State and local governments and emergency responders including law enforcement and fire response;

''(E) establishment of criteria and procedures to ensure immediate and effective Federal identification of, and response to, acts of maritime crime or terrorism, that result in a substantial threat to the welfare of the United States;

''(F) designation of a Federal official to be the Federal maritime security coordinator for each area for which an area maritime security plan is required to be prepared;

''(G) establishment of procedures for the coordination of activities of—

''(i) Coast Guard maritime safety and security teams established under this section;

''(ii) Federal maritime security coordinators;

''(iii) area maritime security committees;

''(iv) local port security committees; and

''(v) the National Maritime Security Advisory Committee.

''(3) REVISION AUTHORITY.—The Secretary may, from time to time, as the Secretary deems advisable, revise or otherwise amend the National Maritime Transportation Security Plan.

''(4) PLAN TO BE FOLLOWED.—After publication of the Plan, the planning and response to acts of maritime crime and terrorism shall, to the greatest extent possible, be in accordance with the Plan.

''(5) COPY TO THE CONGRESS.—The Secretary shall furnish a copy of the Plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.''.

SEC. 204. AREA MARITIME SECURITY COMMITTEES AND AREA MARITIME SECURITY PLANS.

Section 7 of the Ports and Waterways Safety Act (33 U.S.C. 1226), as amended by section 203, is further amended by adding at the end the following:

''(j) AREA MARITIME SECURITY COMMITTEES AND AREA MARITIME SECURITY PLANS.—

''(1) IN GENERAL.—There is established for each area designated by the Secretary an area maritime security committee comprised of members appointed by the Secretary. The Secretary may designate any existing local port security committee as an area maritime security committee for the

purposes of this subsection. The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to an area maritime security committee.

''(2) FUNCTION.—Each area maritime security committee, under the direction of the Federal maritime security coordinator for its area, shall—

''(A) prepare an area maritime security plan for its area; and

''(B) work with State and local officials to enhance the contingency planning of those officials and to assure pre-planning of joint response efforts, including appropriate procedures for prevention and response to acts of maritime crime or terrorism.

''(3) AREA MARITIME SECURITY PLAN REQUIREMENT.—Each area maritime security committee shall prepare an area maritime security plan for its area and submit it to the Secretary for approval. The area maritime security plan shall—

''(A) when implemented in conjunction with the national maritime transportation security plan, be adequate to prevent or rapidly and effectively respond to an act of maritime crime or terrorism in or near the area;

''(B) describe the area covered by the plan, including the areas of population or special economic, environmental or national security importance that might be damaged by an act of maritime crime or terrorism;

''(C) describe in detail how the plan is integrated with other area maritime security plans, facility security plans, and vessel security plans under this section;

''(D) include any other information the Secretary requires; and

''(E) be updated periodically by the area maritime security committee.

''(4) REVIEW BY SECRETARY.—The Secretary shall—

''(A) review and approve area maritime security plans under this subsection; and

''(B) periodically review previously approved area maritime security plans.''.

SEC. 205. VESSEL SECURITY PLANS.

(a) IN GENERAL.—Section 4(a) of the Ports and Waterways Safety Act (33 U.S.C. 1223(a)) is amended—

(1) by striking ''and'' after the semicolon in paragraph (4);

(2) by striking ''environment.'' in paragraph (5) and inserting ''environment; and''; and

(3) by adding at the end the following:

''(6) may issue regulations establishing requirements for vessel security plans and programs for vessels calling on United States ports.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the department in which the Coast Guard is operating $2,000,000 for each of fiscal years 2002 through 2006 to carry out section 4(a)(6) of the Ports and Waterways Safety Act (33 U.S.C. 1223(a)(6)), such sums to remain available until expended.

SEC. 206. PROTECTION OF SECURITY-RELATED INFORMATION.

Section 7(c) of the Ports and Waterways Safety Act (33 U.S.C. 1226(c)) is amended to read as follows:

''(c) NONDISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, information developed under this section, and vessel security plan information developed under section 4(a)(6) of this Act (33 USC 1223(a)(6)), is not required to be disclosed to the public. This includes information related to security plans, procedures, or programs for passenger vessels or passenger terminals authorized under this Act, and any other information, including maritime facility security plans, vessel security plans and port vulnerability assessments.''.

SEC. 207. ENHANCED CARGO IDENTIFICATION AND TRACKING.

(a) TRACKING PROGRAM.—The Secretaries of the Treasury and Transportation shall establish a joint task force to work with ocean shippers and ocean carriers in the development of performance standards for systems to track data for shipments, containers, and contents—

(1) to improve the capacity of shippers and others to limit cargo theft and tampering; and

(2) to track the movement of cargo, through the Global Positioning System or other systems, within the United States, particularly for in-bond shipments.

(b) PERFORMANCE STANDARDS FOR ANTI-TAMPERING DEVICES.—The Secretaries of the Treasury and Transportation shall work with the National Institutes of Standards and Technology to develop enhanced performance standards for in-bond seals and locks for use on or in containers used for water-borne cargo shipments.

SEC. 208. ENHANCED CREWMEMBER IDENTIFICATION.

The Secretary of Transportation, in consultation with the Attorney General, may require crewmembers aboard vessels calling on United States ports to carry and present upon demand such identification as the Secretary determines.

SA 2691. Mr. REID (for Mr. ALLEN) proposed an amendment to the bill S. 1858, to permit the closed circuit televising of the criminal trial of Zacarias Moussaoui for the victims of September 11th; as follows:

On page 2, line 5, strike ''including'' and insert ''in''.

On page 2, line 6, after ''San Francisco,'' insert ''and such other locations the trial court determines are reasonably necessary,''.

SA 2692. Mr. REID (for MR. FRIST (for himself, Mr. KENNEDY, and Mr. GREGG)) proposed an amendment to the bill H.R. 3448, to improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Bioterrorism Preparedness Act of 2001''.

(b) TABLE OF CONTENTS.—The table of contents of the Act is as follows:

TITLE I—NATIONAL GOALS FOR BIOTERRORISM PREPAREDNESS

SEC. 101. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

''TITLE XXVIII—STRENGTHENING THE NATION'S PREPAREDNESS FOR BIOTERRORISM

''SEC. 2801. CONGRESSIONAL FINDINGS ON BIOTERRORISM PREPAREDNESS.

''Congress finds that the United States should further develop and implement a coordinated strategy to prevent, and if necessary, to respond to biological threats or attacks upon the United States. Such strategy should include measures for—

''(1) enabling the Federal Government to provide health care assistance to States and localities in the event of a biological threat or attack;

''(2) improving public health, hospital, laboratory, communications, and emergency response personnel preparedness and responsiveness at the State and local levels;

''(3) rapidly developing and manufacturing needed therapies, vaccines, and medical supplies; and

''(4) enhancing the protection of the nation's food supply and protecting agriculture against biological threats or attacks.''.

TITLE II—IMPROVING THE FEDERAL RESPONSE TO BIOTERRORISM

Subtitle A—Additional Authorities

SEC. 201. ADDITIONAL AUTHORITIES OF THE SECRETARY; STRATEGIC NATIONAL PHARMACEUTICAL STOCKPILE.

Title XXVIII of the Public Health Service Act, as added by section 101, is amended by adding at the end the following:

''Subtitle A—Improving the Federal Response to Bioterrorism

''SEC. 2811. AUTHORITY OF THE SECRETARY RELATED TO BIOTERRORISM PREPAREDNESS.

''(a) PLAN.—To meet the objectives of this title (and the amendments made by the Bioterrorism Preparedness Act of 2001), and to help the United States fully prepare for a biological threat or attack, the Secretary, consistent with the recommendations and activities of the working group established under section 319F(a), shall develop and implement a coordinated plan to meet such objectives that are within the jurisdiction of the Secretary. Such plan shall include the development of specific criteria that will enable measurements to be made of the progress made at the national, State, and local levels toward achieving the national goal of bioterrorism preparedness, including actions to strengthen the preparedness of rural communities for a biological threat or attack.

''(b) BIENNIAL REPORTS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this title, and biennially thereafter, the Secretary shall prepare and submit to Congress a report concerning the progress made and the steps taken by the Secretary to further the purposes of this title (and the amendments made by the Bioterrorism Preparedness Act of 2001). Such report shall include an assessment of the activities conducted under section 319F(c).

''(2) ADDITIONAL AUTHORITY.—In the biennial report submitted under paragraph (1), the Secretary may make recommendations concerning—

''(A) additional legislative authority that the Secretary determines is necessary to meet the objectives of this title (and the amendments made by the Bioterrorism Preparedness Act of 2001); and

''(B) additional legislative authority that the Secretary determines is necessary under section 319 to protect the public health in the event that a condition described in section 319(a) occurs.

''(c) OTHER REPORTS.—Not later than 1 year after the date of enactment of this title, the Secretary shall prepare and submit to Congress a report concerning—

''(1) activities conducted under section 319F(b);

''(2) the characteristics that may render a rural community uniquely vulnerable to a biological threat or attack, including distance, lack of emergency transport, hospital or laboratory capacity, lack of integration of Federal or State public health networks, workforce deficits, or other relevant conditions;

''(3) in any case in which the Secretary determines that additional legislative authority is necessary to effectively strengthen the preparedness of rural communities for responding to a biological threat or attack, the recommendations of the Secretary with respect to such legislative authority; and

''(4) the need for and benefits of a National Disaster Response Medical Volunteer Service that would be a private-sector, community-based rapid response corps of medical volunteers.

''SEC. 2812. STRATEGIC NATIONAL PHARMACEUTICAL STOCKPILE.

''(a) IN GENERAL.—The Secretary, in coordination with the Secretary of Veterans Affairs, shall maintain a strategic stockpile of vaccines, therapies, and medical supplies that are adequate, as determined by the Secretary, to meet the health needs of the United States population, including children and other vulnerable populations, for use at the direction of the Secretary, in the event of a biological threat or attack or other public health emergency.

''(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to prohibit the Secretary from including in the stockpile described in such subsection such vaccines, therapies, or medical supplies as may be necessary to meet the needs of the United States in the event of a nuclear, radiological, or chemical attack or other public health emergency.

''(c) DEFINITION.—In this section, the term 'stockpile' means—

''(1) a physical accumulation of the material described in subsection (a); or

''(2) a contractual agreement between the Secretary and a vendor or vendors under which such vendor or vendors agree to provide to the Secretary such medical supplies as shall be described in the contract at such time as shall be specified in the contract.

''(d) PROCEDURES.—The Secretary, in managing the stockpile under this section, shall—

''(1) ensure that adequate procedures are followed with respect to the stockpile maintained under subsection (a) for inventory management, accounting, and for the physical security of such stockpile; and

''(2) in consultation with State and local officials, take into consideration the timing and location of special events, including designated national security events.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $640,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.''.

SEC. 202. IMPROVING THE ABILITY OF THE CENTERS FOR DISEASE CONTROL AND PREVENTION TO RESPOND EFFECTIVELY TO BIOTERRORISM.

(a) REVITALIZING THE CDC.—Section 319D of the Public Health Service Act (42 U.S.C. 247d–4) is amended—

(1) in subsection (a), by inserting '', and expanded, enhanced, and improved capabilities of the Centers related to biological threats or attacks,'' after ''modern facilities'';

(2) in subsection (b)—

(A) by inserting '', including preparing for or responding to biological threats or attacks,'' after ''public health activities''; and

(B) by inserting ''$60,000,000 for fiscal year 2002,''; and

(3) by adding at the end the following:

''(c) IMPROVING PUBLIC HEALTH LABORATORY CAPACITY.—

''(1) IN GENERAL.—The Secretary shall provide for the establishment of a coordinated network of public health laboratories to assist with the detection of and response to a biological threat or attack, that may, at the discretion of the Secretary, include laboratories that serve as regional reference laboratories.

''(2) AUTHORITY.—The Secretary may award grants, contracts, or cooperative agreements to carry out paragraph (1).

''(3) COORDINATION.—To the maximum extent practicable, the Secretary shall ensure that activities conducted under paragraph (1) are coordinated with existing laboratory preparedness activities.

''(4) LOCAL DISCRETION.—Use of regional laboratories, if established under paragraph (1), shall be at the discretion of the public health agencies of the States.

''(5) PROHIBITED USES.—An eligible entity may not use amounts received under this subsection to—

''(A) purchase or improve land or purchase any building or other facility; or

''(B) construct, repair, or alter any building or other facility.

''(6) SUPPLEMENT NOT SUPPLANT.—Funds appropriated under this subsection shall be used to supplement and not supplant other Federal, State, and local public funds provided for activities under this subsection.

''(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, $59,500,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.''.

(b) EDUCATION AND TRAINING.—Section 319F(e) of the Public Health Service Act (42 U.S.C. 247d6(e)) is amended by adding at the end the following flush sentence:

''The education and training activities described in this subsection may be carried out through Public Health Preparedness Centers, Noble training facilities, the Emerging Infections Program, and the Epidemic Intelligence Service.''.

Subtitle B—Coordination of Efforts and Responses

SEC. 211. ASSISTANT SECRETARY FOR EMERGENCY PREPAREDNESS; NATIONAL DISASTER MEDICAL SYSTEM.

Title XXVIII of the Public Health Service Act, as added by section 101, and amended by section 201, is further amended by adding at the end the following:

''SEC. 2813. ASSISTANT SECRETARY FOR EMERGENCY PREPAREDNESS.

''(a) APPOINTMENT OF ASSISTANT SECRETARY FOR EMERGENCY PREPAREDNESS.—The President, with the advice and consent of the Senate, shall appoint an individual to serve as the Assistant Secretary for Emergency Preparedness who shall head the Office for Emergency Preparedness. Such Assistant Secretary shall report to the Secretary.

''(b) DUTIES.—Subject to the authority of the Secretary, the Assistant Secretary for Emergency Preparedness shall—

''(1) serve as the principal adviser to the Secretary on matters relating to emergency preparedness, including preparing for and responding to biological threats or attacks and for developing policy; and

''(2) coordinate all functions within the Department of Health and Human Services relating to emergency preparedness, including preparing for and responding to biological threats or attacks.

"SEC. 2814. NATIONAL DISASTER MEDICAL SYSTEM.

''(a) NATIONAL DISASTER MEDICAL SYSTEM.—

''(1) IN GENERAL.—There shall be operated a system to be known as the National Disaster Medical System (in this section referred to as the 'National System') which shall be coordinated by the Secretary, in collaboration with the Secretary of Defense, the Secretary of Veterans Affairs, and the Director of the Federal Emergency Management Agency.

''(2) FUNCTIONS.—The National System shall provide appropriate health services, health-related social services and, if necessary, auxiliary services (including mortuary and veterinary services) to respond to the needs of victims of a public health emergency if the Secretary activates the System with respect to the emergency. The National System shall carry out such ongoing activities as may be necessary to prepare for the provision of such services.

''(b) TEMPORARY DISASTER-RESPONSE PERSONNEL.—

''(1) IN GENERAL.—For the purpose of assisting the Office of Emergency Preparedness and the National System in carrying out duties under this section, the Secretary may in accordance with section 316.401 of title 5, Code of Federal Regulations (including revisions to such section), and notwithstanding the eligibility requirements set forth in paragraphs (1) through (8) of section 316.402(b) of such title (including revisions), make temporary appointments of individuals to intermittent positions to serve as personnel of such Office or System.

''(2) TRAVEL AND SUBSISTENCE.—An individual appointed under paragraph (1) shall, in accordance with subchapter I of chapter 57 of title 5, United States Code, be eligible for travel, subsistence, and other necessary expenses incurred in carrying out the duties for which the individual was appointed, including per diem in lieu of subsistence.

''(3) LIABILITY.—For purposes of section 224(a) and the remedies described in such section, an individual appointed under paragraph (1) shall, while acting within the scope of such appointment, be considered to be an employee of the Public Health Service performing medical, surgical, dental, or related functions. Participation in training programs carried out by the Office of Emergency Preparedness or Federal personnel of the National System shall be considered within the scope of such an appointment (regardless of whether the individual receives compensation for such participation).

''(c) TEMPORARY DISASTER-RESPONSE APPOINTEE.—For purposes of this section, the term 'temporary disaster-response appointee' means an individual appointed by the Secretary under subsection (b).

''(d) COMPENSATION FOR WORK INJURIES.—A temporary disaster-response appointee, as designated by the Secretary, shall be deemed an employee, and an injury sustained by such an individual while actually serving or while participating in a uncompensated training exercise related to such service shall be deemed 'in the performance of duty', for purposes of chapter 81 of title 5, United States Code, pertaining to compensation for work injuries. In the event of an injury to such a temporary disaster-response appointee, the Secretary of Labor shall be responsible for making determinations as to whether the claimants are entitled to compensation or other benefits in accordance with chapter 81 of title 5, United States Code.

''(e) EMPLOYMENT AND REEMPLOYMENT RIGHTS.—

''(1) IN GENERAL.—A temporary disaster-response appointee, as designated by the Secretary, shall, when performing service as a temporary disaster-response appointee or participating in an uncompensated training exercise related to such service, be deemed a person performing 'service in the uniformed services' for purposes of chapter 43 of title 38, United States Code, pertaining to employment and reemployment rights of members in the uniformed services. All rights and obligations of such persons and procedures for assistance, enforcement, and investigation shall be as provided for in chapter 43 of title 38, United States Code.

''(2) NOTICE OF ABSENCE FROM POSITION OF EMPLOYMENT.—Preclusion of giving notice of service by disaster response necessity shall be deemed preclusion by 'military necessity' for purposes of section 4312(b) of title 38, United States Code, pertaining to giving notice of absence from a position of employment. A determination of disaster response necessity shall be made pursuant to regulations prescribed by the Secretary, in consultation with the Secretary of Defense, and shall not be subject to judicial review.

''(f) LIMITATION.—A temporary disaster-response appointee shall not be deemed an employee of the Public Health Service or the Office of Emergency Preparedness for purposes other than those specifically set forth in this section.''.

SEC. 212. EXPANDED AUTHORITY OF THE SECRETARY OF HEALTH AND HUMAN SERVICES TO RESPOND TO PUBLIC HEALTH EMERGENCIES.

(a) PROVISION OF DECLARATION TO CONGRESS.—Section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)) is amended by adding at the end the following: ''Not later than 48 hours after a declaration of a public health emergency under this section, the Secretary shall provide a written declaration to Congress indicating that an emergency under this section has been declared.''.

(b) WAIVER OF REPORTING DEADLINES.—Section 319 of the Public Health Service Act (42 U.S.C. 247d) is amended by adding at the end the following:

''(d) WAIVER OF DATA SUBMITTAL AND REPORTING DEADLINES.—In any case in which the Secretary determines that, wholly or partially as a result of a public health emergency that has been declared pursuant to subsection (a), individuals or public or private entities are unable to comply with deadlines for the submission to the Secretary of data or reports required under any law administered by the Secretary, the Secretary may, notwithstanding any other provision of law, grant such extensions of such deadlines as the circumstances reasonably require, and may waive any sanctions otherwise applicable to such failure to comply.''.

(c) EMERGENCY DECLARATION PERIOD.—Section 319 of the Public Health Service Act (42 U.S.C. 247d), as amended by subsection (b), is further amended by adding at the end the following:

''(e) EMERGENCY DECLARATION PERIOD.—A determination by the Secretary under subsection (a) that a public health emergency exists shall remain in effect for not longer than the 180-day period beginning on the date of the determination. Such period may be extended by the Secretary if—

''(1) the Secretary determines that such an extension is appropriate; and

''(2) the Secretary provides a written notification to Congress within 48 hours of such extension.''.

SEC. 213. PUBLIC HEALTH PREPAREDNESS AND RESPONSE TO A BIOTERRORIST ATTACK.

Section 319F of the Public Health Service Act (42 U.S.C. 247d–6) is amended by striking subsections (a) and (b), and inserting the following:

''(a) WORKING GROUP ON BIOTERRORISM.—The Secretary, in coordination with the Secretary of Defense, the Director of the Federal Emergency Management Agency, the Attorney General, the Secretary of Veterans Affairs, the Secretary of Labor, and the Secretary of Agriculture, and with other similar Federal officials as determined appropriate, shall establish a joint interdepartmental working group on the prevention, preparedness, and response to a biological threat or attack on the civilian population. Such joint working group shall—

''(1) prioritize countermeasures required to treat, prevent, or identify exposure to a biological agent or toxin pursuant to section 351A;

''(2) coordinate and facilitate the awarding of grants, contracts, or cooperative agreements for the development, manufacture, distribution, and purchase of priority countermeasures;

''(3) coordinate research on pathogens likely to be used in a biological threat or attack on the civilian population;

''(4) develop shared standards for equipment to detect and to protect against biological agents and toxins;

''(5) coordinate the development, maintenance, and procedures for the release of materials from the Strategic National Pharmaceutical Stockpile;

''(6) assess the priorities for and enhance the preparedness of public health institutions, providers of medical care, and other emergency service personnel (including firefighters) to detect, diagnose, and respond (including mental health response) to a biological threat or attack;

''(7) in the recognition that medical and public health professionals are likely to provide much of the first response to such an attack, develop, coordinate, enhance, and assure the quality of joint planning and training programs that address the public health and medical consequences of a biological threat or attack on the civilian population between—

''(A) local firefighters, ambulance personnel, police and public security officers, or other emergency response personnel; and

''(B) hospitals, primary care facilities, and public health agencies;

''(8) coordinate the development of strategies for Federal, State, and local agencies to communicate information to the public regarding biological threats or attacks;

''(9) develop methods to decontaminate facilities contaminated as a result of a biological attack, including appropriate protections for the safety of those conducting such activities; and

''(10) ensure that the activities under this subsection address the needs of children and other vulnerable populations.

The working group shall carry out paragraphs (1) and (2) in consultation with the pharmaceutical, biotechnology, and medical device industries, and other appropriate experts.

''(b) ADVICE TO THE SECRETARY.—The Secretary shall establish advisory committees to provide expert recommendations to the Secretary to assist the Secretary, including the following:

''(1) NATIONAL TASK FORCE ON CHILDREN AND TERRORISM.—

''(A) IN GENERAL.—The National Task Force on Children and Terrorism, which shall be composed of such Federal officials as may be appropriate to address the special needs of children, and child health experts on infectious disease, environmental health, toxicology, and other relevant professional disciplines.

''(B) DUTIES.—The task force described in subparagraph (A) shall provide recommendations to the Secretary regarding—

''(i) the preparedness of the health care system to respond to bioterrorism as it relates to children;

''(ii) needed changes to the health care and emergency medical service systems and emergency medical services protocols to meet the special needs of children with respect to a biological threat or attack; and

''(iii) changes, if necessary, to the Strategic National Pharmaceutical Stockpile, to meet the special needs of children.

''(2) EMERGENCY PUBLIC INFORMATION AND COMMUNICATIONS TASK FORCE.—

''(A) IN GENERAL.—The Emergency Public Information and Communications (EPIC) Task Force, which shall be composed of individuals with expertise in public health, communications, behavioral psychology, and other areas determined appropriate by the Secretary.

''(B) DUTIES.—The task force described in subparagraph (A) shall make recommendations and report to the Secretary on appropriate ways to communicate information regarding biological threats or attacks to the public, including public service announcements or other appropriate means to communicate in a manner that maximizes information and minimizes panic, and includes information relevant to children and other vulnerable populations.

''(3) SUNSET.—Each Task Force established under paragraphs (1) and (2) shall terminate on the date that is 1 year after the date of enactment of the Bioterrorism Preparedness Act of 2001.''.

SEC. 214. THE OFFICIAL FEDERAL INTERNET SITE ON BIOTERRORISM.

It is the recommendation of Congress that there should be established an official Federal Internet site on bioterrorism, either directly or through provision of a grant to an entity that has expertise in bioterrorism and the development of websites, that should include information relevant to diverse populations (including messages directed at the general public and such relevant groups as medical personnel, public safety workers, and agricultural workers) and links to appropriate State and local government sites.

SEC. 215. TECHNICAL AMENDMENTS.

Section 319C of the Public Health Service Act (42 U.S.C. 247d–3) is amended—

(1) in subsection (a), by striking ''competitive''; and

(2) in subsection (f), by inserting ''$420,000,000 for fiscal year 2002,'' after ''2001,''.

SEC. 216. REGULATION OF BIOLOGICAL AGENTS AND TOXINS.

(a) BIOLOGICAL AGENTS PROVISIONS OF THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996; CODIFICATION IN THE PUBLIC HEALTH SERVICE ACT, WITH AMENDMENTS.—

(1) PUBLIC HEALTH SERVICE ACT.—Subpart 1 of part F of title III of the Public Health Service Act (42 U.S.C. 262 et seq.) is amended by inserting after section 351 the following:

''SEC. 351A. ENHANCED CONTROL OF BIOLOGICAL AGENTS AND TOXINS.

''(a) REGULATORY CONTROL OF BIOLOGICAL AGENTS AND TOXINS.—

''(1) LIST OF BIOLOGICAL AGENTS AND TOXINS.—

''(A) IN GENERAL.—The Secretary shall by regulation establish and maintain a list of each biological agent and each toxin that has the potential to pose a severe threat to public health and safety.

''(B) CRITERIA.—In determining whether to include an agent or toxin on the list under subparagraph (A), the Secretary shall—

''(i) consider—

''(I) the effect on human health of exposure to the agent or toxin;

''(II) the degree of contagiousness of the agent or toxin and the methods by which the agent or toxin is transferred to humans;

''(III) the availability and effectiveness of pharmacotherapies and immunizations to treat and prevent any illness resulting from infection by the agent or toxin; and

''(IV) any other criteria, including the needs of children and other vulnerable populations, that the Secretary considers appropriate; and

''(ii) consult with appropriate Federal departments and agencies, and scientific experts representing appropriate professional groups, including those with pediatric expertise.

''(2) BIENNIAL REVIEW.—The Secretary shall review and republish the list under paragraph (1) biennially, or more often as needed, and shall, through rulemaking, revise the list as necessary to incorporate additions or deletions to ensure public health, safety, and security.

''(3) EXEMPTIONS.—The Secretary may exempt from the list under paragraph (1)—

''(A) attenuated or inactive biological agents or toxins used in biomedical research or for legitimate medical purposes; and

''(B) products that are cleared or approved under the Federal Food, Drug, and Cosmetic Act or under the Virus-Serum-Toxin Act, as amended in 1985 by the Food Safety and Security Act.'';

''(b) REGULATION OF TRANSFERS OF LISTED BIOLOGICAL AGENTS AND TOXINS.—The Secretary shall by regulation provide for—

''(1) the establishment and enforcement of safety procedures for the transfer of biological agents and toxins listed pursuant to subsection (a)(1), including measures to ensure—

''(A) proper training and appropriate skills to handle such agents and toxins; and

''(B) proper laboratory facilities to contain and dispose of such agents and toxins;

''(2) safeguards to prevent access to such agents and toxins for use in domestic or international terrorism or for any other criminal purpose;

''(3) the establishment of procedures to protect the public safety in the event of a transfer or potential transfer of a biological agent or toxin in violation of the safety procedures established under paragraph (1) or the safeguards established under paragraph (2); and

''(4) appropriate availability of biological agents and toxins for research, education, and other legitimate purposes.

''(c) POSSESSION AND USE OF LISTED BIOLOGICAL AGENTS AND TOXINS.—The Secretary shall by regulation provide for the establishment and enforcement of standards and procedures governing the possession and use of biological agents and toxins listed pursuant to subsection (a)(1) in order to protect the public health and safety, including the measures, safeguards, procedures, and availability of such agents and toxins described in paragraphs (1) through (4) of subsection (b), respectively.

''(d) REGISTRATION AND TRACEABILITY MECHANISMS.—Regulations under subsections (b) and (c) shall require registration for the possession, use, and transfer of biological agents and toxins listed pursuant to subsection (a)(1), and such registration shall include (if available to the registered person) information regarding the characterization of such biological agents and toxins to facilitate their identification and traceability. The Secretary shall maintain a national database of the location of such biological agents and toxins with information regarding their characterizations.

''(e) INSPECTIONS.—The Secretary shall have the authority to inspect persons subject to the regulations under subsections (b) and (c) to ensure their compliance with such regulations, including prohibitions on restricted persons under subsection (g).

''(f) EXEMPTIONS.—

''(1) IN GENERAL.—The Secretary shall establish exemptions, including exemptions from the security provisions, from the applicability of provisions of—

''(A) the regulations issued under subsections (b) and (c) when the Secretary determines that the exemptions, including exemptions from the security requirements for the use of attenuated or inactive biological agents or toxins in biomedical research or for legitimate medical purposes, are consistent with protecting public health and safety; and

''(B) the regulations issued under subsection (c).

''(2) CLINICAL LABORATORIES.—The Secretary shall exempt clinical laboratories and other persons that possess, use, or transfer biological agents and toxins listed pursuant to subsection (a)(1) from the applicability of provisions of regulations issued under subsections (b) and (c) only when—

''(A) such agents or toxins are presented for diagnosis, verification, or proficiency testing;

''(B) the identification of such agents and toxins is, when required under Federal or State law, reported to the Secretary or other public health authorities; and

''(C) such agents or toxins are transferred or destroyed in a manner set forth by the Secretary in regulation.

''(g) SECURITY REQUIREMENTS FOR REGISTERED PERSONS.—

''(1) SECURITY.—In carrying out paragraphs (2) and (3) of subsection (b), the Secretary shall establish appropriate security requirements for persons possessing, using, or transferring biological agents and toxins listed pursuant to subsection (a)(1), considering existing standards developed by the Attorney General for the security of government facilities, and shall ensure compliance with such requirements as a condition of registration under regulations issued under subsections (b) and (c).

''(2) LIMITING ACCESS TO LISTED AGENTS AND TOXINS.—Regulations issued under subsections (b) and (c) shall include provisions—

''(A) to restrict access to biological agents and toxins listed pursuant to subsection (a)(1) only to those individuals who need to handle or use such agents or toxins; and

''(B) to provide that registered persons promptly submit the names and other identifying information for such individuals to the Attorney General, with which information the Attorney General shall promptly use criminal, immigration, and national security databases available to the Federal Government to identify whether such individuals—

''(i) are restricted persons, as defined in section 175b of title 18, United States Code; or

''(ii) are named in a warrant issued to a Federal or State law enforcement agency for participation in any domestic or international act of terrorism.

''(3) CONSULTATION AND IMPLEMENTATION.—Regulations under subsections (b) and (c) shall be developed in consultation with research-performing organizations, including universities, and implemented with timeframes that take into account the need to continue research and education using biological agents and toxins listed pursuant to subsection (a)(1).

''(h) DISCLOSURE OF INFORMATION.—

''(1) IN GENERAL.—Any information in the possession of any Federal agency that identifies a person, or the geographic location of a person, who is registered pursuant to regulations under this section (including regulations promulgated before the effective date of this subsection), or any site-specific information relating to the type, quantity, or characterization of a biological agent or toxin listed pursuant to subsection (a)(1) or

the site-specific security mechanisms in place to protect such agents and toxins, including the national database required in subsection (d), shall not be disclosed under section 552(a) of title 5, United States Code.

''(2) DISCLOSURES FOR PUBLIC HEALTH AND SAFETY; CONGRESS.—Nothing in this section may be construed as preventing the head of any Federal agency—

''(A) from making disclosures of information described in paragraph (1) for purposes of protecting the public health and safety; or

''(B) from making disclosures of such information to any committee or subcommittee of the Congress with appropriate jurisdiction, upon request.

''(i) CIVIL MONEY PENALTY.—Any person who violates a regulation under subsection (b) or (c) shall be subject to the United States for a civil money penalty in an amount not exceeding $250,000 in the case of an individual and $500,000 in the case of any other person. The provisions of section 1128A of the Social Security Act (other than subsections (a), (b), (h), and (i), the first sentence of subsection (c), and paragraphs (1) and (2) of subsection (f) of such section) shall apply to civil money penalties under this subsection in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a) of such Act. The Secretary may delegate authority under this section in the same manner as provided in section 1128A(j)(2) of such Act and such authority shall include all powers described in section 6 of the Inspector General Act of 1978 (5 U.S.C. App. 2)

''(j) DEFINITIONS.—For purposes of this section, the terms 'biological agent' and 'toxin' have the same meaning as in section 178 of title 18, United States Code.''.

(2) REGULATIONS.—

(A) DATE CERTAIN FOR PROMULGATION; EFFECTIVE DATE REGARDING CRIMINAL AND CIVIL PENALTIES.—Not later than 180 days after the date of the enactment of this title, the Secretary of Health and Human Services shall promulgate an interim final rule for carrying out section 351A(c) of the Public Health Service Act, which amends the Antiterrorism and Effective Death Penalty Act of 1996. Such interim final rule will take effect 60 days after the date on which such rule is promulgated, including for purposes of—

(i) section 175(b) of title 18, United States Code (relating to criminal penalties), as added by subsection (b)(1)(B) of this section; and

(ii) section 351A(i) of the Public Health Service Act (relating to civil penalties).

(B) SUBMISSION OF REGISTRATION APPLICATIONS.—A person required to register for possession under the interim final rule promulgated under subparagraph (A) shall submit an application for such registration not later than 60 days after the date on which such rule is promulgated.

(3) CONFORMING AMENDMENT.—Subsections (d), (e), (f), and (g) of section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 (42 U.S.C. 262 note) are repealed.

(4) EFFECTIVE DATE.—Paragraph (1) shall take effect as if incorporated in the Antiterrorism and Effective Death Penalty Act of 1996, and any regulations, including the list under subsection (d)(1) of section 511 of that Act, issued under section 511 of that Act shall remain in effect as if issued under section 351A of the Public Health Service Act.

(b) SELECT AGENTS.—

(1) IN GENERAL.—Section 175 of title 18, United States Code, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56), is amended—

(A) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(B) by inserting after subsection (a) the following:

''(b) SELECT AGENTS.—

''(1) UNREGISTERED FOR POSSESSION.—Whoever knowingly possesses a biological agent or toxin where such agent or toxin is a select agent for which such person has not obtained a registration required by regulation issued under section 351A(c) of the Public Health Service Act shall be fined under this title, or imprisoned for not more than 5 years, or both.

''(2) TRANSFER TO UNREGISTERED PERSON.—Whoever transfers a select agent to a person who the transferor has reason to believe has not obtained a registration required by regulations issued under section 351A(b) or (c) of the Public Health Service Act shall be fined under this title, or imprisoned for not more than 5 years, or both.''.

(2) DEFINITIONS.—Section 175 of title 18, United States Code, as amended by paragraph (1), is further amended by striking subsection (d) and inserting the following:

''(d) DEFINITIONS.—As used in this section:

''(1) The terms 'biological agent' and 'toxin' have the meanings given such terms in section 178, except that, for purposes of subsections (b) and (c), such terms do not encompass any biological agent or toxin that is in its naturally occurring environment, if the biological agent or toxin has not been cultivated, cultured, collected, or otherwise extracted from its natural source.

''(2) The term 'for use as a weapon' includes the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system, other than for prophylactic, protective, or other peaceful purposes.

''(3) The term 'select agent' means a biological agent or toxin, as defined in paragraph (1), that is on the list that is in effect pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), or as subsequently revised under section 351A(a) of the Public Health Service Act.''.

(3) CONFORMING AMENDMENT.—

(A) Section 175(a) of title 18, United States Code, is amended in the second sentence by striking ''under this section'' and inserting ''under this subsection''.

(B) Section 175(c) of title 18, United States Code, (as redesignated by paragraph (1)), is amended by striking the second sentence.

(c) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services, after consultation with other appropriate Federal agencies, shall submit to the Congress a report that—

(1) describes the extent to which there has been compliance by governmental and private entities with applicable regulations under section 351A of the Public Health Service Act, including the extent of compliance before the date of the enactment of this Act, and including the extent of compliance with regulations promulgated after such date of enactment;

(2) describes the actions to date and future plans of the Secretary for updating the list of biological agents and toxins under section 351A(a)(1) of the Public Health Service Act;

(3) describes the actions to date and future plans of the Secretary for determining compliance with regulations under such section 351A of the Public Health Service Act and for taking appropriate enforcement actions; and

(4) provides any recommendations of the Secretary for administrative or legislative initiatives regarding such section 351A of the Public Health Service Act.

TITLE III—IMPROVING STATE AND LOCAL PREPAREDNESS

Subtitle A—Emergency Measures to Improve State and Local Preparedness

SEC. 301. STATE BIOTERRORISM PREPAREDNESS AND RESPONSE BLOCK GRANT.

(a) IN GENERAL.—Section 319F of the Public Health Service Act (42 U.S.C. 247d–6) is amended by striking subsection (c) and inserting the following:

''(c) STATE BIOTERRORISM PREPAREDNESS AND RESPONSE BLOCK GRANTS.—

''(1) IN GENERAL.—The Secretary shall establish the State Bioterrorism Preparedness and Response Block Grant Program (referred to in this subsection as the 'Program') under which the Secretary shall award grants to or enter into cooperative agreements with States, the District of Columbia, and territories (referred to in this section as 'eligible entities') to enable such entities to prepare for and respond to biological threats or attacks. The Secretary shall ensure that activities conducted under this section are coordinated with the activities conducted under this section and section 319C.

''(2) ELIGIBILITY.—To be eligible to receive amounts under paragraph (1), a State, the District of Columbia, or a territory shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including an assurance that the entity will—

''(A) not later than 180 days after the date on which a grant or contract is received under this subsection, prepare and submit to the Secretary a Bioterrorism Preparedness and Response Plan in accordance with subsection (c);

''(B) not later than 180 days after the date on which a grant or contract is received under this subsection, complete an assessment under section 319B(a), or an assessment that is substantially equivalent as determined by the Secretary unless such assessment has already been performed; and

''(C) establish a means by which to obtain public comment and input on the plan and plan implementation that shall include an advisory committee or other similar mechanism for obtaining input from the public at large as well as other stakeholders;

''(D) use amounts received under paragraph (1) in accordance with the plan submitted under paragraph (3), including making expenditures to carry out the strategy contained in the plan;

''(E) use amounts received under paragraph (1) to supplement and not supplant funding at levels in existence prior to September 11, 2001 for public health capacities or bioterrorism preparedness; and

''(F) with respect to the plan under paragraph (3), establish reasonable criteria to evaluate the effective performance of entities that receive funds under the grant or agreement and shall include relevant benchmarks in the plan.

''(3) BIOTERRORISM PREPAREDNESS AND RESPONSE PLAN.—Not later than 180 days after receiving amounts under this subsection, and 1 year after such date, a State, the District of Columbia, or a territory shall prepare and submit to the Secretary a Bioterrorism Preparedness and Response Plan for responding to biological threats or attacks. Recognizing the assessment of public health capacity conducted under section 319B, such plan shall include—

''(A) a description of the program that the eligible entity will adopt to achieve the core capacities developed under section 319A, including measures that meet the needs of children and other vulnerable populations;

''(B) a description (including amounts expended by the eligible entity for such purpose) of the programs, projects, and activities that the eligible entity will implement using amounts received in order to detect and respond to biological threats or attacks, including the manner in which the eligible entity will manage State surveillance and response efforts and coordinate such efforts with national efforts;

''(C) a description of the training initiatives that the eligible entity has carried out to improve its ability to detect and respond to a biological threat or attack, including training and planning to protect the health and safety of those conducting such detection and response activities;

''(D) a description of the cleanup and contamination prevention efforts that may be implemented in the event of a biological threat or attack;

''(E) a description of efforts to ensure that hospitals and health care providers have adequate capacity and plans in place to provide health care items and services (including mental health services and services to meet the needs of children and other vulnerable populations that may include the provision of telehealth services) in the event of a biological threat or attack; and

''(F) other information the Secretary may by regulation require.

''Nothing in subparagraph (E) shall be construed to require or recommend that States establish or maintain stockpiles of vaccines, therapies, or other medical supplies.

''(4) USE OF FUNDS.—

''(A) IN GENERAL.—In coordination with the activities conducted under this section, an eligible entity shall use amounts received under this section to—

''(i) conduct the assessment under section 319B to achieve the capacities described in section 319A, if the assessment has not previously been conducted;

''(ii) achieve the public health capacities developed under section 319A; and

''(iii) carry out the plan under paragraph (3).

''(B) ADDITIONAL USES.—In addition to the activities described in subparagraph (A), an eligible entity may use amounts received under this subsection to—

''(i) improve surveillance, detection, and response activities to prepare for emergency response activities including biological threats or attacks, including training personnel in these and other necessary functions;

''(ii) carry out activities to improve communications and coordination efforts within the eligible entity and between the eligible entity and the Federal Government, including activities to improve information technology and communications equipment available to health care and public health officials for use in responding to a biological threat or attack or other public health emergency and including early warning and surveillance networks that use advanced information technology to provide early detection of biological threats or attacks;

''(iii) plan for triage and transport management in the event of a biological threat or attack;

''(iv) meet the special needs of children and other vulnerable populations during and after a biological threat or attack, including the expansion of 2–1–1 call centers or other universal hotlines, or an alternative communication plan to assist victims and their families in receiving timely information;

''(v) improve the ability of hospitals and other health care facilities to provide effective health care (including mental health care) during and after a biological threat or attack, including the development of model hospital preparedness plans by a hospital accreditation organization or similar organizations; and

''(vi) enhance the safety of workplaces in the event of a biological threat or attack, except that nothing in this clause shall be construed to create a new, or deviate from an existing, authority to regulate, modify, or otherwise effect safety and health rules and standards.

''(C) PROHIBITED USES.—An eligible entity may not use amounts received under this subsection to—

''(i) provide inpatient services;

''(ii) make cash payments to intended recipients of health services;

''(iii) purchase or improve land or purchase any building or other facility;

''(iv) construct, repair, or alter any building or other facility; or

''(v) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

''(5) AMOUNT OF GRANT.—

''(A) IN GENERAL.—Except as provided in paragraph (2), the amount awarded to a State, the District of Columbia, or a territory under this subsection for a fiscal year shall be an amount that bears the same ratio to the amount appropriated under paragraph (9) for such fiscal year (and remaining after amounts are made available under subparagraphs (C) and (D)) as the total population of the State, District, or territory bears to the total population of the United States.

''(B) EXCEPTIONS.—

''(i) MINIMUM AMOUNT WITH RESPECT TO STATES.—Notwithstanding subparagraph (A) and subject to the extent of amounts made available under paragraph (9), a State may not receive an award under this subsection for a fiscal year in an amount that is less than—

''(I) $5,000,000 for any fiscal year in which the total amount appropriated under this subsection equals or exceeds $667,000,000; or

''(II) 0.75 percent of the total amount appropriated under this subsection for any fiscal year in which such total amount is less than $667,000,000.

''(ii) EXTRAORDINARY NEEDS.—

''(I) IN GENERAL.—Notwithstanding subparagraph (A) and subject to the extent of amounts made available under paragraph (9), the Secretary may provide additional funds to a State, District, or territory under this subsection if the Secretary determines that such State, District, or territory has extraordinary needs with respect to bioterrorism preparedness.

''(II) FINDING WITH RESPECT TO THE DISTRICT OF COLUMBIA.—As a result of the concentration of entities of national significance located within the District of Columbia, Congress finds that the District of Columbia has extraordinary needs with respect to bioterrorism preparedness, and the Secretary shall recognize such finding for purposes of subclause (I).

''(C) RULE WITH RESPECT TO UNEXPENDED FUNDS.—To the extent that all the funds appropriated under paragraph (9) for a fiscal year and available in such fiscal year are not otherwise paid to eligible entities because—

''(i) one or more eligible entities have not submitted an application or public health disaster plan in accordance with paragraphs (2) and (3) for the fiscal year;

''(ii) one or more eligible entities have notified the Secretary that they do not intend to use the full amount awarded under this subsection; or

''(iii) some eligible entity amounts are offset or repaid;

such excess shall be provided to each of the remaining eligible entities in proportion to the amount otherwise provided to such entities under this paragraph for the fiscal year without regard to this subparagraph.

''(D) AVAILABILITY OF FUNDS.—Any amount paid to an eligible entity for a fiscal year under this subsection and remaining unobligated at the end of such year shall remain available for the next fiscal year to such entity for the purposes for which it was made.

''(6) INDIAN TRIBES.—

''(A) IN GENERAL.—If the Secretary—

''(i) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this subsection be provided directly by the Secretary to such tribe or organization; and

''(ii) determines that the members of such tribe or tribal organization would be better served by means of grants or agreements made directly by the Secretary under this subsection;

the Secretary shall reserve from amounts which would otherwise be provided to such State under this subsection for the fiscal year the amount determined under subparagraph (B).

''(B) AMOUNT.—The Secretary shall reserve for the purpose of subparagraph (A) from amounts that would otherwise be paid to such State under paragraph (1) an amount equal to the amount which bears the same ratio to the amount awarded to the State for the fiscal year involved as the population of the Indian tribe or the individuals represented by the tribal organization bears to the total population of the State.

''(C) GRANT.—The amount reserved by the Secretary on the basis of a determination under this paragraph shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

''(D) PLAN.—In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this paragraph, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.

''(E) DEFINITIONS.—In this paragraph, the terms 'Indian tribe' and 'tribal organization' have the same meaning given such terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act.

''(7) WITHHOLDING.—

''(A) REQUIREMENTS.—

''(i) IN GENERAL.—The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected eligible entity, withhold or recoup funds from any such entity that does not use amounts received under this subsection in accordance with the requirements of this subsection. The Secretary shall withhold or recoup such funds until the Secretary finds that the reason for the withholding or recoupment has been removed and there is reasonable assurance that it will not recur.

''(ii) INVESTIGATION.—The Secretary may not institute proceedings to withhold or recoup funds under clause (i) unless the Secretary has conducted an investigation concerning whether the eligible entity has used grant or agreement amounts in accordance with the requirements of this subsection. Investigations required by this clause shall be conducted within the affected entity by qualified investigators.

''(iii) RESPONSE TO COMPLAINTS.—The Secretary shall respond in an expeditious manner to complaints of a substantial or serious nature that an eligible entity has failed to use funds in accordance with the requirements of this subsection.

''(iv) MINOR FAILURES.—The Secretary may not withhold or recoup funds under clause (i) from an eligible entity for a minor failure to comply with the requirements of this subsection.

''(B) AVAILABILITY OF INFORMATION FOR INSPECTION.—Each eligible entity, and other

entity which has received funds under this section, shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefore.

''(C) LIMITATION ON REQUESTS FOR INFORMATION.—

''(i) IN GENERAL.—In conducting any investigation in an eligible entity, the Secretary or the Comptroller General of the United States may not make a request for any information not readily available to such eligible entity, or an entity which has received funds under this subsection, or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

''(ii) JUDICIAL PROCEEDINGS.—Clause (i) does not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

''(8) DEFINITION.—In this subsection, the term 'State' means any of the several States.

''(9) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, $667,000,000 for fiscal year 2002, and such sums as may be necessary for fiscal year 2003, and no funds are authorized to be appropriated for subsequent fiscal years.''.

(b) REAUTHORIZATION OF OTHER PROGRAMS.—Section 319F(i) of the Public Health Service Act (42 U.S.C. 247d–6(i)) is amended to read as follows:

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

''(1) to carry out subsection (d), $370,000,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year through 2006; and

''(2) to carry out subsections (a), (b), and (e) through (i), such sums as may be necessary for each of fiscal years 2002 through 2006.''.

Subtitle B—Improving Local Preparedness and Response Capabilities

SEC. 311. DESIGNATED BIOTERRORISM RESPONSE MEDICAL CENTERS.

Section 319F of the Public Health Service Act (42 U.S.C. 247d–6) is amended—

(1) by redesignating subsections (d) through (h) and (i), as subsections (e) through (i) and (l), respectively; and

(2) by inserting after subsection (c), the following:

''(d) DESIGNATED BIOTERRORISM RESPONSE MEDICAL CENTERS.—

''(1) GRANTS.—The Secretary shall award project grants to eligible entities to enable such entities, in a manner consistent with applicable provisions of the Bioterrorism Preparedness and Response Plan, to improve local and bioterrorism response medical center preparedness.

''(2) ELIGIBILITY.—To be eligible for a grant under paragraph (1), an entity shall—

''(A) be a consortium that consists of at least one entity from each of the following categories—

''(i) a hospital including children's hospitals, clinic, health center, or primary care facility;

''(ii) a political subdivision of a State; and

''(iii) a department of public health;

''(B) prepare, in consultation with the Chief Executive Officer of the State, District, or territory in which the hospital, clinic, health center, or primary care facility is located, and submits to the Secretary, an application at such time, in such manner, and containing such information as the Secretary may require;

''(C) within a reasonable period of time after receiving a grant under paragraph (1), meet such technical guidelines as may be applicable under paragraph (4); and

''(D) provide assurances satisfactory to the Secretary that such entity shall, upon the request of the Secretary or the Chief Executive Officer of the State, District, or territory in which the entity is located, during the emergency period, serve the needs of the emergency area, including providing adequate health care capacity, serving as a regional resource in the diagnosis, treatment, or care for persons, including children and other vulnerable populations, exposed to a biological threat or attack, and accepting the transfer of patients, where appropriate.

''(3) USE OF FUNDS.—An entity that receives a grant under paragraph (1) shall use funds received under the grant for activities that include—

''(A) the training of health care professionals to enhance the ability of such personnel to recognize the symptoms of exposure to a potential biological threat or attack and to provide treatment to those so exposed;

''(B) the training of health care professionals to recognize and treat the mental health consequences of a biological threat or attack;

''(C) increasing the capacity of such entity to provide appropriate health care for large numbers of individuals exposed to a biological threat or attack;

''(D) the purchase of reserves of vaccines, therapies, and other medical supplies to be used until materials from the Strategic National Pharmaceutical Stockpile arrive;

''(E) training and planning to protect the health and safety of personnel involved in responding to a biological threat or attack; or

''(F) other activities determined appropriate by the Secretary.

''(4) PROHIBITED USES.—An eligible entity may not use amounts received under this subsection to—

''(A) purchase or improve land or purchase any building or other facility; or

''(B) construct, repair, or alter any building or facility.

''(6) TECHNICAL ASSISTANCE.—Not later than 180 days after the date of enactment of the Bioterrorism Preparedness Act of 2001, the Secretary shall develop and publish technical guidelines relating to equipment, training, treatment, capacity, and personnel, relevant to the status as a bioterrorism response medical center and the Secretary may provide technical assistance to eligible entities, including assistance to address the needs of children and other vulnerable populations.''.

SEC. 312. DESIGNATED STATE PUBLIC EMERGENCY ANNOUNCEMENT PLAN.

Section 613(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196b(b)) is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(7) include a plan for providing information to the public in a coordinated manner.''.

SEC. 313. TRAINING FOR PEDIATRIC ISSUES SURROUNDING BIOLOGICAL AGENTS USED IN WARFARE AND TERRORISM.

Section 319F(f) of the Public Health Service Act (42 U.S.C. 247d–6(e)), as so redesignated by section 311, is amended—

(1) in paragraph (1)—

(A) by inserting ''(including mental health care)'' after ''and care''; and

(B) by striking ''and'' at the end;

(2) in paragraph (2), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(3) develop educational programs for health care professionals, recognizing the special needs of children and other vulnerable populations.''.

SEC. 314. GENERAL ACCOUNTING OFFICE REPORT.

Section 319F(h) of the Public Health Service Act (42 U.S.C. 247d–6(g)), as so redesignated by section 311, is amended—

(1) by striking ''Not later than 180 days after the date of the enactment of this section, the'' and inserting ''The'';

(2) in paragraph (3), by striking ''and'' at the end;

(3) in paragraph (4), by striking the period and inserting a semicolon; and

(4) by adding at the end the following:

''(5) the activities and cost of the Civil Support Teams of the National Guard in responding to biological threats or attacks against the civilian population;

''(6) the activities of the working group described in subsection (a) and the efforts made by such group to carry out the activities described in such subsection;

''(7) the activities and cost of the 2–1–1 call centers and other universal hotlines; and

''(8) the activities and cost of the development and improvement of public health laboratory capacity.''.

SEC. 315. ADDITIONAL RESEARCH.

Section 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 671) is amended by adding at the end the following:

''(h) RESEARCH RELATING TO BIOLOGICAL THREATS OR ATTACKS IN THE WORKPLACE.—The Director shall enhance and expand research as deemed appropriate by the Director on the health and safety of workers who are at risk for biological threats or attacks in the workplace.''.

SEC. 316. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) many excellent university-based programs are already functioning and developing important biodefense products and solutions throughout the United States;

(2) accelerating the crucial work done at university centers and laboratories will contribute significantly to the United States capacity to defend against any biological threat or attack;

(3) maximizing the effectiveness of, and extending the mission of, established university programs would be one appropriate use of the additional resources provided for in the Bioterrorism Preparedness Act of 2001; and

(4) Congress recognizes the importance of existing public and private university-based research, training, public awareness, and safety related biological defense programs in the awarding of grants and contracts made in accordance with this Act.

TITLE IV—DEVELOPING NEW COUNTERMEASURES AGAINST BIOTERRORISM

SEC. 401. LIMITED ANTITRUST EXEMPTION.

Section 2 of the Clayton Act (15 U.S.C. 13) is amended by adding at the end the following:

''(g) LIMITED ANTITRUST EXEMPTION.—

''(1) COUNTERMEASURES DEVELOPMENT MEETINGS.—

''(A) COUNTERMEASURES DEVELOPMENT MEETINGS AND CONSULTATIONS.—The Secretary may conduct meetings and consultations with parties involved in the development of priority countermeasures for the purpose of the development, manufacture, distribution, purchase, or sale of priority countermeasures consistent with the purposes of this title. The Secretary shall give notice of such meetings and consultations to the Attorney General and the Chairperson of the Federal Trade Commission (referred to in this subsection as the 'Chairperson').

''(B) MEETING AND CONSULTATION CONDITIONS.—A meeting or consultation conducted under subparagraph (A) shall—

''(i) be chaired or, in the case of a consultation, facilitated by the Secretary;

''(ii) be open to parties involved in the development, manufacture, distribution, purchase, or sale of priority countermeasures, as determined by the Secretary;

''(iii) be open to the Attorney General and the Chairperson;

''(iv) be limited to discussions involving the development, manufacture, distribution, or sale of priority countermeasures, consistent with the purposes of this title; and

''(v) be conducted in such manner as to ensure that national security, confidential, and proprietary information is not disclosed outside the meeting or consultation.

''(C) MINUTES.—The Secretary shall maintain minutes of meetings and consultations under this subsection, which shall not be disclosed under section 552 of title 5, United States Code.

''(D) EXEMPTION.—The antitrust laws shall not apply to meetings and consultations under this paragraph, except that any agreement or conduct that results from a meeting or consultation and that does not receive an exemption pursuant to this subsection shall be subject to the antitrust laws.

''(2) WRITTEN AGREEMENTS.—The Secretary shall file a written agreement regarding covered activities, made pursuant to meetings or consultations conducted under paragraph (1) and that is consistent with this paragraph, with the Attorney General and the Chairperson for a determination of the compliance of such agreement with antitrust laws. In addition to the proposed agreement itself, any such filing shall include—

''(A) an explanation of the intended purpose of the agreement;

''(B) a specific statement of the substance of the agreement;

''(C) a description of the methods that will be utilized to achieve the objectives of the agreement;

''(D) an explanation of the necessity of a cooperative effort among the particular participating parties to achieve the objectives of the agreement; and

''(E) any other relevant information determined necessary by the Secretary in consultation with the Attorney General and the Chairperson.

''(3) DETERMINATION.—The Attorney General, in consultation with the Chairperson, shall determine whether an agreement regarding covered activities referred to in paragraph (2) would likely—

''(A) be in compliance with the antitrust laws, and so inform the Secretary and the participating parties; or

''(B) violate the antitrust laws, in which case, the filing shall be deemed to be a request for an exemption from the antitrust laws, limited to the performance of the agreement consistent with the purposes of this title.

''(4) ACTION ON REQUEST FOR EXEMPTION.—

''(A) IN GENERAL.—The Attorney General, in consultation with the Chairperson, shall grant, deny, grant in part and deny in part, or propose modifications to a request for exemption from the antitrust laws under paragraph (3) within 15 days of the receipt of such request.

''(B) EXTENSION.—The Attorney General may extend the 15-day period referred to in subparagraph (A) for an additional period of not to exceed 10 days. Such additional period may be further extended only by the United States district court, upon an application by the Attorney General after notice to the Secretary and the parties involved.

''(C) DETERMINATION.—In granting an exemption under this paragraph, the Attorney General, in consultation with the Chairperson and the Secretary—

(i) must find—

''(I) that the agreement involved is necessary to ensure the availability of priority countermeasures;

''(II) that the exemption from the antitrust laws would promote the public interest; and

''(III) that there is no substantial competitive impact to areas not directly related to the purposes of the agreement; and

''(ii) may consider any other factors determined relevant by the Attorney General and the Chairperson.

''(5) LIMITATION ON AND RENEWAL OF EXEMPTIONS.—An exemption granted under paragraph (4) shall be limited to covered activities, and shall expire on the date that is 3 years after the date on which the exemption becomes effective (and at 3 year intervals thereafter, if renewed) unless the Attorney General in consultation with the Chairperson determines that the exemption should be renewed (with modifications, as appropriate) considering the factors described in paragraph (4).

''(6) LIMITATION ON PARTIES.—The use of any information acquired under an exempted agreement by the parties to such an agreement for any purposes other than those specified in the antitrust exemption granted by the Attorney General shall be subject to the antitrust laws and any other applicable laws.

''(7) GUIDELINES.—The Attorney General and the Chairperson may develop and issue guidelines to implement this subsection.

''(8) REPORT.—Not later than 1 year after the date of enactment of the Bioterrorism Preparedness Act of 2001, and annually thereafter, the Attorney General and the Chairperson shall report to Congress on the use and continuing need for the exemption from the antitrust laws provided by this subsection.

''(9) SUNSET.—The authority of the Attorney General to grant or renew a limited antitrust exemption under this subsection shall expire at the end of the 6-year period that begins on the date of enactment of the Bioterrorism Preparedness Act of 2001.

''(h) DEFINITIONS.—In this section and title XXVIII of the Public Health Service Act:

''(1) ANTITRUST LAWS.—The term 'antitrust laws'—

''(A) has the meaning given such term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes the Act of June 19, 1936 (15 U.S.C. 13 et seq.) commonly known as the Robinson-Patman Act), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

''(B) includes any State law similar to the laws referred to in subparagraph (A).

''(2) COVERED ACTIVITIES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'covered activities' means any group of activities or conduct, including attempting to make, making, or performing a contract or agreement or engaging in other conduct, for the purpose of—

''(i) theoretical analysis, experimentation, or the systematic study of phenomena or observable facts necessary to the development of priority countermeasures;

''(ii) the development or testing of basic engineering techniques necessary to the development of priority countermeasures;

''(iii) the extension of investigative findings or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes necessary to the development of priority countermeasures;

''(iv) the production, distribution, or marketing of a product, process, or service that is a priority countermeasures;

''(v) the testing in connection with the production of a product, process, or services necessary to the development of priority countermeasures;

''(vi) the collection, exchange, and analysis of research or production information necessary to the development of priority countermeasures; or

''(vii) any combination of the purposes described in clauses (i) through (vi);

and such term may include the establishment and operation of facilities for the conduct of covered activities described in clauses (i) through (vi), the conduct of such covered activities on a protracted and proprietary basis, and the processing of applications for patents and the granting of licenses for the results of such covered activities.

''(B) EXCEPTION.—The term 'covered activities' shall not include the following activities involving 2 or more persons:

''(i) Exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service if such information is not reasonably necessary to carry out the purposes of covered activities.

''(ii) Entering into any agreement or engaging in any other conduct—

''(I) to restrict or require the sale, licensing, or sharing of inventions, developments, products, processes, or services not developed through, produced by, or distributed or sold through such covered activities; or

''(II) to restrict or require participation by any person who is a party to such covered activities in other research and development activities, that is not reasonably necessary to prevent the misappropriation of proprietary information contributed by any person who is a party to such covered activities or of the results of such covered activities.

''(iii) Entering into any agreement or engaging in any other conduct allocating a market with a competitor that is not expressly exempted from the antitrust laws by a determination under subsection (i)(4).

''(iv) Exchanging information among competitors relating to production (other than production by such covered activities) of a product, process, or service if such information is not reasonably necessary to carry out the purpose of such covered activities.

''(v) Entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production of a product, process, or service that is not so expressly exempted from the antitrust laws by a determination under subsection (i)(4).

''(vi) Except as otherwise provided in this subsection, entering into any agreement or engaging in any other conduct to restrict or require participation by any person who is a party to such activities, in any unilateral or joint activity that is not reasonably necessary to carry out the purpose of such covered activities.

''(3) DEVELOPMENT.—The term 'development' includes the identification of suitable compounds or biological materials, the conduct of preclinical and clinical studies, the preparation of an application for marketing approval, and any other actions related to preparation of a countermeasure.

''(4) PERSON.—The term 'person' has the meaning given such term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

''(5) PRIORITY COUNTERMEASURE.—The term 'priority countermeasure' means a countermeasure, including a drug, medical device, biological product, or diagnostic test to treat, identify, or prevent infection by a biological agent or toxin on the list developed under section 351A(a)(1) and prioritized under subsection (a)(1).''.

SEC. 402. DEVELOPING NEW COUNTERMEASURES AGAINST BIOTERRORISM.

Title XXVIII of the Public Health Service Act, as added by section 101 and amended by section 201, is further amended by adding at the end the following:

"Subtitle B—Developing New Countermeasures Against Bioterrorism

"SEC. 2841. SMALLPOX VACCINE AND OTHER VACCINE DEVELOPMENT.

''(a) IN GENERAL.—The Secretary shall award contracts, enter into cooperative agreements, or carry out such other activities as may reasonably be required in order to ensure that the stockpile described in section 2812 shall include the number of doses of vaccine against smallpox and other such vaccines determined by the Secretary to be sufficient to meet the needs of the population of the United States.

''(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the private distribution, purchase, or sale of vaccines from sources other than the stockpile described in subsection (a).

''(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $509,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.

"SEC. 2842. CONTRACT AUTHORITY FOR PRIORITY COUNTERMEASURES.

''(a) IN GENERAL.—The Secretary shall, to the extent the Secretary determines necessary to achieve the purposes of this title, enter into long-term contracts and comparable grants or cooperative agreements, for the purpose of—

''(1) ensuring the development of priority countermeasures that are necessary to prepare for a bioterrorist attack or other significant disease emergency;

''(2) securing the manufacture, distribution, and adequate supply of such countermeasures, including through the development of novel production methods for such countermeasures;

''(3) maintaining the Strategic National Pharmaceutical Stockpile under section 2812; and

''(4) carrying out such other activities determined appropriate by the Secretary to achieve the purposes of this title.

''(b) TERMS OF CONTRACTS.—Notwithstanding any other provision of law, the Secretary may enter into a contract or cooperative agreement under subsection (a) prior to the development, approval, or clearance of the countermeasure that is the subject of the contract. The contract or cooperative agreement may provide for its termination for the convenience of the Federal Government if the contractor does not develop the countermeasure involved. Such a contract or cooperative agreement may—

''(1) involve one or more aspects of the development, manufacture, purchase, or distribution of one or more uses of one or more countermeasures; and

''(2) set forth guaranteed minimum quantities of products and negotiated unit prices.

"SEC. 2843. SECURITY FOR COUNTERMEASURE DEVELOPMENT AND PRODUCTION.

''(a) IN GENERAL.—The Secretary, in consultation with the Attorney General and the Secretary of Defense, may provide technical or other assistance, to provide security to persons or facilities that conduct development, production, distribution, or storage of priority countermeasures.

''(b) BEST PRACTICES.—The Secretary shall develop guidelines and best practices to enable entities eligible to receive assistance under this section to secure their facilities against potential terrorist attack.''.

SEC. 403. SEQUENCING OF PRIORITY PATHOGENS.

Section 319F(g) of the Public Health Service Act (42 U.S.C. 247d–6(f)), as so redesignated by section 311, is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3), the following:

''(4) the sequencing of the genomes of priority pathogens as determined appropriate by the Director of the National Institutes of Health, in consultation with the working group established in subsection (a); and''.

SEC. 404. ACCELERATED COUNTERMEASURE RESEARCH AND DEVELOPMENT.

Section 319F(g) of the Public Health Service Act (42 U.S.C. 247d–6(f)), as so redesignated by section 311 and amended by section 403, is further amended—

(1) by redesignating paragraphs (1) through (5), as subparagraphs (A) through (E), respectively and indenting appropriately;

(2) by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—The Secretary''; and

(3) by adding at the end the following:

''(2) ACCELERATED COUNTERMEASURE RESEARCH AND DEVELOPMENT.—

''(A) IN GENERAL.—The Secretary shall conduct, and award grants, contracts, or cooperative agreements for, research, investigations, experiments, demonstrations, and studies in the health sciences relating to—

''(i) the epidemiology and pathogenesis of biological agents or toxins of potential use in a bioterrorist attack;

''(ii) the development of new vaccines and therapeutics for use against biological agents or toxins of potential use in a bioterrorist attack;

''(iii) the development of diagnostic tests to detect biological agents or toxins of potential use in a bioterrorist attack; and

''(iv) other relevant areas of research;

with consideration given to the needs of children and other vulnerable populations.

''(B) PRIORITY.—The Secretary shall give priority under this paragraph to the funding of research and other studies related to priority countermeasures.''.

SEC. 405. ACCELERATED APPROVAL OF PRIORITY COUNTERMEASURES.

(a) IN GENERAL.—The Secretary of Health and Human Services may designate a priority countermeasure as a fast-track product pursuant to section 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356) or as a device granted priority review pursuant to section 515(d)(5) of such Act (21 U.S.C. 366e(d)(5)). Such a designation may be made prior to the submission of—

(1) a request for designation by the sponsor or applicant; or

(2) an application for the investigation of the drug under section 505(i) of such Act or section 351(a)(3) of the Public Health Service Act.

Nothing in this subsection shall be construed to prohibit a sponsor or applicant from declining such a designation.

(b) USE OF ANIMAL TRIALS.—A drug for which approval is sought under section 505(d) of the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act on the basis of evidence of effectiveness that is derived from animal studies under section 406 may be designated as a fast track product for purposes of this section.

(c) PRIORITY REVIEW.—

(1) IN GENERAL.—A priority countermeasure that is a drug or biological product shall be subject to the performance goals established by the Commissioner of Food and Drugs for priority drugs or biological products.

(2) DEFINITION.—In this subsection the term ''priority drugs or biological products'' means a drug or biological product that is the subject of a drug application referred to in section 101(4) of the Food and Drug Administration Modernization Act of 1997.

SEC. 406. USE OF ANIMAL TRIALS IN THE APPROVAL OF PRIORITY COUNTERMEASURES.

Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall issue a final rule for the proposal entitled ''New Drug and Biological Drug Products; Evidence Needed to Demonstrate Efficacy of New Drugs for Use Against Lethal or Permanently Disabling Toxic Substances When Efficacy Studies in Humans Ethically Cannot be Conducted'' as published in the Federal Register on October 5, 1999 (64 Fed. Reg.).

SEC. 407. MISCELLANEOUS PROVISIONS.

Title XXVIII of the Public Health Service Act, as added by section 101 and amended by section 403, is further amended by adding at the end the following:

"Subtitle C—Miscellaneous Provisions

"SEC. 2851. SUPPLEMENT NOT SUPPLANT.

''A State or local government, or other entity to which a grant, contract, or cooperative agreement is awarded under this title, may not use amounts received under the grant, contract, or cooperative agreement to supplant expenditures by the entity for activities provided for under this title, but shall use such amounts only to supplement such expenditures at a level at least equal to the level of such expenditures for fiscal year 2001 (excluding those additional, extraordinary expenditures that may have been made after September 10, 2001).''.

TITLE V—PROTECTING THE SAFETY AND SECURITY OF THE FOOD SUPPLY

Subtitle A—General Provisions to Expand and Upgrade Security

SEC. 511. FOOD SAFETY AND SECURITY STRATEGY.

(a) IN GENERAL.—The President's Council on Food Safety (as established by Executive Order 13100), the Secretary of Commerce, and the Secretary of Transportation, shall, in consultation with the food industry and consumer and producer groups, and the States, develop a crisis communications and education strategy with respect to bioterrorist threats to the food supply. Such strategy shall address threat assessments, response and notification procedures, and risks communications to the public.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, $500,000 for fiscal year 2002, and such sums as may be necessary in each subsequent fiscal year to implement the strategy developed under subsection (a) in cooperation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency.

SEC. 512. EXPANSION OF ANIMAL AND PLANT HEALTH INSPECTION SERVICE ACTIVITIES.

(a) IN GENERAL.—The Secretary of Agriculture (referred to in this section as the ''Secretary'') shall enhance and expand the capacity of the Animal and Plant Health Inspection Service through the conduct of activities to—

(1) increase the inspection capacity of the Service at international points of origin;

(2) improve surveillance at ports of entry and customs;

(3) enhance methods of protecting against the introduction of plant and animal disease organisms by terrorists;

(4) adopt new strategies and technologies for dealing with intentional outbreaks of

plant and animal disease arising from acts of terrorism or from unintentional introduction, including—

(A) establishing cooperative agreements among Veterinary Services of the Animal and Plant Health Inspection Service, State animal health commissions and regulatory agencies for livestock and poultry health, and private veterinary practitioners to enhance the preparedness and ability of Veterinary Services and the commissions and agencies to respond to outbreaks of such animal diseases; and

(B) strengthening planning and coordination with State and local agencies, including—

(i) State animal health commissions and regulatory agencies for livestock and poultry health; and

(ii) State agriculture departments; and

(5) otherwise expand the capacity of the Service to protect against the threat of bioterrorism.

(b) HIGH-TECH AGRICULTURE EARLY WARNING AND EMERGENCY RESPONSE SYSTEM.—

(1) IN GENERAL.—To provide the agricultural system of the United States with a new, enhanced level of protection and biosecurity that does not exist on the date of enactment of this Act, the Secretary of Agriculture, in coordination with the Secretary of Health and Human Services, shall implement a fully secure surveillance and response system that utilizes, or is capable of utilizing, field test devices capable of detecting biological threats to animals and plants and that electronically integrates the devices and the tests on a real-time basis into a comprehensive surveillance, incident management, and emergency response system.

(2) EXPANSION OF SYSTEM.—The Secretary shall expand the system implemented under paragraph (1) as soon as practicable to include other Federal agencies and the States where appropriate and necessary to enhance the protection of the food and agriculture system of the United States. To facilitate the expansion of the system, the Secretary shall award grants to States.

(c) AUTOMATED RECORDKEEPING SYSTEM.—The Administrator of the Animal and Plant Health Inspection Service shall implement a central automated recordkeeping system to provide for the reliable tracking of the status of animal and plant shipments, including those shipments on hold at ports of entry and customs. The Secretary shall ensure that such a system shall be fully accessible to or fully integrated with the Food Safety Inspection Service.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $30,000,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year.

SEC. 513. EXPANSION OF FOOD SAFETY INSPECTION SERVICE ACTIVITIES.

(a) IN GENERAL.—The Secretary of Agriculture shall enhance and expand the capacity of the Food Safety Inspection Service through the conduct of activities to—

(1) enhance the ability of the Service to inspect and ensure the safety and wholesomeness of meat and poultry products;

(2) improve the capacity of the Service to inspect international meat and meat products, poultry and poultry products, and egg products at points of origin and at ports of entry;

(3) strengthen the ability of the Service to collaborate with relevant agencies within the Department of Agriculture and with other entities in the Federal Government, the States, and Indian tribes through the sharing of information and technology; and

(4) otherwise expand the capacity of the Service to protect against the threat of bioterrorism.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $15,000,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year.

SEC. 514. EXPANSION OF FOOD AND DRUG ADMINISTRATION ACTIVITIES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall expand the capacity of the Food and Drug Administration to—

(1) increase inspections to ensure the safety of the food supply consistent with the amendments made by subtitle B; and

(2) improve linkages between the Agency and other regulatory agencies of the Federal Government, the States, and Indian tribes with shared responsibilities.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $59,000,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year.

SEC. 515. BIOSECURITY UPGRADES AT THE DEPARTMENT OF AGRICULTURE.

There is authorized to be appropriated for fiscal year 2002, $180,000,000 to enable the Agricultural Research Service to conduct building upgrades to modernize existing facilities, of which (1) $100,000,000 is allocated for renovation, updating, and expansion of the Biosafety Level 3 laboratory and animal research facilities at the Plum Island Animal Disease Center (Greenport, New York), and of which (2) $80,000,000 is allocated for the Agricultural Research Service/Animal and Plant Health Inspection Service facility in Ames, Iowa. There is authorized to be appropriated such sums as may be necessary in fiscal years 2003 through 2006 for (1), (2) and the planning and design of an Agricultural Research Service biocontainment laboratory for poultry research in Athens, Georgia, and the planning, updating, and renovation of the Arthropod-Borne Animal Disease Laboratory in Laramie, Wyoming.

SEC. 516. BIOSECURITY UPGRADES AT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

The Secretary of Health and Human Services shall take such actions as may be necessary to secure existing facilities of the Department of Health and Human Services where potential animal and plant pathogens are housed or researched.

SEC. 517. AGRICULTURAL BIOSECURITY.

(a) LAND GRANT ASSESSMENTS.—

(1) IN GENERAL.—The Secretary of Agriculture (referred to in this section as the ''Secretary'') shall establish minimum security standards and award grants to land grant universities to conduct security needs assessments and to plan for improvement of—

(A) the security of all facilities where hazardous biological agents and toxins are stored or used for agricultural research purposes; and

(B) communication networks that transmit information about hazardous biological agents and toxins.

(2) AVAILABILITY OF STANDARDS.—Not later than 45 days after the establishment of security standards under paragraph (1), the Secretary shall make such standards available to land grant universities.

(3) GRANTS.—Not later than 45 days after the date of enactment of this Act, the Secretary shall award grants, not to exceed $50,000 each, to land grant universities to enable such universities to conduct a security needs assessment and plan activities to improve security. Such an assessment shall be completed not later than 45 days after the date on which such grant funds are received.

(b) NATIONAL HAZARDOUS AGENT INVENTORY.—The Secretary shall carry out activities necessary to develop a national inventory of hazardous biological agents and toxins contained in agricultural research facilities. Such activities shall include developing and distributing a model inventory procedure, developing secure means of transmitting inventory information, and conducting annual inventory activities. The inventory shall be developed in coordination with, or as a component of, similar systems in existence on the date of enactment of this Act.

(c) SCREENING PROTOCOL.—The Secretary shall establish a national protocol for the screening of individuals who require access to agricultural research facilities in a manner that provides for the protection of personal privacy.

(d) INDUSTRY-ON-FARM EDUCATION.—

(1) IN GENERAL.—The Secretary shall develop and implement a program to provide education relating to farms, livestock confinement operations, and livestock auction biosecurity to prevent the intentional or accidental introduction of a foreign animal disease and to attempt to discover the introduction of such a disease before it can spread into an outbreak. Biosecurity for livestock includes animal quarantine procedures, blood testing of new arrivals, farm locations, control of human movement onto farms and holding facilities, control of vermin, and movement of vehicles onto farms.

(2) QUARANTINE AND TESTING.—The Secretary shall develop and disseminate through educational programs animal quarantine and testing guidelines to enable farmers and producers to better monitor new arrivals. Any educational seminars and training carried out by the Secretary under this paragraph shall emphasize the economic benefits of biosecurity and the profound negative impact of an outbreak.

(3) CROP GUIDELINES.—The Secretary may develop guidelines and educational materials relating to biosecurity issues to be distributed to local crop producers and facilities that handle, process, or transport crops.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $20,000,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year, of which not less than $5,000,000 shall be made available in fiscal year 2002 for activities under subsection (a).

SEC. 518. BIOSECURITY OF FOOD MANUFACTURING, PROCESSING, AND DISTRIBUTION.

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary''), in consultation with the Attorney General, may award grants, contracts, or cooperative agreements to enable food manufacturers, food processors, food distributors, and other entities regulated by the Secretary to ensure the safety of food through the development and implementation of educational programs to ensure the security of their facilities and modes of transportation against potential bioterrorist attack.

(b) BEST PRACTICES.—The Secretary may develop best practices to enable entities eligible for funding under this section to secure their facilities and modes of transportation against potential bioterrorist attacks.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $500,000 in fiscal year 2002, and such sums as may be necessary for each fiscal year thereafter.

Subtitle B—Protection of the Food Supply

SEC. 531. ADMINISTRATIVE DETENTION.

(a) EXPANDED AUTHORITY.—Section 304 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 334) is amended by adding at the end the following:

''(h) ADMINISTRATIVE DETENTION OF FOODS.—

''(1) AUTHORITY.—Any officer or qualified employee of the Food and Drug Administration may order the detention, in accordance with this subsection, of any article of food that is found during an inspection, examination, or investigation under this Act conducted by such officer or qualified employee, if the officer or qualified employee has credible evidence or information indicating that the article is in violation of this Act and presents a threat of serious adverse health consequences or death to humans or animals.

