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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Gracious God, for tomorrow and its needs we do not pray, but keep us, guide us, strengthen us, just for today. Help us to live in day-tight compartments by being faithful and obedient to You in this new day You have given us. Yesterday is a memory and tomorrow is uncertain. But today, if we live it to the fullest, will become a memorable yesterday and tomorrow will be a vision of hope. A great life is an accumulation of days lived, one at a time, for Your glory and by Your grace. Anything is possible if we take it in day-sized bites. Help us make today a day to be that different person we've wanted to be, to start doing what we've procrastinated, and to enjoy the work we have to do. We want this to be a special day to love You, serve You, and be an encourager of others around us. One day to live, it will go so fast; Lord, make it a good memory, before it's past. In our Lord's name. Amen.

RESERVATION OF LEADER TIME

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

PARTIAL-BIRTH ABORTION BAN ACT

The PRESIDENT pro tempore. Under the previous order, 9:30 a.m. having arrived, the Senate will now resume consideration of H.R. 1833, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1833) to amend title 18, United States Code, to ban partial-birth abortion.

The Senate resumed the consideration of the bill.

MOTION TO COMMIT WITH INSTRUCTIONS

The PRESIDENT pro tempore. Under the previous order, the Senator from Pennsylvania [Mr. SPECTER] is recognized to make a motion to commit with the time until 12:30 p.m. equally divided and controlled between the Senator from New Hampshire [Mr. SMITH] and the Senator from Pennsylvania [Mr. SPECTER].

Mr. SPECTER. I thank the Chair. I thank the distinguished President pro tempore.

Mr. President, on behalf of Senators JEFFORDS, SNOWE, CAMPBELL, KASSEBAUM, SIMPSON, and COHEN, I move to commit H.R. 1833 to the Committee on the Judiciary with instructions to hold not less than one hearing on this bill and report the bill with amendments, if any, back to the Senate within 19 days.

The motion to commit with instructions is as follows:

MOTION TO COMMIT WITH INSTRUCTIONS

Mr. SPECTER (for himself, Mr. JEFFORDS, Ms. SNOWE, Mr. CAMPBELL, Ms. KASSEBAUM, Mr. SIMPSON, and Mr. COHEN) moves to commit the bill H.R. 1833 to the Committee on the Judiciary with instructions to hold not less than one hearing on such bill and report the bill, with amendments (if any), back to the Senate within 19 days.

Mr. SPECTER. Mr. President, I have selected a bare minimum amount of time, which is really only a 9-day commitment from today, November 8, until November 17 when the Senate will go out of session under a previously announced recess period by the majority leader. And then there would be an additional 10 days while the Senate is in recess, from November 17 to November 27, for a total of 19 days. But the effective period of this referral, as I say, will only be for 9 days.

After considerable thought, I have abbreviated the referral period to this very short time to emphasize to everyone the importance of the issue and the need to have very prompt consideration and to allay any concern or reject any argument that this referral is being made to, in effect, defeat the bill.

Mr. President, I submit that this kind of consideration and this kind of a hearing is really indispensable because of the very complex matters which are involved in this issue. I would enumerate them as humanitarian considerations, medical considerations, statutory interpretation considerations, and constitutional considerations.

The humanitarian considerations have been broached to a significant extent in terms of the circumstances of the mother and the circumstances of the fetus with considerable doubt as to what actually occurs during these so-called late-term abortions. It is a very complicated picture as to what pain and suffering is sustained by the fetus, a subject which requires our very thorough consideration because of the very serious humanitarian implications on pain and suffering to the fetus during the course of this medical procedure.

The matter has had a very, very brief hearing in the House of Representatives—as I understand it, for less than a full day.

Mr. President, I ask unanimous consent that at the conclusion of my statement the full transcript of the hearing before the House of Representatives may be printed in the RECORD so that everyone in the Senate who will be considering this matter in the course of the next day or two, or however long it takes, will have an opportunity to see the brevity of those hearings and the impossibility of consideration of the many complicated issues which are involved in this matter.

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

(See exhibit 1.)

Mr. SPECTER. Mr. President, there is no question about the chilling effect

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

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of this medical procedure. It is something that, I submit, has to be understood thoroughly on all sides.

I say candidly that I am not sure what my ultimate judgment would be on this kind of a medical procedure if, as some claim, it is really infanticide. I have spent a large portion of my career as a district attorney being very much concerned about the issue of homicide, which takes many, many forms. And, if we genuinely have an issue of infanticide—the killing of an infant—that is something which existing law does not tolerate, and that is something which has to be considered very, very carefully on the basic question of whether there is an infant where the medical procedures would take the life of the infant, or whether we do not have an infant in the contemplation of the law. And that is something which has to be considered carefully.

There has been considerable controversy as to just what the medical circumstances are with the children who are involved. One case, which I have had referred to me through the media, involved a fetus where the brain had grown outside the skull so that on the medical procedure involved it was not a question of whether the baby would die, not a question of whether the fetus would die, but only a question of when and how.

Other matters that I have heard about involve situations where the mothers and the fathers were desperately interested in saving the pregnancy but the medical facts were such that there was such severe brain damage and heart damage that there really was not a live human being.

There will doubtless be considerable discussion on the floor of the Senate today about the status of the fetus on these medical procedures.

I suggest that while argument and debate is obviously a very important part of our process, a more important part of our process involves the hard medical facts as to what is involved. That really requires medical testimony as opposed to the kinds of arguments which are traditionally made on the Senate floor. Those arguments have real value, but they have to be evaluated and judged in the context of what the hard medical evidence is. On this date of the record, at least from the House hearings, there is not much to go on. So that I think this is a matter which cries out for that kind of a hearing and the establishment of the evidence to enable the Senate to make a judgment.

I find it, candidly, a little hard to understand the procedures which brought this legislation to the floor without a hearing by the Judiciary Committee. But facing the procedural posture of this matter, the remedy is to move from the decision of the majority leader to put this matter in the Chamber to having consideration by the full Senate as to what is the appropriate course. It is rumored that this is going to be a close vote. I do not know whether that is true or not. But if we send this matter to committee for hearings, we may be saving considerable time because if the vote is close on a motion to commit as to having a simple majority, I think it is fair to say it is unlikely there would be the 60 votes present to cut off debate. So that prompt action by the Senate in sending the matter to committee may well save us time, not only in the long run but in the short run as well.

Beyond the considerations of humane treatment for the fetus and the mother, we then come to very, very complex questions of statutory interpretation which I submit have not been thought through by the proponents of this bill in the House or by the hasty action that it went through in the House and the heavily emotionally charged context.

According to the information provided to me, there is a real question as to the applicability of this statute in the broader terms of how a fetus is delivered. Subsection (b) provides that a partial-birth abortion is defined as ''an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.''

On a note, a statutory interpretation—and again, candidly, I think this needs further verification and further analysis, but according to this definition the prohibition established in H.R. 1833 would not apply to (1) abortions performed by C section or hysterectomy, that is, where the fetus is not extracted vaginally, and it would not apply either to abortions in which the fetus is acted upon prior to being moved into the birth canal.

So what we may realistically be doing here is to be legislating in a halfway manner in the area of vaginal births without other ways of dealing with the issue which ought to be dealt with in terms of effective legislation, if this is, indeed, an issue with which we feel we ought to deal.

Subsection (c) then establishes an affirmative defense to the prosecution of a physician performing a partial-birth abortion if it is established by a preponderance of the evidence that the physician reasonably believed that ''the partial-birth abortion was necessary to save the life of the mother; and no other procedure would suffice for that purpose.''

As a matter of statutory interpretation, there are very complex issues involved where you provide for an affirmative defense as opposed to making those elements of proof a part of the prosecutor's case. In a criminal case, the Government has the burden of proving beyond a reasonable doubt all of the elements in a prosecution, and it may well be that this language is ineffective as a matter of law to shift the burden of proof to the defendant.

There are many items which have been affirmative defenses such as alibi, not being present at the time the offense was committed, which have been incorporated into the prosecutor's affirmative duty to show beyond a reasonable doubt all elements of the offense. There is no indication that any consideration has been given on that complex subject by the House of Representatives.

The constitutional issues are present here because the Supreme Court of the United States has held that the States may prohibit an abortion in late term—''may proscribe an abortion except where it is necessary in an appropriate medical judgment for the preservation of the life or health of the mother,'' language from Roe versus Wade.

That involves making the life of the mother an affirmative defense, and it also opens a broader context as to whether the health of the mother would be an exception to the prohibition against the State's eliminating late-term abortions.

This is a very shorthanded description, in the course of having a relatively limited amount of time available for this issue in this Chamber because of our crowded calendar, but these are matters which could be taken up in some detail in the course of the 9 days between now and the 17th, when the Senate is in session or when the Judiciary Committee may see fit to interrupt the recess process. And I can speak for myself. I would be glad to be here to take whatever time is necessary on a hearing or hearings so that these matters may be inquired into and we may legislate, if at all, in a rational way.

There is another consideration involved here that I do not intend to dwell on, but that is the consideration which is articulated so frequently in this Chamber. That is the appropriate area of legislation for the Federal Government in terms of federalism generally and in terms of the 10th amendment where Members of this body are proud to pull from their vest pocket the 10th amendment which specifies that all matters not expressly given to the Congress are reserved to the States.

Subsection (a) provides:

> Whoever, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years or both.

It raises a real question basically as to whether this is a matter appropriately for the Congress. Provisions of the criminal law are traditionally left to the States. Recently, the Supreme Court of the United States in the Lopez case sharply limited the authority of the Congress of the United States to legislate in areas which have long been viewed as areas where the Congress had authority. So that we do have State legislatures ready, willing, and able to act affirmatively on the subject.

On this date of the record, I do not know what States, if any, have moved to legislate on late-term abortions. But

I think it ought to be at least mentioned with whatever degree of emphasis we choose to make on it as to the Federal considerations which are involved here.

Customarily, when you have issues involving jurisdiction, our pattern has been to move a little fast over any such considerations, as we have been known to move a little fast over constitutional considerations, leaving those matters ultimately for the courts.

But where you have a matter of overwhelming importance on the constitutional issue of life of the mother, or health of the mother, and especially where even the most restrictive interpretations on abortion have always carved out an exception for life of the mother, this statute does not do that.

This statute purports to have it raised only as an affirmative defense, which is very different from even under the restrictive interpretations of when an abortion may be performed excepting life of the mother.

Then the issue of jurisdiction, again, not often focused on the floor of either the Senate or the House of Representatives, is worthy of consideration.

But I would say, Mr. President, that the fundamental considerations really here involve the humanitarian considerations: What is actually happening to the fetus? Is the fetus subjected to pain and suffering? If so, is there a way that the legislation could encompass a procedure which would eliminate that pain and suffering? What are the humanitarian considerations involved for the life of the mother?

If it is determined medically that it is preferable to have the fetus acted upon vaginally, as opposed to alternatives which are apparently not covered by the statute, a C section, hysterotomy, or where action is taken on the fetus prior to removal from the birth canal, why should the Congress of the United States rush to judgment to criminalize a medical procedure which is in the vaginal channel as opposed to a hysterotomy or C section or action prior to the entry of the fetus into the vaginal channel, where those matters are really matters for the medical profession as opposed to the Congress? At least should not the Congress be informed as to the intricacies of these matters before we pass judgment on a matter of this great importance?

EXHIBIT 1

HEARING ON PARTIAL-BIRTH ABORTION BEFORE THE HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON THE CONSTITUTION, COMMITTEE ON THE JUDICIARY, June 15, 1995

The subcommittee met, pursuant to notice, at 10:23 a.m., in room 2237, Rayburn House Office Building, Hon. Charles Canady (chairman of the subcommittee) presiding.

Present: Representatives Canady, Hyde, Inglis, Sensenbrenner, Hoke, Goodlatte, Frank, Conyers, and Schroeder.

Also Present: Representative Jackson Lee.

Staff Present: Kathyrn Hazeem, chief counsel; Keri Harrison, counsel; Jennifer Welch, secretary; Jacquelene McKee, secretary; and Robert Raben, minority counsel.

Mr. CANADY [presiding]. The subcommittee will come to order. I am pleased to have the opportunity to hold this hearing to examine the partial-birth abortion procedure. We will hear primarily from medical experts today. They will describe the partial-birth abortion procedure in which a live baby's entire body, except for the head, is delivered before the baby is killed, after which the practitioner completes the delivery. They will testify regarding whether the baby undergoing this procedure feels pain.

We invited two of the abortionists who specialize in and advocate the use of this type of abortion. They agreed to testify. But apparently after further consideration, they found that their position was a position they did not wish to speak to the subcommittee about today. I am very disappointed to report that both practitioners canceled at the last minute.

This hearing focuses on partial birth abortion because while every abortion sadly takes a human life, this method takes that life as the baby emerges from the mother's womb while the baby is in the birth canal. The difference between the partial-birth abortion procedure and homicide is a mere three inches.

A fundamental principle on which our country was founded is that we are endowed by our creator with the unalienable right to life. Roe v. Wade alienated that right from a powerless group by taking away their legal personhood. Richard John Neuhouse correctly stated that, ''We need never fear the charge of crimes against humanity so long as we hold the power to define who does and who does not belong to humanity.'' The Supreme Court instituted abortion on demand by deciding that unborn human beings do not belong to humanity.

Partial-birth abortion procedures go a step beyond abortion on demand. The baby involved is not unborn. His or her life is taken during a breech delivery. A procedure which obstetricians use in some circumstances to bring a healthy child into the world is perverted to result in a dead child. The physician, traditionally trained to do everything in his power to assist and protect both mother and child during the birth process deliberately kills the child in the birth canal.

Because we believe it is an inhuman act, Barbara Vucanovich, Tony Hall, Henry Hyde, and I introduced a bill yesterday with 28 of our colleagues to ban the performance of partial-birth abortion. Partial-birth abortion is defined in the bill as, and I quote, ''An abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.''

On June 12, the National Abortion Federation sent a letter to Members of Congress in response to a letter Barbara Vucanovich and I sent to inform our colleagues of our intention to introduce the partial-birth abortion ban. The National Abortion Federation letter made a number of claims about the partial-birth abortion procedure that are inconsistent with the statements of Drs. McMahon and Haskell, two abortionists who use and advocate the use of the procedure.

The letter claims that the drawings of the partial-birth abortion procedure that we included with our Dear Colleague are highly imaginative and misleading. But Dr. Haskell himself told the American Medical News that the drawings were accurate from a technical point of view.

Professor Watson Bowes of the University of North Carolina at Chapel Hill, a distinguished physician and prominent authority on fetal and maternal medicine, and coeditor of the Obstetrical and Gynological Survey, reviewed an article by Dr. Haskell describing a partial-birth abortion procedure and confirmed that the drawings are an accurate representation of the procedure described in the article by Dr. Haskell.

The National Abortion Federation letter also claims that the fetal demise is virtually always induced by the combination of steps taken to prepare for the abortion procedure. Both Dr. Haskell and Dr. McMahon, however, told American Medical News that the majority of fetuses aborted this way are alive until the end of the procedure. In a Dayton News interview, Dr. Haskell referred to the scissors thrust that occurs after the baby's entire body is delivered and only the head of the baby is still lodged in the birth canal as the act that kills the baby. He said, and I quote, ''When I do the instrumentation on the skull, it destroys the brain sufficiently so that even if it,'' that is, the baby's head, ''falls out at that point, it definitely is not alive.''

After his review of Dr. Haskell's article, Professor Bowes concluded that the fetuses are alive at the time the partial-birth procedure is performed. Indeed, Dr. Bowes notes that Dr. Haskell explicitly contrasts his procedure with other procedures that do induce fetal death within the uterus.

The National Abortion Federation letter implies that partial-birth abortions are performed only in unusual circumstances. Neither Dr. Haskell nor Dr. McMahon claims that this technique is used only in limited circumstances. In fact, their writings advocate this method as the preferred method for most late-term abortions. Dr. Haskell prefers the method from 20 to 26 weeks into the pregnancy. Dr. McMahon uses the method throughout the entire 40 weeks of pregnancy. In fact, a previous National Abortion Federation memo to its members counsels them not to apologize for this legal procedure, and states, ''There are many reasons why women have late abortions, life endangerment, fetal indications, lack of money or health insurance, social, psychological crises, lack of knowledge about human reproduction,'' et cetera.

It is my hope that we can have a candid debate on the realities of this procedure without disinformation or euphemisms. I believe that when they are informed about the truth about the procedure, my colleagues who value the dignity of human life and believe in common decency, will agree with me that partial-birth abortion is inhuman and should be banned.

Mr. Frank.

Mr. FRANK. Mr. Chairman, I have very strong views on this. But given the importance of this particularly to women, I am going to yield my time to the senior woman in the U.S. Congress, the gentlewoman from Colorado.

Mrs. SCHROEDER. I want to thank the ranking member for yielding. I mean that very sincerely, because as the senior woman in this House, this is a day I had dreaded. I see us really rolling back on women's rights.

I think what we are doing here today is bad medicine, it's bad law, it's bad public policy, and it's intrusive Government at its very, very worst.

What this bill is doing is saying that doctors should put aside their best medical judgment in favor of some political judgments made my Washington politicians. I do not know of any other area where we go in and legislatively mandate medical practices. In other words, some of the written testimony I have seen on this has said that what we are really doing is legislatively mandating malpractice.

First of all, the partial-birth procedure is not a medical term. It is a political term. We all know that what people are really trying to get at here is the fundamental right of women to receive medical treatment that they and their doctors determined to be safest and best for them. That is the essence. That is a constitutional right. That right has

been around for more than 20 years. Today we are moving to try and tamper with that.

Today we are going to try and make a procedure sound so terrible and so awful that only women who are demons would consider doing this. Only doctors who are demons would consider doing this. It is almost reinciting witchcraft of a sort, trying to see women as witches. Well, let's talk about this.

There are very, very, very few of these procedures. These procedures are heartbreak procedures. These are procedures that nobody wants to engage in. But sometimes everything goes wrong. Everything goes wrong and it is left to a woman, her spouse, her doctor, to sit down and make hard choices. I do not think we want the Government in Washington taking those choices away.

When you hear from some of the women who had to make these hard choices, they came to them by medical science. Things that we thought were progressive. Things such as amniocentesis and many of the procedures now that tell us more about what is happening along the different markers of birth. I must ask, are we going to do away with those things too? Are we going to do away with all medical procedures and go back to the Dark Ages?

I remind you that in World War I, more women died in childbirth in this country than American solders died in World War I. We have gone a long way to making all of this safer for women. I hate to see us rolling back.

We are going to see a gruesome parade of photos today. That is going to be part of why they are going to say this should all be banned. But I must say that you could do that with almost any medical procedure. All of us are a little squeamish about medical procedures of almost any kind. Do you want to see liver transplants? Do you want to see heart transplants? Do you want to make people squirm? You can start doing all of that.

The issue is, is this a valid life-saving medical procedure that a doctor could reach under reasonably difficult situations. I think that we have all agreed, yes.

I want to say there are some very brave women that are sitting here in this hearing. I don't know how they are doing it. First there is Vicky Wilson, who is a nurse married to an emergency room physician. She had to end a wanted pregnancy because of devastating fetal malformations. She is standing. I want to say I salute you and your husband for being here and listening to this.

There is also Tammy Watts, a California woman, who terminated a wanted pregnancy because the fetus was so horribly deformed and could not live outside the womb. I think you are a very brave woman to be here and stand up to this too.

Vicky Smith, who is an Illinois mother of two children ages 7 and 11, had to end a wanted pregnancy because again, the fetus was microcephalic, had multiple fetal deformations. Vicky Smith is now pregnant again. Vicky, thank you for having the courage to come here.

I also want to say that none of these people engaged in this process lightly. I think that is why they have the courage to come here and say do not demonize them. These were very difficult decisions for them to make and their doctors to make. Who are we, as politicians, to say we know better?

Also, I would like to offer for the record a letter from Rabbi Shira Stern and her husband Rabbi Donald Weber. They wrote to count their experience with abortion. They said, you don't have to show us pictures of fetuses in jars. We held our own shortly after the abortion. Don't talk to us of pain. We worked for 5 years as volunteer chaplains on the pediatric floor of the Memorial Sloan Kettering Cancer Center in New York, and we watched countless children die in agony. Our baby would have died at birth with pain sensors that were much more sophisticated at its full gestational age than they did at the time of the abortion. We have all sorts of problems. This is very painful.

I think because this bill begins the imposition of restrictions on abortion, and that will also increase the medical risks to the life and health of women, it should be considered unconstitutional. I know and I hope that the American women will say this is unacceptable. This is a beginning of chopping away at a right we have spent much too long in trying to ascertain. One of the fundamental rights under the constitution is one, to health care, and to be treated fully as an adult.

I must say again, as the only woman, what a sad day this is. I hope that the women in America will wake up, realize what is happening. Your rights are at stake today. My rights are at stake today. Physicians' rights are at stake today. If we want the physicians to treat us to deal with their best medical judgment and not have political judgments slapped all over their training, this is the day to draw the line in the sand and say, ''No more.'' It's our choice. It is not politicians' choice. I thank the gentleman from Massachusetts again for yielding.

Mr. CANADY. Mr. Hyde.

Mr. HYDE. Well, I thank the chairman. It's always instructive to hear the gentlelady from Colorado. I radically disagree with her. She cited some tragic examples of children born with deformities who were aborted because of that. When I hear cases like that I think of Terry Wiles, who was born from a woman who had taken phalitimide. He was born without arms, legs, with one eye, a little lump of flesh left in an ally in London, found by a bobby, and taken to a home run by an eccentric, wealthy woman called The Guild of the Brave Poor Things.

Little Terry was there until he was aged 10, when he was adopted by a couple in Britain who had lost their own three children, had been taken away from the mother by the court. She was adjudicated an unfit mother, but she was fit enough to adopt Terry, and her husband, and unemployed war veteran. They became quite a family. Terry wrote a book called, ''On the Shoulders of Giants.'' Prince Phillip comes to visit occasionally to get his spirits bolstered, because this little grotesque lump of flesh was so grateful that his mother permitted him to live, at least didn't exterminate him, which is what abortion is, even though he was a little lump of flesh.

I think of Gregory Wattin, whom I watched get an Eagle Scout badge, although he was confined to a wheelchair, profoundly affected by cerebral palsy, could not speak, pointed to letters on an alphabet card. I saw him with a chest full of merit badges I couldn't have earned in the best day of my life, the best year of my life. Hike 10 miles. He crawled on his knees 1 mile, pushed himself 9 miles in a wheelchair.

Do we need people like that? People that have gotten the short end of the stick. When we get depressed, when we think the world is piling up on us, people who have been given so little and have done so much. I think so.

So for all of these cases, there are other cases that inspire us. Beethoven conducting his premier of the Ninth Symphony in the Vienna Opera House and can't hear a note. He said, ''I am wretched. I cannot hear.'' Yet he wrote and conducted this divine music and had to be turned around to face the audience so he could see what he couldn't hear.

So there are cases and there are cases and there are cases, that abortion is the intentional and direct killing of a human life once it has begun. To do that, some people may say is a right. I say for every right there is a responsibility. We have a responsibility to protect human life where and when we can.

So this is an endless discussion. It never ends. It goes on and on and on. Perhaps that's a good thing in a democracy. I thank the gentleman.

Mrs. SCHROEDER. Would the gentleman yield?

Mr. HYDE. Sure. With pleasure.

Mrs. SCHROEDER. I just want to say that I think all of us would attribute great inspiration to the cases that you talk about. But I hope that we also listen with open ears, and I think we'll find that the women did exercise these rights with great responsibility. Their lives were in jeopardy, or maybe other things. I think there's two, you know, we really need to listen to the whole thing, because there is the woman's life that we are also looking at. I know the gentleman from Illinois——

Mr. HYDE. I would say to my dear friend, that a life for a life is certainly an even trade. And that when a mother's life is threatened, that the tradeoff is equal. But when something less than a life is at risk, then I don't think the trade is equal. I stand in awe of the gentlelady of Colorado, who presumes to speak for all women. I certainly wouldn't pretend to speak for——

Mrs. SCHROEDER. Well, if the gentleman will yield further. I don't believe I ever said I spoke for all women. I must say that I do think that when we start talking about how we start measuring rights and responsibilities, those are very serious issues. But one of the great things about this country is that we have tried to keep the Federal Government out of coming down very hard on one side or the other. I think that's what I am——

Mr. HYDE. I couldn't agree more with the gentlelady. When they force taxpayers to pay for abortions, they are involving us coercively in something that we abhor. Again, it seems to me the purpose of Government is to protect the weak from the strong. Otherwise, there's no reason for Government.