''(2) PERIOD OF DETENTION; APPROVAL BY SECRETARY OR SECRETARY'S DESIGNEE.—

''(A) DURATION.—An article of food may be detained under this subsection for a reasonable period, not to exceed 20 days, unless a greater period of time, not to exceed 30 days, is necessary to enable the Secretary to institute an action under subsection (a) or section 302.

''(B) SECRETARY'S APPROVAL.—Before an article of food may be ordered detained under this subsection, the Secretary or an officer or qualified employee designated by the Secretary must approve such order, after determining that the article presents a threat of serious adverse health consequences or death to humans or animals.

''(3) SECURITY OF DETAINED ARTICLE.—A detention order under this subsection with respect to an article of food may require that the article be labeled or marked as detained, and may require that the article be removed to a secure facility. An article subject to a detention order under this subsection shall not be moved by any person from the place at which it is ordered detained until released by the Secretary, or the expiration of the detention period applicable to such order, whichever occurs first.

''(4) APPEAL OF DETENTION ORDER.—Any person who would be entitled to claim a detained article if it were seized under subsection (a) may appeal to the Secretary the detention order under this subsection. Within 15 days after such an appeal is filed, the Secretary, after affording opportunity for an informal hearing, shall by order confirm the detention order or revoke it.

''(5) PERISHABLE FOODS.—The Secretary shall provide in regulation or in guidance for procedures for instituting and appealing on an expedited basis administrative detention of perishable foods.''.

(b) PROHIBITED ACT.—Section 301 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 331) is amended by adding at the end the following new subsection:

''(bb) The movement of an article of food in violation of an order under section 304(h), or the removal or alteration of any mark or label required by the order in order to identify the article as detained.''.

SEC. 532. DEBARMENT FOR REPEATED OR SERIOUS FOOD IMPORT VIOLATIONS.

(a) DEBARMENT AUTHORITY.—

(1) PERMISSIVE DEBARMENT.—Section 306(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(b)(1)) is amended—

(A) by striking the period at the end of subparagraph (B) and inserting ''; or''; and

(B) by adding at the end the following:

''(C) a person from importing a food or offering a food for import into the United States if—

''(i) the person has been convicted of a felony for conduct relating to the importation into the United States of any food; or

''(ii) the person has engaged in a pattern of importing or offering for import adulterated food that presents a threat of serious adverse health consequences or death to humans or animals.''.

(2) CONFORMING AMENDMENT.—Section 306(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(b)(2)) is amended—

(A) in the paragraph heading, by inserting ''RELATING TO DRUG APPLICATIONS'' after ''DEBARMENT''; and

(B) in the matter preceding subparagraph (A), by striking ''paragraph (1)'' and inserting ''subparagraphs (A) and (B) of paragraph (1)''.

(3) DEBARMENT PERIOD.—Section 306(c)(2)(A)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(c)(2)(A)(iii)) is amended by striking ''subsection (b)(2)'' and inserting ''subsection (b)(1)(C) or (b)(2)''.

(4) TERMINATION OF DEBARMENT.—Section 306(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(d)(3)) is amended—

(A) in subparagraph (A)(i), by striking ''or (b)(2)(A)'' and inserting '', or (b)(2)(A), or (b)(1)(C)'';

(B) in subparagraph (A)(ii)(II), by inserting ''in applicable cases,'' before ''sufficient audits''; and

(C) in subparagraph (B), in each of clauses (i) and (ii), by inserting ''or (b)(1)(C)'' after ''(b)(2)(B)''.

(5) EFFECTIVE DATES.—Section 306(1)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(1)(2)) is amended—

(A) in the first sentence, by inserting ''and subsection (b)(1)(C)'' after ''subsection (b)(2)(B)''; and

(B) in the second sentence, by striking ''and subsections (f) and (g) of this section'' and inserting ''subsections (f) and (g), and subsection (b)(1)(C)''.

(b) CONFORMING AMENDMENT.—Section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) is amended by adding at the end the following:

''(h) If it is an article of food imported or offered for import into the United States by, with the assistance of, or at the direction of, a person debarred under section 306(b)(1)(C).''.

SEC. 533. MAINTENANCE AND INSPECTION OF RECORDS FOR FOODS.

(a) IN GENERAL.—Chapter IV of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

''SEC. 414. MAINTENANCE AND INSPECTION OF RECORDS.

''(a) IN GENERAL.—If the Secretary has reason to believe that an article of food is adulterated or misbranded under this Act and presents a threat of serious adverse health consequences or death to humans or animals, each person (excluding restaurants and farms) that manufactures, processes, packs, distributes, receives, holds, or imports such food shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, upon presentation of appropriate credentials and a written notice to such person, at reasonable times and within reasonable limits and in a reasonable manner, to have access to and to copy all records relating to such food that may assist the Secretary to determine the cause and scope of the violation. This requirement applies to all records relating to such manufacture, processing, packing, distribution, receipt, holding, or importation of such food maintained by or on behalf of such person in any format (including paper and electronic formats) and at any location.

''(b) REGULATIONS CONCERNING RECORDKEEPING.—The Secretary shall promulgate regulations regarding the maintenance and retention of records for inspection for not longer than 2 years by persons (excluding restaurants and farms) that manufacture, process, pack, transport, distribute, receive, hold, or import food, as may be needed to allow the Secretary—

''(1) to promptly trace the source and chain of distribution of food and its packaging to address threats of serious adverse health consequences or death to humans or animals; or

''(2) to determine whether food manufactured, processed, packed, or held by the person may be adulterated or misbranded to the extent that it presents a threat of serious adverse health consequences or death to humans or animals under this Act.

The Secretary may impose reduced requirements under such regulations for small businesses with 50 or fewer employees.

''(c) LIMITATIONS.—Nothing in this section shall be construed—

''(1) to limit the authority of the Secretary to inspect records or to require maintenance of records under any other provision of or regulations issued under this Act;

''(2) to authorize the Secretary to impose any requirements with respect to a food to the extent that it is within the exclusive jurisdiction of the Secretary of Agriculture pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Egg Products Inspection Act (21 U.S.C. 1031 et seq.);

''(3) to extend to recipes for food, financial data, sales data other than shipment data, pricing data, personnel data, or research data; or

''(4) to alter, amend, or affect in any way the disclosure or nondisclosure under section 552 of title 5, United States Code, of information copied or collected under this section, or its treatment under section 1905 of title 18, United States Code.''.

(b) FACTORY INSPECTION.—Section 704(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374(a)) is amended—

(1) in paragraph (1), by adding after the first sentence the following: ''In the case of any person (excluding restaurants and farms) that manufactures, processes, packs, transports, distributes, receives, holds, or imports foods, the inspection shall extend to all records and other information described in section 414(a), or required to be maintained pursuant to section 414(b).''; and

(2) in paragraph (2), in the matter preceding subparagraph (A), by striking ''second sentence'' and inserting ''third sentence''.

(c) PROHIBITED ACT.—Section 301 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 331) is amended—

(1) in subsection (e)—

(A) by striking ''by section 412, 504, or 703'' and inserting ''by section 412, 414, 504, 703, or 704(a)''; and

(B) by striking ''under section 412'' and inserting ''under section 412, 414(b)''; and

(2) in section (j), by inserting ''414,'' after ''412,''.

(d) EXPEDITED RULEMAKING.—Not later than 18 months after the date of enactment of this Act, the Secretary shall promulgate proposed and final regulations establishing recordkeeping requirements under subsection 414(b)(1) of the Federal Food, Drug, and Cosmetic Act.

SEC. 534. REGISTRATION OF FOOD MANUFACTURING, PROCESSING, AND HANDLING FACILITIES.

(a) IN GENERAL.—Chapter IV of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341 et seq.), as amended by section 533, is further amended by adding at the end the following:

''SEC. 415. REGISTRATION OF FOOD MANUFACTURING, PROCESSING, AND HANDLING FACILITIES.

''(a) REGISTRATION.—

''(1) IN GENERAL.—Any facility engaged in manufacturing, processing, or handling food for consumption in the United States shall be registered with the Secretary. To be registered—

''(A) for a domestic facility, the owner, operator, or agent in charge of the facility shall submit a registration to the Secretary; and

''(B) for a foreign facility, the owner, operator, or agent in charge of the facility shall submit a registration to the Secretary and shall include with the registration the name of the United States agent for the facility.

''(2) REGISTRATION.—An entity (referred to in this section as the 'registrant') shall submit a registration under paragraph (1) to the Secretary containing information necessary to notify the Secretary of the name and address of each facility at which, and all trade names under which, the registrant conducts business and, when determined necessary by the Secretary through guidance, the general food category (as identified under section 170.3 of title 21, Code of Federal Regulations) of any food manufactured, processed, or handled at such facility. The registrant shall notify the Secretary in a timely manner of changes to such information.

''(3) PROCEDURE.—Upon receipt of a completed registration described in paragraph (1), the Secretary shall notify the registrant of the receipt of such registration and assign a registration number to each registered facility.

''(4) LIST.—The Secretary shall compile and maintain an up-to-date list of facilities that are registered under this section. Such list and other information required to be submitted under this subsection shall not be subject to the disclosure requirements of section 552 of title 5, United States Code.

''(b) EXEMPTION AUTHORITY.—The Secretary may by regulation exempt types of retail establishments or farms from the requirements of subsection (a) if the Secretary determines that the registration of such facilities is not needed for effective enforcement of chapter IV and any regulations issued under such chapter.

''(c) FACILITY.—In this section, the term 'facility' includes any factory, warehouse, or establishment (including a factory, warehouse, or establishment of an importer), that manufactures, handles, or processes food. Such term does not include restaurants.

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to authorize the Secretary to require an application, review, or licensing process.''.

(b) MISBRANDED FOODS.—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end the following:

''(t) If it is a food from a facility for which registration has not been submitted to the Secretary under section 415(a).''.

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect 180 days after the date of enactment of this Act.

SEC. 535. PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS.

(a) PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS.—Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended by adding at the end the following:

''(j) PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS.—

''(1) IN GENERAL.—At least 4 hours before a food is imported or offered for importation into the United States, the producer, manufacturer, or shipper of the food shall provide documentation to the Secretary of the Treasury and the Secretary of Health and Human Services that—

''(A) identifies—

''(i) the food;

''(ii) the countries of origin of the food; and

''(iii) the quantity to be imported; and

''(B) includes such other information as the Secretary of Health and Human Services may require by regulation.

''(2) REFUSAL OF ADMISSION.—If documentation is not provided as required by paragraph (1) at least 4 hours before the food is imported or offered for importation, the food may be refused admission.

''(3) LIMITATION.—Nothing in this subsection shall be construed to authorize the Secretary to impose any requirements with respect to a food to the extent that it is within the exclusive jurisdiction of the Secretary of Agriculture pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Egg Products Inspection Act (21 U.S.C. 1031 et seq.).''.

(b) PROHIBITION OF KNOWINGLY MAKING FALSE STATEMENTS.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331), as amended by section 531(b), is further amended by inserting after subsection (bb) the following:

''(cc) Knowingly making a false statement in documentation required under section 801(j).''.

SEC. 536. AUTHORITY TO MARK REFUSED ARTICLES.

(a) MISBRANDED FOODS.—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343), as amended by section 534(b), is further amended by adding at the end the following:

''(u) If—

''(1) it has been refused admission under section 801(a);

''(2) it has not been required to be destroyed under section 801(a);

''(3) the packaging of it does not bear a label or labeling described in section 801(a); and

''(4) it presents a threat of serious adverse health consequences or death to humans or animals.''.

(b) REQUIREMENT.—Section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) is amended by adding at the end the following: ''The Secretary of Health and Human Services may require the owner or consignee of a food that has been refused admission under this section, and has not been required to be destroyed, to affix to the packaging of the food a label or labeling that—

''(1) clearly and conspicuously bears the statement: 'United States: Refused Entry';

''(2) is affixed to the packaging until the food is brought into compliance with this Act; and

''(3) has been provided at the expense of the owner or consignee of the food.''.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the authority of the Secretary of Health and Human Services or the Secretary of the Treasury to require the marking of refused articles under any other provision of law.

SEC. 537. AUTHORITY TO COMMISSION OTHER FEDERAL OFFICIALS TO CONDUCT INSPECTIONS.

Section 702(a) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 372(a)) is amended in the first sentence—

(1) by inserting ''qualified'' before ''employees''; and

(2) by inserting ''or of other Federal Departments or agencies, notwithstanding any other provision of law restricting the use of a Department's or agency's officers, employees, or funds,'' after ''officers and qualified employees of the Department''.

SEC. 538. PROHIBITION AGAINST PORT SHOPPING.

Section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342), as amended by section 532(b), is further amended by adding at the end the following:

''(i) If it is an article of food imported or offered for import into the United States and the article of food has previously been refused admission under section 801(a), unless the person reoffering the article affirmatively establishes, at the expense of the owner or consignee of the article, that the article complies with the applicable requirements of this Act, as determined by the Secretary.''.

SEC. 539. GRANTS TO STATES FOR INSPECTIONS.

Chapter IX of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 391 et seq.) is amended by adding at the end the following:

''SEC. 910. GRANTS TO STATES FOR INSPECTIONS.

''(a) IN GENERAL.—The Secretary is authorized to make grants to States, territories, and Federally recognized Indian tribes that undertake examinations, inspections, and investigations, and related activities under section 702. The funds provided under such grants shall only be available for the costs of conducting such examinations, inspections, investigations, and related activities.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for fiscal year 2002, and such sums as may be necessary to carry out this section for each subsequent fiscal year.''.

SEC. 540. RULE OF CONSTRUCTION.

Nothing in this title, or an amendment made by this title, shall be construed to—

(1) provide the Food and Drug Administration with additional authority related to the regulation of meat, poultry, and egg products; or

(2) limit the authority of the Secretary of Agriculture with respect to such products.

Subtitle C—Research and Training to Enhance Food Safety and Security

SEC. 541. SURVEILLANCE AND INFORMATION GRANTS AND AUTHORITIES.

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended by inserting after section 317P the following:

''SEC. 317Q. FOOD SAFETY GRANTS.

''(a) IN GENERAL.—The Secretary may award food safety grants to States to expand the number of States participating in Pulsenet, the Foodborne Diseases Active Surveillance Network, and other networks to enhance Federal, State, and local food safety efforts.

''(b) USE OF FUNDS.—Funds awarded under this section shall be used by States to assist such States in meeting the costs of establishing and maintaining the food safety surveillance, technical and laboratory capacity needed to participate in Pulsenet, Foodborne Diseases Active Surveillance Network, and other networks to enhance Federal, State, and local food safety efforts.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $19,500,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.

''SEC. 317R. SURVEILLANCE OF ANIMAL AND HUMAN HEALTH.

''The Secretary, through the Commissioner of the Food and Drug Administration and the Director of the Centers for Disease Control and Prevention, and the Secretary of Agriculture shall develop and implement a plan for coordinating the surveillance for zoonotic disease and human disease.''.

SEC. 542. AGRICULTURAL BIOTERRORISM RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—The Secretary of Agriculture, to the maximum extent practicable, shall utilize existing authorities to expand Agricultural Research Service, and Cooperative State Research Education and Extension Service, programs to protect the food supply of the United States by conducting activities to—

(1) enhance the capability of the Service to respond immediately to the needs of Federal regulatory agencies involved in protecting the food and agricultural system;

(2) continue existing partnerships with institutions of higher education (including partnerships with 3 institutions of higher education that are national centers for countermeasures against agricultural bioterrorism and 7 additional institutions with existing programs related to bioterrorism) to help form stable, long-term programs of research, development, and evaluation of options to enhance the biosecurity of United States agriculture;

(3) strengthen linkages with the intelligence community to better identify research needs and evaluate acquired materials;

(4) expand Service involvement with international organizations dealing with plant and animal disease control; and

(5) otherwise expand the capacity of the Service to protect against the threat of bioterrorism.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $190,000,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year.

SA 2693. Mr. REID (for Mr. BROWNBACK) proposed an amendment to the bill S. Res. 194, congratulating the people and government on the tenth anniversary of the independence of the Republic of Kazakhstan; as follows:

On page 2, delete the fifth whereas clause, and insert: ''Whereas Kazakhstan, under the leadership of President Nursultan Nazarbaev, has cooperated with the United States on national security concerns, including combatting international terrorism, nuclear proliferation, international crime, and narcotics trafficking; and'';

Delete the final whereas clause; and

On page 3, delete lines 7–9, and insert the following: ''United States on matters of national security, including the war against terrorism.''

SA 2694. Mr. REID (for Mr. SMITH of New Hampshire) proposed an amendment to the bill S. 990, to amend the Pittman-Robertson Wildlife Restoration Act to improve the provisions relating to wildlife conservation and restoration programs, and for other purposes; as follows:

On page 49, strike lines 7 through 14 and insert the following:

(1) Section 3 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669b) is amended—

(A) in the first sentence of subsection (a)(1)—

(i) by inserting ''(other than the Account)'' after ''wildlife restoration fund''; and

(ii) by inserting before the period at the end the following: ''(other than sections 4(d) and 12)''; and

(B) in subsection (b), by inserting ''(other than the Account)'' after ''the fund'' each place it appears.

On page 74, line 11, insert ''(other than an incidental taking statement with respect to a species recovery agreement entered into by the Secretary under subsection (c))'' before the semicolon.

SA 2695. Mr. REID (for Mr. BIDEN (for himself and Mr. HELMS)) proposed an amendment to the bill S. 1803, to authorize appropriations under the Arms Export Control Act and the Foreign Assistance Act of 1961 for security assistance for fiscal years 2002 and 2003, and for other purposes; as follows:

On page 10, between lines 11 and 12, insert the following new section:

SEC. 206. CONGRESSIONAL NOTIFICATION OF SMALL ARMS AND LIGHT WEAPONS LICENSE APPROVALS; ANNUAL REPORTS.

(a) CONGRESSIONAL NOTIFICATION OF EXPORT LICENSE APPROVALS.—Section 36(c) of the Arms Export Control Act (22 U.S.C. 2776(c)) is amended by inserting ''(or, in the case of a defense article that is a firearm controlled under category I of the United States Munitions List, $1,000,000 or more)'' after ''$50,000,000 or more''.

(b) REPORT.—Not later than six months after the date of enactment of this Act, and annually thereafter, the Secretary of State shall submit an unclassified report to the appropriate congressional committees on the numbers, range, and findings of end-use monitoring of United States transfers in small arms and light weapons.

(c) ANNUAL MILITARY ASSISTANCE REPORTS.—Section 655(b)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2415(b)(3)) is amended by inserting before the period at the end the following: '', including, in the case of defense articles that are firearms controlled under category I of the United States Munitions List, a statement of the aggregate dollar value and quantity of semiautomatic assault weapons, or related equipment, the manufacture, transfer, or possession of which is unlawful under section 922 of title 18, United States Code, that were licensed for export during the period covered by the report''.

(d) ANNUAL REPORT ON ARMS BROKERING.—Not later than six months after the date of enactment of this Act, and annually thereafter, the Secretary of State shall submit a report to the appropriate committees of Congress on activities of registered arms brokers, including violations of the Arms Export Control Act.

(e) ANNUAL REPORT ON INVESTIGATIONS OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS.—Not later than six months after the date of enactment of this Act, and annually thereafter, the Secretary of the Treasury shall submit a report to the appropriate committees of Congress on investigations and other efforts undertaken by the Bureau of Alcohol, Tobacco and Firearms (including cooperation with other agencies) to stop United States-source weapons from being used in terrorist acts and international crime.

On page 66, strike lines 1 through 12, and insert the following:

SEC. 404. IMPROVEMENTS TO THE AUTOMATED EXPORT SYSTEM.

(a) CONTRIBUTION TO THE AUTOMATED EXPORT SYSTEM.—Not less than $250,000 of the amounts provided under section 302 for each fiscal year shall be available for the purpose of—

(1) providing the Department of State with full access to the Automated Export System;

(2) ensuring that the system is modified to meet the needs of the Department of State, if such modifications are consistent with the needs of other United States Government agencies; and

(3) providing operational support.

(b) MANDATORY FILING.—The Secretary of Commerce, with the concurrence of the Secretary of State and the Secretary of Treasury, shall publish regulations in the Federal Register to require, upon the effective date of those regulations, that all persons who are required to file export information under chapter 9 of title 13, United States Code, to file such information through the Automated Export System.

(c) REQUIREMENT FOR INFORMATION SHARING.—The Secretary shall conclude an information-sharing arrangement with the heads of United States Customs Service and the Census Bureau—

(1) to allow the Department of State to access information on controlled exports made through the United States Postal Service; and

(2) to adjust the Automated Export System to parallel information currently collected by the Department of State.

(d) SECRETARY OF TREASURY FUNCTIONS.—Section 303 of title 13, United States Code, is amended by striking '', other than by mail,''.

(e) FILING EXPORT INFORMATION, DELAYED FILINGS, PENALTIES FOR FAILURE TO FILE.—Section 304 of title 13, United States Code, is amended—

(1) in subsection (a)—

(A) in the first sentence, by striking ''the penal sum of $1,000'' and inserting ''a penal sum of $10,000''; and

(B) in the third sentence, by striking ''a penalty not to exceed $100 for each day's delinquency beyond the prescribed period, but not more than $1,000,'' and inserting ''a penalty not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation'';

(2) by redesignating subsection (b) as subsection (c); and

(3) by inserting after subsection (a) the following:

''(b) Any person, other than a person described in subsection (a), required to submit export information, shall file such information in accordance with any rule, regulation, or order issued pursuant to this chapter. In the event any such information or reports are not filed within such prescribed period, the Secretary of Commerce (and officers of the Department of Commerce designated by the Secretary) may impose a civil penalty not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation.''.

(f) ADDITIONAL PENALTIES.—

(1) IN GENERAL.—Section 305 of title 13, United States Code, is amended to read as follows:

''SEC. 305. PENALTIES FOR UNLAWFUL EXPORT INFORMATION ACTIVITIES.

''(a) CRIMINAL PENALTIES.—(1) Any person who knowingly fails to file or knowingly submits false or misleading export information through the Shippers Export Declaration (SED) (or any successor document) or the Automated Export System (AES) shall be subject to a fine not to exceed $10,000 per violation or imprisonment for not more than 5 years, or both.

''(2) Any person who knowingly reports any information on or uses the SED or the AES to further any illegal activity shall be subject to a fine not to exceed $10,000 per violation or imprisonment for not more than 5 years, or both.

''(3) Any person who is convicted under this subsection shall, in addition to any other penalty, be subject to forfeiting to the United States—

''(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

''(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

''(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

''(b) CIVIL PENALTIES.—The Secretary (and officers of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $10,000

per violation on any person violating the provisions of this chapter or any rule, regulation, or order issued thereunder, except as provided in section 304. Such penalty may be in addition to any other penalty imposed by law.

''(c) CIVIL PENALTY PROCEDURE.—(1) When a civil penalty is sought for a violation of this section or of section 304, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Any such hearing shall be conducted in accordance with sections 556 and 557 of title 5, United States Code.

''(2) If any person fails to pay a civil penalty imposed under this chapter, the Secretary may ask the Attorney General to commence a civil action in an appropriate district court of the United States to recover the amount imposed (plus interest at currently prevailing rates from the date of the final order). No such action may be commenced more than 5 years after the order imposing the civil penalty becomes final. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

''(3) The Secretary may remit or mitigate any penalties imposed under paragraph (1) if, in his or her opinion—

''(A) the penalties were incurred without willful negligence or fraud; or

''(B) other circumstances exist that justify a remission or mitigation.

''(4) If, pursuant to section 306, the Secretary delegates functions under this section to another agency, the provisions of law of that agency relating to penalty assessment, remission or mitigation of such penalties, collection of such penalties, and limitations of actions and compromise of claims, shall apply.

''(5) Any amount paid in satisfaction of a civil penalty imposed under this section or section 304 shall be deposited into the general fund of the Treasury and credited as miscellaneous receipts.

''(d) ENFORCEMENT.—(1) The Secretary of Commerce may designate officers or employees of the Office of Export Enforcement to conduct investigations pursuant to this chapter. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate to the enforcement of this chapter, exercise such authorities as are conferred upon them by other laws of the United States, subject to policies and procedures approved by the Attorney General.

''(2) The Commissioner of Customs may designate officers or employees of the Customs Service to enforce the provisions of this chapter, or to conduct investigations pursuant to this chapter.

''(e) REGULATIONS.—The Secretary of Commerce shall promulgate regulations for the implementation and enforcement of this section.

''(f) EXEMPTION.—The criminal fines provided for in this section are exempt from the provisions of section 3571 of title 18, United States Code.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 9 of title 13, United States Code, is amended by striking the item relating to section 305 and inserting the following:

''305. Penalties for unlawful export information activities.''.

On page 75, strike lines 1 through 24.

On page 83, between lines 17 and 18, insert the following:

(4) TAIWAN.—The President is authorized to transfer to the Taipei Economic and Cultural Representative Office in the United States (which is the Taiwan instrumentality designated pursuant to section 10(a) of the Taiwan Relations Act) the ''Kidd'' class guided missile destroyers Kidd (DDG 993), Callaghan (DDG 994), Scott (DDG 995), and Chandler (DDG 996). The transfer of these 4 ''Kidd'' class guided missile destroyers shall be on a sale basis under section 21 of the Arms Export Control Act (22 U.S.C. 2761).

Starting on page 24, line 14, strike all that follows through line 23 of page 25.

Strike page 13, lines 5-14.

On line 4, page 78, delete ''not less than'' and on line 5, page 78, delete ''shall'' and insert in lieu thereof ''may''.

On line 7, page 21, delete ''and 2003'' and delete lines 9 through 15 on page 21.

SA 2696. Mr. REID (for Mrs. CLINTON) proposed an amendment to the bill S. 1637, to waive certain limitations in the case of use of the emergency fund authorized by section 125 of title 23, United States Code, to pay the costs of projects in response to the attack on the World Trade Center in New York City that occurred on September 11, 2001; as follows:

On page 2, strike lines 10 through 14 and insert the following:

''shall be 100 percent; and

''(2) notwithstanding section 125(d)(1) of that''.

SA 2697. Mr. REID (for Mr. LEAHY (for himself, Mr. KENNEDY, and Mr. HATCH)) proposed an amendment to the bill H.R. 2215, to authorize appropriations for the Department of Justice for fiscal year 2002, and for other purposes; as follows:

On page 51, after line 4, insert the following:

DIVISION A—21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

On page 51, line 6, strike ''This Act'' and insert ''This division''.

On page 52, beginning with line 4, strike all through page 57, line 12.

Redesignate sections 102 and 103 as sections 101 and 102, respectively.

On page 57, line 23, strike ''may'' and insert ''shall''.

On page 80, lines 22, strike all through page 81, line 22.

On page 86, lines 15 and 16, strike ''OF APPROPRIATIONS'' and insert ''WITHIN THE DEPARTMENT OF JUSTICE''.

On page 87, line 24, after ''contract'' insert ''over $5,000,000''.

On page 89, line 24, after ''period'' and insert ''and the paragraph following''.

On page 89, line 25, strike ''after''.

On page 97, beginning with line 1, strike all through line 6.

At the end of the bill add the following:

DIVISION B—MISCELLANEOUS DIVISION

TITLE I—BOYS AND GIRLS CLUBS OF AMERICA

SEC. 1101. BOYS AND GIRLS CLUBS OF AMERICA.

Section 401 of the Economic Espionage Act of 1966 (42 U.S.C. 13751 note) is amended—

(1) in subsection (a)(2)—

(A) by striking ''1,000'' and inserting ''1,200'';

(B) by striking ''2,500'' and inserting ''4,000''; and

(C) by striking ''December 31, 1999'' and inserting ''December 31, 2006, serving not less than 6,000,000 young people'';

(2) in subsection (c)—

(A) in paragraph (1), by striking ''1997, 1998, 1999, 2000, and 2001'' and inserting ''2002, 2003, 2004, 2005, and 2006''; and

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by striking ''90 days'' and inserting ''30 days'';

(ii) in subparagraph (A), by striking ''1,000'' and inserting ''1,200''; and

(iii) in subparagraph (B), by striking ''2,500 Boys and Girls Clubs of America facilities in operation before January 1, 2000'' and inserting ''4,000 Boys and Girls Clubs of America facilities in operation before January 1, 2007''; and

(3) in subsection (e), by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

''(A) $70,000,000 for fiscal year 2002;

''(B) $80,000,000 for fiscal year 2003;

''(C) $80,000,000 for fiscal year 2004;

''(D) $80,000,000 for fiscal year 2005; and

''(E) $80,000,000 for fiscal year 2006.''.

TITLE II—DRUG ABUSE EDUCATION, PREVENTION, AND TREATMENT ACT OF 2001

SEC. 2001. SHORT TITLE.

This title may be cited as the ''Drug Abuse Education, Prevention, and Treatment Act of 2001''.

Subtitle A—Drug-Free Prisons and Jails

SEC. 2101. DRUG-FREE PRISONS AND JAILS INCENTIVE GRANTS.

(a) IN GENERAL.—Subtitle A of title II of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13701 et seq.) is amended—

(1) by redesignating section 20110 as section 20111; and

(2) by inserting after section 20109 the following:

''SEC. 20110. DRUG-FREE PRISONS AND JAILS BONUS GRANTS.

''(a) IN GENERAL.—The Attorney General shall make incentive grants in accordance with this section to eligible States, units of local government, and Indian tribes, in order to encourage the establishment and maintenance of drug-free prisons and jails.

''(b) RESERVATION OF FUNDS.—Notwithstanding any other provision of this subtitle, in each fiscal year, before making the allocations under sections 20106 and 20108(a)(2) or the reservation under section 20109, the Attorney General shall reserve 10 percent of the amount made available to carry out this subtitle for grants under this section.

''(c) ELIGIBILITY.—

''(1) IN GENERAL.—To be eligible to receive a grant under this section, a State, unit of local government, or Indian tribe shall demonstrate to the Attorney General that the State, unit of local government, or Indian tribe—

''(A) meets the requirements of section 20103(a); and

''(B) has established, or, within 18 months after the initial submission of an application this section will implement, a program or policy of drug-free prisons and jails for correctional and detention facilities, including juvenile facilities, in its jurisdiction.

''(2) CONTENTS OF PROGRAM OR POLICY.—The drug-free prisons and jails program or policy under paragraph (1)(B)—

''(A) shall include—

''(i) a zero-tolerance policy for drug use or presence in State, unit of local government, or Indian tribe facilities, including random and routine sweeps and inspections for drugs, random and routine drug tests of inmates, and improved screening for drugs and other contraband of prison visitors and prisoner mail;

''(ii) establishment and enforcement of penalties, including prison disciplinary actions and criminal prosecution for the introduction, possession, or use of drugs in any prison or jail;

''(iii) the implementation of residential drug treatment programs that are effective and science-based; and

''(iv) drug testing of inmates upon intake and upon release from incarceration as appropriate; and

''(B) may include a system of incentives for prisoners to participate in counter-drug programs such as drug treatment and drug-free wings with greater privileges, except that incentives under this paragraph may not include the early release of any prisoner convicted of a crime of violence that is not part of a policy of a State concerning good-time credits or criteria for the granting of supervised release.

''(d) APPLICATION.—In order to be eligible to receive a grant under this section, a State, unit of local government, or Indian tribe shall submit to the Attorney General an application, in such form and containing such information, including rates of positive drug tests among inmates upon intake and release from incarceration, as the Attorney General may reasonably require.

''(e) USE OF FUNDS.—Amounts received by a State, unit of local government, or Indian tribe from a grant under this section may be used—

''(1) to implement the program under subsection (c)(2); or

''(2) for any other purpose permitted by this subtitle.

''(f) ALLOCATION OF FUNDS.—Grants awarded under this section shall be in addition to any other grants a State, unit of local government, or Indian tribe may be eligible to receive under this subtitle or under part S of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff et seq.).

''(g) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts allocated under this section, there are authorized to be appropriated to carry out this section such sums as are necessary for each of the fiscal years 2002, 2003, and 2004.''.

SEC. 2102. JAIL-BASED SUBSTANCE ABUSE TREATMENT PROGRAMS.

(a) USE OF RESIDENTIAL SUBSTANCE ABUSE TREATMENT GRANTS TO PROVIDE AFTERCARE SERVICES.—Section 1902 of part S of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff–1) is amended by adding at the end the following:

''(f) USE OF GRANT AMOUNTS FOR NONRESIDENTIAL AFTERCARE SERVICES.—A State may use amounts received under this part to provide nonresidential substance abuse treatment aftercare services for inmates or former inmates that meet the requirements of subsection (c), if the chief executive officer of the State certifies to the Attorney General that the State is providing, and will continue to provide, an adequate level of residential treatment services.''.

(b) JAIL-BASED SUBSTANCE ABUSE TREATMENT.—Part S of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff et seq.) is amended by adding at the end the following:

''SEC. 1906. JAIL-BASED SUBSTANCE ABUSE TREATMENT.

''(a) DEFINITIONS.—In this section:

''(1) The term 'jail-based substance abuse treatment program' means a course of individual and group activities, lasting for a period of not less than 3 months, in an area of a correctional facility set apart from the general population of the correctional facility, if those activities are—

''(A) directed at the substance abuse problems of prisoners; and

''(B) intended to develop the cognitive, behavioral, and other skills of prisoners in order to address the substance abuse and related problems of prisoners.

''(2) The term 'local correctional facility' means any correctional facility operated by a State or unit of local government.

''(b) AUTHORIZATION.—

''(1) IN GENERAL.—At least 10 percent of the total amount made available to a State under section 1904(a) for any fiscal year shall be used by the State to make grants to local correctional facilities in the State, provided the State includes local correctional facilities, for the purpose of assisting jail-based substance abuse treatment programs that are effective and science-based established by those local correctional facilities.

''(2) FEDERAL SHARE.—The Federal share of a grant made by a State under this section to a local correctional facility may not exceed 75 percent of the total cost of the jail-based substance abuse treatment program described in the application submitted under subsection (c) for the fiscal year for which the program receives assistance under this section.

''(c) APPLICATIONS.—

''(1) IN GENERAL.—To be eligible to receive a grant from a State under this section for a jail-based substance abuse treatment program, the chief executive of a local correctional facility shall submit to the State, in such form and containing such information as the State may reasonably require, an application that meets the requirements of paragraph (2).

''(2) APPLICATION REQUIREMENTS.—Each application submitted under paragraph (1) shall include—

''(A) with respect to the jail-based substance abuse treatment program for which assistance is sought, a description of the program and a written certification that the local correctional facility will—

''(i) coordinate the design and implementation of the program between local correctional facility representatives and the appropriate State and local alcohol and substance abuse agencies;

''(ii) implement (or continue to require) urinalysis or other proven reliable forms of substance abuse testing of individuals participating in the program, including the testing of individuals released from the jail-based substance abuse treatment program who remain in the custody of the local correctional facility; and

''(iii) carry out the program in accordance with guidelines, which shall be established by the State, in order to guarantee each participant in the program access to consistent, continual care if transferred to a different local correctional facility within the State;

''(B) written assurances that Federal funds received by the local correctional facility from the State under this section will be used to supplement, and not to supplant, non-Federal funds that would otherwise be available for jail-based substance abuse treatment programs assisted with amounts made available to the local correctional facility under this section; and

''(C) a description of the manner in which amounts received by the local correctional facility from the State under this section will be coordinated with Federal assistance for substance abuse treatment and aftercare services provided to the local correctional facility by the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services.

''(d) REVIEW OF APPLICATIONS.—

''(1) IN GENERAL.—Upon receipt of an application under subsection (c), the State shall—

''(A) review the application to ensure that the application, and the jail-based residential substance abuse treatment program for which a grant under this section is sought, meet the requirements of this section; and

''(B) if so, make an affirmative finding in writing that the jail-based substance abuse treatment program for which assistance is sought meets the requirements of this section.

''(2) APPROVAL.—Based on the review conducted under paragraph (1), not later than 90 days after the date on which an application is submitted under subsection (c), the State shall—

''(A) approve the application, disapprove the application, or request a continued evaluation of the application for an additional period of 90 days; and

''(B) notify the applicant of the action taken under subparagraph (A) and, with respect to any denial of an application under subparagraph (A), afford the applicant an opportunity for reconsideration.

''(3) ELIGIBILITY FOR PREFERENCE WITH AFTERCARE COMPONENT.—

''(A) IN GENERAL.—In making grants under this section, a State shall give preference to applications from local correctional facilities that ensure that each participant in the jail-based substance abuse treatment program for which a grant under this section is sought, is required to participate in an aftercare services program that meets the requirements of subparagraph (B), for a period of not less than 1 year following the earlier of—

''(i) the date on which the participant completes the jail-based substance abuse treatment program; or

''(ii) the date on which the participant is released from the correctional facility at the end of the participant's sentence or is released on parole.

''(B) AFTERCARE SERVICES PROGRAM REQUIREMENTS.—For purposes of subparagraph (A), an aftercare services program meets the requirements of this paragraph if the program—

''(i) in selecting individuals for participation in the program, gives priority to individuals who have completed a jail-based substance abuse treatment program;

''(ii) requires each participant in the program to submit to periodic substance abuse testing; and

''(iii) involves the coordination between the jail-based substance abuse treatment program and other human service and rehabilitation programs that may assist in the rehabilitation of program participants, such as—

''(I) educational and job training programs;

''(II) parole supervision programs;

''(III) half-way house programs; and

''(IV) participation in self-help and peer group programs; and

''(iv) assists in placing jail-based substance abuse treatment program participants with appropriate community substance abuse treatment facilities upon release from the correctional facility at the end of a sentence or on parole.

''(e) COORDINATION AND CONSULTATION.—

''(1) COORDINATION.—Each State that makes 1 or more grants under this section in any fiscal year shall, to the maximum extent practicable, implement a statewide communications network with the capacity to track the participants in jail-based substance abuse treatment programs established by local correctional facilities in the State as those participants move between local correctional facilities within the State.

''(2) CONSULTATION.—Each State described in paragraph (1) shall consult with the Attorney General and the Secretary of Health and Human Services to ensure that each jail-based substance abuse treatment program assisted with a grant made by the State under this section incorporates applicable components of comprehensive approaches, including relapse prevention and aftercare services.

''(f) USE OF GRANT AMOUNTS.—

''(1) IN GENERAL.—Each local correctional facility that receives a grant under this section shall use the grant amount solely for the purpose of carrying out the jail-based substance abuse treatment program described in the application submitted under subsection (c).

''(2) ADMINISTRATION.—Each local correctional facility that receives a grant under this section shall carry out all activities relating to the administration of the grant amount, including reviewing the manner in which the amount is expended, processing, monitoring the progress of the program assisted, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

''(3) RESTRICTION.—A local correctional facility may not use any amount of a grant under this section for land acquisition, a construction project, or facility renovations.

''(g) REPORTING REQUIREMENT; PERFORMANCE REVIEW.—

''(1) REPORTING REQUIREMENT.—Not later than March 1 each year, each local correctional facility that receives a grant under this section shall submit to the Attorney General, through the State, a description and an evaluation report of the jail-based substance abuse treatment program carried out by the local correctional facility with the grant amount, in such form and containing such information as the Attorney General may reasonably require.

''(2) PERFORMANCE REVIEW.—The Attorney General shall conduct an annual review of each jail-based substance abuse treatment program assisted under this section, in order to verify the compliance of local correctional facilities with the requirements of this section.

''(h) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section.''.

(c) ELIGIBILITY FOR SUBSTANCE ABUSE TREATMENT.—Part S of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff et seq.), as amended by subsection (b), is further amended by adding at the end the following:

''SEC. 1907. DEFINITIONS.

''In this part:

''(1) The term 'inmate' means an adult or a juvenile who is incarcerated or detained in any State or local correctional facility.

''(2) The term 'correctional facility' includes a secure detention facility and a secure correctional facility (as those terms are defined in section 103 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603)).''.

(d) CLERICAL AMENDMENT.—The table of contents for title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended in the matter relating to part S by adding at the end the following:

''1906. Jail-based substance abuse treatment.
''1907. Definitions.''.

(e) USE OF RESIDENTIAL SUBSTANCE ABUSE TREATMENT GRANTS TO PROVIDE FOR SERVICES DURING AND AFTER INCARCERATION.—Section 1901 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff) is amended by adding at the end the following:

''(c) ADDITIONAL USE OF FUNDS.—States that demonstrate that they have existing in-prison drug treatment programs that are in compliance with Federal requirements may use funds awarded under this part for treatment and sanctions both during incarceration and after release, provided that no more than 25 percent of funds be spent on aftercare services.

''(d) CONSULTATION.—The Attorney General shall consult with the Secretary of Health and Human Services to ensure that programs of substance abuse treatment and related services for State prisoners carried out under this part incorporate applicable components of existing, comprehensive approaches including relapse prevention and aftercare services that have been shown to be efficacious and incorporate evidence-based principles of effective substance abuse treatment as determined by the Secretary of Health and Human Services.''.

(f) REAUTHORIZATION.—Paragraph (17) of section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(17)) is amended to read as follows:

''(17) There are authorized to be appropriated to carry out part S such sums as are necessary for fiscal year 2002 and such sums as may be necessary for fiscal years 2003 and 2004.''.

(g) SUBSTANCE ABUSE TREATMENT IN FEDERAL PRISONS REAUTHORIZATION.—Section 3621(e) of title 18, United States Code, is amended—

(1) in paragraph (4), by striking subparagraph (E) and inserting the following:

''(E) such sums as are necessary for fiscal year 2002; and

''(F) such sums as are necessary for fiscal year 2003.''; and

(2) in paragraph (5)—

(A) in subparagraph (B), by striking ''and'' at the end;

(B) in subparagraph (C), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(D) the term 'appropriate substance abuse treatment' means treatment in a program that has been shown to be efficacious and incorporates evidence-based principles of effective substance abuse treatment as determined by the Secretary of Health and Human Services.''.

SEC. 2103. MANDATORY REVOCATION OF PROBATION AND SUPERVISED RELEASE FOR FAILING A DRUG TEST.

(a) REVOCATION OF PROBATION.—Section 3565(b) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' after the semicolon;

(2) in paragraph (3), by striking ''(4),'' and inserting ''(4); or''; and

(3) by adding after paragraph (3) the following:

''(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;''.

(b) REVOCATION OF SUPERVISED RELEASE.—Section 3583(g) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' after the semicolon;

(2) in paragraph (3), by inserting ''or'' after the semicolon; and

(3) by adding after paragraph (3) the following:

''(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;''.

Subtitle B—Treatment and Prevention

SEC. 2201. DRUG TREATMENT ALTERNATIVE TO PRISON PROGRAMS ADMINISTERED BY STATE OR LOCAL PROSECUTORS.

(a) PROSECUTION DRUG TREATMENT ALTERNATIVE TO PRISON PROGRAMS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following new part:

''PART CC—PROSECUTION DRUG TREATMENT ALTERNATIVE TO PRISON PROGRAMS

''SEC. 2901. PILOT PROGRAM AUTHORIZED.

''(a) IN GENERAL.—The Attorney General may make grants to State or local prosecutors for the purpose of developing, implementing, or expanding drug treatment alternative to prison programs that comply with the requirements of this part.

''(b) USE OF FUNDS.—A State or local prosecutor who receives a grant under this part shall use amounts provided under the grant to develop, implement, or expand the drug treatment alternative to prison program for which the grant was made, which may include payment of the following expenses:

''(1) Salaries, personnel costs, equipment costs, and other costs directly related to the operation of the program, including the enforcement unit.

''(2) Payments to licensed substance abuse treatment providers for providing treatment to offenders participating in the program for which the grant was made, including aftercare supervision, vocational training, education, and job placement.

''(3) Payments to public and nonprofit private entities for providing treatment to offenders participating in the program for which the grant was made.

''(c) FEDERAL SHARE.—The Federal share of a grant under this part shall not exceed 75 percent of the cost of the program.

''(d) SUPPLEMENT AND NOT SUPPLANT.—Grant amounts received under this part shall be used to supplement, and not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

''SEC. 2902. PROGRAM REQUIREMENTS.

''A drug treatment alternative to prison program with respect to which a grant is made under this part shall comply with the following requirements:

''(1) A State or local prosecutor shall administer the program.

''(2) An eligible offender may participate in the program only with the consent of the State or local prosecutor.

''(3) Each eligible offender who participates in the program shall, as an alternative to incarceration, be sentenced to or placed with a long-term substance abuse treatment provider that is licensed or certified under State or local law.

''(4) Each eligible offender who participates in the program shall serve a sentence of imprisonment with respect to the underlying crime if that offender does not successfully complete treatment with the residential substance abuse provider.

''(5) Each substance abuse provider treating an offender under the program shall—

''(A) make periodic reports of the progress of treatment of that offender to the State or local prosecutor carrying out the program and to the appropriate court in which the defendant was convicted; and

''(B) notify that prosecutor and that court if that offender absconds from the facility of the treatment provider or otherwise violates the terms and conditions of the program.

''(6) The program shall have an enforcement unit comprised of law enforcement officers under the supervision of the State or local prosecutor carrying out the program, the duties of which shall include verifying an

offender's addresses and other contacts, and, if necessary, locating, apprehending, and arresting an offender who has absconded from the facility of a substance abuse treatment provider or otherwise violated the terms and conditions of the program, and returning such offender to court for sentence on the underlying crime.

"SEC. 2903. APPLICATIONS.

''(a) IN GENERAL.—To request a grant under this part, a State or local prosecutor shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

''(b) CERTIFICATIONS.—Each such application shall contain the certification of the State or local prosecutor that the program for which the grant is requested shall meet each of the requirements of this part.

"SEC. 2904. GEOGRAPHIC DISTRIBUTION.

''The Attorney General shall ensure that, to the extent practicable, the distribution of grant awards is equitable and includes State or local prosecutors—

''(1) in each State; and

''(2) in rural, suburban, and urban jurisdictions.

"SEC. 2905. REPORTS AND EVALUATIONS.

''For each fiscal year, each recipient of a grant under this part during that fiscal year shall submit to the Attorney General a description and an evaluation report regarding the effectiveness of activities carried out using that grant. Each report shall include an evaluation in such form and containing such information as the Attorney General may reasonably require. The Attorney General shall specify the dates on which such reports shall be submitted.

"SEC. 2906. DEFINITIONS.

''In this part:

''(1) The term 'State or local prosecutor' means any district attorney, State attorney general, county attorney, or corporation counsel who has authority to prosecute criminal offenses under State or local law.

''(2) The term 'eligible offender' means an individual who—

''(A) has been convicted of, or pled guilty to, or admitted guilt with respect to a crime for which a sentence of imprisonment is required and has not completed such sentence;

''(B) has never been convicted of, or pled guilty to, or admitted guilt with respect to, and is not presently charged with, a felony crime of violence, a drug trafficking crime (as defined in section 924(c)(2) of title 18, United States Code), or a crime that is considered a violent felony under State or local law; and

''(C) has been found by a professional substance abuse screener to be in need of substance abuse treatment because that offender has a history of substance abuse that is a significant contributing factor to that offender's criminal conduct.

''(3) The term 'felony crime of violence' has the meaning given such term in section 924(c)(3) of title 18, United States Code.

''(4) The term 'major drug offense' has the meaning given such term in section 36(a) of title 18, United States Code.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended by adding at the end the following new paragraph:

''(24) There are authorized to be appropriated to carry out part CC such sums as are necessary for each of fiscal years 2002 through 2004.''.

(c) STUDY OF THE EFFECT OF MANDATORY MINIMUM SENTENCES FOR CONTROLLED SUBSTANCE OFFENSES.—Not later than 1 year after the date of enactment of this Act, the United States Sentencing Commission shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report regarding mandatory minimum sentences for controlled substance offenses, which shall include an analysis of—

(1) whether such sentences may have a disproportionate impact on ethnic or racial groups;

(2) the effectiveness of such sentences in reducing drug-related crime by violent offenders;

(3) the effectiveness of basing sentences on drug quantities and the feasibility of potential alternatives; and

(4) the frequency and appropriateness of the use of such sentences for nonviolent offenders in contrast with other approaches such as drug treatment programs.

SEC. 2202. JUVENILE SUBSTANCE ABUSE COURTS.

(a) GRANT AUTHORITY.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

"PART DD—JUVENILE SUBSTANCE ABUSE COURTS

"SEC. 2926. DEFINITIONS.

''In this part:

''(1) CRIME OF VIOLENCE.—The term 'crime of violence' means a criminal offense that—

''(A) has as an element, the use, attempted use, or threatened use of physical force against the person or property of another; or

''(B) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

''(2) VIOLENT JUVENILE OFFENDER.—The term 'violent juvenile offender' means a juvenile who has been convicted of a violent offense or adjudicated delinquent for an act that, if committed by an adult, would constitute a crime of violence.

"SEC. 2927. GRANT AUTHORITY.

''(a) APPROPRIATE SUBSTANCE ABUSE COURT PROGRAMS.—The Attorney General may make grants to States, State courts, local courts, units of local government, and Indian tribes in accordance with this part to establish programs that—

''(1) involve continuous judicial supervision over juvenile offenders (other than violent juvenile offenders) with substance abuse problems;

''(2) integrate administration of other sanctions and services, which include—

''(A) mandatory random testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant;

''(B) substance abuse treatment for each participant;

''(C) probation, diversion, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress; and

''(D) programmatic offender management, and aftercare services such as relapse prevention; and

''(3) may include—

''(A) payment, in whole or in part, by the offender or his or her parent or guardian of treatment costs, to the extent practicable, such as costs for urinalysis or counseling;

''(B) payment, in whole or in part, by the offender or his or her parent or guardian of restitution, to the extent practicable, to either a victim of the offender's offense or to a restitution or similar victim support fund; and

''(C) economic sanctions shall not be at a level that would interfere with the juvenile offender's education or rehabilitation.

''(b) USE OF GRANTS FOR NECESSARY SUPPORT PROGRAMS.—A recipient of a grant under this part may use the grant to pay for treatment, counseling, and other related and necessary expenses not covered by other Federal, State, Indian tribal, and local sources of funding that would otherwise be available.

''(c) CONTINUED AVAILABILITY OF GRANT FUNDS.—Amounts made available under this part shall remain available until expended.

"SEC. 2928. APPLICATIONS.

''(a) IN GENERAL.—In order to receive a grant under this part, the chief executive or the chief justice of a State, or the chief executive or judge of a unit of local government or Indian tribe shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

''(b) CONTENTS.—In addition to any other requirements that may be specified by the Attorney General, each application for a grant under this part shall—

''(1) include a long-term strategy and detailed implementation plan;

''(2) explain the applicant's need for Federal assistance;

''(3) certify that the Federal support provided will be used to supplement, and not supplant, State, Indian tribal, and local sources of funding that would otherwise be available;

''(4) identify related governmental or community initiatives that complement or will be coordinated with the proposal;

''(5) certify that there has been appropriate consultation with all affected agencies and that there will be appropriate coordination with all affected agencies in the implementation of the program;

''(6) certify that participating offenders will be supervised by one or more designated judges with responsibility for the substance abuse court program;

''(7) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and

''(8) describe the methodology that will be used in evaluating the program.

"SEC. 2929. FEDERAL SHARE.

''(a) IN GENERAL.—The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the program described in the application submitted under section 2928 for the fiscal year for which the program receives assistance under this part.

''(b) WAIVER.—The Attorney General may waive, in whole or in part, the requirement of a matching contribution under subsection (a).

''(c) IN-KIND CONTRIBUTIONS.—In-kind contributions may constitute a portion of the non-Federal share of a grant under this part.

"SEC. 2930. DISTRIBUTION OF FUNDS.

''(a) GEOGRAPHICAL DISTRIBUTION.—The Attorney General shall ensure that, to the extent practicable, an equitable geographic distribution of grant awards is made.

''(b) INDIAN TRIBES.—The Attorney General shall allocate 0.75 percent of amounts made available under this part for grants to Indian tribes.

''(c) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this part have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this part not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this part.

"SEC. 2931. REPORT.

''Each recipient of a grant under this part during a fiscal year shall submit to the Attorney General a description and an evaluation report regarding the effectiveness of programs established with the grant on the date specified by the Attorney General.

''SEC. 2932. TECHNICAL ASSISTANCE, TRAINING, AND EVALUATION.

''(a) TECHNICAL ASSISTANCE AND TRAINING.—The Attorney General may provide technical assistance and training in furtherance of the purposes of this part.

''(b) EVALUATIONS.—In addition to any evaluation requirement that may be prescribed for recipients of grants under this part, the Attorney General may carry out or make arrangements for evaluations of programs that receive assistance under this part.

''(c) ADMINISTRATION.—The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, in collaboration with the Secretary of Health and Human Services, or through grants, contracts, or other cooperative arrangements with other entities.

''SEC. 2933. REGULATIONS.

''The Attorney General shall issue any regulations and guidelines necessary to carry out this part, which shall ensure that the programs funded with grants under this part do not permit participation by violent juvenile offenders.

''SEC. 2934. UNAWARDED FUNDS.

''The Attorney General may reallocate any grant funds that are not awarded for juvenile substance abuse courts under this part for use for other juvenile delinquency and crime prevention initiatives.

''SEC. 2935. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated for each of fiscal years 2002 through 2004, such sums as are necessary to carry out this part.''.

(b) CLERICAL AMENDMENT.—The table of contents for title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

''PART DD—JUVENILE SUBSTANCE ABUSE COURTS

''Sec. 2926. Definitions.
''Sec. 2927. Grant authority.
''Sec. 2928. Applications.
''Sec. 2929. Federal share.
''Sec. 2930. Distribution of funds.
''Sec. 2931. Report.
''Sec. 2932. Technical assistance, training, and evaluation.
''Sec. 2933. Regulations.
''Sec. 2934. Unawarded funds.
''Sec. 2935. Authorization of appropriations.''.

SEC. 2203. EXPANSION OF SUBSTANCE ABUSE EDUCATION AND PREVENTION EFFORTS.

(a) EXPANSION OF EFFORTS.—Section 515 of the Public Health Service Act (42 U.S.C. 290bb–21) is amended by adding at the end the following:

''(e) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—The Administrator may make grants to and enter into contracts and cooperative agreements with public and nonprofit private entities to enable such entities—

''(A) to carry out school-based programs concerning the dangers of abuse of and addiction to illicit drugs, using methods that are effective and evidence-based, including initiatives that give students the responsibility to create their own antidrug abuse education programs for their schools; and

''(B) to carry out community-based abuse and addiction education and prevention programs relating to illicit drugs that are effective and evidence-based.

''(2) USE OF GRANT, CONTRACT, OR COOPERATIVE AGREEMENT FUNDS.—Amounts made available under a grant, contract, or cooperative agreement under paragraph (1) shall be used for planning, establishing, or administering education and prevention programs relating to illicit drugs in accordance with paragraph (3).

''(3) USES OF AMOUNTS.—

''(A) IN GENERAL.—Amounts provided under this subsection may be used—

''(i) to carry out school-based programs that are focused on those districts with high or increasing rates of drug abuse and addiction and targeted at populations which are most at-risk to start abuse of illicit drugs;

''(ii) to carry out community-based education and prevention programs and environmental change strategies that are focused on those populations within the community that are most at-risk for abuse of and addiction to illicit drugs;

''(iii) to assist local government entities and community antidrug coalitions to plan, conduct, and evaluate appropriate prevention activities and strategies relating to illegal drugs;

''(iv) to train and educate State and local law enforcement officials, prevention and education officials, members of community antidrug coalitions and parents on the signs of abuse of and addiction to illicit drugs, and the options for treatment and prevention;

''(v) for planning, administration, and educational activities related to the prevention of abuse of and addiction to illicit drugs;

''(vi) for the monitoring and evaluation of prevention activities relating to illicit drugs, and reporting and disseminating resulting information to the public; and

''(vii) for targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

''(B) PRIORITY IN MAKING GRANTS.—The Administrator shall give priority in making grants under this subsection to rural States, urban areas, and other areas that are experiencing a high rate or rapid increases in drug abuse and addiction.

''(4) ANALYSES, EVALUATIONS, AND REPORTS.—

''(A) ANALYSES AND EVALUATIONS.—Not less than $500,000 of the amount available in each fiscal year to carry out this subsection shall be made available to the Administrator, acting in consultation with other Federal agencies, to support and conduct periodic analyses and evaluations of effective education and prevention programs for abuse of and addiction to illicit drugs and the development of appropriate strategies for disseminating information about and implementing these programs.

''(B) ANNUAL REPORT.—The Administrator shall submit to the committees of Congress referred to in subparagraph (C) an annual report with the results of the analyses and evaluation under subparagraph (A).

''(C) COMMITTEES.—The committees of Congress referred to in this subparagraph are the following:

''(i) SENATE.—The Committees on Health, Education, Labor, and Pensions, the Judiciary, and Appropriations of the Senate.

''(ii) HOUSE OF REPRESENTATIVES.—The Committees on Energy and Commerce, the Judiciary, and Appropriations of the House of Representatives.''.

(b) AUTHORIZATION OF APPROPRIATIONS FOR EXPANSION OF ABUSE PREVENTION EFFORTS AND PRACTITIONER REGISTRATION REQUIREMENTS.—There is authorized to be appropriated to carry out section 515(e) of the Public Health Service Act (as added by subsection (a)) and section 303(g)(2) of the Controlled Substances Act, such sums as are necessary for fiscal year 2002, and such sums as may be necessary for each succeeding fiscal year.

(c) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section.

SEC. 2204. FUNDING FOR RURAL STATES AND ECONOMICALLY DEPRESSED COMMUNITIES.

(a) IN GENERAL.—The Director of the Center for Substance Abuse Treatment shall provide awards of grants, cooperative agreement, or contracts to public and nonprofit private entities for the purpose of providing treatment facilities in rural States and economically depressed communities that have high rates of drug addiction but lack the resources to provide adequate treatment.

(b) MINIMUM QUALIFICATIONS FOR RECEIPT OF AWARD.—With respect to the principal agency of the State involved that administers programs relating to substance abuse, the Director may make an award under subsection (a) to an applicant only if the agency has certified to the Director that—

(1) the applicant has the capacity to carry out a program described in subsection (a);

(2) the plans of the applicant for such a program are consistent with the policies of such agency regarding the treatment of substance abuse; and

(3) the applicant, or any entity through which the applicant will provide authorized services, meets all applicable State licensure or certification requirements regarding the provision of the services involved.

(c) REQUIREMENT OF MATCHING FUNDS.—

(1) IN GENERAL.—With respect to the costs of the program to be carried out by an applicant pursuant to subsection (a), a funding agreement for an award under such subsection is that the applicant will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that—

(A) for the first fiscal year for which the applicant receives payments under an award under such subsection, is not less than $1 for each $9 of Federal funds provided in the award;

(B) for any second such fiscal year, is not less than $1 for each $9 of Federal funds provided in the award; and

(C) for any subsequent such fiscal year, is not less than $1 for each $3 of Federal funds provided in the award.

(2) DETERMINATION OF AMOUNT CONTRIBUTED.—Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(d) REPORTS TO DIRECTOR.—A funding agreement for an award under subsection (a) is that the applicant involved will submit to the Director a report—

(1) describing the utilization and costs of services provided under the award;

(2) specifying the number of individuals served and the type and costs of services provided; and

(3) providing such other information as the Director determines to be appropriate.

(e) REQUIREMENT OF APPLICATION.—The Director may make an award under subsection (a) only if an application for the award is submitted to the Director containing such agreements, and the application is in such form, is made in such manner, and contains

such other agreements and such assurances and information as the Director determines to be necessary to carry out this section.

(f) EQUITABLE ALLOCATION OF AWARDS.—In making awards under subsection (a), the Director shall ensure that the awards are equitably allocated among the principal geographic regions of the United States, subject to the availability of qualified applicants for the awards.

(g) DURATION OF AWARD.—The period during which payments are made to an entity from an award under subsection (a) may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Director of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments. This subsection may not be construed to establish a limitation on the number of awards under such subsection that may be made to an entity.

(h) EVALUATIONS; DISSEMINATION OF FINDINGS.—The Director shall, directly or through contract, provide for the conduct of evaluations of programs carried out pursuant to subsection (a). The Director shall disseminate to the States the findings made as a result of the evaluations.

(i) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section.

(j) DEFINITION OF RURAL STATE.—In this section, the term ''rural State'' has the same meaning as in section 1501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796bb(B)).

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of the fiscal years 2002, 2003, and 2004.

SEC. 2205. FUNDING FOR RESIDENTIAL TREATMENT CENTERS FOR WOMEN AND CHILDREN.

(a) IN GENERAL.—The Director of the Center for Substance Abuse Treatment shall provide awards of grants, cooperative agreement, or contracts to public and nonprofit private entities for the purpose of providing treatment facilities that—

(1) provide residential treatment for methamphetamine, heroin, and other drug addicted women with minor children; and

(2) offer specialized treatment for methamphetamine-, heroin-, and other drug-addicted mothers and allow the minor children of those mothers to reside with them in the facility or nearby while treatment is ongoing.

(b) MINIMUM QUALIFICATIONS FOR RECEIPT OF AWARD.—With respect to the principal agency of the State involved that administers programs relating to substance abuse, the Director may make an award under subsection (a) to an applicant only if the agency has certified to the Director that—

(1) the applicant has the capacity to carry out a program described in subsection (a);

(2) the plans of the applicant for such a program are consistent with the policies of such agency regarding the treatment of substance abuse; and

(3) the applicant, or any entity through which the applicant will provide authorized services, meets all applicable State licensure or certification requirements regarding the provision of the services involved.

(c) REQUIREMENT OF MATCHING FUNDS.—

(1) IN GENERAL.—With respect to the costs of the program to be carried out by an applicant pursuant to subsection (a), a funding agreement for an award under such subsection is that the applicant will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that—

(A) for the first fiscal year for which the applicant receives payments under an award under such subsection, is not less than $1 for each $9 of Federal funds provided in the award;

(B) for any second such fiscal year, is not less than $1 for each $9 of Federal funds provided in the award; and

(C) for any subsequent such fiscal year, is not less than $1 for each $3 of Federal funds provided in the award.

(2) DETERMINATION OF AMOUNT CONTRIBUTED.—Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(d) REPORTS TO DIRECTOR.—A funding agreement for an award under subsection (a) is that the applicant involved will submit to the Director a report—

(1) describing the utilization and costs of services provided under the award;

(2) specifying the number of individuals served and the type and costs of services provided; and

(3) providing such other information as the Director determines to be appropriate.

(e) REQUIREMENT OF APPLICATION.—The Director may make an award under subsection (a) only if an application for the award is submitted to the Director containing such agreements, and the application is in such form, is made in such manner, and contains such other agreements and such assurances and information as the Director determines to be necessary to carry out this section.

(f) PRIORITY.—In making grants under this subsection, the Director shall give priority to areas experiencing a high rate or rapid increase in drug abuse and addiction.

(g) EQUITABLE ALLOCATION OF AWARDS.—In making awards under subsection (a), the Director shall ensure that the awards are equitably allocated among the principal geographic regions of the United States, subject to the availability of qualified applicants for the awards.

(h) DURATION OF AWARD.—The period during which payments are made to an entity from an award under subsection (a) may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Director of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments. This subsection may not be construed to establish a limitation on the number of awards under such subsection that may be made to an entity.

(i) EVALUATIONS; DISSEMINATION OF FINDINGS.—The Director shall, directly or through contract, provide for the conduct of evaluations of programs carried out pursuant to subsection (a). The Director shall disseminate to the States the findings made as a result of the evaluations.

(j) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of the fiscal years 2002, 2003, and 2004.

SEC. 2206. DRUG TREATMENT FOR JUVENILES.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end the following:

''PART G—RESIDENTIAL TREATMENT PROGRAMS FOR JUVENILES

''SEC. 575. RESIDENTIAL TREATMENT PROGRAMS FOR JUVENILES.

''(a) IN GENERAL.—The Director of the Center for Substance Abuse Treatment shall award grants to, or enter into cooperative agreements or contracts, with public and nonprofit private entities for the purpose of providing treatment to juveniles for substance abuse through programs that are effective and science-based in which, during the course of receiving such treatment the juveniles reside in facilities made available by the programs.

''(b) AVAILABILITY OF SERVICES FOR EACH PARTICIPANT.—A funding agreement for an award under subsection (a) for an applicant is that, in the program operated pursuant to such subsection—

''(1) treatment services will be available through the applicant, either directly or through agreements with other public or nonprofit private entities; and

''(2) the services will be made available to each person admitted to the program.

''(c) INDIVIDUALIZED PLAN OF SERVICES.—A funding agreement for an award under subsection (a) for an applicant is that—

''(1) in providing authorized services for an eligible person pursuant to such subsection, the applicant will, in consultation with the juvenile and, if appropriate the parent or guardian of the juvenile, prepare an individualized plan for the provision to the juvenile or young adult of the services; and

''(2) treatment services under the plan will include—

''(A) individual, group, and family counseling, as appropriate, regarding substance abuse; and

''(B) followup services to assist the juvenile or young adult in preventing a relapse into such abuse.

''(d) ELIGIBLE SUPPLEMENTAL SERVICES.—Grants under subsection (a) may be used to provide an eligible juvenile, the following services:

''(1) HOSPITAL REFERRALS.—Referrals for necessary hospital services.

''(2) HIV AND AIDS COUNSELING.—Counseling on the human immunodeficiency virus and on acquired immune deficiency syndrome.

''(3) DOMESTIC VIOLENCE AND SEXUAL ABUSE COUNSELING.—Counseling on domestic violence and sexual abuse.

''(4) PREPARATION FOR REENTRY INTO SOCIETY.—Planning for and counseling to assist reentry into society, both before and after discharge, including referrals to any public or nonprofit private entities in the community involved that provide services appropriate for the juvenile.

''(e) MINIMUM QUALIFICATIONS FOR RECEIPT OF AWARD.—With respect to the principal agency of a State or Indian tribe that administers programs relating to substance abuse, the Director may award a grant to, or enter into a cooperative agreement or contract with, an applicant only if the agency or Indian tribe has certified to the Director that—

''(1) the applicant has the capacity to carry out a program described in subsection (a);

''(2) the plans of the applicant for such a program are consistent with the policies of such agency regarding the treatment of substance abuse; and

''(3) the applicant, or any entity through which the applicant will provide authorized services, meets all applicable State licensure or certification requirements regarding the provision of the services involved.

''(f) REQUIREMENTS FOR MATCHING FUNDS.—

''(1) IN GENERAL.—With respect to the costs of the program to be carried out by an applicant pursuant to subsection (a), a funding agreement for an award under such subsection is that the applicant will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that—

''(A) for the first fiscal year for which the applicant receives payments under an award under such subsection, is not less than $1 for each $9 of Federal funds provided in the award;

''(B) for any second such fiscal year, is not less than $1 for each $9 of Federal funds provided in the award; and

''(C) for any subsequent such fiscal year, is not less than $1 for each $3 of Federal funds provided in the award.

''(2) DETERMINATION OF AMOUNT CONTRIBUTED.—Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

''(g) OUTREACH.—A funding agreement for an award under subsection (a) for an applicant is that the applicant will provide outreach services in the community involved to identify juveniles who are engaging in substance abuse and to encourage the juveniles to undergo treatment for such abuse.

''(h) ACCESSIBILITY OF PROGRAM.—A funding agreement for an award under subsection (a) for an applicant is that the program operated pursuant to such subsection will be operated at a location that is accessible to low income juveniles.

''(i) CONTINUING EDUCATION.—A funding agreement for an award under subsection (a) is that the applicant involved will provide for continuing education in treatment services for the individuals who will provide treatment in the program to be operated by the applicant pursuant to such subsection.

''(j) IMPOSITION OF CHARGES.—A funding agreement for an award under subsection (a) for an applicant is that, if a charge is imposed for the provision of authorized services to or on behalf of an eligible juvenile, such charge—

''(1) will be made according to a schedule of charges that is made available to the public;

''(2) will be adjusted to reflect the economic condition of the juvenile involved; and

''(3) will not be imposed on any such juvenile whose family has an income of less than 185 percent of the official poverty line, as established by the Director of the Office for Management and Budget and revised by the Secretary in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)).

''(k) REPORTS TO DIRECTOR.—A funding agreement for an award under subsection (a) is that the applicant involved will submit to the Director a report—

''(1) describing the utilization and costs of services provided under the award;

''(2) specifying the number of juveniles served, and the type and costs of services provided; and

''(3) providing such other information as the Director determines to be appropriate.

''(l) REQUIREMENT OF APPLICATION.—The Director may make an award under subsection (a) only if an application for the award is submitted to the Director containing such agreements, and the application is in such form, is made in such manner, and contains such other agreements and such assurances and information as the Director determines to be necessary to carry out this section.

''(m) PRIORITY.—In making grants under this subsection, the Director shall give priority to areas experiencing a high rate or rapid increase in drug abuse and addiction.

''(n) EQUITABLE ALLOCATION OF AWARDS.—In making awards under subsection (a), the Director shall ensure that the awards are equitably allocated among the principal geographic regions of the United States, as well as among Indian tribes, subject to the availability of qualified applicants for the awards.

''(o) DURATION OF AWARD.—

''(1) IN GENERAL.—The period during which payments are made to an entity from an award under this section may not exceed 5 years.

''(2) APPROVAL OF DIRECTOR.—The provision of payments described in paragraph (1) shall be subject to—

''(A) annual approval by the Director of the payments; and

''(B) the availability of appropriations for the fiscal year at issue to make the payments.

''(3) NO LIMITATION.—This subsection may not be construed to establish a limitation on the number of awards that may be made to an entity under this section.

''(p) EVALUATIONS; DISSEMINATION OF FINDINGS.—The Director shall, directly or through contract, provide for the conduct of evaluations of programs carried out pursuant to subsection (a). The Director shall disseminate to the States the findings made as a result of the evaluations.

''(q) REPORTS TO CONGRESS.—

''(1) INITIAL REPORT.—Not later than October 1, 2001, the Director shall submit to the Committee on the Judiciary of the House of Representatives, and to the Committee on the Judiciary of the Senate, a report describing programs carried out pursuant to this section.

''(2) PERIODIC REPORTS.—

''(A) IN GENERAL.—Not less than biennially after the date described in paragraph (1), the Director shall prepare a report describing programs carried out pursuant to this section during the preceding 2-year period, and shall submit the report to the Administrator for inclusion in the biennial report under section 501(k).

''(B) SUMMARY.—Each report under this subsection shall include a summary of any evaluations conducted under subsection (m) during the period with respect to which the report is prepared.

''(r) DEFINITIONS.—In this section:

''(1) AUTHORIZED SERVICES.—The term 'authorized services' means treatment services and supplemental services.

''(2) JUVENILE.—The term 'juvenile' means anyone 18 years of age or younger at the time that of admission to a program operated pursuant to subsection (a).

''(3) ELIGIBLE JUVENILE.—The term 'eligible juvenile' means a juvenile who has been admitted to a program operated pursuant to subsection (a).

''(4) FUNDING AGREEMENT UNDER SUBSECTION (A).—The term 'funding agreement under subsection (a)', with respect to an award under subsection (a), means that the Director may make the award only if the applicant makes the agreement involved.

''(5) TREATMENT SERVICES.—The term 'treatment services' means treatment for substance abuse, including the counseling and services described in subsection (c)(2).

''(6) SUPPLEMENTAL SERVICES.—The term 'supplemental services' means the services described in subsection (d).

''(s) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—For the purpose of carrying out this section and section 576 there is authorized to be appropriated such sums as may be necessary for fiscal years 2002 through 2004. There is authorized to be appropriated from the Violent Crime Reduction Trust Fund such sums as are necessary in each of fiscal years 2002, 2003, and 2004.

''(2) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this section have been funded, such State,together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section.

''(3) TRANSFER.—For the purpose described in paragraph (1), in addition to the amounts authorized in such paragraph to be appropriated for a fiscal year, there is authorized to be appropriated for the fiscal year from the special forfeiture fund of the Director of the Office of National Drug Control Policy such sums as may be necessary.

''(4) RULE OF CONSTRUCTION.—The amounts authorized in this subsection to be appropriated are in addition to any other amounts that are authorized to be appropriated and are available for the purpose described in paragraph (1).

''SEC. 576. OUTPATIENT TREATMENT PROGRAMS FOR JUVENILES.

''(a) GRANTS.—The Secretary of Health and Human Services, acting through the Director of the Center for Substance Abuse Treatment, shall make grants to establish projects for the outpatient treatment of substance abuse among juveniles.

''(b) PREVENTION.—Entities receiving grants under this section shall engage in activities to prevent substance abuse among juveniles.

''(c) EVALUATION.—The Secretary of Health and Human Services shall evaluate projects carried out under subsection (a) and shall disseminate to appropriate public and private entities information on effective projects.''.

SEC. 2207. COORDINATED JUVENILE SERVICES GRANTS.

Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended by inserting after section 205 the following:

''SEC. 205A. COORDINATED JUVENILE SERVICES GRANTS.

''(a) IN GENERAL.—The Attorney General and the Secretary of Health and Human Services shall make grants to a consortium within a State consisting of State or local juvenile justice agencies, State or local substance abuse and mental health agencies, and child service agencies to coordinate the delivery of services to children among these agencies.

''(b) USE OF FUNDS.—A consortium described in subsection (a) that receives a grant under this section shall use the grant for the establishment and implementation of programs that address the service needs of juveniles with substance abuse and treatment problems who come into contact with the justice system by requiring the following:

''(1) Collaboration across child serving systems, including juvenile justice agencies, relevant substance abuse and mental health treatment providers, and State or local educational entities and welfare agencies.

''(2) Appropriate screening and assessment of juveniles.

''(3) Individual treatment plans.

''(4) Significant involvement of juvenile judges where possible.

''(c) APPLICATION FOR COORDINATED JUVENILE SERVICES GRANT.—

''(1) IN GENERAL.—A consortium described in subsection (a) desiring to receive a grant under this section shall submit an application containing such information as the Administrator may prescribe.

''(2) CONTENTS.—In addition to guidelines established by the Administrator, each application submitted under paragraph (1) shall provide—

''(A) certification that there has been appropriate consultation with all affected agencies and that there will be appropriate coordination with all affected agencies in the implementation of the program;

''(B) for the regular evaluation of the program funded by the grant and describe the methodology that will be used in evaluating the program;

''(C) assurances that the proposed program or activity will not supplant similar programs and activities currently available in the community; and

''(D) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support.

''(3) FEDERAL SHARE.—The Federal share of a grant under this section shall not exceed 75 percent of the cost of the program.

''(d) REPORT.—Each recipient of a grant under this section during a fiscal year shall submit to the Attorney General a description and an evaluation report regarding the effectiveness of programs established with the grant on the date specified by the Attorney General.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There shall be made available from the Violent Crime Reduction Trust Fund for each of fiscal years 2002 through 2004, such sums as are necessary to carry out this section.''.

SEC. 2208. EXPANSION OF RESEARCH.

Section 464L of the Public Health Service Act (42 U.S.C. 285o) is amended by adding at the end the following:

''(f) DRUG ABUSE RESEARCH.—

''(1) GRANTS OR COOPERATIVE AGREEMENTS.—The Director of the Institute shall make grants or enter into cooperative agreements to conduct research on drug abuse treatment and prevention, and as is necessary to establish up to 12 new National Drug Abuse Treatment Clinical Trials Network (CTN) Centers to develop and test an array of behavioral and pharmacological treatments and to determine the conditions under which novel treatments are successfully adopted by local treatment clinics.

''(2) USE OF FUNDS.—Amounts made available under a grant or cooperative agreement under paragraph (1) for drug abuse and addiction may be used for research and clinical trials relating to—

''(A) the effects of drug abuse on the human body, including the brain;

''(B) the addictive nature of various drugs and how such effects differ with respect to different individuals;

''(C) the connection between drug abuse, mental health, and teenage suicide;

''(D) the identification and evaluation of the most effective methods of prevention of drug abuse and addiction among juveniles and adults;

''(E) the identification and development of the most effective methods of treatment of drug addiction, including pharmacological treatments;

''(F) risk factors for drug abuse;

''(G) effects of drug abuse and addiction on pregnant women and their fetuses; and

''(H) cultural, social, behavioral, neurological and psychological reasons that individuals, including juveniles, abuse drugs or refrain from abusing drugs.

''(3) RESEARCH RESULTS.—The Director shall promptly disseminate research results under this subsection to Federal, State and local entities involved in combating drug abuse and addiction.

''(4) AUTHORIZATION OF APPROPRIATIONS.—

''(A) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraphs (1), (2), and (3) there is authorized to be appropriated such sums as are necessary for fiscal year 2002, and such sums as may be necessary for fiscal years 2003 and 2004, for establishment of up to 12 new CTN Centers and for the identification and development of the most effective methods of treatment and prevention of drug addiction, including behavioral, cognitive, and pharmacological treatments among juveniles and adults.

''(B) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated pursuant to the authorization of appropriations in subparagraph (A) for a fiscal year shall supplement and not supplant any other amounts appropriated in such fiscal year for research on drug abuse and addiction.''.

SEC. 2209. REPORT ON DRUG-TESTING TECHNOLOGIES.

(a) REQUIREMENT.—The National Institute on Standards and Technology shall conduct a study of drug-testing technologies in order to identify and assess the efficacy, accuracy, and usefulness for purposes of the National effort to detect the use of illicit drugs of any drug-testing technologies (including the testing of hair) that may be used as alternatives or complements to urinalysis as a means of detecting the use of such drugs.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Institute shall submit to Congress a report on the results of the study conducted under subsection (a).

SEC. 2210. USE OF NATIONAL INSTITUTES OF HEALTH SUBSTANCE ABUSE RESEARCH.

(a) NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM.—Section 464H of the Public Health Service Act (42 U.S.C. 285n) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

''(d) REQUIREMENT TO ENSURE THAT RESEARCH AIDS PRACTITIONERS.—The Director, in conjunction with the Director of the National Institute on Drug Abuse and the Administrator of the Substance Abuse and Mental Health Services Administration, shall—

''(1) ensure that the results of all current substance abuse research that is set aside for services (and other appropriate research with practical consequences) is widely disseminated to treatment, prevention, and general practitioners in an easily understandable format;

''(2) ensure that such research results are disseminated in a manner that provides easily understandable steps for the implementation of best practices based on the research; and

''(3) make technical assistance available to the Center for Substance Abuse Treatment and the Center for Substance Abuse Prevention to assist alcohol and drug treatment and prevention practitioners, including general practitioners, to make permanent changes in treatment and prevention activities through the use of successful models.''.

(b) NATIONAL INSTITUTE ON DRUG ABUSE.—Section 464L of the Public Health Service Act (42 U.S.C. 285o) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

''(d) REQUIREMENT TO ENSURE THAT RESEARCH AIDS PRACTITIONERS.—The Director, in conjunction with the Director of the National Institute on Alcohol Abuse and Alcoholism and the Administrator of the Substance Abuse and Mental Health Services Administration, shall—

''(1) ensure that the results of all current substance abuse research that is set aside for services (and other appropriate research with practical consequences) is widely disseminated to treatment and prevention practitioners, including general practitioners, in an easily understandable format;

''(2) ensure that such research results are disseminated in a manner that provides easily understandable steps for the implementation of best practices based on the research; and

''(3) make technical assistance available to the Center for Substance Abuse Treatment and the Center for Substance Abuse Prevention to assist alcohol and drug treatment practitioners to make permanent changes in treatment and prevention activities through the use of successful models.''.

SEC. 2211. STUDY ON STRENGTHENING EFFORTS ON SUBSTANCE ABUSE RESEARCH AT THE NATIONAL INSTITUTES OF HEALTH.

(a) STUDY.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary''), shall enter into a contract, under subsection (b), to conduct a study to determine if combining the National Institute on Drug Abuse and the National Institute on Alcohol Abuse and Alcoholism of the National Institutes of Health to form 1 National Institute on Addiction would—

(1) strengthen the scientific research efforts on substance abuse at the National Institutes of Health; and

(2) be more economically efficient.

(b) INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMY OF SCIENCES.—The Secretary shall request the Institute of Medicine of the National Academy of Sciences to enter into a contract under subsection (a) to conduct the study described in subsection (a).

(c) REPORT.—Not later than 9 months after the date of enactment of this Act, the Secretary shall submit to the Committee on the Judiciary of the Senate—

(1) a report detailing the results of the study conducted under subsection (a); and

(2) any recommendations.

Subtitle C—School Safety and Character Education

CHAPTER 1—SCHOOL SAFETY

SEC. 2301. ALTERNATIVE EDUCATION.

Part D of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6421 et seq.) is amended by adding at the end the following:

''Subpart 4—Alternative Education Demonstration Project Grants

''SEC. 1441. PROGRAM AUTHORITY.

''(a) GRANTS.—

''(1) IN GENERAL.—From amounts appropriated under section 1443, the Secretary, in consultation with the Administrator, shall make grants to State educational agencies or local educational agencies for not less than 10 demonstration projects that enable the agencies to develop models for and carry out alternative education for at-risk youth.

''(2) CONSTRUCTION.—Nothing in this subpart shall be construed to affect the requirements of the Individuals with Disabilities Education Act.

''(b) DEMONSTRATION PROJECTS.—

''(1) PARTNERSHIPS.—Each agency receiving a grant under this subpart may enter into a partnership with a private sector entity to provide alternative educational services to at-risk youth.

''(2) REQUIREMENTS.—Each demonstration project assisted under this subpart shall—

''(A) accept for alternative education at-risk or delinquent youth who are referred by a local school or by a court with a juvenile delinquency docket and who—

''(i) have demonstrated a pattern of serious and persistent behavior problems in regular schools;

''(ii) are at risk of dropping out of school;

''(iii) have been convicted of a criminal offense or adjudicated delinquent for an act of juvenile delinquency, and are under a court's supervision; or

''(iv) have demonstrated that continued enrollment in a regular classroom—

''(I) poses a physical threat to other students; or

''(II) inhibits an atmosphere conducive to learning; and

''(B) provide for accelerated learning, in a safe, secure, and disciplined environment, including—

''(i) basic curriculum focused on mastery of essential skills, including targeted instruction in basic skills required for secondary school graduation and employment; and

''(ii) emphasis on—

''(I) personal, academic, social, and workplace skills; and

''(II) behavior modification.

''(c) APPLICABILITY.—Except as provided in subsections (c) and (e) of section 1442, the provisions of section 1401(c), 1402, and 1431, and subparts 1 and 2, shall not apply to this subpart.

''(d) DEFINITION OF ADMINISTRATOR.—In this subpart, the term 'Administrator' means the Administrator of the Office of Juvenile Crime Control and Prevention of the Department of Justice.

''SEC. 1442. APPLICATIONS; GRANTEE SELECTION.

''(a) APPLICATIONS.—Each State educational agency and local educational agency seeking a grant under this subpart shall submit an application in such form, and containing such information, as the Secretary, in consultation with the Administrator, may reasonably require.

''(b) SELECTION OF GRANTEES.—

''(1) IN GENERAL.—The Secretary shall select State educational agencies and local educational agencies to receive grants under this subpart on an equitable geographic basis, including selecting agencies that serve urban, suburban, and rural populations.

''(2) MINIMUM.—The Secretary shall award a grant under this subpart to not less than 1 agency serving a population with a significant percentage of Native Americans.

''(3) PRIORITY.—In awarding grants under this subpart, the Secretary may give priority to State educational agencies and local educational agencies that demonstrate in the application submitted under subsection (a) that the State has a policy of equitably distributing resources among school districts in the State.

''(c) QUALIFICATIONS.—To qualify for a grant under this subpart, a State educational agency or local educational agency shall—

''(1) in the case of a State educational agency, have submitted a State plan under section 1414(a) that is approved by the Secretary;

''(2) in the case of a local educational agency, have submitted an application under section 1423 that is approved by the State educational agency;

''(3) explain the educational and juvenile justice needs of the community to be addressed by the demonstration project;

''(4) provide a detailed plan to implement the demonstration project; and

''(5) provide assurances and an explanation of the agency's ability to continue the program funded by the demonstration project after the termination of Federal funding under this subpart.

''(d) MATCHING REQUIREMENT.—

''(1) IN GENERAL.—Grant funds provided under this subpart shall not constitute more than 35 percent of the cost of the demonstration project funded.

''(2) SOURCE OF FUNDS.—Matching funds for grants under this subpart may be derived from amounts available under part B of title II, of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) to the State in which the demonstration project will be carried out, except that the total share of funds derived from Federal sources shall not exceed 50 percent of the cost of the demonstration project.

''(e) PROGRAM EVALUATION.—

''(1) IN GENERAL.—Each State educational agency or local educational agency that receives a grant under this subpart shall evaluate the demonstration project assisted under this subpart in the same manner as programs are evaluated under section 1431. In addition, the evaluation shall include—

''(A) an evaluation of the effect of the alternative education project on order, discipline, and an effective learning environment in regular classrooms;

''(B) an evaluation of the project's effectiveness in improving the skills and abilities of at-risk students assigned to alternative education, including an analysis of the academic and social progress of such students; and

''(C) an evaluation of the project's effectiveness in reducing juvenile crime and delinquency, including—

''(i) reductions in incidents of campus crime in relevant school districts, compared with school districts not included in the project; and

''(ii) reductions in recidivism by at-risk students who have juvenile justice system involvement and are assigned to alternative education.

''(2) EVALUATION BY THE SECRETARY.—The Secretary, in cooperation with the Administrator, shall comparatively evaluate each of the demonstration projects funded under this subpart, including an evaluation of the effectiveness of private sector educational services, and shall report the findings of the evaluation to the Committee on Education and the Workforce of the House of Representatives and the Committees on the Judiciary and Health, Education, Labor and Pensions of the Senate not later than June 30, 2007.

''SEC. 1443. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this subpart such sums as are necessary for each of fiscal years 2002, 2003, and 2004.''.

SEC. 2302. TRANSFER OF SCHOOL DISCIPLINARY RECORDS.

Part F of title XIV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8921 et seq.) is amended by adding at the end the following:

''SEC. 14604. TRANSFER OF SCHOOL DISCIPLINARY RECORDS.

''(a) NONAPPLICATION OF PROVISIONS.—The provisions of this section shall not apply to any disciplinary records transferred from a private, parochial, or other nonpublic school, person, institution, or other entity, that provides education below the college level.

''(b) DISCIPLINARY RECORDS.—Not later than 2 years after the date of enactment of the Drug Abuse Education, Prevention, and Treatment Act of 2001, each State receiving Federal funds under this Act shall provide an assurance to the Secretary that the State has a procedure in place to facilitate the transfer of disciplinary records by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, full-time or part-time, in the school.''.

CHAPTER 2—CHARACTER EDUCATION

Subchapter A—National Character Achievement Award

SEC. 2311. NATIONAL CHARACTER ACHIEVEMENT AWARD.

(a) PRESENTATION AUTHORIZED.—The President is authorized to award to individuals under the age of 18, on behalf of the Congress, a National Character Achievement Award, consisting of a medal of appropriate design, with ribbons and appurtenances, honoring those individuals for distinguishing themselves as a model of good character.

(b) DESIGN AND STRIKING.—For the purposes of the award referred to in subsection (a), the Secretary of the Treasury shall design and strike a medal with suitable emblems, devices, and inscriptions, to be determined by such Secretary.

(c) ELIGIBILITY.—

(1) IN GENERAL.—The President pro tempore of the Senate and the Speaker of the House of Representatives shall establish procedures for the processing of recommendations to be forwarded to the President for awarding National Character Achievement Awards under subsection (a).

(2) RECOMMENDATIONS BY SCHOOL PRINCIPALS.—At a minimum, the recommendations referred to in paragraph (1) shall contain the endorsement of the principal (or equivalent official) of the school in which the individual under the age of 18 is enrolled.

Subchapter B—Preventing Juvenile Delinquency Through Character Education

SEC. 2321. PURPOSE.

The purpose of this subchapter is to support the work of community-based organizations, local educational agencies, and schools in providing children and youth with alternatives to delinquency through strong after school programs that—

(1) are organized around character education;

(2) reduce delinquency, school discipline problems, and truancy; and

(3) improve student achievement, overall school performance, and youths' positive involvement in their community.

SEC. 2322. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out the after school programs under this subchapter, such sums as are necessary for fiscal year 2002, and such sums as may be necessary for each of the 2 succeeding fiscal years.

(b) SOURCE OF FUNDING.—Amounts authorized to be appropriated pursuant to this section may be derived from the Violent Crime Reduction Trust Fund.

SEC. 2323. AFTER SCHOOL PROGRAMS.

(a) IN GENERAL.—The Secretary, in consultation with the Attorney General, is authorized to award grants to community-based organizations to enable the organizations to provide youth with alternative activities, in the after school or out of school hours, that include a strong character education component.

(b) ELIGIBLE COMMUNITY-BASED ORGANIZATIONS.—The Secretary shall only award a grant under this section to a community-based organization that has a demonstrated capacity to provide after school or out of school programs to youth, including youth serving organizations, businesses, and other community groups.

(c) APPLICATIONS.—Each community-based organization desiring a grant under this section shall submit an application to the Secretary at such time and in such manner as

the Secretary may require. Each application shall include—

(1) a description of the community to be served and the needs that will be met through the program in that community;

(2) a description of how the program will identify and recruit at-risk youth for participation in the program, and how the program will provide continuing support for the participation of such youth;

(3) a description of the activities to be assisted under the grant, including—

(A) how parents, students, and other members of the community will be involved in the design and implementation of the program;

(B) how character education will be incorporated into the program; and

(C) how the program will coordinate activities assisted under this section with activities of schools and other community-based organizations;

(4) a description of the goals of the program;

(5) a description of how progress toward achieving such goals, and toward meeting the purposes of this subchapter, will be measured; and

(6) an assurance that the community-based organization will provide the Secretary with information regarding the program and the effectiveness of the program.

SEC. 2324. GENERAL PROVISIONS.

(a) DURATION.—Each grant under this subchapter shall be awarded for a period of not to exceed 5 years.

(b) PLANNING.—A community-based organization may use grant funds provided under this subchapter for not more than 1 year for the planning and design of the program to be assisted.

(c) SELECTION OF GRANTEES.—

(1) CRITERIA.—The Secretary, in consultation with the Attorney General, shall select, through a peer review process, community-based organizations to receive grants under this subchapter on the basis of the quality of the applications submitted and taking into consideration such factors as—

(A) the quality of the activities to be assisted;

(B) the extent to which the program fosters in youth the elements of character and reaches youth at-risk of delinquency;

(C) the quality of the plan for measuring and assessing the success of the program;

(D) the likelihood the goals of the program will be realistically achieved;

(E) the experience of the applicant in providing similar services; and

(F) the coordination of the program with larger community efforts in character education.

(2) DIVERSITY OF PROJECTS.—The Secretary shall approve applications under this subchapter in a manner that ensures, to the extent practicable, that programs assisted under this subchapter serve different areas of the United States, including urban, suburban and rural areas, and serve at-risk populations.

(d) USE OF FUNDS.—Grant funds under this subchapter shall be used to support the work of community-based organizations, schools, or local educational agencies in providing children and youth with alternatives to delinquency through strong after school, or out of school programs that—

(1) are organized around character education;

(2) reduce delinquency, school discipline problems, and truancy; and

(3) improve student achievement, overall school performance, and youths' positive involvement in their community.

(e) DEFINITIONS.—In this subchapter:

(1) IN GENERAL.—The terms used shall have the meanings given such terms in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(2) CHARACTER EDUCATION.—The term ''character education'' means an organized educational program that works to reinforce core elements of character, including caring, civic virtue and citizenship, justice and fairness, respect, responsibility, and trustworthiness.

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

Subchapter C—Counseling, Training, and Mentoring Children of Prisoners

SEC. 2331. PURPOSE.

The purpose of this subchapter is to support the work of community-based organizations in providing counseling, training, and mentoring services to America's most at-risk children and youth in low-income and high-crime communities who have a parent or legal guardian that is incarcerated in a Federal, State, or local correctional facility.

SEC. 2332. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out programs under this subchapter, such sums as are necessary for fiscal year 2002, and such sums as may be necessary for each of the 2 succeeding fiscal years.

(b) SOURCE OF FUNDING.—Amounts authorized to be appropriated pursuant to this section may be derived from the Violent Crime Reduction Trust Fund.

SEC. 2333. COUNSELING, TRAINING, AND MENTORING PROGRAMS.

(a) IN GENERAL.—The Attorney General shall award grants to community-based organizations to enable the organizations to provide youth who have a parent or legal guardian incarcerated in a Federal, State, or local correctional facility with counseling, training, and mentoring services in low-income and high-crime communities that include—

(1) counseling, including drug prevention counseling;

(2) academic tutoring, including online computer academic programs that focus on the development and reinforcement of basic skills;

(3) technology training, including computer skills;

(4) job skills and vocational training; and

(5) confidence building mentoring services.

(b) ELIGIBLE COMMUNITY-BASED ORGANIZATIONS.—The Attorney General shall only award a grant under this section to a community-based organization that has a demonstrated capacity to provide after school or out of school programs to youth, including youth serving organizations, businesses, and other community groups.

(c) APPLICATIONS.—Each community-based organization desiring a grant under this section shall submit an application to the Attorney General at such time and in such manner as the Attorney General may require. Each application shall include—

(1) a description of the community to be served and the needs that will be met through the program in that community;

(2) a description of how the program will identify and recruit youth who have a parent or legal guardian that is incarcerated in a Federal, State, or local correctional facility for participation in the program, and how the program will provide continuing support for the participation of such youth;

(3) a description of the activities to be assisted under the grant, including—

(A) how parents, residents, and other members of the community will be involved in the design and implementation of the program; and

(B) how counseling, training, and mentoring services will be incorporated into the program;

(4) a description of the goals of the program;

(5) a description of how progress toward achieving such goals, and toward meeting the purposes of this subchapter, will be measured; and

(6) an assurance that the community-based organization will provide the Attorney General with information regarding the program and the effectiveness of the program.

SEC. 2334. GENERAL PROVISIONS.

(a) DURATION.—Each grant under this subchapter shall be awarded for a period of not to exceed 5 years.

(b) PLANNING.—A community-based organization may use grant funds provided under this subchapter for not more than 1 year for the planning and design of the program to be assisted.

(c) SELECTION OF GRANTEES.—

(1) CRITERIA.—The Attorney General shall select, through a peer review process, community-based organizations to receive grants under this subchapter on the basis of the quality of the applications submitted and taking into consideration such factors as—

(A) the quality of the activities to be assisted;

(B) the extent to which the program fosters positive youth development and encourages meaningful and rewarding lifestyles;

(C) the likelihood the goals of the program will be realistically achieved;

(D) the experience of the applicant in providing similar services; and

(E) the coordination of the program with larger community efforts.

(2) DIVERSITY OF PROJECTS.—The Attorney General shall approve applications under this subchapter in a manner that ensures, to the extent practicable, that programs assisted under this subchapter serve different low-income and high-crime communities of the United States.

(d) USE OF FUNDS.—Grant funds under this subchapter shall be used to support the work of community-based organizations in providing children of incarcerated parents or legal guardians with alternatives to delinquency through strong after school, or out of school programs that—

(1) are organized around counseling, training, and mentoring;

(2) reduce delinquency, school discipline problems, and truancy; and

(3) improve student achievement, overall school performance, and youths' positive involvement in their community.

Subtitle D—Reestablishment of Drug Courts

SEC. 2401. REESTABLISHMENT OF DRUG COURTS.

(a) DRUG COURTS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after part DD the following new part:

''PART EE—DRUG COURTS

''SEC. 2951. GRANT AUTHORITY.

''(a) IN GENERAL.—The Attorney General may make grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, for programs that involve—

''(1) continuing judicial supervision over offenders with substance abuse problems who are not violent offenders; and

''(2) the integrated administration of other sanctions and services, which shall include—

''(A) mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant;

''(B) substance abuse treatment for each participant;

''(C) diversion, probation, or other supervised release involving the possibility of

prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress;

''(D) offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant who requires such services;

''(E) payment, in whole or part, by the offender of treatment costs, to the extent practicable, such as costs for urinalysis or counseling; and

''(F) payment, in whole or part, by the offender of restitution, to the extent practicable, to either a victim of the offender's offense or to a restitution or similar victim support fund.

''(b) LIMITATION.—Economic sanctions imposed on an offender pursuant to this section shall not be at a level that would interfere with the offender's rehabilitation.

''SEC. 2952. PROHIBITION OF PARTICIPATION BY VIOLENT OFFENDERS.

''The Attorney General shall—

''(1) issue regulations or guidelines to ensure that the programs authorized in this part do not permit participation by violent offenders; and

''(2) immediately suspend funding for any grant under this part, pending compliance, if the Attorney General finds that violent offenders are participating in any program funded under this part.

''SEC. 2953. DEFINITION.

''In this part, the term 'violent offender' means a person who—

''(1) is charged with or convicted of an offense, during the course of which offense or conduct—

''(A) the person carried, possessed, or used a firearm or dangerous weapon;

''(B) there occurred the death of or serious bodily injury to any person; or

''(C) there occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (A) or (B) is an element of the offense or conduct of which or for which the person is charged or convicted; or

''(2) has 1 or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

''SEC. 2954. ADMINISTRATION.

''(a) CONSULTATION.—The Attorney General shall consult with the Secretary of Health and Human Services and any other appropriate officials in carrying out this part.

''(b) USE OF COMPONENTS.—The Attorney General may utilize any component or components of the Department of Justice in carrying out this part.

''(c) REGULATORY AUTHORITY.—The Attorney General may issue regulations and guidelines necessary to carry out this part.

''(d) APPLICATIONS.—In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this part shall—

''(1) include a long-term strategy and detailed implementation plan;

''(2) explain the applicant's inability to fund the program adequately without Federal assistance;

''(3) certify that the Federal support provided will be used to supplement, and not supplant, State, Indian tribal, and local sources of funding that would otherwise be available;

''(4) identify related governmental or community initiatives which complement or will be coordinated with the proposal;

''(5) certify that there has been appropriate consultation with all affected agencies and that there will be appropriate coordination with all affected agencies in the implementation of the program;

''(6) certify that participating offenders will be supervised by 1 or more designated judges with responsibility for the drug court program;

''(7) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and

''(8) describe the methodology that will be used in evaluating the program.

''SEC. 2955. APPLICATIONS.

''To request funds under this part, the chief executive or the chief justice of a State or the chief executive or judge of a unit of local government or Indian tribal government, or the chief judge of a State court or the judge of a local court or Indian tribal court shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

''SEC. 2956. FEDERAL SHARE.

''(a) IN GENERAL.—The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the program described in the application submitted under section 2955 for the fiscal year for which the program receives assistance under this part, unless the Attorney General waives, wholly or in part, the requirement of a matching contribution under this section.

''(b) IN-KIND CONTRIBUTIONS.—In-kind contributions may constitute a portion of the non-Federal share of a grant.

''SEC. 2957. DISTRIBUTION AND ALLOCATION.

''(a) GEOGRAPHIC DISTRIBUTION.—The Attorney General shall ensure that, to the extent practicable, an equitable geographic distribution of grant awards is made.

''(b) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this part have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this part not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this part.

''SEC. 2958. REPORT.

''A State, Indian tribal government, or unit of local government that receives funds under this part during a fiscal year shall submit to the Attorney General a description and an evaluation report on a date specified by the Attorney General regarding the effectiveness of this part.

''SEC. 2959. TECHNICAL ASSISTANCE, TRAINING, AND EVALUATION.

''(a) TECHNICAL ASSISTANCE AND TRAINING.—The Attorney General may provide technical assistance and training in furtherance of the purposes of this part.

''(b) EVALUATIONS.—In addition to any evaluation requirements that may be prescribed for grantees, the Attorney General may carry out or make arrangements for evaluations of programs that receive support under this part.

''(c) ADMINISTRATION.—The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, in collaboration with the Secretary of Health and Human Services, or through grants, contracts, or other cooperative arrangements with other entities.''.

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the matter relating to part DD the following:

''PART EE—DRUG COURTS

''Sec. 2951. Grant authority.
''Sec. 2952. Prohibition of participation by violent offenders.
''Sec. 2953. Definition.
''Sec. 2954. Administration.
''Sec. 2955. Applications.
''Sec. 2956. Federal share.
''Sec. 2957. Distribution and allocation.
''Sec. 2958. Report.
''Sec. 2959. Technical assistance, training, and evaluation.''.

SEC. 2402. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) in paragraph (3), by inserting before the period at the end the following: ''or EE''; and

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

''(20)(A) There are authorized to be appropriated for fiscal year 2002 such sums as are necessary and for fiscal years 2003 and 2004 such sums as may be necessary to carry out part EE.

''(B) The Attorney General shall reserve not less than 1 percent and not more than 4.5 percent of the sums appropriated for this program in each fiscal year for research and evaluation of this program.''.

Subtitle E—Program for Successful Reentry of Criminal Offenders Into Local Communities

SEC. 2501. SHORT TITLE.

This subtitle may be cited as the ''Offender Reentry and Community Safety Act of 2001''.

SEC. 2502. PURPOSES.

The purposes of this subtitle are to—

(1) establish demonstration projects in several Federal judicial districts, the District of Columbia, and in the Federal Bureau of Prisons, using new strategies and emerging technologies that alleviate the public safety risk posed by released prisoners by promoting their successful reintegration into the community;

(2) establish court-based programs to monitor the return of offenders into communities, using court sanctions to promote positive behavior;

(3) establish offender reentry demonstration projects in the states using government and community partnerships to coordinate cost efficient strategies that ensure public safety and enhance the successful reentry into communities of offenders who have completed their prison sentences;

(4) establish intensive aftercare demonstration projects that address public safety and ensure the special reentry needs of juvenile offenders by coordinating the resources of juvenile correctional agencies, juvenile courts, juvenile parole agencies, law enforcement agencies, social service providers, and local Workforce Investment Boards; and

(5) rigorously evaluate these reentry programs to determine their effectiveness in reducing recidivism and promoting successful offender reintegration.

CHAPTER 1—FEDERAL REENTRY DEMONSTRATION PROJECTS

SEC. 2511. FEDERAL COMMUNITY CORRECTIONS CENTERS REENTRY PROJECT.

(a) AUTHORITY AND ESTABLISHMENT OF FEDERAL COMMUNITY CORRECTIONS CENTERS REENTRY PROJECT.—Subject to the availability of appropriations to carry out this chapter, the Attorney General and the Director of the Administrative Office of the United States Courts, shall establish the Federal Reentry project. The project shall involve appropriate prisoners released from the Federal prison population to a community corrections center during fiscal years 2003 and 2004, and a coordinated response by Federal agencies to assist participating prisoners, under close monitoring and more seamless supervision, in preparing for and adjusting to reentry into the community.

(b) PROJECT ELEMENTS.—The project authorized by subsection (a) shall include—

(1) a Reentry Review Team for each prisoner, consisting of representatives from the Bureau of Prisons, the United States Probation System, and the relevant community corrections center, who shall initially meet with the prisoner to develop a reentry plan tailored to the needs of the prisoner and taking into account the views of the victim advocate and the family of the prisoner, if it is safe for the victim, and will thereafter meet regularly to monitor the prisoner's progress toward reentry and coordinate access to appropriate reentry measures and resources;

(2) drug testing, as appropriate;

(3) a system of graduated levels of supervision within the community corrections centers to promote community safety, provide incentives for prisoners to complete the reentry plan, including victim restitution, and provide a reasonable method for imposing immediate sanctions for a prisoner's minor or technical violation of the conditions of participation in the project;

(4) substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and basic educational training, and other programming to promote effective reintegration into the community as needed;

(5) to the extent practicable, the recruitment and utilization of local citizen volunteers, including volunteers from the faith-based and business communities, to serve as advisers and mentors to prisoners being released into the community;

(6) a description of the methodology and outcome measures that will be used to evaluate the program; and

(7) notification to victims on the status and nature of offenders' release, as appropriate.

(c) PROBATION OFFICERS.—From funds made available to carry out this Act, the Director of the Administrative Office of the United States Courts shall appoint 1 or more probation officers from each judicial district to the Reentry Demonstration project. Such officers shall serve as reentry officers and shall serve on the Reentry Review Teams.

(d) PROJECT DURATION.—The Community Corrections Center Reentry project shall begin not later than 9 months following the availability of funds to carry out this section, and shall last 5 years. The Attorney General and the Director of the Administrative Office of the United States Courts may extend the project for a period of up to 6 months to enable participant prisoners to complete their involvement in the project.

(e) SELECTION OF PRISONERS.—The Director of the Administrative Office of the United States Courts in consultation with the Attorney General shall select an appropriate pool of prisoners from the Federal prison population scheduled to be released to community correction centers in fiscal years 2003 and 2004 to participate in the Reentry project.

(f) COORDINATION OF PROJECTS.—If appropriate, Community Corrections Center Reentry project offenders who participated in the Enhanced In-Prison Vocational Assessment and Training Demonstration project established by section 615 may be included.

SEC. 2512. FEDERAL HIGH-RISK OFFENDER REENTRY PROJECT.

(a) AUTHORITY AND ESTABLISHMENT OF FEDERAL HIGH-RISK OFFENDER PROJECT.—Subject to the availability of appropriations to carry out this Act, the Director of the Administrative Office of the United States Courts shall establish the Federal High-Risk Offender Reentry project. The project shall involve Federal offenders under supervised release who have violated the terms of their release following a term of imprisonment and shall utilize, as appropriate and indicated, community corrections centers, home confinement, appropriate monitoring technologies, and treatment and programming to promote more effective reentry into the community.

(b) PROJECT ELEMENTS.—The project authorized by subsection (a) shall include—

(1) participation by Federal prisoners who have violated the terms of their release following a term of imprisonment;

(2) use of community corrections centers and home confinement that, together with the technology referenced in paragraph (5), will be part of a system of graduated levels of supervision;

(3) substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and basic educational training, and other programming to promote effective reintegration into the community as needed;

(4) involvement of a victim advocate and the family of the prisoner, if it is safe for the victim(s), especially in domestic violence cases, to be involved;

(5) the use of monitoring technologies, as appropriate and indicated, to monitor and supervise participating offenders in the community;

(6) a description of the methodology and outcome measures that will be used to evaluate the program; and

(7) notification to victims on the status and nature of a prisoner's release, as appropriate.

(c) CONDITION OF SUPERVISED RELEASE.—During the demonstration project, appropriate offenders who are found to have violated a term of supervised release and who will be subject to some additional term of supervised release, may be designated to participate in the demonstration project. With respect to these offenders, the court may impose additional conditions of supervised release that each offender shall, as directed by the probation officer, reside at a community corrections center or participate in a program of home confinement, or both, and submit to appropriate location verification monitoring. The court may also impose additional correctional intervention conditions as appropriate.

(d) PROJECT DURATION.—The Federal High-Risk Offender Reentry Project shall begin not later than 9 months following the availability of funds to carry out this section, and shall last 5 years. The Director of the Administrative Office of the United States Courts may extend the project for a period of up to 6 months to enable participating prisoners to complete their involvement in the project.

(e) SELECTION OF OFFENDERS.—The Director of the Administrative Office of the United States Courts shall select an appropriate pool of offenders who are found by the court to have violated a term of supervised release during fiscal year 2003 and 2004 to participate in the Federal High-Risk Offender Reentry project.

SEC. 2513. DISTRICT OF COLUMBIA INTENSIVE SUPERVISION, TRACKING, AND REENTRY TRAINING (DC iSTART) DEMONSTRATION.

(a) AUTHORITY AND ESTABLISHMENT OF DEMONSTRATION PROJECT.—From funds made available to carry out this Act, the Trustee of the Court Services and Offender Supervision Agency of the District of Columbia, as authorized by the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105–33; 111 Stat. 712) shall establish the District of Columbia Intensive Supervision, Tracking and Reentry Training Demonstration (DC iSTART) project. The project shall involve high risk District of Columbia parolees who would otherwise be released into the community without a period of confinement in a community corrections facility and shall utilize intensive supervision, monitoring, and programming to promote such parolees' successful reentry into the community.

(b) PROJECT ELEMENTS.—The project authorized by subsection (a) shall include—

(1) participation by appropriate high risk parolees;

(2) use of community corrections facilities and home confinement;

(3) a Reentry Review Team that includes a victim witness professional for each parolee which shall meet with the parolee, by video conference or other means as appropriate, before the release of the parolee from the custody of the Federal Bureau of Prisons to develop a reentry plan that incorporates victim impact information and is tailored to the needs of the parolee and which will thereafter meet regularly to monitor the parolee's progress toward reentry and coordinate access to appropriate reentry measures and resources;

(4) regular drug testing, as appropriate;

(5) a system of graduated levels of supervision within the community corrections facility to promote community safety, victim restitution, to the extent practicable, provide incentives for prisoners to complete the reentry plan, and provide a reasonable method for immediately sanctioning a prisoner's minor or technical violation of the conditions of participation in the project;

(6) substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and basic educational training, and other programming to promote effective reintegration into the community as needed;

(7) the use of monitoring technologies, as appropriate;

(8) to the extent practicable, the recruitment and utilization of local citizen volunteers, including volunteers from the faith-based communities, to serve as advisers and mentors to prisoners being released into the community; and

(9) notification to victims on the status and nature of a prisoner's reentry plan.

(c) MANDATORY CONDITION OF PAROLE.—For those offenders eligible to participate in the demonstration project, the United States Parole Commission shall impose additional mandatory conditions of parole such that the offender when on parole shall, as directed by the community supervision officer, reside at a community corrections facility or participate in a program of home confinement, or both, submit to electronic and other remote monitoring, and otherwise participate in the project.

(d) PROGRAM DURATION.—The District of Columbia Intensive Supervision, Tracking and Reentry Training Demonstration shall begin not later than 6 months following the availability of funds to carry out this section, and shall last 3 years. The Trustee of the Court Services and Offender Supervision Agency of the District of Columbia may extend the project for a period of up to 6 months to enable participating prisoners to complete their involvement in the project.

SEC. 2514. FEDERAL INTENSIVE SUPERVISION, TRACKING, AND REENTRY TRAINING (FED iSTART) PROJECT.

(a) AUTHORITY AND ESTABLISHMENT OF PROJECT.—Subject to the availability of appropriations to carry out this section, the Director of the Administrative Office of the United States Courts, in consultation with the Attorney General, shall establish the Federal Intensive Supervision, Tracking and Reentry Training (FED iSTART) project. The project shall involve appropriate high risk Federal offenders who are being released into the community without a period of confinement in a community corrections center.

(b) PROJECT ELEMENTS.—The project authorized by subsection (a) shall include—

(1) participation by appropriate high risk Federal offenders;

(2) significantly smaller caseloads for probation officers participating in the demonstration project;

(3) substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and basic educational training, and other programming to promote effective reintegration into the community as needed; and

(4) notification to victims on the status and nature of a prisoner's reentry plan.

(c) PROGRAM DURATION.—The Federal Intensive Supervision, Tracking and Reentry Training Project shall begin not later than 9 months following the availability of funds to carry out this section, and shall last 3 years. The Director of the Administrative Office of the United States Courts may extend the project for a period of up to 6 months to enable participating prisoners to complete their involvement in the project.

(d) SELECTION OF PRISONERS.—The Director of the Administrative Office of the United States Courts, in consultation with the Attorney General, shall select an appropriate pool of Federal prisoners who are scheduled to be released into the community without a period of confinement in a community corrections center in fiscal years 2003 and 2004 to participate in the Federal Intensive Supervision, Tracking and Reentry Training project.

SEC. 2515. FEDERAL ENHANCED IN-PRISON VOCATIONAL ASSESSMENT AND TRAINING AND DEMONSTRATION.

(a) AUTHORITY AND ESTABLISHMENT OF DEMONSTRATION PROJECT.—From funds made available to carry out this section, the Attorney General shall establish the Federal Enhanced In-Prison Vocational Assessment and Training Demonstration project in selected institutions. The project shall provide in-prison assessments of prisoners' vocational needs and aptitudes, enhanced work skills development, enhanced release readiness programming, and other components as appropriate to prepare Federal prisoners for release and reentry into the community.

(b) PROGRAM DURATION.—The Enhanced In-Prison Vocational Assessment and Training Demonstration shall begin not later than 6 months following the availability of funds to carry out this section, and shall last 3 years. The Attorney General may extend the project for a period of up to 6 months to enable participating prisoners to complete their involvement in the project.

SEC. 2516. RESEARCH AND REPORTS TO CONGRESS.

(a) DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Not later than 2 years after enactment of this Act, the Director of the Administrative Office of the United States Courts shall report to Congress on the progress of the reentry projects authorized by sections 2511, 2512, and 2514. Not later than 2 years after the end of the reentry projects authorized by sections 2511, 2512, and 2514, the Director of the Administrative Office of the United States Courts shall report to Congress on the effectiveness of the reentry projects authorized by sections 2511, 2512, and 2514 on post-release outcomes and recidivism. The report shall address post-release outcomes and recidivism for a period of 3 years following release from custody. The reports submitted pursuant to this section shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate.

(b) ATTORNEY GENERAL.—Not later than 2 years after enactment of this Act, the Attorney General shall report to Congress on the progress of the projects authorized by section 2515. Not later than 180 days after the end of the projects authorized by section 2515, the Attorney General shall report to Congress on the effectiveness of the reentry projects authorized by section 2515 on post-release outcomes and recidivism. The report should address post-release outcomes and recidivism for a period of 3 years following release from custody. The reports submitted pursuant to this section shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate.

(c) DC iSTART.—Not later than 2 years after enactment of this Act, the Executive Director of the corporation or institute authorized by section 11281(2) of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105–33; 111 Stat. 712) shall report to Congress on the progress of the demonstration project authorized by section 2515. Not later than 1 year after the end of the demonstration project authorized by section 2513, the Executive Director of the corporation or institute authorized by section 11281(2) of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105–33; 111 Stat. 712) shall report to Congress on the effectiveness of the reentry project authorized by section 2513 on post-release outcomes and recidivism. The report shall address post-release outcomes and recidivism for a period of 3 years following release from custody. The reports submitted pursuant to this section shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate. In the event that the corporation or institute authorized by section 11281(2) of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105–33; 111 Stat. 712) is not in operation 1 year after enactment of this Act, the Director of the National Institute of Justice shall prepare and submit the reports required by this section and may do so from funds made available to the Court Services and Offender Supervision Agency of the District of Columbia, as authorized by the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105–33; 111 Stat. 712) to carry out this chapter.

SEC. 2517. DEFINITIONS.

In this chapter:

(1) APPROPRIATE HIGH RISK PAROLEES.—The term ''appropriate high risk parolees'' means parolees considered by prison authorities—

(A) to pose a medium to high risk of committing a criminal act upon reentering the community; and

(B) to lack the skills and family support network that facilitate successful reintegration into the community.

(2) APPROPRIATE PRISONER.—The term ''appropriate prisoner'' means a person who is considered by prison authorities—

(A) to pose a medium to high risk of committing a criminal act upon reentering the community; and

(B) to lack the skills and family support network that facilitate successful reintegration into the community.

SEC. 2518. AUTHORIZATION OF APPROPRIATIONS.

To carry out this chapter, there are authorized to be appropriated, to remain available until expended, the following amounts:

(1) To the Federal Bureau of Prisons—

(A) such sums as are necessary for fiscal year 2002;

(B) such sums as are necessary for fiscal year 2003; and

(C) such sums as are necessary for fiscal year 2004.

(2) To the Federal Judiciary—

(A) such sums as are necessary for fiscal year 2002;

(B) such sums as are necessary for fiscal year 2003;

(C) such sums as are necessary for fiscal year 2004;

(D) such sums as are necessary for fiscal year 2005; and

(E) such sums as are necessary for fiscal year 2006.

(3) To the Court Services and Offender Supervision Agency of the District of Columbia, as authorized by the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105–33; 111 Stat. 712)—

(A) such sums as are necessary for fiscal year 2002;

(B) such sums as are necessary for fiscal year 2003; and

(C) such sums as are necessary for fiscal year 2004.

CHAPTER 2—STATE REENTRY GRANT PROGRAMS

SEC. 2521. AMENDMENTS TO THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended, is amended by inserting after part EE the following new part:

''PART FF—OFFENDER REENTRY AND COMMUNITY SAFETY

''SEC. 2976. ADULT OFFENDER STATE AND LOCAL REENTRY PARTNERSHIPS.

''(a) GRANT AUTHORIZATION.—The Attorney General shall make grants of up to $1,000,000 to States, Territories, and Indian tribes, in partnership with units of local government and nonprofit organizations, for the purpose of establishing adult offender reentry demonstration projects. Funds may be expended by the projects for the following purposes:

''(1) oversight/monitoring of released offenders;

''(2) substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and basic educational training, and other programming to promote effective reintegration into the community as needed;

''(3) convening community impact panels, victim impact panels or victim impact educational classes; and

''(4) establishing and implementing graduated sanctions and incentives.

''(b) SUBMISSION OF APPLICATION.—In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this subpart shall—

''(1) describe a long-term strategy and detailed implementation plan, including how the jurisdiction plans to pay for the program after the Federal funding ends;

''(2) identify the governmental and community agencies that will be coordinated by this project;

''(3) certify that there has been appropriate consultation with all affected agencies and there will be appropriate coordination with all affected agencies in the implementation of the program, including existing community corrections and parole; and

''(4) describe the methodology and outcome measures that will be used in evaluating the program.

''(c) APPLICANTS.—The applicants as designated under 2601(a)—

''(1) shall prepare the application as required under subsection 2601(b); and

''(2) shall administer grant funds in accordance with the guidelines, regulations, and procedures promulgated by the Attorney General, as necessary to carry out the purposes of this part.

''(d) MATCHING FUNDS.—The Federal share of a grant received under this title may not exceed 75 percent of the costs of the project funded under this title unless the Attorney General waives, wholly or in part, the requirements of this section.

''(e) REPORTS.—Each entity that receives a grant under this part shall submit to the Attorney General, for each year in which funds from a grant received under this part is expended, a description and an evaluation report at such time and in such manner as the Attorney General may reasonably require that contains—

''(1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application funded under this part; and

''(2) such other information as the Attorney General may require.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section such sums as are necessary in fiscal year 2002; and such sums as may be necessary for each of the fiscal years 2003 and 2004.

''(2) LIMITATIONS.—Of the amount made available to carry out this section in any fiscal year—

''(A) not more than 2 percent or less than 1 percent may be used by the Attorney General for salaries and administrative expenses; and

''(B) not more than 3 percent or less than 2 percent may be used for technical assistance and training.

''SEC. 2977. JUVENILE OFFENDER STATE AND LOCAL REENTRY PROGRAMS.

''(a) GRANT AUTHORIZATION.—The Attorney General shall make grants of up to $250,000 to States, in partnership with local units of governments or nonprofit organizations, for the purpose of establishing juvenile offender reentry programs. Funds may be expended by the projects for the following purposes:

''(1) providing returning juvenile offenders with drug and alcohol testing and treatment and mental and medical health assessment and services;

''(2) convening victim impact panels, restorative justice panels, or victim impact educational classes for juvenile offenders;

''(3) oversight/monitoring of released juvenile offenders; and

''(4) providing for the planning of reentry services when the youth is initially incarcerated and coordinating the delivery of community-based services, such as education, family involvement and support, and other services as needed.

''(b) SUBMISSION OF APPLICATION.—In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this subpart shall—

''(1) describe a long-term strategy and detailed implementation plan, including how the jurisdiction plans to pay for the program after the Federal funding ends;

''(2) identify the governmental and community agencies that will be coordinated by this project;

''(3) certify that there has been appropriate consultation with all affected agencies and there will be appropriate coordination with all affected agencies, including existing community corrections and parole, in the implementation of the program;

''(4) describe the methodology and outcome measures that will be used in evaluating the program.

''(c) APPLICANTS.—The applicants as designated under 2603(a)—

''(1) shall prepare the application as required under subsection 2603(b); and

''(2) shall administer grant funds in accordance with the guidelines, regulations, and procedures promulgated by the Attorney General, as necessary to carry out the purposes of this part.

''(d) MATCHING FUNDS.—The Federal share of a grant received under this title may not exceed 75 percent of the costs of the project funded under this title unless the Attorney General waives, wholly or in part, the requirements of this section.

''(e) REPORTS.—Each entity that receives a grant under this part shall submit to the Attorney General, for each year in which funds from a grant received under this part is expended, a description and an evaluation report at such time and in such manner as the Attorney General may reasonably require that contains:

''(1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application funded under this part; and

''(2) such other information as the Attorney General may require.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section such sums as are necessary in fiscal year 2002, and such sums as are necessary for each of the fiscal years 2003 and 2004.

''(2) LIMITATIONS.—Of the amount made available to carry out this section in any fiscal year—

''(A) not more than 2 percent or less than 1 percent may be used by the Attorney General for salaries and administrative expenses; and

''(B) not more than 3 percent or less than 2 percent may be used for technical assistance and training.

''SEC. 2978. STATE REENTRY PROGRAM RESEARCH, DEVELOPMENT, AND EVALUATION.

''(a) GRANT AUTHORIZATION.—The Attorney General shall make grants to conduct research on a range of issues pertinent to reentry programs, the development and testing of new reentry components and approaches, selected evaluation of projects authorized in the preceding sections, and dissemination of information to the field.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary in fiscal year 2002, and such sums as are necessary to carry out this section in fiscal years 2003 and 2004.''.

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended, is amended by inserting at the end the following:

''PART FF—OFFENDER REENTRY AND COMMUNITY SAFETY ACT

''Sec. 2976. Adult Offender State and Local Reentry Partnerships.

''Sec. 2977. Juvenile Offender State and Local Reentry Programs.

''Sec. 2978. State Reentry Program Research, Development, and Evaluation.''.

CHAPTER 3—CONTINUATION OF ASSISTANCE AND BENEFITS

SEC. 2531. AMENDMENTS TO THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996.

Section 115 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (21 U.S.C. 862a) is amended—

(1) in subsection (d), by adding at the end the following:

''(3) INAPPLICABILITY TO CERTAIN INDIVIDUALS.—Subsection (a) shall not apply to an individual who—

''(A) has successfully completed a substance abuse treatment program and has not committed a subsequent offense described in subsection (a); or

''(B) is enrolled in a substance abuse treatment program and is fully complying with the terms and conditions of the program.''; and

(2) by striking subsection (e) and inserting the following:

''(e) DEFINITIONS.—In this section:

''(1) SUBSTANCE ABUSE TREATMENT PROGRAM.—The term 'substance abuse treatment program' means a course of individual or group activities or both, lasting for a period of not less than 28 days that—

''(A) includes residential or outpatient treatment services for substance abuse and is operated by a public, nonprofit, or private entity that meets all applicable State licensure or certification requirements; and

''(B) is directed at substance abuse problems and intended to develop cognitive, behavioral, and other skills to address substance abuse and related problems and includes drug testing of patients.

''(2) STATE.—The term 'State' has the meaning given it—

''(A) in section 419(5) of the Social Security Act, when referring to assistance provided under a State program funded under part A of title IV of the Social Security Act; and

''(B) in section 3(m) of the Food Stamp Act of 1977, when referring to the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977) or any State program carried out under the Food Stamp Act of 1977.

''(3) SUCCESSFULLY COMPLETED.—The term 'successfully completed' means has completed the prescribed course of drug treatment.''.

Subtitle F—Amendment to Foreign Narcotics Kingpin Designation Act

SEC. 2701. AMENDMENT TO FOREIGN NARCOTICS KINGPIN DESIGNATION ACT.

Section 805 of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1904) is amended by striking subsection (f).

Subtitle G—Core Competencies in Drug Abuse Detection and Treatment

SEC. 2801. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

Subpart 2 of part B of title V of the Public Health Service Act (42 U.S.C. 290bb–21 et seq.), as amended by the Youth Drug and Mental Health Services Act (Public Law 106–310), is further amended by adding at the end the following:

''SEC. 519F. CORE COMPETENCIES.

''(a) PURPOSE.—The purpose of this section is—

''(1) to educate, train, motivate, and engage key professionals to identify and intervene with children in families affected by substance abuse and to refer members of such families to appropriate programs and services in the communities of such families;

''(2) to encourage professionals to collaborate with key professional organizations representing the targeted professional groups, such as groups of educators, social workers, faith community members, and probation officers, for the purposes of developing and implementing relevant core competencies; and

''(3) to encourage professionals to develop networks to coordinate local substance abuse prevention coalitions.

''(b) PROGRAM AUTHORIZED.—The Secretary shall award grants to leading nongovernmental organizations with an expertise in aiding children of substance abusing parents or experience with community antidrug coalitions to help professionals participate in such coalitions and identify and help youth affected by familial substance abuse.

''(c) DURATION OF GRANTS.—No organization shall receive a grant under subsection (c) for more than 5 consecutive years.

''(d) APPLICATION.—Any organization desiring a grant under subsection (c) shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including a plan for the evaluation of the project involved, including both process and outcome evaluation, and the

submission of the evaluation at the end of the project period.

''(e) USE OF FUNDS.—Grants awarded under subsection (c) shall be used to—

''(1) develop core competencies with various professional groups that the professionals can use in identifying and referring children affected by substance abuse;

''(2) widely disseminate the competencies to professionals and professional organizations through publications and journals that are widely read and respected;

''(3) develop training modules around the competencies; and

''(4) develop training modules for community coalition leaders to enable such leaders to engage professionals from identified groups at the local level in community-wide prevention and intervention efforts.

''(f) DEFINITION.—In this section, the term 'professional' includes a physician, student assistance professional, social worker, youth and family social service agency counselor, Head Start teacher, clergy, elementary and secondary school teacher, school counselor, juvenile justice worker, child care provider, or a member of any other professional group in which the members provide services to or interact with children, youth, or families.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, such sums as are necessary for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 and 2004.''.

Subtitle H—Adolescent Therapeutic Community Treatment Programs

SEC. 2901. PROGRAM AUTHORIZED.

The Secretary shall award competitive grants to treatment providers who administer treatment programs to enable such providers to establish adolescent residential substance abuse treatment programs that provide services for individuals who are between the ages of 14 and 21.

SEC. 2902. PREFERENCE.

In awarding grants under this subtitle, the Secretary shall consider the geographic location of each treatment provider and give preference to such treatment providers that are geographically located in such a manner as to provide services to addicts from nonmetropolitan areas.

SEC. 2903. DURATION OF GRANTS.

For awards made under this subtitle, the period during which payments are made may not exceed 5 years.

SEC. 2904. RESTRICTIONS.

A treatment provider receiving a grant under this subtitle shall not use any amount of the grant for land acquisition or a construction project.

SEC. 2905. APPLICATION.

A treatment provider that desires a grant under this subtitle shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

SEC. 2906. USE OF FUNDS.

A treatment provider that receives a grant under this subtitle shall use those funds to provide substance abuse services for adolescents, including—

(1) a thorough psychosocial assessment;

(2) individual treatment planning;

(3) a strong education component integral to the treatment regimen;

(4) life skills training;

(5) individual and group counseling;

(6) family services;

(7) daily work responsibilities; and

(8) community-based aftercare, providing 6 months of treatment following discharge from a residential facility.

SEC. 2907. TREATMENT TYPE.

The Therapeutic Community model shall be used as a basis for all adolescent residential substance abuse treatment programs established under this subtitle, which shall be characterized by—

(1) the self-help dynamic, requiring youth to participate actively in their own treatment;

(2) the role of mutual support and the therapeutic importance of the peer therapy group;

(3) a strong focus on family involvement and family strengthening;

(4) a clearly articulated value system emphasizing both individual responsibility and responsibility for the community; and

(5) an emphasis on development of positive social skills.

SEC. 2908. REPORT BY PROVIDER.

Not later than 1 year after receiving a grant under this subtitle, and annually thereafter, a treatment provider shall prepare and submit to the Secretary a report describing the services provided pursuant to this subtitle.

SEC. 2909. REPORT BY SECRETARY.

(a) IN GENERAL.—Not later than 3 months after receiving all reports by providers under section 2908, and annually thereafter, the Secretary shall prepare and submit a report containing information described in subsection (b) to—

(1) the Committee on Health, Education, Labor, and Pensions of the Senate;

(2) the Committee on Appropriations of the Senate;

(3) the United States Senate Caucus on International Narcotics Control;

(4) the Committee on Commerce of the House of Representatives;

(5) the Committee on Appropriations of the House of Representatives; and

(6) the Committee on Government Reform of the House of Representatives.

(b) CONTENT.—The report described in subsection (a) shall—

(1) outline the services provided by providers pursuant to this section;

(2) evaluate the effectiveness of such services;

(3) identify the geographic distribution of all treatment centers provided pursuant to this section, and evaluate the accessibility of such centers for addicts from rural areas and small towns; and

(4) make recommendations to improve the programs carried out pursuant to this section.

SEC. 2910. DEFINITIONS.

In this subtitle:

(1) ADOLESCENT RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM.—The term ''adolescent residential substance abuse treatment program'' means a program that provides a regimen of individual and group activities, lasting ideally not less than 12 months, in a community-based residential facility that provides comprehensive services tailored to meet the needs of adolescents and designed to return youth to their families in order that such youth may become capable of enjoying and supporting positive, productive, drug-free lives.

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

(3) THERAPEUTIC COMMUNITY.—The term ''Therapeutic Community'' means a highly structured residential treatment facility that—

(A) employs a treatment methodology;

(B) relies on self-help methods and group process, a view of drug abuse as a disorder affecting the whole person, and a comprehensive approach to recovery;

(C) maintains a strong educational component; and

(D) carries out activities that are designed to help youths address alcohol or other drug abuse issues and learn to act in their own best interests, as well as in the best interests of their peers and families.

SEC. 2911. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subject to appropriations, there are authorized be appropriated to carry out this subtitle—

(1) such sums as are necessary for fiscal year 2002; and

(2) such sums as may be necessary for 2003 and 2004.

(b) SUPPLEMENT AND NOT SUPPLANT.—Grant amounts received under this subtitle shall be used to supplement, and not supplant, non-Federal funds that would otherwise be available for activities funded under this subtitle.

Subtitle I—Other Matters

SEC. 2951. AMENDMENT TO CONTROLLED SUBSTANCES ACT.

Section 303(g)(2)(I) of the Controlled Substances Act is amended by striking ''on the date of enactment'' and all that follows through ''such drugs,'' and inserting ''on the date of approval by the Food and Drug Administration of a drug in schedule III, IV, or V, a State may not preclude a practitioner from dispensing or prescribed such drug, or combination of such drugs''.

SEC. 2952. STUDY OF METHAMPHETAMINE TREATMENT.

Section 3633 of the Methamphetamine Anti-Proliferation Act of 2000 (114 Stat. 1236) is amended by striking ''the Institute of Medicine of the National Academy of Sciences'' and inserting ''the National Institute on Drug Abuse''.

TITLE III—NATIONAL COMPREHENSIVE CRIME-FREE COMMUNITIES ACT

SEC. 3001. SHORT TITLE.

This title may be cited as the ''National Comprehensive Crime-Free Communities Act''.

SEC. 3002. PROGRAM ADMINISTRATION.

(a) ATTORNEY GENERAL RESPONSIBILITIES.—In carrying out this title, the Attorney General shall—

(1) make and monitor grants to grant recipients;

(2) provide, including through organizations such as the National Crime Prevention Council, technical assistance and training, data collection, and dissemination of information on state-of-the-art research-grounded practices that the Attorney General determines to be effective in preventing and reducing crime, violence, and drug abuse;

(3) provide for the evaluation of this title and assess the effectiveness of comprehensive planning in the prevention of crime, violence, and drug abuse;

(4) provide for a comprehensive communications strategy to inform the public and State and local governments of programs authorized by this title and their purpose and intent;

(5) establish a National Crime-Free Communities Commission to advise, consult with, and make recommendations to the Attorney General concerning activities carried out under this Act;

(6) establish the National Center for Justice Planning in a national organization representing State criminal justice executives that will—

(A) provide technical assistance and training to State criminal justice agencies in implementing policies and programs to facilitate community-based strategic planning processes;

(B) establish a collection of best practices for statewide community-based criminal justice planning; and

(C) consult with appropriate organizations, including the National Crime Prevention Council, in providing necessary training to States.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for the fiscal years 2002 through 2006, including $4,500,000 to assist States and communities in providing training, technical assistance, and setting benchmarks, and $500,000 to establish and operate the National Center for Justice Planning.

(c) PROGRAM ADMINISTRATION.—Up to 3 percent of program funds appropriated for Community Grants and State Capacity Building grants may be used by the Attorney General to administer this program.

SEC. 3003. FOCUS.

Programs carried out by States and local communities under this title shall include a specialized focus on neighborhoods and schools disproportionately affected by crime, violence, and drug abuse.

SEC. 3004. DEFINITIONS.

In this title, the term ''crime prevention plan'' means a strategy that has measurable long-term goals and short-term objectives that—

(1) address the problems of crime, including terrorism, violence, and substance abuse for a jurisdiction, developed through an interactive and collaborative process that includes senior representatives of law enforcement and the local chief executive's office as well as representatives of such groups as other agencies of local government (including physical and social service providers), nonprofit organizations, business leaders, religious leaders, and representatives of community and neighborhood groups;

(2) establishes interim and final benchmark measures for each prevention objective and strategy; and

(3) includes a monitoring and assessment mechanism for implementation of the plan.

SEC. 3005. COMMUNITY GRANTS.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Attorney General shall award grants to at least 100 communities or an organization organized under section 501(c)(3) of the Internal Revenue Code of 1986 that is the designee of a community, including 1 in each State, in an amount not to exceed $250,000 per year for the planning, evaluation, and implementation of a program designed to prevent and reduce crime, violence, and substance abuse.

(2) LIMITATION.—Of the amount of a grant awarded under this section in any given year, not more than $125,000 may be used for the planning or evaluation component of the program.

(b) PROGRAM IMPLEMENTATION COMPONENT.—

(1) IN GENERAL.—A community grant under this section may be used by a community to support specific programs or projects that are consistent with the local Crime Prevention Plan.

(2) AVAILABILITY.—A grant shall be awarded under this paragraph to a community that has developed a specific Crime Prevention Plan and program outline.

(3) MATCHING REQUIREMENT.—The Federal share of a grant under this paragraph shall not exceed—

(A) 80 percent in the first year;

(B) 60 percent in the second year;

(C) 40 percent in the third year;

(D) 20 percent in the fourth year; and

(E) 20 percent in the fifth year.

(4) DATA SET ASIDE.—A community may use up to 5 percent of the grant to assist it in collecting local data related to the costs of crime, violence, and substance abuse for purposes of supporting its Crime Prevention Plan.

(c) APPLICATION.—

(1) IN GENERAL.—An applicant for a community grant under this section shall—

(A) demonstrate how the proposed program will prevent crime, violence, and substance abuse;

(B) certify that the program is based on nationally recognized research standards that have been tested in local communities;

(C) collaborate and obtain the approval and support of the State agency designated by the Governor of that State in the development of the comprehensive prevention plan of the applicant;

(D) demonstrate the ability to develop a local Crime-Free Communities Commission, including such groups as Federal, State, and local criminal justice personnel, law enforcement, schools, youth organizations, religious and other community organizations, business and health care professionals, parents, State, local, or tribal governmental agencies, and other organizations; and

(E) submit a plan describing how the applicant will maintain the program without Federal funds following the fifth year of the program.

(2) CONSIDERATION.—The Attorney General may give additional consideration in the grant review process to an applicant with an officially designated Weed and Seed site seeking to expand from a neighborhood to community-wide strategy.

(3) RURAL COMMUNITIES.—The Attorney General shall give additional consideration in the grant review process to an applicant from a rural area.

(d) WAIVERS FOR MATCHING REQUIREMENT.—A community with an officially designated Weed and Seed site may be provided a waiver by the Attorney General for all matching requirements under this section based on demonstrated financial hardship.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $25,000,000 to carry out this section for the fiscal years 2002 through 2006.

SEC. 3006. STATE CAPACITY BUILDING GRANTS.

(a) GRANTS AUTHORIZED.—The Attorney General shall award grants to each State criminal justice agency, Byrne agency, or other agency as designated by the Governor of that State and approved by the Attorney General, in an amount not to exceed $400,000 per year to develop State capacity to assist local communities in the prevention and reduction of crime, violence, and substance abuse.

(b) USE OF FUNDS.—

(1) IN GENERAL.—A State capacity building grant shall be used to develop a statewide strategic plan as defined in subsection (c) to prevent and reduce crime, violence, and substance abuse.

(2) PERMISSIVE USE.—A State may also use its grant to provide training and technical assistance to communities and promote innovation in the development of policies, technologies, and programs to prevent and reduce crime.

(3) DATA COLLECTION.—A State may use up to 5 percent of the grant to assist grant recipients in collecting statewide data related to the costs of crime, violence, and substance abuse for purposes of supporting the statewide strategic plan.

(c) STATEWIDE STRATEGIC PREVENTION PLAN.—

(1) IN GENERAL.—A statewide strategic prevention plan shall be used by the State to assist local communities, both directly and through existing State programs and services, in building comprehensive, strategic, and innovative approaches to reducing crime, violence, and substance abuse based on local conditions and needs.

(2) GOALS.—The plan must contain statewide long-term goals and measurable annual objectives for reducing crime, violence, and substance abuse.

(3) ACCOUNTABILITY.—The State shall be required to develop and report in its plan relevant performance targets and measures for the goals and objectives to track changes in crime, violence, and substance abuse.

(4) CONSULTATION.—The State shall form a State crime free communities commission that includes representatives of State and local government, and community leaders who will provide advice and recommendations on relevant community goals and objectives, and performance targets and measures.

(d) REQUIREMENTS.—

(1) TRAINING AND TECHNICAL ASSISTANCE.—The State shall provide training and technical assistance, including through such groups as the National Crime Prevention Council, to assist local communities in developing Crime Prevention Plans that reflect statewide strategic goals and objectives, and performance targets and measures.

(2) REPORTS.—The State shall provide a report on its statewide strategic plan to the Attorney General, including information about—

(A) involvement of relevant State-level agencies to assist communities in the development and implementation of their Crime Prevention Plans;

(B) support for local applications for Community Grants; and

(C) community progress toward reducing crime, violence, and substance abuse.

(3) CERTIFICATION.—Beginning in the third year of the program, States must certify that the local grantee's project funded under the community grant is generally consistent with statewide strategic goals and objectives, and performance targets and measures.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $20,000,000 to carry out this section for the fiscal years 2002 through 2006.

TITLE IV—SAFEGUARDING THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM

SEC. 4001. INCREASING THE PENALTY FOR USING PHYSICAL FORCE TO TAMPER WITH WITNESSES, VICTIMS, OR INFORMANTS.

(a) IN GENERAL.—Section 1512 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''as provided in paragraph (2)'' and inserting ''as provided in paragraph (3)'';

(B) by redesignating paragraph (2) as paragraph (3);

(C) by inserting after paragraph (1) the following:

''(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—

''(A) influence, delay, or prevent the testimony of any person in an official proceeding;

''(B) cause or induce any person to—

''(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

''(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

''(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

''(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

''(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release,

parole, or release pending judicial proceedings;
shall be punished as provided in paragraph (3).''; and

(D) in paragraph (3), as redesignated—

(i) by striking ''and'' at the end of subparagraph (A); and

(ii) by striking subparagraph (B) and inserting the following:

''(B) in the case of—

''(i) an attempt to murder; or

''(ii) the use or attempted use of physical force against any person;
imprisonment for not more than 20 years; and

''(C) in the case of the threat of use of physical force against any person, imprisonment for not more than 10 years.'';

(2) in subsection (b), by striking ''or physical force''; and

(3) by adding at the end the following:

''(j) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.''.

(b) RETALIATING AGAINST A WITNESS.—Section 1513 of title 18, United States Code, is amended by adding at the end the following:

''(e) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.''.

(c) CONFORMING AMENDMENTS.—

(1) WITNESS TAMPERING.—Section 1512 of title 18, United States Code, is amended in subsections (b)(3) and (c)(2) by inserting ''supervised release,'' after ''probation''.

(2) RETALIATION AGAINST A WITNESS.—Section 1513 of title 18, United States Code, is amended in subsections (a)(1)(B) and (b)(2) by inserting ''supervised release,'' after ''probation''.

SEC. 4002. CORRECTION OF ABERRANT STATUTES TO PERMIT IMPOSITION OF BOTH A FINE AND IMPRISONMENT.

(a) IN GENERAL.—Title 18 of the United States Code is amended—

(1) in section 401, by inserting ''or both,'' after ''fine or imprisonment,'';

(2) in section 1705, by inserting '', or both'' after ''years''; and

(3) in sections 1916, 2234, and 2235, by inserting '', or both'' after ''year''.

(b) IMPOSITION BY MAGISTRATE.—Section 636 of title 28, United States Code, is amended—

(1) in subsection (e)(2), by inserting '', or both,'' after ''fine or imprisonment''; and

(2) in subsection (e)(3), by inserting ''or both,'' after ''fine or imprisonment,''.

SEC. 4003. REINSTATEMENT OF COUNTS DISMISSED PURSUANT TO A PLEA AGREEMENT.

(a) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''§ 3296. Counts dismissed pursuant to a plea agreement

''(a) IN GENERAL.—Notwithstanding any other provision of this chapter, any counts of an indictment or information that are dismissed pursuant to a plea agreement shall be reinstated by the District Court if—

''(1) the counts sought to be reinstated were originally filed within the applicable limitations period;

''(2) the counts were dismissed pursuant to a plea agreement approved by the District Court under which the defendant pled guilty to other charges;

''(3) the guilty plea was subsequently vacated on the motion of the defendant; and

''(4) the United States moves to reinstate the dismissed counts within 60 days of the date on which the order vacating the plea becomes final.

''(b) DEFENSES; OBJECTIONS.—Nothing in this section shall preclude the District Court from considering any defense or objection, other than statute of limitations, to the prosecution of the counts reinstated under subsection (a).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Chapter 213 of title 18, United States Code, is amended in the table of sections by adding at the end the following new item:

''3296. Counts dismissed pursuant to a plea agreement.''.

SEC. 4004. APPEALS FROM CERTAIN DISMISSALS.

Section 3731 of title 18, United States Code, is amended by inserting '', or any part thereof'' after ''as to any one or more counts''.

SEC. 4005. CLARIFICATION OF LENGTH OF SUPERVISED RELEASE TERMS IN CONTROLLED SUBSTANCE CASES.

(a) DRUG ABUSE PENALTIES.—Subparagraphs (A), (B), (C), and (D) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) are amended by striking ''Any sentence'' and inserting ''Notwithstanding section 3583 of title 18, any sentence''.

(b) PENALTIES FOR DRUG IMPORT AND EXPORT.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) in paragraphs (1), (2), and (3), by striking ''Any sentence'' and inserting ''Notwithstanding section 3583 of title 18, any sentence''; and

(2) in paragraph (4), by inserting ''notwithstanding section 3583 of title 18,'' before ''in addition to such term of imprisonment''.

SEC. 4006. AUTHORITY OF COURT TO IMPOSE A SENTENCE OF PROBATION OR SUPERVISED RELEASE WHEN REDUCING A SENTENCE OF IMPRISONMENT IN CERTAIN CASES.

Section 3582(c)(1)(A) of title 18, United States Code, is amended by inserting ''(and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment)'' after ''may reduce the term of imprisonment''.

SEC. 4007. CLARIFICATION THAT MAKING RESTITUTION IS A PROPER CONDITION OF SUPERVISED RELEASE.

Subsections (c) and (e) of section 3583 of title 18, United States Code, are amended by striking ''and (a)(6) and inserting ''(a)(6), and (a)(7)''.

TITLE V—CRIMINAL LAW TECHNICAL AMENDMENTS ACT OF 2001

SEC. 5001. SHORT TITLE.

This title may be cited as the ''Criminal Law Technical Amendments Act of 2001''.

SEC. 5002. TECHNICAL AMENDMENTS RELATING TO CRIMINAL LAW AND PROCEDURE.

(a) MISSING AND INCORRECT WORDS.—

(1) CORRECTION OF GARBLED SENTENCE.—Section 510(c) of title 18, United States Code, is amended by striking ''fine of under this title'' and inserting ''fine under this title''.

(2) INSERTION OF MISSING WORDS.—Section 981(d) of title 18, United States Code, is amended by striking ''proceeds from the sale of this section'' and inserting ''proceeds from the sale of such property under this section''.

(3) CORRECTION OF INCORRECT WORD.—Sections 1425 through 1427, 1541 through 1544 and 1546(a) of title 18, United States Code, are each amended by striking ''to facility'' and inserting ''to facilitate''.

(4) CORRECTING ERRONEOUS AMENDATORY LANGUAGE ON EXECUTED AMENDMENT.—Effective on the date of the enactment of Public Law 103–322, section 60003(a)(13) of such public law is amended by striking ''$1,000,000 or imprisonment'' and inserting ''$1,000,000 and imprisonment''.

(5) CORRECTION OF REFERENCE TO SHORT TITLE OF LAW.—That section 2332d(a) of title 18, United States Code, which relates to financial transactions is amended by inserting ''of 1979'' after ''Export Administration Act''.

(6) ELIMINATION OF TYPO.—Section 1992(b) of title 18, United States Code, is amended by striking ''term or years'' and inserting ''term of years''.

(7) SPELLING CORRECTION.—Section 2339A(a) of title 18, United States Code, is amended by striking ''or an escape'' and inserting ''of an escape''.

(8) SECTION 3553.—Section 3553(e) of title 18, United States Code, is amended by inserting ''a'' before ''minimum''.

(9) MISSPELLING IN SECTION 205.—Section 205(d)(1)(B) of title 18, United States Code, is amended by striking ''groups's'' and inserting ''group's''.

(10) CONFORMING CHANGE AND INSERTING MISSING WORD IN SECTION 709.—The paragraph in section 709 of title 18, United States Code, that begins with ''A person who'' is amended—

(A) by striking ''A person who'' and inserting ''Whoever''; and

(B) by inserting ''or'' after the semicolon at the end.

(11) ERROR IN LANGUAGE BEING STRICKEN.—Effective on the date of its enactment, section 726(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) is amended—

(A) in subparagraphs (C) and (E), by striking ''section'' the first place it appears; and

(B) in subparagraph (G), by striking ''relating to'' the first place it appears.

(b) MARGINS, PUNCTUATION, AND SIMILAR ERRORS.—

(1) MARGIN ERROR.—Section 1030(c)(2) of title 18, United States Code, is amended so that the margins of subparagraph (B) and each of its clauses, are moved 2 ems to the left.

(2) CORRECTING CAPITALIZATION IN LANGUAGE TO BE STRICKEN.—Effective on the date of its enactment, section 607(g)(2) of the Economic Espionage Act of 1996 is amended by striking ''territory'' and inserting ''Territory''.

(3) CORRECTING PARAGRAPHING.—The material added to section 521(a) of title 18, United States Code, by section 607(q) of the Economic Espionage Act of 1996 is amended to appear as a paragraph indented 2 ems from the left margin.

(4) SUBSECTION PLACEMENT CORRECTION.—Section 1513 of title 18, United States Code, is amended by transferring subsection (d) so that it appears following subsection (c).

(5) CORRECTION TO ALLOW FOR INSERTION OF NEW SUBPARAGRAPH AND CORRECTION OF ERRONEOUS INDENTATION.—Section 1956(c)(7) of title 18, United States Code, is amended—

(A) in subparagraph (B)(ii), by moving the margin 2 ems to the right;

(B) by striking ''or'' at the end of subparagraph (D);

(C) by striking the period at the end of subparagraph (E) and inserting ''; or''; and

(D) in subparagraph (F)—

(i) by striking ''Any'' and inserting ''any''; and

(ii) by striking the period at the end and inserting a semicolon.

(6) CORRECTION OF CONFUSING SUBDIVISION DESIGNATION.—Section 1716 of title 18, United States Code, is amended—

(A) in the first undesignated paragraph, by inserting ''(j)(1)'' before ''Whoever'';

(B) in the second undesignated paragraph—

(i) by striking ''not more than $10,000'' and inserting ''under this title''; and

(ii) by inserting ''(2)'' at the beginning of that paragraph;

(C) by inserting ''(3)'' at the beginning of the third undesignated paragraph; and

(D) by redesignating subsection (j) as subsection (k).

(7) PUNCTUATION CORRECTION IN SECTION 1091.—Section 1091(b)(1) of title 18, United States Code, is amended by striking ''subsection (a)(1),'' and inserting ''subsection (a)(1)''.

(8) PUNCTUATION CORRECTION IN SECTION 2311.—Section 2311 of title 18, United States Code, is amended by striking the period after ''carcasses thereof'' the second place that term appears and inserting a semicolon.

(9) SYNTAX CORRECTION.—Section 115(b)(2) of title 18, United States Code, is amended by striking '', attempted kidnapping, or conspiracy to kidnap of a person'' and inserting ''or attempted kidnapping of, or a conspiracy to kidnap, a person''.

(10) CORRECTING CAPITALIZATION IN SECTION 982.—Section 982(a)(8) of title 18, United States Code, is amended by striking ''Court'' and inserting ''court''.

(11) PUNCTUATION CORRECTIONS IN SECTION 1029.—Section 1029 of title 18, United States Code, is amended—

(A) in subsection (c)(1)(A)(ii), by striking ''(9),'' and inserting ''(9)''; and

(B) in subsection (e), by adding a semicolon at the end of paragraph (8).

(12) CORRECTIONS OF CONNECTORS AND PUNCTUATION IN SECTION 1030.—Section 1030 of title 18, United States Code, is amended—

(A) by inserting ''and'' at the end of subsection (c)(2)(B)(iii); and

(B) by striking the period at the end of subsection (e)(4)(I) and inserting a semicolon.

(13) CORRECTION OF PUNCTUATION IN SECTION 1032.—Section 1032(1) of title 18, United States Code, is amended by striking ''13,'' and inserting ''13''.

(14) CORRECTION OF PUNCTUATION IN SECTION 1345.—Section 1345(a)(1) of title 18, United States Code, is amended—

(A) in subparagraph (B), by striking '', or'' and inserting ''; or''; and

(B) in subparagraph (C), by striking the period and inserting a semicolon.

(15) CORRECTION OF PUNCTUATION IN SECTION 3612.—Section 3612(f)(2)(B) of title 18, United States Code, is amended by striking ''preceding.'' and inserting ''preceding''.

(16) CORRECTION OF INDENTATION IN CONTROLLED SUBSTANCES ACT.—Section 402(c)(2) of the Controlled Substances Act (21 U.S.C. 842(c)(2)) is amended by moving the margin of subparagraph (C) 2 ems to the left.

(c) ELIMINATION OF REDUNDANCIES.—

(1) ELIMINATION OF DUPLICATE AMENDMENTS.—Effective on the date of its enactment, paragraphs (1), (2), and (4) of section 601(b), paragraph (2) of section 601(d), paragraph (2) of section 601(f), paragraphs (1) and (2)(A) of section 601(j), paragraphs (1) and (2) of section 601(k), subsection (d) of section 602, paragraph (4) of section 604(b), subsection (r) of section 605, and paragraph (2) of section 607(j) of the Economic Espionage Act of 1996 are repealed.

(2) ELIMINATION OF EXTRA COMMA.—Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(A) by striking ''Code,,'' and inserting ''Code,''; and

(B) by striking ''services),,'' and inserting ''services),''.

(3) REPEAL OF SECTION GRANTING DUPLICATIVE AUTHORITY.—

(A) Section 3503 of title 18, United States Code, is repealed.

(B) The table of sections at the beginning of chapter 223 of title 18, United States Code, is amended by striking the item relating to section 3503.

(4) ELIMINATION OF OUTMODED REFERENCE TO PAROLE.—Section 929(b) of title 18, United States Code, is amended by striking the last sentence.

(d) CORRECTION OF OUTMODED FINE AMOUNTS.—

(1) IN TITLE 18, UNITED STATES CODE.—

(A) IN SECTION 492.—Section 492 of title 18, United States Code, is amended by striking ''not more than $100'' and inserting ''under this title''.

(B) IN SECTION 665.—Section 665(c) of title 18, United States Code, is amended by striking ''a fine of not more than $5,000'' and inserting ''a fine under this title''.

(C) IN SECTIONS 1924, 2075, 2113(b), AND 2236.—

(i) Section 1924(a) of title 18, United States Code, is amended by striking ''not more than $1,000,'' and inserting ''under this title''.

(ii) Sections 2075 and 2113(b) of title 18, United States Code, are each amended by striking ''not more than $1,000'' and inserting ''under this title''.

(iii) Section 2236 of title 18, United States Code, is amended by inserting ''under this title'' after ''warrant, shall be fined'', and by striking ''not more than $1,000''.

(D) IN SECTION 372 AND 752.—Sections 372 and 752(a) of title 18, United States Code, are each amended by striking ''not more than $5,000'' and inserting ''under this title''.

(E) IN SECTION 924(e)(1).—Section 924(e)(1) of title 18, United States Code, is amended by striking ''not more than $25,000'' and inserting ''under this title''.

(2) IN THE CONTROLLED SUBSTANCES ACT.—

(A) IN SECTION 401.—Section 401(d) of the Controlled Substances Act (21 U.S.C. 841(d)) is amended—

(i) in paragraph (1), by striking ''and shall be fined not more than $10,000'' and inserting ''or fined under title 18, United States Code, or both''; and

(ii) in paragraph (2), by striking ''and shall be fined not more than $20,000'' and inserting ''or fined under title 18, United States Code, or both''.

(B) IN SECTION 402.—Section 402(c)(2) of the Controlled Substances Act (21 U.S.C. 842(c)) is amended—

(i) in subparagraph (A), by striking ''of not more than $25,000'' and inserting ''under title 18, United States Code''; and

(ii) in subparagraph (B), by striking ''of $50,000'' and inserting ''under title 18, United States Code''.