While I am a Republican, I am no libertarian. I believe there is a use for the Government, sometimes a unique use. When a pregnant woman, who should be the natural protector of her child in her womb, becomes her child's deadly adversary, the Government ought to intercede to protect the weak, there's nothing weaker than the defenseless pre-born child, from the strong. But you and I can go on indefinitely. Let's do that some time. We'll hire a——

Mrs. SCHROEDER. Well, Mr. Chairman, I'd be more than happy. Again, let's not demonize.

Mr. CANADY. Mr. Frank.

Mr. FRANK. I should note first that everything that gentleman from Illinois has said applies not to partial-birth abortions or however you want to describe them. It applies to all abortions. The gentleman from Illinois has given, with his usual eloquence, his objection to any form of abortion whatsoever.

That is relevant because this is the first step in a sincere effort by some people who believe that all abortion should be outlawed, and if they can not be outlawed because the Supreme Court will not be made to change its position, they should be made as unavailable as possible. As I said, this is the first step.

People should understand that nothing in what the gentleman from Illinois said differentiates this particular type of abortion from any other. He is consistently and conscientiously against all abortions. This is the first step in that effort.

But I have some problems even with it as done. The gentleman from Illinois said when

the pregnant woman who should be protector turns on the child. Well, why then would you pass a law if you believe that the woman who volunteers to have such an abortion, if you believe that the woman who seeks out a doctor, and by the way, as far as speaking for all women, I believe myself that on this issue, the gentlewoman from Colorado speaks for most women, but the key point is, that none of us are proposing to——

Mr. CANADY. Let me tell the members of the audience that we appreciate your being here, but no matter which side you are on, we would ask that you not express your approval or disapproval of the statements by the members or of the statements of any of the witnesses. Thank you.

Mr. FRANK. I think making faces is OK. The key point is this. The gentlewoman from Colorado and I are not proposing a law for all women. We are not presuming to tell all women what to do. We recognize that this choice, the choice that was described of some of the brave people who were here, is a very difficult one. We don't think the Federal Government ought to make it for them. We are not saying all women must do one thing or must do another. We are saying this is the most intimate and difficult choice, and people should make it within their own families and within their own views.

But what does this bill say? If you commit an act that people here are describing as a terrible act, if you the woman do that, not only are you subject to no penalty whatsoever, but you can sue the doctor who you asked to perform it. That is in this bill.

What about your notions of personal responsibility? We are told on the conservative side that people should be held to a standard of personal responsibility. We are presented with a bill which says you can seek out a doctor, ask that doctor to perform this procedure which you think is a terrible procedure, voluntarily participate in the procedure. Indeed, you are obviously indispensable at procedure. And then turn around and sue the doctor and get money from the doctor who did what you asked him to do, and which you participated in.

That goes so contrary to your notions of personal responsibility that it is puzzling. It can only be a recognition that for all the rhetoric, this is obviously not something that you want to really treat as criminal. Why else would you take the woman whose participation is the essential element in all this? The woman who makes the decision, the woman who seeks out the doctor, the woman who goes to the doctor and submits to the procedure. She comes out in this as someone who has a right to sue the doctor who simply did what she wanted.

That shows to me a fundamental ambivalence in the minds of the people who say this. Because if it were everything that you said it was, you would be at least punishing, you would be punishing the woman in a logical sense if she has participated in a murder. You certainly would not be empowering her to sue. Now would you be empowering others to sue, and for psychological damages.

That is just the other great inconsistency we have here. We have been told on the conservative side that we should return things to the States. This is a matter the States have full jurisdiction over right now. This is not anything preempted by the Federal Government. I am not talking constitutionally now. I am talking about the matter of public policy.

How can people who talk about how they want to return things to the States now come and say we're going to have this Federal statute regulating abortion. The States are fully free to do it. If the overwhelming majority in a State think this is a bad thing and they have a way to do it constitutionally, then they can do it. In some States, provisions like this do exist.

The argument for doing it on the Federal level is, that there are some States that have chosen not to ban it. My conservative colleagues believe that the States have no business exercising their judgment in this regard. I understand that. I have never claimed to be Thomas Jefferson without the wig. But don't come to me on the one hand and say, ''We're for State's rights. We are going to undo this Federal monolith.'' And then for the first time in my memory, inject intimate decision.

So I think that this is flawed in several regards. I would just reaffirm what the gentlewoman from Colorado has said. We are not trying to make any decision for anybody. We are respecting the individual integrity of this very difficult decision, and therefore, I hope that this legislation does not go anywhere.

Mr. CONYERS. Mr. Chairman.

Mr. CANADY. Yes.

Mr. CONYERS. I would like to make a comment or two.

Mr. CANADY. Well, you will be recognized in turn. Mr. Inglis has been here. I will recognize him now. We'll come back to you.

Mr. CONYERS. Thank you.

Mr. INGLIS. Thank you, Mr. Chairman. I start any comments I make by saying this. That we're now on the probably one of the most volatile issues that we can possibly face. I always try to start that discussion by indicating compassion for the victims of abortion that are walking around today. The fact is, there are a lot of victims of abortion that are alive. They are the women that were deceived, and now realize that they wish they had not had an abortion.

If we look in our families, somewhere in the family somebody has had an abortion, a sister, a mother, a cousin, an aunt. Somebody in almost every family has had an abortion. That is why this is such a huge tragedy.

So I start anything I say by way of compassion for the victims of abortion who are walking around today, that are still dealing with the guilt of what they now realize they did. With that opening, I would also say that I am really quite disappointed. I thought we might have found some common ground here. I thought that there wouldn't be anybody who would rise in defense of this type of abortion. I guess I'm too Pollyanna. I thought the gentlelady from Colorado, for example, would say well surely this is a case where we can agree, that this is a horrible procedure and one that we should not make legal.

But I guess I am finding out just how radical the other side is on this issue. It's a really interesting thing to see the radical nature of someone who would defend a procedure in which a live child is halfway delivered and then killed on the way out. I just can not imagine anything more radical than that position.

So I thought really we would find some common ground here and agree that yet this is something that people of good faith can agree on. That surely this is a type of abortion that we can't abide in a civilized society, where a child if it were just literally inches in a different realm, inches away from life, inches away from the protection of the Constitution, is murdered, and a civilized society defends it as some sort of a right.

I think what it rises to is it indicates that this is really some sort of sacrament in a very perverted religious system almost. Some sort of a statement that we've got to have abortion and you can't stop us from having it. Some sort of an assertion of—I'm really not sure what it is, but a rather strange assertion that literally inches from life and protection of the Constitution, we murder a child. I am really surprised that we wouldn't have found some common ground, particularly, I look forward to the panelists making it clear that the real world here is that this is not going on that often in the cases that the gentlelady from Colorado cited about people in hard decisions. It is rather going on in people's minds who choose conscientiously to go to a place that is going to, in the gentleman's word from Illinois, exterminate a living human being. They are not involved in a normal healthy delivery. They are going to a place that specializes in the extermination of human life.

So in the real world, contrary to what the gentlelady has indicated, the real world, this is happening in abortion chambers. This is happening where people pay another person to exterminate a human being that is literally inches from life and protection of the Constitution.

Mrs. SCHROEDER. Would the gentleman yield?

Mr. INGLIS. I'd be happy to. Maybe you could explain to me why this isn't radical.

Mrs. SCHROEDER. This is happening by some of our best educated medical minds making a decision that this is the safest procedure for the woman's health. Now I think it's——

Mr. INGLIS. Let me reclaim my time. Let me reclaim my time because—let me reclaim my time because the gentlelady persists in not living in the real world. The gentlelady is not living in the real world. We are talking places where one consciously decides to go to pay another person——

Mrs. SCHROEDER. A doctor's office.

Mr. INGLIS. To exterminate.

Mrs. SCHROEDER. A doctor.

Mr. INGLIS. Another human being.

Mr. FRANK. Would the gentleman yield?

Mr. INGLIS. I will not because I'm not finding any common ground. I'm not finding any rationality in what the woman has to say.

Mr. FRANK. Will the gentleman yield to me?

Mrs. SCHROEDER. You are trying to——

Mr. INGLIS. Reclaiming my time, I want to make clear that this is a very—I mean, I listened as the gentlelady talked about how hard decisions and medical professionals—you are not in the real world.

The real world is that people are going to a place, consciously deciding to engage the services of a specialist who is good at pulling a baby within inches of life and then sucking the brains out of the child. That is not a medical specialist who is involved in a hard decision.

Mr. CONYERS. Would the gentleman yield?

Mr. INGLIS. That is a radical procedure.

Mr. CANADY. The gentleman's time is expired. Mr. Conyers.

Mr. FRANK. Would the gentleman yield to me for 15 seconds at the outset?

Mr. CONYERS. Thank you, Mr. Chairman, I would yield to Mr. Frank.

Mr. FRANK. I would just then say to my friend from South Carolina, he talks about someone who makes this conscious choice to go and do this, and then apparently he votes for a bill which would allow her to then to sue and get damages for it.

So if this is such a terrible decision this woman is making, why are you then going to vote for a bill if you are going to vote for this, which lets her then sue the person? I am just baffled by that evaluation of human life. The person who submits to what you consider murder, who is indispensable to the murder, then makes a profit off it.

Mr. CONYERS. Ladies and gentleman, it is obvious that this is one of these subjects that are very personally and tenaciously held by people that oppose abortion. It is the law that allows abortion. It is the law that we are examining.

But what we are doing here today is continuing a strategy, an obvious one, of limiting abortion rights since we can't—we don't have the support or the legal justification for changing the law, is that we're going to begin in this new conservative Congress to cut back in every place we can. What more convenient strategy than to start off here in one of the most painful, difficult, unhappy decisions in the abortion arena than this politically claimed decision or title that we have on this subject matter here today.

I submit to you that there is no medical term called partial-birth abortion. I am getting drawn further and further into this dispute because I sense the difference between those who fight to curb abortion and their difficulty in helping to deal with the children who are born, who come out of the birth circumstance, and what do we do after they get a life? What do we do in terms of training them and educating them and trying to build up their families? Well, we cut back. That's what we do.

We say well, this is an incredible right, that we know when life occurs in the fetus. But after it does, let's abolish the Department of Education. Let's cut back on Aid to Families With Dependent Children. Let's reduce the budgets for the children of the poor. All these wonderful statements that are being made about this period from the beginning of life to the existence as a fetus. Yet we are faced with a society with more and more dysfunctional families, more children that are leading lives of despair, more joblessness. But those are different subjects, these are people alive. But when we get to this, we're going to impose our views on you.

So I see this as a strategy. I am prepared to withstand it. I always like to hear people talking about Government funded abortions. Why should taxpayers pay for abortions. Why should taxpayers that don't like war pay for wars? Why should taxpayers that don't like anything else have to pay for it? Because we have determined that is the appropriate way that we have to run a system to raise money for the government.

So I don't see any real value in Beethoven not being raised as a case on one side or the other on this issue. I think the fact that he was deaf is totally irrelevant to these proceedings.

But it is a sad moment when we are in the biggest frenzy of cutting the funds necessary for children and families and health to flourish in this country, that we are now here meeting in a committee of this importance over a subject which I think is probably very low on the list, Partial-birth Abortion Ban Act of 1995. I deplore it.

Mr. CANADY. The gentleman's time is expired. Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. I very much appreciate you holding these hearings. I appreciate your courage in addressing this issue, because I think it's an issue that every American should be aware of and consider and think about. Quite frankly, I am appalled that there would be objection to not being willing to ban a procedure like this, that if the doctor would bring that baby a few inches further into full delivery, would clearly have the full protection of the law.

Mr. Frank and Ms. Schroeder have spoken eloquently about a woman's right to choose. You know, if there were only one right involved, if there were only one life involved, I think there would be nobody in this room who would disagree with that. But therein lies the responsibility of Government, and responsibility of every one of us to have Government intercede when there is more than one right involved. We do have to act responsibly in protecting those who can not protect themselves.

One of the individuals on the other side mentioned bringing this up about what could be the most unhappy decision that not only a woman, but hopefully a man too, might be involved in making a decision about this. Well here we have the opportunity to take away what is clearly not only an unhappy decision, but a wrong decision, to be allowed to do something like this. I think that we are clearly on the right track in addressing this issue today. Thank you, Mr. Chairman.

Mr. CANADY. Thank you, Mr. Goodlatte. Mr. Hoke.

Mr. HOKE. Thank you, Mr. Chairman. I will be brief because I want to hear the testimony of the witnesses, as do you. I want to thank you as well and commend you for bringing this hearing today. I think it takes a tremendous amount of courage and is the sort of thing that this committee should be doing. I am very grateful that you decided to do it.

I also want to make a quick observation regarding the State that I come from, Ohio, where we recently outlawed or made this specific procedure illegal. It was the right thing to do there. It will be the right thing to do here as well.

I am particularly looking forward to the testimony of Dr. White, who is one of this Nation's most preeminent neurosurgeons. He is from Cleveland. I mentioned him particularly, because I am interested in not only what he has to say about the ability of a fetus to experience pain, but also because I make the observation that he trained my own father who is also a neurosurgeon, I won't say how many years ago, to protect all of those that are involved.

Finally, the other observation I would like to make is that I am particularly appalled at this procedure for the reasons that have been described already, but also because this is a procedure that can only take place, that only takes place after the 20th week, and usually takes place much later than that. I have been consistently opposed to any abortions that would take place in the second or third trimesters, except under the most extraordinary circumstances to save the life of the mother. So I look forward to this hearing, Mr. Chairman. Thank you.

Mr. CANADY. Thank you, Mr. Hoke. I'd like to now ask that the other witnesses on our first panel please come forward and take their seats. I'll introduce all the members of our panel, and then we'll recognize them in turn.

First we will hear from Dr. Pamela Smith, who comes to us today from the Department of Obstetrics and Gynecology at Mt. Sinai Hospital in Chicago, where she is the Director of Medical Education. In addition to serving as president-elect of the American Association of Pro-Life Obstetricians and Gynecologists, Dr. Smith has written several articles for medical journals on the subject of pregnancy and issues relating to complications during pregnancy.

Second, Dr. J. Courtland Robinson will testify. Dr. Robinson is from the school of hygiene and public health at Johns Hopkins University.

Third, we will hear from Dr. Robert J. White. Dr. White is Professor of Neurosurgery at the Case Western Reserve University School of Medicine, and is director of the Division of Neurosurgery and the Brain Research Laboratory at the Metro Health Medical Center. He is internationally known for his expertise in clinical brain surgery. He has been the recipient of several honorary doctorate degrees and visiting professorships.

Fourth, we will hear from Ms. Tammy Watts, with us today from California. Ms. Watts has had personal experience with abortion.

Finally, Mary Ellen Morton, a nurse specializing in neonatal care will testify. Mrs. Morton has developed a program on neonatal and pediatric pain control that she presents to health care professionals. For the past 5 years she has practiced as a flight nurse with Med Flight, an air medical program in Columbus, OH, where she helps to stabilize and transport premature or ill infants to Columbus Children's Hospital.

I would like to ask each of our witnesses to please summarize your testimony in no more than 10 minutes. If you can summarize it in less than 10 minutes, that would also be appreciated. Without objection, the entirety of your prepared statements will be placed in the record.

Our first witness, Dr. Smith.

STATEMENT OF PAMELA SMITH, DIRECTOR OF MEDICAL EDUCATION, MOUNT SINAI HOSPITAL; ACCOMPANIED BY J. COURTLAND ROBINSON, JOHNS HOPKINS UNIVERSITY, SCHOOL OF HYGIENE AND PUBLIC HEALTH, ROBERT J. WHITE, PROFESSOR OF SURGERY, CASE WESTERN RESERVE UNIVERSITY, TAMMY WATTS, AND MARY ELLEN MORTON, NEONATAL SPECIALIST

Statement of Pamela Smith

Dr. SMITH. Thank you, Mr. Chairman, and honorable members of the subcommittee. Abortion provides claim that participation in intrauterine dismemberment or a D&E, dilation and evacuation techniques, often cause severe psychological ill effects in counseling staff and surgical providers. Partial-birth abortion techniques, which are distinctly different surgical procedures, compound this problem even further.

The partial-birth abortion method is strikingly similar to the technique of internal podalic version, or fetal breech extraction. Breech extraction is a procedure that is utilized by many obstetricians with the intent of delivering a live infant in the management of twin pregnancies, or single infant pregnancies complicated by abnormal positions of the pre-born infant.

In fact, when I describe the procedure of partial-birth abortion to physicians and lay persons who I know to be pro-choice, many of them were horrified to learn that such a procedure was even legal.

The development and growing use of the partial-birth abortion method is particularly alarming when one considers the recent actions of the Accreditation Council for Graduate Medical Education. This council, whose members include a nonvoting Federal official, has tremendous power. It is responsible for accrediting medical education programs. Nonaccredited programs are not eligible for Federal funding, and students who graduate from nonaccredited programs may not be able to obtain State licenses, hospital privileges, or board certification.

ACGME is requiring obstetrics and gynecology residency training programs to provide abortion training either in their own program or at another institution. This policy will undoubtedly be used to coerce individuals and institutions to participate in procedures that violate their moral conscience. Physicians throughout this country therefore will encounter the ethical dilemma of participating in an abortion procedure which under Roe versus Wade is literally seconds and inches away from being classified as a murder by every State in the union. I believe that this factor among others, fully justifies the banning of this particular abortion technique.

What I would like to do at this time is to demonstrate for you, using this model, which is a replica of how small the average baby would be that is subjected to this procedure. This is the length and a model of a 19 to 20 week old infant. I would like to just go through this very quickly, the procedure, to

show you the similarities between this procedure and the procedures that are used by obstetricians not to destroy the baby's life, but to save the baby's life.

Breech presentation is when the buttocks or the feet are coming first. This area here is the bottom of the womb of the cervix. Normally, when you are trying to deliver a premature baby that may be breech, what you would like to do is to have the bag of waters intact around the baby, because that serves two things. It can buffer the baby as you are pulling the baby out. It also serves to keep the cervix open, so that the head does not get trapped.

When you do partial-birth abortion, however, because you want the head to be trapped, you don't want the bag of waters there, particularly when the baby is premature. So the bag of waters is ruptured.

You then grab the feet. If the infant is very small, you would use the forceps that are there. If the infant is larger, you would probably put your hand in, the same way we would do if we did an internal podalic version, grab the feet and start to pull the baby down the cervix and into the vagina.

Normally when I do this with the intention of delivering the baby alive, I like to have the back toward the mother's bladder, which would be here, because it will be easier for me once the head gets to the level of a cervix to flex the head and deliver the baby safely.

When you do partial-birth abortions, you want the head here in this position, so that you can have access to the neck. Again, when you are delivering a breech baby, cervical entrapment is a complication. It's a complication that we basically handle by either cutting the cervix with a certain kind of incision to release the head, or by doing a cesarian section sometimes. Especially if it's a large baby and that doesn't work.

With the abortion technique that we are describing today, however, you want the head to get trapped, because if the baby gets passed there and slips out, then his status changes from an abortus to a living person. So what you do to make sure that the baby does not move the few inches that is required is you hold your hands here. Basically, when you want to deliver the baby live, you use your hands in this position to buttress the baby. Again, you usually have an assistant up here pressing and flexing the mother's abdomen to deliver the head.

But when you are doing an abortion technique, you are steadying the baby so that the baby won't slip out. Then you take the Metzenbaum scissors, which are these scissors here. Put them in the back of the baby's head. Push them in to try to sever the cord, the spinal cord, open the scissors up to create a hole big enough to put a catheter in. You then put the catheter in and suck out the baby's brains. That way, the baby is dead. When the baby comes out that ends the abortion technique.

Of course when you are doing this to deliver a live baby, the differences are primarily at the level of the cervix. If by change the cervix is floppy or loose and the head slips through, the surgeon will encounter the dreadful complication of delivering a live baby. The surgeon must therefore act quickly to ensure that the baby does not manage to move the inches that are legally required to transform its status from one of an abortus to that of a living human child.

Although the defenders of this technique proclaim that it is safe, they have not substantiated these claims. Only two individuals have provided any kind of data to evaluate. Included in this scanty amount of data, there is a report of a hemorrhagic complication that required 100 units of blood to stabilize the patient, along with an infectious cardiac complication that required 6 weeks of antibiotic therapy.

I have also been shown a copy of a letter dated June 12, signed by the executive director of the National Abortion Federation. This memo makes a number of remarkable claims regarding the partial-birth abortion method, claims that are flatly inconsistent with the recorded statements made by physicians who specialize in performing these procedures. I will refer to statements made by Dr. Martin Haskell, who wrote a monograph explaining in detail how to perform this type of procedure, which was distributed by the National Abortion Federation in 1992. I will also refer to statements made by Dr. James McMahon in various interviews and in written materials that he has distributed.

The National Abortion Federation letter states that fetal demise is virtually always induced by the combination of steps taken to prepare for the abortion procedure. But in interviews with the American Medical News, quoted in an article published on July 5, 1993, edition, both Dr. Haskell and McMahon said that the majority of fetuses aborted this way are alive until the end of the procedure.

Dr. Haskell himself further elaborated in an interview published December 10 in the Dayton News, that it was the thrust of the scissors that accomplished the lethal act. I quote him, ''When I do the instrumentation of the skull, it destroys the brain sufficiently so that even if the fetus falls out at that point, it's definitely not alive.''

Professor Watson Bowes of the University of North Carolina at Chapel Hill, a prominent authority on fetal and maternal medicine, and coeditor of the Obstetrical and Gynecological Survey, reviewed Dr. Haskell's article and noted that Dr. Haskell quite explicitly contrasts this procedure with other procedures that do induce fetal death within the uterus. Professor Bowes concurred that the fetuses are indeed alive at the time that the procedure is performed.

The National Abortion Federation letter also claims that the drawings of the partial-birth procedure distributed by Congressman Canady and others are highly imaginative and misleading. But Dr. Haskell himself validated the accuracy of these drawings, as reported in the American Medical News. Again I quote. ''Dr. Haskell said the drawings were accurate from a technical point of view, but he took issue with the implication that the fetuses were aware and resisting.''

Professor Bowes also reviewed the drawings and wrote that they are an accurate representation of the procedure described in the article by Dr. Haskell.

I would invite the members of the subcommittee to review the drawing of the fetal breech extraction method that I have attached to my written testimony, reproduced from Williams Obstetrics, a standard textbook. You can see that the method described by Dr. Haskell is an adaptation, or I would rather say a perversion, of the fetal breech extraction and that the textbook drawings are strikingly similar to the disputed drawings of the partial-birth procedure. I would also invite the members of the subcommittee to examine an accurate model of a fetus at 20 weeks and the Metzenbaum surgical scissors that are used in this procedure, and decide for yourselves who is being misleading.

The National Abortion Federation letter also suggests that these partial-birth abortions are commonly done in a variety of unusual circumstances, such as when the life of the mother is at grave risk. I have practiced obstetrics and gynecology for 15 years and I work with indigent women. I have never encountered a case in which it would be necessary to deliberately kill the fetus in this manner in order to save the life of the mother.

There are cases in which some acute emergency occurs during the second half of pregnancy that makes it necessary to get the baby out fast, even if the baby is too premature to survive. This would include for example, HELLP syndrome, a severe form of preeclampsia that can develop quite suddenly. But no doctor would employ the partial-birth method of abortion, which as Dr. Haskell carefully describes, takes 3 days.

Dr. McMahon also lists maternal conditions such as sickle cell trait, uterine prolapse, depression and diabetes as indications for this procedure, when in fact, these conditions are frequently associated with the birth of a totally normal child.