(C) IN SECTION 403.—Section 403(d) of the Controlled Substances Act (21 U.S.C. 843(d)) is amended—

(i) by striking ''of not more than $30,000'' each place that term appears and inserting ''under title 18, United States Code''; and

(ii) by striking ''of not more than $60,000'' each place it appears and inserting ''under title 18, United States Code''.

(e) CROSS REFERENCE CORRECTIONS.—

(1) SECTION 3664.—Section 3664(o)(1)(C) of title 18, United States Code, is amended by striking ''section 3664(d)(3)'' and inserting ''subsection (d)(5)''.

(2) CHAPTER 228.—Section 3592(c)(1) of title 18, United States Code, is amended by striking ''section 36'' and inserting ''section 37''.

(3) CORRECTING ERRONEOUS CROSS REFERENCE IN CONTROLLED SUBSTANCES ACT.—Section 511(a)(10) of the Controlled Substances Act (21 U.S.C. 881(a)(10)) is amended by striking ''1822 of the Mail Order Drug Paraphernalia Control Act'' and inserting ''422''.

(4) CORRECTION TO REFLECT CROSS REFERENCE CHANGE MADE BY OTHER LAW.—Effective on the date of its enactment, section 601(c)(3) of the Economic Espionage Act of 1996 is amended by striking ''247(d)'' and inserting ''247(e)''.

(5) TYPOGRAPHICAL AND TYPEFACE ERROR IN TABLE OF CHAPTERS.—The item relating to chapter 123 in the table of chapters at the beginning of part I of title 18, United States Code, is amended—

(A) by striking ''2271'' and inserting ''2721''; and

(B) so that the item appears in bold face type.

(6) SECTION 4104.—Section 4104(d) of title 18, United States Code, is amended by striking ''section 3653 of this title and rule 32(f) of'' and inserting ''section 3565 of this title and the applicable provisions of''.

(7) ERROR IN AMENDATORY LANGUAGE.—Effective on the date of its enactment, section 583 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (111 Stat. 2436) is amended by striking ''Section 2401'' and inserting ''Section 2441''.

(8) ERROR IN CROSS REFERENCE TO COURT RULES.—The first sentence of section 3593(c) of title 18, United States Code, is amended by striking ''rule 32(c)'' and inserting ''rule 32''.

(9) SECTION 1836.—Section 1836 of title 18, United States Code, is amended—

(A) in subsection (a), by striking ''this section'' and inserting ''this chapter''; and

(B) in subsection (b), by striking ''this subsection'' and inserting ''this section''.

(10) CORRECTION OF ERRONEOUS CITE IN CHAPTER 119.—Section 2510(10) of title 18, United States Code, is amended by striking ''shall have'' and all that follows through ''United States Code;'' and inserting ''has the meaning given that term in section 3 of the Communications Act of 1934;''.

(11) ELIMINATION OF OUTMODED CITE IN SECTION 2339A.—Section 2339A(a) of title 18, United States Code, is amended by striking ''2332c,''.

(12) CORRECTION OF REFERENCES IN AMENDATORY LANGUAGE.—Effective the date of its enactment, section 115(a)(8)(B) of Public Law 105–119 is amended—

(A) in clause (i)—

(i) by striking ''at the end of'' and inserting ''following''; and

(ii) by striking ''paragraph'' the second place it appears and inserting ''subsection''; and

(B) in clause (ii), by striking ''subparagraph (A)'' and inserting ''clause (i)''.

(f) TABLES OF SECTIONS CORRECTIONS.—

(1) CONFORMING TABLE OF SECTIONS TO HEADING OF SECTION.—The item relating to section 1837 in the table of sections at the beginning of chapter 90 of title 18, United States Code, is amended by striking ''Conduct'' and inserting ''Applicability to conduct''.

(2) CONFORMING HEADING TO TABLE OF SECTIONS ENTRY.—The heading of section 1920 of title 18, United States Code, is amended by striking ''**employee's**'' and inserting ''**employees'**''.

SEC. 5003. ADDITIONAL TECHNICALS.

Title 18, United States Code, is amended—

(1) in section 922(t)(1)(C), by striking ''1028(d)(1)'' and inserting ''1028(d)'';

(2) in section 1005—

(A) in the first undesignated paragraph, by striking ''Act,,'' and inserting ''Act,''; and

(B) by inserting ''or'' at the end of the third undesignated paragraph;

(3) in section 1071, by striking ''fine of under this title'' and inserting ''fine under this title'';

(4) in section 1368(a), by inserting ''to'' after ''serious bodily injury'';

(5) in subsections (b)(1) and (c) of section 2252A, by striking ''paragraphs'' and inserting ''paragraph''; and

(6) in section 2254(a)(3), by striking the comma before the period at the end.

SEC. 5004. REPEAL OF OUTMODED PROVISIONS.

(a) Section 14 of title 18, United States Code, and the item relating thereto in the table of sections at the beginning of chapter 1 of title 18, United States Code, are repealed.

(b) Section 1261 of such title is amended—

(1) by striking ''(a) The Secretary'' and inserting ''The Secretary''; and

(2) by striking subsection (b).

(c) Section 1821 of such title is amended by striking '', the Canal Zone''.

(d) Section 3183 of such title is amended by striking ''or the Panama Canal Zone,''.

(e) Section 3241 of such title is amended by striking ''United States District Court for the Canal Zone and the''.

SEC. 5005. AMENDMENTS RESULTING FROM PUBLIC LAW 107–56.

(a) MARGIN CORRECTIONS.—

(1) Section 2516(1) of title 18, United States Code, is amended by moving the left margin for subsection (q) 2 ems to the right.

(2) Section 2703(c)(1) of title 18, United States Code, is amended by moving the left margin of subparagraph (E) 2 ems to the left.

(3) Section 1030(a)(5) of title 18, United States Code, is amended by moving the left margin of subparagraph (B) 2 ems to the left.

(b) CORRECTION OF WRONGLY WORDED CLERICAL AMENDMENT.—Effective on the date of its enactment, section 223(c)(2) of Public Law 107-56 is amended to read as follows:

''(2) The table of sections at the beginning of chapter 121 of title 18, United States Code, is amended by adding at the end the following new item:

''2712. Civil actions against the United States.''.

(c) CORRECTION OF ERRONEOUS PLACEMENT OF AMENDMENT LANGUAGE.—Effective on the date of its enactment, section 225 of Public Law 107-56 is amended—

(1) by striking ''after subsection (g)'' and inserting ''after subsection (h)''; and

(2) by redesignating the subsection added to section 105 of section 105 of the he Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) as subsection (i).

(d) PUNCTUATION CORRECTIONS.—

(1) Section 1956(c)(6)(B) of title 18, United States Code, is amended by striking the period and inserting a semicolon.

(2) Effective on the date of its enactment, section 803(a) of Public Law 107-56 is amended by striking the close quotation mark and period that follows at the end of subsection (a) in the matter proposed to be inserted in title 18, United States Code, as a new section 2339.

(3) Section 1030(c)(3)(B) of title 18, United States Code, is amended by inserting a comma after ''(a)(4)''.

(e) ELIMINATION OF DUPLICATE AMENDMENT.—Effective on the date of its enactment, section 805 of Public Law 107-56 is amended by striking subsection (b).

(f) CORRECTION OF UNEXECUTABLE AMENDMENTS.—

(1) Effective on the date of its enactment, section 813(2) of Public Law 107-56 is amended by striking ''semicolon'' and inserting ''period''.

(2) Effective on the date of its enactment, section 815 of Public Law 107-56 is amended by inserting ''a'' before ''statutory authorization''.

(g) CORRECTION OF HEADING STYLE.—The heading for section 175b of title 18, United States Code, is amended to read as follows:

''§ 175b. Possession by restricted persons''.

TITLE VI—UNDERCOVER INVESTIGATIVE PRACTICES CONDUCTED BY FEDERAL ATTORNEYS

SEC. 6001. UNDERCOVER INVESTIGATIVE PRACTICES CONDUCTED BY FEDERAL ATTORNEYS.

Section 530B(a) of title 28, United States Code, is amended by inserting after the first sentence the following: ''Notwithstanding any provision of State law, including rules of professional conduct for attorneys, an attorney for the Government may, for the purpose of investigating terrorism, provide legal advice and supervision on conducting undercover activities, even though such activities may require the use of deceit or misrepresentation, where such activities are consistent with Federal law.''.

TITLE VII—PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANTS

SEC. 7001. PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANTS.

(a) STATE APPLICATIONS.—Section 503(a)(13)(A)(iii) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)(13)(A)(iii)) is amended by striking ''or the National Association of Medical Examiners,'' and inserting '', the National Association of Medical Examiners, or any other nonprofit, professional organization that may be recognized within the forensic science community as competent to award such accreditation,''.

(b) FORENSIC SCIENCES IMPROVEMENT GRANTS.—Part BB of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797j et seq.) is amended—

(1) in section 2801, by inserting after ''States'' the following: '' and units of local government'';

(2) in section 2802—

(A) in the matter before paragraph (1), by inserting ''or unit of local government'' after ''State'';

(B) in paragraph (1), to read as follows:

''(1) a certification that the State or unit of local government has developed a plan for forensic science laboratories under a program described in section 2804(a), and a specific description of the manner in which the grant will be used to carry out that plan;'';

(C) in paragraph (2), by inserting ''or appropriate certifying bodies'' before the semicolon; and

(D) in paragraph (3), by inserting ''for a State or local plan'' after ''program'';

(3) in section 2803(a)(2), by striking ''to States with'' and all that follows through the period and inserting ''for competitive awards to States and units of local government. In making awards under this part, the Attorney General shall consider the average annual number of part 1 violent crimes reported by each State to the Federal Bureau of Investigation for the 3 most recent calendar years for which data is available and consider the existing resources and current needs of the potential grant recipient.'';

(4) in section 2804—

(A) in subsection (a), by inserting ''or unit of local government'' after ''A State''; and

(B) in subsection (c)(1), by inserting ''(including grants received by units of local government within a State)'' after ''under this part''; and

(5) in section 2806(a)—

(A) in the matter before paragraph (1), by inserting ''or unit of local government'' after ''each State''; and

(B) in paragraph (1), by inserting before the semicolon the following: '', which shall include a comparison of pre-grant and post-grant forensic science capabilities''

(C) in paragraph (2), by striking ''and'' at the end;

(D) by redesignating paragraph (3) as paragraph (4); and

(E) by inserting after paragraph (2) the following:

''(3) an identification of the number and type of cases currently accepted by the laboratory; and''.

SEC. 7002. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of fiscal years 2002 through 2007—

(1) $30,000,000 for the Center for Domestic Preparedness of the Department of Justice in Anniston, Alabama;

(2) $7,000,000, or such sums as may be necessary, for the Texas Engineering Extension Service of Texas A&M University;

(3) $7,000,000, or such sums as may be necessary, for the Energetic Materials Research and Test Center of the New Mexico Institute of Mining and Technology;

(4) $7,000,000, or such sums as may be necessary, for the Academy of Counterterrorist Education at Louisiana State University; and

(5) $7,000,000, or such sums as may be necessary, for the National Exercise, Test, and Training Center of the Department of Energy, located at the Nevada test site.

TITLE VIII—ECSTASY PREVENTION ACT OF 2001

SEC. 8001. SHORT TITLE.

This title may be cited as the ''Ecstasy Prevention Act of 2001''.

SEC. 8002. GRANTS FOR ECSTASY ABUSE PREVENTION.

Section 506B(c) of title V of the Public Health Service Act is amended by adding at the end the following:

''(3) EFFECTIVE PROGRAMS.—

''(A) IN GENERAL.—In addition to the priority under paragraph (2), the Administrator shall give priority to communities that have taken measures to combat club drug use, including passing ordinances restricting rave clubs, increasing law enforcement on Ecstasy, and seizing lands under nuisance abatement laws to make new restrictions on an establishment's use.

''(B) STATE PRIORITY.—A priority grant may be made to a State under this paragraph on a pass-through basis to an eligible community.''.

SEC. 8003. COMBATING ECSTASY AND OTHER CLUB DRUGS IN HIGH INTENSITY DRUG TRAFFICKING AREAS.

(a) PROGRAM.—

(1) IN GENERAL.—The Director of the Office of National Drug Control Policy shall use amounts available under this section to combat the trafficking of MDMA in areas designated by the Director as high intensity drug trafficking areas.

(2) ACTIVITIES.—In meeting the requirement in paragraph (1), the Director shall transfer funds to assist anti-Ecstasy law enforcement initiatives in high intensity drug trafficking areas, including assistance for investigative costs, intelligence enhancements, technology improvements, and training.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section such sums as are necessary for fiscal years 2002 through 2005.

(2) NO SUPPLANTING.—Any Federal funds received under this section shall be used to supplement, not supplant, non-Federal funds that would otherwise be used to carry out activities funded under this section.

(c) APPORTIONMENT OF FUNDS.—The Director shall apportion amounts appropriated for a fiscal year pursuant to the authorization of appropriations in subsection (b) for activities under subsection (a) among and within areas designated by the Director and based on the threat assessments submitted by individual high intensity drug trafficking areas.

SEC. 8004. NATIONAL YOUTH ANTIDRUG MEDIA CAMPAIGN.

(a) IN GENERAL.—In conducting the national media campaign under section 102 of the Drug-Free Media Campaign Act of 1998, the Director of the Office of National Drug Control Policy shall ensure that such campaign addresses the reduction and prevention of abuse of MDMA and club and emerging drugs among young people in the United States.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section such sums as are necessary for fiscal years 2002 through 2005.

SEC. 8005. MDMA DRUG TEST.

There are authorized to be appropriated to the Office of National Drug Control Policy

such sums as are necessary to commission a drug test for MDMA which would meet the standards for the Federal Workplace.

SEC. 8006. NATIONAL INSTITUTE ON DRUG ABUSE REPORT.

(a) RESEARCH.—The Director of the National Institute on Drug Abuse (referred to in this section as the ''Director'') shall conduct research—

(1) that evaluates the effects that MDMA use can have on an individual's health, such as—

(A) physiological effects such as changes in ability to regulate one's body temperature, stimulation of the cardiovascular system, muscle tension, teeth clenching, nausea, blurred vision, rapid eye movement, tremors, and other such conditions, some of which can result in heart failure or heat stroke;

(B) psychological effects such as mood and mind altering and panic attacks which may come from altering various neurotransmitter levels such as serotonin in the brain;

(C) short-term effects like confusion, depression, sleep problems, severe anxiety, paranoia, hallucinations, and amnesia; and

(D) long-term effects on the brain with regard to memory and other cognitive functions, and other medical consequences; and

(2) documenting those research findings and conclusions with respect to MDMA that are scientifically valid and identify the medical consequences on an individual's health.

(b) FINAL REPORT.—Not later than January 1, 2003, the Director shall submit a report to the Congress.

(c) REPORT PUBLIC.—The report required by this section shall be made public.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 8007. INTERAGENCY ECSTASY/CLUB DRUG TASK FORCE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Director of the Office of National Drug Control Policy shall establish a Task Force on Ecstasy/MDMA and Emerging Club Drugs (referred to in this section as the ''task force'') which shall—

(A) design, implement, and evaluate the education, prevention, and treatment practices and strategies of the Federal Government with respect to Ecstasy, MDMA, and emerging club drugs; and

(B) specifically study the club drug problem and report its findings to Congress.

(2) MEMBERSHIP.—The task force shall—

(A) be under the jurisdiction of the Director of the Office of National Drug Control Policy, who shall designate a chairperson; and

(B) include as members law enforcement, substance abuse prevention, judicial, and public health professionals as well as representatives from Federal, State, and local agencies.

(b) RESPONSIBILITIES.—The responsibilities of the task force shall be—

(1) to evaluate the current practices and strategies of the Federal Government in education, prevention, and treatment for Ecstasy, MDMA, and other emerging club drugs and recommend appropriate and beneficial models for education, prevention, and treatment;

(2) to identify appropriate government components and resources to implement task force recommendations; and

(3) to make recommendations to the President and Congress to implement proposed improvements in accordance with the National Drug Control Strategy and its budget allocations.

(c) MEETINGS.—The task force shall meet at least once every 6 months.

(d) TERMINATION.—The task force shall terminate 3 years after the date of enactment of this Act.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, December 20, 2001, at 11:30 a.m., in executive session to consider a civilian nomination and pending military nominations.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, December 20, 2001, at 9:30 a.m., on the nomination of John Magaw to be Undersecretary of Transportation Security, (DOT).

The PRESIDING OFFICER. Without objection it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. WELLSTONE. Madam President, I ask unanimous consent that Ellen Gerrity, of my staff, be allowed floor privileges for the duration of today.

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

Mr. GRAHAM. I ask unanimous consent Tiffany Smith, a fellow in our office, be permitted the privilege of the floor.

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

MAKING FURTHER CONTINUING APPROPRIATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to H.J. Res. 79, the continuing resolution, which is at the desk.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 79) making further continuing appropriations for the fiscal year 2002, and for other purposes.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. REID. Mr. President, I ask unanimous consent that the joint resolution be read a third time, passed, and the motion to reconsider be laid upon the table, without intervening action or debate.

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

The joint resolution (H.J. Res. 79) was read the third time and passed.

CONVENING OF THE SECOND SESSION OF THE 107TH CONGRESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.J. Res. 80, which we have just received from the House and is now at the desk.

The PRESIDING OFFICER. The clerk will report the joint resolution.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 80) appointing the day for the convening of the second session of the one hundred seventh Congress.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. REID. Mr. President, I ask unanimous consent that the joint resolution be read a third time, passed, and the motion to reconsider be laid upon the table, without any intervening action or debate.

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

The joint resolution (H.J. Res. 80) was read the third time and passed.

The PRESIDING OFFICER. Under the previous order, the Senator from Montana is recognized.

TAX EXTENDERS

Mr. BAUCUS. Mr. President, in a few moments I am going to ask that the Senate take up and pass the tax extenders legislation. It is unfortunate that the Congress, along with the President, were unable to agree on a stimulus to the American economy that would provide not only a boost to the American economy, but also assistance to those who have lost unemployment compensation benefits as a consequence of the decline in the economy accelerated by the events of September 11, as well as those who have lost health insurance as a consequence of losing their jobs.

It is almost axiomatic that the economy is in tough shape. I do not expect with a high degree of certainty that the Congress is going to come back to where we would like to be very quickly.

There are some small points which I think we should keep in mind. One is that auto sales broke records with zero percent financing, and the auto companies get most of their income from financing. So they were not making any money these past couple of months, which means reports coming out next quarter and even this quarter will not be high.

The same applies to retail sales. It is the Christmas season. We know stores across the country, in order to encourage more sales, are giving tremendous discounts, which clearly discounts that company's income.

We are going to have to face a stimulus package and should this next year. I hope we do it in a much more accommodating manner than we have in the last several weeks.

I am not going to get into the blame game. I am not going to say who

caused this collapse. I have lots of ideas. That is history. What happened happened. It is now time to go forward. I urge my colleagues, after appropriate rest and a break over the holidays, when they are rested up, to come back with renewed vigor and renewed dedication and perseverance to working together and, most important, listening to the other side.

Too often we tend to talk, and we do not listen enough. If we were to listen a little more, even for a nanosecond, I think that would be progress. I urge my colleagues to listen to different points of view next year.

Nevertheless, I think we should salvage whatever we can, and part of that is what is called the tax extenders. These include matters that are very important for the economy and for people who are relying on them. One is the work opportunity tax credit which helps people find jobs.

The Joint Committee on Tax estimates 450,000 to 525,000 will be hired with this credit next year. It expires this year. All provisions I mentioned expire this year, and I think it is important to keep those in existence so next year people can rely upon them.

Another is extending the qualified zone academy bond that authorizes $400 billion in bonds to States in the calendar year 2002. That is to renovate schools and purchase equipment. That expires this year and will terminate unless this legislation I mentioned passes.

A key point, and I urge my colleagues to listen to this, it is a matter of confidence and certainty. These are provisions upon which so many people in our country depend. Over the years, they have been on again, off again. It is like a yo-yo.

It is no way to do business. People need certainty, a little more than they have today in these uncertain times, a little more ability to predict the future. If we could pass this legislation tonight, extending the extenders, that would enable people with more certainty to know they can count on an existing law.

This is not new law. This is an extension of existing law. It is not right for us to be not continuing that legislation because, otherwise, we will wake up next year, January 1 or 2, and these are not in effect. There are many other of them that are very good and, again, it creates that uncertainty.

One, for example, is AMT for individuals. That is the alternative minimum tax credit. That is an extender. According to the Joint Committee on Tax, 900,000 Americans will be subject to the AMT without this relief, as one of the extenders we have.

Four hundred thousand of those will be taxpayers with incomes between $50,000 and $75,000. Those are really middle-income Americans. If we do not extend this extender, then those people will be subject to the AMT tax.

In addition, this package includes an extension of a GSP, that is a generalized preference for trade. That is a trade provision that is in the law today. The Andean Trade Preference Act extends that. It is in the law today, in addition to trade adjustment assistance.

I strongly urge my colleagues to think of Americans and pass this request.

I ask unanimous consent that the Senate proceed to immediate consideration of Calendar No. 33, H.R. 8; that the Baucus substitute amendment at the desk be agreed to; the bill as amended be read a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Reserving the right to object, I concur with many of the statements my friend from Montana made; it is very important for us to work together more than we have done in the last few months. The unanimous consent request, if I am reading it correctly, says the Senate wants to substitute the extenders for H.R. 8, which is the revenue package that passed April 6. Is that correct?

Mr. BAUCUS. That is correct.

Mr. NICKLES. That package would be a substitute for it? In other words, this was a bill that would basically, over a 10-year period of time, eliminate the death tax, I believe, and the Senator wants to strike all that language and put in a 2-year extender bill; is that correct?

Mr. BAUCUS. This is 1 year. There is no intention to repeal any of the tax provisions that passed earlier this year.

Mr. NICKLES. I am reading this as a substitute for the House bill. I believe it is a substitute for the House bill. If the Senator modifies this and makes it in addition to the House bill, at least this Senator would not object. But if it is striking the House bill, I feel constrained to object.

If the Senator is willing to move it, in addition to the House bill, I will not object at this time.

Mr. BAUCUS. I will respond to my colleague that my intention is to take up the bill that is already on the calendar.

Mr. NICKLES. I know.

Mr. BAUCUS. And strike out the substance of it; take it up and pass it back with these provisions.

I might answer my friend, this is the procedure we have to follow in order to pass these extenders.

Mr. NICKLES. Further reserving the right to object, again I will object if it is striking the House bill. The House passed a bill with a good vote. I do not remember exactly what it was. If it is in addition to the House bill, I would not object.

I ask my colleague—and I think I hear the Senator saying he is not going to—is it not the intent of the Senator not to pass the House-passed bill? I was hoping we could make a deal.

I might mention we might have to notify a few other Senators before we do this by unanimous consent.

Mr. BAUCUS. I see. It is now more clear to me what is happening.

Mr. NICKLES. My intention was, if we want to repeal the death tax and pass the extenders, this Senator would have no objection. I am sure we could whip it and see if there would be no objection.

Mr. BAUCUS. I understand. I am sure the Senator would love to do that, and I am also sure there would be other Senators who would object.

Mr. NICKLES. The Presiding Officer might like for us to do that.

Mr. BAUCUS. Given all the objections that approach will take, I was asking the Senator to consider the approach I am suggesting.

Mr. NICKLES. Further reserving the right to object, if the Senator is not going to agree to pass the House-passed language that passed in April with the extenders language, then I ask the Senator to modify his request and let us take up the stimulus package that did have the extenders, that did have many other provisions that would have helped the unemployed, that did have some things that would help stimulate the economy, that did some things that would help New York in addition to what we have already done today. So I ask my colleague to modify his request, let us take up the stimulus package, the H.R. 3529, which was received from the House.

I ask unanimous consent that the request be modified so that at first the Senate would proceed to consideration of H.R. 3529, which is the stimulus package received by the House; the bill be read a third time and passed, with no intervening action or debate.

I would add, before the Chair rules, the bill has extender language that my colleague from Montana is requesting and therefore it would accommodate his request.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. BAUCUS. Mr. President, I believe the Senator made a unanimous consent request that would change my unanimous consent request, at least as I understand it. I ask the Senator if he will modify his request to substitute the stimulus bill that passed the Senate Finance Committee instead of the bill that passed the House.

Mr. NICKLES. I cannot agree to that. I do not know if we are playing one-upmanship. I would like to pass the bill that passed the House. So I will not agree to that.

Mr. BAUCUS. Mr. President, it is clear what is happening.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

Mr. NICKLES. I object.

The PRESIDING OFFICER. The objection is heard.

Under the previous order, the Senator from Louisiana is recognized.

BIOTERRORISM

Ms. LANDRIEU. Mr. President, there are many important issues on the

agenda and the one that was being discussed is one of the most important, but not the only. There is other business that needs to get done before we leave, which is an issue that is of great concern and an issue I wanted to bring to the attention of the Senators.

Before I get into that subject area, which relates to families and children and adoption, I want to thank the leadership. I thank Senator KENNEDY and Senator FRIST, the main sponsors of the bioterrorism legislation, for agreeing in a colloquy submitted on behalf of myself and Senator MCCONNELL from Kentucky to add a provision that will help all hospitals to call on FEMA funds that may be available in the event of another terrorist attack when hospital resources are called on to assist victims of those attacks or if the hospitals are harmed themselves. I very much appreciate it because it seemed to be an oversight in the legislation.

As that bill moves to conference, I particularly thank them for their sensitivities to provide funding for all hospitals in the event that that situation were to occur. Of course, we are all hopeful it does not and are working very hard to see it does not, but I thank them for agreeing.

TWELVE FAMILIES NEED CAMBODIAN VISAS TO BRING THEIR CHILDREN HOME

Ms. LANDRIEU. Mr. President, I know the Senator from Ohio and others are waiting to speak on other matters before we leave, but last night there was a troubling exposé done on a very unfortunate circumstance, and that circumstance involves 12 American families who are stuck in Cambodia because they are unable to obtain visas for their newly adopted children. They are unable to get those visas to come back to the United States safely with these children to celebrate what would have been a joyous homecoming on these holidays.

We are all getting ready to join our families and loved ones in our home States for Christmas and for the holidays. It is not just parents being reunited with children and children with parents, but grandchildren, aunts, uncles, and cousins. This holiday season, as we have all said, is going to be even that much more special because of the challenges before our Nation and the events of September 11 and subsequent events that make us realize how important our families are to us and our loved ones.

We are mindful as we leave today, happy with some of the successes we have had, of the pain and suffering that will be felt during this holiday season by 3,000 families and many more who were directly affected, who will not have a loved one present for the holidays.

For the record, there is not anything I can offer at this moment—no piece of legislation, no fix that I can offer at this moment—but it is my intention to work with all the Senators and to work with the INS, to work with the State Department over the course of the next several days and weeks and months, if necessary, to make sure these American families can get the visas, take their children safely and come to the United States.

According to the INS and according to the story and the details I know, there is concern that there is fraud and abuse in Cambodia and therefore that is why the visas were not issued. I acknowledge that, unfortunately, in the whole area of adoption, both domestic and international, there is some fraud and abuse. We need to do everything we can to make sure that fraud and abuse is stamped out. This Senate, this House, and this Congress, with the help of President Clinton as well as President Bush and both State Departments in the last administration and this administration, are working diligently on that.

We have passed a Hague treaty, an international treaty aimed specifically at making the system of adoption more transparent, eliminating the middleman, reducing time, and encouraging people to adopt children from all over the world because there are so many children who need a home and so many families who want to add children to their families, to build and strengthen their families through adoption.

Denying visas to 12 American families who pay their taxes, good community citizens, people who are doing everything they think is right, and then denying the visas is, I suggest, not the right approach. I am hoping our INS, with our new Commissioner, Mr. Ziglar, who we all know very well and who I have spoken to directly about this issue, as well as the State Department and Secretary Powell and others, will look into this matter and come to an understanding and agreement to allow these children to come with their families.

These children are 6 months to 31 months old. I have learned if children are not adopted in Cambodia by the age of 8, under the Cambodian rules and regulations, children are not able to be adopted. So there is an urgency. There are time issues here. It is very important to try to work through this situation to help these families who are from Illinois, Pennsylvania, New York, Maine, Virginia, Oklahoma, Washington, and Arizona; none from Louisiana.

As the chair of the adoption caucus, I bring this to the attention of the Senate. I will be working as much as I can over the next weeks and months to make sure this issue is resolved. There are procedures that can be used to focus on eliminating abuse and corruption but holding up families who have gone through the process, sometimes excruciating detail, without specific allegations of fraud in these individual cases, is beyond where I think we need to go.

In conclusion, we need to promote adoption, helping the system to be transparent and encouraging people by saying, it is not too long, it is not too tough, it is not too difficult, and it is worth it to bring some of these children to our country and to provide permanency and love to so many who have so little to hope for.

Mr. President, I ask unanimous consent to have these details printed in the RECORD.

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

WHY THESE 12 NOTICES OF INTENT TO DENY SHOULD BE REVOKED

The Consular Officials in Cambodia reviewed each child's documents PRIOR to the child being legally adopted under Cambodian law. The documents were again reviewed by Consular Officials prior to the parents being notified that all was in order and scheduling of their interviews. So the U.S. State Department had two opportunities to identify problems prior to the parents traveling to Cambodia to bring home their child. These children are now officially adopted by American citizens. To deny these children visas for no specific, concrete reason, is to make orphans out of these children all over again.

INS should revoke the Notice of Intent to Deny Letters it issued in the recent Cambodian cases for the following reasons.

1. INS did not conduct a case-by-case investigation.

INS has a policy to adjudicate cases on a case-by-case basis. This policy is predicated on the premise that each case has unique facts, documents and circumstances. In reviewing the seven (7) Notice of Intent to Deny Letters, the matters addressed are exactly alike. The cases do not even reflect correct information about the children and their respective ages. Specifically, the letters focus on children that are infants. However, in review of the children is issue, a significant number of children are not infants.

One child is 31 months old;
One child is 25 months old;
One child is 23 months old;
One child is 20 months old;
One child is 10 months old;
Seven children are approximately 6 months old; and
DOB May 8th 2001 and abandoned May 14 (Munson).

It is important to note that all of the children have been in the Asian Orphanage Association for at least six (6) months. These children have been processed through the Cambodian judicial system and have been adopted by American families in accordance with the laws of Cambodia.

2. The investigation is flawed: INS only investigated cases that were facilitated by a Cambodian man, Serey Puth—it did not investigate orphans from other orphanages or children who came through other facilitators; INS interviewed secondary sources when persons holding primary roles were available; faulty translations; and erroneous information in the Notice of Intent to Deny.

(a) The only children that were targeted in this investigation were children that has been processed through a Cambodian facilitator, Serey Puth. Children who were placed through other orphanages and other facilitators were not investigated.

(b) Generally, INS protocol is to conduct extensive investigations. Statements are taken under oath by competent investigators and translators. Usually, primary parties are interviewed. This did not occur in these cases.

INS only interviewed three persons. Mrs. Phorn Phon, the wife of a village chief for Chaneng Mang village, Mr. Yo a member of the staff of the Asian Orphanage Association and a villager on motorcycle.

It would have been more appropriate to interview the chief instead of the chief's wife. It is not sound reasoning to expect the wife of the village chief to know everything that the chief knows.

It would have been more direct and informative to interview Serey Puth, the owner and director or the Asian Orphanage Association than Mr. Yo a staff member of AOA. Mr. Yo has the responsibility of listing children in the orphanage's registry, making sure the premises are clean and in good repair. He is not privy as to the circumstances of the particular cases. He would not know when and where children were born.

Additionally, Serey Puth, the director and owner of the AOA orphanage was available and willing to meet with the INS officials. Although he had just moved the location of his office, it would not have been difficult to locate him.

It would have been more credible to interview persons in authority than to interview someone who drove by the chief's dwelling on a motorcycle and claimed he was the deputy chief of a village near by.

(c) There is a serious problem with the comprehension and/or translations. Here are three examples of erroneous interpretations by the translator.

(i) The Notice of Intent to Deny letter contains the following pertinent statement by Mr. Yo. ''Mr. Yo was then asked if he thought that it was reasonable to accept the answers that he had given and he said he did not.''

Please note that this statement is taken directly from the Notice of Intent to Deny. The only explanation for such a dialogue is that Mr. Yo did not understand the investigator's question or Mr. Yo has some serious competency problems.

(ii) When the INS investigator asked Mr. Yo where Serey Puth was, Mr. Yo responded that Serey Puth, the orphanage director and owner, was out in the country as in the countryside. However, the translator interpreted his answer to be that Serey Puth was out of the country. Serey Puth never left the country during the nine day INS investigation.

(iii) The Chief's wife was asked if any children were abandoned in the village and she stated that there were not. That is true, children from her village had not been abandoned. However, children from other whereabouts had been abandoned to the village.

Review of these examples illustrates how words not properly translated can lead to very unfavorable conclusions.

(d) The Intent to Deny states that a raid was conducted of the Asian Orphanage Association premises. This is false. The Cambodian officials conducted a raid of a medical center, not AOA. Some of the children from the orphanage were being treated at the medical center.

Additionally, the Intent to Deny states that ''accusations of baby trafficking have been levied against the director.'' This too is false! Evidence from the Cambodian newspapers confirm the allegations made herein.

3. Cambodian government authorities are satisfied that their law has been fully complied with.

MOSALVY, a Cambodian governmental entity (Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation) informed the American prospective adoptive parents that they had been approved to adopt specific Cambodian children. Additionally, MOSALVY issued a Certificate of Adoption for each of the children in issue. Had there been any irregularities regarding these children, it would seem that the Cambodian government would have been aware of the problems. Furthermore, if the Cambodian government believes that the Asian Orphanage Association did not comply with Cambodian law, then MOSALVY has the ability to revoke the Certificates of Adoption.

In addition, under the old Cambodian Law, if it was not known where a child was born, the place of birth was picked randomly. In the last year, the law has been changed. Currently, when an abandoned child is found, his place of birth is where he was found. However, at the time that the children were born and registered with vital records, the orphanage director complied with the law of that time—he picked a place of birth.

INS sent Jean M. Christiansen from the INS District Office in Bangkok to investigate the cases. While in Cambodia for nine days, her staff conducted an investigation. Under her pen, INS issued Notices of Intent to Deny to the American families. INS should revoke its Notices of Intent to Deny.

CAMBODIAN CASES THAT RECEIVED NOTICES OF INTENT TO DENY

Adoptive parents' State	DOB	DOA
Pennsylvania	5–05–99	1–01–01
Illinois	10–10–99	11–26–99
Illinois	1–07–00	2–10–01
NY	2–04–00	3–10–00
NY	2–10–01	4–25–01
Maine	2–27–01	3–14–01
Illinois	5–01–01	5–06–01
Virginia	5–05–01	5–12–01
Oklahoma	5–08–01	5–14–01
Arizona	5–18–01	5–25–01
Washington	5–22–01	5–29–01
Arizona	5–29–01	6–01–01
Illinois	6–14–01	6–21–01

DOB: Date of birth.
POA: Place of abandonment.

CAMBODIAN CASES TO RECEIVE NOTICES OF INTENT TO DENY

State and contact	DOB	DOA	Place of birth	Place of abandonment	US agency or facilitator	Orphanage contact
Pennsylvania	5–05–99	1–01–01				AOA/.
Illinois	10–10–99	11–26–99				AOA/RO.
Illinois	1–07–00	2–10–01				AOA/RO.
NY	3–04–00	3–10–00				AOA/RO.
NY	2–8–01	5 01			Independent Facilitator Cassandra Keirstead	Cambodian, French Hungarian Friendship Orphanage.
Maine	2–27–01	3–14–01				AOA.
Illinois	5–01–01	5–06–01				AOA/RO.
Virginia	5–05–01	5–12–01			Independent Facilitator Cassandra Keirstead	Cambodian, French Hungarian Friendship Orphanage.
Oklahoma	5–08–01	5–14–01				AOA/RO.
Arizona	5–22–01				Independent Facilitator Cassandra Keirstead	Cambodian, French Hungarian Friendship Orphanage.
Washington	5–22–01				Independent Facilitator Cassandra Keirstead	Cambodian, French Hungarian Friendship Orphanage.
Arizona	5–29–01	6–1–01				AOA/RO.
Illinois	6–14–01	6–21–01				AOA/RO.

DOB: Date of birth.
POB: Place of birth.
POA: Place of abandonment.
AOA: Asian Orphanage Association.
RO: Web site Reaching Out.

Ms. LANDRIEU. I thank the Senator from Oklahoma. One or two or more of these families are from his home State. He has been such an advocate of adoption and such a tremendous leader in this area. I know he would understand. We will keep the Senate posted and work with the officials from the executive department to see if it is resolved.

My wish to the families is that we could give them Christmas in the United States and get it resolved in the next few days. Perhaps that is possible. If not, we will revisit the issue when we come back in January.

The PRESIDING OFFICER (Mr. REED). The Senator from Oklahoma.

Mr. NICKLES. I congratulate and compliment my friend and colleague from Louisiana for her leadership in adoption, for the statement she just made. Adoption is an issue we have worked on in a bipartisan way, and we will continue to work in a bipartisan way. There are lots of families who are impacted both in the United States and worldwide. My colleague from Louisiana has done a very good job, and I am happy to work with her.

The story last night is heartbreaking. Many of our staff members have been working on these issues for a long time. I compliment her for it.

TERRORIST VICTIMS' COURTROOM ACCESS ACT

Mr. NICKLES. I also compliment Senator ALLEN for his leadership and passage of a bill a few moments ago that will allow closed-circuit TV viewing for the trial of the alleged terrorists. I compliment Senator ALLEN because I know he has a lot of constituents in Virginia and there are a lot of constituents in New York, New Jersey, and California who have a real interest in seeing that justice is done. By passing the authorization bill allowing for closed-circuit TV, he will do that. I compliment Senator ALLEN for making that happen.

UNFINISHED SENATE BUSINESS

Mr. NICKLES. Mr. President, we are getting close to wrapping up this session. We did a lot of good things this year and some things we didn't get done. One thing we did not get done was passage of the stimulus package. That is unfortunate. It became way too partisan. It did not need to be. Recessions are not partisan. We have a lot of people out of work who need help. A lot of companies want to grow. We could have done that.

Senator GRASSLEY worked hard with the Bush administration. There was a lot of movement on this side of the aisle to help pass the stimulus package. It didn't happen. I regret that very much. We could have helped the economy, and we could have helped a lot of unemployed people.

Senator BAUCUS mentioned earlier that he hopes when people come back they are less partisan and more intent on getting some positive results for the American people. That needs to happen. I hope we do not hear: Well, we cannot bring something out unless it passes two-thirds on our side. That does not belong in the Senate. The Senate is a deliberative body, and we should have a chance to try to pass things, and pass them by majority vote. Try to get something done, try to make a positive contribution toward helping the economy, not a strictly Democrat or Republican package, but a package that helps the economy.

The House passed good legislation last night. Not perfect. Maybe we can improve upon it and help our economy and help the unemployed.

As we wind down, there are several nominations that are pending that should be confirmed. It is not fair to this administration. It is not fair to some of these individuals who have been languishing, waiting to be confirmed with no action. There are five district court nominees, Federal judges. We have confirmed 27; if we do 5 more, that will be 32. During President Clinton's first year, we confirmed 27 of 47. President Bush nominated 60. We have confirmed 27, not quite half. We confirmed over half for President Clinton, and if you look at what we did for the first President Bush or what we did for Ronald Reagan, we confirmed 91 percent of Ronald Reagan's judges and a much higher percentage for President Bush. We should confirm more than we have today. There are five on the calendar. There is no reason not to confirm these individuals. We all know they will be confirmed. Why not let them go ahead and assume their duties?

We have a judge from Alabama, a judge from Colorado, a judge from Nevada, a judge from Texas, a judge from Georgia. We have judges from Democrat States and Republican States. Let's not hold these five individuals hostage. We can pass them tonight and I urge my colleagues to help do that.

We also have four U.S. attorneys, from Alabama, New York, Arkansas, and one from New Jersey. They need to be confirmed. They should be confirmed.

We have a couple of marshals who are pending. There is no reason why they should not be confirmed—actually just one marshal and one to be Chairman of the Foreign Claims Settlement Commission. Let's confirm these individuals. Let's do it tonight. Somebody says: Why are you doing it tonight? We confirmed more judges, more U.S. attorneys—all those are always done by voice votes.

We have Janet Hale to be Assistant Secretary of Health and Human Services. Secretary Thompson is entitled to have his Assistant Secretary for Health and Human Services be confirmed. So I urge my colleagues to vote on that nomination or to approve that nomination.

We also have a couple of other positions. We have James Lockhart III to be Deputy Commissioner of Social Security. That is an important position.

In the Department of Energy, we have Michael Smith, actually one of my constituents. He happens to be secretary of energy of the State of Oklahoma. He has been nominated to be Assistant Secretary of Energy dealing with fossil fuels. Secretary Abraham is completing his first year and he doesn't have his Assistant Secretary dealing with fossil fuels. We are now importing about 58 percent of our energy needs and he doesn't even have an Assistant Secretary dealing with fossil fuels.

One of the first bills we are going to be wrestling with next year is an energy bill. We have a commitment from the majority leader that we are going to take up energy early next year. That is great. You would think the administration would be entitled to have their Assistant Secretary to help the negotiations, to help prod Congress along. So I urge my colleagues to approve his nomination. He was reported out of the Energy Committee unanimously, as I believe Beverly Cook was, from Idaho, to be Assistant Secretary of Energy dealing with environment, safety, and health.

Also Margaret S.Y. Chu, of New Mexico, to be Director of the Office of Civilian Radioactive Waste Management, Department of Energy.

There is no reason why we cannot do most of these nominees. Most of these nominees passed by unanimous votes in the committees. Why can't we confirm these individuals?

I urge Senator DASCHLE and Senator REID and others to help.

There are a couple of others who are very important. The Department of State, John Hanford. John Hanford is an individual with whom many of us worked in the Senate for years. He worked for Senator LUGAR. He helped myself and others when we ended up passing the International Religious Freedom Act. Senator LIEBERMAN was a principal sponsor of that, and Senator SPECTER. The administration nominated John Hanford III, of Virginia, to be Ambassador at Large for International Religious Freedom. When you think of the battles we have going on all across the world with religious freedom, and some of it is in Afghanistan and some in Pakistan and some in Sudan where you have individuals who are held captive, imprisoned, enslaved because of their religion, wouldn't it make sense for us to get our Ambassador at Large for International Religious Freedom confirmed so he can go to work and help protect and promote religious harmony and freedom throughout the world? Hopefully, his nomination will be confirmed tonight.

We have several other people in the Department of State who were confirmed by the Foreign Relations Committee unanimously who should be confirmed tonight. Many of these were just reported by the committee, by Senator BIDEN. I thank him for doing that. I am looking at John Ong, who is to be Ambassador to Norway and John Price to be Ambassador Extraordinary to the Republic of Mauritius; Arthur Dewey, of Maryland, to be Assistant Secretary of State for Population, Refugees, and Migration.

Some of these, again, were just reported out. I thank my colleagues. We should be able to get those through as well, not to mention Gaddi Vasquez, of California, to be Director of the Peace Corps.

I mention these. These are not all. I did not mention Gene Scalia. I would really urge my colleagues—Gene Scalia has been on the calendar. He was nominated in, I believe, April, one of the earliest nominees of this administration, to be Solicitor of the Department of Labor. Secretary Chao is entitled to have a Solicitor. One of the most important positions in the Department of Labor is Solicitor. He has to make all kinds of rulings. It is very important that she have her Solicitor. I urge my colleagues, let's have a vote. If we cannot have it today, let's have it in January; let's vote up or down.

Somebody said we may have to file cloture. I can think of several people, including the previous Solicitor of Labor, to whom many on this side might have had a philosophical objection, but we did not require cloture. You should not require cloture on most nominees. You should not require cloture hardly ever on nominees unless they are really out of the Main Street. We had a vote on Joycelyn Elders and I opposed that nomination very significantly, but it was an up-or-down vote.

I think people are entitled to have a difference of opinion and have a debate. If we have a difference of opinion, let's discuss it. This is the Senate. But to not allow somebody to have a vote and hold their careers in limbo for an unlimited period of time, it is not fair to them, and I don't think it makes the Senate look very good.

Again, I urge our colleagues to move forward on Gene Scalia, to move forward on some of these other nominees,

many of whom, I hope and expect to be confirmed tonight. I hope they will. I urge the leadership on the Democrat side to work with us and see if we cannot clear up as many nominees as possible, confirm as many nominees as possible on the Executive Calendar.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

ECONOMIC STIMULUS

Mr. VOINOVICH. Mr. President, I rise to express my disappointment that the Senate did not have an opportunity today to vote on the White House and Senate Centrist Coalition compromise on the economic stimulus package to aid dislocated workers. I think the stimulus package, if passed, would have made a real difference for the American people. It would have helped individuals and families. It would have helped create jobs, or at least maintain jobs. And it would have responded to the needs of laid-off workers and their families.

Early this fall, when it became clear to me that our nation was in recession, I decided to get actively involved in developing and advocating a stimulus package. I recognized the package that was coming out of the House could not get through the Senate because it wasn't balanced. So I gathered together with my other colleagues in the Centrist Coalition. Six of us from the Coalition were the ones who really were the nucleus of it—I was one of them with OLYMPIA SNOWE and SUSAN COLLINS, and on the Democrat side there was JOHN BREAUX and two of my colleagues who were former Governors, ZELL MILLER, who was a former Governor of Georgia, and BEN NELSON, the former Governor of Nebraska.

We decided we would try to put something together that would be fair, and that would respond to the need to stimulate the economy, and at the same time, respond to the human needs that we see throughout this country. We wanted to try to work something out, and see if we could get something through Congress and particularly through the Senate.

We worked very conscientiously on that package. We finally were able to get the ear of the White House and got them to be part of this compromise package. Yesterday we were able to convince the leadership in the House of Representatives that it was a fair package, although a far cry from the package they had adopted. We had hoped that, somehow, miraculously, maybe, we would have had an opportunity to vote on that package in the Senate.

The Republican leader, Senator LOTT, talked about the fact that maybe during the period of time we are in recess, pressure will build up and maybe we will get a bill passed. Or maybe the pressure will not be out there and we will not need to pass a piece of legislation. However, I am here to tell you that this legislation is needed now.

This afternoon I met with about 50 steelworkers from Cleveland, OH, from LTV steel. That company is in bankruptcy. Their jobs are gone and they are displaced. They are petrified because they do not know how they are going to be able to take care of their medical costs. Their company had a health plan, but COBRA is no longer an option because the company is out of business. They are worried about how they are going to provide health care for their families. They will get their unemployment benefits, but they are really concerned about how to pay for their health care coverage.

I pointed out to them that the stimulus package the Centrist Coalition put together would subsidize their health care to the tune of 60 percent. They were pleased to learn that their was hope that someone would help them, that they could get insurance for their families to get them over this very difficult period. I can tell you: they are frightened.

I think so often when we talk about stimulus packages, we get caught up in the dollar amounts and we don't talk about real people. That is what this is about. For example, the rebate program that is in our stimulus package would provide help to some 38 million low-income workers who didn't qualify for rebate checks the last time around. Those rebates would mean $13.5 billion would go into the pockets of those individuals to help them with their problems. And I am sure it would help stimulate the economy because they would likely spend that money.

Some describe the reduction in marginal rates as an awful thing because of the fact that we would reduce the marginal rate from 27½ down to 25 percent. I would like to point out that we are talking about single people who make between $28,000 and $68,000, and married couples who make between $47,000 and $113,000. That is about one-third of the taxpayers in this country, some 36 million people, who would have benefitted if we had gone forward with these rate reductions. Between the 38 million beneficiaries of the rebate checks, and the 36 million who would benefit from the reduction in marginal rates, a total of 74 million Americans would have been able to take advantage of this package.

The thing I would really like to concentrate on is the part of this package that deals with health care. When we got started debating the stimulus package, the House passed a package that had something like $3 billion for health care. Likewise, the President's package had also had $3 billion. Our centrist package had $13.5 billion. The Democratic Finance Committee proposal was $16.7 billion. At the end of the day, the Centrist Coalition and White House compromise package had $21 billion in it for dislocated workers' health care, money for the States for national emergency grants, including $4 billion to the States for Medicaid funding.

Now I would like to talk about what we do for displaced workers.

First of all, we include an extension of 13 weeks of unemployment benefits—benefits that would be available to those who became unemployed between March 15, 2001, and December 31 at the end of next year. An estimated 3 million unemployed workers would qualify for benefits averaging about $230 a week. Those extended benefits would be 100-percent federally funded at a cost of about $10 billion to the Federal Government, so States wouldn't have to pick up the tab.

The bill would allow states to accelerate the transfer of $9 billion from State unemployment trust funds so they could distribute that money earlier than now possible. This transfer of money, which already belongs to the states, would help State treasuries, which are in dire straits today. This proposed advance would provide the States with the flexibility to pay administrative costs, provide additional benefits for part-time workers, adopt alternative base periods, and avoid raising their unemployment taxes during the current recessionary times.

Next, let us look at health care benefits.

The Centrist Coalition and White House compromise proposal includes $19 billion in health care assistance for dislocated workers.

It provides a refundable, advanceable tax credit to all displaced workers, who are eligible for unemployment insurance, for the purchase of health insurance—not just individuals who are eligible for COBRA coverage.

Individuals with access to health insurance through a spouse wouldn't be eligible and couldn't get the credit.

However, the credit is available to unemployed people who do not have access to coverage through COBRA, since their employers did not provide health insurance or their employer went out of business. Under this bill, these individuals would have been able to get a 60-percent subsidy of their health insurance costs without any cap on the dollar amount of subsidy.

The proposal also includes reforms to ensure that people have access to health insurance coverage in the individual market. If a person has 12 months of employer-sponsored coverage, rather than 18 months as under the current law, health insurers are required to issue a policy and not impose any preexisting condition exclusion. In other words, if someone has a preexisting exclusion for which they would ordinarily be disqualified from getting health insurance, this reform requires that they be able to obtain health insurance.

The Centrist and White House proposal also includes $4 billion in enhanced national emergency grants for the States which Governors could use to help all workers—not just those eligible for the tax credit. They could use this to pay for health insurance in both public and private plans. In other

words, we would be paying $4 billion out to the States so they can reach out and help people in their respective States who are not covered by some of the particular provisions in the stimulus package.

Last if not least, the centrist package provides a $4.6 billion, one-time grant to assist states with their Medicaid programs.

I worked with the National Governors Association and the Bush administration to try to get them to understand that the State governments are not like the Federal Government. States are in deep budgetary trouble because they have to balance their budgets every year. The money isn't there for them to take care of the many needs they face. This $4.6 billion grant would have gone out to the States to help them provide Medicaid for the neediest of our brothers and sisters. In many States they are going to have to cut Medicaid payments because they simply don't have the money since their State treasuries are in such deep financial trouble.

I hope my colleagues understand that this is not some kind of a game. We are talking about real human beings.

This morning at a press conference, one of the reporters said to me: I understand the problem with this stimulus bill is that the majority leader has a problem with the philosophy of it.

I said that this bill responds to most of the concerns that have been raised by my colleagues from the other side of the aisle.

Think about it. When was the last time Congress gave serious consideration to providing health care to unemployed workers? I don't ever recall such consideration before. But this time, we have been able to get a Republican administration and a Republican House of Representatives to consider providing health insurance to unemployed workers. That was a breakthrough in terms of dealing with the unemployed and displaced workers in this country.

I happen to believe that if this proposal had come from the other side of the aisle and not from the centrist coalition and the White House, many of my colleagues on the other side of the aisle would have been very much in favor of this proposal.

I am hoping, as we all go home and look into the eyes of the people who will come and see us because they have lost their jobs, and are panicked about health care for themselves and their families, that we start to understand we have an obligation to touch their lives. And to do this, the first thing we need to do when we come back to this chamber is pass a stimulus package that addressed the needs of unemployed men and women. We need to restore people's faith in their economy and restore people's faith that we do care about them.

The thing that really bothers me about our failure to pass a stimulus package, is that so many people anticipated we would do so. They really did. They were counting on us, as did the financial markets. I think from a psychological point of view, we have really done a disservice to the American people, particularly at a time when we are all going home to celebrate Christmas and the holidays.

What a lousy Christmas present we are giving to the people of America. Shame on us. I hope when we come back in January that we will make it up to them. They need our help.

I yield the floor.

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

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

THE HOUSE ECONOMIC STIMULUS PACKAGE

Mr. DASCHLE. Mr. President, when people become doctors they take the Hippocratic oath which, among other things, instructs them to ''First, do no harm.''

Maybe our Nation's leaders in Washington need to take a similar oath if they intend to operate on the economy.

Sadly, our friends in the Republican Party are steadfast in their insistence that we enact legislation that would harm our economy. Their plan takes more than $200 billion out of Social Security and uses it mostly for tax breaks for wealthy individuals and profitable corporations. It will do little to stimulate the economy, and even less for the millions of newly unemployed Americans. Their plan will not make the recession better, but it will make the deficit worse. This impasse is regrettable—and it was completely avoidable.

Immediately after September 11, it became clear that the attacks dealt our economy—which already was slowing—a devastating blow. We all agreed—Democrats and Republicans, House and Senate—that America needed an economic recovery plan. And Congress had a responsibility to pass such a plan.

We asked the best financial thinkers in the country, economic leaders, such as Chairman Greenspan and Secretary Rubin: What should such a package contain?

Their advice led to the development of a set of bipartisan principles for an economic recovery plan. Those principles were endorsed by the chairmen and ranking members of the Budget Committees in both the House and the Senate.

Rather than work together to develop a plan based on those principles, Republicans in the House chose to withdraw from bipartisan negotiations and pass their own highly partisan economic plan.

The experts we consulted told us that the problem with the economy right now is that corporations have too much capacity and that consumers have too little cash. That is it in a nutshell: Corporations have too much capacity; consumers have too little cash. So we developed a plan to address those problems.

The plan we put together included tax cuts for businesses that invest and create jobs in the near future. It had tax rebates for people who were left out of the first round and unemployment and health benefits for workers who have lost their jobs in this recession and as a result of the September 11 attacks.

Our plan did what economists say needs to be done—no more, no less. And it met the bipartisan standards agreed to by the budget leaders in both Houses.

Early this morning the House passed a far different plan. Their plan speeds up the tax cuts Congress passed last summer—months before the terrorist attacks. Their tax cuts give most of the benefits to the wealthiest individuals, and they will get those tax cuts not just next year, but the year after that, and the year after that, and the year after that. That is the first part of their plan.

The second part of the House Republican plan is to take the biggest corporations in America and give them billions of dollars in new tax breaks. Some profitable corporations would get permission not to pay taxes at all.

Under their plan, companies such as Enron would get hundreds of millions of taxpayer's money. Republicans are not proposing to do that for police officers, for firefighters, for postal workers. They are not proposing it for hard-pressed, hard-working families. Maybe it would help if they did, but they are not.

They are proposing it for the biggest corporations in America, with no strings attached. The corporations do not need to create a single job to get this gift. They can lay off workers and still not have to pay a dime in taxes under the Republican plan. That kind of plan does not help the economy, and it does not help workers.

Since September 11, nearly a million American workers have lost their jobs. Eight and a half million Americans are now out of work.

Often, the biggest worry when Americans lose their jobs is how to pay for their health care. The average cost of keeping health care coverage is half of the average monthly unemployment check, half of a family's total monthly income. That is why only 20 percent of workers who are eligible for COBRA coverage purchase it. Most simply cannot afford it.

The plan passed by the House provides an inadequate tax credit for individuals to buy health care, and it leaves many of them at the whim of the private insurance market.

Under their plan, health insurance will remain out of reach for millions of

laid-off workers. The credit would require a parent to spend, on average, a quarter of their unemployment check for COBRA coverage. For most individuals not eligible for COBRA, the price tag would be even higher.

One million displaced workers—part-time workers and recent hires—do not even qualify for assistance under the plan.

Survivors of victims of September 11 do not qualify for assistance under their plan. Employees, whose hours have been reduced and who have lost their health care as a result, do not qualify for their plan.

Their individual tax credit discriminates against older and sicker workers. An insurer can refuse to cover a sick worker, can charge exorbitant prices based on age and health, and can refuse to provide coverage for such basic needs as pregnancy, prescription drugs, or mental health.

All the worst practices of the insurance industry are fair game in their bill. What is worse, it would actually discourage laid-off workers from taking a new job. Under the plan passed by the House, the moment an individual goes back into the workforce, they lose their eligibility for the insurance premium tax credit.

Say a recently laid-off worker has a sick spouse; if he wants to go back to work, he can't because his new job may not offer health insurance for his wife. He would have to choose between freeing himself from unemployment and losing health care his wife needs.

That is their plan for health care. It gives workers insufficient help, and it discourages responsibility in the process.

On jobless benefits, Republicans say their plan extends jobless benefits for all laid-off workers. But it doesn't. More than half of America's laid-off workers held part-time jobs over recent hires. They paid into the unemployment system, but the House plan leaves them out.

A week ago, the whole world paused to remember the victims of September 11, but the House-passed plan forgets the economic victims of those attacks, and that is wrong.

Three days after September 11, we passed a $15 billion airline bailout package. Democrats tried to include help for laid-off workers in that plan. We were told: Now is not the time. There will be another chance soon. We are going to consider airline security. We can help workers then.

Reluctantly, we agreed to wait. We tried to include our package of help for workers on airline security. Again, Republican colleagues filibustered. Again, they said: This is not the time. We still need to pass an economic stimulus package. We will help workers then.

We took them at their word. We included jobless and health benefits for laid-off workers in our economic recovery plan. But instead of joining us, Republicans voted to kill our proposal. They said that helping workers is not an emergency. We have waited. We have compromised.

At Republican insistence, we dropped the measures to strengthen America's homeland security from our plan, even though we believe such measures are essential to restoring confidence in our safety and our economy. We said: We are willing to support larger tax cuts to let businesses write off more of their investment costs.

We also made a significant concession on health care. We believe the best approach is to provide laid-off workers with a direct subsidy to help pay for COBRA premiums. But in the name of compromise, we said we would be willing to move toward the Republican approach again and again. We are willing to adopt an employer tax credit as long as it will work and as long as it will pay 75 percent of health care costs. We even said we will discuss additional tax cuts, such as the Domenici payroll tax holiday, the charitable choice legislation, and others, as long as Republicans agreed to help workers. We made concession after concession after concession to try to get an agreement both sides could support and the President could sign.

We have been willing to compromise on every part of this plan. The only issue we couldn't compromise on was our fundamental principle: We could not support a plan that does not adequately protect workers or help our economy.

By insisting once again on a bloated package of tax cuts that lack real help for workers, the bill that passed in the House indicates that perhaps Republicans were never serious about achieving a negotiated compromise in the first place.

Instead of political theatrics, instead of writing another bill with no chance of passing the Senate, instead of finger pointing and casting blame, we need to come together and pass a real economic recovery plan. We need to pass a bill that helps the economy, helps workers, and meets the standards that we all agreed to at the beginning of this process. At the very least, we need a bill that first does no harm.

We may have missed our opportunity to get it done this year. If that is the case, it is regrettable. But we will again try. We will do all that we can to get it done early next year, as we should.

Mr. KENNEDY. Mr. President, it has been over three months since the terrorist atrocities of September 11. Since that day, the Nation's workers have been among the Nation's most respected heroes. They have come together in the face of new challenges, risking their lives in the rescue and recovery efforts, and in too many cases, losing their lives. Our hearts are heavy with those losses.

Our Nation's workers have come together, and the American people strongly support our efforts to give them the support and assistance they deserve. But our Republican colleagues in Congress have stalled our efforts to help these heroic workers. Senator DASCHLE proposed an effective and balanced plan to stimulate the faltering economy. It had a majority of support in the Senate.

The provisions had the support of the nation's most preeminent economists, including nine Nobel prize laureates. But our Republican colleagues refused to even debate it. They said it wasn't an ''emergency.''

Listen to what the economists say. They say the House Republican proposal ''will do little to assist a near term recovery and is likely to undermine growth in the economy.'' But also listen to what our values say, that we cannot abandon our fellow citizens in their time of need. If there is any lesson from the tragedy of September 11, it is this: that we are one American community, and the backbone of that community comes from average Americans.

Millions of members of that community are hurting today because they lost their jobs. Yet, our Republican friends repeatedly say no to the very actions that would help these families and strengthen our economy at the same time.

Democrats tried to negotiate in good faith, but Republicans have been unwilling to support any recovery package unless it contains tens of billions of dollars for new tax breaks for wealthy individuals and corporations that will jeopardize the nation's long-term fiscal health and threaten Social Security and Medicare. We cannot let Republicans hold laid-off workers hostage to these irresponsible and costly tax breaks.

Republicans have also refused to agree to a proposal to provide real health insurance to the victims of this terrorist attack and the current economic downturn. Instead, they offer only inadequate plans that leave workers with sky-high premiums for meager health benefits, and that leave behind the survivors of September 11 and many other of our most vulnerable workers.

The Democratic economic recovery proposal puts money in the hands of the people who will spend it immediately.

We strengthen unemployment insurance, and guarantee affordable health care to laid-off workers on the front lines of the economic battle. These workers deserve no less.

Every day that we fail to pass a stimulus package, we fail to help more laid-off workers. The unemployment rate is now 5.7 percent, a 33 percent increase since the recession began. Over 8 million Americans will start the year out of work, through no fault of their own. Millions of Americans are left with no paycheck and no golden parachute. We cannot accept a plan that fails these workers.

Health premiums can cost nearly $600 a month for a family—most of an unemployment check. That is why only

about one in five laid-off workers today continue their coverage, even if they are eligible. Our plan covers 75 percent of the health care premium for those who are eligible to continue their coverage, but can't afford the cost.

Some workers are not eligible for any continuing health plan. Our plan also allows states to cover these vulnerable workers. Taken together, our plan ensures that men and women who lose their jobs don't have to worry about losing their health insurance as well.

Our plan also provides fiscal relief to the States, which face serious budget shortfalls, yet must meet yearly balanced budget requirements. We increase Medicaid payments, so that States don't have to cut back on coverage, just as more workers need help. The head of the Republican Governors' Association, Governor John Engler, said without this plan, a stimulus package is ''robbing Peter to pay Paul, because States will have to cut critical services, stifling the positive effect of any stimulus measures enacted at the federal level.''

Our Democratic plan assures 13 weeks of extended unemployment benefits for laid-off workers.

The current recession is already 9 months old, and the two million workers who have run out of unemployment insurance benefits should not have to continue to wait for our help.

Our plan also makes part-time and low-wage workers eligible for unemployment benefits. In 1975, on average, 75 percent of unemployed workers received unemployment benefits. Last year, the figure was only 38 percent. Expanding coverage to include part-time and low-wage workers will benefit more than 600,000 more of those who have been laid-off, and it will also provide additional economic stimulus.

In addition, our plan supplements the current meager level of unemployment benefits, which do not replace enough lost wages to keep workers out of poverty.

In 2000, the national average unemployment benefit only replaced 33 percent of workers' lost income, a steep drop from the 46 percent of workers' wages replaced by jobless benefits during the recessions of the 1970's and 1980's.

During an economic crisis, unemployed workers have few opportunities to rejoin a declining workforce. They depend on unemployment benefits to live. Adding $150 a month to unemployment benefits will stimulate the economy and help these laid-off workers support their families while they look for a new job.

While Democrats have been negotiating an economic recovery package in good faith, the House Republicans pulled the rug out from under those negotiations. They walked away from the negotiating table, made harsh personal attacks against our Democratic leader, and brought a separate Republican bill, largely a repackaging of the previous bill—back to the House floor.

The latest GOP plan is not an effort to stimulate the economy or help workers. It is a Republican game of political hot potato, to avoid blame. They do not deserve credit for a misguided plan that does nothing for the economy and nothing for workers.

The latest House Republican bill fails the economy. It fails the states, which are struggling to balance their budgets. It fails the millions of workers who have been laid off through no fault of their own and are struggling to keep a roof over their families' heads and food on their tables.

What it will do is blow a deep hole in our economy, estimated at $250 billion, adding to deficits already expected next year. All of it will have to come from the Social Security Trust Fund.

Our Republican colleagues are more concerned about helping wealthy corporations and individuals than about stimulating the economy or assisting laid-off workers. The new House Republican bill continues to gut the corporate Alternative Minimum Tax. They refuse to offer any true help for workers, but wealthy corporations will receive a promise that they won't have to pay any income tax in future years.

The Republican bill also provides new tax reductions for wealthy individuals. Only the top quarter of American families will receive any benefit from these rate reductions and only the top 4.4 percent will receive the full benefit.

The House bill also maintains a 30 percent bonus depreciation over the next 3 years, even though nobody believes the recession will last 3 years. With no incentive for immediate action, companies will not invest, now when the economy is weak. Instead, they will get windfalls in later years.

At the same time, states will suffer revenue losses for the full 3 years of this proposal, on top of the $35 to $50 billion budget deficits they are already facing.

The Republican bill drains money from States, but it provides little fiscal relief. Since states must balance their budgets even in recessions, the Republican plans will force still-larger budget cuts. These losses in revenue will almost certainly result in deep cuts for Medicaid, education, and other vital State and local services.

The Republican bill clearly shortchanges workers. It does little to provide unemployment benefits or affordable health care for laid-off workers.

Perhaps the best and purest form of economic stimulus is to increase unemployment benefits for families, because they are sure to spend it quickly.

Yet, the unemployment insurance provisions in the bill passed by the House do not accomplish nearly enough. The bill leaves out hundreds of thousands of low-wage and part-time workers who have paid into the unemployment fund, but are not eligible for benefits under it.

The Republican plan fails to raise the meager level of benefits, which currently replace half or less of an individual's lost wages. A few weeks ago, the chairman of the Ways and Means Committee proposed temporarily suspending income taxes on UI benefits as a way of raising these meager benefits. That step would be slower and less inclusive than a benefit increase, but at least it acknowledged that we need to raise benefit levels. However, even that tax suspension has been dropped from the latest Republican bill. Instead, that bill provides funding for unemployment insurance that will most likely be used for employer tax cuts, and to boost trust fund reserves instead of worker benefits.

The Republican health proposals are also an empty promise to millions of Americans. Their plan leaves out hundreds of thousands of unemployed workers. It excludes the survivors of the September 11 attack. It excludes low-wage and part-time workers. Even for those are eligible, it provides an inadequate subsidy that most workers can't afford to use.

The Republican plan leaves deserving Americans who are not eligible for COBRA to the flawed individual insurance market which charges thousands of dollars for inadequate benefits. Their plan does not prevent HMOs and insurers from discriminating against sick and older workers, or from charging unlimited premiums.

In these difficult economic times, it is wrong to ignore the needs of working families. It is wrong to repeatedly help our Nation's most prosperous firms, while ignoring the needs of millions of workers.

It is wrong to tell workers, who have been laid off that they don't deserve unemployment benefits. It is wrong to tell hard-working men and women that the price they must pay for the terrorist attack is to go without the health care they need and deserve. It is wrong to offer only an empty promise with unlimited premiums. It is wrong to enact a stimulus plan that says yes to the greedy and no to the needy.

It is time to end the suffering of the millions of families who have lost jobs and health insurance in this economic downturn. It is time for Congress and the President to listen to the voices of working families, instead of powerful special interests.

Over the past 3 months, Congress has acted to help affected industries receive the assistance that they need. Businesses have also received stimulus after stimulus from the Federal Reserve which has cut interest rates 11 times. But business clearly has excess capacity today. Providing more benefits to business is not what will help this country recover most effectively.

Economic recovery will come best and quickest helping unemployed workers pay for their groceries, their mortgage and their health costs. We reject the Republican proposals, because we cannot accept a plan that fails so many millions of workers. We owe it to all the Americans who have lost their jobs to provide the support they need and deserve, and to provide it now.

Mr. ALLARD. Mr. President, at the beginning of this year we passed a series of tax cuts. This was a strong action in favor of hardworking Americans. With the recent slowdown in the economy, we must again act, and act quickly, for the American worker. Historically, Congress has failed to act quick enough to provide economic relief when it is needed. Let us not repeat this error. It is imperative that we now take this opportunity to act in unison to provide the American people with the assistance they deserve.

Several economic stimulus packages have been proposed. The House has recently passed a stimulus package that I feel will give the economy a much needed boost and provide dislocated workers with the temporary assistance they require. I, as well as many of my colleagues, have some reservations about certain items contained in this package. But for the sake of the economy and the American worker we must take quick and decisive action now. Overall, this stimulus package is a positive and much-needed step in the right direction.

We must provide aid to dislocated workers. In times of a slow economy, many hardworking Americans are forced from their jobs through no fault of their own. It is of the utmost importance that we provide the support these hardworking Americans deserve. This package provides around 20 billion dollars in aid to these displaced workers, which includes a measure that will provide a 13 week extension to unemployment benefits, supporting American individuals and families in their time of financial hardship. This also provides support to Medicaid. This assistance is a temporary and much needed helping hand to those whose families and way of life are currently threatened by the recent economic downturn.

When we have taken care of these dislocated workers, we must look forward to what lies beyond the realm of short-term relief. History has shown us time and time again that overall economic growth is one of long term planning. Here we have the opportunity to provide the economy with a short and long term boost via a 10 year investment stimulus package. This would provide almost $160 billion worth of support, through the year 2011, to small businesses and taxpayers. This package calls for increased tax cuts for individuals, $60 billion of tax relief in Fiscal Year 2002 and $112 billion over the next 10 years. This package will provide health care tax credits so that displaced workers and their families do not go without medical coverage. Furthermore, this package provides increases in investment opportunities and net operating loss flexibility for small businesses.

This package, aptly named Economic Stimulus and Aid to Dislocated Workers, is a good start. In the future, we will need to return to these issues. We will need to provide more incentives for long term economic growth and development. But our immediate action on this package is crucial. We must act now, we must pass this stimulus bill before Christmas, because this is what the American people need and deserve. I have commended my colleagues on the passage of the education school reform bill; a bill that leaves no child behind. We must now ensure that American families, workers, and the temporarily unemployed are not left behind. The President proposed an economic security package in October. Now I stand before you in December and tell you that the American people can wait no longer. We must support our economy and our unemployed workers now. I humbly ask my fellow Senators: Put aside your differences and vote in unison for the economy, for hardworking displaced Americans, and for the American family.

Mr. KERRY. Mr. President, at a time when so many Americans are out of work, with out Nation at war and with, appropriately, calls for national unity, I regret to say I have to come to the floor to address what I feel is the ultimate breakdown on unity. Rather than delivering a responsible stimulus package that is targeted and temporary, my colleagues on the other side of the aisle have been working overtime to turn a legitimate policy debate into a personal exercise in demonization. They have worked hard to turn a battle of ideas into a battle of name calling. And their focus has been our leader TOM DASCHLE. They have called him obstructionist—partisan—divisive—and worse.

Now let me make clear for the record, I'm not worried about TOM DASCHLE. He's tough and resilient like the South Dakota prairie. He won't buckle, he won't shrink from their charges, and TOM DASCHLE knows that truth wins out in the end. He knows that what a different wartime leader, Abraham Lincoln, said is still true: ''If the end brings me out all right, what is said against me won't amount to anything. If the end brings me out wrong, ten angels swearing I was right would make no difference.'' By that measure, TOM DASCHLE will do just fine. But let's be honest. This really isn't about TOM DASCHLE. It's about a Republican Party that knows their agenda won't stand up to the light of day and so they need to make the debate about something else.

Can't pass drilling in an Arctic Refuge on its merits? Then do it because you're patriotic. Can't do that? Attach it to a ban on human cloning. Have that cynical effort rejected almost unanimously, then just blame the Democratic Leader. Can't ram backloaded, retroactive corporate tax giveaways through Congress while ignoring workers? Well, that must be because TOM DASCHLE is a partisan. Better to demonize the Democratic leader than acknowledge that your stimulus bill is unacceptable because it won't stimulate the economy. Better to attack TOM DASCHLE than admit that your bill is an insult to the working, everyday Americans who've been honored in words countless times since September 11th but insulted by the first so-called stimulus bill that the Republican House passed by one vote. Then, Senate Republicans prevented a vote on a balanced package put together by the Fiance Committee.

Now, the House is set to vote on a supposed ''bipartisan compromise''—''bipartisan'' because it may likely get 51 or 52 votes here in the Senate. But it is not a stimulus bill. It's a tax cut bill that will spend $211 billion over the next five years, with more than half of that cost coming after 2002, when the administration believes that the economy will have already recovered. A ''bipartisan'' bill is not one that barely gets enough votes for passage. A bipartisan bill is one like the education bill we passed yesterday, which received 87 votes. We were statesmen when we passed—almost unanimously—an emergency spending bill, a use-of-force resolution, a counterterrorism bill, an airline industry bailout, and an airport security bill that will make the skies safer for millions of Americans. But in a Senate as closely divided as this one, to call a bill ''bipartisan'' that gets two or three Democrats to vote for it is laughable.

There are still other ways in which statesmanship can be exercised. Statesmanship can be resisting bad ideas that take advantage of national emotion to do unacceptable special interest favors for a favored political constituency. That, regrettably, is what the Republican stimulus bill is all about, although they will tell you it is for workers. But they do nothing to expand unemployment insurance to the many thousands of laid-off workers who are not currently eligible for benefits, and their ideas for health care simply will not work. And so we find ourselves divided—not because TOM DASCHLE is an obstructionist, but because a decades-old partisan agenda which was on its last legs before September 11th has been revived under the guise of economic security. Average Americans are being denied unemployment insurance and health care because Republicans want to hold out for more for those who are doing fine as it is. So we have an impasse—we are fighting for everyone to be treated fairly—they're fighting to reward those already rewarded with no guarantee it will be spent or invested in a way that has any immediate stimulative impact on an economy that needs it. No wonder they'd rather just attack TOM DASCHLE—it is easier than dealing in the truth and moving this economy forward and helping America's workers.

It doesn't need to be this way. In early October, three weeks after the terrorist attacks, Democrats and Republicans in the House and Senate agreed to a list of bipartisan principles for stimulus. These included the belief that the package should be temporary,

help those most vulnerable, impact the economy quickly, be broad-based, and include out-year offsets. The Republican leader of the Ways and Means Committee in the House abandoned those bipartisan negotiations in order to push through his own partisan package by one vote. It is his truculence, and the insistence of the Republicans that we reduce the corporate Alternative Minimum Tax and cut individual tax rates even more than we did in June, that have led directly to the situation we find ourselves in today.

Mr. President, 700,000 Americans lost their jobs in October and November alone. The unemployment rate is not at 5.7 percent. The country is at war, we have an economy in negative growth, and we are on the verge of returning to an era of deficits after finally putting our fiscal house in order. We should not be passing large, permanent tax cuts unless we can be certain that the cuts will have a stimulative impact. The tax cuts proposed by most Republicans would not have that effect, since most of the costs occur after 2002. Again, this is not a stimulus bill—it is a $200 billion tax cut disguised as a stimulus bill. I still hope that the Senate can work to develop a bipartisan agreement, and I commend my leader for his continued efforts. We owe it to working Americans everywhere to pass a responsible bill. We know that a real stimulus bill should contain some tax relief for businesses, provided that it will help spur new investment or address temporary cashflow concerns. We know that we should provide some temporary tax relief to those families who are likely to spend the money, thus helping generate some additional demand. We know that we need to help unemployed workers make ends meet, and make sure that they don't lose their health insurance as a result of the ripple effects from the terrorist attacks of September 11th.

And we know that we need to temporarily offset some of the impact of the current downturn on the states, by increasing the federal Medicaid matching rate, or FMAP. Let's be clear: Laid-off workers cannot contribute to economic recovery. The answer is not to sit back and wait for economic benefits to trickle down to workers already thrown off the job. Instead we must invest in health care, unemployment insurance, and worker retraining to help put money in their pockets and bring dislocated workers back into the economic mainstream of this country. We need to do that even if we can't agree on how to boost the economy through tax cuts. That's why I introduced the Putting Americans First Act, to take these worker protections out of the stimulus debate and provide a guarantee of immediate relief for those who have been hurt by the economic recession. The legislation would empower the states to expand unemployment compensation and health insurance coverage and provide help to states in which welfare caseloads are sharply increasing.

Common sense and common decency tells us now is not the time for a corporate grab-bag of tax cuts, or for revisiting a debate about future marginal tax rates—particularly when these rate cuts would do nothing for more than three-quarters of the population. It is incumbent upon us to act in the best interests of our country as a whole, not in the interests of a select few. All Americans want to see this economy get moving again, and no Americans want to see this country begin a new chapter in our history where we hold back health insurance and unemployment benefits in tough times because Democrats won't agree to further permanent tax cuts.

Let's put things straight and meet the objectives of the American people and not the objectives of an ideological minority, and let's stop demonizing those who disagree with us. We owe the American people better than what they have been given at one of the most important times in our Nation's history, and it's time the Congress delivered.