The National Abortion Federation letter of June 12 also states, ''This is not a different surgical procedure than D&E.'' This statement is erroneous. The D&E procedure involves dismemberment of the fetus inside the uterus. It is cruel and violent, but it is quite distinct in some important respects from the partial-birth method. Indeed, Dr. McMahon himself has provided to this subcommittee a fact sheet, that he sends to other physicians in which he goes into a detailed discussion of the distinctions between intrauterine dismemberment procedures, which he calls disruptive D&E, and the procedure that he performs, which he calls intact D&E.

This brings us to another important point. There is no uniformly accepted medical terminology for the method that is the subject of this legislation. Dr. McMahon does not even use the same term as Dr. Haskell, while the National Abortion Federation implausibly argues that there is nothing to distinguish this procedure from D&E.

The term you have chosen, partial-birth abortion, is straightforward. Your definition is straightforward, and in my opinion, covers this procedure and no other.

Mr. CANADY. Doctor, if you could summarize and continue and conclude in another couple of minutes, I'd appreciate it.

Dr. SMITH. I'll just summarize by saying partial-birth abortions are being heralded by some as safer alternatives to D&E. But advances in this type of technology do not solve the problem. They only compound it. In part because of its similarity to obstetrical techniques that are designed to save a baby's life and not destroy it, this procedure produces a moral dilemma that is even more acute than that encountered in dismemberment techniques. The baby is literally inches away from being declared a legal person by every state in the union. The urgency and seriousness of these matters therefore require appropriate legislative action. Thank you.

Mr. CANADY. Thank you, Dr. Smith. Dr. Robinson. I will point out before Dr. Robinson's testimony that the two doctors, McMahon and Haskell that Dr. Smith referred to in her testimony, were the doctors we had invited and who had agreed to appear for this hearing, but who canceled at the last minute. We wanted to give them the opportunity to be here to testify and explain the procedure. But they were——

Mrs. SCHROEDER. If the Chairman will yield. I think one of the reasons that we have to be very honest about this, is doctors have been harassed and sometimes don't feel very secure in this environment that we live in. I think it is only fair to put that on the record.

Mr. CANADY. Thank you. Dr. Robinson.

Statement of J. Courtland Robinson

Dr. ROBINSON. I would like to thank the Chairman and the members of the subcommittee for inviting me to be here today. My name is J. Courtland Robinson, associate professor on the full-time faculty in the Department of Gynecology and Obstetrics at the Johns Hopkins University School of Medicine, and a joint appointment with the

Johns Hopkins School of Hygiene and Public Health.

I have been involved in all aspects of reproductive health care for women for over 40 years, including complete obstetrical care, abortion, special oncologic and gynecological care, with an extra interest in family and sterilization. I am here on behalf of the National Abortion Federation, the national professional association of abortion providers.

My experience with abortion began in the 1950's, when as a house officer at the Columbia Presbyterian Medical Center in New York City, I watched women die from abortions that were poorly done. Over a 5-year period when in training at the medical center, many women died before our eyes. Many survived only with aggressive pelvic surgery. On occasion, we did save the very sick.

These are not events learned from books, but reality that I painfully experienced and witnessed. This experience with poorly performed abortions was further extended during my 11 years as a medical missionary with the Presbyterian Church while I worked and taught in Korea.

In 1971 at Baltimore City Hospital, we were already doing legal first and second trimester abortions before the Roe versus Wade decision came down. We did about 1,000 a year. Thirty percent were second trimester. At that time, the method of management of second-trimester abortions was saline induction. When the saline did not work, it was often my task to carry out an evacuation in order to meet the patient's needs in a safe and timely manner. I have performed abortions in different settings, and have performed second-trimester abortions using different techniques, depending upon the clinical situation.

When a woman is faced with a need to terminate a pregnancy, the physician can manage the surgical procedure using a number of techniques, hypotonic glucose, saline, urea, prostoglandins, potossin, suction, D&C, D&E. We have used different techniques over the years as our skill and understanding of basic physiology has become clearer. As in all of medicine we develop techniques which are more appropriate, study the long-term impacts, and determine which is safer.

The physician needs to be able to decide, in consultation with the patient, and based on her specific physical and emotional needs, what is the appropriate methodology. The practice of medicine by committee is neither good for patients or for medicine in general.

This legislation appears to be about something you are referring to as partial-birth abortion. I now am beginning to learn a little about what you think it means, but I did not know it until a few days ago. Never in my career have I heard a physician who provides abortions refer to any techniques as a partial-birth abortion. That, I suspect, is because the name did not exist until someone who wanted to ban abortions made it up. Medically, we do not do partial-birth abortion. There is no such thing.

When an intact fetus is removed in the process of abortion, as is sometimes done, fetal demise is induced either by an artificial medical means or through the combination of steps taken as the procedure is begun. Thus, in no case is pain induced to the fetus. If neurologic development at the stage of the abortion being performed even made this possible, which in the vast majority of cases it does not, analgesia and anesthesia given to the women neutralizes any pain that may be perceived by the fetus.

So when I read in your legislation that you seek to, ''Ban an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery,'' my reaction is that you are banning something that does not happen. To say partially vaginally delivers is vague, not medically oriented, just not correct. In any normal second-trimester abortion procedure done by any method, you may have a point at which a part, an inch of cord, for example, of the fetus passes out of the cervical os, before fetal demise has occurred. This does not mean you are performing a partial birth.

I have seen the sketches that have been passed around. I have read your description of a particular physician's method of performing this procedure, a method by the way which is not at all common. It represents a particular surgical decision by that physician, one which works in his practice. The sketches in any case are not particularly correct. They may in a very technical sense represent an approximation of what occurs in some cases, but they do not represent medical or scientific accuracy. Rather, they are designed to be upsetting and inflammatory for the lay person. They do not advance medical practice.

The words of the legislation are equally inflammatory. No one doing this procedure is partially delivering a fetus. So then, I have to wonder what you are trying to ban with this legislation. It sounds to me as if you are trying to leave any late abortion open to question, to create a right of action, and in fact, a criminal violation. To force doctors to affirmatively prove that they have not somehow violated such a law.

I know that a number of physicians who have performed abortions for years who are experts in the field, look at this legislation and do not understand what you mean or what you are trying to accomplish. It seems as if this vagueness is intentional. I, as a physician, can not countenance a vague law that may or may not cut off an appropriate surgical option for my patient.

Women present to us for later abortions for a number of reasons, including congenital anomalies, of which I have a few pictures if necessary. I can tell you from my long experience that women do not appear and ask for any abortion, particularly those that I saw die in the 1950's, particularly a later abortion, cavalierly or lightly. They want an answer. It is a serious and difficult decision and has been for centuries for women to make. It is not my place to judge my patient's reason for ending a pregnancy, or to punish her because circumstances prevented her from obtaining an abortion earlier.

It is my place to treat my patient, a woman with a pregnancy she feels certain she cannot continue, to the best of my ability. That includes selecting the most appropriate surgical technique using my skill and knowledge developed from experience, to determine what method is safest for this woman at all times and in all circumstances.

Sometimes, as any doctor will tell you, you begin a surgical procedure expecting that it will go one way, only to discover that a unique demand, the case requires you to do something different. Telling a physician that it's illegal for him or her to adapt a certain surgical method for the safety of the patient is absolutely criminal and flies in the face of the standards for the quality of medical care.

For many physicians, this law would amount to a ban on D&E entirely, because they would not undertake a surgery if they were legally prohibited from completing it in the best way they saw fit at the time the procedure was being done. Because the law itself is so vague and bizarre, leaving them to wonder whether they are open to prosecution or not.

This means that by banning this very rare technique, you end up banning D&E, essentially recognized as the safest method of performing secondary-trimester abortions. That means that women will probably die. I know. I have seen it happen.

With all due respect, the Congress of the United States is not qualified to stand over my shoulder in the operating room and tell me how to treat my patient. If we are to allow women of this country the right to decide when and whether to bear children, we, as their doctors, must be allowed to be doctors and treat them to the best of our abilities and according to their sense of personal control. Thank you.

Mr. CANADY. Thank you Doctor. Dr. White.

Statement of Robert J. White

Dr. WHITE. Mr. Chairman, members of this distinguished panel. I am delighted to have the opportunity to testify before you. I appreciate Mr. Hoke's remarks, whether true or otherwise.

I come before you as not an obstetrician or an gynecologist. I come before you as a brain surgeon and as a neuro scientist. When I was undergoing my training at Harvard Medical School and was working at Children's Hospital in Boston, when I saw the efforts that the pediatricians and the neonatalogists were putting forward to save children, infants, it had a mark on my consciousness and on my practice. I have been trained through all of my years, including many years at the Mayo Clinic, to save lives. Not to take lives.

I go back to a time in American medicine when abortion was abhorred by the medical profession. The things that we have to consider here is we are dealing with a human being, a fetus. By the 20th week of gestation and beyond, has in place the neurocircuitry to appreciate pain. Now I'm not going to bore this distinguished panel by going through the neuroanatomy and the neurochemistry and the studies that are on board that reflect that these fetuses can perceive and appreciate pain. As a matter of fact, there are studies that demonstrate at 8 weeks through 13 weeks, there's enough neurocircuitry present so that pain noxious stimuli could be perceived.

It is well to remember at this particular time, beyond the 20th week of gestation, that not only are the fiber tracks in place from the surface of the skin in through the spinal cord and to special areas of the brain where pain can be appreciated. But the system which is equally important in the modulation and suppression of pain is not yet as mature as the one conducting pain. Some authorities feel that fetuses at this age can perceive pain to a greater degree than the adult. So I would like to come before you emphasizing that within the framework of the fetus, his nervous system, pain can be perceived and appreciated.

Now, I am not an obstetrician. But as I view and understand this particular procedure, the compression, the pulling, the distortion must be a painful experience for the fetus as it is advanced into the birth canal. But for me, what is most disturbing is the procedure itself. You are talking about a brain operation on a fetus who could have reached an age where I would be called upon as someone trained and experienced in pediatric neurosurgery to operate.

We operate on preemies within this range, conducting brain surgery to save their lives. We would never consider any procedure giving us access to that preemie's central nervous system without sophisticated anesthesia.

As I read as you do that the procedure to terminate the fetus' life requires the opening of the scalp, the entering of the spinal canal. Now interestingly, I am really wondering if these people who conduct this procedure really know what they are doing in a technical way. We operate on infants beyond the 24th week of gestation using magnification.

Some of the most sophisticated instrumentation allows us to enter these areas.

I can conceive that these people eventually sucking out the brain have not even divided the upper cervical cord, which incidentally, and we should think about that, is the area where Mr. Reeves has been injured. We're bringing to bear the greatest technology, and he's being treated by some of the finest neurosurgeons in this country, to save his life.

The obstetrician who conducts this type of partial abortion, is attempting to undertake brain surgery. There is no description in any of the doctors' articles or responses who do these procedures, to give me any indication whether they are operating on the upper cervical spine or cord, or on the brain stem.

Now it is true, once you sever that area, then of course the capability of respiration and so forth has been separated, as has happened to Mr. Reeves. But I can believe that these are not trained neurosurgeons. In the process of terminating this child by removing its brain, could be even conducted in a poor infant whose pain situation, capabilities, the tracks, the neurocircuitry, could be in place because they are not trained to carry out even this dastardly procedure.

Members of the panel, we are talking about a procedure, and I have no idea how often it is conducted, by individuals who are not trained neurosurgeons. We are trained to save lives.

Since I became involved in this, as I sit at the operating table, spending hours utilizing intensive medication, special instrumentation, to remove blood from the brain, to direct specially developed hydraulic tubing into the fluid passages of the brain, in infants of this age or perhaps a little older, to save their lives it frankly disgusts me to think that other medical professionals are undertaking these procedures that we have spent years of study and training to undertake to save lives, are being conducted to terminate lives.

I would also remind you that the animal rights groups in this country have displayed great concern over animal rights, particularly as it relates to pain and to medical experimentation. It seems to me that we have reached a point where far greater care would have to be exercised by the veterinarian or the medical scientist experimenting on animals in terms of pain reduction or elimination, than is a part of this particular procedure. It is almost as if, from an ethical standpoint, it would be more disturbing, even morally incorrect and inappropriate, to cause pain in a rat than a human fetus.