Mr. HUTCHINSON. Mr. President, there is no question that we are now in the middle of a recession. Even before the terrorist attacks 3 months ago, economic growth had slowed dramatically and unemployment was rising. Since September 11, the number of payroll jobs has declined by an average of 314,000 per month, unemployment has increased by an average of 392,000 per month, and consumer confidence is at its lowest level in 7 years.

In response to their pessimistic mood and uncertainty about the future, consumers stayed away from shopping centers and retail sales fell by 2.4 percent in September, the largest one-month drop since 1987. In Arkansas, more than three-fourths of employers indicate they have no plans to expand in the next 6 months, whether by adding jobs, making capital investments, or seeking new business opportunities. On October 5, the President publicly urged Congress to send him an economic stimulus package that encourages consumer spending, promotes business investment, and helps dislocated workers.

The House of Representatives has now twice passed economic stimulus legislation. I ask you, Mr. President, how many more Americans have to lose their jobs? How many more businesses have to file for bankruptcy? How many more families do we have to see turned away from their own doctor's office because their medical insurance has run out before we put petty politics aside and do something to help those that so badly need our help.

I have received hundreds of letters, e-mails, faxes, and phone calls from people all over my home State of Arkansas, as I'm sure have all of my colleagues, from people who need our help and need it now. Take for example an e-mail I recently received from a constituent in West Memphis who wrote:

I am one of the 450,000 Americans who were laid off before the September 11th attack, and I am going to need extended unemployment benefits.

My plant in Forrest City is in the process of closing. My last day was July 27. Since then, I have spent several hours a day trying to find another job. Things are tough right now. Plus, I have another problem—I am a few years away from retirement. I'm too young to retire but too old to get another job. I know that age discrimination is against the law (wink, wink), but the truth is that not even the government will hire a sixty year old.

In a couple of months, my $300 a week unemployment will run out. When that happens, I will have to dip into my retirement funds—if there's anything left by then—to pay the bills. An extension of benefits will help some, and would be appreciated. What I want more than government help, however, is a job.

If your staff knows of agencies, websites, etc., which specialize in senior jobseekers' need, I would appreciate knowing about them. I have a lifetime of knowledge and experience to offer a company, and I have kept up with the latest philosophies of manufacturing, as well. There are just more people than jobs right now.

This is NOT how and when I expected to retire!

Best Wishes—Mike

Some simply write and say: ''Please, I urge you help get an economic recovery bill passed now.''

While each person has their own individual story to tell about the effects this recession is having on them, they are all saying the same thing: We need help now! We don't have time for you to play politics with this one. People's lives and livelihoods are at stake.

One of, quite possible, the only good things to come out of the horrific terrorist attacks that occurred on September 11th is that we saw, even if for a limited time, real bipartisanship occur here on Capitol Hill. Well guess what . . . the American people saw bipartisanship in action and now expect it, and deserve it, every day. Bipartisanship was once a word that was only spoken by those in political office. It is now being used by nearly every person that contacts me. We need to listen to these people and do what they sent us here to do. We need to work together today, not a month from now, and send to the President an economic stimulus package before we go home for the year.

A constituent of mine recently wrote me and said: ''Please quit bickering and pass an economic stimulus package. Senators, it seems that the 'ball is in your court'. Thank you, and God Bless America.'' I think he summed it up rather nicely.

Mr. President, the ball is in our court, and we need to do something with it. We need to pass an economic stimulus package today.

Mr. ROCKEFELLER. Mr. President, I rise today to express my serious disappointment that we could not reach agreement on a stimulus package that would both help America's workers and encourage immediate business investment to strengthen our economy. I intend to keep fighting for real help for the workers who have lost their jobs

and need health care coverage until they get the assistance they need.

I think an economic recovery package is still important work to do. Had my Republican counterparts been willing to stay at the negotiating table and keep talking, I would not have left my post until we reached agreement. As a conferee on this unique Leadership Conference, I am especially disappointed that our work was abandoned by the Republican Leadership.

Unfortunately, the House Leadership chose to walk out on the tough work of negotiation and move a partisan bill that includes numerous, multiyear tax cuts for corporations and for the wealthiest Americans. The House bill would do little to actually stimulate our economy and would not provide real health care coverage for workers in need of meaningful assistance to retain their health insurance.

Moreover, from what I can learn of the legislation which passed just hours ago, it will have significant costs after 2002, as much as $67 billion. That means substantial deficit spending to finance corporate tax relief and additional tax cuts for the top 25 percent of all taxpayers. Nearly 80 percent of West Virginia taxpayers would not get a dime from the tax rate changes proposed by the House Republicans, and to add insult to injury, their payroll taxes would pay for the corporate tax breaks. I cannot support raiding billions of dollars from the Social Security and Medicare Trust Funds.

Nearly a million people have lost their jobs in recent months as a result of the economic downturn that was exacerbated by the September 11 terrorist attacks on our Nation. Those families deserve the help that the Senate Finance Committee package provided, substantial help to pay for health insurance that they can count on and a temporary extension and improvement of unemployment benefits, which includes improved benefits and makes part-time and low wage workers eligible. Unemployed Americans deserve access to affordable health care and to unemployment benefits as they seek new employment.

I deeply regret that the House Leadership conferees could not, or I should say, would not, accept the Senate's worker package that provides immediate, but temporary health care coverage for displaced workers and extended and improved unemployment insurance. The House approach on health care was inadequate and unworkable. It would not have guaranteed health care coverage to a single solitary worker. It failed to include needed reforms to the insurance market to make insurance affordable, or to ensure that a decent benefit package was available.

I am deeply frustrated that the Republican conferees wanted to leave workers at the mercy of the insurance industry. Under the House bill, workers would have had to, on their own, seek affordable coverage on the current, failed individual market, armed with limited resources and zero leverage. Older and sicker workers would have been left entirely out of luck with that kind of approach. I am frustrated that House Leaders insisted on promoting their ideology over existing programs that could have been used to provide reliable health care coverage to workers who need it.

I believe our economy would benefit from additional stimulus in the form of 1-year business incentives and additional individual tax cuts for those taxpayers who were left out and did not benefit from the rebate checks last summer. I believe we could have come together on a package that would have helped workers even as it provided business tax cuts like bonus depreciation and expensing for small businesses. We could have helped many businesses who are having a hard time in this economy by extending the carryback period for net operating losses, NOLs. I also firmly believe we could have reached accommodation on the issue of AMT relief, if only the House Leadership had been willing to accept real health care and unemployment coverage as part of the package.

But the House chose to move forward with a plan that consists primarily of tax cuts, not help for the workers who have been promised for months, promised by both the President and Congress, that we would attend to their needs after the tragedy of September 11. Instead, the House bill's cost over both 5 and 10 years is over 90 percent tax cuts. Less than half of those tax cuts would come in 2002 because it is a back-loaded plan, not the temporary stimulus measure Congress and the President had mutually agreed was the goal of a stimulus package. Common sense tells us that tax cuts in 2003 don't stimulate the economy during our current downturn. There is strong evidence that the House's proposed tax cuts to higher income individuals would not stimulate the economy in the out years, either, because wealthier individuals tend to save rather than spend.

Finally, the House bill does not sufficiently address the desperate financial conditions of the States, or the fact that some of the business tax provisions in the bill will actually mean the States lose billions in revenue. The House bill, as far as I can estimate, does not even offset those costs. States are facing a collective, roughly $50 billion deficit, and experts believe the House bill will cost States. Estimates are that West Virginia alone could lose $35 million in State revenues because of policies embedded in the House Republican package. That means West Virginia and other States would be more likely to cut health care to the poor and other low income programs just when the economy makes the programs most essential.

In sum, workers did not get the help they need or deserve from the House Republicans' bill. They did not get the consideration they deserve from the House Republican Leadership. And some useful business tax incentives, that combined with additional assistance for the unemployed, could have effectively stimulated our economy, won't pass this year.

I had hoped we could have put our partisan and ideological differences aside to speed relief to workers and our ailing economy. I will not give up until we help the people who are waiting to get their fair share of Federal assistance, just as other sectors of our economy have been provided with Federal aid in this unusual time.

Today, in an effort to at least provide a short-term extension of unemployment benefits to workers on the verge of running out of assistance and facing the holidays, the Senate Majority Leader asked unanimous consent to take up and pass a 13-week extension of existing unemployment benefits. He asked for a one-time, 13-week extension of existing benefits, no benefit improvements, no expanded eligibility, just a straight, short-term extension.

The Senate Republican Leader objected to that request, despite the fact that we have frequently extended these unemployment benefits in the past. That tells you something about why the stimulus conference did not produce legislation. American workers are still waiting for the help they need.

2001 IN REVIEW: A SENATE (MOSTLY) EQUAL TO THESE HISTORIC TIMES

Mr. DASCHLE. Mr. President, we are all tired. This has been a long day in what has been a long week and a long session. But before we go our separate ways for the holidays, I want to thank my colleagues for the support and kindness they have shown me during my short time as majority leader.

I thank our staffs, the many hard-working men and women who enable us to do our jobs—from the Capitol Police to the Official Reporters who transcribe our debates, the people in the cloakroom, the people who serve our meals, the doorkeepers, the pages, and so many others. The public may not know their names, but we know the Senate could not function without them.

On a very personal note, I want to say a special word of thanks to my own staff. In the last 3 months, they have experienced the horrors of September 11 as we all did, but they have undergone an additional challenge few of us ever have, or will, face.

Two months ago my staff, along with members of Senator FEINGOLD's staff, and law enforcement officers, were exposed to lethal levels of anthrax when a letter containing that deadly bacteria was opened in my office. I am pleased to report that they are all healthy today, and I am proud to say that they have continued to work throughout all of this time.

They are victims of terrorism. Yet they have spent the last 2 months dedicated to the effort to protect the rest of America from a truly similar fate. Their courage and their grace is truly heroic and a source of inspiration to me.

They are extraordinary people who have endured extraordinary circumstances. I could not be more proud of them.

We started this year appropriately in unusual circumstances. For 17 days between the day this Congress was sworn in and the day President Bush was sworn in, Democrats held the majority in the Senate. I joked back then that I intended to savor every one of my 17 days as majority leader. As it turns out, those days were just a preamble.

For nearly 6 months now, I have again had the rare privilege of serving as majority leader of this Senate. While I can't say I have enjoyed every day of these last 6 months—our country has experienced too much sadness for that to be true—I am honored to have had the chance to work with all. I am proud of much of what we have been able to achieve together.

We made history this year, not just once, but over and over again. It was a year ago this month that the Supreme Court issued its ruling—the first time in history that the Supreme Court had intervened to settle a Presidential election. We started this Congress last January as the first 50–50 Senate in our Nation's history. Some observers predicted we would never be able to agree on a plan to divide power fairly and efficiently, but we did.

Then in late May, Senator JEFFORDS made his historic and extraordinary decision to leave his party and become the Senate's only officially Independent Member. Never before had majority control of the Senate changed on the basis of one Senator's decision. Again, we made history, and we made it work.

Then came the horrific morning of September 11. Even now, more than 3 months later, it is hard to imagine the magnitude of that loss. If you read one name every minute, it would take more than 3 days to read the list of all those who died on September 11.

A little more than a month later, the anthrax letter was opened in my office. The Hart Building became the site of the largest anthrax spill anywhere, ever, and the largest biological weapons attack in our Nation's history.

More than once during these 6 months I have found myself thinking about the words of America's second President, John Adams.

In 1774, John Adams wrote in his diary of his concerns over the quality of the members of the Continental Congress, ''We have not men for these times,'' he worried. ''We are deficient in genius, in education, in travel, in fortune, in everything.''

That is how our Founders saw themselves: deficient in almost every way. Yet they went on to create the world's greatest experiment, now the world's oldest democracy.

I suspect we have all wondered, at least once or twice since September 11, whether the men and women of this Senate are equal to these times. It would be hubris not to wonder.

As this year ends, we can take some pride knowing that we were largely equal to our times.

In the days following the attacks, we demonstrated greater unity than I have ever experienced in my years in Congress. We worked with each other, and with the President, for the good of the Nation.

We gave the President the authority to use force to defeat terrorism.

We gave law enforcement new tools and authority to pursue terrorists.

We passed billions of dollars in emergency aid to help the communities and families and business devastated by the attacks of September 11th rebuild and recover.

We also passed legislation to keep the airlines flying—and to make airports safer.

Those measures will help our nation recover from the terrorist attacks, and help prevent future attacks.

We also passed other important measures.

Earlier this week, we sent the President a new, bipartisan bill to strengthen America's public schools. The new No Child Left Behind Act marks the first major overhaul of our Nation's education system in more than 35 years.

It is a blueprint for real educational progress that includes good ideas from both parties. More importantly, it reflects the experiences and the needs of America's schoolchildren, parents, teachers, employers and many others who care deeply about America's schools.

We can all take some pride in having been a part of those bipartisan successes.

At the same time, we must acknowledge, there have been occasions on which we were not equal to our times. There have been too many instances when partisanship has prevented us from doing what needs to be done. That is deeply regrettable.

We should have passed a genuine economic recovery plan to lift up America's economy and help laid-off workers. In the first weeks after the terrorist attacks, we worked together to craft such a plan. Even after Republican leaders walked away from that bipartisan effort, we continued to try to reach out to them.

We compromised repeatedly on the details of our proposal—all to no avail. In the end, we could not accept a plan that takes $211 billion out of Social Security and gives most of it, in the form of tax cuts, to the wealthiest individuals and corporations in this country. And our colleagues would accept no less.

We should have passed a farm bill this year.

We talk a lot about families that have fallen on hard times in the last year, especially those who are economic victims of September 11. And we should be concerned about these families.

But what about America's farm and ranch families? The recession didn't start two quarters ago for them. They have been battling near-Depression conditions in the farm economy for years now.

Prices for many commodities are lower today than any time since the Government started keeping records, back in 1910.

If you don't know who these families are, come to South Dakota. You'll see: they are some of the hardest-working people in this country. And they need our help.

We didn't pass a terrorism insurance bill.

We didn't finish work on the Patients' Bill of Rights. It is stuck in a conference committee—along with campaign finance reform.

We didn't increase the minimum wage.

We didn't pass real election reform to protect the right of every American to vote and have that vote counted.

As we leave for the holidays, I want to say to my colleagues, and to the American people: We recognize that these are critically important issues. They will not go away. When this Senate returns next year, these are among the items that will top our agenda.

Senator STABENOW spoke earlier today about an idea some of her constituents proposed to her. They suggested America create ''living memorials'' to the victims of September 11. These ''living memorials'' would take the form of community service projects. Through them, the love and courage of the people who died on September 11 will continue to live on.

It is a beautiful and fitting way to remember the victims. I encourage all of my colleagues to support it.

But there is perhaps an even more fitting way for us to remember the victims of September 11. We must recapture the spirit of bipartisanship that allowed us to accomplish so much together in the first weeks and months after the attacks.

The rescue workers did their job.

The firefighters continue to do their job.

We must put aside the partisanship and do our job.

Again, I thank my colleagues for what we were able to do together this year. And I wish them, and the American people, a peaceful holiday season.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, I ask that I be allowed to speak for about 20 minutes.

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

ENERGY

Mr. MURKOWSKI. Mr. President, I very much appreciate the remarks of the majority leader. He indicated that we should have passed a farm bill. We should have passed an energy bill as well, Mr. President. Unfortunately, the majority leader did not mention that.

I think it is fitting to once again discuss the priorities that were laid before this body by our President—trade promotion, stimulus, energy legislation.

So as we look at where we are in the Senate today, clearly, we have not been responsive to our very popular President, nor have we been very responsive to the Nation. Indeed, we labored several days on the farm bill. Some have suggested that perhaps it is easier to address the extended benefits associated with that farm bill than the realities associated with our increased dependence on foreign oil.

As I look at the session we have just completed, I think many of my colleagues would agree that as we look at the completion of the year and the realization that we are coming back next year, we should review in some detail just what progress has been made relative to the priorities that were laid by our President before this body.

When this Congress began, I introduced a comprehensive bipartisan energy measure with the senior Senator from Louisiana, Mr. BREAUX. Later, the ranking member of the Energy Committee, Senator BINGAMAN, along with Senator DASCHLE, introduced legislation that touched on many issues that were covered in our bill. That was March.

Shortly thereafter, Senator DASCHLE indicated that those problems, and more, demonstrate the overwhelming need for a new and comprehensive energy policy. America is faced with a grave energy policy that will get worse if we do not act. Prior to the Memorial Day recess, the Committee on Energy and Natural Resources had almost completed its hearing schedule and we were discussing dates to mark up comprehensive energy legislation. Again, the majority leader was supportive. On May 16, he stated:

> The problem needs comprehensive attention and the problem needs bipartisan solutions. We are concerned about the lack of consultation to date. There has been none. There doesn't appear to be any real sense of urgency here.

I find that a rather curious statement since the only bipartisan measure remained one that I had introduced with Senator BREAUX of Louisiana, and I was receiving complaints about how aggressive was the hearing schedule we were holding.

In May, we received the administration's comprehensive national energy policy, and both the Senate and the House began to prepare for debate on comprehensive, bipartisan, national security energy legislation. We were pressured, perhaps, because the House had done its job. It had reported out its bill, H.R. 4, the energy bill. I stated that I was committed to bringing a bipartisan measure out of the Energy Committee in time for the debate prior to the July 4 recess.

Then, of course, we had a little change of control here, and our current majority leader didn't seem quite as anxious or concerned with energy legislation. The Committee on Energy and Natural Resources, rather than proceeding to a markup, either on my bipartisan measure or the new chairman's more limited bill, suddenly began to repeat hearings—in one case, hearings from the same witnesses who had appeared before us only a few weeks previously.

The majority leader still indicated a willingness to proceed even if it did not have the same sense of urgency. So on July 31, the majority leader stated:

> The Democratic caucus is very supportive of finding ways with which to pursue additional energy production. I think production has to be part of any comprehensive energy policy.

This was encouraging since the only bipartisan bill that I had introduced included significant domestic production.

In retrospect, we all should have known that when the majority leader got around to finally introducing energy legislation, as he did several weeks ago, the only production that he would be supporting would be, evidently, foreign production from Iran and elsewhere in the OPEC nations, and the only jobs and economic stimulus created would be in Canada, as he indicated support for a pipeline, not specifying the route and as a consequence, obviously favoring the alternative in Canada, which is very much opposed by my colleagues, Senator STEVENS, Representative YOUNG, and the Governor of the State of Alaska.

My point is, in their legislation they left the route selection neutral, and this is the one favored by the Canadians. On August 1 and 2, the Committee on Energy and Natural Resources finally began consideration of research and development provisions of energy legislation. The majority leader even announced on August 1:

> There is a great deal of interest in our caucus in moving a comprehensive energy bill in the early part of the fall. The Energy Committee is going to be completing its work about mid-September.

He was certainly correct in stating the Energy Committee would be completing its work in mid-September, but little did we know what he meant was that he intended to shut down the committee and prevent us from reporting comprehensive bipartisan energy legislation.

When we returned in September and our schedule then continued to slide, the majority leader once again said on September 6:

> I have indicated all along that it is our hope and expectation to bring up energy before the end of the session, and that is still my intention.

Like Charlie Brown, once again we believed that Lucy would not pull the football away, but that was not the case. But it was fall and it was football season, and the majority leader finally pulled the plug on the pretense of concern.

It has always been clear that a bipartisan majority of the Committee on Energy and Natural Resources has been ready and willing to report comprehensive legislation with a balance of conservation efficiencies, research and development, and domestic production.

When we on both sides of the aisle stated and indicated our intent to press for a firm schedule to report the legislation, then the majority leader, which in my opinion was in defiance of the rules of the Senate and of the Committee on Energy and Natural Resources, simply shut the Energy Committee down.

I have been around here 21 years, Mr. President. I have never heard of that particular initiation by a majority leader of shutting a committee down.

On October 9, without consultation or advance notice, the members of the Committee on Energy and Natural Resources were told they were irrelevant and would not be allowed to consider any legislation for the remainder of the session.

I read from a press release from the chairman of the committee, Senator BINGAMAN:

> At the request of the majority leader, Senator DASCHLE, the Senate Energy and Natural Resources Committee, Chairman JEFF BINGAMAN, today suspended any further markup on energy legislation for this session of Congress.

I remind my colleagues, there is no provision in the Senate rules for the majority leader to abolish the work of a standing committee by edict. That is what happened. The rules of the Senate require each committee to meet at least once a month before the Senate and while the Senate is in session to address the business of the committee.

The Committee on Energy and Natural Resources has not met in business session since August 2. The business of the committee is, among other things, energy. I wonder the reason for the reluctance of the majority leader. Was he fearful the Energy Committee might report bipartisan legislation, for certainly no amendment from this Senator or any other Republican could be reported without some support from the Democratic side. It is clear the Democrats control the committee by a 12-to-11 ratio. I can only guess perhaps the majority leader would have been better off requiring the committee to approve any amendments perhaps by two-thirds of the Democratic members, as he seems to have set on other issues.

It has now been 4½ months since the Committee on Energy and Natural Resources has held a business meeting, and we are no closer to consideration of comprehensive legislation than we were when the majority leader assumed control of the Senate.

The majority leader has indicated and has finally introduced a warmed-

over version of the legislation that he cosponsored almost 9 months ago. The majority leader has again perhaps indicated that he intends to move energy legislation if there is time. Clearly, there is no more time. This is it. We are out.

On the other hand, he has indicated a willingness when we return to take up energy sometime in January or February. Now we hear we are going to go back to an Agriculture bill. We have asked the majority leader to give us an indication of his willingness to take up a bill and give us an up-or-down vote on it, but the indications are we are going to have to have 60 votes.

It is extraordinary that this body in times of national security and the tremendous activity associated with the Mideast, the OPEC nations, Israel, Afghanistan, Iraq, as we look to those areas for our security interests, would have to have a dictate, but 51 votes on the issue will not do it. We are going to need 60 votes.

We are going to get those 60 votes if that is what it takes, but I do not know of another time when the national energy security of the Nation was at risk requiring more than 50 votes. A simple majority evidently will not do.

Let me make it clear to the majority leader—and I have the greatest respect for him—I am prepared to come back and spend day after day, night after night debating an energy policy in this Senate and get the job done. This is a priority of our President, a priority of our Nation, a priority of our veterans, and a priority of our labor groups.

A few weeks ago both the President and Vice President called for the Senate to end this partisan charade and address energy legislation.

The President said in a radio address not so long ago:

> Last spring, I sent to Congress a comprehensive energy plan that encourages conservation and greater energy independence. The House has acted. The Senate has not.

The President of the United States is correct. Rather than a spirited debate on comprehensive energy legislation, reported from the Energy Committee, developed in an open process, the majority leader has savaged the reforms of the 1970s to craft partisan legislation behind closed doors with only selected special interests allowed to participate.

There is a process to get advice from members of the Energy Committee, and that is in a business meeting. When the majority leader says his legislation represents input from the Energy Committee, he is not being accurate. Make no mistake, the Energy Committee has had no input on this legislation that has been introduced by the majority leader. I accept that the bulk of the bill was drafted by our committee, but the chairman is not the committee, and it is clear neither he nor our majority leader evidently trusts the makeup of the committee to address it in a bipartisan manner and vote it out.

The reforms of the 1970s were designed precisely to curb the dictatorial powers of committee chairmen, as our distinguished President pro tempore noted in his history of the Senate.

The Vice President hit the nail on the head a few weeks ago in his discussion with Tim Russert on ''Meet the Press'' when he said:

> But there is a disagreement with respect to Senator DASCHLE on energy. The House of Representatives has moved and passed an energy bill last summer. The Senate has not acted. Tom pulled it out of the Energy Committee so they are not considering in committee an energy bill at this point. The House has passed a stimulus package. The Senate has yet to act. The House just passed trade promotion authority. The Senate has yet to act. In the energy area, it is extraordinarily important that we move for energy security, energy independence. We are never going to get all the way over to energy independence, but given the volatility of the Mideast and our increasing dependence on that part of the world for oil, it is important we go forward, for example, with things like ANWR.

I am embarrassed at the lack of action of this body as we conclude this year in not having taken up an energy bill. I grant the farm bill is important, but the farm bill is not about to expire. We do not have an energy bill in this country. We should have an energy bill.

I assume the majority leader will continue to find items he thinks are more important than our national energy security. We have seen it: Railroad retirement, raising the price of milk to consumers through dairy compacts. As I indicated, next year we are going to address this issue and we will seek votes on the issue. I do not believe, on behalf of our constituents, we should duck these difficult decisions. I know the majority leader shares those views as well.

Some time ago, this body voted to initiate sanctions on Iran and some other nations in the Mideast that produce oil because we were not satisfied with their record of human rights, we were not satisfied with their record of full disclosure relative to the development of weapons of mass destruction. I proposed an amendment to include Iraq. At the time during the debate, the majority leader committed to me he would at some time give me an up-or-down vote.

I have communicated with the majority leader and asked him for the up-or-down vote. I have not received a response. I hope I will receive a response very soon because I think it is important to recognize the situation with regard to Iraq. We know Saddam Hussein is developing weapons of mass destruction. We have evidence of that, even though we have not had a U.N. inspector in that country for some time. We know he smuggled the oil.

Many Americans perhaps do not recognize we are importing nearly a million barrels of oil a day from Saddam Hussein, yet we are enforcing a no-fly zone over that country. We are putting the lives of many of our young men and women at risk.

What is he attempting to do? He is attempting to shoot down our aircraft. He has almost succeeded, but it almost seems as though we take his oil, put it in our aircraft, enforce the no-fly zone, which is like an air wall blockade. What does he do with our money? He pays the Republican Army, develops a weapons capability, a biological capability, and aims it at our ally Israel. It is beyond me why this Nation and our foreign policy should rely on Saddam Hussein and Iraq for our energy needs when we have the capability at home.

Finally, I think it is interesting to reflect on where we are in the economic stimulus. We could not reach a conclusion. Yet our economy is in recession. We need a stimulus. It would help get us back on the right track.

The discussions have focused on this for some time. We have talked about ''immediate.'' We have talked about ''temporary.'' We have talked about the creation of jobs, increasing consumer spending or otherwise increasing domestic product. I think we make a big mistake if we only focus on those stimulus ideas that are of a temporary nature. We should also focus on stimulus elements that will ensure the long-term economic growth of our country. Otherwise, we will have to come to the Senate at the end of each economic cycle and perhaps have this debate over again.

One such permanent stimulus would be the establishment of a national energy strategy that ensures energy prices that remain constant, affordable, reliable sources of energy which play an important role in fostering economic growth and development.

We have seen high prices. We have seen sectors of our economy. We have seen the situation in California. We have seen increasing costs. We have seen the development in the OPEC countries of a cartel where, when they want the price to go up, they decrease the supply.

High energy prices reduce consumer disposable income, reduce spending, and inhibit economic growth. Our friend Martin Feldstein, the former Chairman of the Council on Economic Advisers, noted since the end of World War II economic downturns have coincided with energy price increases. This most recent economic downturn is no exception. We have seen a rapid increase in oil prices occurring the first half of this year, followed by similar increases in natural gas and electricity.

The result of data from the Bureau of Economic Statistics shows that while the GDP grew at 5.7 percent in the second quarter of 2000, the most recent data showed the GDP has declined by 1.1 percent for the third quarter. So I think we acknowledge we are in a recession.

This is consistent with findings of the National Bureau of Economic Research that, on an average, for every 10 percent increase in oil prices, economic output falls by 2.5 percent, real wages

drop by 1 percent, and increases in oil prices reduce the number of hours worked and increase unemployment.

We recall what has happened over a period of time, and as a consequence of that we could generalize that high prices for energy and natural gas cause significant impacts on those sectors of our economy that do not depend on oil.

America and the world move on oil. We have other sources of energy for electricity. We have seen impacts across the board. Energy spending by American families increased by nearly 30 percent in 2000. Heating bills tripled for many Americans, particularly in the Northeast. Small businesses had a great increase in costs associated with energy. We have seen this. Thousands of jobs were lost. These high energy prices were the result of one unavoidable fact: Our energy supplies failed to meet our growing energy demands.

For 10 years following the passage of the Energy Policy Act of 1992, U.S. demand for energy increased over 17 percent, while total energy production increased only 2.3 percent. By the end of last year, we had simply run out of fuel for the sputtering American economy. That has changed as a consequence of the tragedy of September 11, but it will not stay that way. OPEC will initiate the cartel to again decrease supplies.

We have seen what happened to our economy as a consequence of energy price increases. We know a national energy strategy that balances supply and demand could reduce threats and future recessions. Alan Greenspan noted on November 13:

> As economic policymakers understand the focus on the impact of the tragedy of September 11 and the further weakening of the economy that follows these events, it is essential that we do not lose sight of policies needed to ensure long-term economic growth.
>
> One of the most important objectives for those policies should be assured availability of energy.

As a consequence, the U.S. relies on foreign imported oil with more than one-half of its petroleum needs. Much of this comes from the Middle East, Saudi Arabia, Iraq, and Kuwait.

Consider the consequences of the oil embargo in 1973. At the time, tensions ran high in the Middle East. Then we were involved in the war on terrorism.

It makes sense to consider our energy security in the context of an economic stimulus package. We have not done that. It makes sense to ensure our economic security by ensuring the availability of affordable energy supplies.

One aspect we have not considered in this equation is the contribution of ANWR. Talking about stimulus, there is hardly any single item we could have come up with that would have been a more significant and genuine stimulus package than opening ANWR in my State of Alaska.

What would it have done? It would have created $3.3 billion in Federal bonuses, money that would have come in from the Federal Treasury as a consequence of leasing off Federal land. This would have been paid for by competitive bidding by the oil companies. It was a jobs issue. It would have created 250,000 new jobs in this country.

The contribution of the steel industry is extremely significant, as well. We have a stimulus package not even considered in the debate because we could not have a debate. We did not have an energy bill.

It would have created 250,000 new jobs and $3.3 billion in new Federal bid bonuses. And the bottom line is, not a red penny by the taxpayer. That is the kind of stimulus we need in this country.

As we look at the end of the year, we have to recognize the obligation that we have to come back and do a better job. We need an energy bill. We need it quickly. We need a stimulus in this country. We could and should consider a genuine stimulus that results in jobs that do not cost the taxpayer money, and as a consequence spurs the economy.

I hope as we address our New Year's resolutions we can recognize the House has done its job in energy legislation. We did not do our job in the Senate. I am very disappointed. I am sure the President and the American public shares that disappointment.

We have not been honest with the American people because we have a crisis in energy. Our national security is at risk. We are risking the lives of men and women in the Middle East over this energy crisis. We should address it here and relieve that dependence.

I wish all a happy and joyous holiday season, and I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I wish to ask the distinguished Senator from Alabama, Mr. SESSIONS, how long he will be speaking. The reason I ask, I know the Presiding Officer has an engagement. He has to leave within another 20 minutes, from what I understand.

How much time does the Senator desire?

Mr. SESSIONS. Twelve minutes would be sufficient.

Mr. BYRD. Let me deliver my speech. I ask unanimous consent, am I correct that the Presiding Officer needs to leave the Presiding Chair no later than 7:45, or is it 7:50?

The PRESIDING OFFICER. At 7:50.

Mr. BYRD. I ask unanimous consent the distinguished Senator from Alabama may proceed for not to exceed 12 minutes and I will do something not often done around here; I do it quite often. I wait and wait and wait, realizing I can get recognition almost any time I want, but I am usually willing to accommodate another Senator, even if that Senator is on the Republican side. Not many will accommodate me in that fashion, but I am glad to accommodate them.

I ask consent that the Senator from Alabama have not to exceed, say, 10 minutes, after which I be recognized, and that mine be the last speech of the day. I don't mind relieving the Senator in the Chair, so I will ask that the Senator from Alabama go ahead of me.

Mr. SESSIONS. I am delighted to follow the Senator from West Virginia.

Mr. BYRD. I want to make my speech about Christmas in the main. We refer to this as a holiday. It is not a holiday to me. This is Christmas, which is something different. It marks the greatest event that ever occurred in the history of man. It split the centuries in two. There is B.C. and there is A.D. It was a tremendous event. I believe in Christ. I am a Christian—not a very worthy one, but a Christian. I respect those who are of a different religion. I respect those who believe that Christ was a historic figure but not the Messiah, but a prophet. That is all right. They have a right to believe that.

Both would agree that it was a tremendous event. This is something beyond just being a holiday. When someone wishes me happy holidays, I say: No, Happy Christmas.

I want to make a statement about Christmas, so I ask unanimous consent the Senator from Alabama proceed for 10 minutes and I follow him.

I ask the question of the minority, while I am on the floor, Is there an intention on that side of the aisle to seek unanimous consent by Senator BROWNBACK? If there is still the intention to make that request, I want to be here to object to it; if there is not, I may go on my way happy.

I make that consent and I will see to it that the Chair gets relief.

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

ECONOMIC STIMULUS

Mr. SESSIONS. I thank the distinguished Senator from West Virginia. I thank him for his fidelity to his faith and for his fidelity to this Senate and the courtesies and rules that need to be followed to make sure we live up to the high ideals on which this institution was founded. He, more than anyone I know, has taught us the history, and the importance, of what we are about. His courtesy to me, a first-term Senator, is typical of his many courtesies.

I simply say how deeply disappointed I have been that we will be leaving this body before Christmas without having passed a stimulus package. Experts have said a good stimulus package, $75 to $100 billion, would preserve 300,000 jobs in this country. That is a lot of jobs. Those people, if they are working, will be happier. Those families will be happier. The homes will be happier. They will pay taxes. They will pay State and local sales taxes and other taxes. They will pay Federal taxes. It will help us run our government.

But if they lose their jobs, there will be a sadness and an unease in their homes, a difficulty that otherwise would not take place, and the government itself, State, local and Federal, will lose revenue.

It is a big deal if we can affect the economy. I do not think there is any doubt. I have been convinced for a long time in the projections that we could achieve a 1-percent or a half-percent increase in the gross domestic product by passing the stimulus package. That is important. I believe we should pass a bill.

No less than 2 weeks ago I became deeply concerned that we might actually leave this body without a bill being passed. At first I did not think that was possible. We brought up a bill and disagreed, the House had passed a bill, and some here didn't like it but negotiators were working together. The Finance Committee chairman and ranking member, the majority leader, the Democratic leader and the Republican leader, they were all working and talking and surely a bill would pass, I thought. They would work out their differences.

Frankly, I never believed exactly what was in that bill, if it met a few simple principles, would make a lot of difference. Probably, another $100 billion, another $75 billion into the economy we would have made an impact. There was no doubt in my mind if a middle-income family would have gotten a 2-percent reduction in the amount of money withheld from their taxes they would have more money and they would spend it.

Because of my concern, I offered my own bill. As a matter of fact, we were here one night until midnight. I sat around with some colleagues and refined my ideas and four of us introduced a stimulus package. It was simple. It did not have a lot of complexity to it. Frankly, I did not think anybody could find anything wrong with any of it or would object to a bit of it. I said: We offered this bill; let's just vote on that.

It had a number of provisions in it that I thought were worthwhile. My favorite contribution, what I believe in and would like to see accomplished and really needs to be accomplished as part of this package, or it may be more difficult to pass, is the advanced payment of the earned-income tax credit.

The Presiding Officer understands these finance issues a lot better than I, but I can understand a little bit about low-income working Americans. They are at a point with the earned-income tax credit where the Federal Government gives them a tax credit. It is $31 billion a year. It amounts to, for an average family with one child, a $2,000-per-year tax credit. They can get it when they work or on their tax refund a year after they work. Since the earned-income tax credit was designed to encourage work, there has been a strong feeling it ought to go on the wage that they earn.

What has happened, however, is that we have never accomplished that. Only 5 percent of the workers take advantage of the opportunity to get their earned-income tax credit on their paycheck. If it were given to them 100 percent, that would be a $1-an-hour pay raise with no deductions from it. But we have never been able to figure out how to do it.

They finally passed, a day or so ago, an amendment that would allow that to happen, but only 5 percent take advantage of it; 95 percent get their credit the next year.

So it is good public policy, in my view, that they get their credit early. I believe in this time of stimulus, if we would make a conversion and pump in $15 billion or $20 billion extra on low-income people's paychecks, many of whom may be out of work for a while, get another job, lose work and find another job, they would have more money to take care of their families with and it would not cost the budget of the country, the Treasury of the country, any money in the long run. It would shift about $15 billion or more into this fiscal year but that money would be from the next fiscal year, and we would have $15 billion left to spend next year. It is good public policy and a superb stimulus that moves money forward and saves money next year.

We would have put in another item. We proposed reducing the median income tax rate from 27 percent to 25 percent. It was planned to be done anyway.

We extended the unemployment benefits, as most of the proposals have, for an additional 13 weeks. We provided insurance and health benefits. We provided a $5 billion fund for national emergency grants for States to help people who have been displaced or lost their job. And we advanced the plans for 1 year for the child tax credit. This child tax credit is a plan that would infuse about $6 billion or $8 billion into the economy for families with children.

Those were some of the provisions we put in that plan. It could have passed. I don't believe anybody would have been upset about it. It had no business provisions in it that would upset anybody. It did have some depreciation advancement.

I say we ought to have done something. That bill, other bills, the bill that almost reached conclusion, the bipartisan approach that passed the House last night, was sent over here, and we did not get a vote. So I am very disappointed.

I believe the leadership of this Senate made a mistake. We were not even allowed to vote on it or debate it. Everybody said we needed a stimulus package, but we never even got to bring the bill up for a vote. We had a number of Democratic Senators and certainly a large number of Democratic House Members who supported this bipartisan bill, and we could have passed it, but we did not and it is a great disappointment to me.

I was pleased the Senator from Alaska discussed the energy bill that did not pass this time, under the very same factors. I was in Mobile Monday of this week. On two different occasions a real estate person and a very fine doctor came to me and said: JEFF, I think you have to do something about the energy situation. We are too dependent on Middle Eastern oil. They have the ability to disrupt our economy and to affect our foreign policy and damage us in ways that we ought to defend against. You need to do something to reduce our dependence on middle eastern oil. That is something I believe in very strongly.

The bill the Senator from Alaska, Mr. MURKOWSKI, has so eloquently argued for has conservation, reduced use of energy, as well as increased production. Both of those steps together will help reduce our dependence on foreign oil. It will help reduce the amount of American wealth that goes out of our country to purchase this substance that it would be better if we could purchase at home and keep that wealth at home.

I believe we have had a number of opportunities to do better. I wanted a farm bill passed desperately. The President has made clear that we do not have a fight over money on the farm bill. We are prepared to honor the $75 billion set-aside in our budget over 10 years for farm programs. But there are some problems and serious disagreements about some of the policy that was in that bill.

We could not get debate on it. Every amendment was rejected virtually on a party line vote, so we ended up not passing an Agriculture bill. We will have to come back and work on that because we need an Agriculture bill. We do not need to go into the summer without an Agriculture bill. So I am sure we will be back on that early next year. But it could have been done this time.

So I will just say there were some great things accomplished this year: the education bill, a bipartisan effort that passed. The tax reduction was a historic empowerment of individual working Americans, a victory for the individual against the State and the power the State has to extract what they earn from them and spend as the State wishes. But it would empower them to utilize the wealth they have earned in the way they choose. If we had not done that, I am confident our economy would be struggling even more today.

I see the distinguished Senator from West Virginia is ready to speak, and I am interested in hearing his remarks. I thank the Chair. I thank the Senator from West Virginia for his time. I wanted to express these remarks before we recessed today.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

THE PRESIDING OFFICER OF THE SENATE

Mr. BYRD. Mr. President, first I thank our Presiding Officer, the Senator from New Jersey. He always has a clean desk. What does that mean? That

means he is paying attention to what is going on in the Senate. He is not at the desk reading a magazine or a piece of paper, a newspaper. He is alert. I watched him. This is the way he always presides. That is the way Presiding Officers ought to conduct themselves when gracing that desk in this, the greatest legislative, parliamentary, deliberative body in the world.

He does it with a great dignity and style. I thank him. He sits there many evenings at this hour when most Senators have gone on their separate ways. I thank him.

I thank the other Members of the new class—I say it in that fashion—who have worked at that desk. There are some of them—I will not call their names at the moment—who make me proud of the Senate. The fact is, the way they preside is a model for legislative bodies everywhere to watch. Too often as we sit in that chair, we forget that millions of people are watching the Senate. They are watching the Chair.

I have been a member of the State legislature in West Virginia and the West Virginia House of Delegates. Those people in the State legislatures watch the Presiding Officer of this body.

This is the premier upper house in the world. They should see the premier act of presiding on the part of the Senator who sits at that desk. Teachers, college professors, students, political column writers, and editorialists watch. We ought to remember that when we are sitting in that chair.

I congratulate the Presiding Officer. I congratulate Senator CORZINE. I thank him.

GLORIA GILLESPIE

Mr. BYRD. Mr. President, as we head toward Christmas and the close of this session of Congress and this turbulent and tragic first year of the new millennium, I want to pause to remember a young woman who passed away this summer. Gloria Margaret Gillespie was a friend of mine.

Many Members of the Senate and staff will remember Gloria, for she worked in the Senate hair salon for 29 years. She cut my hair. Probably for the first time that my hair was ever cut at that salon she cut—28 years or 29 years ago. She worked there for 29 years.

She loved her work, and she loved her friends and she loved life. Gloria had a cheerful, loyal, uplifting spirit. And her time on this Earth was far, far too brief. She was only 54 years of age when she passed away in Berea, KY, this past July—54.

Five years ago, Gloria began a battle with cancer. She had smoking-related lung cancer. But instead of withdrawing, she used her illness as a forum to warn others about the dangers of smoking.

Gloria did not win her battle with cancer, but to the end, even in the face of great pain, she remained a fighter and a friend to all—someone who loved the Senate and someone who loved life.

Gloria Gillespie knew that each day is a gift. Each day is a gift. She cherished each waking moment. She found great joy in seeing people alive. From childhood, Gloria possessed a deep and abiding faith in God. That strong faith made her courageous and deeply appreciative of the sheer wonder of the world that God created.

Her unfailing optimism was contagious, as was her impish laughter. She brought a special kind of joy to all of her endeavors. She made the load a little lighter for all who knew her.

Gloria is survived by her parents, C.H. and Mary Frances Gillespie of Berea, KY, one niece, Lisa Gillespie, and one nephew, David Gillespie.

Along with all the members of her family and her legions of friends, I shall miss Gloria. But I shall think of her during this Christmas season, and I shall never, never, never forget her.

MARIAN BERTRAM

Mr. BYRD. Mr. President, I rise to remember a longtime Senate employee who passed away on October 15 of this year. Marian Bertram dedicated 27 years of her life to public service and to the United States Senate. She began her work at the Democratic Policy Committee in 1971, eventually serving as the chief clerk of that committee. She retired from the Senate in October of 1998.

Marian Bertram served four Democratic Leaders, beginning with Mike Mansfield and continuing on through my own tenure as Democratic Leader, George Mitchell's, and Senator DASCHLE's leader terms.

She gained a deep understanding of the Senate's intricacies during those years and researched and wrote the Democratic Policy Committee's Legislative Bulletin. She also shouldered the challenging task of producing voting records and vote analyses for Democratic Members.

Marian was an able and very dedicated Senate employee and through it all she was unfailing good humored and professional.

My sympathy goes out to her many friends in the Washington area who were shocked and saddened by her untimely death this fall. We shall remember her with great affection and with thanks for the many years she gave so unselfishly to this institution.

SENATORS AND SENATE LEADERS

Mr. BYRD. Mr. President, let me say just a word or so before I make my final speech of this year. I thank all Senators on both sides of the aisle for the work they do on behalf of this great Nation. They work here at a sacrifice. We are paid well, but there are many here who could earn much more money in other fields. There are many who come here after earning much more money in other fields but who want to give something to the Nation, who want to serve. Here is the place—in this Chamber—where Senators, since 1859, have served the Nation.

So I salute all Senators. I salute the leaders of the Senate—our Democratic and Republican leaders of the majority and the minority.

I have been a majority leader. I have been a minority leader. I have been a majority whip. I know the kinds of problems with which they are confronted every day. I know the demands that are made upon them by their colleagues. I know of the expectations that surround this Chamber and the expectations of our leaders. They spend a lot of time protecting our interests and working on behalf of our interests. They spend many hours here when the rest of us are probably sleeping. They carry to their beds problems that we don't know about. Many demands are made on these leaders.

I sit here and I hear criticism of our majority leader. He is the majority leader and was chosen by his colleagues for this job. He sets the schedule. He decides the program.

So not only do I salute him for the great work that he does on behalf of the Nation every day, but I also have empathy with him. I know he must go home troubled at night—troubled because he could not fulfill the expectations of this Senator, or that Senator, troubled because he is sometimes unjustly criticized. I had all of these things happen to me.

So I thank TOM DASCHLE. He can't be everything to everybody. He has to do what he has to do. He has to do what he thinks is best. He has to promote the interests of the Senate. He has to promote the interests of getting on with the work.

So does our majority whip. These are two fine Senators. There isn't a Senator here who doesn't think that he could do that job right there better—that majority leader's job. Every Senator thinks he can do it better. Every Senator thinks he can do the whip's job better. But they do the best they can.

I want to pray for them in this season that we are entering. I want them to know that we Senators, upon reflection, cannot help but thank them for the work they do.

Somebody has to do this so we can leave the Senate when our speeches are made and go home. But they have to stay.

Senator REID, the whip, stays around here. He stays around the Chamber. He renders a tremendous service to his country.

I want to take this moment to thank him, to thank TOM DASCHLE, to thank the Republican leader, to thank the Republican whip, to thank the Senators—the ladies and the gentlemen—who preside, all of the members of the staffs in the cloakrooms and in the hallways, in the corridors, and those who provide the security of this Chamber, and the people who work in it. I thank them all.

Somebody appreciates you. You may not realize it, but somebody is watching you. Somebody appreciates what you are doing. The people at the desk up there, somebody appreciates you.

So I just want to express that appreciation.

THE REAL STORY OF CHRISTMAS

Mr. BYRD. Now, Mr. President, we are just a few days from Christmas, a few days from the morning when millions of children tumble out of their warm beds, awaken their parents, rush to the family room, and look, with gleeful delight, at the bows, the boxes, and the bundles under the tree.

This is one of my favorite times of the year—a time of joy, a time of love, a time of family gatherings and warm memories.

I remember the Christmas presents waiting for me when I was a boy back there during the Great Depression in the hard hills of Mercer County in southern West Virginia. There was not an electric light in the house—no electricity, no running water, but there was an orange or a drawing book or a set of pencils or a set of water colors, or a geography book that I had been wanting.

My family did not have great material wealth, but we always had a wealth of love. The two old people who raised me, they are in Heaven tonight. They are in Heaven. We did not have fancy toys in those days. We celebrated the season for its true meaning: the birth of the Christ Child.

Now, I respect every man's or woman's religion. I respect their religion. If it is Moslem, I respect their religion. I can listen to the prayers of any churchman or any layman. I can respect them all because who am I? I am unworthy of God's blessings. I can respect them.

So my wife Erma and I have passed those lessons on to our children, our grandchildren, and our great-grandchildren.

In recent years, however, that meaning has been drowned out by a society that is focused more on the perfect gift or the latest gadget or the hottest-selling toy. Our attention is on store sales and Santa Claus rather than on the true meaning of Christmas.

Now, I am a Christian. I believe in Christ. I am not very worthy, but I believe in Him. I respect anyone who does not. I respect anyone who believes that He was, that He lived, He was a historic figure, He was a prophet. They may not believe He is the Messiah—I do—but it does not lesson my respect for others.

I will listen to them at any time. But I think all of us have to agree that this was a great event that happened that split the centuries in two, and the years that were before Christ are numbered, the years that are after Christ numbered differently. This was some, some happening. No matter what we believe or do not believe, it is still recognized by all that there was a man named Jesus Christ.

And so no matter what our religion, I think we ought to understand this was more than just an ordinary happening, more than just an ordinary man.

At its core, the season has not changed. Christmas will always be, to me, about a family that found no shelter but a manger, and also about a newborn child who would become, in my viewpoint, the Saviour of the world.

As Luke wrote in his Gospel:

> And the angel said unto them, Fear not: for, behold, I bring you good tidings of great joy, which shall be to all people. For unto you is born this day in the city of David a Savior, which is Christ the Lord.

Good tidings. Great joy. How many people think of those words standing in the long lines of their local shopping malls?

I worry that too many of us, in the hectic pace of the modern world, have forgotten the true spirit of Christmas, have forgotten what this is really all about. They have forgotten the true meaning. The story of the birth of Christ has been overshadowed by the pressures and the strains of a commercialized holiday.

Families will spend hours at shopping malls, waiting in long lines, rather than in the company of loved ones or in a church or in a place of worship celebrating in song or prayer. They will become obsessed with purchases and the gifts they may receive. Children will meticulously craft the perfect list of toys and will worry that grandma will again, this Christmas, buy them another sweater that they will never wear. Sadly, the Christmas season has become the shopping season. A time for joy and spiritual reflection has drowned in the shallow waters of greed.

That does not need to be. We can return to the true meaning of Christmas. During this holiday, I urge all Americans to reflect on their families and their faith—whatever their faith—and to read the story of Jesus' birth in the Gospels. Look up into the night sky and pick the Star of Wonder that led the wise men to Bethlehem to offer gifts to the Christ Child. Join with family and friends to sing a Christmas carol, share a meal, and reflect on the blessings we have been given. Visit each other, one another's church or synagogue or whatever. Go join and visit and enjoy this season. Perhaps the materialism that has come to dominate the season will fade and we can begin to truly understand the great and glorious story of Christmas.

And so, Mr. President:

'Twas battered and scarred, and the auctioneer
Thought it scarcely worth his while
To waste much time on the old violin,
But held it up with a smile:
''What am I bidden, good folks,'' he cried,
''Who'll start the bidding for me?''
''A dollar, a dollar''; then, ''Two!'' ''Only two?
Two dollars, and who'll make it three?
Three dollars, once; three dollars, twice;
Going for three—'' But no,
From the room, far back, a gray-haired man
Came forward and picked up the bow;
Then, wiping the dust from the old violin,
And tightening the loose strings,
He played a melody pure and sweet
As a caroling angel sings.
The music ceased, and the auctioneer,
With a voice that was quiet and low,
Said, ''What am I bid for the old violin?''
And he held it up with the bow.
''A thousand dollars, and who'll make it two?
Two thousand! and who'll make it three?
Three thousand, once, three thousand, twice,
And going, and gone,'' said he.
The people cheered, but some of them cried,
''We do not quite understand
What changed its worth.'' Swift came the reply:
''The touch of a master's hand.''
And many a man with life out of tune,
And battered and scarred with sin,
Is auctioned cheap to the thoughtless crowd,
Much like the old violin.
A ''mess of pottage,'' a glass of wine;
A game—and he travels on.
He is ''going'' once, and ''going'' twice,
He's ''going'' and almost ''gone.''
But the Master comes, and the foolish crowd
Never can quite understand
The worth of a soul and the change that's wrought
By the touch of the Master's hand.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from New Jersey.

COMMENDING SENATOR BYRD

Mr. CORZINE. Mr. President, it is my honor to address you in the chair. Your remarks with regard to Christmas are ones that stir one's heart and feelings. I am the lucky one to be here this evening to hear you speak. I hope everyone across America has the sense of how you love this body, the great Senate, and the people we serve.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

The PRESIDENT pro tempore. In my capacity as a Senator from the State of West Virginia, I ask unanimous consent that the order for the quorum call be rescinded.

There being no objection, the quorum call is waived.

The Senator from Nevada.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. REID. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 8:11 p.m., recessed subject to the call of the Chair and reassembled at 9:37 p.m. when called to order by the President pro tempore.

The PRESIDENT pro tempore. The Senator from Nevada is recognized.

EXECUTIVE SESSION

NOMINATIONS DISCHARGED

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed

to executive session and that the HELP Committee be discharged from further consideration of the nomination of Michael Hammond to be the chairperson of the National Endowment for the Arts. I ask that the nomination be confirmed, the motion to reconsider be laid upon the table, that any statements thereon be printed in the RECORD, and that the President be immediately notified of the Senate's action.

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

The nomination was considered and confirmed, as follows:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Committee on Health, Education, Labor, and Pensions:

Michael Hammond, of Texas, to be Chairperson of the National Endowment for the Arts for a term of four years.

Mr. KENNEDY. Mr. President, I welcome this opportunity to express my strong support for the confirmation of Michael Hammond to be Chairman of the National Endowment for the Arts, and I urge the Senate to confirm him.

Mr. Hammond is a distinguished composer, conductor, arts educator and scientist. His is the Dean of the Shepherd School of Music at Rice University, where he is also a professor of music and a faculty fellow in neuroscience.

Mr. Hammond is an excellent choice to lead the Arts Endowment. He is also one of the nation's leaders in the field of cognitive development and he understands the vast potential of the arts in early childhood education. I welcome his leadership, and I believe that he will be an outstanding chairman for this very important agency.

During the consideration of his nomination by the Committee on Health, Education, Labor and Pensions, I submitted a number of questions to Mr. Hammond. His responses are impressive and I ask unanimous consent that they may be printed in the RECORD.

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

QUESTIONS BY SENATOR EDWARD KENNEDY FOR MICHAEL HAMMOND, NOMINEE FOR CHAIRMAN OF THE NATIONAL ENDOWMENT FOR THE ARTS

1. Do you support the mission of the National Endowment for the Arts and believe that there is a federal role in support of the arts?

Yes. The Arts Endowment's mandate is to provide national recognition and support to significant projects of artistic excellence, thus preserving and enhancing our nation's diverse cultural heritage. This is a noble and essential national goal and I embrace it completely. I believe there are important aspects of this task that can best be performed at the federal level. If I have the opportunity to serve as chairman, I will work to advance the Endowment's mandate in every conceivable way.

2. Are there any circumstances under which you would support the elimination of the agency?

No.

3. Due to budget cuts and the impact of inflation, the NEA's spending power has been dramatically reduced. The decline in funding has also reduced the agency's reach and impact. How do you view the current funding? Will you advocate for higher spending levels for the agency?

Although the Endowment's financial resources are limited, it has a national voice that I believe should articulate clearly and strongly the importance of the arts in enriching the lives and shaping the aesthetic taste of all Americans. It is now more important than ever that the Endowment make performances and presentations of the highest artistic quality accessible to our urban, rural and suburban communities.

The Endowment's financial capability is important both for the direct project grants it makes and for the matching money grants generated from other sources. I would advocate for spending levels that are more adequate in fulfilling the full gamut of the Endowment's goals. Should I have the honor to be the chairman, I would look for ways to stimulate more public and private support for the arts and arts education.

4. How do you think the Endowment should best balance its various programs which support the creation and presentation of the arts with providing broad access to the arts?

Each of these tasks is crucial and the balance between them, though difficult, must be reconsidered regularly. A full review of the Endowment's activities in both these areas (creation/presentation and broad access) would be a high priority for me. Further, I would pursue these goals nationwide in rural, urban and suburban communities, in close cooperation with state and local arts groups and educational organizations committed to the arts.

5. What do you think are the highest programming priorities for the agency?

In the days following September 11, in ceremony after ceremony, Americans turned to the arts, especially music and poetry, for expressions of our anguish over our human losses and for confirmation of our common commitments as Americans. It is essential that the Arts Endowment help provide opportunities for our citizens to experience works whose meaning transcends the momentary and speak to us as human beings, sharing one another's mortality and longing for beauty and understanding.

At the same time the Endowment must, I believe, work to create conditions favorable to our professional artists—conditions in which they will be inspired to fulfill their deepest artistic aspirations, encouraging all of us to understand ourselves and one another in continuously new ways. If I am given the opportunity to serve, I will also try to direct the Endowment's efforts toward enlivening the artistic culture of the nation from the ground up by strengthening all forms of educational activity in the arts, especially among the young. If there is to be a further flowering of our artistic culture in the coming years, it must begin by making the best achievements of our rich heritage a reality in the lives of our young people.

6. You have had an extremely accomplished career in music and music education. Do you have any thoughts about ways that the agency can develop or initiate programs for young children and the arts?

To ensure the artistic future of our country, I believe, today's children and those of generations to come must have the opportunity to learn by actual experience, the techniques of music-making, the skills of drawing, painting and sculpting, dance movement, poetry and other forms of writing, and the art of acting and play-making. Such experiences together with regular access to the finest art can stimulate a child's imagination, engage the intellect, create discipline, produce physical skill and enhance curiosity and joy. Few may become professional artists, but many will become grateful audiences for the arts. A richer artistic culture can be brought into being with consistent effort over time in this way.

Should I have the honor of serving as the chairman of the National Endowment for the Arts, I will explore how the agency can provide national leadership in promoting such hands-on educational programs in the arts for children from preschool through high school. The country has vast educational resources both public and private for this undertaking. These need to be surveyed, documented and enhanced.

It is my understanding that grants for arts education are now funded under two new Arts Endowment funding programs—Challenge America and Arts Learning. The state arts agencies also contribute very significantly to educational efforts in the arts, as do a number of private organizations and programs. The Endowment can advocate and promote models for cooperation among these groups and incentives for imaginative action.

From my own studies in neuroscience, I know there is a growing body of information concerning cognitive development among preschoolers showing their ability to discriminate clearly among musical sounds, visual colors, movements and language elements in a way that mandates programs of learning in the arts at very early ages. I would actively pursue this agenda and attempt to work closely with that growing body of scientists and educators throughout the world who are concerned with such early cognitive development.

7. How do you think the agency can best support K–12 education programs?

First, there must be an accurate assessment of the programs and institutions, both public and private, which are addressing the matter of arts education for school-age young people in each region of the country. Working with these groups and with the state and regional arts agencies, the Endowment can help to set goals for instruction and experience at each stage of a student's life, in each of the arts. The Endowment can encourage cooperative efforts among arts groups to get the job done. It is a challenging task that will require all our available institutional resources as well as a new level of aspiration from all quarters, including parents, schools, museums, community centers, performing arts organizations, church groups, Boys and Girls Clubs and many others. Much valuable work is already being done in many parts of the country. These efforts can serve as models for others.

I believe the Endowment can lead in certain aspects by initiating conversations, encouraging fine teaching, generating funding from corporations, foundations, private benefactors and arts support groups. It can assist and strengthen organizations that have valuable ideas but need assistance in initiating them. It can connect outstanding young artists to this effort, both as teachers and practitioners. Finally, through its general grants programs, the Endowment can increase access to outstanding performances and exhibitions so that at every stage of a young person's development, the arts at their best are regularly experienced.

8. How do you feel that the federal role of the Arts Endowment differs from the role of the state entities and local agencies? Do you feel that these roles complement each other well? Are there any changes that you would suggest for either the federal role, or the way the Endowment supports state and local initiatives?

If the opportunity to serve as chairman of the Arts Endowment comes to me, I will make it a high priority to become very familiar with our state and local arts agencies,

their leaders and the important work they do. I will explore with them ways in which their partnership with the Endowment can be strengthened and broadened. They have played a vital role in carrying out Challenge America and other important Endowment programs. Many of them have been extremely successful in promoting the arts in their own locales. I see them as already valuable allies for the Endowment, and I would hope that these alliances can be made even more productive for our citizens everywhere.

9. Do you believe that the Arts Endowment should actively pursue private funds to supplement its federal appropriation?

I understand that legislation gives the Endowment authority to accept private gifts and donations. I also understand that there is concern in the arts community that major fundraising activities by the Arts Endowment could compete with, and therefore, conceivably diminish the ability of arts organizations to raise the funding necessary for their survival. In the current economic climate, and following September 11, the issue of financial support for arts groups everywhere is especially serious. If I am confirmed, I would approach this matter carefully and in a collegial spirit.

10. Will you continue the agency's efforts to build partnerships and funding coalitions with other federal agencies?

I support efforts to form coalitions and partnerships with other federal agencies whenever these can enhance access for Americans nationwide to projects of artistic quality. Accordingly, I would examine the current inter-agency agreements that the Endowment has entered into over the years to see how these and other such cooperative efforts can help to preserve our national artistic heritage and increase the value of that heritage to our citizens, especially those who may be otherwise underserved.

Mr. REID. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from the consideration of the nomination of James Newsome, to be chairman of the Commodity Futures Trading Commission and his nomination to be a commissioner on the Commission; that the nominations be confirmed, the motion to reconsider be laid on the table, and that any statements thereon be printed at the appropriate place in the RECORD.

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

The nominations were considered and confirmed, as follows:

DEPARTMENT OF AGRICULTURE

James E. Newsome, of Mississippi, to be Chairman of the Commodity Futures Trading Commission.

James E. Newsome, of Mississippi, to be a Commissioner of the Commodity Futures Trading Commission for the term expiring June 19, 2006. (Reappointment)

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 607, 624, 647, 650, 651, 667, and 668.

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

Mr. REID. Mr. President, I ask that those nominations be confirmed, the motions to reconsider be laid upon the table, that any statements be printed in the RECORD, and the President be immediately notified.

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

The nominations were considered and confirmed, as follows:

DEPARTMENT OF DEFENSE

Claude M. Bolton, Jr., of Florida, to be an Assistant Secretary of the Army.

DEPARTMENT OF THE INTERIOR

Kathleen Burton Clarke, of Utah, to be Director of the Bureau of Land Management.

THE JUDICIARY

C. Ashley Royal, of Georgia, to be United States District Judge for the Middle District of Georgia.

Harry E. Cummins, III, of Arkansas, to be United States Attorney for the Eastern District of Arkansas for the term of four years.

Christopher James Christie, of New Jersey, to be United States Attorney for the District of New Jersey for the term of four years.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Sean O'Keefe, of New York, to be Administrator of the National Aeronautics and Space Administration, vice Daniel S. Goldin, resigned.

ARMY

The following named officers for appointment in the Reserve of the Army to the grades indicated under title 10, U.S.C., section 12203:

To be major general

Brigadier General Donna F. Barbisch, 0000
Brigadier General Jamie S. Barkin, 0000
Brigadier General Robert W. Chesnut, 0000
Brigadier General Richard S. Colt, 0000
Brigadier General Lowell C. Detamore, 0000
Brigadier General Douglas O. Dollar, 0000
Brigadier General Kenneth D. Herbst, 0000
Brigadier General Karol A. Kennedy, 0000
Brigadier General Rodney M. Kobayashi, 0000
Brigadier General Robert B. Ostenberg, 0000
Brigadier General Michael W. Symanski, 0000
Brigadier General William B. Watson, Jr., 0000

To be brigadier general

Colonel James E. Archer, 0000
Colonel Thomas M. Bryson, 0000
Colonel Peter S. Cooke, 0000
Colonel Donna L. Dacier, 0000
Colonel Charles H. Davidson, IV, 0000
Colonel Michael R. Eyre, 0000
Colonel Donald L. Jacka, Jr., 0000
Colonel William H. Johnson, 0000
Colonel Robert J. Kasulke, 0000
Colonel Jack L. Killen, Jr., 0000
Colonel John C. Levasseur, 0000
Colonel James A. Mobley, 0000
Colonel Mark A. Montjar, 0000
Colonel Carrie L. Nero, 0000
Colonel Arthur C. Nuttall, 0000
Colonel Paulette M. Risher, 0000
Colonel Kenneth B. Ross, 0000
Colonel William Terpeluk, 0000
Colonel Michael H. Walter, 0000
Colonel Roger L. Ward, 0000
Colonel David Zalis, 0000
Colonel Bruce E. Zukauskas, 0000

REFERRAL OF THE NOMINATION OF JOSEPH SCHMITZ

Mr. REID. Mr. President, I ask unanimous consent that the nomination of Joseph Schmitz to be Inspector General, Department of Defense, which was ordered reported by the Committee on Armed Services earlier today, be referred to the Committee on Governmental Affairs for not to exceed 20 calendar days, beginning January 23, 2002, and that if the nomination is not reported after that 20-day period, the nomination be automatically discharged and placed on the Executive Calendar.

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

NOMINATIONS TO REMAIN IN STATUS QUO NOTWITHSTANDING THE ADJOURNMENT OF THE SENATE

Mr. REID. Mr. President, I ask unanimous consent that all nominations received by the Senate during the 107th Congress, first session, remain in status quo notwithstanding the adjournment of the Senate and the provisions of rule XXXI, paragraph 6, of the Standing Rules of the Senate, with the following exceptions: PN850, Otto Reich, to be Assistant Secretary of State; PN983–4, Colonel David R. Leffarge, to be Brigadier General.

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

LEGISLATIVE SESSION

The PRESIDENT pro tempore. The Senate will return to legislative session.

AUTHORIZATION TO MAKE APPOINTMENTS NOTWITHSTANDING THE SINE DIE ADJOURNMENT

Mr. REID. Mr. President, I ask unanimous consent that notwithstanding the sine die adjournment of the Senate, the President of the Senate, the Senate President pro tempore, and the majority and minority leaders be authorized to make appointments to commissions, committees, boards, and conferences, or interparliamentary conferences authorized by law by concurrent action of the two Houses, or by order of the Senate.

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

SENATE RESOLUTIONS 195, 196, 197, AND 198, EN BLOC

Mr. REID. Mr. President, I ask unanimous consent that it be in order for the Senate to proceed en bloc to the consideration of Senate Resolutions 195, 196, 197, and 198, all submitted earlier today, that the resolutions be agreed to en bloc, and the motions to reconsider be laid upon the table, with no intervening action.

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

The resolutions (S. Res. 195, S. Res. 196, S. Res. 197, and S. Res. 198) were agreed to en bloc.

(The text of the resolutions are printed in today's RECORD under ''Statements on Submitted Resolutions.'')

MEASURE INDEFINITELY POSTPONED—S. 1178

Mr. REID. Mr. President, I ask unanimous consent that Calendar No. 88, S. 1178, be indefinitely postponed.

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

Mr. REID. Mr. President, for the information of the Senate, this item is an appropriations bill. The conference report on the House numbered bill is now public law.

BASIC PILOT EXTENSION ACT OF 2001

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to H.R. 3030.

The PRESIDENT pro tempore. The clerk will report the title of the bill.

The legislative clerk read as follows:

A bill (H.R. 3030) to extend the basic pilot program for employment eligibility verification, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 3030) was read the third time and passed.

EXPRESSING THE SENSE OF CONGRESS REGARDING EFFORTS OF THE PEOPLE OF THE UNITED STATES OF KOREAN ANCESTRY TO REUNITE WITH FAMILY MEMBERS IN NORTH KOREA

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 280, S. Con. Res. 90.

The PRESIDENT pro tempore. The clerk will state the title of the concurrent resolution.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 90) expressing the sense of Congress regarding the efforts of people of the United States of Korean ancestry to reunite with their family members in North Korea.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (S. Con. Res. 90) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 90

Whereas on June 25, 1950, North Korea invaded South Korea, thereby initiating the Korean War, leading to the loss of countless lives, and further polarizing a world engulfed by the Cold War;

Whereas in the aftermath of the Korean War, the division of the Koreas at the 38th parallel separated millions of Koreans from their families, tearing at the heart of every mother, father, daughter, and son;

Whereas on June 13 and 14, 2000, in the first summit conference ever held between leaders of North and South Korea, South Korean President Kim Dae Jung met with North Korean leader Kim Jong Il in Pyongyang, North Korea's capital;

Whereas in a historic joint declaration, South Korean President Kim Dae Jung and North Korean leader Kim Jong Il made an important promise to promote economic cooperation and hold reunions of South Korean and North Korean citizens;

Whereas such reunions have been held in North and South Korea since the signing of the joint declaration, reuniting family members who had not seen or heard from each other for more than 50 years;

Whereas 500,000 people of the United States of Korean ancestry bear the pain of being separated from their families in North Korea;

Whereas the United States values peace in the global community and has long recognized the significance of uniting families torn apart by the tragedy of war; and

Whereas a petition drive is taking place throughout the United States, urging the United States Government to assist in the reunification efforts: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) Congress and the President should support efforts to reunite people of the United States of Korean ancestry with their families in North Korea; and

(2) such efforts should be made in a timely manner, as 50 years have passed since the separation of these families.

GRANTING CONSENT OF CONGRESS TO THE INTERNATIONAL EMERGENCY MANAGEMENT ASSISTANCE MEMORANDUM OF UNDERSTANDING

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 211, S.J. Res. 12.

The PRESIDENT pro tempore. The clerk will state the title of the joint resolution.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 12) granting the consent of Congress to the International Emergency Management Assistance Memorandum of Understanding.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. REID. Mr. President, I ask unanimous consent that the joint resolution be read a third time, passed, the motion to reconsider be laid upon the table, and any statement relating to the joint resolution be printed in the RECORD.

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

The joint resolution (S.J. Res. 12) was read the third time and passed, as follows:

S.J. RES. 12

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONGRESSIONAL CONSENT.

Congress consents to the International Emergency Management Assistance Memorandum of Understanding entered into between the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut and the Provinces of Quebec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland. The compact is substantially as follows:

"Article I—International Emergency Management Assistance Memorandum of Understanding Purpose and Authorities

''The International Emergency Management Assistance Memorandum of Understanding, hereinafter referred to as the 'compact,' is made and entered into by and among such of the jurisdictions as shall enact or adopt this compact, hereinafter referred to as 'party jurisdictions.' For the purposes of this agreement, the term 'jurisdictions' may include any or all of the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut and the Provinces of Quebec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland, and such other states and provinces as may hereafter become a party to this compact.

''The purpose of this compact is to provide for the possibility of mutual assistance among the jurisdictions entering into this compact in managing any emergency or disaster when the affected jurisdiction or jurisdictions ask for assistance, whether arising from natural disaster, technological hazard, manmade disaster or civil emergency aspects of resources shortages.

''This compact also provides for the process of planning mechanisms among the agencies responsible and for mutual cooperation, including, if need be, emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party jurisdictions or subdivisions of party jurisdictions during emergencies, with such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of emergency forces by mutual agreement among party jurisdictions.

"Article II—General Implementation

''Each party jurisdiction entering into this compact recognizes that many emergencies may exceed the capabilities of a party jurisdiction and that intergovernmental cooperation is essential in such circumstances. Each jurisdiction further recognizes that there will be emergencies that may require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency because few, if any, individual jurisdictions have all the resources they need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

''The prompt, full, and effective utilization of resources of the participating jurisdictions, including any resources on hand or available from any other source that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster, shall be the underlying principle on which all articles of this compact are understood.

''On behalf of the party jurisdictions participating in the compact, the legally designated official who is assigned responsibility for emergency management is responsible for formulation of the appropriate inter-jurisdictional mutual aid plans and procedures necessary to implement this compact, and for recommendations to the jurisdiction concerned with respect to the amendment of any statutes, regulations, or ordinances required for that purpose.

"Article III—Party Jurisdiction Responsibilities

''(a) FORMULATE PLANS AND PROGRAMS.—It is the responsibility of each party jurisdiction to formulate procedural plans and programs for inter-jurisdictional cooperation in the performance of the responsibilities listed in this section. In formulating and implementing such plans and programs the party jurisdictions, to the extent practical, shall—

''(1) review individual jurisdiction hazards analyses that are available and, to the extent reasonably possible, determine all those potential emergencies the party jurisdictions might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster or emergency aspects of resource shortages;

''(2) initiate a process to review party jurisdictions' individual emergency plans and develop a plan that will determine the mechanism for the inter-jurisdictional cooperation;

''(3) develop inter-jurisdictional procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

''(4) assist in warning communities adjacent to or crossing jurisdictional boundaries;

''(5) protect and ensure delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services and resources, both human and material to the extent authorized by law;

''(6) inventory and agree upon procedures for the inter-jurisdictional loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

''(7) provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances, over which the province or state has jurisdiction, that impede the implementation of the responsibilities described in this subsection.

''(b) REQUEST ASSISTANCE.—The authorized representative of a party jurisdiction may request assistance of another party jurisdiction by contacting the authorized representative of that jurisdiction. These provisions only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request must be confirmed in writing within 15 days of the verbal request. Requests must provide the following information:

''(1) A description of the emergency service function for which assistance is needed and of the mission or missions, including but not limited to fire services, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

''(2) The amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time they will be needed.

''(3) The specific place and time for staging of the assisting party's response and a point of contact at the location.

''(c) CONSULTATION AMONG PARTY JURISDICTION OFFICIALS.—There shall be frequent consultation among the party jurisdiction officials who have assigned emergency management responsibilities, such officials collectively known hereinafter as the International Emergency Management Group, and other appropriate representatives of the party jurisdictions with free exchange of information, plans, and resource records relating to emergency capabilities to the extent authorized by law.

"Article IV—Limitation

''Any party jurisdiction requested to render mutual aid or conduct exercises and training for mutual aid shall undertake to respond as soon as possible, except that it is understood that the jurisdiction rendering aid may withhold or recall resources to the extent necessary to provide reasonable protection for that jurisdiction. Each party jurisdiction shall afford to the personnel of the emergency forces of any party jurisdiction, while operating within its jurisdictional limits under the terms and conditions of this compact and under the operational control of an officer of the requesting party, the same powers, duties, rights, privileges, and immunities as are afforded similar or like forces of the jurisdiction in which they are performing emergency services. Emergency forces continue under the command and control of their regular leaders, but the organizational units come under the operational control of the emergency services authorities of the jurisdiction receiving assistance. These conditions may be activated, as needed, by the jurisdiction that is to receive assistance or upon commencement of exercises or training for mutual aid and continue as long as the exercises or training for mutual aid are in progress, the emergency or disaster remains in effect or loaned resources remain in the receiving jurisdiction or jurisdictions, whichever is longer. The receiving jurisdiction is responsible for informing the assisting jurisdictions of the specific moment when services will no longer be required.

"Article V—Licenses and Permits

''Whenever a person holds a license, certificate, or other permit issued by any jurisdiction party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party jurisdiction, such person is deemed to be licensed, certified, or permitted by the jurisdiction requesting assistance to render aid involving such skill to meet an emergency or disaster, subject to such limitations and conditions as the requesting jurisdiction prescribes by Executive order or otherwise.

"Article VI—Liability

''Any person or entity of a party jurisdiction rendering aid in another jurisdiction pursuant to this compact are considered agents of the requesting jurisdiction for tort liability and immunity purposes. Any person or entity rendering aid in another jurisdiction pursuant to this compact are not liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article does not include willful misconduct, gross negligence, or recklessness.

"Article VII—Supplementary Agreements

''Because it is probable that the pattern and detail of the machinery for mutual aid among 2 or more jurisdictions may differ from that among the jurisdictions that are party to this compact, this compact contains elements of a broad base common to all jurisdictions, and nothing in this compact precludes any jurisdiction from entering into supplementary agreements with another jurisdiction or affects any other agreements already in force among jurisdictions. Supplementary agreements may include, but are not limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, public utility, reconnaissance, welfare, transportation and communications personnel, equipment, and supplies.

"Article VIII—Workers' Compensation and Death Benefits

''Each party jurisdiction shall provide, in accordance with its own laws, for the payment of workers' compensation and death benefits to injured members of the emergency forces of that jurisdiction and to representatives of deceased members of those forces if the members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own jurisdiction.

"Article IX—Reimbursement

''Any party jurisdiction rendering aid in another jurisdiction pursuant to this compact shall, if requested, be reimbursed by the party jurisdiction receiving such aid for any loss or damage to, or expense incurred in, the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with those requests. An aiding party jurisdiction may assume in whole or in part any such loss, damage, expense, or other cost or may loan such equipment or donate such services to the receiving party jurisdiction without charge or cost. Any 2 or more party jurisdictions may enter into supplementary agreements establishing a different allocation of costs among those jurisdictions. Expenses under article VIII are not reimbursable under this section.

"Article X—Evacuation

''Each party jurisdiction shall initiate a process to prepare and maintain plans to facilitate the movement of and reception of evacuees into its territory or across its territory, according to its capabilities and powers. The party jurisdiction from which the evacuees came shall assume the ultimate responsibility for the support of the evacuees, and after the termination of the emergency or disaster, for the repatriation of such evacuees.

"Article XI—Implementation

''(a) This compact is effective upon its execution or adoption by any 2 jurisdictions, and is effective as to any other jurisdiction upon its execution or adoption thereby: subject to approval or authorization by the United States Congress, if required, and subject to enactment of provincial or State legislation that may be required for the effectiveness of the Memorandum of Understanding.

''(b) Any party jurisdiction may withdraw from this compact, but the withdrawal does not take effect until 30 days after the governor or premier of the withdrawing jurisdiction has given notice in writing of such withdrawal to the governors or premiers of all other party jurisdictions. The action does not relieve the withdrawing jurisdiction from obligations assumed under this compact prior to the effective date of withdrawal.

''(c) Duly authenticated copies of this compact in the French and English languages and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party jurisdictions.

"Article XII—Severability

''This compact is construed to effectuate the purposes stated in Article I. If any provision of this compact is declared unconstitutional or the applicability of the compact to any person or circumstances is held invalid, the validity of the remainder of this compact and the applicability of the compact to other persons and circumstances are not affected.

"Article XIII—Consistency of Language

''The validity of the arrangements and agreements consented to in this compact

shall not be affected by any insubstantial difference in form or language as may be adopted by the various states and provinces.

"Article XIV—Amendment

''This compact may be amended by agreement of the party jurisdictions.''.

SEC. 2. INCONSISTENCY OF LANGUAGE.

The validity of the arrangements consented to by this Act shall not be affected by any insubstantial difference in their form or language as adopted by the States and provinces.

SEC. 3. RIGHT TO ALTER, AMEND, OR REPEAL.

The right to alter, amend, or repeal this Act is hereby expressly reserved.

RECOGNIZING RADIO FREE EUROPE/RADIO LIBERTY'S SUCCESS IN PROMOTING DEMOCRACY AND ITS CONTINUING CONTRIBUTION TO UNITED STATES NATIONAL INTERESTS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 281, S. Con. Res. 92.

The PRESIDENT pro tempore. The clerk will report the title of the concurrent resolution.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 92) recognizing Radio Free Europe/Radio Liberty's success in promoting democracy and its continuing contribution to United States national interests.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (S. Con. Res. 92) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 92

Whereas on May 1, 1951, Radio Free Europe inaugurated its full schedule of broadcast services to the people of Eastern Europe and, subsequently, Radio Liberty initiated its broadcast services to the peoples of the Soviet Union on March 1, 1953, just before the death of Stalin;

Whereas now fifty years later, Radio Free Europe/Radio Liberty (in this concurrent resolution referred to as ''RFE/RL'') continues to promote democracy and human rights and serve United States national interests by fulfilling its mission ''to promote democratic values and institutions by disseminating factual information and ideas'';

Whereas Radio Free Europe and Radio Liberty were established in the darkest days of the cold war as a substitute for the free media which no longer existed in the communist-dominated countries of Central and Eastern Europe and the Soviet Union;

Whereas Radio Free Europe and Radio Liberty developed a unique form of international broadcasting known as surrogate broadcasting by airing local news about the countries to which they broadcast as well as providing regional and international news, thus preventing the communist governments from establishing a monopoly on the dissemination of information and providing an alternative to the state-controlled, party dominated domestic media;

Whereas the broadcast of uncensored news and information by Radio Free Europe and Radio Liberty was a critical element contributing to the collapse of the totalitarian communist governments of Central and Eastern Europe and the Soviet Union;

Whereas since the fall of the Iron Curtain, RFE/RL has continued to inform and therefore strengthen democratic forces in Central Europe and the countries of the former Soviet Union, and has contributed to the development of a new generation of political and economic leaders who have worked to strengthen civil society, free market economies, and democratic government institutions;

Whereas United States Government funding established and continues to support international broadcasting, including RFE/RL, and this funding is among the most useful and effective in promoting and enhancing the Nation's national security over the past half century;

Whereas RFE/RL has successfully downsized in response to legislative mandate and adapted its programming to the changing international broadcast environment in order to serve a broad spectrum of target audiences—people living in fledgling democracies where private media are still weak and do not enjoy full editorial independence, transitional societies where democratic institutions and practices are poorly developed, as well as countries which still have tightly controlled state media;

Whereas RFE/RL continues to provide objective news, analysis, and discussion of domestic and regional issues crucial to democratic and free-market transformations in emerging democracies as well as strengthening civil society in these areas;

Whereas RFE/RL broadcasts seek to combat ethnic, racial, and religious intolerance and promote mutual understanding among peoples;

Whereas RFE/RL provides a model for local media, assists in training to encourage media professionalism and independence, and develops partnerships with local media outlets in emerging democracies;

Whereas RFE/RL is a unique broadcasting institution long regarded by its audience as an alternative national media that provides both credibility and security for local journalists who work as its stringers and editors in the broadcast region; and

Whereas RFE/RL fosters closer relations between the United States and other democratic states, and the states of Central Europe and the former Soviet republics: Now therefore be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) congratulates the editors, journalists, and managers of Radio Free Europe/Radio Liberty on a half century of effort in promoting democratic values, and particularly their contribution to promoting freedom of the press and freedom of expression in areas of the world where such liberties have been denied or are not yet fully institutionalized; and

(2) recognizes the major contribution of Radio Free Europe/Radio Liberty to the growth of democracy throughout the world and its continuing efforts to advance the vital national interests of the United States in building a world community that is more peaceful, democratic, free, and stable.

REFERRING S. 846 TO CHIEF JUDGE OF U.S. COURT OF FEDERAL CLAIMS

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 83 and that the Senate proceed to its immediate consideration.

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

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 83) referring S. 846 entitled ''A bill for the relief of J.L. Simmon Company, Inc., of Champaign, Illinois'' to the chief judge of the Unites States Court of Federal Claims for a report thereon.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

The resolution (S. Res. 83) was agreed to, as follows:

S. RES. 83

Resolved,

SECTION 1. REFERRAL.

S. 846 entitled ''A bill for the relief of J.L. Simmons Company, Inc., of Champaign, Illinois'', now pending in the Senate, together with all the accompanying papers, is referred to the chief judge of the United States Court of Federal Claims.

SEC. 2. PROCEEDING AND REPORT.

The chief judge shall—

(1) proceed according to the provisions of sections 1492 and 2509 of title 28, United States Code, notwithstanding the bar of any statute of limitations, laches, or bar of sovereign immunity; and

(2) report back to the Senate, at the earliest practicable date, providing—

(A) such findings of fact and conclusions as are sufficient to inform Congress of the nature, extent, and character of the claim for compensation referred to in such bill as a legal or equitable claim against the United States, or a gratuity; and

(B) the amount, if any, legally or equitably due from the United States to J.L. Simmons Company, Inc., of Champaign, Illinois.

AMENDING THE INTERNAL REVENUE CODE OF 1986

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 3346.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3346) to amend the Internal Revenue Code of 1986 to simplify the reporting requirements relating to higher education, tuition and related expenses.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD.

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

The bill (H.R. 3346) was read the third time and passed.

DESIGNATING RICHARD J. GUADAGNO HEADQUARTERS AND VISITORS CENTER

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 3334 just received from the House and which is now at the desk.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3334) to designate the Richard J. Guadagno Headquarters and Visitors Center at Humboldt Bay National Wildlife Refuge, California.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD.

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

The bill (H.R. 3334) was read the third time and passed.

DESIGNATING THE TODD BEAMER POST OFFICE BUILDING

Mr. REID. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of H.R. 3248 and that the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3248) to designate the facility of the United States Postal Service located at 65 North Main Street in Cranbury, New Jersey, as the Todd Beamer Post Office Building.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

The bill (H.R. 3248) was read the third time and passed.

COMMENDING DAW AUNG SAN SUU KYI ON THE TENTH ANNIVERSARY OF HER RECEIVING THE NOBEL PEACE PRIZE

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 294, H. Con. Res. 211.

The PRESIDENT pro tempore. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 211) commending Daw Aung San Suu Kyi on the tenth anniversary of her receiving the Nobel Peace Prize and expressing the sense of the Congress with respect to the Government of Burma.

There being no objection, the Senate proceeded to consider the concurrent resolution, which had been reported from the Committee on Foreign Relations, with an amendment and an amendment to the preamble.

(The parts of the concurrent resolution intended to be stricken are shown in boldface brackets and the parts of the concurrent resolution intended to be inserted are shown in italic.)

H. CON. RES. 211

[Whereas since 1962, the people of Burma have lived under a repressive military regime;

[Whereas in 1988, the people of Burma rose up in massive prodemocracy demonstrations;

[Whereas in response to this call for change, the Burmese military brutally suppressed these demonstrations;

[Whereas opposition leader Daw Aung San Suu Kyi was placed under house arrest after these demonstrations;

[Whereas in the 1990 Burmese elections, Daw Aung San Suu Kyi led the National League for Democracy and affiliated parties to a landslide victory, winning 80 percent of the parliamentary seats;

[Whereas the ruling military regime rejected this election and proceeded to arrest hundreds of members of the National League for Democracy;

[Whereas Daw Aung San Suu Kyi's freedom of speech was restricted by the military regime;

[Whereas in recognition of her efforts to bring democracy to Burma, Daw Aung San Suu Kyi was awarded the Nobel Peace Prize on October 14, 1991;

[Whereas Daw Aung San Suu Kyi remained under unlawful house arrest until 1995;

[Whereas even after her release, the Burmese military regime, known as the State Peace and Development Council (SPDC), has continued to ignore the basic human rights of 48,000,000 Burmese citizens and has brutally suppressed any opposition to its authority;

[Whereas according to the State Department, the SPDC has made no significant progress toward stopping the practice of human trafficking, whereby thousands of people have been sent to Thailand for the purpose of factory and household work and for sexual exploitation;

[Whereas the SPDC has forced civilians to work in industrial, military, and infrastructure construction operations throughout Burma, and on a large-scale basis has targeted ethnic and religious minorities for this work;

[Whereas a Department of Labor report in 2000 described the human rights abuses of forced laborers, including beating, torture, starvation, and summary executions;

[Whereas the worldwide scourge of heroin and methamphetamines is significantly aggravated by large-scale cultivation and production of these drugs in Burma;

[Whereas the Drug Enforcement Agency has reported that Burma is the world's second largest producer of opium and opiate-based drugs;

[Whereas officials in Thailand have estimated that as many as 800 million tablets of methamphetamine will be smuggled into their country this year, contributing to the growing methamphetamine problem in Thailand;

[Whereas there are as many as a million internally displaced persons in Burma;

[Whereas the SPDC has severely restricted Daw Aung San Suu Kyi's political activities;

[Whereas in September 2000, Daw Aung San Suu Kyi was placed under house arrest when she attempted to visit a National League for Democracy party office on the outskirts of Rangoon, and again when she attempted to travel by train to Mandalay;

[Whereas Daw Aung San Suu Kyi has recently begun talks with the SPDC which are welcomed by the international community, although the slow pace of the talks reflects on the SPDC's sincerity to move toward national reconciliation;

[Whereas the SPDC has recently allowed the National League for Democracy to open some political offices, and has released some political prisoners, although over 1,800 such prisoners are believed to remain imprisoned;

[Whereas with the exception of these positive developments the SPDC has made little progress in improving human rights conditions and restoring democracy to the country;

[Whereas the SPDC has continued to restrict the political power of Daw Aung San Suu Kyi and the National League for Democracy;

[Whereas Daw Aung San Suu Kyi's struggle to assert the rights of her people has spread beyond politics and into popular culture, as evidenced by others championing her cause, most notably the rock group U2 in their song ''Walk On'', which is banned in Burma; and

[Whereas, in the face of oppression, Daw Aung San Suu Kyi has remained an outspoken champion of democracy and freedom: Now, therefore, be it**]**

Whereas, since 1962, the people of Burma have lived under a repressive military regime;

Whereas, in 1988, the people of Burma rose up in massive prodemocracy demonstrations;

Whereas, in response to this call for change, the Burmese military brutally suppressed these demonstrations;

Whereas opposition leader Daw Aung San Suu Kyi was placed under house arrest after these demonstrations;

Whereas, in the 1990 Burmese elections, Daw Aung San Suu Kyi led the National League for Democracy and affiliated parties to a landslide victory, winning 80 percent of the parliamentary seats;

Whereas the ruling military regime rejected this election and proceeded to arrest hundreds of members of the National League for Democracy;

Whereas Daw Aung San Suu Kyi's freedom of speech, assembly, association, and movement was restricted by the military regime;

Whereas, in recognition of her efforts to bring democracy to Burma, Daw Aung San Suu Kyi was awarded the Nobel Peace Prize on December 10, 1991;

Whereas Daw Aung San Suu Kyi remained under unlawful house arrest until 1995;

Whereas, even after the release of Daw Aung San Suu Kyi, the Burmese military regime, known as the State Peace and Development Council (in this concurrent resolution referred to as the ''SPDC''), has continued to ignore the basic human rights of 48,000,000 Burmese citizens and has brutally suppressed any opposition to its authority;

Whereas, according to the Department of State, the SPDC has made no significant progress toward stopping the practice of human trafficking, whereby thousands of people have been sent to Thailand and other countries for the purpose of factory and household work and for sexual exploitation;

Whereas the SPDC has forced civilians to work in industrial, military, and infrastructure construction operations throughout Burma, and on a large-scale basis has targeted ethnic and religious minorities for this work;

Whereas a Department of Labor report in 2000 described the human rights abuses of forced laborers, including beating, torture, starvation, and summary executions;

Whereas the Drug Enforcement Administration has reported that Burma is the world's second largest producer of opium and opiate-based drugs;

Whereas officials in Thailand have estimated that as many as 800 million tablets of methamphetamine will be smuggled into their country this year, contributing to the growing methamphetamine problem in Thailand;

Whereas there are as many as a million internally displaced persons in Burma;

Whereas the SPDC continues to severely restrict the political activities of Daw Aung San Suu Kyi and the National League for Democracy;

Whereas, in September 2000, Daw Aung San Suu Kyi was placed under house arrest when she attempted to visit a National League for Democracy party office on the outskirts of Rangoon, and again when she attempted to travel by train to Mandalay;

Whereas Daw Aung San Suu Kyi and the SPDC have recently begun talks under the auspices of the United Nations Special Envoy to Burma, Razali Ismail, which are welcomed by the international community;

Whereas the SPDC has recently allowed the National League for Democracy to open some political offices, and has released some political prisoners, although over 1,800 such prisoners are believed to remain imprisoned;

Whereas, with the exception of these positive developments, the SPDC has made little progress in improving human rights conditions and restoring democracy to Burma;

Whereas the United Nations General Assembly has recently expressed its concern over the slow progress in the talks between Daw Aung San Suu Kyi and the SPDC;

Whereas Daw Aung San Suu Kyi's struggle to assert the rights of her people has spread beyond politics and into popular culture, as evidenced by others championing her cause, most notably the rock group U2 in their song ''Walk On'', which is banned in Burma;

Whereas Daw Aung San Suu Kyi is the recipient of the Presidential Medal of Freedom; and

Whereas, in the face of oppression and at great personal sacrifice, Daw Aung San Suu Kyi has remained an outspoken champion of democracy and freedom: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

⟦That—

⟦(1) the Congress commends and congratulates Daw Aung San Suu Kyi on the 10th anniversary of her receiving the Nobel Peace Prize, and recognizes her remarkable contributions and tireless work toward bringing peace and democracy to Burma;

⟦(2) it is the sense of the Congress that the President and Secretary of State should continue to encourage the Government of Burma to restore basic human rights to the Burmese people, to eliminate the practice of human trafficking, to address the manufacture of heroin and methamphetamines, to continue the process of releasing political prisoners, to recognize the results of the 1990 democratic elections, and to allow Daw Aung San Suu Kyi and the National League for Democracy to enjoy unfettered freedom of speech and freedom of movement; and

⟦(3) it is the sense of the Congress that Daw Aung San Suu Kyi should be invited to address a joint meeting of the Congress at such time and under such circumstances as will, in the judgment of Daw Aung San Suu Kyi, advance rather than endanger her continued ability to work within Burma for the rights of the Burmese people.⟧

SECTION 1. COMMENDATION OF DAW AUNG SAN SUU KYI AND SENSE OF CONGRESS WITH RESPECT TO THE GOVERNMENT OF BURMA.

(a) COMMENDATION OF DAW AUNG SAN SUU KYI.—Congress—

(1) commends and congratulates Daw Aung San Suu Kyi on the 10th anniversary of her receiving the Nobel Peace Prize; and

(2) recognizes her remarkable contributions and tireless work toward bringing national reconciliation and democracy to Burma.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President and the Secretary of State should continue to encourage the SPDC to—

(1) restore basic human rights to the Burmese people;

(2) eliminate the practice of human trafficking;

(3) address the manufacture of heroin and methamphetamines;

(4) release all political prisoners;

(5) remove all restrictions on the freedom of speech, assembly, association, and movement of Daw Aung San Suu Kyi and members of the National League for Democracy;

(6) recognize the results of the 1990 democratic elections; and

(7) take concrete steps to achieve national reconciliation and the restoration of democracy through genuine and substantive dialogue with Daw Aung San Suu Kyi.

Mr. REID. I ask unanimous consent that the committee amendment be agreed to, the concurrent resolution, as amended, be agreed to, the amendment to the preamble be agreed to, the preamble, as amended, be agreed to, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD.

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

The committee amendment was agreed to.

The concurrent resolution (H. Con. Res. 211), as amended, was agreed to.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

CONGRATULATING THE PEOPLE AND GOVERNMENT OF KAZAKHSTAN ON THE ANNIVERSARY OF INDEPENDENCE

Mr. REID. I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of S. Res. 194, and that the Senate now proceed to its immediate consideration.

The PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 194) congratulating the people and government of Kazakhstan on the tenth anniversary of the independence of the Republic of Kazakhstan.

There being no objection, the Senate proceeded to the immediate consideration of the resolution.

Mr. REID. I ask unanimous consent that the amendment to the resolution and the preamble be agreed to, the resolution, as amended, be agreed to, the preamble, as amended, be agreed to, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The amendment (No. 2693) was agreed to, as follows:

On page 3, delete lines 7–9, and insert the following: ''United States on matters of national security, including the war against terrorism.''

The resolution (S. Res. 194), as amended, was agreed to.

The preamble, as amended, was agreed to.

[The resolution will appear in a future edition of the RECORD.]

AMERICAN WILDLIFE ENHANCEMENT ACT OF 2001

Mr. REID. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 283, S. 990.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 990) to amend the Pittman-Robertson Wildlife Restoration Act to improve the provisions relating to wildlife conservation and restoration programs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''American Wildlife Enhancement Act of 2001''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—PITTMAN-ROBERTSON WILDLIFE CONSERVATION AND RESTORATION PROGRAMS IMPROVEMENT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Pittman-Robertson Wildlife Conservation and Restoration Programs Improvement Act''.

SEC. 102. DEFINITIONS.

(a) IN GENERAL.—Section 2 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669a) is amended to read as follows:

''SEC. 2. DEFINITIONS.

''In this Act:

''(1) ACCOUNT.—The term 'Account' means the Wildlife Conservation and Restoration Account established by section 3(a)(2).

''(2) CONSERVATION.—

''(A) IN GENERAL.—The term 'conservation' means the use of a method or procedure necessary or desirable—

''(i) to sustain healthy populations of wildlife; or

''(ii) to restore declining populations of wildlife.

''(B) INCLUSIONS.—The term 'conservation' includes any activity associated with scientific resources management, such as—

''(i) research;

''(ii) census;

''(iii) monitoring of populations;

''(iv) acquisition, improvement, and management of habitat;

''(v) live trapping and transplantation;

''(vi) wildlife damage management;

''(vii) periodic or total protection of a species or population; and

''(viii) the taking of individuals within a wildlife stock or population if permitted by applicable Federal law, State law, or law of the District of Columbia, a territory, or an Indian tribe for the purpose of protecting wildlife in decline.

''(3) FUND.—The term 'fund' means the Federal aid to wildlife restoration fund established by section 3(a)(1).

''(4) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(5) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(6) STATE FISH AND GAME DEPARTMENT.—The term 'State fish and game department' means any department or division of a department of another name, or commission, or 1 or more officials, of a State, the District of Columbia, a territory, or an Indian tribe empowered under the laws of the State, the District of Columbia, the territory, or the Indian tribe, respectively, to exercise the functions ordinarily exercised by a State fish and game department or a State fish and wildlife department.

''(7) TERRITORY.—The term 'territory' means Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

''(8) WILDLIFE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'wildlife' means—

''(i) any species of wild, free-ranging fauna (excluding fish); and

''(ii) any species of fauna (excluding fish) in a captive breeding program the object of which is to reintroduce individuals of a depleted native species into the previously occupied range of the species.

''(B) WILDLIFE CONSERVATION AND RESTORATION PROGRAM.—For the purposes of each wildlife conservation and restoration program, the term 'wildlife' includes fish and native plants.

''(9) WILDLIFE-ASSOCIATED RECREATION PROJECT.—The term 'wildlife-associated recreation project' means—

''(A) a project intended to meet the demand for an outdoor activity associated with wildlife, such as hunting, fishing, and wildlife observation and photography;

''(B) a project such as construction or restoration of a wildlife viewing area, observation tower, blind, platform, land or water trail, water access route, area for field trialing, or trail head; and

''(C) a project to provide access for a project described in subparagraph (A) or (B).

''(10) WILDLIFE CONSERVATION AND RESTORATION PROGRAM.—The term 'wildlife conservation and restoration program' means a program developed by a State fish and game department and approved by the Secretary under section 12.

''(11) WILDLIFE CONSERVATION EDUCATION PROJECT.—The term 'wildlife conservation education project' means a project, including public outreach, that is intended to foster responsible natural resource stewardship.

''(12) WILDLIFE-RESTORATION PROJECT.—

''(A) IN GENERAL.—The term 'wildlife-restoration project' means a project consisting of the selection, restoration, rehabilitation, or improvement of an area of land or water (including a property interest in land or water) that is adaptable as a feeding, resting, or breeding place for wildlife.

''(B) INCLUSIONS.—The term 'wildlife-restoration project' includes—

''(i) acquisition of an area of land or water described in subparagraph (A) that is suitable or capable of being made suitable for feeding, resting, or breeding by wildlife;

''(ii) restoration or rehabilitation of an area of land or water described in subparagraph (A) (such as through management of habitat and invasive species);

''(iii) construction in an area described in subparagraph (A) of such works as are necessary to make the area available for feeding, resting, or breeding by wildlife;

''(iv) such research into any problem of wildlife management as is necessary for efficient administration of wildlife resources; and

''(v) such preliminary or incidental expenses as are incurred with respect to activities described in this paragraph.''.

(b) CONFORMING AMENDMENTS.—

(1) The first section, section 3(a)(1), and section 12 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669, 669b(a)(1), 669i) are amended by striking ''Secretary of Agriculture'' each place it appears and inserting ''Secretary''.

(2) The Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 et seq.) is amended by striking ''Secretary of the Interior'' each place it appears and inserting ''Secretary''.

(3) Section 3(a)(1) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669b(a)(1)) is amended by striking ''(hereinafter referred to as the 'fund')''.

(4) Section 6(c) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669e(c)) is amended by striking ''established by section 3 of this Act''.

(5) Section 11(b) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669h–2(b)) is amended by striking ''wildlife restoration projects'' each place it appears and inserting ''wildlife-restoration projects''.

SEC. 103. WILDLIFE CONSERVATION AND RESTORATION ACCOUNT.

(a) IN GENERAL.—Section 3 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669b) is amended—

(1) by striking ''SEC. 3. (a)(1) An'' and inserting the following:

''SEC. 3. FEDERAL AID TO WILDLIFE RESTORATION FUND.

''(a) IN GENERAL.—

''(1) FEDERAL AID TO WILDLIFE RESTORATION FUND.—An'';

(2) in subsection (a), by striking paragraph (2) and inserting the following:

''(2) WILDLIFE CONSERVATION AND RESTORATION ACCOUNT.—

''(A) ESTABLISHMENT.—There is established in the fund an account to be known as the 'Wildlife Conservation and Restoration Account'.

''(B) FUNDING.—

''(i) IN GENERAL.—There are authorized to be appropriated to the Account for apportionment to States, the District of Columbia, territories, and Indian tribes in accordance with section 4(d)—

''(I) $50,000,000 for fiscal year 2001; and

''(II) $350,000,000 for each of fiscal years 2002 through 2006.

''(ii) AVAILABILITY.—Notwithstanding the matter under the heading 'FEDERAL AID IN WILDLIFE RESTORATION' under the heading 'FISH AND WILDLIFE SERVICE' in title I of chapter VII of the General Appropriation Act, 1951 (64 Stat. 693), the amount appropriated under clause (i)(II) for each of fiscal years 2002 through 2006 shall be available for obligation in that fiscal year.''; and

(3) by striking subsections (c) and (d).

(b) CONFORMING AMENDMENTS.—

(1) Section 3(a)(1) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669b(a)(1)) is amended in the first sentence—

(A) by inserting ''(other than the Account)'' after ''wildlife restoration fund''; and

(B) by inserting before the period at the end the following: ''(other than sections 4(d) and 12)''.

(2) Section 4 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669c) is amended—

(A) in subsection (a)—

(i) in paragraph (1)(A)—

(I) by inserting ''(other than the Account)'' after ''the fund''; and

(II) by inserting ''(other than subsection (d) and sections 3(a)(2) and 12)'' after ''this Act''; and

(ii) in paragraph (2)(B), by inserting ''from the fund (other than the Account)'' before ''under this Act''; and

(B) in the first sentence of subsection (b), by striking ''said fund'' and inserting ''the fund (other than the Account)''.

(3) Section 6 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669e) is amended—

(A) in subsection (a)—

(i) in the matter preceding paragraph (1), by inserting ''(other than sections 4(d) and 12)'' after ''this Act'';

(ii) in the last sentence of paragraph (1), by striking ''this Act from funds apportioned under this Act'' and inserting ''this Act (other than sections 4(d) and 12) from funds apportioned from the fund (other than the Account) under this Act'';

(iii) in paragraph (2)—

(I) in the first sentence, by inserting ''(other than sections 4(d) and 12)'' after ''this Act''; and

(II) in the last sentence, by striking ''said fund as represents the share of the United States payable under this Act'' and inserting ''the fund (other than the Account) as represents the share of the United States payable from the fund (other than the Account) under this Act''; and

(iv) in the last paragraph, by inserting ''from the fund (other than the Account)'' before ''under this Act'' each place it appears; and

(B) in subsection (b), by inserting ''(other than sections 4(d) and 12)'' after ''this Act'' each place it appears.

(4) Section 8A of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669g–1) is amended in the first sentence by inserting ''from the fund (other than the Account)'' before ''under this Act''.

(5) Section 9 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669h) is amended in subsections (a) and (b)(1) by striking ''section 4(a)(1)'' each place it appears and inserting ''subsections (a)(1) and (d)(1) of section 4''.

(6) Section 10 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669h–1) is amended—

(A) in subsection (a)(1)—

(i) by inserting ''(other than the Account)'' after ''the fund''; and

(ii) in subparagraph (B), by inserting ''but excluding any use authorized solely by section 12'' after ''target ranges''; and

(B) in subsection (c)(2), by inserting before the period at the end the following: ''(other than sections 4(d) and 12)''.

(7) Section 11(a)(1) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669h–2(a)(1)) is amended by inserting ''(other than the Account)'' after ''the fund''.

SEC. 104. APPORTIONMENT OF AMOUNTS IN THE ACCOUNT.

Section 4 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669c) is amended by striking the second subsection (c) and subsection (d) and inserting the following:

''(d) APPORTIONMENT OF AMOUNTS IN THE ACCOUNT.—

''(1) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—For each fiscal year, the Secretary may deduct, for payment of administrative expenses incurred by the Secretary in carrying out activities funded from the Account, not more than 3 percent of the total amount of the Account available for apportionment for the fiscal year.

''(2) APPORTIONMENT TO DISTRICT OF COLUMBIA, TERRITORIES, AND INDIAN TRIBES.—

''(A) IN GENERAL.—For each fiscal year, after making the deduction under paragraph (1), the Secretary shall apportion from the amount in the Account remaining available for apportionment—

''(i) to each of the District of Columbia and the Commonwealth of Puerto Rico, a sum equal to not more than ½ of 1 percent of that remaining amount;

''(ii) to each of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, a sum equal to not more than ¼ of 1 percent of that remaining amount; and

''(iii) to Indian tribes, a sum equal to not more than 2¼ percent of that remaining amount, of which, subject to subparagraph (B)—

''(I) ⅓ shall be apportioned among Indian tribes based on the ratio that the trust land area of each Indian tribe bears to the total trust land area of all Indian tribes; and

''(II) ⅔ shall be apportioned among Indian tribes based on the ratio that the population of each Indian tribe bears to the total population of all Indian tribes.

''(B) MAXIMUM APPORTIONMENT FOR EACH INDIAN TRIBE.—For each fiscal year, the amounts apportioned under subparagraph (A)(iii) shall be adjusted proportionately so that no Indian tribe is apportioned a sum that is more than 5 percent of the amount available for apportionment under subparagraph (A)(iii) for the fiscal year.

''(3) APPORTIONMENT TO STATES.—

''(A) IN GENERAL.—Subject to subparagraph (B), for each fiscal year, after making the deduction under paragraph (1) and the apportionment under paragraph (2), the Secretary shall apportion the amount in the Account remaining available for apportionment among States in the following manner:

''(i) ⅓ based on the ratio that the area of each State bears to the total area of all States.

''(ii) ⅔ based on the ratio that the population of each State bears to the total population of all States.

''(B) MINIMUM AND MAXIMUM APPORTIONMENTS.—For each fiscal year, the amounts apportioned under this paragraph shall be adjusted proportionately so that no State is apportioned a sum that is—

''(i) less than 1 percent of the amount available for apportionment under this paragraph for the fiscal year; or

''(ii) more than 5 percent of that amount.

''(4) USE.—

''(A) IN GENERAL.—Apportionments under paragraphs (2) and (3)—

''(i) shall supplement, but not supplant, funds available to States, the District of Columbia, territories, and Indian tribes—

''(I) from the fund; or

''(II) from the Sport Fish Restoration Account established by section 9504(a) of the Internal Revenue Code of 1986; and

''(ii) shall be used to address the unmet needs for wildlife (including species that are not hunted or fished, and giving priority to species that are in decline), and the habitats on which the wildlife depend, for projects authorized to be carried out as part of wildlife conservation and restoration programs in accordance with section 12.

''(B) PROHIBITION ON DIVERSION.—A State, the District of Columbia, a territory, or an Indian tribe shall not be eligible to receive an apportionment under paragraph (2) or (3) if the Secretary determines that the State, the District of Columbia, the territory, or the Indian tribe respectively, diverts funds from any source of revenue (including interest, dividends, and other income earned on the revenue) available to the State, the District of Columbia, the territory, or the Indian tribe after January 1, 2000, for conservation of wildlife for any purpose other than the administration of the State fish and game department in carrying out wildlife conservation activities.

''(5) PERIOD OF AVAILABILITY OF APPORTIONMENTS.—Notwithstanding section 3(a)(1), for each fiscal year, the apportionment to a State, the District of Columbia, a territory, or an Indian tribe from the Account under this subsection shall remain available for obligation until the end of the second following fiscal year.''.

SEC. 105. WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.

(a) IN GENERAL.—The Pittman-Robertson Wildlife Restoration Act is amended—

(1) by redesignating sections 12 and 13 (16 U.S.C. 669i, 669 note) as sections 13 and 15, respectively; and

(2) by inserting after section 11 (16 U.S.C. 669h–2) the following:

''SEC. 12. WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.

''(a) DEFINITION OF STATE.—In this section, the term 'State' means a State, the District of Columbia, a territory, and an Indian tribe.

''(b) WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.—

''(1) IN GENERAL.—A State, acting through the State fish and game department, may apply to the Secretary—

''(A) for approval of a wildlife conservation and restoration program; and

''(B) to receive funds from the apportionment to the State under section 4(d) to develop and implement the wildlife conservation and restoration program.

''(2) APPLICATION CONTENTS.—As part of an application under paragraph (1), a State shall provide documentation demonstrating that the wildlife conservation and restoration program of the State includes—

''(A) provisions vesting in the State fish and game department overall responsibility and accountability for the wildlife conservation and restoration program of the State;

''(B) provisions to identify which species in the State are in greatest need of conservation; and

''(C) provisions for the development, implementation, and maintenance, under the wildlife conservation and restoration program, of—

''(i) wildlife conservation projects—

''(I) that expand and support other wildlife programs; and

''(II) that are selected giving appropriate consideration to all species of wildlife in accordance with subsection (c);

''(ii) wildlife-associated recreation projects; and

''(iii) wildlife conservation education projects.

''(3) PUBLIC PARTICIPATION.—A State shall provide an opportunity for public participation in the development, implementation, and revision of the wildlife conservation and restoration program of the State and projects carried out under the wildlife conservation and restoration program.

''(4) APPROVAL FOR FUNDING.—If the Secretary finds that the application submitted by a State meets the requirements of paragraph (2), the Secretary shall approve the wildlife conservation and restoration program of the State.

''(5) PAYMENT OF FEDERAL SHARE.—

''(A) IN GENERAL.—Subject to subparagraph (D), after the Secretary approves a wildlife conservation and restoration program of a State, the Secretary may use the apportionment to the State under section 4(d) to pay the Federal share of—

''(i) the cost of implementation of the wildlife conservation and restoration program; and

''(ii) the cost of development, implementation, and maintenance of each project that is part of the wildlife conservation and restoration program.

''(B) FEDERAL SHARE.—The Federal share shall not exceed 75 percent.

''(C) TIMING OF PAYMENTS.—Under such regulations as the Secretary may promulgate, the Secretary—

''(i) shall make payments to a State under subparagraph (A) during the course of a project; and

''(ii) may advance funds to pay the Federal share of the costs described in subparagraph (A).

''(D) MAXIMUM AMOUNT FOR CERTAIN ACTIVITIES.—

''(i) IN GENERAL.—Notwithstanding section 8(a), except as provided in clause (ii), for each fiscal year, not more than 10 percent of the apportionment to a State under section 4(d) for the wildlife conservation and restoration program of the State may be used for each of the following activities:

''(I) Law enforcement activities.

''(II) Wildlife-associated recreation projects.

''(ii) EXCEPTION.—For any fiscal year, the limitation under clause (i) shall not apply to law enforcement activities or wildlife-associated recreation projects in a State if the State demonstrates to the satisfaction of the Secretary that law enforcement activities or wildlife-associated recreation projects, respectively, have a significant impact on high priority conservation activities.

''(6) METHOD OF IMPLEMENTATION OF PROJECTS.—A State may implement a project that is part of the wildlife conservation and restoration program of the State through—

''(A) a grant made by the State to, or a contract entered into by the State with—

''(i) any Federal, State, or local agency (including an agency that gathers, evaluates, and disseminates information on wildlife and wildlife habitats);

''(ii) an Indian tribe;

''(iii) a wildlife conservation organization, sportsmen's organization, land trust, or other nonprofit organization; or

''(iv) an outdoor recreation or conservation education entity; and

''(B) any other method determined appropriate by the State.

''(c) WILDLIFE CONSERVATION STRATEGY.—

''(1) IN GENERAL.—Not later than 5 years after the date of the initial apportionment to a State under section 4(d), to be eligible to continue to receive funds from the apportionment to the State under section 4(d), the State shall, as part of the wildlife conservation and restoration program of the State, develop and implement a wildlife conservation strategy that is based on the best available and appropriate scientific information.

''(2) REQUIRED ELEMENTS.—A wildlife conservation strategy shall—

''(A) use such information on the distribution and abundance of species of wildlife as is indicative of the diversity and health of the wildlife of the State, including such information on species with low populations and declining numbers of individuals as the State fish and game department determines to be appropriate;

''(B) identify the extent and condition of wildlife habitats and community types essential to conservation of the species of wildlife of the State identified using information described in subparagraph (A);

''(C)(i) identify the problems that may adversely affect—

''(I) the species identified using information described in subparagraph (A); and

''(II) the habitats of the species identified under subparagraph (B); and

''(ii) provide for high priority research and surveys to identify factors that may assist in the restoration and more effective conservation of—

''(I) the species identified using information described in subparagraph (A); and

''(II) the habitats of the species identified under subparagraph (B);

''(D)(i) describe which actions should be taken to conserve—

''(I) the species identified using information described in subparagraph (A); and

''(II) the habitats of the species identified under subparagraph (B); and

''(ii) establish priorities for implementing those actions; and

''(E) provide for—

''(i) periodic monitoring of—

''(I) the species identified using information described in subparagraph (A);

''(II) the habitats of the species identified under subparagraph (B); and

''(III) the effectiveness of the conservation actions described under subparagraph (D); and

''(ii) adaptation of conservation actions as appropriate to respond to new information or changing conditions.

''(3) PUBLIC PARTICIPATION IN DEVELOPMENT OF STRATEGY.—A State shall provide an opportunity for public participation in the development and implementation of the wildlife conservation strategy of the State.

''(4) REVIEW AND REVISION.—Not less often than once every 7 years, a State shall review the wildlife conservation strategy of the State and make any appropriate revisions.

''(5) COORDINATION.—During the development, implementation, review, and revision of the wildlife conservation strategy of the State, a State shall provide for coordination between—

''(A) the State fish and game department; and

''(B) Federal, State, and local agencies and Indian tribes that—

''(i) manage significant areas of land or water within the State; or

''(ii) administer programs that significantly affect the conservation of

''(I) the species identified using information described in paragraph (2)(A); or

''(II) the habitats of the species identified under paragraph (2)(B).

''(6) EFFECT OF FAILURE TO DEVELOP OR CARRY OUT WILDLIFE CONSERVATION STRATEGY.—

''(A) IN GENERAL.—If, in any fiscal year, a State fails to develop, implement, obtain the approval of the Secretary for, review, or revise a wildlife conservation strategy as required under this subsection, the apportionment to the State under section 4(d) for the following fiscal year shall be reapportioned in accordance with section 4(d) to States that carry out those activities as required under this subsection.

''(B) CORRECTION OF DEFICIENCIES.—If a State whose apportionment for a fiscal year is reapportioned under subparagraph (A) subsequently carries out the activities described in that subparagraph as required under this subsection, the State shall be eligible to receive an apportionment under section 4(d) for the fiscal year following the fiscal year of the reapportionment.

''(d) USE OF FUNDS FOR NEW AND EXISTING PROGRAMS AND PROJECTS.—Funds made available from the Account to carry out activities under this section may be used—

''(1) to carry out new programs and projects; and

''(2) to enhance existing programs and projects.

''(e) PRIORITY FOR FUNDING.—In using funds made available from the Account to carry out activities under this section, a State shall give priority to species that are in greatest need of conservation—

''(1) as evidenced by—

''(A) a low population and declining numbers of individuals;

''(B) a current threat or reasonably anticipated threat to the habitat of the species; or

''(C) any other similar indicator of need of conservation; or

''(2) as identified in the wildlife conservation strategy of the State under subsection (c).

''(f) LIMITATION ON USE OF FUNDS FOR WILDLIFE CONSERVATION EDUCATION PROJECTS.—Funds made available from the Account to carry out wildlife conservation education projects shall not be used to fund, in whole or in part, any activity that promotes or encourages opposition to the regulated hunting or trapping of wildlife.''.

(b) CONFORMING AMENDMENT.—Section 8(a) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669g) is amended by striking the last sentence.

SEC. 106. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

(a) PITTMAN-ROBERTSON WILDLIFE RESTORATION ACT.—The Pittman-Robertson Wildlife Restoration Act (as amended by section 105(a)(1)) is amended by inserting after section 13 the following:

''SEC. 14. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

''Coordination with State fish and game department personnel or with personnel of any other agency of a State, the District of Columbia, a territory, or an Indian tribe under this Act shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).''.

(b) DINGELL-JOHNSON SPORT FISH RESTORATION ACT.—The Dingell-Johnson Sport Fish Restoration Act is amended—

(1) by redesignating section 15 (16 U.S.C. 777 note) as section 16; and

(2) by inserting after section 14 (16 U.S.C. 777m) the following:

''SEC. 15. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

''Coordination with State fish and game department personnel or with personnel of any other State agency under this Act shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).''.

SEC. 107. TECHNICAL AMENDMENTS.

(a) The first section of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669) is amended by striking ''That the'' and inserting the following:

''SECTION 1. COOPERATION OF SECRETARY OF THE INTERIOR WITH STATES.

''The''.

(b) Section 5 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669d) is amended by striking ''SEC. 5.'' and inserting the following:

''SEC. 5. CERTIFICATION OF AMOUNTS DEDUCTED OR APPORTIONED.''.

(c) Section 6 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669e) is amended by striking ''SEC. 6.'' and inserting the following:

''SEC. 6. SUBMISSION AND APPROVAL OF PLANS AND PROJECTS.''.

(d) Section 7 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669f) is amended by striking ''SEC. 7.'' and inserting the following:

''SEC. 7. PAYMENT OF FUNDS TO STATES.''.

(e) Section 8 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669g) is amended by striking ''SEC. 8.'' and inserting the following:

''SEC. 8. MAINTENANCE OF PROJECTS; FUNDING OF HUNTER SAFETY PROGRAMS AND PUBLIC TARGET RANGES.''.

(f) Section 8A of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669g–1) is amended by striking ''SEC. 8A.'' and inserting the following:

''SEC. 8A. APPORTIONMENTS TO TERRITORIES.''.

(g) Section 13 of the Pittman-Robertson Wildlife Restoration Act (as redesignated by section 105(a)(1)) is amended by striking ''SEC. 13.'' and inserting the following:

''SEC. 13. RULES AND REGULATIONS.''.

SEC. 108. EFFECTIVE DATE.

This title takes effect on October 1, 2001.

TITLE II—ENDANGERED AND THREATENED SPECIES RECOVERY

SEC. 201. PURPOSE.

The purpose of this title is to promote involvement by non-Federal entities in the recovery of—

(1)(A) the endangered species of the United States;

(B) the threatened species of the United States; and

(C) the species of the United States that may become endangered species or threatened species if conservation actions are not taken to conserve and protect the species; and

(2) the habitats on which the species depend.

SEC. 202. ENDANGERED AND THREATENED SPECIES RECOVERY ASSISTANCE.

(a) IN GENERAL.—Section 13 of the Endangered Species Act of 1973 (87 Stat. 902) is amended to read as follows:

''SEC. 13. ENDANGERED AND THREATENED SPECIES RECOVERY ASSISTANCE.

''(a) DEFINITIONS.—In this section:

''(1) CONSERVATION ENTITY.—

''(A) IN GENERAL.—The term 'conservation entity' means a nonprofit entity that engages in activities to conserve or protect fish, wildlife, or plants, or habitats for fish, wildlife, or plants.

''(B) INCLUSIONS.—The term 'conservation entity' includes—

''(i) a sportsmen's organization;

''(ii) an environmental organization; and

''(iii) a land trust.

''(2) FARM OR RANCH.—The term 'farm or ranch' means an activity with respect to which not less than $1,000 in income is derived from agricultural production within a census year.

''(3) PERSON.—The term 'person' includes a conservation entity.

''(4) SMALL LANDOWNER.—The term 'small landowner' means—

''(A) an individual who owns land in a State that—

''(i) is used as a farm or ranch; and

''(ii) has an acreage of not more than the greater of—

''(I) 50 percent of the average acreage of a farm or ranch in the State; or

''(II) 160 acres of land; and

''(B) an individual who owns land that—

''(i) is not used as a farm or ranch; and

''(ii) has an acreage of not more than 160 acres.

''(5) SPECIES AT RISK.—The term 'species at risk' means a species that may become an endangered species or a threatened species if conservation actions are not taken to conserve and protect the species.

''(6) SPECIES RECOVERY AGREEMENT.—The term 'species recovery agreement' means an endangered and threatened species recovery agreement entered into under subsection (c).

''(b) ENDANGERED AND THREATENED SPECIES RECOVERY ASSISTANCE.—

''(1) FINANCIAL ASSISTANCE.—The Secretary may provide financial assistance to any person for development and implementation of an endangered and threatened species recovery agreement entered into by the Secretary and the person under subsection (c).

''(2) PRIORITY.—In providing financial assistance under this subsection, the Secretary shall give priority to the development and implementation of species recovery agreements that—

''(A) implement actions identified under recovery plans approved by the Secretary under section 4(f);

''(B) have the greatest potential for contributing to the recovery of endangered species, threatened species, or species at risk;

''(C) benefit multiple endangered species, threatened species, or species at risk;

''(D) carry out activities specified in State or local conservation plans; or

''(E) are proposed by small landowners.

''(3) PROHIBITION ON ASSISTANCE FOR REQUIRED ACTIVITIES.—The Secretary shall not provide financial assistance under this subsection for any activity that is required—

''(A) by a permit issued under section 10(a)(1)(B);

''(B) by an incidental taking statement provided under section 7(b)(4); or

''(C) under another provision of this Act, any other Federal law, or any State law.

''(4) PAYMENTS UNDER OTHER PROGRAMS.—

''(A) OTHER PAYMENTS NOT AFFECTED.—Financial assistance provided to a person under this subsection shall be in addition to, and shall not affect, the total amount of payments that the person is eligible to receive under—

''(i) the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.);

''(ii) the wetlands reserve program established under subchapter C of that chapter (16 U.S.C. 3837 et seq.);

''(iii) the environmental quality incentives program established under chapter 4 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.); or

''(iv) the Wildlife Habitat Incentive Program established under section 387 of the Federal Agriculture Improvement and Reform Act of 1996 (16 U.S.C. 3836a).

''(B) LIMITATION.—A person shall not receive financial assistance under a species recovery agreement for any activity for which the person receives a payment under a program referred to in subparagraph (A) unless the species recovery agreement imposes on the person a financial or management obligation in addition to the obligations of the person under that program.

''(c) ENDANGERED AND THREATENED SPECIES RECOVERY AGREEMENTS.—

''(1) IN GENERAL.—In accordance with this subsection, the Secretary may enter into endangered and threatened species recovery agreements.

''(2) REQUIRED TERMS.—The Secretary shall include in each species recovery agreement with a person provisions that—

''(A) require the person—

''(i) to carry out on real property owned or leased by the person, or on Federal or State land, activities (such as activities that, consistent with applicable State water law (including regulations), make water available for endangered species, threatened species, or species at risk) that—

''(I) are not required by Federal or State law; and

''(II) contribute to the recovery of an endangered species, threatened species, or species at risk; or

''(ii) to refrain from carrying out on real property owned or leased by the person otherwise lawful activities that would inhibit the recovery of an endangered species, threatened species, or species at risk, such as refraining from carrying out activities that, consistent with applicable State water law (including regulations), directly reduce the availability of water for such a species;

''(B) describe the real property referred to in clauses (i) and (ii) of subparagraph (A);

''(C) specify species recovery goals for the species recovery agreement, and activities for attaining the goals;

''(D)(i) require the person to make demonstrable progress in accomplishing the species recovery goals; and

''(ii) specify a schedule for implementation of the species recovery agreement;

''(E) specify actions to be taken by the Secretary or the person to monitor the effectiveness of the species recovery agreement in attaining the species recovery goals;

''(F) require the person to notify the Secretary if any right or obligation of the person under the species recovery agreement is assigned to any other person;

''(G) require the person to notify the Secretary if any term of the species recovery agreement is breached;

''(H) specify the date on which the species recovery agreement takes effect and the period of time during which the species recovery agreement shall remain in effect;

''(I) schedule the disbursement of financial assistance provided under subsection (b) for implementation of the species recovery agreement, on an annual or other basis during the period in which the species recovery agreement is in effect, based on the schedule for implementation required under subparagraph (D)(ii); and

''(J) provide that the Secretary shall, subject to paragraph (4)(C), terminate the species recovery agreement if the person fails to carry out the species recovery agreement.

''(3) REVIEW AND APPROVAL OF PROPOSED SPECIES RECOVERY AGREEMENTS.—On submission by any person of a proposed species recovery agreement under this subsection, the Secretary shall—

''(A) review the proposed species recovery agreement and determine whether the species recovery agreement—

''(i) complies with this subsection; and

''(ii) will contribute to the recovery of each endangered species, threatened species, or species at risk that is the subject of the proposed species recovery agreement;

''(B) propose to the person any additional provisions that are necessary for the species recovery agreement to comply with this subsection; and

''(C) if the Secretary determines that the species recovery agreement complies with this subsection, enter into the species recovery agreement with the person.

''(4) MONITORING OF IMPLEMENTATION OF SPECIES RECOVERY AGREEMENTS.—The Secretary shall—

''(A) periodically monitor the implementation of each species recovery agreement;

''(B) based on the information obtained from the monitoring, annually or otherwise disburse financial assistance under this section to implement the species recovery agreement as the Secretary determines to be appropriate under the species recovery agreement; and

''(C) if the Secretary determines that the person is not making demonstrable progress in accomplishing the species recovery goals specified under paragraph (2)(C)—

''(i) propose 1 or more modifications to the species recovery agreement that are necessary to accomplish the species recovery goals; or

''(ii) terminate the species recovery agreement.

''(5) LIMITATION WITH RESPECT TO FEDERAL OR STATE LAND.—The Secretary may enter into a species recovery agreement with a person with respect to Federal or State land only if the United States or the State, respectively, is a party to the species recovery agreement.

''(d) ALLOCATION OF FUNDS.—Of the amounts made available to carry out this section for a fiscal year—

''(1) ⅓ shall be made available to provide financial assistance for development and implementation of species recovery agreements by small landowners, subject to subparagraphs (A) through (D) of subsection (b)(2);

''(2) ⅓ shall be made available to provide financial assistance for development and implementation of species recovery agreements on public land, subject to subparagraphs (A) through (D) of subsection (b)(2); and

''(3) ⅓ shall be made available to provide financial assistance for development and implementation of species recovery agreements, subject to subsection (b)(2).

''(e) LIMITATION ON ADMINISTRATIVE EXPENSES.—Of the amounts made available to carry out this section for a fiscal year, not more than 3 percent may be used to pay administrative expenses incurred in carrying out this section.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended by adding at the end the following:

''(d) ENDANGERED AND THREATENED SPECIES RECOVERY ASSISTANCE.—There is authorized to be appropriated to carry out section 13 $150,000,000 for each of fiscal years 2002 through 2006.''.

(c) CONFORMING AMENDMENT.—The table of contents in the first section of the Endangered Species Act of 1973 (16 U.S.C. prec. 1531) is amended by striking the item relating to section 13 and inserting the following:

''Sec. 13. Endangered and threatened species recovery assistance.''.

TITLE III—NON-FEDERAL LAND CONSERVATION GRANT PROGRAM

SEC. 301. NON-FEDERAL LAND CONSERVATION GRANT PROGRAM.

(a) IN GENERAL.—The Partnerships for Wildlife Act (16 U.S.C. 3741 et seq.) is amended by adding at the end the following:

''SEC. 7106. NON-FEDERAL LAND CONSERVATION GRANT PROGRAM.

''(a) ESTABLISHMENT.—In consultation with appropriate State, regional, and other units of government, the Secretary shall establish a competitive grant program, to be known as the 'Non-Federal Land Conservation Grant Program' (referred to in this section as the 'program'), to make grants to States or groups of States to pay the Federal share determined under subsection (c)(4) of the costs of conservation of non-Federal land or water of regional or national significance.

''(b) RANKING CRITERIA.—In selecting among applications for grants for projects under the program, the Secretary shall—

''(1) rank projects according the extent to which a proposed project will protect watersheds and important scenic, cultural, recreational, fish, wildlife, and other ecological resources; and

''(2) subject to paragraph (1), give preference to proposed projects—

''(A) that seek to protect ecosystems;

''(B) that are developed in collaboration with other States;

''(C) with respect to which there has been public participation in the development of the project proposal;

''(D) that are supported by communities and individuals that are located in the immediate vicinity of the proposed project or that would be directly affected by the proposed project; or

''(E) that the State considers to be a State priority.

''(c) GRANTS TO STATES.—

''(1) NOTICE OF DEADLINE FOR APPLICATIONS.—The Secretary shall give reasonable advance notice of each deadline for submission of applications for grants under the program by publication of a notice in the Federal Register.

''(2) SUBMISSION OF APPLICATIONS.—

''(A) IN GENERAL.—A State or group of States may submit to the Secretary an application for a grant under the program.

''(B) REQUIRED CONTENTS OF APPLICATIONS.—Each application shall include—

''(i) a detailed description of each proposed project;

''(ii) a detailed analysis of project costs, including costs associated with—

''(I) planning;

''(II) administration;

''(III) property acquisition; and

''(IV) property management;

''(iii) a statement describing how the project is of regional or national significance; and

''(iv) a plan for stewardship of any land or water, or interest in land or water, to be acquired under the project.

''(3) SELECTION OF GRANT RECIPIENTS.—Not later than 90 days after the date of receipt of an application, the Secretary shall—

''(A) review the application; and

''(B)(i) notify the State or group of States of the decision of the Secretary on the application; and

''(ii) if the application is denied, provide an explanation of the reasons for the denial.

''(4) COST SHARING.—The Federal share of the costs of a project under the program shall be—

''(A) in the case of a project to acquire an interest in land or water that is not a permanent conservation easement, not more than 50 percent of the costs of the project;

''(B) in the case of a project to acquire a permanent conservation easement, not more than 70 percent of the costs of the project; and

''(C) in the case of a project involving 2 or more States, not more than 75 percent of the costs of the project.

''(5) EFFECT OF INSUFFICIENCY OF FUNDS.—If the Secretary determines that there are insufficient funds available to make grants with respect to all applications that meet the requirements of this subsection, the Secretary shall give priority to those projects that best meet the ranking criteria established under subsection (b).

''(6) GRANTS TO STATE OF NEW HAMPSHIRE.—Notwithstanding subsection (b) and paragraphs (3) and (5), the Secretary shall make grants under the program to the State of New Hampshire to pay the Federal share determined under paragraph (4) of the costs of acquiring conservation easements with respect to land or water located in northern New Hampshire and sold by International Paper to the Trust for Public Land.

''(d) REPORT.—Not later than 60 days after the end of each fiscal year, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report describing the grants made under this section, including an analysis of how projects were ranked under subsection (b).

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

''(1) to carry out this section (other than subsection (c)(6)) $50,000,000 for each of fiscal years 2002 through 2006; and

''(2) to carry out subsection (c)(6) $9,000,000 for the period of fiscal years 2002 and 2003.''.

(b) CONFORMING AMENDMENT.—Section 7105(g)(2) of the Partnerships for Wildlife Act (16 U.S.C. 3744(g)(2)) is amended by striking ''this chapter'' and inserting ''this section''.

TITLE IV—CONSERVATION AND RESTORATION OF SHRUBLAND AND GRASSLAND

SEC. 401. CONSERVATION AND RESTORATION OF SHRUBLAND AND GRASSLAND.

The Partnerships for Wildlife Act (16 U.S.C. 3741 et seq.) (as amended by section 301(a)) is amended by adding at the end the following:

''SEC. 7107. CONSERVATION AND RESTORATION OF SHRUBLAND AND GRASSLAND.

''(a) DEFINITIONS.—In this section:

''(1) CONSERVATION ACTIVITY.—The term 'conservation activity' means—

''(A) a project or activity to reduce erosion;

''(B) a prescribed burn;

''(C) the restoration of riparian habitat;

''(D) the control or elimination of invasive or exotic species;

''(E) the reestablishment of native grasses; and

''(F) any other project or activity that restores or enhances habitat for endangered species, threatened species, or species at risk.

''(2) CONSERVATION AGREEMENT.—The term 'conservation agreement' means an agreement entered into under subsection (c).

''(3) CONSERVATION ENTITY.—

''(A) IN GENERAL.—The term 'conservation entity' means a nonprofit entity that engages in activities to conserve or protect fish, wildlife, or plants, or habitats for fish, wildlife, or plants.

''(B) INCLUSIONS.—The term 'conservation entity' includes—

''(i) a sportsmen's organization;

''(ii) an environmental organization; and

''(iii) a land trust.

''(4) COVERED LAND.—The term 'covered land' means public or private—

''(A) natural grassland or shrubland that serves as habitat for endangered species, threatened species, or species at risk, as determined by the Secretary; or

''(B) other land that—

''(i) is located in an area that has been historically dominated by natural grassland or shrubland; and

''(ii) if restored to natural grassland or shrubland, would have the potential to serve as habitat for endangered species, threatened species, or species at risk, as determined by the Secretary.

''(5) ENDANGERED SPECIES.—The term 'endangered species' has the meaning given the term in section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532).

''(6) PERMIT HOLDER.—The term 'permit holder' means an individual who holds a grazing permit for covered land that is the subject of a conservation agreement.

''(7) PROGRAM.—The term 'program' means the conservation assistance program established under subsection (b).

''(8) SPECIES AT RISK.—The term 'species at risk' means a species that may become an endangered species or a threatened species if conservation actions are not taken to conserve and protect the species.

''(9) THREATENED SPECIES.—The term 'threatened species' has the meaning given the term in section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532).

''(b) ESTABLISHMENT OF PROGRAM.—As soon as practicable after the date of enactment of this section, the Secretary shall establish a conservation assistance program to encourage the conservation and restoration of covered land.

''(c) CONSERVATION AGREEMENTS.—

''(1) IN GENERAL.—In carrying out the program, the Secretary shall enter into a conservation agreement with a landowner, permit holder, or conservation entity with respect to covered land under which—

''(A) the Secretary shall award a grant to the landowner, permit holder, or conservation entity; and

''(B) the landowner, permit holder, or conservation entity shall use the grant to carry out 1 or more conservation activities on the covered land that is the subject of the conservation agreement.

''(2) PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a conservation agreement may permit on the covered land subject to the conservation agreement—

''(i) operation of a managed grazing system;

''(ii) haying or mowing (except during the nesting season for birds);

''(iii) fire rehabilitation; and

''(iv) the construction of fire breaks and fences.

''(B) LIMITATION.—An activity described in subparagraph (A) may be permitted only if the activity contributes to maintaining the viability of natural grass and shrub plant communities on the covered land subject to the conservation agreement.

''(d) PAYMENTS UNDER OTHER PROGRAMS.—

''(1) OTHER PAYMENTS NOT AFFECTED.—A grant awarded to a landowner, permit holder, or conservation entity under this section shall be in addition to, and shall not affect, the total amount of payments that the landowner, permit holder, or conservation entity is eligible to receive under—

''(A) the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.);

''(B) the wetlands reserve program established under subchapter C of that chapter (16 U.S.C. 3837 et seq.);

''(C) the environmental quality incentives program established under chapter 4 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.); or

''(D) the Wildlife Habitat Incentive Program established under section 387 of the Federal Agriculture Improvement and Reform Act of 1996 (16 U.S.C. 3836a).

''(2) LIMITATION.—A landowner, permit holder, or conservation entity shall not receive a grant under a conservation agreement for any activity for which the landowner, permit holder, or conservation entity receives a payment under a program referred to in paragraph (1) unless the conservation agreement imposes on the landowner, permit holder, or conservation entity a financial or management obligation in addition to the obligations of the landowner, permit holder, or conservation entity under that program.

''(e) PROHIBITION ON ASSISTANCE FOR REQUIRED ACTIVITIES.—The Secretary shall not award a grant under this section for any activity that is required under Federal or State law.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $50,000,000 for each of fiscal years 2002 through 2006.''.

Mr. REID. Mr. President, Senator SMITH has an amendment at the desk. I ask for its consideration; that the amendment be agreed to, the motion to reconsider be laid upon the table, the committee substitute amendment be agreed to, the bill, as amended, be read three times and passed, and the motion to reconsider be laid upon the table, with no further intervening action or debate, and any statements be printed in the RECORD.

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

The amendment (No. 2694) was agreed to, as follows:

On page 49, strike lines 7 through 14 and insert the following:

(1) Section 3 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669b) is amended—

(A) in the first sentence of subsection (a)(1)—

(i) by inserting ''(other than the Account)'' after ''wildlife restoration fund''; and

(ii) by inserting before the period at the end the following: ''(other than sections 4(d) and 12)''; and

(B) in subsection (b), by inserting ''(other than the Account)'' after ''the fund'' each place it appears.

On page 74, line 11, insert ''(other than an incidental taking statement with respect to a species recovery agreement entered into by the Secretary under subsection (c))'' before the semicolon.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 990), as amended, was read the third time and passed.

DESIGNATION OF GEORGE P. SHULTZ NATIONAL FOREIGN AFFAIRS TRAINING CENTER

Mr. REID. Mr. President, I ask consent that the Foreign Relations Committee be discharged from further consideration of H.R. 3348, and the Senate proceed to its immediate consideration.

The PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report the title of the bill.

The legislative clerk read as follows:

A bill (H.R. 3348) to designate the National Foreign Affairs Training Center as the George P. Shultz National Foreign Affairs Training Center.

There being no objection, the Senate proceeded to the immediate consideration of the bill.

Mr. REID. I ask consent the bill be read three times, passed, the motion to reconsider be laid upon the table, and

any statements be printed in the RECORD.

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

The bill (H.R. 3348) was read the third time and passed.

SECURITY ASSISTANCE ACT OF 2001

Mr. REID. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 276, S. 1803.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1803) to authorize appropriations under the Arms Export Control Act and the Foreign Assistance Act of 1961 for security assistance for fiscal years 2002 and 2003, and for other purposes.

There being no objection, the Senate proceeded to the immediate consideration of the bill.

AMENDMENT NO. 2695

(Purpose: To make managers' amendments to the text of the bill)

Mr. REID. I understand Senators BIDEN and HELMS have an amendment at the desk, and I ask unanimous consent it be considered.

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

Mr. BIDEN. Mr. President, I am very pleased to urge Senate adoption of S. 1803, the Security Assistance Act of 2001. This is legislation that the Foreign Relations Committee reports out each year, either free-standing or as a title in our State Department authorization bill.

But the substance of the Security Assistance Act is anything but routine. It includes: foreign military assistance, including Foreign Military Financing, FMF, and International Military Education and Training, IMET; international arms transfers; and many of our arms control, nonproliferation and anti-terrorism programs.

The Security Assistance Act of 2001 covers those programs and includes not only routine adjustments, but also some significant initiatives. For example, a 5-year National Security Assistance Strategy is mandated, so as to provide country-by-country foreign policy guidance to a function that may tend otherwise to operate on the basis more of military or bureaucratic concerns.

Several provisions are designed to streamline the arms export control system, so as to make it more efficient and responsive to competitive requirements in a global economy, without sacrificing controls that serve foreign policy or nonproliferation purposes. This is a vital enterprise. U.S. industry depends upon the efficient processing of arms export applications, and U.S. firms lose contracts when the U.S. Government cannot make up its mind expeditiously.

At the same time, however, an ill-advised export license could lead to sensitive equipment getting into the hands of enemies or of unstable regimes. So there is a tension between the need for efficiency and the need not to make the mistake that ends up putting U.S. lives at risk. This bill addresses that tension by providing funds for improved staffing levels, information and communications to enable the State Department to make quicker and smarter export licensing decisions.

The Security Assistance Act of 2001 includes several new nonproliferation and antiterrorism measures. For example, the ban on arms sales to state supporters of terrorism, in section 40(d) of the Arms Export Control Act, is broadened to include states engaging in the proliferation of chemical, biological or radiological weapons.

Subtitle III–C of this bill establishes an interagency committee to coordinate nonproliferation programs directed at the independent states of the former Soviet Union. This provision is based on S. 673, a bill introduced by Senator HAGEL and me with the cosponsorship of Senators DOMENICI and LUGAR. It will ensure continuing, high-level coordination of our many nonproliferation programs, so that we can be more confident that they will mesh with each other. The need for better coordination was cited in the report, earlier this year, of the Russia Task Force chaired by former Senator Howard Baker and former White House counsel Lloyd Cutler.

Section 308 of this bill encourages the Secretary of State to seek an increase in the regular budget of the International Atomic Energy Agency, beyond that required to keep pace with inflation, and funds are authorized for the U.S. share of such an enlarged budget. This organization is vital to our nuclear nonproliferation efforts, and its workload is increasing. The lack of a sufficient assessed budget has impaired its ability to hire and retain top-flight scientists, however, so the Committee believes that an increase in that budget is essential.

Subtitle III–B of this bill authorizes the President to offer Soviet-era debt reduction to the Russian Federation in the context of an arrangement whereby a significant proportion of the savings to Russia would be invested in agreed nonproliferation programs or projects. Debt reduction is a potentially important means of funding the costs of securing Russia's stockpiles of sensitive nuclear material, chemical weapons and dangerous pathogens, of destroying its chemical weapons and dismantling strategic weapons, and of helping its former weapons experts to find civilian careers and resist offers from rogue states or terrorists. The Administration is reportedly considering this funding option, and this bill gives the President authority to pursue it.

A few changes were made in a managers' amendment to this bill, which I would like to summarize for the record.

The managers' amendment adds, at the request of Senator FEINSTEIN of California, a new section 206 on congressional notification of small arms and light weapons export license approvals. This section makes license approvals for commercial sales of such weapons, with a value over $1,000,000, subject to the prior notice provisions of section 36(c) of the Arms Export Control Act. It also requires annual reports on end-use monitoring of such arms transfers, the yearly value of such transfers, the activities of registered arms brokers, and efforts of the Bureau of Alcohol, Tobacco and Firearms to stop U.S. weapons from being used in terrorist acts and international crime.

I want to commend Senator FEINSTEIN for raising this issue, which is central to our efforts to stem wars and civil bloodshed in Africa and other regions. The United States leads the way on this issue, but we must do more. Senator FEINSTEIN's proposals for U.S. policy and international negotiations in this field are contained in S. 1555, which has been referred to the Committee on Foreign Relations. I will work with her and with my House and Senate colleagues in the coming weeks and months to see whether we can agree on further steps on small arms and light weapons exports. Personally, I think we can do so.

The managers' amendment deletes subsection 221(c), and I am sorry that we had to do this. This subsection would have returned to Israel certain funds that Israel was forced to give back to the United States due to a general rescission last year. This provision was first proposed by Republican staff to the Foreign Relations Committee, when the Republicans were in the majority, but it was one that I heartily supported. The $4,000,000 at stake may be a small amount of money, but each dollar we provide to Israel is given because it serves our national security interests.

Unfortunately, the chairman of the Appropriations Subcommittee on Foreign Operations and the chairman of the full Appropriations Committee objected strongly to this provision, not the least because it was scored by the Congressional Budget Office as an appropriation. I intend to press this issue in the coming year, and I hope that my good friends from Vermont and West Virginia will work with me to provide these funds. If we are ever to have a lasting peace in the Middle East, we must do all we can to give Israel confidence that the United States will continue to help assure that country's continued sovereignty and well-being.

Section 242, on funds for humanitarian demining programs, is amended in two respects. First, we have deleted any number for the Fiscal Year 2003 authorization for these programs. I welcome this change, because it comes with suggestions that the Foreign Operations Subcommittee may look favorably on an increase in that figure. I will work with that subcommittee on this matter, and I would hope that in

conference we could insert a higher figure for Fiscal Year 2003 than the $40,000,000 that has been spent on humanitarian demining each of the last several years.

The second change is to delete subsection (b) of section 242. The Foreign Relations Committee, in its desire to increase funds for humanitarian demining, had suggested that the Secretary of State be authorized to provide up to $40,000,000 from development assistance funds in addition to the $40,000,000 authorized in the State Department's Nonproliferation, Antiterrorism, Demining and Related Programs account. The Foreign Operations Subcommittee informs us that this is not tenable, and I accept their point that this would have been robbing Peter to pay Paul. I think we have made our point, however, that more funds are needed for this program, which has an important political impact in addition to providing humanitarian benefits.

Another provision that is deleted in the managers' amendment is section 302, (on an interagency program to prevent diversion of sensitive U.S. technology). This was an effort to authorize the Secretary of State to institute new joint programs with the Department of Commerce and the Commissioner of Customs to improve our export control, as well as a program to use retired inspectors and investigators from the U.S. Customs Service and the Bureau of Export Enforcement in our diplomatic missions overseas. Another committee questioned our jurisdiction in this matter, and we did not have time to work out this matter today, so we are dropping the provision. The need remains, however, to make more use of the many talents of current and former Commerce and Customs personnel. Especially in our overseas missions, those people can make contracts with law enforcement and border control officials in foreign countries that traditional diplomats have a hard time achieving. So I hope that we can work something out on this issue in the weeks and months to come.

Another provision in the managers' amendment inserts into section 404, on improvements to the Automated Export System new subsections to extend the range of exporters that must file their Shippers' Export Declarations electronically and to increase the penalties for failure to file and for filing false information. An earlier version of these subsections was deleted by the Committee at the request of Senator ENZI of Wyoming, who spotted some faulty language. The version added to the managers' amendment was worked out with Senator ENZI and with the Department of Commerce, and I am pleased to thank my friend from Wyoming, who is a new member of the Foreign Relations Committee, but an expert in export control, for his sage counsel on this provision.

Section 602 of this bill, on nonproliferation interests and free trade agreements, is deleted by the managers' amendment. There were questions from other committees as to whether this was within our jurisdiction. I hope we can resolve those concerns, because the fact remains that other countries' nonproliferation and export control laws and actions are relevant to the question of whether we should engage in free trade with those countries.

The managers' amendment inserts into section 701 authorizing certain ship transfers, a subsection authorizing the transfer of four KIDD-class guided missible destroyers to Taiwan. This provision was accidentially omitted from the bill at the Committee's business meeting. In fact, these ship transfers, and the others in this bill, have already been enacted in the defense authorization act. The Foreign Relations Committee is the committee of jurisdiction on this matter, so we do that in this bill.

One issue that is not addressed in this bill, but that is of considerable interest to Senator MILKULSKI and others, is the need for a Center for Antiterrorism and Security Training in the Department of State. We tried to get funding for this in Fiscal Year 2001, but the executive branch went to the wrong subcommittee of the Appropriations Committee and this center fell between the cracks. Now, as our Antiterrorism Assistance Program increases its course offerings for security personnel from friendly countries, the need for a training center is greater than ever. The Security Assistance Act may not be the best vehicle in which to address this issue, but I want to assure my good friend from Maryland that we work on this and that we will assure the State Department of our support for a new center.

Even with the managers' amendments this is a good bill that will contribute to our national security. I am happy to urge support of it and I am very pleased that my colleagues appear ready to approve it.

Mr. REID. I ask consent the amendment be agreed to, the bill be read the third time and passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The amendment (No. 2695) was agreed to.

(The amendment is printed in today's RECORD under ''Amendments Submitted and Proposed.'')

The bill (S. 1803), as amended, was read the third time and passed.

[The bill will appear in a future edition of the RECORD.]

TO PROVIDE GRANTS TO DRINKING WATER AND WASTEWATER FACILITIES

Mr. REID. I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 273, S. 1608.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1608) to establish a program to provide grants to drinking water and wastewater facilities to meet immediate security needs.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. WATER SECURITY GRANTS.

(a) DEFINITIONS.—In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) ELIGIBLE ENTITY.—The term ''eligible entity'' means a publicly- or privately-owned drinking water or wastewater facility.

(3) ELIGIBLE PROJECT OR ACTIVITY.—

(A) IN GENERAL.—The term ''eligible project or activity'' means a project or activity carried out by an eligible entity to address an immediate physical security need.

(B) INCLUSIONS.—The term ''eligible project or activity'' includes a project or activity relating to—

(i) security staffing;

(ii) detection of intruders;

(iii) installation and maintenance of fencing, gating, or lighting;

(iv) installation of and monitoring on closed-circuit television;

(v) rekeying of doors and locks;

(vi) site maintenance, such as maintenance to increase visibility around facilities, windows, and doorways;

(vii) development, acquisition, or use of guidance manuals, educational videos, or training programs; and

(viii) a program established by a State to provide technical assistance or training to water and wastewater facility managers, especially such a program that emphasizes small or rural eligible entities.

(C) EXCLUSIONS.—The term ''eligible project or activity'' does not include any large-scale or system-wide project that includes a large capital improvement or vulnerability assessment.

(b) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—The Administrator shall establish a program to allocate to States, in accordance with paragraph (2), funds for use in awarding grants to eligible entities under subsection (c).

(2) ALLOCATION TO STATES.—Not later than 30 days after the date on which funds are made available to carry out this section, the Administrator shall allocate the funds to States in accordance with the formula for the distribution of funds described in section 1452(a)(1)(D) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(1)(D)).

(3) NOTICE.—Not later than 30 days after the date described in paragraph (2), each State shall provide to each eligible entity in the State a notice that funds are available to assist the eligible entity in addressing immediate physical security needs.

(c) AWARD OF GRANTS.—

(1) APPLICATION.—An eligible entity that seeks to receive a grant under this section shall submit to the State in which the eligible entity is located an application for the grant in such form and containing such information as the State may prescribe.

(2) CONDITION FOR RECEIPT OF GRANT.—An eligible entity that receives a grant under this section shall agree to expend all funds provided by the grant not later than September 30 of the fiscal year in which this Act is enacted.

(3) DISADVANTAGED, SMALL, AND RURAL ELIGIBLE ENTITIES.—A State that awards a grant

under this section shall ensure, to the maximum extent practicable in accordance with the income and population distribution of the State, that a sufficient percentage of the funds allocated to the State under subsection (b)(2) are available for disadvantaged, small, and rural eligible entities in the State.

(d) ELIGIBLE PROJECTS AND ACTIVITIES.—

(1) IN GENERAL.—A grant awarded by a State under subsection (c) shall be used by an eligible entity to carry out 1 or more eligible projects or activities.

(2) COORDINATION WITH EXISTING TRAINING PROGRAMS.—In awarding a grant for an eligible project or activity described in subsection (a)(3)(B)(vii), a State shall, to the maximum extent practicable, coordinate with training programs of rural water associations of the State that are in effect as of the date on which the grant is awarded.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $50,000,000 for the fiscal year in which this Act is enacted.

Mr. REID. I ask unanimous consent the committee amendment in the nature of a substitute be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1608), as amended, was read the third time and passed.

WAIVING CERTAIN LIMITATIONS IN THE USE OF FUNDS TO PAY THE COSTS OF PROJECTS IN RESPONSE TO THE ATTACK ON THE WORLD TRADE CENTER

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to Calendar No. 275, S. 1637.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1637) to waive certain limitations in the case of use of the emergency fund authorized by section 125 of title 23, United States Code, to pay the costs of projects in response to the attack on the World Trade Center in New York City that occurred on September 11, 2001.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Senator CLINTON has an amendment at the desk. I ask for its consideration, that the amendment be agreed to, the motion to reconsider be laid upon the table, the bill, as amended, be read three times and passed, and the motion to reconsider be laid on the table, with no intervening action or debate, and any statements pertaining thereto be printed in the RECORD.

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

The amendment (No. 2696) was agreed to, as follows:

On page 2, strike lines 10 through 14 and insert the following:

''shall be 100 percent; and

''(2) notwithstanding section 125(d)(1) of that''.

The bill (S. 1637), as amended, was read the third time and passed.

[The bill will appear in a future edition of the RECORD.]

FEDERAL JUDICIARY PROTECTION ACT OF 2001

Mr. REID. I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 105, S. 1099.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1099) to increase the criminal penalty for assaulting or threatening Federal judges or family members and other public servants and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, I am pleased that the Senate is passing the Smith-Leahy Federal Judiciary Protection Act, S. 1099.

In the last two Congresses, I joined as an original cosponsor of identical legislation introduced by Senator GORDON SMITH, which unanimously passed the Senate Judiciary Committee and the Senate but was not acted upon by the House of Representatives. I commend the Senator from Oregon for his continued leadership in protecting public servants in our Federal government.

Our bipartisan legislation would provide greater protection to Federal judges, law enforcement officers, and United States officials and their families. Federal law enforcement officers, under our bill, include United States Capitol Police Officers. United States officials, under our bill, include the President, Vice President, Cabinet Secretaries and Members of Congress.

Specifically, our legislation would: increase the maximum prison term for forcible assaults, resistance, intimidation or interference with a Federal judge, law enforcement officer or United States official from 3 years imprisonment to 8 years; increase the maximum prison term for use of a deadly weapon or infliction of bodily injury against a Federal judge, law enforcement officer or United States official from 10 years imprisonment to 20 years; and increase the maximum prison term for threatening murder or kidnapping of a member of the immediate family of a Federal judge or law enforcement officer from 5 years imprisonment to 10 years.

Our bipartisan bill has the support of the Department of Justice, the United States Judicial Conference, the United States Sentencing Commission and the United States Marshal Service.

It is most troubling that the greatest democracy in the world needs this legislation to protect the hard working men and women who serve in our Federal government. Just a few months ago, I was saddened to read about death threats against my colleague from Vermont after his act of conscience in declaring himself an Independent.

Senator JEFFORDS received multiple threats against his life, which forced around-the-clock police protection. These unfortunate threats made a difficult time even more difficult for Senator JEFFORDS and his family.

We are seeing more violence and threats of violence against officials of our Federal government. In July, we commemorated the lives of two Capitol Police officers, Officer Jacob Chestnut and Detective John Gibson, who were slain in the line of duty in the Capitol Building in 1998. A courtroom in Urbana, Illinois, was firebombed recently, apparently by a disgruntled litigant. And we also continue to mourn the victims of the horrible tragedy of the bombing of the federal office building in Oklahoma City in 1995.

In my home state during the summer of 1997, a Vermont border patrol officer, John Pfeiffer, was seriously wounded by Carl Drega, during a shootout with Vermont and New Hampshire law enforcement officers in which Drega lost his life. Earlier that day, Drega shot and killed two state troopers and a local judge in New Hampshire. Apparently, Drega was bent on settling a grudge against the judge who had ruled against him in a land dispute. I had a chance to visit John Pfeiffer in the hospital and met his wife and young daughter. As a federal law enforcement officer, Agent Pfeiffer and his family will receive greater protection under our bill.

After the tragic events of September 11, it is even more important that we protect the dedicated women and men throughout the Federal Judiciary and Federal government in this country who do a tremendous job under difficult circumstances. They are examples of the hard-working public servants that make up the federal government, who are too often maligned and unfairly disparaged.