I doubt very much, ladies and gentlemen, if this type of procedure, and as I said before I am not an expert as to how often it would be undertaken, were conducted within the framework of the lower animal, I am sure that the animal rights groups would be able to bring sufficient pressure on Congress and within the media to have it totally eliminated.

In conclusion, the fetus is at an age of gestation where he or she can perceive pain and possibly more exquisitely, than he or she would if they were allowed to go on to be born. The procedure itself is a brain operation. But the details of it are so limited and so ghastly, that it seems to me that it is impossible to believe that medical colleagues at another specialty would carry it out. Thank you, ladies and gentlemen.

Mr. CANADY. Thank you, Dr. Ms. Watts.

Statement of Tammy Watts

Ms. WATTS. Good morning. My name is Tammy Watts. I would like to thank the subcommittee for inviting me here today. My story is one of heartbreak, one of tragedy, but also one of compassion.

When I found out I was pregnant on October 10, 1994, it was a great day, because on the same day, my nephew, Tanner James Gilbert was born. We were doubly blessed. My husband and I ran through the whole variety of emotions, scared, happy, excited, the whole thing. We immediately started making our plans. We talked about names, what kind of baby's room we wanted, would it be a boy or girl. We told everyone we knew, and I was only 3 weeks pregnant at the time.

It was not an easy pregnancy. Almost as soon as my pregnancy was confirmed, I started getting really sick. I had severe morning sickness, and so I took some time off of work to get through that stage. As the pregnancy progressed, I had some spotting, which is common, but my doctor said to take disability leave from work and take things 1 month at a time.

During that leave, I had a chance to spend a lot of time with new newborn nephew, Tanner, and his mom, Melanie, my sister-in-law. I watched him grow day by day, sharing all the news with my husband. We made our plans, excited by watching Tanner grow, thinking, ''This is what our baby is going to be like.''

Then I had more trouble in January. My husband and I had gone out to dinner, came back and were watching TV when I started having contractions. They lasted for about a half an hour and then they stopped. But then the doctor told me that I should stay out of work for the rest of my pregnancy. I was very disappointed that I couldn't share my pregnancy with the people at work, let me watch me grow. But our excitement just kept growing, and we made our normal plans, everything that prospective parents do.

I had had a couple of earlier unltrasounds which turned out fine. I took the alphafetoprotein test, which is supposed to show fetal anomalies, anything like what we later found out we had. Mine came back clean.

In March, I went in for a routine seven month untrasound. They were saying this looks good, this looks good. Then suddenly, they got really quiet. The doctor said, ''This is something I did not expect to see.'' My heart dropped. He said he was not sure what it was, and after about an hour of solid ultrasound, he and another doctor decided to send me to a perinatologist. That was also when they told us we were going to have a girl. They said, ''Don't worry. It's probably nothing. It can even be the machine.''

So we went home. We were a little bit frightened so we called some family members. My husband's parents were away and wanted to come home, but we told them to wait. The next day the perinatologist did ultrasound for about 2 hours, and said he thought the ultrasound showed a condition in which the intestines grow on the outside of the body, something that is easily corrected with surgery after birth. But just to make sure, he made an appointment for me in San Francisco with a specialist.

After another intense ultrasound with the specialist, the doctors met with us along with a genetic counselor. They absolutely did not beat around the bush. They told me, ''Your daughter has no eyes. Six fingers and six toes, and enlarged kidneys which were already failing. The mass on the outside of her stomach involves her bowel and bladder, and her heart and other major organs are also affected.'' This is part of a syndrome called trisomy-13, where on the 13th gene there's an extra chromosome. They told me, ''Almost everything in life, if you've got more of it, it's great, except for this. This is one of the most devastating syndromes, and your child will not live.''

My mother-in-law collapsed to her knees. What do you do? What do you say? I remember just looking out the window. I couldn't look at anybody. So my mother-in-law asked, ''Do we go on? Does she have to go on?'' The doctor said, ''no,'' that there was a place in Los Angeles that could help if we could not cope with carrying the pregnancy to term. The genetic counselor explained exactly how the procedure would be done if we chose to end the pregnancy, and we made an appointed for the next day.

I had a choice. I could have carried this pregnancy to term, knowing that everything was wrong. I could have gone on for 2 more months doing everything that an expectant mother does, but knowing my baby was going to die, and would probably suffer a great deal before dying. My husband and I would have to endure that knowledge and watch that suffering. We could never have survived that, and so we made the choice together, my husband, and I, to terminate this pregnancy.

We came home, packed, and called the rest of our families. At this point, there wasn't a person in the world who didn't know how excited we were about this baby. My sister-in-law and best friend divided up our phone book and called everyone. I didn't want to have to tell anyone. I just wanted it to be over with.

On Thursday morning, we started the procedure. It was over about 6 p.m. Friday night. The doctor, nurses, and counselors were absolutely wonderful. While I was going through the most horrible experience of my life, they had more compassion than I have ever felt from anybody. We had wanted this baby so much. We named her Mackenzie. Just because we had to end the pregnancy didn't mean we didn't want to say goodbye. Thanks to the type of procedure that Dr. McMahon uses in terminating these pregnancies, we got to hold her and be with her and love her and have pictures for a couple of hours, which was wonderful and heartbreaking all at once. They had her wrapped in a blanket. We spent some time with her, said our goodbyes, and went back to the hotel.

Before we went home, I had a checkup with Dr. McMahon and everything was fine. He said, ''I'm going to tell you two things. First, I never want to see you again. I mean that in a good way. Second, my job isn't done with you yet until I get the news that you have had a healthy baby.'' He gave me hope that this tragedy was not the end, that we could have children just as we had planned.

I remember getting on the plane, and as soon as it took off, we began crying because we were leaving our child behind. The really hard part started when I got home. I had to go through my milk coming in and everything you go through if you have a child.

I don't know how to explain the heartache. There are no words. There's nothing I can tell you, express or show you, that would allow you to feel what I feel. If you think about the worst thing that has happened to you in your life and multiply it by a million, maybe then you might be close. You do what you can. I couldn't deal with anybody, couldn't see anybody, especially my nephews. It was too heartbreaking. People came to see me, and I don't remember them being there.

Eventually, I came around to being able to see and talk to people. I am a whole new person, a whole different person. Things that used to be important now seem silly. My family and my friends are everything to me. My belief in God has strengthened. I never blamed God for this. I am a good Christian woman. However, I did question.

Through a lot of prayer and talk with my pastor, I have come to realize that everything happens for a reason, and Mackenzie's life had meaning. I know it would come to

pass some day that I would find out why it happened, and I think it is for this reason. I am supposed to be here to talk to you and say, you can't take this away from women and families. You can't. It is so important that we be able to make these decisions, because we are the only ones who can.

We made another painful decision shortly after the procedure. Dr. McMahon said, ''This will be very difficult, but I have to ask you. Given the anomalies Mackenzie had so vast and different, there is a program at Cedars-Sinai which is trying to find out the cause for why this happens. They would like to accept her into this program.'' I said, ''I know what that means, autopsies and the whole realm of testing.'' But we decided how can we not do this? If I can keep one family from going through what we went through, it would make her life have more meaning. So they are doing the testing now. Because Dr. McMahon does the procedure the way he does, it made the testing possible.

I can tell you one thing after our experience, I know more than ever that there is no way to judge what someone else is going through. Until you have walked a mile in my shoes, don't pretend to know what this was like for me. I don't pretend to know what someone else is going through. Everybody has got a reason for doing what they have to do. Nobody should be forced into having to make the wrong decision. That's what you'll be doing if you pass this legislation. Let doctors be free to treat their patients in the way they think is best, like my doctor did for me.

I understand this legislation would make my doctor a criminal. My doctor is the furthest thing from a criminal in the world. Many times I have called him my angel. They say there are angels working around the world protecting us, and I know he is one. If I was not led to Mr. McMahon, I don't know how I would have lived through this. I can't imagine where we would be without him. He saved my family, my mental stability, and my life. I could not have made it through this without him and I know there are a great many women out there who feel the same.

I have still got my baby's room and her memory cards from her memorial service. Her foot and hand prints. Those are good things and good memories, but she's gone. The best thing I can do for her is continue this fight. I know she would want me to. So for her, for Mackenzie, I respectfully ask you reject this legislation. Thank you.

Mr. CANADY. Thank you. Mrs. Morton.

Statement of Mary Ellen Morton

Ms. MORTON. Mr. Chairman, members of the committee, thank you for the opportunity to testify. With your permission, could I use slides to illustrate my testimony?

Mr. CANADY. Certainly.

Ms. MORTON. Could we lower the lights? Thank you. My name is Mary Ellen Morton. I am here today to challenge and to dispel the notion that unborn babies would not feel agonizing pain before they are reduced to human rubble during the partial-birth abortion procedure.

Now I have practiced as a nurse for 12 years. Nine of those have been in the neonatal intensive care units. Taking care of babies like this little neonate.

[Slide.]

Now a neonate is defined as a baby that is born, whether premature or full term, until the time they about 4 weeks of age. As you see, this little baby is about 1½ pounds. He falls right into the time line of when this partial-birth abortion procedure is routinely done. He is not even on life support systems. As you see, that's an adult 02 mask there for size. This little boy, named Al, is just about 26 weeks along at this point along in the picture.

As the Chairman stated, I am a flight nurse in Columbus, OH. A portion of my flights is dedicated to picking up the smallest of premature babies and transporting them via air back to Columbus Children's Hospital in an isolet. Viability is an arbitrary term to medical people like myself. The reason for that is, is because it's a measure of the sophistication of the external life supports that is available to us. We know that that is ever changing.

[Slide.]

In fact, this little boy, Donnie, is in the midst of all that technology. He was born at 24 weeks. He is now at about three pounds. That is him laying on his tummy under an oxygen hood.

Now the reason viability is arbitrary, because it varies from institution to institution in my experience. It also varies from baby to baby, because neonatologists, when they call a gram weight or a gestational age as when a baby is viable, you will always have a baby that will prove the definition wrong. It also increases, of course, with our sophisticated technology.

[Slide.]

Now this little baby, it's kind of hard to see, but she was born at 23 weeks gestation in Columbus, OH. She had multiple operations done. One of them was to restore intestines that were born outside of her tummy. It is the standard of care that a baby like this would receive narcotic analgesics for pain control after surgery. It is also the standard of care that these babies would receive skeletal muscle relaxant drugs, such as valium. Also, that has kind of an amnesic effect, so the baby will not remember the painful experience. Also, an antianxiety effect.

It is also the standard of care that these babies receive anesthetic for any kind of surgical procedure. That could be from a central line insertion, chest tube insertion, even to a circumcision. Now the reason we have standards of care, nurses know that it promotes the physical well-being of that baby. More importantly, it is the compassionate thing to do for these little ones, and it holds the medical community accountable for what we do.

I fought long and hard for 12 years to get adequate pain control for these little babies. As Dr. White can probably testify, it has been a long time coming. It has been a struggle. But finally, we are using more and more pain technology and we realize that hospitals should not be a place of torture and torment, but use the adequate pain technology available to us.

[Slide.]

Now I have ample experience as a nurse to assess the pain experience in the smallest of babies. Just to give you an idea from this drawing, there are breathing tubes, there are oral gastric tubes that need to be inserted. We do vena punctures, arterial punctures. We draw blood from the heels of these babies. Their skin, especially the 21 to 23 week babies, they have very sensitive skin. So it requires that we take much caution when we remove electrodes from their skin. We use electrodes for heart monitoring, for oxygen monitoring through the skin, for temperature monitoring. So how is it that nurses know that this little babies are in pain? What it is that I have discovered over the 12 years of taking care of them?

[Slide.]

Well, this just kind of sums it up for you. But basically, we see differences in their vocalizations. There's different kinds of cries. Even your small babies can actually moan, just like an adult would. The facial expressions. We see chin quivering, eye squeezing, we see eye rolling, all kinds of brow bulge, a square chin when they are experiencing pain activity. We see differences in their sleep wake cycles. We see a lack of consolability. Their sucking ability changes when they are in pain. There general appearance, their color actually deteriorates because they deoxygenate their blood when they are in severe pain. We also see posture motor responses, such as jitteriness and arching, when they are exhibiting a pain stimulus.

[Slide.]