It is unfortunate that it takes acts or threats of violence to put a human face on the Federal Judiciary, law enforcement officers and U.S. officials, to remind everyone in our democracy that these are people with children and parents and friends. They deserve our respect and our protection.

Mr. REID. I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, the several requests are granted.

The bill (S. 1099) was read the third time and passed, as follows:

S. 1099

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 ''Federal Judiciary Protection Act of 2001''.

SEC. 2. ASSAULTING, RESISTING, OR IMPEDING CERTAIN OFFICERS OR EMPLOYEES.

Section 111 of title 18, United States Code, is amended—

(1) in subsection (a), by striking ''three'' and inserting ''8''; and

(2) in subsection (b), by striking ''ten'' and inserting ''20''.

SEC. 3. INFLUENCING, IMPEDING, OR RETALIATING AGAINST A FEDERAL OFFICIAL BY THREATENING OR INJURING A FAMILY MEMBER.

Section 115(b)(4) of title 18, United States Code, is amended—

(1) by striking ''five'' and inserting ''10''; and

(2) by striking ''three'' and inserting ''6''.

SEC. 4. MAILING THREATENING COMMUNICATIONS.

Section 876 of title 18, United States Code, is amended—

(1) by designating the first 4 undesignated paragraphs as subsections (a) through (d), respectively;

(2) in subsection (c), as redesignated by paragraph (1), by adding at the end the following: ''If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.''; and

(3) in subsection (d), as redesignated by paragraph (1), by adding at the end the following: ''If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.''.

SEC. 5. AMENDMENT OF THE SENTENCING GUIDELINES FOR ASSAULTS AND THREATS AGAINST FEDERAL JUDGES AND CERTAIN OTHER FEDERAL OFFICIALS AND EMPLOYEES.

(a) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the commission, if appropriate, to provide an appropriate sentencing enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in section 111 or 115 of title 18, United States Code.

(b) FACTORS FOR CONSIDERATION.—In carrying out this section, the United States Sentencing Commission shall consider, with respect to each offense described in subsection (a)—

(1) any expression of congressional intent regarding the appropriate penalties for the offense;

(2) the range of conduct covered by the offense;

(3) the existing sentences for the offense;

(4) the extent to which sentencing enhancements within the Federal sentencing guidelines and the authority of the court to impose a sentence in excess of the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense;

(5) the extent to which the Federal sentencing guideline sentences for the offense have been constrained by statutory maximum penalties;

(6) the extent to which the Federal sentencing guidelines for the offense adequately achieve the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(7) the relationship of the Federal sentencing guidelines for the offense to the Federal sentencing guidelines for other offenses of comparable seriousness; and

(8) any other factors that the Commission considers to be appropriate.

IMMIGRATION AND NATIONALITY ACT AMENDMENTS

Mr. REID. Mr. President, I ask unanimous consent that we move now to Calendar No. 292, H.R. 2278.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2278) to provide for work authorization for nonimmigrant spouses of intracompany transferees, and to reduce the period of time during which certain intracompany transferees have to be continuously employed before applying for admission to the United States.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid on the table with no intervening action or debate, and any statements be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, the several requests are granted.

The bill (H.R. 2278) was read the third time and passed.

WORK AUTHORIZATION FOR NONIMMIGRANT SPOUSES OF TREATY TRADERS AND TREATY INVESTORS

Mr. REID. I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 291, H.R. 2277.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2277) to provide for work authorization for nonimmigrant spouses of treaty traders and treaty investors.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid on the table with no intervening action or debate, and any statements be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, the several requests are granted.

The bill (H.R. 2277) was read the third time and passed.

SMALL BUSINESS LIABILITY RELIEF AND BROWNFIELDS REVITALIZATION ACT

Mr. REID. I ask unanimous consent the Senate proceed to H.R. 2869, just received from the House, now at the desk.

The PRESIDENT pro tempore. The clerk will state the title of the House bill.

The legislate clerk read as follows:

A bill (H.R. 2869) to provide certain relief for small business from liability under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and to amend such Act to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, and to enhance State response programs.

There being no objection, the Senate proceeded to consider the bill.

Mr. NICKLES. Mr. President, for the information of colleagues regarding H.R. 2869, I ask unanimous consent the following letter be printed in the RECORD:

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

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, December 20, 2001.

MEMORANDUM

Subject: Davis Bacon Act Applicability Under Brownfields Legislation.

From: Robert E. Fabricant, General Counsel.

To: Marianne Horinko, Assistant Administrator, Office of Solid Waste and Emergency Response.

As you know, the House of Representatives has passed a bill, H.R. 2869, which we are informed would amend CERCLA to add a new section 104(k), ''Brownfields Revitalization Funding.'' We have been asked whether CERCLA, if amended as proposed in H.R. 2869, would require that the Davis-Bacon Act apply to contracts under loans made from a Brownfields Revolving Loan Fund (BRLF) entirely with non-federal funds. We have concluded that H.R. 2869 does not change the legal applicability of the Davis-Bacon Act to the Brownfields program. We have also concluded that this bill neither requires nor prohibits the application of the Davis-Bacon Act to contracts under BRLF loans made entirely with non-grant funds, e.g., principal and interest loan payments. CERCLA would continue to require that the Davis-Bacon Act apply to contracts under BRLF loans made in whole or in part with federal grant funds. Finally, state cleanup programs that operate independently and are not funded under this bill are not affected by the bill, and will operate in accordance with applicable state law.

The proposed legislation would add section 104(k) to CERCLA. New sections 104(k)(3)(A) and (B) authorize the President to make grants ''for capitalization of revolving loan funds'' for ''the remediation of brownfield sites.'' Under section 104(k)(9)(B)(iii), each recipient of a capitalization grant must provide a non-federal matching share of at least 20 percent (unless the Administrator makes a hardship determination). Section 104(k)(12), ''Funding,'' authorizes the appropriation of $200 million for each of fiscal years 2002 through 2006 to carry out section 104(k).

Under the Davis-Bacon Act, 40 U.S.C. 276a *et seq.*, most public building or public works construction contracts entered into by the United States must stipulate that the wages paid to laborers and mechanics will be comparable to the prevailing wages for similar work in the locality where the contract is to be performed. The Davis-Bacon Act does not apply by its own terms to contracts to which the United States is not a party, including contracts awarded by recipients of federal grants in performance of a grant project.

The proposed legislation is silent regarding the applicability of the Davis-Bacon Act to BRLFs. However, an existing provision of CERCLA section 104(g), extends the reach of the Davis-Bacon Act beyond direct federal procurement. That section applies Davis-Bacon Act prevailing wage rate requirements to contracts ''for construction, repair or alteration work funded in whole or in part under this section.'' Since the new BRLF provision would fall within section 104, it would be subject to the Davis-Bacon requirements of section 104(g). However, CERCLA does not define the precise meaning or scope of the quoted from section 104(g).

If a statute does not address the precise question at issue, an agency may adopt an interpretation that is reasonable and consistent with the statute and legislative history. Since CERCLA does not address the precise question at issue here, EPA may adopt a reasonable interpretation, which would be entitled to deference. *Chevron, USA* v. *NRDC*, 467 U.S. 837 (1984). If H.R. 2869 is enacted, one reasonable interpretation of CERCLA, as amended, would be that contracts under every loan made from a BRLF that received a capitalization grant pursuant to section 104(k) would be subject to Davis-Bacon. Under this interpretation, Davis-Bacon would apply to loans made entirely from payments of principal and interest. The phrase in section 104(g), ''funded in whole or in part under this section'' could be construed to encompass every contract indirectly supported by federal grant funds. This arguably would include all contracts awarded by a BRLF, which might not exist but for the EPA capitalization grant(s).

However, it would be at least equally reasonable to interpret CERCLA, as amended by H.R. 2869, to require that only contracts under BRLF loans made with the federal grant funds and the associated 20 percent matching funds are subject to Davis-Bacon. The phrase ''funded in whole or in part under this section'' may reasonably be construed to mean ''receiving funds authorized under this section.'' The funds authorized under section 104 for BRLFs are the $200 million authorized under section 104(k)(12). The phrase would also include the 20 percent matching funds because when a grant statute requires a non-federal match every expenditure of grant funds includes the federal and non-federal share.

Under H.R. 2869, as passed by the House, the Agency would have the discretion to decide whether to apply Davis-Bacon to contracts under BRLF loans that are made solely with funds other than the federal grant and match amount. However, any loan that includes both grant funds and loan payments would be subject to Davis-Bacon, because it would be funded in part with funds authorized under section 104(k). See 40 CFR 31.21(f).

If you have any questions about this matter, please contact me or John Valeri of this office.

Mr. JEFFORDS. Mr. President, today, we take a historic step toward bolstering economic development. The Small Business Liability Relief and Brownfields Revitalization Act, H.R. 2869, will protect our small businesses. This bill will revitalize once abandoned factory sites. This bill will give new life to our aging industrial sites. This bill will provide hope and prosperity to locations long ago forgotten.

Earlier this year, the U.S. Senate declared a mandate in the form of a 99–0 vote endorsing the Brownfields Revitalization and Environmental Restoration Act, S. 350. Unanimously, the Senate pledged its commitment to the redevelopment of potentially contaminated industrial sites. As Chairman of the Senate Environment and Public Works Committee, I have taken that mandate seriously. I am pleased that, today, the House followed suit.

The Brownfields Revitalization and Environmental Restoration Act authorizes $250 million a year over the next five years for assessment and cleanup grants, including petroleum sites, and State program enhancement. The bill would provide liability relief for three groups: contiguous property owners, prospective purchasers, and innocent landowners. Lastly, the bill outlines the parameters by which EPA may re-enter a site to protect human health and the environment.

We also have fulfilled another mandate today. Earlier this year, the Small Business Liability Protection Act passed the House of Representatives 419–0; today, the Senate followed suit. This legislation is a victory for small businesses, on which the foundation of our nation's economy stands. The Small Business Liability Protection Act provides Superfund liability relief for small businesses and others who disposed of, or arranged disposal of, small amounts of hazardous waste. The legislation also allows expedited settlements for a lesser amount if a business can show financial hardship.

There are many who share in this victory. It was truly a bipartisan and bicameral effort. In particular, I would like to recognize the efforts of Senators SMITH, CHAFEE, BAUCUS and BOXER. I also thank all the Leadership offices, on both sides and in both Chambers, for their dedication to the passage of H.R. 2869.

I am very proud of this legislation. I am pleased to have played an integral role in these efforts to encourage development of our urban cores, reduce development demands in greenfields, and promote our economic base by supporting our small businesses. This new year's resolution has been many years in the making. I am gratified that our communities will reap the rewards of further tools to redevelop brownfields and sustain small businesses in 2002 and beyond.

Mr. REID. Mr. President, I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD with no intervening action or debate.

The PRESIDENT pro tempore. Without objection, it is so ordered. The several requests are granted.

The bill (H.R. 2869) was read the third time and passed.

FAMILY SPONSOR IMMIGRATION ACT OF 2001

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to Calendar No. 289, H.R. 1892.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1892) to amend the Immigration and Nationality Act to provide for the acceptance of an affidavit of support from another eligible sponsor if the original sponsor has died and the Attorney General has determined for humanitarian reasons that the original sponsor's classification petition should not be revoked.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment.

[Matter to be added is printed in italic.]

H.R. 1892

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 ''Family Sponsor Immigration Act of 2001''.

SEC. 2. SUBSTITUTION OF ALTERNATIVE SPONSOR IF ORIGINAL SPONSOR HAS DIED.

(a) PERMITTING SUBSTITUTION OF ALTERNATIVE CLOSE FAMILY SPONSOR IN CASE OF DEATH OF PETITIONER.—

(1) RECOGNITION OF ALTERNATIVE SPONSOR.—Section 213A(f)(5) of the Immigration and Nationality Act (8 U.S.C. 1183a(f)(5)) is amended to read as follows:

''(5) NON-PETITIONING CASES.—Such term also includes an individual who does not meet the requirement of paragraph (1)(D) but who—

''(A) accepts joint and several liability with a petitioning sponsor under paragraph (2) or relative of an employment-based immigrant under paragraph (4) and who demonstrates (as provided under paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line; or

''(B) is a spouse, parent, mother-in-law, father-in-law, sibling, child (if at least 18 years of age), son, daughter, son-in-law, daughter-in-law, *sister-in-law, brother-in-law,* grandparent, or grandchild of a sponsored alien or a legal guardian of a sponsored alien, meets the requirements of paragraph (1) (other than subparagraph (D)), and executes an affidavit of support with respect to such alien in a case in which—

''(i) the individual petitioning under section 204 for the classification of such alien died after the approval of such petition; and

''(ii) the Attorney General has determined for humanitarian reasons that revocation of such petition under section 205 would be inappropriate.''.

(2) CONFORMING AMENDMENT PERMITTING SUBSTITUTION.—Section 212(a)(4)(C)(ii) of such Act (8 U.S.C. 1182(a)(4)(C)(ii)) is amended by striking ''(including any additional sponsor required under section 213A(f))'' and inserting ''(and any additional sponsor required under section 213A(f) or any alternative sponsor permitted under paragraph (5)(B) of such section)''.

(3) ADDITIONAL CONFORMING AMENDMENTS.—Section 213A(f) of such Act (8 U.S.C. 1183a(f)) is amended, in each of paragraphs (2) and (4)(B)(ii), by striking ''(5).'' and inserting ''(5)(A).''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to deaths occurring before, on, or after the date of the enactment of this Act, except that, in the case of a death occurring before such date, such amendments shall apply only if—

(1) the sponsored alien—

(A) requests the Attorney General to reinstate the classification petition that was filed with respect to the alien by the deceased and approved under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) before such death; and

(B) demonstrates that he or she is able to satisfy the requirement of section 212(a)(4)(C)(ii) of such Act (8 U.S.C. 1182(a)(4)(C)(ii)) by reason of such amendments; and

(2) the Attorney General reinstates such petition after making the determination described in section 213A(f)(5)(B)(ii) of such Act (as amended by subsection (a)(1) of this Act).

Mr. REID. Mr. President, I ask unanimous consent that the committee

amendment be agreed to, the bill be read a third time and passed, the motion to reconsider be laid on the table with no intervening action or debate, and that any statements pertaining to this matter be printed in the RECORD.

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

The committee amendment was agreed to.

The bill (H.R. 1892), as amended, was passed.

NURSE REINVESTMENT ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 1864, introduced earlier today by Senators MIKULSKI, HUTCHINSON, KERRY, and others.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1864) to amend the Public Health Service Act establishing a nurse corps and recruitment and retention strategy to address the nurse shortage, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid on the table, and that any statements on this matter be printed in the RECORD.

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

The bill (S. 1864) was passed.

(The text of S. 1864 is printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

GENERAL SHELTON CONGRESSIONAL GOLD MEDAL ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2751.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2751) to authorize the President to award a Gold Medal on behalf of the Congress to General Henry H. Shelton.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid on the table with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 2751) was passed.

21ST CENTURY DEPARTMENT OF JUSTICE AUTHORIZATION ACT

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 206, H.R. 2215.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2215) to authorize the appropriations for the Department of Justice for fiscal year 2002, and for other purposes.

There being no objection, the Senate proceeded to consider the bill Appropriations for the Department of Justice for fiscal year 2002, and for other purposes and which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''21st Century Department of Justice Appropriations Authorization Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 2002

SEC. 101. SPECIFIC SUMS AUTHORIZED TO BE APPROPRIATED.

There are authorized to be appropriated for fiscal year 2002, to carry out the activities of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof), the following sums:

(1) GENERAL ADMINISTRATION.—For General Administration: $93,433,000.

(2) ADMINISTRATIVE REVIEW AND APPEALS.—For Administrative Review and Appeals: $178,499,000 for administration of pardon and clemency petitions and for immigration-related activities.

(3) OFFICE OF INSPECTOR GENERAL.—For the Office of Inspector General: $55,000,000, which shall include for each such fiscal year, not to exceed $10,000 to meet unforeseen emergencies of a confidential character.

(4) GENERAL LEGAL ACTIVITIES.—For General Legal Activities: $566,822,000, which shall include for each such fiscal year—

(A) not less than $4,000,000 for the investigation and prosecution of denaturalization and deportation cases involving alleged Nazi war criminals; and

(B) not to exceed $20,000 to meet unforeseen emergencies of a confidential character.

(5) ANTITRUST DIVISION.—For the Antitrust Division: $140,973,000.

(6) UNITED STATES ATTORNEYS.—For United States Attorneys: $1,346,289,000, which shall include not less than $10,000,000 for the investigation and prosecution of intellectual property crimes, including software counterfeiting crimes and crimes identified in the No Electronic Theft (NET) Act (Public Law 105–147): provided, that such amounts in the appropriations account ''General Legal Services'' as may be expended for such investigations or prosecutions shall count towards this minimum as though expended from this appropriations account.

(7) FEDERAL BUREAU OF INVESTIGATION.—For the Federal Bureau of Investigation: $3,507,109,000, which shall include for each such fiscal year—

(A) not to exceed $1,250,000 for construction, to remain available until expended; and

(B) not to exceed $70,000 to meet unforeseen emergencies of a confidential character.

(8) UNITED STATES MARSHALS SERVICE.—For the United States Marshals Service: $626,439,000, which shall include for each such fiscal year not to exceed $6,621,000 for construction, to remain available until expended.

(9) FEDERAL PRISON SYSTEM.—For the Federal Prison System, including the National Institute of Corrections: $4,662,710,000.

(10) FEDERAL PRISONER DETENTION.—For the support of United States prisoners in non-Federal institutions, as authorized by section 4013(a) of title 18 of the United States Code: $724,682,000, to remain available until expended.

(11) DRUG ENFORCEMENT ADMINISTRATION.—For the Drug Enforcement Administration: $1,480,929,000, which shall include not to exceed $70,000 to meet unforeseen emergencies of a confidential character.

(12) IMMIGRATION AND NATURALIZATION SERVICE.—For the Immigration and Naturalization Service: $3,516,411,000, which shall include—

(A) not to exceed $2,737,341,000 for salaries and expenses of enforcement and border affairs (i.e., the Border Patrol, deportation, intelligence, investigations, and inspection programs, and the detention program);

(B) not to exceed $650,660,000 for salaries and expenses of citizenship and benefits (i.e., programs not included under subparagraph (A));

(C) for each such fiscal year, not to exceed $128,410,000 for construction, to remain available until expended; and

(D) not to exceed $50,000 to meet unforeseen emergencies of a confidential character.

(13) FEES AND EXPENSES OF WITNESSES.—For Fees and Expenses of Witnesses: $156,145,000 to remain available until expended, which shall include for each such fiscal year not to exceed $6,000,000 for construction of protected witness safesites.

(14) INTERAGENCY CRIME AND DRUG ENFORCEMENT.—For Interagency Crime and Drug Enforcement: $338,106,000, for expenses not otherwise provided for, for the investigation and prosecution of persons involved in organized crime drug trafficking, except that any funds obligated from appropriations authorized by this paragraph may be used under authorities available to the organizations reimbursed from such funds.

(15) FOREIGN CLAIMS SETTLEMENT COMMISSION.—For the Foreign Claims Settlement Commission: $1,130,000.

(16) COMMUNITY RELATIONS SERVICE.—For the Community Relations Service: $9,269,000.

(17) ASSETS FORFEITURE FUND.—For the Assets Forfeiture Fund: $22,949,000 for expenses authorized by section 524 of title 28, United States Code.

(18) UNITED STATES PAROLE COMMISSION.—For the United States Parole Commission: $10,862,000.

(19) FEDERAL DETENTION TRUSTEE.—For the necessary expenses of the Federal Detention Trustee: $1,718,000.

(20) JOINT AUTOMATED BOOKING SYSTEM.—For expenses necessary for the operation of the Joint Automated Booking System: $15,957,000.

(21) NARROWBAND COMMUNICATIONS.—For the costs of conversion to narrowband communications, including the cost for operation and maintenance of Land Mobile Radio legacy systems: $104,606,000.

(22) RADIATION EXPOSURE COMPENSATION.—For administrative expenses in accordance with the Radiation Exposure Compensation Act: such sums as necessary.

(23) COUNTERTERRORISM FUND.—For the Counterterrorism Fund for necessary expenses, as determined by the Attorney General: $4,989,000.

(24) OFFICE OF JUSTICE PROGRAMS.—For administrative expenses not otherwise provided for, of the Office of Justice Programs: $116,369,000.

SEC. 102. APPOINTMENT OF ADDITIONAL ASSISTANT UNITED STATES ATTORNEYS; REDUCTION OF CERTAIN LITIGATION POSITIONS.

(a) APPOINTMENTS.—Not later than September 30, 2003, the Attorney General may exercise authority under section 542 of title 28, United States Code, to appoint 200 assistant United States attorneys in addition to the number of assistant United States attorneys serving on the date of the enactment of this Act.

(b) SELECTION OF APPOINTEES.—Individuals first appointed under subsection (a) may be appointed from among attorneys who are incumbents of 200 full-time litigation positions in divisions of the Department of Justice and whose official duty station is at the seat of Government.

(c) TERMINATION OF POSITIONS.—Each of the 200 litigation positions that become vacant by reason of an appointment made in accordance with subsections (a) and (b) shall be terminated at the time the vacancy arises.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 103. AUTHORIZATION FOR ADDITIONAL ASSISTANT UNITED STATES ATTORNEYS FOR PROJECT SAFE NEIGHBORHOODS.

(a) IN GENERAL.—The Attorney General shall establish a program for each United States Attorney to provide for coordination with State and local law enforcement officials in the identification and prosecution of violations of Federal firearms laws including school gun violence and juvenile gun offenses.

(b) AUTHORIZATION FOR HIRING 94 ADDITIONAL ASSISTANT UNITED STATES ATTORNEYS.—There are authorized to be appropriated to carry out this section $9,000,000 for fiscal year 2002 to hire an additional Assistant United States Attorney in each United States Attorney Office.

TITLE II—PERMANENT ENABLING PROVISIONS

SEC. 201. PERMANENT AUTHORITY.

(a) IN GENERAL.—Chapter 31 of title 28, United States Code, is amended by adding at the end the following:

"§ 530C. Authority to use available funds

''(a) IN GENERAL.—Except to the extent provided otherwise by law, the activities of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof) may, in the reasonable discretion of the Attorney General, be carried out through any means, including—

''(1) through the Department's own personnel, acting within, from, or through the Department itself;

''(2) by sending or receiving details of personnel to other branches or agencies of the Federal Government, on a reimbursable, partially-reimbursable, or nonreimbursable basis;

''(3) through reimbursable agreements with other Federal agencies for work, materials, or equipment;

''(4) through contracts, grants, or cooperative agreements with non-Federal parties; and

''(5) as provided in subsection (b), in section 524, and in any other provision of law consistent herewith, including, without limitation, section 102(b) of Public Law 102–395 (106 Stat. 1838), as incorporated by section 815(d) of Public Law 104–132 (110 Stat. 1315).

''(b) PERMITTED USES.—

''(1) GENERAL PERMITTED USES.—Funds available to the Attorney General (i.e., all funds available to carry out the activities described in subsection (a)) may be used, without limitation, for the following:

''(A) The purchase, lease, maintenance, and operation of passenger motor vehicles, or police-type motor vehicles for law enforcement purposes, without regard to general purchase price limitation for the then-current fiscal year.

''(B) The purchase of insurance for motor vehicles, boats, and aircraft operated in official Government business in foreign countries.

''(C) Services of experts and consultants, including private counsel, as authorized by section 3109 of title 5, and at rates of pay for individuals not to exceed the maximum daily rate payable from time to time under section 5332 of title 5.

''(D) Official reception and representation expenses (i.e., official expenses of a social nature intended in whole or in predominant part to promote goodwill toward the Department or its missions, but excluding expenses of public tours of facilities of the Department of Justice), in accordance with distributions and procedures established, and rules issued, by the Attorney General, and expenses of public tours of facilities of the Department of Justice.

''(E) Unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General and accounted for solely on the certificate of the Attorney General.

''(F) Miscellaneous and emergency expenses authorized or approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Assistant Attorney General for Administration.

''(G) In accordance with procedures established and rules issued by the Attorney General—

''(i) attendance at meetings and seminars;

''(ii) conferences and training; and

''(iii) advances of public moneys under section 3324 of title 31: Provided, That travel advances of such moneys to law enforcement personnel engaged in undercover activity shall be considered to be public money for purposes of section 3527 of title 31.

''(H) Contracting with individuals for personal services abroad, except that such individuals shall not be regarded as employees of the United States for the purpose of any law administered by the Office of Personnel Management.

''(I) Payment of interpreters and translators who are not citizens of the United States, in accordance with procedures established and rules issued by the Attorney General.

''(J) Expenses or allowances for uniforms as authorized by section 5901 of title 5, but without regard to the general purchase price limitation for the then-current fiscal year.

''(K) Expenses of—

''(i) primary and secondary schooling for dependents of personnel stationed outside the continental United States at cost not in excess of those authorized by the Department of Defense for the same area, when it is determined by the Attorney General that schools available in the locality are unable to provide adequately for the education of such dependents; and

''(ii) transportation of those dependents between their place of residence and schools serving the area which those dependents would normally attend when the Attorney General, under such regulations as he may prescribe, determines that such schools are not accessible by public means of transportation.

''(L) Payment of rewards (i.e., payments pursuant to public advertisements for assistance to the Department of Justice), in accordance with procedures and regulations established or issued by the Attorney General: provided that—

''(i) no such reward shall exceed $2,000,000 (unless a statute should authorize a higher amount);

''(ii) no such reward of $250,000 or more may be made or offered without the personal approval of either the Attorney General or the President;

''(iii) the Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives not later than 30 days after the approval of a reward under clause (ii);

''(iv) any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5) may provide the Attorney General with funds for the payment of rewards; and

''(v) neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review.

''(2) SPECIFIC PERMITTED USES.—

''(A) AIRCRAFT AND BOATS.—Funds available to the Attorney General for United States Attorneys, for the Federal Bureau of Investigation, for the United States Marshals Service, for the Drug Enforcement Administration, and for the Immigration and Naturalization Service may be used for the purchase, lease, maintenance, and operation of aircraft and boats, for law enforcement purposes.

''(B) PURCHASE OF AMMUNITION AND FIREARMS; FIREARMS COMPETITIONS.—Funds available to the Attorney General for United States Attorneys, for the Federal Bureau of Investigation, for the United States Marshals Service, for the Drug Enforcement Administration, for the Federal Prison System, for the Office of the Inspector General, and for the Immigration and Naturalization Service may be used for—

''(i) the purchase of ammunition and firearms; and

''(ii) participation in firearms competitions.

''(C) CONSTRUCTION.—Funds available to the Attorney General for construction may be used for expenses of planning, designing, acquiring, building, constructing, activating, renovating, converting, expanding, extending, remodeling, equipping, repairing, or maintaining buildings or facilities, including the expenses of acquisition of sites therefor, and all necessary expenses incident or related thereto; but the foregoing shall not be construed to mean that funds generally available for salaries and expenses are not also available for certain incidental or minor construction, activation, remodeling, maintenance, and other related construction costs.

''(3) FEES AND EXPENSES OF WITNESSES.—Funds available to the Attorney General for fees and expenses of witnesses may be used for—

''(A) expenses, mileage, compensation, protection, and per diem in lieu of subsistence, of witnesses (including advances of public money) and as authorized by section 1821 or other law, except that no witness may be paid more than 1 attendance fee for any 1 calendar day;

''(B) fees and expenses of neutrals in alternative dispute resolution proceedings, where the Department of Justice is a party; and

''(C) construction of protected witness safesites.

''(4) FEDERAL BUREAU OF INVESTIGATION.—Funds available to the Attorney General for the Federal Bureau of Investigation for the detection, investigation, and prosecution of crimes against the United States may be used for the conduct of all its authorized activities.

''(5) IMMIGRATION AND NATURALIZATION SERVICE.—Funds available to the Attorney General for the Immigration and Naturalization Service may be used for—

''(A) acquisition of land as sites for enforcement fences, and construction incident to such fences;

''(B) cash advances to aliens for meals and lodging en route;

''(C) refunds of maintenance bills, immigration fines, and other items properly returnable, except deposits of aliens who become public charges and deposits to secure payment of fines and passage money; and

''(D) expenses and allowances incurred in tracking lost persons, as required by public exigencies, in aid of State or local law enforcement agencies.

''(6) FEDERAL PRISON SYSTEM.—Funds available to the Attorney General for the Federal Prison System may be used for—

''(A) inmate medical services and inmate legal services, within the Federal prison system;

''(B) the purchase and exchange of farm products and livestock;

''(C) the acquisition of land as provided in section 4010 of title 18; and

''(D) the construction of buildings and facilities for penal and correctional institutions (including prison camps), by contract or force account, including the payment of United States prisoners for their work performed in any such construction;

except that no funds may be used to distribute or make available to a prisoner any commercially published information or material that is sexually explicit or features nudity.

''(7) DETENTION TRUSTEE.—Funds available to the Attorney General for the Detention Trustee may be used for all the activities of such Trustee in the exercise of all power and functions authorized by law relating to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody of the United States Marshals Service and to the detention of aliens in the custody of the Immigration and Naturalization Service, including the overseeing of construction of detention facilities or for housing related to such detention, the management of funds appropriated to the Department for the exercise of detention functions, and the direction of the United States Marshals Service and Immigration Service with respect to the exercise of detention policy setting and operations for the Department of Justice.

''(c) RELATED PROVISIONS.—

''(1) LIMITATION OF COMPENSATION OF INDIVIDUALS EMPLOYED AS ATTORNEYS.—No funds available to the Attorney General may be used to pay compensation for services provided by an individual employed as an attorney (other than an individual employed to provide services as a foreign attorney in special cases) unless such individual is duly licensed and authorized to practice as an attorney under the law of a State, a territory of the United States, or the District of Columbia.

''(2) REIMBURSEMENTS PAID TO GOVERNMENTAL ENTITIES.—Funds available to the Attorney General that are paid as reimbursement to a governmental unit of the Department of Justice, to another Federal entity, or to a unit of State or local government, may be used under authorities available to the unit or entity receiving such reimbursement.

''(d) FOREIGN REIMBURSEMENTS.—Whenever the Department of Justice or any component participates in a cooperative project to improve law enforcement or national security operations or services with a friendly foreign country on a cost-sharing basis, any reimbursements or contributions received from that foreign country to meet its share of the project may be credited to appropriate current appropriations accounts of the Department of Justice or any component. The amount of a reimbursement or contribution credited shall be available only for payment of the share of the project expenses allocated to the participating foreign country.

''(e) RAILROAD POLICE TRAINING FEES.—The Attorney General is authorized to establish and collect a fee to defray the costs of railroad police officers participating in a Federal Bureau of Investigation law enforcement training program authorized by Public Law 106–110, and to credit such fees to the appropriation account ''Federal Bureau of Investigation, Salaries and Expenses'', to be available until expended for salaries and expenses incurred in providing such services.

''(f) WARRANTY WORK.—In instances where the Attorney General determines that law enforcement-, security-, or mission-related considerations mitigate against obtaining maintenance or repair services from private sector entities for equipment under warranty, the Attorney General is authorized to seek reimbursement from such entities for warranty work performed at Department of Justice facilities, and to credit any payment made for such work to any appropriation charged therefor.''.

(b) CONFORMING AMENDMENT.—The table of sections of chapter 31 of title 28, United States Code, is amended by adding at the end the following:

''530C. Authority to use available funds.''.

SEC. 202. PERMANENT AUTHORITY RELATING TO ENFORCEMENT OF LAWS.

(a) IN GENERAL.—Chapter 31 of title 28, United States Code (as amended by section 201), is amended by adding at the end the following:

''§ 530D. Report on enforcement of laws

''(a) REPORT.—

''(1) IN GENERAL.—The Attorney General shall submit to the Congress a report of any instance in which the Attorney General or any officer of the Department of Justice—

''(A) establishes or implements a formal or informal policy to refrain—

''(i) from enforcing, applying, or administering any provision of any Federal statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the Attorney General or such officer on the grounds that such provision is unconstitutional; or

''(ii) within any judicial jurisdiction of or within the United States, from adhering to, enforcing, applying, or complying with, any standing rule of decision (binding upon courts of, or inferior to those of, that jurisdiction) established by a final decision of any court of, or superior to those of, that jurisdiction, respecting the interpretation, construction, or application of the Constitution, any statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the Attorney General or such officer;

''(B) determines—

''(i) to contest affirmatively, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law; or

''(ii) to refrain (on the grounds that the provision is unconstitutional) from defending or asserting, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law, or not to appeal or request review of any judicial, administrative, or other determination adversely affecting the constitutionality of any such provision; or

''(C) approves (other than in circumstances in which a report is submitted to the Joint Committee on Taxation, pursuant to section 6405 of the Internal Revenue Code of 1986) the settlement or compromise (other than in bankruptcy) of any claim, suit, or other action—

''(i) against the United States (including any agency or instrumentality thereof) for a sum that exceeds, or is likely to exceed, $2,000,000, excluding prejudgment interest; or

''(ii) by the United States (including any agency or instrumentality thereof) pursuant to an agreement, consent decree, or order (or pursuant to any modification of an agreement, consent decree, or order) that provides injunctive or other nonmonetary relief that exceeds, or is likely to exceed, 3 years in duration: Provided, That for purposes of this clause, the term ''injunctive or other nonmonetary relief'' shall not be understood to include the following, where the same are a matter of public record—

''(I) debarments, suspensions, or other exclusions from Government contracts or grants;

''(II) mere reporting requirements or agreements (including sanctions for failure to report);

''(III) requirements or agreements merely to comply with statutes or regulations;

''(IV) requirements or agreements to surrender professional licenses or to cease the practice of professions, occupations, or industries;

''(V) any criminal sentence or any requirements or agreements to perform community service, to serve probation, or to participate in supervised release from detention, confinement, or prison; or

''(VI) agreements to cooperate with the government in investigations or prosecutions (whether or not the agreement is a matter of public record).

''(2) SUBMISSION OF REPORT TO THE CONGRESS.—For the purposes of paragraph (1), a report shall be considered to be submitted to the Congress if the report is submitted to—

''(A) the majority leader and minority leader of the Senate;

''(B) the Speaker, majority leader, and minority leader of the House of Representatives;

''(C) the chairman and ranking minority member of the Committee on the Judiciary of the House of Representatives and the chairman and ranking minority member of the Committee on the Judiciary of the Senate; and

''(D) the Senate Legal Counsel and the General Counsel of the House of Representatives.

''(b) DEADLINE.—A report shall be submitted—

''(1) under subsection (a)(1)(A), not later than 30 days after the establishment or implementation of each policy;

''(2) under subsection (a)(1)(B), within such time as will reasonably enable the House of Representatives and the Senate to take action, separately or jointly, to intervene in timely fashion in the proceeding, but in no event later than 30 days after the making of each determination; and

''(3) under subsection (a)(1)(C), not later than 30 days after the conclusion of each fiscal-year quarter, with respect to all approvals occurring in such quarter.

''(c) CONTENTS.—A report required by subsection (a) shall—

''(1) specify the date of the establishment or implementation of the policy described in subsection (a)(1)(A), of the making of the determination described in subsection (a)(1)(B), or of each approval described in subsection (a)(1)(C);

''(2) include a complete and detailed statement of the relevant issues and background (including a complete and detailed statement of the reasons for the policy or determination, and the identity of the officer responsible for establishing or implementing such policy, making such determination, or approving such settlement or compromise), except that—

''(A) such details may be omitted as may be absolutely necessary to prevent improper disclosure of national-security- or classified information, of any information subject to the deliberative-process-, executive-, attorney-work-product-, or attorney-client privileges, or of any information the disclosure of which is prohibited by section 6103 of the Internal Revenue Code of 1986, if the fact of each such omission (and the precise ground or grounds therefor) is clearly noted in the statement: Provided, That this subparagraph shall not be construed to deny to the Congress (including any House, Committee, or agency thereof) any such omitted details (or related information) that it lawfully may seek, subsequent to the submission of the report; and

''(B) the requirements of this paragraph shall be deemed satisfied—

''(i) in the case of an approval described in subsection (a)(1)(C)(i), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the legal and factual basis or bases for the settlement or compromise (if not apparent on the face of documents provided); and

''(ii) in the case of an approval described in subsection (a)(1)(C)(ii), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the injunctive or other nonmonetary relief (if not apparent on the face of documents provided); and

''(3) in the case of a determination described in subsection (a)(1)(B) or an approval described in subsection (a)(1)(C), indicate the nature, tribunal, identifying information, and status of the proceeding, suit, or action.

''(d) DECLARATION.—In the case of a determination described in subsection (a)(1)(B), the representative of the United States participating in the proceeding shall make a clear declaration in the proceeding that any position expressed as to the constitutionality of the provision involved is the position of the executive branch of the Federal Government (or, as applicable, of the President or of any executive agency or military department).

''(e) APPLICABILITY TO THE PRESIDENT AND TO EXECUTIVE AGENCIES AND MILITARY DEPARTMENTS.—The reporting, declaration, and other provisions of this section relating to the Attorney General and other officers of the Department of Justice shall apply to the President, to the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) that establishes or implements a policy described in subsection (a)(1)(A) or is authorized to conduct litigation, and to the officers of such executive agency.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 31 of title 28, United States Code (as amended by section 201), is amended by adding at the end the following:

''530D. Report on enforcement of laws.''.

(2) Section 712 of Public Law 95–521 (92 Stat. 1883) is amended by striking subsection (b).

(3) Not later than 30 days after the date of the enactment of this Act, the President shall advise the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) of the enactment of this section.

(4)(A) Not later than 90 days after the date of the enactment of this Act, the Attorney General (and, as applicable, the President, and the head of any executive agency or military department described in subsection (e) of section 530D of title 28, United States Code, as added by subsection (a)) shall submit to Congress a report (in accordance with subsections (a), (c), and (e) of such section) on—

(i) all policies of which the Attorney General and applicable official are aware described in subsection (a)(1)(A) of such section that were established or implemented before the date of the enactment of this Act and were in effect on such date; and

(ii) all determinations of which the Attorney General and applicable official are aware described in subsection (a)(1)(B) of such section that were made before the date of the enactment of this Act and were in effect on such date.

(B) If a determination described in subparagraph (A)(ii) relates to any judicial, administrative, or other proceeding that is pending in the 90-day period beginning on the date of the enactment of this Act, with respect to any such determination, then the report required by this paragraph shall be submitted within such time as will reasonably enable the House of Representatives and the Senate to take action, separately or jointly, to intervene in timely fashion in the proceeding, but not later than 30 days after the date of the enactment of this Act.

(5) Section 101 of Public Law 106–57 (113 Stat. 414) is amended by striking subsection (b).

SEC. 203. NOTIFICATIONS AND REPORTS TO BE PROVIDED SIMULTANEOUSLY TO COMMITTEES.

If the Attorney General or any officer of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof) is required by any Act (which shall be understood to include any request or direction contained in any report of a committee of the Congress relating to an appropriations Act or in any statement of managers accompanying any conference report agreed to by the Congress) to provide a notice or report to any committee or subcommittee of the Congress (other than both the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate), then such Act shall be deemed to require that a copy of such notice or report be provided simultaneously to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, except that classified notices and reports submitted to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives shall be excluded from this section so long as simultaneous notification of the provision of such reports (other than notification required under section 502(1) of the National Security Act of 1947 (50 U.S.C. 413a(1)) is made to the Committees on the Judiciary of the Senate and the House of Representatives.

SEC. 204. MISCELLANEOUS USES OF FUNDS; TECHNICAL AMENDMENTS.

(a) BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) in section 504(a) by striking ''502'' and inserting ''501(b)'';

(2) in section 506(a)(1) by striking ''participating'';

(3) in section 510(a)(3) by striking ''502'' and inserting ''501(b)'';

(4) in section 510 by adding at the end the following:

''(d) No grants or contracts under subsection (b) may be made, entered into, or used, directly or indirectly, to provide any security enhancements or any equipment to any non-governmental entity that is not engaged in law enforcement or law enforcement support, criminal or juvenile justice, or delinquency prevention.''; and

(5) in section 511 by striking ''503'' and inserting ''501(b)''.

(b) ATTORNEYS SPECIALLY RETAINED BY THE ATTORNEY GENERAL.—The 3d sentence of section 515(b) of title 28, United States Code, is amended by striking ''at not more than $12,000''.

SEC. 205. TECHNICAL AND MISCELLANEOUS AMENDMENTS TO DEPARTMENT OF JUSTICE AUTHORITIES; AUTHORITY TO TRANSFER PROPERTY OF MARGINAL VALUE; RECORDKEEPING; PROTECTION OF THE ATTORNEY GENERAL.

(a) Section 524 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting ''to the Attorney General'' after ''available'';

(2) in subsection (c)(1)—

(A) by striking the semicolon at the end of the 1st subparagraph (I) and inserting a period;

(B) by striking the 2d subparagraph (I);

(C) by striking ''(A)(iv), (B), (F), (G), and (H)'' in the first sentence following the second subparagraph (I) and inserting ''(B), (F), and (G)''; and

(D) by striking ''fund'' in the 3d sentence following the 2d subparagraph (I) and inserting ''Fund'';

(3) in subsection (c)(2)—

(A) by inserting before the period in the last sentence '', without both the personal approval of the Attorney General and written notice within 30 days thereof to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives'';

(B) by striking ''for information'' each place it appears; and

(C) by striking ''$250,000'' the 2d and 3d places it appears and inserting ''$500,000'';

(4) in subsection (c)(3) by striking ''(F)'' and inserting ''(G)'';

(5) in subsection (c)(5) by striking ''Fund which'' and inserting ''Fund, that'';

(6) in subsection (c)(8)(A), by striking ''(A)(iv), (B), (F), (G), and (H)'' and inserting ''(B), (F), and (G)''; and

(7) in subsection (c)(9)(B)—

(A) by striking ''year 1997'' and inserting ''years 2002 and 2003''; and

(B) by striking ''Such transfer shall not'' and inserting ''Each such transfer shall be subject to satisfaction by the recipient involved of any outstanding lien against the property transferred, but no such transfer shall''.

(b) Section 522 of title 28, United States Code, is amended by inserting ''(a)'' before ''The'', and by inserting at the end the following:

''(b) With respect to any data, records, or other information acquired, collected, classified, preserved, or published by the Attorney General for any statistical, research, or other aggregate reporting purpose beginning not later than 1 year after the date of enactment of 21st Century Department of Justice Appropriations Authorization Act and continuing thereafter, and notwithstanding any other provision of law, the same criteria shall be used (and shall be required to be used, as applicable) to classify or categorize offenders and victims (in the criminal context), and to classify or categorize actors and acted upon (in the noncriminal context).''.

(c) Section 534(a)(3) of title 28, United States Code, is amended by adding ''and'' after the semicolon.

(d) Section 509(3) of title 28, United States Code, is amended by striking the 2d period.

(e) Section 533 of title 28, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by adding after paragraph (2) a new paragraph as follows:

''(3) to assist in the protection of the person of the Attorney General.''.

(f) Hereafter, no compensation or reimbursement paid pursuant to section 501(a) of Public Law 99–603 (100 Stat. 3443) or section 241(i) of the Act of June 27, 1952 (ch. 477) shall be subject to section 6503(d) of title 31, United States Code, and no funds available to the Attorney General may be used to pay any assessment made pursuant to such section 6503 with respect to any such compensation or reimbursement.

(g) Section 108 of Public Law 103–121 (107 Stat. 1164) is amended by replacing ''three'' with ''six'', by replacing ''only'' with '', first,'', and by replacing ''litigation.'' with ''litigation, and, thereafter, for financial systems, and other personnel, administrative, and litigation expenses of debt collection activities.''.

SEC. 206. OVERSIGHT; WASTE, FRAUD, AND ABUSE OF APPROPRIATIONS.

(a) Section 529 of title 28, United States Code, is amended by inserting ''(a)'' before ''Beginning'', and by adding at the end the following:

''(b) Notwithstanding any provision of law limiting the amount of management or administrative expenses, the Attorney General shall, not later than May 2, 2003, and of every year thereafter, prepare and provide to the Committees on the Judiciary and Appropriations of each House of the Congress using funds available for the underlying programs—

''(1) a report identifying and describing every grant (other than one made to a governmental entity, pursuant to a statutory formula), cooperative agreement, or programmatic services contract that was made, entered into, awarded, or, for which additional or supplemental funds were provided in the immediately preceding fiscal year, by or on behalf of the Office of Justice Programs (including any component or unit thereof, and the Office of Community Oriented Policing Services), and including, without limitation, for each such grant, cooperative agreement, or contract: the term, the dollar amount or value, a description of its specific purpose or purposes, the names of all grantees or parties, the names of each unsuccessful applicant or bidder, and a description of the specific purpose or purposes proposed in each unsuccessful application or bid, and of the reason or reasons for rejection or denial of the same; and

''(2) a report identifying and reviewing every grant (other than one made to a governmental entity, pursuant to a statutory formula), cooperative agreement, or programmatic services contract made, entered into, awarded, or for which additional or supplemental funds were provided, after October 1, 2002, by or on behalf of the Office of Justice Programs (including any component or unit thereof, and the Office of Community Oriented Policing Services) that was programmatically and financially closed out or that otherwise ended in the immediately preceding fiscal year (or even if not yet closed out, was terminated or otherwise ended in the fiscal year that ended 2 years before the end of such immediately preceding fiscal year), and including, without limitation, for each such grant, cooperative agreement, or contract: a description of how the appropriated funds involved actually were spent, statistics relating to its performance, its specific purpose or purposes, and its effectiveness, and a written declaration by each non-Federal grantee and each non-Federal party to such agreement or to such contract, that—

''(A) the appropriated funds were spent for such purpose or purposes, and only such purpose or purposes;

''(B) the terms of the grant, cooperative agreement, or contract were complied with; and

''(C) all documentation necessary for conducting a full and proper audit under generally accepted accounting principles, and any (additional) documentation that may have been required under the grant, cooperative agreement, or contract, have been kept in orderly fashion and will be preserved for not less than 3 years from the date of such close out, termination, or end;

except that the requirement of this paragraph shall be deemed satisfied with respect to any such description, statistics, or declaration if such non-Federal grantee or such non-Federal party shall have failed to provide the same to the Attorney General, and the Attorney General notes the fact of such failure and the name of such grantee or such party in the report.''.

(b) Section 1913 of title 18, United States Code, is amended by striking ''to favor'' and inserting ''a jurisdiction, or an official of any government, to favor, adopt,'', by inserting '', law, ratification, policy,'' after ''legislation'' every place it appears, by striking ''by Congress'' the 2d place it appears, by inserting ''or such official'' before '', through the proper'', by inserting '', measure,'' before ''or resolution'', by striking ''Members of Congress on the request of any Member'' and inserting ''any such Member or official, at his request,'', by striking ''for legislation'' and inserting ''for any legislation'', and by striking the period after ''business'' and inserting '', or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.''.

(c) Section 1516(a) of title 18, United States Code, is amended by inserting '', entity, or program'' after ''person'', and by inserting ''grant, or cooperative agreement,'' after ''subcontract,''.

(d) Section 112 of title I of section 101(b) of division A of Public Law 105–277 (112 Stat. 2681–67) is amended by striking ''fiscal year'' and all that follows through ''Justice—'', and inserting ''any fiscal year the Attorney General—''.

(e) Section 2320(f) of title 18, United States Code, is amended—

(1) by striking ''title 18'' each place it appears and inserting ''this title''; and

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively;

(3) by inserting ''(1)'' after ''(f)''; and

(4) by adding at the end the following:

''(2) The report under paragraph (1), with respect to criminal infringement of copyright, shall include the following:

''(A) The number of infringement cases involving specific types of works, such as audiovisual works, sound recordings, business software, video games, books, and other types of works.

''(B) The number of infringement cases involving an online element.

''(C) The number and dollar amounts of fines assessed in specific categories of dollar amounts, such as up to $500, from $500 to $1,000, from $1,000 to $5,000, from $5,000 to $10,000, and categories above $10,000.

''(D) The amount of restitution awarded.

''(E) Whether the sentences imposed were served.''.

SEC. 207. ENFORCEMENT OF FEDERAL CRIMINAL LAWS BY ATTORNEY GENERAL.

Section 535 of title 28, United States Code, is amended in subsections (a) and (b), by replacing ''title 18'' with ''Federal criminal law'', and in subsection (b), by replacing ''or complaint'' with ''matter, or complaint witnessed, discovered, or'', and by inserting ''or the witness, discoverer, or recipient, as appropriate,'' after ''agency,''.

SEC. 208. COUNTERTERRORISM FUND.

(a) ESTABLISHMENT; AVAILABILITY.—There is hereby established in the Treasury of the United States a separate fund to be known as the ''Counterterrorism Fund'', amounts in which shall remain available without fiscal year limitation—

(1) to reimburse any Department of Justice component for any costs incurred in connection with—

(A) reestablishing the operational capability of an office or facility that has been damaged or destroyed as the result of any domestic or international terrorism incident;

(B) providing support to counter, investigate, or prosecute domestic or international terrorism, including, without limitation, paying rewards in connection with these activities; and

(C) conducting terrorism threat assessments of Federal agencies and their facilities; and

(2) to reimburse any department or agency of the Federal Government for any costs incurred in connection with detaining in foreign countries individuals accused of acts of terrorism that violate the laws of the United States.

(b) NO EFFECT ON PRIOR APPROPRIATIONS.—The amendment made by subsection (a) shall not affect the amount or availability of any appropriation to the Counterterrorism Fund made before the date of enactment of this Act.

SEC. 209. STRENGTHENING LAW ENFORCEMENT IN UNITED STATES TERRITORIES, COMMONWEALTHS, AND POSSESSIONS.

(a) EXTENDED ASSIGNMENT INCENTIVE.—Chapter 57 of title 5, United States Code, is amended—

(1) in subchapter IV, by inserting at the end the following:

''§ 5757. Extended assignment incentive

''(a) The head of an Executive agency may pay an extended assignment incentive to an employee if—

''(1) the employee has completed at least 2 years of continuous service in 1 or more civil service positions located in a territory or possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands;

''(2) the agency determines that replacing the employee with another employee possessing the required qualifications and experience would be difficult; and

''(3) the agency determines it is in the best interest of the Government to encourage the employee to complete a specified additional period of employment with the agency in the territory or possession, the Commonwealth of Puerto Rico or Commonwealth of the Northern Mariana Islands, except that the total amount of service performed in a particular territory, commonwealth, or possession under 1 or more agreements established under this section may not exceed 5 years.

''(b) The sum of extended assignment incentive payments for a service period may not exceed the greater of—

''(1) an amount equal to 25 percent of the annual rate of basic pay of the employee at the beginning of the service period, times the number of years in the service period; or

''(2) $15,000 per year in the service period.

''(c)(1) Payment of an extended assignment incentive shall be contingent upon the employee entering into a written agreement with the agency specifying the period of service and other terms and conditions under which the extended assignment incentive is payable.

''(2) The agreement shall set forth the method of payment, including any use of an initial lump-sum payment, installment payments, or a final lump-sum payment upon completion of the entire period of service.

''(3) The agreement shall describe the conditions under which the extended assignment incentive may be canceled prior to the completion of agreed-upon service period and the effect of the cancellation. The agreement shall require that if, at the time of cancellation of the incentive, the employee has received incentive payments which exceed the amount which bears the same relationship to the total amount to be paid under the agreement as the completed service period bears to the agreed-upon service period, the employee shall repay that excess amount, at a minimum, except that an employee who is involuntarily reassigned to a position stationed outside the territory, commonwealth, or possession or involuntarily separated (not for cause on

charges of misconduct, delinquency, or inefficiency) may not be required to repay any excess amounts.

''(d) An agency may not put an extended assignment incentive into effect during a period in which the employee is fulfilling a recruitment or relocation bonus service agreement under section 5753 or for which an employee is receiving a retention allowance under section 5754.

''(e) Extended assignment incentive payments may not be considered part of the basic pay of an employee.

''(f) The Office of Personnel Management may prescribe regulations for the administration of this section, including regulations on an employee's entitlement to retain or receive incentive payments when an agreement is canceled. Neither this section nor implementing regulations may impair any agency's independent authority to administratively determine compensation for a class of its employees.''; and

(2) in the analysis by adding at the end the following:

''5757. Extended assignment incentive.''.

(b) CONFORMING AMENDMENT.—Section 5307(a)(2)(B) of title 5, United States Code, is amended by striking ''or 5755'' and inserting ''5755, or 5757''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first applicable pay period beginning on or after 6 months after the date of enactment of this Act.

(d) REPORT.—No later than 3 years after the effective date of this section, the Office of Personnel Management, after consultation with affected agencies, shall submit a report to Congress assessing the effectiveness of the extended assignment incentive authority as a human resources management tool and making recommendations for any changes necessary to improve the effectiveness of the incentive authority. Each agency shall maintain such records and report such information, including the number and size of incentive offers made and accepted or declined by geographic location and occupation, in such format and at such times as the Office of Personnel Management may prescribe, for use in preparing the report.

SEC. 210. ADDITIONAL AUTHORITIES OF THE ATTORNEY GENERAL.

Section 151 of the Foreign Relations Act, fiscal years 1990 and 1991 (5 U.S.C. 5928 note) is amended by inserting ''or Federal Bureau of Investigation'' after ''Drug Enforcement Administration''.

TITLE III—MISCELLANEOUS

SEC. 301. REPEALERS.

(a) OPEN-ENDED AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL INSTITUTE OF CORRECTIONS.—Chapter 319 of title 18, United States Code, is amended by striking section 4353.

(b) OPEN-ENDED AUTHORIZATION OF APPROPRIATIONS FOR UNITED STATES MARSHALS SERVICE.—Section 561 of title 28, United States Code, is amended by striking subsection (i).

(c) REDUNDANT AUTHORIZATIONS OF PAYMENTS FOR REWARDS.—

(1) Chapter 203 of title 18 of the United States Code is amended by striking sections 3059, 3059A, 3059B, 3075, and all the matter after the first sentence of 3072; and

(2) Public Law 101–647 is amended in section 2565, by replacing all the matter after ''2561'' in subsection (c)(1) with ''the Attorney General may, in his discretion, pay a reward to the declarant'' and by striking subsection (e); and by striking section 2569.

SEC. 302. TECHNICAL AMENDMENTS TO TITLE 18 OF THE UNITED STATES CODE.

Title 18 of the United States Code is amended—

(1) in section 4041 by striking ''at a salary of $10,000 a year'';

(2) in section 4013—

(A) in subsection (a)—

(i) by replacing ''the support of United States prisoners'' with ''Federal prisoner detention'';

(ii) in paragraph (2) by adding ''and'' after ''hire;'';

(iii) in paragraph (3) by replacing ''entities; and'' with ''entities.''; and

(iv) in paragraph (4) by inserting ''The Attorney General, in support of Federal prisoner detainees in non-Federal institutions, is authorized to make payments, from funds appropriated for State and local law enforcement assistance, for'' before ''entering''; and

(B) by redesignating—

(i) subsections (b) and (c) as subsections (c) and (d); and

(ii) paragraph (a)(4) as subsection (b), and subparagraphs (A), (B), and (C), of such paragraph (a)(4) as paragraphs (1), (2), and (3) of such subsection (b); and

(3) in section 209(a)—

(A) by striking ''or makes'' and inserting ''makes''; and

(B) by striking ''supplements the salary of, any'' and inserting ''supplements, the salary of any''.

SEC. 303. REQUIRED SUBMISSION OF PROPOSED AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF JUSTICE FOR FISCAL YEAR 2003.

When the President submits to the Congress the budget of the United States Government for fiscal year 2003, the President shall simultaneously submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate such proposed legislation authorizing appropriations for the Department of Justice for fiscal year 2003 as the President may judge necessary and expedient.

SEC. 304. STUDY OF UNTESTED RAPE EXAMINATION KITS.

The Attorney General shall conduct a study to assess and report to Congress the number of untested rape examination kits that currently exist nationwide and shall submit to the Congress a report containing a summary of the results of such study. For the purpose of carrying out such study, the Attorney General shall attempt to collect information from all law enforcement jurisdictions in the United States.

SEC. 305. REPORTS ON USE OF DCS 1000 (CARNIVORE).

(a) REPORT ON USE OF DCS 1000 (CARNIVORE) TO IMPLEMENT ORDERS UNDER 18 U.S.C. 3123.—At the same time that the Attorney General submits to Congress the annual reports required by section 3126 of title 18, United States Code, that are respectively next due after the end of each of the fiscal years 2001 and 2002, the Attorney General shall also submit to the Chairmen and ranking minority members of the Committees on the Judiciary of the Senate and of the House of Representatives a report, covering the same respective time period, on the number of orders under section 3123 applied for by law enforcement agencies of the Department of Justice whose implementation involved the use of the DCS 1000 program (or any subsequent version of such program), which report shall include information concerning—

(1) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(2) the offense specified in the order or application, or extension of an order;

(3) the number of investigations involved;

(4) the number and nature of the facilities affected;

(5) the identity of the applying investigative or law enforcement agency making the application for an order; and

(6) the specific persons authorizing the use of the DCS 1000 program (or any subsequent version of such program) in the implementation of such order.

(b) REPORT ON USE OF DCS 1000 (CARNIVORE) TO IMPLEMENT ORDERS UNDER 18 U.S.C. 2518.—At the same time that the Attorney General, or Assistant Attorney General specially designated by the Attorney General, submits to the Administrative Office of the United States Courts the annual report required by section 2519(2) of title 18, United States Code, that is respectively next due after the end of each of the fiscal years 2001 and 2002, the Attorney General shall also submit to the Chairmen and ranking minority members of the Committees on the Judiciary of the Senate and of the House of Representatives a report, covering the same respective time period, that contains the following information with respect to those orders described in that annual report that were applied for by law enforcement agencies of the Department of Justice and whose implementation involved the use of the DCS 1000 program (or any subsequent version of such program)—

(1) the kind of order or extension applied for (including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of title 18, United States Code, did not apply by reason of section 2518 (11) of title 18);

(2) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(3) the offense specified in the order or application, or extension of an order;

(4) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application;

(5) the nature of the facilities from which or place where communications were to be intercepted;

(6) a general description of the interceptions made under such order or extension, including—

(A) the approximate nature and frequency of incriminating communications intercepted;

(B) the approximate nature and frequency of other communications intercepted;

(C) the approximate number of persons whose communications were intercepted;

(D) the number of orders in which encryption was encountered and whether such encryption prevented law enforcement from obtaining the plain text of communications intercepted pursuant to such order; and

(E) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(7) the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(8) the number of trials resulting from such interceptions;

(9) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(10) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(11) the specific persons authorizing the use of the DCS 1000 program (or any subsequent version of such program) in the implementation of such order.

SEC. 306. STUDY OF ALLOCATION OF LITIGATING ATTORNEYS.

Not later than 180 days after the date of the enactment of this Act, the Attorney General shall submit a report to the chairman and ranking minority member of the Committees on the Judiciary of the House of Representatives and Committee on the Judiciary of the Senate, detailing the distribution or allocation of appropriated funds, attorneys and other personnel, and per-attorney workloads, for each Office of United States Attorney and each division of the Department of Justice except the Justice Management Division.

SEC. 307. USE OF TRUTH-IN-SENTENCING AND VIOLENT OFFENDER INCARCERATION GRANTS.

Section 20105(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13705(b)) is amended to read as follows:

''(b) USE OF TRUTH-IN-SENTENCING AND VIOLENT OFFENDER INCARCERATION GRANTS.—Funds provided under section 20103 or 20104 may be applied to the cost of—

''(1) altering existing correctional facilities to provide separate facilities for juveniles under the jurisdiction of an adult criminal court who are detained or are serving sentences in adult prisons or jails;

''(2) providing correctional staff who are responsible for supervising juveniles who are detained or serving sentences under the jurisdiction of an adult criminal court with orientation and ongoing training regarding the unique needs of such offenders; and

''(3) providing ombudsmen to monitor the treatment of juveniles who are detained or serving sentences under the jurisdiction of an adult criminal court in adult facilities, consistent with guidelines issued by the Assistant Attorney General.

SEC. 308. AUTHORITY OF THE DEPARTMENT OF JUSTICE INSPECTOR GENERAL.

Section 8E of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (b), by striking paragraphs (2) and (3) and inserting the following:

''(2) except as specified in subsection (a) and paragraph (3), may investigate allegations of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice, or may, in the Inspector General's discretion, refer such allegations to the Office of Professional Responsibility or the internal affairs office of the appropriate component of the Department of Justice; and

''(3) shall refer to the Counsel, Office of Professional Responsibility of the Department of Justice, allegations of misconduct involving Department attorneys, investigators or law enforcement personnel, where the allegations relate to the exercise of an attorney's authority to investigate, litigate, or provide legal advice, except that no such referral shall be made if the attorney is employed in the Office of Professional Responsibility.''; and

(2) by inserting at the end the following:

''(d) The Attorney General shall insure by regulation that any component of the Department of Justice receiving a nonfrivolous allegation of criminal wrongdoing or administrative misconduct by an employee of the Department shall report such information to the Inspector General.''.

SEC. 309. REVIEW OF THE DEPARTMENT OF JUSTICE.

(a) APPOINTMENT OF OVERSIGHT OFFICIAL WITHIN THE OFFICE OF INSPECTOR GENERAL.—The Inspector General of the Department of Justice shall direct that one official from the Inspector General's office shall be responsible for supervising and coordinating independent oversight of programs and operations of the Federal Bureau of Investigation until September 30, 2003. The Inspector General may continue this policy after September 30, 2003, at the Inspector General's discretion.

(b) INSPECTOR GENERAL OVERSIGHT PLAN FOR THE FEDERAL BUREAU OF INVESTIGATION.—Not later than 30 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to the Chairman and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives a plan for oversight of the Federal Bureau of Investigation. The Inspector General shall consider the following activities for inclusion in such plan:

(1) FINANCIAL SYSTEMS.—Auditing the financial systems, information technology systems, and computer security systems of the Federal Bureau of Investigation.

(2) PROGRAMS AND PROCESSES.—Auditing and evaluating programs and processes of the Federal Bureau of Investigation to identify systemic weaknesses or implementation failures and to recommend corrective action.

(3) INTERNAL AFFAIRS OFFICES.—Reviewing the activities of internal affairs offices of the Federal Bureau of Investigation, including the Inspections Division and the Office of Professional Responsibility.

(4) PERSONNEL.—Investigating allegations of serious misconduct by personnel of the Federal Bureau of Investigation.

(5) OTHER PROGRAMS AND OPERATIONS.—Reviewing matters relating to any other program or and operation of the Federal Bureau of Investigation that the Inspector General determines requires review.

(6) RESOURCES.—Identifying resources needed by the Inspector General to implement such plan.

(c) REPORT ON INSPECTOR GENERAL FOR FEDERAL BUREAU OF INVESTIGATION.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall submit a report and recommendation to the Chairman and ranking member of the Committees on the Judiciary of the Senate and the House of Representatives concerning whether there should be established, within the Department of Justice, a separate office of Inspector General for the Federal Bureau of Investigation that shall be responsible for supervising independent oversight of programs and operations of the Federal Bureau of Investigation.

SEC. 310. USE OF RESIDENTIAL SUBSTANCE ABUSE TREATMENT GRANTS TO PROVIDE FOR SERVICES DURING AND AFTER INCARCERATION.

Section 1901 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff) is amended by adding at the end the following:

''(c) ADDITIONAL USE OF FUNDS.—States that demonstrate that they have existing in-prison drug treatment programs that are in compliance with Federal requirements may use funds awarded under this part for treatment and sanctions both during incarceration and after release.''.

SEC. 311. REPORT ON THREATS AND ASSAULTS AGAINST FEDERAL LAW ENFORCEMENT OFFICERS, UNITED STATES JUDGES, UNITED STATES OFFICIALS AND THEIR FAMILIES.

(a) REPEAL OF COMPILATION OF STATISTICS RELATING TO INTIMIDATION OF GOVERNMENT EMPLOYEES.—Section 808 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132; 110 Stat.1310) is repealed.

(b) REPORT ON THREATS AND ASSAULTS AGAINST FEDERAL LAW ENFORCEMENT OFFICERS, UNITED STATES JUDGES, UNITED STATES OFFICIALS AND THEIR FAMILIES.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall submit to the Chairmen and ranking minority members of the Committees on the Judiciary of the Senate and of the House of Representatives a report on the number of investigations and prosecutions under section 111 of title 18, United States Code, and section 115 of title 18, United States Code, for the fiscal year 2001.

SEC. 312. ADDITIONAL FEDERAL JUDGESHIPS.

(a) PERMANENT DISTRICT JUDGES FOR THE DISTRICT COURTS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 5 additional district judges for the southern district of California;

(B) 1 additional district judge for the western district of North Carolina; and

(C) 2 additional district judges for the western district of Texas.

(2) TABLES.—In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of paragraph (1) of this subsection, such table is amended—

(A) by striking the item relating to California and inserting the following:

''California:

Northern	14
Eastern	6
Central	27
Southern	13.'';

(B) by striking the item relating to North Carolina and inserting the following:

''North Carolina:

Eastern	4
Middle	4
Western	4.'';

and

(C) by striking the item relating to Texas and inserting the following:

''Texas:

Northern	12
Southern	19
Eastern	7
Western	13.''.

(b) DISTRICT JUDGESHIPS FOR THE CENTRAL AND SOUTHERN DISTRICTS OF ILLINOIS.—

(1) CONVERSION OF TEMPORARY JUDGESHIPS TO PERMANENT JUDGESHIPS.—The existing district judgeships for the central district and the southern district of Illinois authorized by section 203(c) (3) and (4) of the Judicial Improvements Act of 1990 (Public Law 101–650, 28 U.S.C. 133 note) shall, as of the date of the enactment of this Act, be authorized under section 133 of title 28, United States Code, and the incumbents in such offices shall hold the offices under section 133 of title 28, United States Code (as amended by this section).

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table contained in section 133(a) of title 28, United States Code, is amended by striking the item relating to Illinois and inserting the following:

''Illinois:

Northern	22
Central	4
Southern	4.''.

(c) TEMPORARY JUDGESHIP.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the western district of North Carolina. The first vacancy in the office of district judge in the western district of North Carolina, occurring 7 years or more after the confirmation date of the judge named to fill the temporary district judgeship created in that district by this subsection, shall not be filled.

(d) EXTENSION OF TEMPORARY FEDERAL DISTRICT COURT JUDGESHIP FOR THE NORTHERN DISTRICT OF OHIO.—

(1) IN GENERAL.—Section 203(c) of the Judicial Improvement Act of 1990 (28 U.S.C. 133 note) is amended—

(A) in the first sentence following paragraph (12), by striking ''and the eastern district of Pennsylvania'' and inserting '', the eastern district of Pennsylvania, and the northern district of Ohio''; and

(B) by inserting after the third sentence following paragraph (12) ''The first vacancy in the office of district judge in the northern district of Ohio occurring 15 years or more after the confirmation date of the judge named to fill the temporary judgeship created under this subsection shall not be filled.''.

(2) EFFECTIVE DATE.—The amendments made by this section shall take effect on the earlier of—

(A) the date of enactment of this Act; or

(B) November 15, 2001.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this section.

TITLE IV—VIOLENCE AGAINST WOMEN

SEC. 401. SHORT TITLE.

This title may be cited as the ''Violence Against Women Office Act''.

SEC. 402. ESTABLISHMENT OF VIOLENCE AGAINST WOMEN OFFICE.

(a) IN GENERAL.—There is established in the Department of Justice a Violence Against Women Office (in this title referred to as the ''Office'') under the general authority of the Attorney General.

(b) SEPARATE OFFICE.—The Office—

(1) shall not be part of any division or component of the Department of Justice; and

(2) shall be a separate office headed by a Director who shall report to the Attorney General through the Associate Attorney General of the United States, and who shall also serve as Counsel to the Attorney General.

SEC. 403. JURISDICTION.

The Office—

(1) shall have jurisdiction over all matters related to administration, enforcement, coordination, and implementation of all responsibilities of the Attorney General or the Department of Justice related to violence against women, including formula and discretionary grant programs authorized under the Violence Against Women Act of 1994 (title IV of Public Law 103–322) and the Violence Against Women Act of 2000 (Division B of Public Law 106–386); and

(2) shall be solely responsible for coordination with other offices or agencies of administration, enforcement, and implementation of the programs, grants, and activities authorized or undertaken under the Violence Against Women Act of 1994 (title IV of Public Law 103–322) and the Violence Against Women Act of 2000 (Division B of Public Law 106–386).

SEC. 404. DIRECTOR OF VIOLENCE AGAINST WOMEN OFFICE.

(a) APPOINTMENT.—The President, by and with the advice and consent of the Senate, shall appoint a Director for the Violence Against Women Office (in this title referred to as the ''Director'') to be responsible for the administration, coordination, and implementation of the programs and activities of the office.

(b) OTHER EMPLOYMENT.—The Director shall not—

(1) engage in any employment other than that of serving as Director; or

(2) hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other agreement under the Violence Against Women Act of 1994 (title IV of Public Law 103–322) or the Violence Against Women Act of 2000 (Division B of Public Law 106–386).

(c) VACANCY.—In the case of a vacancy, the President may designate an officer or employee who shall act as Director during the vacancy.

(d) COMPENSATION.—The Director shall be compensated at a rate of pay not to exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

SEC. 405. REGULATORY AUTHORIZATION.

The Director may, after appropriate consultation with representatives of States and units of local government, establish such rules, regulations, and procedures as are necessary to the exercise of the functions of the Office, and are consistent with the stated purposes of this Act and those of the Violence Against Women Act of 1994 (title IV of Public Law 103–322) and the Violence Against Women Act of 2000 (Division B of Public Law 106–386).

SEC. 406. OFFICE STAFF.

The Attorney General shall ensure that there is adequate staff to support the Director in carrying out the responsibilities of the Director under this title.

SEC. 407. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

Mr. LEAHY. Mr. President, I am pleased to the Senate is finally passing the 21st Century Department of Justice Appropriations Authorization Act. I thank Senator HATCH, the ranking Republican member of the Judiciary Committee, for his hard work and support of this legislation.

The last time Congress properly authorized spending for the entire Department of Justice (''DOJ'' or the ''Department'') was in 1979. Congress extended that authorization in 1980 and 1981. Since then, Congress has not passed nor has the President signed an authorization bill for the Department. In fact, there are a number of years where Congress failed to consider any Department authorization bill. This 21-year failure to properly reauthorize the Department has forced the appropriations committees in both houses to reauthorize and appropriate money.

We have ceded the authorization power to the appropriators for too long. Our bipartisan legislation is an attempt to reaffirm the authorizing authority and responsibility of the House and Senate Judiciary Committees. I commend Chairman SENSENBRENNER and Ranking Member CONYERS of the House Judiciary Committee for working in a bipartisan manner to pass similar legislation in the House of Representatives.

The 21st Century Department of Justice Appropriations Authorization Act, is divided into two divisions: the first division is a comprehensive authorization of the Department; and the second division is a comprehensive authorization of expired and new Department grants programs and improvements to criminal law and procedures.

Division A of our bipartisan legislation contains four titles which authorize appropriations for the Department for fiscal year 2002, provide permanent enabling authorities which will allow the Department to efficiently carry out its mission, clarify and harmonize existing statutory authority, and repeal obsolete statutory authorities. The bill establishes certain reporting requirements and other mechanisms, such as DOJ Inspector General authority to investigate allegations of misconduct by employees of the Federal Bureau of Investigation (FBI), intended to better enable the Congress and the Department to oversee the operations of the Department. Finally, the bill creates a separate Violence Against Women Office to combat domestic violence.

Title I authorizes appropriations for the major components of the Department for fiscal year 2002. The authorization mirrors the President's request regarding the Department except in two areas. First, the bill increased the President's request for the DOJ Inspector General by $10 million. This is necessary because the Committee is concerned about the severe downsizing of that office and the need for oversight, particularly of the FBI, at the Department. Second, the bill authorizes at least $10 million for the investigation and prosecution of intellectual property crimes, including software counterfeiting crimes and crimes identified in the No Electronic Theft (NET) Act (Public Law 105–147). The American copyright industry is the largest exporter of goods from the United States, employing more than 7 million Americans, and these additional funds are needed to strengthen the resources available to DOJ and the FBI to investigate and prosecute cyberpiracy.

Title II permanently establishes a clear set of authorities that the Department may rely on to use appropriated funds, including establishing permitted uses of appropriated funds by the Attorney General, the FBI, the Immigration and Naturalization Service, the Federal Prison System, and the Detention Trustee. Title II also establishes new reporting requirements which are intended to enhance Congressional oversight of the Department, including new reporting requirements for information about the enforcement of existing laws, for information regarding the Office of Justice Programs (OJP), and the submission of other reports, required by existing law, to the House and Senate Judiciary Committees. Section 206(e) expands an existing reporting requirement regarding copyright infringement cases.

Title II also provides the Department with additional law enforcement tools in the war against terrorism. For instance, section 201 permits the FBI to enter into cooperative projects with foreign countries to improve law enforcement or intelligence operations. Section 210 of the committee approved bill also provided for special ''danger pay'' allowances for FBI agents in hazardous duty locations outside the United States, as is provided for agents of the Drug Enforcement Administration. At the insistence of a Republican Senator, section 210 have regrettably been removed from the bill to ensure final passage.

Title III repeals outdated and open-ended statutes, requires the submission of an annual authorization bill to the House and Senate Judiciary Committees, and provides states with flexibility to use existing Truth-In-Sentencing and Violent Offender Incarceration Grants to account for juveniles being housed in adult prison facilities. Title III requires the Department to submit to Congress studies on untested rape examination kits, and the allocation of funds, personnel, and workloads for each office of U.S. Attorney and each division of the Department.

In addition, Title III provides new oversight and reporting requirements for the FBI and other activities conducted by the Justice Department. Specifically, section 308 codifies the Attorney General's order of July 11, 2001, which revised Department of Justice's regulations concerning the Inspector General. The section insures that the Inspector General for the Department of Justice has the authority to decide whether a particular allegation of misconduct by Department of Justice personnel, including employees of the Federal Bureau of Investigation

and the Drug Enforcement Administration, should be investigated by the Inspector General or by the internal affairs unit of the appropriate component of the Department of Justice.

Section 309 directs the Inspector General of the Department to appoint an official from the Inspector General's office to be responsible for supervising and coordinating independent oversight of programs and operations of the FBI until the end of the 2003 fiscal year. This section also requires the Inspector General of the Department to submit to Congress not later than 30 days after enactment of this Act an oversight plan for the FBI. This section further requires the Attorney General to submit a report and recommendation to the House and Senate Committees on the Judiciary not later than 90 days after enactment of this Act on whether there should be established a separate office of Inspector General for the FBI that shall be responsible for supervising independent oversight of programs and operations of the FBI.

In addition, the bill as passed by the committee, contains language offered as an amendment by Senator FEINSTEIN to authorize a number of new judgeships. I strongly support Senator FEINSTEIN's amendment, and believe that the need for these new judgeships is acute.

Title IV establishes a separate Violence Against Women Office (VAWO) within the Department. The VAWO is headed by a Director, who is appointed by the President and confirmed by the Senate. In addition, Title IV enumerates duties and responsibilities of the Director, and authorizes appropriations to ensure the VAWO is adequately staffed. I strongly support a separate VAWO office within the Department of Justice.

The 21st Century Department of Justice Appropriations Authorization Act should result in a more effective, as well as efficient, Department of Justice for the American people.

Division B of our bipartisan legislation includes eight titles which compile a comprehensive authorization of expired and new Department of Justice grants programs and improvements to criminal law and procedures.

Title I authorizes Department of Justice grants to establish 4,000 Boys and Girls Clubs across the country before January 1, 2007. This bipartisan amendment authorizes Department of Justice grants for each of the next 5 years to establish 1,200 additional Boys and Girls Clubs across the Nation. In fact, this will bring the number of Boys and Girls clubs to 4,000. That means they will serve approximately 6 million young people by January 1, 2007.

I am very impressed with what I see about the Boys and Girls Clubs as I travel around the country. In 1997, I was very proud to join with Senator HATCH and others to pass bipartisan legislation to authorize grants by the Department of Justice to fund 2,500 Boys and Girls Clubs across the Nation. We increased the Department of Justice grant funding for the Boys and Girls Clubs from $20 million in fiscal year 1998 to $60 million in fiscal year 2001. That is why we have now 2,591 Boys and Girls Clubs in all 50 States and 3.3 million children are served. It is a success story.

I hear from parents certainly across my State how valuable it is to have the Boys and Girls Clubs. I hear it also from police chiefs. In fact, one police chief told me, rather than giving him a couple more police officers, fund a Boys and Girls Club in his district; it would be more beneficial. This long-term Federal commitment has enabled Vermonters to establish six Boys and Girls Clubs—in Brattleboro, Burlington, Montpelier, Randolph, Rutland, and Vergennes. In fact, I believe the Vermont Boys and Girls Clubs have received more than a million dollars from the Department of Justice grants since 1998.

In May of this year at a Vermont town meeting on heroin prevention and treatment, I was honored to present a check for more than $150,000 in Department of Justice funds to the members of the Burlington club to continue helping young Vermonters find some constructive alternatives for both their talents and energies, because we know that in Vermont and across the Nation Boys and Girls Clubs are proving they are a growing success at preventing crime and supporting young children.

Parents, educators, law enforcement officers, and others know we need safe havens where young people can learn and grow up free from the influence of the drugs and gangs and crime. That is why the Boys and Girls Clubs are so important to our Nation's children. Indeed, the success already in Vermont has led to efforts to create nine more clubs throughout my home State. Continued Federal support would be critical to these expansion efforts in Vermont and in the other 49 States as well.

Title II and III is the Drug Abuse Education, Prevention, and Treatment Act of 2001. I am pleased that we have included in this package the version of S. 304 that the Judiciary Committee passed unanimously on November 29. This legislation ushers in a new, bipartisan approach to our efforts to reduce drug abuse in the United States. It was introduced by Senator HATCH and I in February. Senator HATCH held an excellent hearing on the bill in March, the Judiciary Committee has approved it, and the full Senate should follow the Committee's lead. This is a bill that is embraced by Democrats and Republicans alike, as well as law enforcement officers and drug treatment providers.

I have wanted to pass legislation like this for years. This legislation provides a comprehensive approach to reducing drug abuse in America. I hope that the innovative programs established by this legislation will assist all of our States in their efforts to address the drug problems that most affect our communities.

No community or State is immune from the ravages of drug abuse. Earlier this year, I held two town meetings up in Vermont to talk about the most pressing drug problem in my State: heroin. Vermont has historically had one of the lowest crime rates in the nation, but we are experiencing serious troubles because of drug abuse. I was pleased that so many Vermonters—parents, students, teachers, and concerned community members, as well as professionals from our State's prevention, treatment, and enforcement communities—took time out of their busy schedules to discuss the way Vermont's heroin problem affects their lives. They have informed my thinking on these issues and rededicated me to reducing the scourge of drug abuse throughout our nation.

This bill will provide necessary assistance to Vermont and every other State. It contains numerous grant programs to aid States and local communities in their efforts to prevent and treat drug abuse. Of particular interest to Vermonters, S. 304 establishes drug treatment grants for rural States and authorizes money for residential treatment centers for mothers addicted to heroin, methamphetamines, or other drugs.

This legislation also will help States and communities reduce drug use in prisons through testing and treatment. This is an effort I proposed in the Drug Free Prisons Act, which I introduced in the last Congress. It will fund programs designed to reduce recidivism through drug treatment and other services for former prisoners after release. As Joseph Califano, Jr., the president of the Center on Addiction and Substance Abuse and former secretary of the Department of Health, Education, and Welfare, told the National Press Club in January. ''The next great opportunity to reduce crime is to provide treatment and training to drug and alcohol abusing prisoners who will return to a life of criminal activity unless they leave prison substance free and, upon release, enter treatment and continuing aftercare.'' This legislation will accomplish both of those goals. In addition, this bill will authorize drug courts—another step I proposed in the Drug Free Prisons Act—and juvenile drug courts.

Through this legislation, we extend food stamps to people who are ineligible under current law due to a past drug offense, but have completed or are enrolled in drug treatment. Senator HATCH and I wanted to go further, and the Judiciary Committee approved language that would have also extended food stamps to those who were pregnant, seriously ill, or had dependent children. At Senator KYLE's insistence, those provisions have regrettably been removed from this amendment.

This legislation also includes a grant program to assist State and local law enforcement in developing new ways to

fight crime. This National Comprehensive Crime-Free Communities Act will provide funding for 250 communities, including at least one from every State, to support crime prevention efforts. It also provides funding for each State to assist local communities by, among other things, providing training and technical assistance in preventing crime.

Our bipartisan bill, S. 304, represents a major step forward for our drug policy. It is a bill that has been very important to Senator HATCH, and it has been very important to me. I think it will greatly benefit Vermonters, and citizens of every State, and I urge the Senate to give this bill its full support.

Title IV is similar to S. 1315, the Judicial Improvement and Integrity Act of 2001, introduced by myself and Senator HATCH, to protect witnesses who provide information on criminal activity to law enforcement officials by increasing maximum sentences and other improvements to the criminal code.

This title would do a number of things, such as:

No. 1. Protect witnesses who come forward to provide information on criminal activity to law enforcement officials by increasing maximum sentences where physical force is actually used or attempted on the witness;

No. 2. Eliminate a loophole in the criminal contempt statute that allows some defendants to avoid serving prison sentences imposed by the Court;

No. 3. Eliminate a loophole in the statute of limitations that makes some defendants immune from further prosecution if they plead guilty then later get their plea agreements vacated;

No. 4. Grant the government the clear right to appeal the dismissal of a part of a count of an indictment, such as a predicate act in a RICO count;

No. 5. Insure that courts may impose appropriate terms of supervised release in drug cases;

No. 6. Give the District Courts greater flexibility in fashioning appropriate conditions of release for certain elderly prisoners; and

No. 7. Clarify the District Court's authority to revoke or modify a term of supervised release when the defendant willfully violates the obligation to pay restitution to the victims of the defendant's crime.

The only difference between this amendment and the earlier bill which was cosponsored by Senator HATCH is additional language in the provision dealing with newly imposed terms of supervised release for certain elderly prisoners. The new language would limit such new terms to the unserved portion of the prison term which the judge is considering amending. I thank Senator HATCH for his assistance on this legislation.

Title V is the Criminal Law Technical Amendments Act, which makes clerical and other technical amendments to title 18, United States Code, and other laws relating to crime and criminal procedure and is similar to H.R. 2137 as passed by the House of Representatives by 374–0 vote. I commend Chairman SENSENBRENNER and Senator HATCH for their leadership on this technical corrections legislation.

Title VI clarifies that an attorney for the Federal Government may provide legal advice and supervision on certain undercover activities for the purpose of investigating terrorism. Title VI of the bill modifies the McDade law, 28 U.S.C. 530B, which was included in the omnibus appropriations bill at the end of the 105th Congress. The McDade law was intended to codify the principle—with which I strongly agree—that the Justice Department may not unilaterally exempt its lawyers from State ethics rules that apply to all members of the bar.

Unfortunately, the McDade law has had serious unintended consequences for Federal law enforcement, delaying important criminal investigations, preventing the use of effective and traditionally accepted investigative techniques, and serving as the basis of litigation to interfere with legitimate federal prosecutions.

Of particular concern, the McDade law is wreaking havoc on law enforcement efforts in Oregon, where an attorney ethics decision by the State Supreme Court—In re Gatti, 330 Or. 517 (2000)—has resulted in a complete shutdown of all undercover activity. The loss of this essential crime-fighting tool poses a serious and continuing problem for law enforcement in that State, and threatens to hamstring investigations into all manner of criminal activity, including terrorism.

I have introduced a bill, together with Senators HATCH and WYDEN, that would remedy the problems caused by the McDade law while adhering to its basic premise: The Department of Justice does not have the authority it long claimed to write its own ethics rules. The proposed legislation, S. 1437, would clarify the ethical standards governing the conduct of government attorneys and address the most pressing contemporary question of government attorney ethics—namely, the question of which rule should govern government attorneys' communications with represented persons. The Senate approved S. 1437 on October 11, 2001, as part of a broader antiterrorism bill (S. 1510), but the House dropped this reasonable corrective legislation from the final antiterrorism package (H.R. 3162).

Title VI of Division B of the bill that the Senate passes today is a subset of S. 1437, which will restore to Federal law enforcement in Oregon the ability to use undercover techniques to investigate terrorist activities. This legislation is a much-needed step in the right direction; however, it is hardly a complete solution for the many serious problems caused by the McDade law. At a time when we need our Federal agents and prosecutors to move quickly to catch those responsible for the recent terrorist attacks, and to prevent further attacks, we need to address these problems in a thorough and comprehensive manner. I therefore urge my colleagues in the House both to approve title VI of this bill, and to consider the other provisions of S. 1437. We cannot afford to wait until more investigations are compromised.

Title VII contains amendments, authored by Senator SESSIONS, that modify the Paul Coverdell National Forensic Science Improvement Act of 2000 (P.L. 106–561) to enhance participation by local crime labs and to allow for DNA backlog elimination. Dr. Eric Buel, the Director of the Vermont Forensic Laboratory, has written to me to endorse these changes to the Coverdell Act, which I was proud to cosponsor last year. I support this title to help bring the necessary forensic technology to all states to improve their criminal justice systems.

Title VIII contains the Ecstasy Prevention Act, authored by Senator GRAHAM, which authorizes several Department of Justice grant programs to combat Ecstasy drug abuse. I commend Senator GRAHAM for his leadership in fighting Ecstasy use.

I look forward to working with Senator HATCH, Congressman SENSENBRENNER and Congressman CONYERS and other members of the upcoming conference to bring the important business of re-authorizing the Department back before the Senate and House Judiciary Committees. Clearly, regular reauthorization of the Department should be part and parcel of the Committees' traditional role in overseeing the Department's activities. Swift passage into law of the 21st Century Department of Justice Appropriations Authorization Act will be a significant step toward restoring our oversight role.

Mr. HATCH. Mr. President, I rise to commend my colleagues today for the passage of the 21st Century Department of Justice Appropriations Authorization Act. This legislation contains a host of provisions that are critical to law enforcement and to our efforts to combat illegal drug use. Let me take a moment to discuss some of them in more detail.

This provision establishes operating authority for the Department of Justice and expressly authorizes some practices that have developed at the Department of Justice on an ad hoc basis. Pursuant to the legislation, DOJ activities may be carried out through any means in the reasonable discretion of the Attorney General, including by sending or receiving details of personnel to or from other branches of the Government and through contracts, grants, or cooperative agreements with non-Federal parties.

The legislation ensures accountability by directing the Attorney General to provide annually to the House and Senate Judiciary and Appropriations Committees: (1) a report detailing every grant, cooperative agreement, or programmatic services contract that was made, entered into,

awarded, or extended in the immediately preceding fiscal year by or on behalf of the Office of Justice Programs; and (2) a report identifying and reviewing every grant, agreement, or contract that was closed out or otherwise ended in the immediately preceding fiscal year. The bill also enhances oversight over the FBI by requiring the Inspector General of DOJ to appoint a Deputy Inspector General for the FBI who shall be responsible for supervising independent oversight of FBI programs and operations until September 30, 2004, and submitting to Congress a plan for FBI oversight.

The legislation also assists our ongoing war against terrorism. It establishes in the U.S. Treasury a Counterterrorism Fund to reimburse DOJ for certain counter-terrorism activities and Federal departments or agencies for the cost of detaining accused terrorists in foreign countries.

The bill enhances the privacy rights of law-abiding Americans by directing the Attorney General and the FBI Director to report on their use the DCS 1000, or ''Carnivore'' surveillance system. The report will include the number of times the system was used for surveillance during the preceding year, the persons who approved its use, the criteria applied to requests for its use, and any information gathered or accessed that was not authorized by the court to be gathered or accessed. Many concerns have been raised about the use of this system, and it is my hope that the reporting requirement will provide policymakers with valuable information and encourage Department to use the system responsibly.

The bill amends the Omnibus Crime Control and Safe Streets Act of 1968 to establish within the Department of Justice a Violence Against Women Office. With this amendment, the Director of the Office currently—Diane Stuart—will: (1) serve as special counsel to the Attorney General on the subject of violence against women; (2) maintain a liaison with the judicial branches of the Federal and State governments on related matters; (3) provide information to the Federal, State and local governments and the general public on related matters; (4) upon request, serve as the DOJ representative on domestic task forces, committees, or commissions addressing related policies or issues and as the U.S. Government representative on human rights and economic justice matters related to violence against women in international forums; (5) carry out DOJ functions under the Violence Against Women Act of 1994 and other DOJ functions on related matters; and (6) provide technical assistance, coordination, and support to other elements of DOJ and to other Federal, State, and tribal agencies in efforts to develop policy and to enforce Federal laws relating to violence against women.

The legislation authorizes Department of Justice grants to establish 4,000 Boys and Girls Clubs across the country before January 1, 2007. As my colleagues know, for years these clubs have steered thousands of our young people away from lives of drugs and crime. I am pleased that we are able to expand this excellent program to serve other needy young people.

The legislation also contains S. 304, the ''Drug Abuse Education, Prevention, and Treatment Act of 2001,'' which I authored with Chairman LEAHY and a bipartisan group of Senators in an effort to shore up our national commitment to the demand reduction component of our national drug control strategy.

Each year, drug abuse exacts an enormous toll on our nation. I am increasingly alarmed that the drug epidemic in America continues to worsen, with more of our youth experimenting with and becoming addicted to illegal drugs. According to recent national surveys, youth drug use, particularly use of so-called ''club drugs,'' such as Ecstasy and GHB, tragically is again on the rise. Over the past two years, use of ecstasy among 12th graders increased dramatically. Hearings I held last year in Utah highlighted the extent the drug problem pervades not just our major cities, but our entire country.

This dangerous trend is not going to reverse course unless we attack the drug abuse problem from all angles. I agree fully with President Bush that while we must remain steadfast in our commitment to enforcing our criminal laws against drug trafficking and use, the time has come to invest in demand reduction programs that have been proven effective. Only through such a balanced approach can we fully remove the scourge of drugs from our society.

The provisions of this bill provide tools that will make a difference in the fight against drug abuse. It has broad, bipartisan support on Capitol Hill, as well as the support of numerous distinguished law enforcement groups, including the Fraternal Order of Police and the National Sheriff's Association. Several mainstream prevention and treatment organizations have also voiced their support for the bill, including the Phoenix House, the National Crime Prevention Council, and the Community Anti-Drug Coalitions of America.

This title is similar to S. 1315, the Judicial Improvement and Integrity Act of 2001, which I introduced with Senator LEAHY to protect witnesses who provide information on criminal activity to law enforcement officials by increasing maximum sentences and other improvements to the criminal code.

The legislation contains provisions from the Professional Standards for Government Attorneys Act of 2001 that will allow Government attorneys, for the purpose of conducting terrorism investigations, to provide legal advice, authorization, concurrence, direction, or supervision on conducting covert activities and to participate in such activities, even though such activities may require the use of deceit or misrepresentation. The Senators from the State of Oregon, GORDON SMITH and RON WYDEN, deserve the appreciation of the federal prosecutors in their state for insisting that this provision be included in this legislation.

Finally, the bill includes Senator GRAHAM's Ecstasy Prevention Act of 2001. The Ecstasy Prevention Act requires the Substance Abuse and Mental Health Services Administration to give priority in the award of grants to communities that have taken measures to combat club drug use, including passing ordinances restricting ''rave clubs,'' increasing law enforcement on ecstasy, and seizing lands under nuisance abatement laws to prevent the abuse of ecstasy. It requires the Office of National Drug Control Policy to use High Intensity Drug Trafficking Area funds to combat trafficking in ecstasy, and ensures that drug prevention media campaigns include efforts at preventing ecstasy abuse. These provisions are extremely important to address the rising threat of ecstasy use among the young people in our society.

Mr. President, not surprisingly, this comprehensive legislation has broad support not only from my colleagues, but also from law enforcement, community groups, and treatment organizations. This is truly bipartisan legislation that we all agree will do a great deal of good. I again want to thank my colleagues for passing this legislation today. I yield the floor.

Mr. REID. Mr. President, I ask unanimous consent that the Leahy-Hatch amendment, which is at the desk, be agreed to, the committee substitute amendment, as amended, be agreed to, the act, as amended, be read a third time and passed, and the motion to reconsider be laid on the table, and that any statements relating thereto be printed in the RECORD; further, that the Senate insist on its amendment and request a conference with the House on the disagreeing votes of the two Houses, and the Chair be authorized to appoint conferees on the part of the Senate.

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

The amendment (No. 2697) was agreed to.

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

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (H.R. 2215), as amended, was passed.

The PRESIDENT pro tempore appointed Mr. LEAHY, Mr. KENNEDY, and Mr. HATCH conferees on the part of the Senate.

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 3447.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3447) to amend title 38, United States Code, to enhance the authority of the Secretary of Veterans Affairs to recruit and retain qualified nurses for the Veterans Health Administration, to provide an additional basis for establishing the inability of veterans to defray expenses of necessary medical care, to enhance certain health care programs of the Department of Veterans Affairs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. ROCKEFELLER. Mr. President, as Chairman of the Committee on Veterans' Affairs, I urge prompt Senate passage of H.R. 3447, the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001. This bill passed the House on December 11, 2001, and our action will clear the measure for the President's signature. This bill reflects a compromise agreement that the Senate and House Committees on Veterans' Affairs have reached on a number of health-related bills considered in the Senate and House during the 107th Congress, including: a bill to help VA respond to the looming nurse crisis; a bill to extend health care for Persian Gulf War veterans; and a bill to improve specialized treatment and rehabilitation for disabled veterans.

The centerpiece of this bill are provisions to improve recruitment and retention of VA nurses. On June 14, 2001, the Committee on Veterans' Affairs held a hearing to explore reasons for the imminent shortage of professional nurses in the United States and how this shortage will affect health care for veterans served by Department of Veterans Affairs' health care facilities.

Several registered nurses, including Sandra McMeans from my state of West Virginia, testified before the Committee that unpredictable and dangerously long working hours lead to nurses' fatigue and frustration—and patient care suffers.

Following this hearing, I joined with Senators SPECTER and CLELAND to introduce the Department of Veterans Affairs Nurse Recruitment and Retention Enhancement Act of 2001, S. 1188. This bill was included in full in S. 1188 as reported on October 10, 2001, the Department of Veterans Affairs Medical Programs Enhancement Act of 2001, and all of the provisions are now included in H.R. 3447.

I will highlight a number of the provisions included in the pending measure and refer my colleagues to the joint explanatory statement on the legislation which I will insert at the end of my remarks, for more detail.

The legislation before us includes a requirement that VA produce a policy on staffing standards in VA health care facilities. Such a policy shall be developed in consultation with the VA Under Secretary for Health, the Director of VA's National Center for Patient Safety, and VA's Chief Nurse. While it is up to VA to develop the standards, the policy must consider the numbers and skill mix required of staff in specific medical settings, such as critical care and long-term care. I thank J. David Cox, R.N. from the American Federation of Government Employees for eloquently demonstrating the need for this critical provision at our June hearing.

Because mandatory overtime was frequently cited at the Committee's June hearing as being of serious concern, the legislation also includes a requirement that the Secretary report to the House and Senate Committees on Veterans' Affairs on the use of overtime by licensed nursing staff and nursing assistants in each facility. This is a critical first step in determining what can be done to reduce the amount of mandatory overtime.

In terms of providing sufficient pay, the pending legislation mandates that VA provide Saturday premium pay to certain health professionals. This group of professionals includes licensed practical nurses (LPN's), certified or registered respiratory therapists, licensed physical therapists, licensed vocational nurses, pharmacists, and occupational therapists. These workers are known as ''hybrids'' as they straddle two different personnel authorities—titles 38 and 5 of the United States Code. Hybrid status allows for direct hiring and a more flexible compensation system.

This is an issue of equity, especially for LPN's who work alongside other nurses on Saturdays. When LPN's who do not receive Saturday premium pay must work together with registered nurses (RN's) who do, poor morale inevitably results. Being aware of the looming nurse shortage, we should be doing all we can to improve VA's ability to recruit and retain these caregivers.

Currently, hospital directors have the discretion to provide Saturday premium pay. But of the 17,000 hybrid employees, 8,000 are not receiving the pay premium.

I believe this change in law will make pay more consistent and fair for our health care workers. There are other VA health care employees who are employed under the title 5 personnel system who are not affected by this change. But since the title 5 system is not under the Veterans' Affairs Committee jurisdiction, we were not able to address Saturday pay for these workers. However, because of concerns about those workers, I pledge to work with my colleagues on other committees to provide other title 5 workers with Saturday premium pay.

Programs initiated within VA to improve conditions for nurses and patients have focused on issues other than staffing ratios, pay, and hours. A highly praised scholarship program that I spearheaded in 1998 allows VA nurses to pursue degrees and training in return for their service, thus encouraging professional development and improving the quality of health care. Included within the legislation before us are modifications to the existing scholarship and debt reduction programs. These changes are intended to improve the programs by providing additional flexibility to recipients.

In the Upper Midwest, the special skills of nurses and nurse practitioners are being recognized in clinics that provide supportive care close to the veterans who need it. The legislation before us seeks to encourage more nurse-managed clinics and also includes a requirement that VA evaluate these clinics.

The legislation before us would amend the treatment of part-time service performed by certain title 38 employees prior to April 7, 1986, for purposes of retirement credit. Currently, part-time service performed by title 5 employees prior to April 7, 1986, is treated as full-time service; however, title 38 employees' part-time services prior to April 7, 1986, is counted as part-time service and therefore results in lower annuities for these employees. In order to rectify this, the pending measure exempts registered nurses, physician assistants, and expanded-function dental auxiliaries from the requirement that part-time service performed prior to April 7, 1986, be prorated when calculating retirement annuities.

Although the nursing crisis has not yet reached its projected peak, the shortage is already endangering patient safety in the areas of critical and long-term care, where demands on nurses are greatest. We must encourage higher enrollment in nursing schools, improve the work environment, and offer nurses opportunities to develop as respected professionals, while taking steps to ensure safe staffing levels in the short-term.

In addition to the many important changes for nurses, this bill also contains other significant health care provisions. For example, the legislation would enable the Department of Veterans Affairs to allow hearing-impaired veterans and veterans with spinal cord injury or dysfunction, in addition to blind veterans, to obtain service dogs to assist them with everyday activities.

This bill would also establish a VA chiropractic program in each of the VA's health care networks. A chiropractic advisory committee will be established for the purpose of advising the Secretary in the development and implementation of the chiropractic program. The Secretary will provide protocols governing referrals, direct access, chiropractic scope of practice, and definition of chiropractic services, which will be available to all veterans enrolled in the VA health care system. I thank our Majority Leader, Senator DASCHLE, for his leadership in shaping this new landmark chiropractic program within the Department of Veterans Affairs.

Another important provision of this bill would help ''near poor'' veterans living in high cost-of-living areas, by significantly reducing VA copayments for hospital inpatient care. For those

veterans whose family incomes fall between the VA's current means test level and the Department of Housing and Urban Development low income index for the area of their primary residence, the current inpatient copayments would be reduced by 80 percent. This is a significant step in reducing the inequities imposed on those veterans in high cost-of-living areas.

Another very important provision of this bill authorizes $28.3 million for a much needed repair project at the Miami VA medical center. Three years ago there was a devastating fire that destroyed the electrical plant at the medical center, and this project is desperately needed.

As has been the case in previous years and is particularly important in light of our country's current military actions, this legislation truly represents a bipartisan commitment to our Nation's veterans. I particularly recognize the hard work of Kim Lipsky and Mickey Thursam of the Democratic staff of the Committee on Veterans' Affairs; Bill Cahill of the Republican staff of the Committee; Tamera Jones of Senator CLELAND's staff, and John Bradley, Kimberly Cowins, and Susan Edgerton of the House Veterans' Affairs Committee in seeing this bill through the legislative process.

In conclusion, I believe that this bill represents a real step forward for veterans and for the health care system which veterans turn to for care. I urge my colleagues to support this important piece of health care legislation for our veterans.

I ask unanimous consent that the text of the compromise agreement and a joint explanatory statement on the bill be printed in the RECORD.

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

SUMMARY—DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE PROGRAMS ENHANCEMENT ACT OF 2001

The bill, H.R. 3447, passed the House on December 11, 2001, and reflects a compromise agreement stemming from S. 1188, the ''Department of Veterans Affairs Nurse Recruitment and Retention Act of 2001'', as originally introduced; S. 1160; S. 1221; and H.R. 2792.

SUMMARY OF PROVISIONS

The following is a summary of the provisions in the Proposed ''Department of Veterans Affairs Health Care Programs Enhancement Act of 2001'':

TITLE I— ENHANCEMENT OF NURSE RECRUITMENT AND RETENTION AUTHORITIES

Subtitle A—Recruitment Authorities

Employee Incentive Scholarship and Education Debt Reduction Programs: Enhances eligibility and benefits for the programs by enabling nurses to pursue advanced degrees while continuing to care for patients, in order to improve recruitment and retention of nurses within the VA health care system.

Subtitle B—Retention Authorities

Saturday Premium Pay: Mandates that VA provide Saturday premium pay to title 5/title 38 hybrids. Such hybrids include licensed practical nurses, pharmacists, certified or registered respiratory therapists, physical therapists, and occupational therapists.

Staffing Standards and Mandatory Overtime: Requires VA to develop a nationwide policy on staffing standards to ensure that veterans are provided with safe and high quality care, taking into consideration the numbers and skill mix required of staff in specific medical settings. Requires a report on the use of mandatory overtime by licensed nursing staff and nursing assistants in each facility. The report would include a description of the amount of mandatory overtime used by facilities.

Subtitle C—Other Nursing Authorities

Retirement Annuities for RNs, PAs, and Others: Exempts registered nurses, physician assistants, and expanded-function dental auxiliaries from the requirement that part-time service performed prior to April 7, 1986, be prorated when calculating retirement annuities.

Subtitle D—National Commission on VA Nursing

Establishes a 12-member Commission on VA Nursing that would assess legislative and organizational policy changes to enhance the recruitment and retention of nurses by the Department, and the future of the nursing profession within the Department, and recommend legislative and organization policy changes to enhance the recruitment and retention of nurses in the Department.

TITLE II—OTHER MATTERS

Service Dogs: Authorizes VA to provide certain disabled veterans with service dogs to assist them with everyday activities.

Means Test: Retains the current-law means test national income threshold and maintains current allocation methodology (known as VERA), but will reduce copayments by 80% for near-poor veterans who require acute VA hospital inpatient care.

Chiropractic Care: Establishes a program of chiropractic services in VA healthcare facilities in each of the Veterans Integrated Service Networks and requires VA to provide training and educational materials on chiropractic services to VA health care providers. Also creates an advisory committee to oversee the implementation of this provision.

Clinical Research Oversight Funding: Authorizes VA to fund its field Offices of Research Compliance and Assurance from the Medical Care appropriation, rather than from the research budget.

Emergency Construction Project for the Miami VA Hospital: Authorizes a $28,300,000 emergency electrical project.

Health Care for Persian Gulf War Veterans: Extends VA's authority to provide health care for those who served in the Persian Gulf until December 31, 2002.

JOINT EXPLANATORY STATEMENT

The ''Department of Veterans Affairs Health Care Programs Enhancement Act of 2001'' reflects a compromise agreement that the Senate and House of Representatives Committees on Veterans' Affairs reached on certain provisions of a number of bills considered by the House and Senate during the 107th Congress, including: H.R. 2792, a bill to make service dogs available to disabled veterans and to make various other improvements in health care benefits provided by the Department of Veterans Affairs, and for other purposes, by the House Committee on Veterans' Affairs on October 16, 2001, and passed by the House on October 23, 2001 [hereinafter, ''House Bill'']; S. 1188, a bill to enhance the authority of the Secretary of Veterans' Affairs to recruit and retain qualified nurses for the Veterans Health Administration, and for other purposes, reported by the Senate Committee on Veterans' Affairs on October 10, 2001, as proposed to be amended by a manager's amendment [hereinafter, ''Senate Bill'']; S. 1576, a bill to amend section 1710 of title 38, United States Code, to extend the eligibility for health care of veterans who served in Southwest Asia during the Persian Gulf War; and, S. 1598, a bill to amend section 1706 of title 38, United States Code, to enhance the management of the provision by the Department of Veterans Affairs of specialized treatment and rehabilitation for disabled veterans, and for other purposes, introduced on October 21, 2001.

The House and Senate Committees on Veterans' Affairs have prepared the following explanation of the compromise bill, H.R. 3447 (hereinafter referred to as the ''Compromise Agreement''). Differences between the provisions contained in the Compromise Agreement and the related provisions in the bills listed above are noted in this document, except for clerical corrections and conforming changes made necessary by the Compromise Agreement, and minor drafting, technical, and clarifying changes.

TITLE I—ENHANCEMENT OF NURSE RECRUITMENT AND RETENTION AUTHORITIES

Subtitle A—Nurse Recruitment Authorities

Current Law

Several VA programs under existing law are designed to aid the Department in recruiting qualified health care professionals in fields where scarcity and high demand produce competition with the private sector. The Department is authorized to operate the Employee Incentive Scholarship Program (hereafter EISP) under section 7671 of title 38, United States Code. Under the EISP, VA may award scholarship funds, up to $10,000 per year per participant in full-time study, for up to 3 years. These scholarships require eligible participants to reciprocate with periods of obligated service to the Department. Currently, enrollment in the scholarship program is limited to employees with 2 or more antecedent years of VA employment. Statutory authority for this program terminates December 31, 2001.

The Department is authorized to operate the Education Debt Reduction Program (hereafter EDRP) under section 7681 of title 38, United States Code. Under the EDRP, the Department may repay education-related loans incurred by recently hired VA clinical professionals in high demand positions. Statutory authority for this program, a program not yet implemented by the Department, terminates on December 31, 2001. If implemented, the program would authorize VA to repay $6,000, $8,000, and $10,000 per year, respectively, over a 3-year period, in combined principal and interest on educational loans obtained by scarce VA professionals.

Under sections 8344 and 8468 of title 5, United States Code, the Department is authorized to request waivers of the pay reduction otherwise required by law for re-employed Federal annuitants who are recruited to the Department in order to meet staffing needs in scarce health care specialties.

Senate Bill

Section 111 would permanently authorize the EISP; reduce the minimum period of employment for eligibility in the program from 2 years to 1 year; remove the award limit for education pursued during a particular school year by a participant, as long as the participant had not exceeded the overall limitation of the equivalent of 3 years of full-time education; and, extend authority to increase the award amounts based on Federal national comparability increases in pay.

Section 112 would permanently authorize the EDRP; expand the list of eligible occupations furnishing direct patient care services

and services incident to such care to veterans; extend the number of years to 5 that a Departmental employee may participate in the EDRP, and increase the gross award limit to any participant to $44,000, with the award payments for the fourth and fifth years to a participant limited to $10,000 in each; and provide limited authority (until June 30, 2002) for the Secretary to waive the eligibility requirement limiting EDRP participation to recently appointed employees on a case-by-case basis for individuals appointed on or after January 1, 1999, through December 30, 2001.

Section 113 would require the Department to report to Congress its use of the authority in title 5, United States Code, to request waivers of pay reduction normally required from re-employed Federal annuitants, when such requests are used to meet its nurse staffing requirements.

House Bill

The House bill has no comparable provisions.

Compromise Agreement

Section 101, 102, and 103 follow the Senate language.

Subtitle B—Nurse Retention Authorities

Current Law

Section 7453(c) of title 38, United States Code, guarantees premium pay (at 25 percent over the basic pay rate) to VA registered nurses who work regularly scheduled tours of duty during Saturdays and Sundays. However, licensed vocational nurses and certain health care support personnel, whose employment status is grounded in employment authorities in title 5 and title 38, United States Code, are eligible for premium pay on regularly scheduled tours of duty that include Sundays. Saturday premium pay for these employees is a discretionary decision at individual medical facilities.

At retirement, VA registered nurses enrolled in the Civil Service Retirement System receive annuity credit for unused sick leave. This credit is unavailable, however, for registered nurses who retire under the Federal Employee Retirement System.

Senate Bill

Section 121 would mandate that VA provide Saturday premium pay to employees specified in Section 7454(b).

Section 122 would extend authority for the Department to provide VA nurses enrolled in the Federal Employee Retirement System the equivalent sick-leave credit in their retirement annuity calculations that is provided to other VA nurses who are enrolled in the Civil Service Retirement System.

Section 123 would require the Department to evaluate nurse-managed clinics, including those providing primary and geriatric care to veterans. Several nurse-managed clinics are in operation throughout the VA health care system, with a preponderance of clinics operating in the Upper Midwest Health Care Network. The evaluation would include information on patient satisfaction, provider experiences, cost, access and other matters. The Secretary would be required to report results from this evaluation to the Committees on Veterans' Affairs 18 months after enactment.

Section 124 would require the Department to develop a nationwide clinical staffing standards policy to ensure that veterans are provided with safe and high quality care. Section 8110 of title 38, United States Code, sets forth the manner in which medical facilities shall be operated, but does not include reference to staffing levels for such operation.

Section 125 would require the Secretary to submit annual reports on exceptions approved by the Secretary to VA's nurse qualification standards. Such reports would include the number of waivers requested and granted to permit promotion of nurses who do not have baccalaureate degrees in nursing, and other pertinent information.

Section 126 would require the Department to report facility-specific use of mandatory overtime for professional nursing staff and nursing assistants during 2001. The Department has no nationwide policy on the use of mandatory overtime. This report would be required within 180 days of enactment. The report would include information on the amount of mandatory overtime paid by VA health care facilities, mechanisms employed to monitor overtime use, assessment of any ill effects on patient care, and recommendations on preventing or minimizing its use.

House Bill

The House bill has no comparable provisions.

Compromise Agreement

Sections 121, 122, 123, 124, 125, and 126 are identical to the provisions in the Senate bill.

The Committees are concerned about VA's current national policy requiring VA nurses to achieve baccalaureate degrees as one means of quality assurance. VA has issued directive 5012.1, a directive that requires VA's registered nurses to obtain baccalaureate degrees in nursing as a precondition to advancement beyond entry level, and to do so by 2005. This policy is effective immediately for newly employed nurses.

At a time of looming crisis in achieving adequacy of basic clinical staffing of VA facilities, the Committees express concern over whether such a policy guiding nurse qualifications may work against VA's interests and responsibilities to protect the safety of its patients by creating unintended shortages of scarce health personnel. The Committees urge the Secretary to consider the implications of continuing such a policy in the face of future shortages of nursing personnel. The American Association of Community Colleges has reported that, each year, more than 60 percent of new US registered nurses are produced in two-year associate degree programs. The Department's current qualification standard for registered nurses may dissuade these fully licensed health care professionals from considering VA employment.

Subtitle C—Other Authorities

Current Law

Section 7306(a)(5) of title 38, United States Code, requires that the Office of the Under Secretary for Health include a Director of Nursing Service, responsible to the Under Secretary for Health.

Section 7426 of title 38, United States Code, provides retirement rights for, among others, nurses, physician assistants and expanded-function dental auxiliaries with part-time appointments. These employees' retirement annuities are calculated in a way that produces an unfair loss of annuity for them compared to other Federal employees. Congress has made a number of efforts since 1980 to provide equity for this group, many members of whom are now retired. These individuals, appointed to their part-time VA positions prior to April 6, 1986, under the employment authority of title 38, United States Code, have been penalized with lower annuities by subsequent Acts of Congress that addressed retirement annuity calculation rules for other part-time Federal employees appointed under the authority of title 5, United States Code.

Section 7251 of title 38, United States Code, authorizes the directors of VA health care facilities to request adjustments to the minimum rates of basic pay for nurses based on local variations in the labor market.

Senate Bill

Section 131 would amend section 7306(a)(5) of title 38, United States Code, to elevate the office of the VA Nurse Executive by requiring that official to report directly to the VA Under Secretary for Health.

Section 132 would amend section 7426 of title 38, United States Code, to exempt registered nurses, physician assistants, and expanded-function auxiliaries from the requirement that part-time service performed prior to April 7, 1986, be prorated when calculating retirement annuities.

Section 133 would modify the nurse locality-pay authorities and reporting requirements. The section would clarify and simplify a VA medical center's use of Bureau of Labor Statistics (BLS) information to facilitate locality-pay decisions for VA nurses. Additionally, section 133 would clarify the Committees' intent on steps VA facilities would take when certain BLS date were unavailable, thus serving as a trigger for the use of third-party survey information, and thereby reducing current restrictions on the use of such surveys.

House Bill

The House bill contains no comparable provisions.

Compromise Agreement

Section 131, 132, and 133 follow the Senate bill.

Subtitle D—National Commission on VA Nursing

Current Law

None.

House Bill

Section 301 would establish a 12-member National Commission on VA Nursing. The Secretary would appoint eleven members, and the Nurse Executive of the Department would serve as the twelfth, ex officio, member. Members would include three recognized representatives of employees of the Department; three representatives of professional associations of nurses or similar organizations affiliated with the Department's health care practitioners; two representatives of trade associations representing the nursing profession; two would be nurses from nursing schools affiliated with the Department; and one member would represent veterans. The Secretary would designate one member to serve as Chair of the Commission.

Section 302 would authorize the Commission to assess legislative and organization policy changes to enhance the recruitment and retention of nurses by the Department and the future of the nursing profession within the Department. This section would also provide for Commission recommendations on legislation and policy changes to enhance recruitment and retention of nurses by the Department.

Section 303 would require the Commission to submit to Congress and the Secretary a report on its findings and conclusions. The report would be due not later than 2 years after the date of the first meeting of the Commission. The Secretary would be required to promptly consider the Commission's report and submit to Congress the Department's views on the Commission's findings and conclusions, including actions, if any, that the Department would take to implement the recommendations.

Sections 304 and 305 would delineate the powers afforded to the Commission, including powers to conduct hearings and meetings, take testimony and obtain information from external sources, employ staff, authorize rates of pay, detail other Federal employees to the Commission staff, and address other administrative matters.

Section 306 would terminate the Commission 90 days after the date of the submission of its report to Congress.

Senate Bill

The Senate bill has no comparable provisions.

Compromise Agreement

Sections 141, 142, 143, 144, 145 and 146 follow the House bill, with certain modifications to the membership of the Commission.

The Committees expect the National Commission on VA Nursing to concern itself with the full spectrum of occupations involved in nursing care of veterans in the Veterans Health Administration, with specific reference to registered professional and licensed vocational nurses, clinical nurse specialists, nurse practitioners, nurse managers and executives, nursing assistants, and other technical and ancillary personnel of the Department involved in direct health care delivery to the nation's veterans. In addition to statutory requirements, the Committees expect the Secretary to appoint members to the Commission to reflect the wide variety of occupations and disciplines that constitute the nursing profession within the Department.

TITLE II—OTHER MATTERS

PROVISION OF SERVICE DOGS

Current Law

None.

House Bill

Section 101 would amend section 1714 of title 38, United States Code, to authorize the Department to provide service dogs to veterans suffering from spinal cord injury or dysfunction, other diseases causing physical immobility, or hearing loss (or other types of disabilities susceptible to improvement or enhanced functioning) for which use of service dogs is likely to improve or enhance their ability to perform activities of daily living or other skills of independent living. Under the provision, a veteran would be required to be enrolled in VA care under section 1705 of title 38, United States Code, as a prerequisite to eligibility. Service dogs would be provided in accordance with existing priorities for VA health care enrollment.

Senate Bill

Section 201 would authorize the Secretary to provide service dogs to service-connected veterans with hearing impairments and with spinal cord injuries.

Compromise Agreement

Section 201 follows the House provision.

Any travel expenses of the veteran in adjusting to the service dog would be reimbursable on the same basis as such expenses are reimbursed under Section 111, title 38, United States Code, for blind veterans adjusting to a guide dog.

MANAGEMENT OF HEALTH CARE FOR CERTAIN LOW-INCOME VETERANS

Current Law

Section 1722(a) of title 38, United States Code, places veterans whose incomes are below a specified level—in calendar year 2001, $23,688 for an individual without dependents—within the definition of a person who is ''unable to defray'' the cost of health care. The section includes two other such indicators of inability to defray: evidence of eligibility for Medicaid, and receipt of VA nonservice-connected pension. Veterans in these circumstances are adjudged equally unable to defray the costs of health care; as such, they are eligible to receive comprehensive VA health care without agreeing to make co-payments required from veterans whose incomes are higher. Under current law, a single-income threshold (with adjustments only for dependents) is the standard used.

House Bill

Section 103 would amend section 1722(a) of title 38, United States Code, to establish geographically adjusted income thresholds for determining a non-service-connected veteran's priority for VA care, and therefore, whether the veteran must agree to make copayments in order to receive VA care. The section's purpose would be to address local variations in cost of care, cost-of-living or other variables that, beyond gross income, impinge on a veteran's relative economic status and ability to defray the cost of care.

In section 103, low-income limits administered by the Department of Housing and Urban Development (HUD) for its subsidized housing programs would establish an adjusted poverty-income threshold to be used in the ability-to-defray determination. The actual threshold for determining an individual veteran's ability to pay would be the greater of the current-law income threshold in section 1722 of title 38, United States Code, or the local low-income limits set by HUD.

Section 103 also would include a 5-year limitation on the effects of adoption of the HUD low-income limits policy on system resource allocation within the Veterans Health Administration. Such allocations would not be increased or decreased during the period by more than 5 percent due to this provision. The provision would take effect on October 1, 2002.

Senate Bill

Section 202 would amend section 1722 of title 38, United States Code, to include the HUD income index in determining eligibility for treatment as a low-income family based upon the veteran's permanent residence. The current national threshold would remain in place as the base figure if the HUD formula determines the low-income rate for a particular area is actually less than that amount. The effective date of this change would be January 1, 2002, and would apply to all means tests after December 31, 2001, using data from the HUD index at the time the means test is given.

Compromise Agreement

Section 202 retains the current-law income threshold, but would significantly reduce copayments from veterans near the threshold of poverty for acute VA hospital inpatient care. The HUD low-income limits would be used to establish a family income determination within the priority 7 group. Those veterans with family incomes above the HUD income limits for their primary residences would pay the co-payments as otherwise required by law. Veterans whose family incomes fall between the current income threshold level under section 1722, title 38, United States Code, and the HUD income limits level for the standard metropolitan statistical area of their primary residences, would be required to pay co-payments for inpatient care that are reduced by 80 percent from co-payments required of veterans with higher incomes. The effective date for this change would be October 1, 2002.

MAINTENANCE OF CAPACITY FOR SPECIALIZED TREATMENT AND REHABILITATIVE NEEDS OF DISABLED VETERANS

Current Law

Section 1706 of title 38, United States Code, requires VA to maintain nationwide capacity to provide for specialized treatment and rehabilitative needs of disabled veterans, including those with amputations, spinal cord injury or dysfunction, traumatic brain injury, and severe, chronic, disabling mental illnesses. To validate VA's compliance with capacity maintenance, section 1706 includes a requirement for an annual report to Congress. The reporting requirement expired on April 1, 2001.

House Bill

Section 102 would modify the mandate for VA to maintain capacity in specialized medical programs for veterans by requiring the Department of each of its Veterans Integrated Service Networks to maintain capacity in certain specialized health care programs for veterans (those with serious mental illness, substance-use disorders, spinal cord injuries and dysfunction, the brain injured and blinded, and those who need prosthetics and sensory aides); and, would extent the capacity reporting requirement for 3 years.

Senate Bill

S. 1598 similarly would modify current law with regard to VA's capacity for specialized services, but would require that medical centers maintain capacity, in addition to geographic service areas; require that VA utilize uniform standards in the documentation of patient care workload used to construct reports under the authority; require the Inspector General on an annual basis to audit each geographic service area and each medical center in the Veterans Health Administration to ensure compliance with capacity limitations; and, prohibit VA from substituting health care outcome data to satisfy the requirement for maintenance of capacity.

Compromise Agreement

Section 203 is derived substantially from the House bill, with addition of provisions from the Senate bill, including a requirement that VA utilize uniform standards in the documentation of workload; a clarification that ''mental illness'' be defined to include post-traumatic stress disorder (PTSD), substance-use disorder, and seriously and chronically mentally ill services; a prohibition from substituting outcome data to satisfy the requirement to maintain capacity; and, a requirement that the IG audit and certify to Congress as to the accuracy of VA's required reports.

PROGRAM FOR THE PROVISION OF CHIROPRACTIC CARE AND SERVICES TO VETERANS

Current Law

Public Law 106–117 requires the VA to establish a Veterans Health Administration-wide policy regarding chiropractic care. Veterans Health Administration Directive 2000–014, dated May 5, 2000, established such a policy.

House Bill

Title II would establish a national VA chiropractic services program, implemented over a 5-year period; authorize VA to employ chiropractors as federal employees and obtain chiropractic services through contracts; establish an advisory committee on chiropractic care; authorize chiropractors to function as VA primary care providers; authorize the appointment of a director of chiropractic service reporting to the Secretary with the same authority as other service directors in the VA health care system; and provide for training and materials relating to chiropractic services to Department health care providers.

Senate Bill

Section 204 of the Senate Bill would establish a VA chiropractic services program in VA health care facilities and clinics in not less than 25 states. The chiropractic care and services would be for neuro-musculoskeletal conditions, including subluxation complex. The VA would carry out the program through personal service contracts and appointments of licensed chiropractors. Training and materials would be provided to VA health care providers for the purpose of familiarizing them with the benefits of chiropractic care and services.

Compromise Agreement

Section 204 would follow the Senate bill but would replace its reference to 25 states

with a reference to VA's 22 Veterans Integrated Service Networks (referred to as ''geographic service areas'' in the section). Also, the agreement would include an advisory committee to assist the Secretary of Veterans Affairs in implementation of the chiropractic program. Under the agreement, the advisory committee would expire 3 years from enactment.

FUNDS FOR FIELD OFFICES OF THE OFFICE OF RESEARCH COMPLIANCE AND ASSURANCE (ORCA)

Current Law

The Under Secretary of Health has provided funding for ORCA field offices from funds appropriated for Medical and Prosthetic Research.

Senate Bill

Since field offices of ORCA directly protect patient safety, section 205 would authorize VA to fund them from the Medical Care appropriation.

House Bill

The House bill has no comparable provision.

Compromise Agreement

Section 205 follows the Senate bill.

The Committees are concerned about the need for ORCA to maintain independence from the Office of Research and Development. The Committees have concluded, on the strength of hearings and reports on potential conflicts of interest, that funding for ORCA field offices should be statutorily separated from the Medical and Prosthetic Research Appropriation and associated with the Medical Care Appropriation. ORCA advises the Under Secretary for Health on matters affecting the integrity of research, the safety of human-subjects research and research personnel, and the welfare of laboratory animals used in VA biomedical research and development. ORCA field offices investigate allegations of research impropriety, lack of compliance with rules for protection of research participants and scientific misconduct. The ORCA chief officer reports to the Under Secretary for Health.

MAJOR MEDICAL FACILITY CONSTRUCTION

Current Law

None.

Senate Bill

Fiscal Year 2002 appropriations are available for an emergency repair project at the VA Medical Center, Miami, Florida. Section 205 of the Senate Bill authorizes $28.3 million for this project, in accordance with section 8104 of title 38, United States Code.

House Bill

The House bill has no comparable provision.

Compromise Agreement

Section 206 follows the Senate Bill.

SENSE OF CONGRESS ON SPECIAL TELEPHONE SERVICES FOR VETERANS

Current Law

None.

House Bill

Section 104 would require the Secretary to assess special telephone services for veterans (such as help lines and ''hotlines'') provided by the Department. The assessment would include the geographic coverage, availability, utilization, effectiveness, management, coordination, staffing, and cost of those services. It would require the assessment to include a survey of veterans to measure satisfaction with current special telephone services, as well as the demand for additional services. The Secretary would be required to submit a report to Congress on the assessment within 1 year of enactment.

Senate Bill

The Senate bill contains no comparable provision.

Compromise Agreement

Section 207 contains a Sense of the Congress Resolution on the Department's need to assess and report on special telephone services for veterans.

RECODIFICATION OF BEREAVEMENT COUNSELING AUTHORITY AND CERTAIN OTHER HEALTH-RELATED AUTHORITIES

Current Law

Chapter 17 of title 38, United States Code, contains various legal authorities under which VA provides services to non-veterans. These provisions, that authorize bereavement and mental health counseling, care for research subjects, care for dependents and survivors of permanently the totally disabled veterans, and emergency humanitarian care, are intermingled with authorities for the care of veterans in various sections of chapter 17.

House Bill

Section 105 of the House bill would in a new subchapter consolidate and reorganize without substantive change all of the legal authorities under which VA provides services to non-veterans. It would reorganize section 1701 of title 38, United States Code, by transferring one provision (pertaining to sensorineural aids) to section 1707.

Section 105 would create a new Subchapter VIII in Chapter 17 of title 38, United States Code, to incorporate provisions concerning bereavement-counseling services for family members of certain veterans and active duty personnel. A new section 1782 would provide counseling, training, and mental health services for immediate family members.

Section 105 would place in the new subchapter the current dependent health care authorities known as ''Civilian Health and Medical Programs—Veterans Affairs'' (CHAMPVA), transferred from current section 1713 to the new section 1781. A new provision would specify that a dependent or survivor receiving such VA-sponsored care would be eligible for bereavement and other counseling and training and mental health services otherwise available to family members under the subchapter.

The existing authority to provide hospital care or medical services as a humanitarian service in emergency cases would be moved to this new subchapter from its current location in section 1711(b).

Section 105 would also make various technical changes to accommodate the subchapter reorganization. These changes would recodify the existing provisions, and consolidate and clarify the existing statutory authority to provide care to non-veterans.

Senate Bill

The Senate bill has no comparable provisions.

Compromise Agreement

Section 208 follows the House bill.

EXTENSION OF EXPIRING COLLECTIONS AUTHORITIES

Current Law

Sectiion 1710(f)(2)(B) of title 38, United States Code, authorizes VA until September 30, 2002, to collect nursing home, hospital, and outpatient co-payments from certain veterans. Section 1729(a)(2)(E) of title 38, United States Code, authorizes VA until October 1, 2002, to collect third-party payments for the treatment of the nonservice-connected disabilities of veterans with service-connected disabilities.

House Bill

Section 106 would extend until 2007 VA's authority to collect means test co-payments and to collect third-party payments.

Senate Bill

The Senate bill contains no comparable provision.

Compromise Agreement

Section 209 follows the House bill.

PERSONAL EMERGENCY RESPONSE SYSTEM FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

Current Law

None.

House Bill

Section 107 of the House bill would require the Secretary to carry out an evaluation and study of the feasibility and desirability of providing a specialized personal emergency response system for veterans with service-connected disabilities. It would require a report to Congress on the results of this evaluation.

Senate Bill

The Senate bill contains no comparable provision.

Compromise Agreement

Section 210 follows the House bill.

HEALTH CARE FOR PERSIAN GULF WAR VETERANS

Current Law

Section 1710 of title 38, United States Code, defines eligible veterans for whom the Secretary is required to furnish hospital, nursing home, and domiciliary care. Section 1710(e)(1)(C) of title 38 authorizes the Secretary to provide health care services on a priority basis to veterans who served in the Southwest Asia Theater of operations during the Persian Gulf War. Section 1710(e)(3)(B) of title 38 specifies that this eligibility expires on December 31, 2001.

Senate Bill

The Senate Bill would amend section 1710 of title 38, United States Code, to extend health care eligibility for veterans who served in Southwest Asia during the Gulf War, to December 31, 2011.

House Bill

The House Bill contains no comparable provision.

Compromise Agreement

Section 211 follows the Senate bill but extends the health care eligibility to December 31, 2002.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid on the table with no intervening action or debate, and that any statements relating thereto be printed in the RECORD.

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

The bill (H.R. 3447) was read the third time and passed.

RELIEF FOR RETIRED SERGEANT FIRST CLASS JAMES D. BENOIT AND WAN SOOK BENOIT

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 1834, and that the Senate proceed to its immediate consideration.

The PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 1834) for the relief of retired Sergeant First Class James D. Benoit and Wan Sook Benoit.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the bill be printed in the RECORD.

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

The bill (S. 1834) was read the third time and passed, as follows:

S. 1834

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

SECTION 1. REQUIREMENT TO PAY CLAIMS.

(a) PAYMENT REQUIRED.—The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to James D. Benoit and Wan Sook Benoit, jointly, the sum of $415,000, in full satisfaction of all claims described in subsection (b), such amount having been determined by the United States Court of Federal Claims as being equitably due the said James D. Benoit and Wan Sook Benoit pursuant to a referral of the matter to that court by Senate Resolution 129, 105th Congress, 1st session, for action in accordance with sections 1492 and 2509 of title 28, United States Code.

(b) COVERED CLAIMS.—Subsection (a) applies with respect to all claims of the said James D. Benoit, Wan Sook Benoit, and the estate of David Benoit against the United States for compensation and damages for the wrongful death of David Benoit, the minor child of the said James D. Benoit and Wan Sook Benoit, pain and suffering of the said David Benoit, loss of the love and companionship of the said David Benoit by the said James D. Benoit and Wan Sook Benoit, and the wrongful retention of remains of the said David Benoit, all resulting from a fall sustained by the said David Benoit, on June 28, 1983, from an upper level window while occupying military family housing supplied by the Army in Seoul, Korea.

SEC. 2. LIMITATION ON USE OF FUNDS FOR ATTORNEYS' FEES.

No part of the amount appropriated by section 1 in excess of 10 percent thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, any contract to the contrary notwithstanding. Violation of the provisions of this section is a misdemeanor punishable by a fine not to exceed $1,000.

AMENDING TITLE 18 OF THE UNITED STATES CODE

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to S. 1888, which was introduced earlier today by Senator STEVENS.

The PRESIDENT pro tempore. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 1888) to amend title 18 of the United States Code to correct a technical error in the codification of title 36 of the United States Code.

There being no objection, the Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, on August 12th, 1998, the President signed into law H.R. 1085, legislation ''to revise, codify, and enact without substantive change certain general and permanent laws, related to patriotic and national observances, ceremonies, and organizations, as title 36, United States Code, 'Patriotic and National Observances, Ceremonies, and Organizations.''' This was legislation prepared by the Office of Law Revision Counsel in the House of Representatives.

One of the organizations affected was the United States Olympic Committee, whose numerical codification citation was changed in that re-codification legislation. The re-codification process also necessitated certain conforming changes to other parts of the U.S. Code to modify cross-reference citations. One of these, occurring at 18 USCS §2320 (e)(1)(B), was intended to cite a portion of the Ted Stevens Olympic and Amateur Sports Act dealing with protection of its trademarks.

The proper citation should have been ''220506.'' However, because of a typographical error that section of 18 USCS reads ''220706,'' citing law that has to do with Submarine Veterans of World War II rather than Olympic symbols and terminology.

This error went unnoticed until recently when U.S. Customs officials brought it to the attention of Salt Lake Olympic Committee and USOC attorneys in a discussion of enforcing trademark protections associated with the upcoming Olympic Winter Games. In this meeting the Customs officials expressed concern that this error could prevent them from enforcing the law.

The Olympic Rings and other symbols were giving exclusively to the USOC under the Ted Stevens Olympic and Amateur Sports Act. They are the prime fund raising source for the USOC.

This would be a simple correction that would merely change ''220706'' to ''220506'' at 18 USCS §2320 (e)(1)(B).

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 1888) was read the third time and passed.

(The bill is printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

THE GERALD B.H. SOLOMON SARATOGA NATIONAL CEMETERY

Mr. REID. Mr. President, I ask unanimous consent that the Veterans' Affairs Committee be discharged from further consideration and the Senate proceed to the immediate consideration of H.R. 3392.

The PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3392) to name the national cemetery in Saratoga, New York, as the Gerald B.H. Solomon Saratoga National Cemetery, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related thereto be printed in the RECORD.

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

The bill (H.R. 3392) was read the third time and passed.

GRANTING A FEDERAL CHARTER TO KOREAN WAR VETERANS ASSOCIATION, INCORPORATED

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 392 and the Senate proceed to its immediate consideration.

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

The clerk will state the bill by title.

A bill (S. 392) to grant a Federal charter to Korean War Veterans Association, Incorporated, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related thereto be printed in the RECORD.

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

The bill (S. 392) was read the third time and passed, as follows:

S. 392

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

SECTION 1. GRANT OF FEDERAL CHARTER TO KOREAN WAR VETERANS ASSOCIATION, INCORPORATED.

(a) GRANT OF CHARTER.—Part B of subtitle II of title 36, United States Code, is amended—

(1) by striking the following:

''CHAPTER 1201—[RESERVED]''; and

(2) by inserting the following:

''CHAPTER 1201—KOREAN WAR VETERANS ASSOCIATION, INCORPORATED

''Sec.

''§ 120101. Organization

''(a) FEDERAL CHARTER.—Korean War Veterans Association, Incorporated (in this chapter, the 'corporation'), incorporated in the State of New York, is a federally chartered corporation.

''(b) EXPIRATION OF CHARTER.—If the corporation does not comply with the provisions of this chapter, the charter granted by subsection (a) expires.

''§ 120102. Purposes

''The purposes of the corporation are as provided in its articles of incorporation and include—

''(1) organizing, promoting, and maintaining for benevolent and charitable purposes an association of persons who have seen honorable service in the Armed Forces during the Korean War, and of certain other persons;

''(2) providing a means of contact and communication among members of the corporation;

''(3) promoting the establishment of, and establishing, war and other memorials commemorative of persons who served in the Armed Forces during the Korean War; and

''(4) aiding needy members of the corporation, their wives and children, and the widows and children of persons who were members of the corporation at the time of their death.

''§ 120103. Membership

''Eligibility for membership in the corporation, and the rights and privileges of members of the corporation, are as provided in the bylaws of the corporation.

''§ 120104. Governing body

''(a) BOARD OF DIRECTORS.—The board of directors of the corporation, and the responsibilities of the board of directors, are as provided in the articles of incorporation of the corporation.

''(b) OFFICERS.—The officers of the corporation, and the election of the officers of the corporation, are as provided in the articles of incorporation.

''§ 120105. Powers

''The corporation has only the powers provided in its bylaws and articles of incorporation filed in each State in which it is incorporated.

''§ 120106. Restrictions

''(a) STOCK AND DIVIDENDS.—The corporation may not issue stock or declare or pay a dividend.

''(b) POLITICAL ACTIVITIES.—The corporation, or a director or officer of the corporation as such, may not contribute to, support, or participate in any political activity or in any manner attempt to influence legislation.

''(c) LOAN.—The corporation may not make a loan to a director, officer, or employee of the corporation.

''(d) CLAIM OF GOVERNMENTAL APPROVAL OR AUTHORITY.—The corporation may not claim congressional approval, or the authority of the United States, for any of its activities.

''§ 120107. Duty to maintain corporate and tax-exempt status

''(a) CORPORATE STATUS.—The corporation shall maintain its status as a corporation incorporated under the laws of the State of New York.

''(b) TAX-EXEMPT STATUS.—The corporation shall maintain its status as an organization exempt from taxation under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

''§ 120108. Records and inspection

''(a) RECORDS.—The corporation shall keep—

''(1) correct and complete records of account;

''(2) minutes of the proceedings of its members, board of directors, and committees having any of the authority of its board of directors; and

''(3) at its principal office, a record of the names and addresses of its members entitled to vote on matters relating to the corporation.

''(b) INSPECTION.—A member entitled to vote on matters relating to the corporation, or an agent or attorney of the member, may inspect the records of the corporation for any proper purpose, at any reasonable time.

''§ 120109. Service of process

''The corporation shall have a designated agent in the District of Columbia to receive service of process for the corporation. Notice to or service on the agent is notice to or service on the Corporation.

''§ 120110. Liability for acts of officers and agents

''The corporation is liable for the acts of its officers and agents acting within the scope of their authority.

''§ 120111. Annual report

''The corporation shall submit an annual report to Congress on the activities of the corporation during the preceding fiscal year. The report shall be submitted at the same time as the report of the audit required by section 10101 of this title. The report may not be printed as a public document.''.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle II of title 36, United States Code, is amended by striking the item relating to chapter 1201 and inserting the following new item:

''1201. Korean War Veterans Association, Incorporated .....120101''.

AMENDING THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 1400, and the Senate proceed to its immediate consideration.

The PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 1400) to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to extend the deadline for aliens to present a border crossing card that contains a biometric identifier matching the appropriate biometric characteristic of the alien.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, today we will pass an important piece of legislation dealing with America's borders. This bill, S. 1400, has bipartisan support for extending the deadline requiring aliens to present a border passing card with a biometric identifier to enter the United States from Mexico. This deadline expired earlier this year. The bill would extend the requirement by one year to allow the State Department to finish the difficult job of converting the old border crossing cards used by Mexicans entering the United States.

This is a major task, and the State Department has already accomplished a great deal, issuing millions of new biometric border crossing cards. As our State Department continues to work to finish this task, however, we should not punish lawful Mexican workers who are still waiting for new cards, or the American businesses that depend upon them as customers and employees.

This bill is one piece of major border security introduced by Senators KENNEDY and BROWNBACK. I am a proud cosponsor of their bill, S. 1749, the Enhanced Border Security and Visa Entry Reform Act. We should pass that bill in its entirety, and I hope that we do so before the end of this session. In the meantime, we should pass S. 1400 without delay. This measure's original sponsors were Senator KYL of Arizona and Senator BROWNBACK, the Ranking Republican on the Immigration Subcommittee of the Judiciary Committee. It is cosponsored by Senator GRAMM, Senator KENNEDY, Senator BINGAMAN, and Senator DOMENICI. I am glad to be able to accommodate them and urge prompt action by the Senate on this measure.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the bill be printed in the RECORD.

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

The bill (S. 1400) was read the third time and passed, as follows:

S. 1400

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

SECTION 1. EXTENSION OF DEADLINE FOR PRESENTATION OF CERTAIN BORDER CROSSING IDENTIFICATION CARDS.

Section 104(b)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note) is amended by striking ''5 years'' and inserting ''6 years''.

YEAR OF THE ROSE

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 292 which is at the desk.

The PRESIDENT pro tempore. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 292) supporting the goals of the Year of the Rose.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid on the table, and any statements related thereto be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 292) was agreed to.

The preamble was agreed to.

RECOGNITION OF THE SENATE STAFF

Mr. REID. Mr. President, the staff is working on a couple more items. While they are doing that, I would like to express to the Presiding Officer my best wishes for a happy holiday.

I would also like to, at this late hour, acknowledge the work done by the

staff of the Senate. I spend days with these people. The work of the Senate is done by the people who get no recognition but do so much of the work. Each of them are experts at what they do. People around here will be working until the wee hours of the morning. You and I may be here late—the last two to leave the Senate—but they will arrive at their homes sometime tomorrow morning. The last time we did the Defense bill, I talked to one member of the staff who went home at 5 a.m. that morning.

I want each of them to know that even though they do not get the recognition that we get, their jobs are just as important as ours. We in effect couldn't do without them. Every day they do things that help make us look as if we know what we are doing. Hopefully, we do most of the time, but if we don't, they take care of things, point us in the right direction.

I am personally indebted to the help that each of these fine public servants give to the people of the State of Nevada, the people of West Virginia, and this country.

I want the record spread with my good wishes for a happy holiday. In saying this, I speak for every Senator, Democrats and Republicans, we probably, as busy as we are, don't recognize how busy they are and in the process don't express our appreciation nearly as much as we should.

MEASURES READ THE FIRST TIME—H.R. 1432, H.R. 3487, H.R. 400, H.R. 3529, H.R. 2362, H.R. 3504, H.R. 2742, AND H.R. 3441

Mr. REID. Mr. President, I ask unanimous consent that it be in order for the following bills to receive their first reading and objection having been placed for further proceedings: H.R. 1432, H.R. 3487, H.R. 400, H.R. 3529, H.R. 2362, H.R. 3504, H.R. 2742, and H.R. 3441.

The PRESIDENT pro tempore. Without objection, the several requests are ordered.

ORDERS FOR WEDNESDAY, JANUARY 23, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 12 noon, Wednesday, January 23, 2002; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate be in a period of morning business until 12:30 p.m. with Senators permitted to speak for up to 10 minutes each, with time equally divided between Senators DASCHLE and LOTT or their designees; further that the Senate recess from 12:30 to 2:15 for the weekly party conferences.

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

PROGRAM

Mr. REID. Mr. President, the Senate will conduct a live quorum when the Senate convenes. Therefore, the next rollcall vote will occur on Wednesday, January 23, at approximately 12 noon. As a reminder, the Senate photograph will be taken at 2:30 p.m. on Wednesday.

ADJOURNMENT SINE DIE

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the provisions of H. Con. Res. 295.

There being no objection, at 10:06 p.m., the Senate adjourned sine die.

NOMINATIONS

Executive nominations received by the Senate December 20, 2001:

DEPARTMENT OF AGRICULTURE

NANCY SOUTHARD BRYSON, OF THE DISTRICT OF COLUMBIA, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF AGRICULTURE, VICE CHARLES R. RAWLS, RESIGNED.

SECURITIES AND EXCHANGE COMMISSION

PAUL S. ATKINS, OF VIRGINIA, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 5, 2003, VICE ARTHUR LEVITT, JR., RESIGNED.

CYNTHIA A. GLASSMAN, OF VIRGINIA, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR A TERM EXPIRING JUNE 5, 2006, VICE LAURA S. UNGER, TERM EXPIRED.

ENVIRONMENTAL PROTECTION AGENCY

LINDA MORRISON COMBS, OF NORTH CAROLINA, TO BE CHIEF FINANCIAL OFFICER, ENVIRONMENTAL PROTECTION AGENCY, VICE SALLYANNE HARPER.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

EVE SLATER, OF NEW JERSEY, TO BE AN ASSISTANT SECRETARY OF HEALTH AND HUMAN SERVICES, VICE DAVID SATCHER, RESIGNED.

DEPARTMENT OF EDUCATION

WILLIAM LEIDINGER, OF VIRGINIA, TO BE ASSISTANT SECRETARY FOR MANAGEMENT, DEPARTMENT OF EDUCATION, VICE RODNEY A. MCCOWAN, RESIGNED.

OFFICE OF PERSONNEL MANAGEMENT

DAN GREGORY BLAIR, OF THE DISTRICT OF COLUMBIA, TO BE DEPUTY DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT, VICE JOHN U. SEPULVEDA, RESIGNED.

DEPARTMENT OF JUSTICE

MATTHEW D. ORWIG, OF TEXAS, TO BE UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF TEXAS FOR THE TERM OF FOUR YEARS, VICE JOHN MICHAEL BRADFORD, RESIGNED.

FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, FOR THE PERSONAL RANK OF CAREER AMBASSADOR IN RECOGNITION OF ESPECIALLY DISTINGUISHED SERVICE OVER A SUSTAINED PERIOD:

JEFFREY DAVIDOW, OF VIRGINIA
RUTH A. DAVIS, OF CALIFORNIA
GEORGE E. MOOSE, OF COLORADO

THE FOLLOWING-NAMED PERSONS OF THE DEPARTMENT OF STATE FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASSES STATED:

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS ONE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA.

DEPARTMENT OF STATE

GUSTAVIO ALBERTO MEJIA, OF FLORIDA
GREGORY JOHN ORR, OF CALIFORNIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS TWO, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA.

DEPARTMENT OF STATE

KAREN L A EMMERSON, OF WEST VIRGINIA
J. ALBERT TAYLOR, OF MARYLAND

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS THREE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA.

DEPARTMENT OF STATE

MARK FLETCHER ELLIS, OF MAINE
MARK F. MARRANO, OF TEXAS
DENISON KYLE OFFUTT, OF WEST VIRGINIA
JAMES KENT STIEGLER, OF CALIFORNIA
ABDELNOUR ZAIBACK, OF MARYLAND

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS FOUR, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA.

DEPARTMENT OF STATE

EDWARD L. ALLEN, OF ARIZONA
GARY DEAN ANDERSON, OF TEXAS
MICHELE BACK, OF MINNESOTA
ALEJANDRO HOOR BAEZ, OF TEXAS
ANDREA S. BAKER, OF VIRGINIA
ROBERT ALLAN BARE, OF CALIFORNIA
WILLIAM QUINN BEARDSLEE, OF COLORADO
KATHY A. BENTLEY, OF TENNESSEE
BRETT BLACKSHAW, OF NEW YORK
MICHELLE A. BRADFORD, OF NEW JERSEY
TOBIN JOHN BRADLEY, OF CALIFORNIA
HEIDE BRONKE, OF NEW YORK
STEVEN R. BUTLER, OF KENTUCKY
JOHN R. BUZBEE, OF KENTUCKY
CLAUDIA M. COLEMAN, OF TEXAS
ROBERT MADISON CONOLEY, OF WASHINGTON
RICHARD RANDALL CUSTIN, OF MICHIGAN
JESSICA LEE DAVIES, OF CALIFORNIA
GERALD A. DONOVAN, OF DELAWARE
JAMES B. DOTY, OF VIRGINIA
LEAH MICHELLE FENWICK, OF CALIFORNIA
TIMOTHY THOMAS FITZGIBBONS, OF NEBRASKA
RAFAEL P. FOLEY, OF NEW YORK
DANIEL L. FOOTE, OF VIRGINIA
ROBERT M. FREEDMAN, OF WASHINGTON
PAUL N. FUJIMURA, OF CALIFORNIA
ANDREA FRANCA GASTALDO, OF TEXAS
MAUREEN GLAZIER, OF TEXAS
GREGORY S. GROTH, OF CALIFORNIA
BRIAN F. HARRIS, OF WASHINGTON
MELANIE S. HARRIS, OF FLORIDA
MICHAEL J. HAZEL, OF WASHINGTON
PETER GRANT HEMSCH, OF CALIFORNIA
ROBIN HOLZHAUER, OF WISCONSIN
JEFFREY DAVID PRESTON HORWITZ, OF NEW YORK
VIRGINIA MEADE HOTCHNER, OF VIRGINIA
PAUL J. HOUGE, OF TEXAS
DEENA JOHNSONBAUGH, OF WASHINGTON
FREDERICK L. JONES II, OF CALIFORNIA
VIVIAN KELLER, OF VERMONT
MARY MARGARET KNUDSON, OF VIRGINIA
MATTHEW A. KRICHMAN, OF CALIFORNIA
BARBARA BETH LAMPRON, OF NEW JERSEY
JENNIFER L. LANGSTON, OF CALIFORNIA
INGRID D. LARSON, OF MARYLAND
HILLARY MANN, OF THE DISTRICT OF COLUMBIA
DAVID R. MCCAWLEY, OF CALIFORNIA
DAVID L. MCCORMICK, OF MASSACHUSETTS
MEREDITH C. MCEVOY, OF COLORADO
DANIEL FRANCIS MCNICHOLAS, OF ILLINOIS
RACHEL L. MEYERS, OF CALIFORNIA
TESS ANNETTE MOORE, OF TEXAS
MATTHEW DAVID MURRAY, OF MARYLAND
ROBERT S. NEUS, OF FLORIDA
MARC A. NORDBERG, OF TEXAS
SCOTT MCCONNIN OUDKIRK, OF VIRGINIA
KRISTA A. PETERSON, OF NEW MEXICO
CARLTON PHILADELPHIA, OF FLORIDA
USHA E. PITTS, OF THE DISTRICT OF COLUMBIA
THERESA ANN RENNER SMITH, OF MARYLAND
ROGER CLAUDE RIGAUD, OF NEW JERSEY
JEFFREY JAMES ROBERTSON, OF CALIFORNIA
KEVIN S. ROLAND, OF MARYLAND
STEVEN B. ROYSTER, OF VIRGINIA
MICHAEL DEAN SESSUMS, OF FLORIDA
DANNETTE K. SEWARD, OF WYOMING
MAUREEN SHAHEEN, OF VIRGINIA
MATTHEW L. SHIELDS, OF VIRGINIA
SEIJI T. SHIRATORI, OF OREGON
SUSAN M. SHULTZ, OF FLORIDA
PHILLIP T. SLATTERY, OF CALIFORNIA
RICHARD WILLIAM SNELSIRE, OF TEXAS
JAMES BROWARD STORY, OF SOUTH CAROLINA
TIMOTHY C. SWANSON, OF WYOMING
WALTER RANDALL TOWNSEND, OF TEXAS
VERNELLE TRIM, OF VIRGINIA
MICHAEL R TURNER, OF TEXAS
LIAN VON WANTOCH, OF CALIFORNIA
DUNCAN HUGHITT WALKER, OF CALIFORNIA
LISA LOUISE WASHBURN, OF TEXAS
J. RICHARD WATERS III, OF ALABAMA
MARGARET BRYAN WHITE, OF GEORGIA
BENJAMIN V. WOHLAUER, OF THE DISTRICT OF COLUMBIA
ALEISHA WOODWARD, OF WASHINGTON
JEFFERY A. YOUNG, OF FLORIDA
JOSEPH E. ZADROZNY JR., OF TEXAS

IN THE AIR FORCE

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICER TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 1552, 12203 AND 12212:

To be colonel

DAVID E. BLUM, 0000

THE FOLLOWING NAMED OFFICERS FOR THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203 AND 12212:

To be colonel

JAMES C. COOPER II, 0000

JOHN J. KUPKO II, 0000

DEPARTMENT OF JUSTICE

JANE J. BOYLE, OF TEXAS, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF TEXAS FOR THE TERM OF FOUR YEARS, VICE PAUL EDWARD COGGINS, RESIGNED.

JAMES K. VINES, OF TENNESSEE, TO BE UNITED STATES ATTORNEY FOR THE MIDDLE DISTRICT OF TENNESSEE FOR THE TERM OF FOUR YEARS, VICE JOHN MARSHALL ROBERTS, RESIGNED.

JOHNNY LEWIS HUGHES, OF MARYLAND, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF MARYLAND FOR THE TERM OF FOUR YEARS, VICE GEORGE K. MCKINNEY.

RANDY MERLIN JOHNSON, OF ALASKA, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF ALASKA FOR THE TERM OF FOUR YEARS, VICE JOHN R. MURPHY.

LARRY WADE WAGSTER, OF MISSISSIPPI, TO BE UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF MISSISSIPPI FOR THE TERM OF FOUR YEARS, VICE JOHN DAVID CREWS, JR.

CONFIRMATIONS

Executive nominations confirmed by the Senate December 20, 2001:

DEPARTMENT OF DEFENSE

CLAUDE M. BOLTON, JR., OF FLORIDA, TO BE AN ASSISTANT SECRETARY OF THE ARMY.

EXPORT-IMPORT BANK OF THE UNITED STATES

EDUARDO AGUIRRE, JR., OF TEXAS, TO BE FIRST VICE PRESIDENT OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM EXPIRING JANUARY 20, 2005.

J. JOSEPH GRANDMAISON, OF NEW HAMPSHIRE, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM EXPIRING JANUARY 20, 2005.

DEPARTMENT OF THE INTERIOR

KATHLEEN BURTON CLARKE, OF UTAH, TO BE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SEAN O'KEEFE, OF NEW YORK, TO BE ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

COMMODITY FUTURES TRADING COMMISSION

JAMES E. NEWSOME, OF MISSISSIPPI, TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION FOR THE TERM EXPIRING JUNE 19, 2006.

JAMES E. NEWSOME, OF MISSISSIPPI, TO BE CHAIRMAN OF THE COMMODITY FUTURES TRADING COMMISSION.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

MICHAEL HAMMOND, OF TEXAS, TO BE CHAIRPERSON OF THE NATIONAL ENDOWMENT FOR THE ARTS FOR A TERM OF FOUR YEARS.

THE JUDICIARY

C. ASHLEY ROYAL, OF GEORGIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA.

DEPARTMENT OF JUSTICE

HARRY E. CUMMINS, III, OF ARKANSAS, TO BE UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF ARKANSAS FOR THE TERM OF FOUR YEARS.

CHRISTOPHER JAMES CHRISTIE, OF NEW JERSEY, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW JERSEY FOR THE TERM OF FOUR YEARS.

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIGADIER GENERAL DONNA F. BARBISCH
BRIGADIER GENERAL JAMIE S. BARKIN
BRIGADIER GENERAL ROBERT W. CHESNUT
BRIGADIER GENERAL RICHARD S. COLT
BRIGADIER GENERAL LOWELL C. DETAMORE
BRIGADIER GENERAL DOUGLAS O. DOLLAR
BRIGADIER GENERAL KENNETH D. HERBST
BRIGADIER GENERAL KAROL A. KENNEDY
BRIGADIER GENERAL RODNEY M. KOBAYASHI
BRIGADIER GENERAL ROBERT B. OSTENBERG
BRIGADIER GENERAL MICHAEL W. SYMANSKI
BRIGADIER GENERAL WILLIAM B. WATSON, JR.

To be brigadier general

COLONEL JAMES E. ARCHER
COLONEL THOMAS M. BRYSON
COLONEL PETER S. COOKE
COLONEL DONNA L. DACIER
COLONEL CHARLES H. DAVIDSON IV
COLONEL MICHAEL R. EYRE
COLONEL DONALD L. JACKA, JR.
COLONEL WILLIAM H. JOHNSON
COLONEL ROBERT J. KASULKE
COLONEL JACK L. KILLEN, JR.
COLONEL JOHN C. LEVASSEUR
COLONEL JAMES A. MOBLEY
COLONEL MARK A. MONTJAR
COLONEL CARRIE L. NERO
COLONEL ARTHUR C. NUTTALL
COLONEL PAULETTE M. RISHER
COLONEL KENNETH B. ROSS
COLONEL WILLIAM TERPELUK
COLONEL MICHAEL H. WALTER
COLONEL ROGER L. WARD
COLONEL DAVID ZALIS
COLONEL BRUCE E. ZUKAUSKAS