Now this little girl, Sarah, she's under a pound. She is only 420 grams with 454 grams being 1 pound. When she was born at 23 weeks gestation, it required that she have a medication called Adavan, which is like valium, administered to her, and also she was on a fentanyl drip at different points. That is actually a pain killer for the discomfort of all the technology.

[Slide.]

This is her a little bit older. As you see, it was very important to even swaddle her while she's on a breathing machine there. It was important for her parents to put a tape into her isolet, where she could be nurtured by the parents verbally. We even gave a pacifier that she can suck on around that breathing tube. We also play internal womb sounds to these babies to kind of console them.

[Slide.]

Now here she is several years ago with the same little doll. As you can see, she has grown quite a bit. But nurses have known this for years, that babies that have adequate pain control and they have people, whether it just be the nurses or adoptive parents, whoever is caring for the child, to give them emotional care. Those babies fare better. They gain weight better. They have less incidence of inner-cranial bleeds. We see a lot of good outcomes.

[Slide.]

Now unquestionably as Dr. White has said, the research has shown that these premature babies, they possess full sensation. This is a summary of the research that has been done. I just want to show you that this validates what nurses have always known for years. I have already told you a few of these, eye rolling, breath holding, jitteriness, eye squeezing, chin lip quivering, limb withdrawal. We also see physiological changes. Their heart rates will race when they are in pain. Or small babies, it will go down. Their oxygen levels, they also have stress hormones that go off the wall. Cortisol, adrenalin levels, will increase during pain.

[Slide.]

Now this is Kelly Thorman of Toledo, OH, born in 1971. As you see, she doesn't require much sophistication of external life supports. In the 1970's, there probably wasn't very much.

[Slide.]

This is her at 368 grams. That is three-quarters of a pound. That is her nurse's wedding ring on her wrist.

[Slide.]

Now as depicted on the front of Life Magazine. This is a baby that is the same age and weight as Kelly Thorman, the baby I just showed you. I have to ask, what is the difference? Both of those babies, whether inside or outside the womb, can perceive pain and experience it. But the difference is, the baby outside the womb is required to have humane care inside of the hospital. But this baby inside of the womb can be pulled violently down into a breech position, partially delivered, only to experience an agonizing death.

[Slide.]

Now this little girl from Columbus, OH, is shown here in two different stages of her life. At 23 weeks gestation and just over a pound, she is full of technology there you can see at

the bottom. But you know, as a premature neonate at the bottom and also as a preschooler, do you know that she can experience the same things. She can breath, digest, swallow, taste, hear. This baby can feel pain at both stages in her life. In fact, at both of these stages in her life, she had a learned response to pain. I will show you one of the reasons we know this.

[Slide.]

This baby on his 3-month birthday, when he reached about 3½ pounds.

Mr. CANADY. Ms. Morton. There's a vote taking place on the floor. If you could conclude your remarks in about a minute or two. We are going to have to go to the floor to vote.

Ms. MORTON. I am closing right now. This is the last statement. This baby, before he has blood drawn, it requires that we warm his heel as you see on his right heel. After doing this several times to these babies, they actually know when that pain response is coming, because they will start to become agitated. Their heart rates will race when we put the warm pack on.

In closing, as a nurse and also as a mother, I am really disturbed that this abortion procedure could be permitted on these babies. I believe that I have shown that there is unmistakable humanity. I hope with proposed legislation before you, that it will stop that. Thank you.

Mr. CANADY. Thank you, Mrs. Morton. I want to thank all the members of this panel. As you know, there is a vote taking place on the floor of the House. The members of the subcommittee must go to the floor to vote. We will return and reconvene as soon as the vote is concluded. The committee will now stand in recess.

[Recess.]

Mr. CANADY. The subcommittee will come to order. I apologize to our panel for the interruption. I will also tell you that the subcommittee will have to conclude its proceedings somewhat in advance of 1 o'clock due to the fact that the full Judiciary Committee has a meeting scheduled at that time. I regret that. I wish we could have an extended session here of questions, but that is not going to be possible

In light of that, I would like to at this point recognize Mr. Hyde. We're going to switch places, and I'll let Mr. Hyde proceed with questions at this point. Then when it would have been Mr. Hyde's turn, it will be my turn. Mr. Hyde.

Mr. HYDE. Well, I thank you for that gesture. Dr. White, I have yet to find a doctor who performs abortions that calls himself an abortionist. They all say they specialize in reproductive health. I have racked my brain and I try to find something reproductive about abortion. It is contrary, reproductive. Of course health is irrelevant for the fetus that has been exterminated. It just seems ironic that this is the surgery that dares not speak its name.

Dr. Robinson, over the years, about how many abortions have you performed?

Dr. ROBINSON. I really have great difficulty going back to 1953 when in New York City, we didn't do them except under rather limited and special conditions when a committee of four or five physicians would get together and have vote concerning was this a reasonable reason for this young woman to interrupt this pregnancy, just as we had committees to decide whether a woman could have her tubes tied or not. This was all done by committee.

In Korea, since I was working with the Presbyterian Church, I was active in teaching, therefore others in the community were doing the abortions.

When I came back in 1981 or 1971, then at City Hospital I began getting involved in it. I can't give you any sense. It has not been a major job. On the other hand, I have on many occasions introduced myself at church meetings as an abortionist.

Mr. HYDE. You have?

Dr. ROBINSON. Oh, yes.

Mr. HYDE. You are the first then.

Dr. ROBINSON. I'm a Christian abortionist.

Mr. HYDE. That is an interesting juxtaposition.

Dr. ROBINSON. Well, we have Christian crusaders. We have the Christian inquisition in Spain. We have a lot of Christian militants. We have lots of Christians——

Mr. HYDE. Some more nominal than others, I daresay.

Dr. ROBINSON. I daresay.

Mr. HYDE. I have read a statement by Dr. Bernard Nathanson, who was one of the founders of the modern abortion movement and who ran the biggest abortion clinic in New York for years. He said that he can't escape the notion, he said, I can't escape the notion that I have presided over 50,000 deaths. Do you think your record could equal that?

Dr. ROBINSON. I doubt it.

Mr. HYDE. Or is Dr. Nathanson ahead of you?

Dr. ROBINSON. I doubt if that number—on the other hand, the thing that he left out of his statement is that he found 50,000 women who were incredibly pleased.

Mr. HYDE. Who were what?

Dr. ROBINSON. Incredibly pleased with the outcome.

Mr. HYDE. No doubt.

Dr. ROBINSON. One of the pleasures of doing abortions is that no longer do I have to go to a committee. When women leave on the occasions that I have been involved or where the units do, these are very happy women.

Mr. HYDE. Do you ever find that remorse sets in? Do you ever find women who have had an abortion are troubled by it in later years?

Dr. ROBINSON. I find remorse occurs in many women. I do a hysterectomy in women and they grieve later on, because they have lost their ability. Grieving over illness and problems is very common. I think careful studies have indicated that grieving over this issue, as Koop said many years ago as Surgeon General, that this isn't any more common than anybody else. It is an event of life.

Mr. HYDE. You have said that you have spent in your medical experience, you have witnessed women who have died from botched abortions. We are aware that that happens. The statistics are there. The mortality rate for the unborn in abortions is 100 percent though. Isn't it?

Dr. ROBINSON. It better be.

Mr. HYDE. It had better be?

Dr. ROBINSON. Yes.

Mr. HYDE. Thank you Doctor. I have no more questions.

Mr. CANADY. Thank you, Mr. Chairman. I would like to continue, Dr. Robinson, with a couple questions for you.

Dr. Martin Haskell prefers an abortion technique which he calls dilation and extraction. Dr. James McMahon prefers a similar technique and calls it intact dilation and evacuation. The same basic technique has also been called interuterine cranial decompression. Are you familiar with the abortion techniques that are used by Dr. Haskell and Dr. McMahon that are referred to by these particular terms?

Dr. ROBINSON. I must confess, Mr. Chairman, that up to about a week ago, I had never heard anything about this at all. I am in an academic center in which varying issues are discussed. I was totally unaware that even people were talking about it.

Mr. CANADY. Well that was a week ago. So you didn't know anything about the subject you came to testify on today until starting a week ago?

Dr. ROBINSON. I know a lot about abortion. I know a lot about the attempts to describe what is being done. But as a medical piece of information, this is not widely known. It is not generally known. It has not been published in literature. It has not been published in scientific journals. It hasn't even been mentioned in throw-away journals.

Mr. CANADY. Let me ask you this. Would you consider yourself to be familiar, have some familiarity with the subject now? You have been expressing opinions on it.

Dr. ROBINSON. I am very familiar with the subject right now.

Mr. CANADY. OK. Very good. Glad to hear that. Now are you familiar with the paper by Dr. Haskell entitled, Second Trimester DNX 20 Weeks and Beyond, which was presented as part of the National Abortion Federation's Second Trimester Abortion From Every Angle Risk Management Seminar held in September of 1992?

Dr. ROBINSON. As I have testified before, I did not attend that particular meeting of NAF. I was not present. I have not seen that publication.

Mr. CANADY. Oh. You have not seen Dr. Haskell's publication on that subject at all?

Dr. ROBINSON. I have not seen what he has published.

Mr. CANADY. Have you consulted any other literature on this subject?

Dr. ROBINSON. There is no published literature in what we consider the normal medical literature. If I did a Med-Line search, I would not find this term anywhere in the Med-Line search covering about 6,000 medical journals.

Mr. CANADY. What term is that?

Dr. ROBINSON. Med-Line search, it's a way——

Mr. CANADY. No, no, no, no. You said you would not if you did a Med-Line search find this term.

Dr. ROBINSON. The term being used in the legislation.

Mr. CANADY. I refer to some other terms. Dilation and extraction, intact dilation and evacuation, interuterine cranial decompression. What about those terms?

Dr. ROBINSON. If I was to look up the word dilation and extraction, a standard D&E, this is an accepted and considered by many one of the safer methods of accomplishing a second trimester abortion. With that I am familiar with and have done it.

Mr. CANADY. Dilation and extraction?

Dr. ROBINSON. D&E.

Mr. CANADY. OK. Let me ask you this. Now a letter has been sent out by the National Abortion Federation in which you were quoted as saying that the drawings in some materials that I distributed, which are identical to these drawings on the posters, had little relationship to the truth or to medicine.

Now in your prepared testimony, which you submitted to the subcommittee, you said I have seen the sketches that have been passed around. They are medically inaccurate and not designed to advance proper understanding of a surgical procedure. Rather, they are designed to be upsetting and inflammatory to the lay person. Now there you said they were medically inaccurate. When you were giving your testimony a few minutes go, I thought you said something a little different than what is in your written statement. Could you tell me what your current view is of these?

Dr. ROBINSON. I apologize to the committee. Coming down here I took advantage to read what I had prepared and did a little maintaining.

Mr. CANADY. I have no problem with people changing their minds if they get additional

information that convinces them that an earlier view is not correct.

Dr. ROBINSON. My view is essentially that those drawings would not appear in a textbook. These drawings would not appear in a journal.

Mr. CANADY. Do you think they are technically correct?

Dr. ROBINSON. They describe, the first one where he is reaching up there. I think they have taken some artistic license to sort of move things around.

Mr. CANADY. But you do think they are technically correct?

Dr. ROBINSON. That is exactly probably what is occurring in the hands of the two physicians.

Mr. CANADY. OK, well, I appreciate that. I think that's a very different thing than what was referred to in the letter sent out by the National Abortion Federation, in which you were quoted as saying they had little relationship to the truth or to medicine. I am glad to clarify that point.

Now, there's some controversy here about whether a baby is, in fact, being delivered or whether it is correct to call this partial-birth abortion. I just want to quote this paper you have not seen. I will be happy to provide a copy of it to you, you might find it of interest, that was prepared by Dr. Haskell, in which in describing this procedure he says, ''With the lower extremity in the vagina, the surgeon uses his finger to deliver the opposite lower extremity, then the torso, the shoulders, and the upper extremities.'' The term deliver is specifically used by I think one of the leading practitioners of this particular procedure. I just wanted to note that.

I will now turn to Mr. Frank and recognize him.

Mr. FRANK. Thank you, Mr. Chairman. I'd like to ask I guess Ms. Smith, Dr. White, Ms. Morton, your opposition to abortion on the various grounds, does that extend beyond this particular procedure, Ms. Smith?

Dr. SMITH. Dr. Smith, please.

Mr. FRANK. Sorry. Dr. Smith.

Dr. SMITH. Excuse me. You want to know whether or not I have a problem with abortion in general?

Mr. FRANK. Do your objections extend beyond this particular procedure?

Dr. SMITH. OK. I was asked today to come and speak about this procedure.

Mr. FRANK. I understand, but I'm asking you to talk about other things.

Dr. SMITH. As the president of the American Association of Pro-Life OB/GYN's, I think that should be quite obvious that I have a problem with abortion.

Mr. FRANK. I will be honest with you. I don't always read people's biographies. I like to ask them questions and get answers.

Dr. SMITH. I'm sorry. I thought you knew. I'm sorry.

Mr. FRANK. I'm sorry you find that an imposition, but I'm asking you your position. I won't do that again, if that's bothersome. Dr. White.

Dr. WHITE. The answer is yes.

Mr. FRANK. Now do you feel that one of the points you made and I heard Ms. Morton make too, was that the fetus, the baby, feels pain. That is true with regard to other procedures besides this one, I assume? That the fetus would feel pain?

Dr. WHITE. I so testified.

Mr. FRANK. Yes. Again, I apologize. I can't always be everywhere at the same place. So the pain point then applies to others as well. Ms. Morton.

Ms. MORTON. You are saying the babies, that it would undergo any other surgical procedure?

Mr. FRANK. Would also feel pain?

Ms. MORTON. Yes. They certainly do.

Mr. FRANK. OK. Well, my point then is that if there is consensus that pain is felt in every situation, to my mind that does not become a basis for differentiating between abortion and this situation and abortion elsewhere. I understand there are people who think abortion is wrong. But the question is, why we would single this out.

Let me then ask also the three witnesses whom I just addressed. This particular legislation says that not only would the pregnant woman be subject to no penalties whatsoever, but she could, in fact, sue the doctor who performed the procedure.

Dr. White, do you think that is appropriate, that a woman who decided to have this done, sought out the doctor, went to the doctor's office voluntarily, submitted to the procedure, and then with no malpractice or anything, we're not talking here about malpractice, because I don't want to get doctors really upset. We are talking only about the doctor who performs the procedure exactly as described and it has exactly the results projected, and the woman then can sue him. Do you agree with that part of the law?

Mr. CANADY. Could I just——

Mr. FRANK. If I get extra time.

Mr. CANADY. Absolutely. You'll get extra time. It is my understanding that under tort law, it is generally the case that it is considered malpractice to perform a procedure which is illegal. I just would point that out.

Mr. FRANK. Yes. I understand. But this statute, if it was simply general tort law you wouldn't have to do it in the statute. I assume this is not going on my time, because I am responding to the gentleman, but what the gentleman is saying is, please don't pay attention to the law I broke. I mean if that was general tort law, what did you put it in the statute for? You clearly meant to do more than general tort law. That's the principle that is explicitly written in here.

So Dr. White, do you think that a woman in that situation should be allowed to recover damages from the doctor who performed the procedure exactly as she asked him to?

Dr. WHITE. I'm no legal expert, Mr. Frank.

Mr. FRANK. This is a matter of policy. It is not a question of what the law is.

Dr. WHITE. But I find the procedure so inhumane and so nonscientific, that if this particular part of the bill became law, I could accept it.

Mr. FRANK. You think the woman should be allowed to sue. Dr. Smith?

Dr. SMITH. I would like to answer your question. First of all, I don't know how the people who do abortions do their practice. I do know that most of the times when women ask about abortion, and people do come to me and talk to me about it, they don't usually go in saying I want a particular procedure. They usually go in saying I don't want to be pregnant any more, or in a particular case if they find out that they have a baby that has an abnormality that is incompatible with life, they generally don't ask you, do you do D&Es.

Mr. FRANK. What if they do? Ms. Watts said she did, and she had it explained to her.

Dr. SMITH. I'm telling you——

Mr. FRANK. I understand, but I am asking the question.

Dr. SMITH. I am answering your question.

Mr. FRANK. No, you are not, Dr. Smith.

Dr. SMITH. Well, let me try to. OK?

Mr. FRANK. You are not answering it. Let me explain to you why. Maybe I better rephrase the question better. The bill covers every situation. You are talking about there may be situation where the woman was mislead. The bill would allow the woman to sue in situations where it was explained to her exactly, as it apparently was to Ms. Watts.

My question to you is, where it was explained to a woman exactly what was going to happen, and that's what happened, should she be allowed, as this bill would allow her, to sue the doctor?

Dr. SMITH. If the doctor is doing something illegal and he hurts the woman, then first of all, if it's a law, he is breaking the law.

Secondly, if he is doing an experimental procedure.

Mr. FRANK. No——

Dr. SMITH. I am trying to answer your question. If he is doing an experimental procedure——

Mr. FRANK. You are not answering my question.

Dr. SMITH. We must tell the woman that this is what I am doing, and therefore, do you agree to it. Most patients do not ask their doctors for a specific abortion technique.

Mr. FRANK. You are evading the question.

Dr. SMITH. They ask, I don't want to be pregnant.

Mr. FRANK. Yes, Dr. Smith. You are deliberately evading the question.

Dr. SMITH. I am not evading the question.

Mr. FRANK. Excuse me, Dr. Smith. I am going to finish. You are deliberating evading the question. I said to you where we have circumstances where the woman explicitly is told by the doctor what is going to happen, it's not experimental, et cetera.

Mr. CANADY. The gentleman's time is expired.

Mr. FRANK. With my extra time?

Mr. CANADY. Yes. I think you got more than the time I took.

Dr. SMITH. Can I just ask question? Can I ask him a question, please?

Mr. CANADY. No. I'm sorry. We're going to have to recognize Mr. Inglis at this point. Then we'll have another round of questions. Hopefully, Mr. Frank will have another opportunity on the second round. Mr. Inglis.

Mr. INGLIS. I would love for you to ask your question.

Dr. SMITH. I would like to know, you are setting up a situation where you are telling me that my patient is coming in and asking me to do something that I know is against the law? And then you are supposing that the doctor knows this is against the law and then is going to ask, cahoots with the patient to do something that is against the law when they have another alternative to help that person if they don't want to be pregnant not to be pregnant?

I guess the reason I didn't understand your question is that I don't assume that doctors break laws that they know they are not supposed to be breaking. So if you are asking me if two people want to conspire together to do something that is criminal, I don't know how to respond to that. You'd have to ask a doctor who does that. I don't do that.

Mr. FRANK. Would the gentleman yield for me to answer the question?

Mr. INGLIS. Sure. Just briefly though. I've got another question.

Mr. FRANK. Well, you yielded to her to ask me a question. It would seem to be only fair.

The answer to you is that you seem to think it was a stupid question. But what you really mean is that it is a stupid bill, because I asked you the question that came from the bill. It is the bill that sets up those circumstances. You say you are presuming these circumstances. I am reading from the bill. The bill is the one that assumes that there will be a doctor who will do that and the woman will sue. So your discussion——

Mr. INGLIS. Let me reclaim my time.

Mr. FRANK. Is about the bill itself. I was asking you a circumstance from the legislation.

Mr. INGLIS. I'm going to reclaim my time and yield to the Chairman for a response to that attack on the bill.

Mr. CANADY. I hope and presume that there will never be any prosecutions under this law

once it is enacted. I believe that respectable practitioners will not violate this law. So I think what we have in the bill is a mechanism to ensure that there is a consequence if they do. That will encourage their compliance with the law. I will yield back to the gentleman——

Mr. FRANK. Will the gentleman yield?

Mr. INGLIS. No, no. I am going with the question. I have got another question. I am very interested in, and understand I am running back and forth between two subcommittee hearings, but I understand that Dr. Robinson, you testified that partial birth is a misnomer, that this is not really what it is. I would ask you, sir, distinguish for me the difference between the child let's say on these charts that is—I'm not a medical expert, but I assume it's about 5 inches, maybe less than that. Maybe 2 inches difference.

In other words, when the child is once delivered, which is a matter of inches I take it, can you explain to me the difference in your opinion, between the child that has been delivered and the difference between the child whose head is still in utero?

Dr. ROBINSON. Actually, I am not clear what the question is.

Mr. INGLIS. You said that there was not a——

Dr. ROBINSON. We have in our tradition we have other terms. I am surprised the word partial extraction was not used. This is a standard term in obstetrics that we use for delivering. That could have been used. The use of the word living, these types of——

Mr. INGLIS. Let me refine the question a little bit. Do you understand that if you did this procedure it would be legal, but if the child were delivered out of the canal, and you took your same instruments and whacked off its head, do you understand a legal difference between the way you might be treated there?

Dr. ROBINSON. Well, as a younger resident before we had a lot of sophisticated techniques, I was often faced with the delivery of a breech, in which I found the baby at that point still alive, with an enormous head. Yes. I have upon occasion——

Mr. INGLIS. No, no, no, no, no. You are missing the question. Let me explain the question. I want you to explain to me the difference between the child that you may legally kill inside, with its head inside the canal, and the situation that would occur if you were once it was delivered those last few inches, to whack off its head. What is the difference between what would happen to you?

Dr. ROBINSON. If the law was passed, I have no idea what would happen. The law has not passed. I know that I am under law right now, permitted to meet my patient's needs in providing her an abortion.

Mr. INGLIS. OK. Let me ask you this. Now we are talking about the legal. Tell me how you justify in your own soul, if you will, the difference in treatment between the last few inches. I mean describe for me the status difference of that human being. What is the difference in status? One, it's almost all out. In fact, I think the shoulders are out, are they not, and the head is simply in. In the other, the head is out.

I have witnessed four beautiful births of my four children. I recall that that's a rather triumphant moment. Can you tell me the difference in the status in your own mind, between those children? The one that's head is inside, and the one that's head is outside?

Mr. CANADY. If you could do so briefly, please, because the gentleman's time is expired.

Dr. ROBINSON. In my situation, I am dealing with a woman who has come to me for reasons that she wants to interrupt her unplanned, unwanted pregnancy. There are congenital anomalies. In some cases, the babies may be partially dead or won't live when it is on the outside. The conditions under which I, my staff, the nurses in which we are delivering this, as was described, the support and the concern.

The other than you are describing when I am dealing with a patient who is desperately trying to have a live child, and through the mistake of nature, delivers early, prematurely. In most cases, I would probably not have delivered that baby this way. I would have done a caesarian section.

Mr. CANADY. The gentleman's time is expired. Mr. Hoke.

Mr. HOKE. Dr. Robinson, you had stated that in no case is pain induced to the fetus. The fetus feels no pain at all. We have heard a lot of conflicting testimony regarding that, from a nurse and a neuro scientist.

If the baby is alive right up until the very end of the procedure, do you still stand by that testimony?

Dr. ROBINSON. I am not a neuroscientist. I have read some of the literature, although it's not an area that I spend a great deal of time at. I have listened to the nurse testify as to what instinctively she has learned. Instincts, of course, are not the way we learn.

Mr. HOKE. What do you base your statement that there is no pain?

Dr. ROBINSON. Because I'm not sure I know what pain is. Spinosa called it a chronic condition. I am an expert in chronic pain. I deal with a lot of people with chronic pelvic pain. What is it, where does it start.

Mr. HOKE. How about when like if you took a knife and you were cutting a tomato and you sliced into your finger, would you experience something that you might describe as pain?

Dr. ROBINSON. That would be an acute pain reaction. Yes.

Mr. HOKE. Al right. Well then if we can use that definition, which I think is probably one that many people share. Using that kind of definition, are you saying that in no case is that kind of pain induced to the fetus? Is that what you meant by your testimony?

Dr. ROBINSON. I am sure that if you had the fetus outside and had it sophisticated, you would see EKG changes, you would see certain reactions. But this simply the passage of information from a no-susceptive sensor up to the brain. Whether that is pain or not pain, I do not know the answer to that.

Mr. HOKE. Well, Dr. White, the testimony that we had heard from Dr. Robinson was that if there was pain, and apparently there is some question in Dr. Robinson's mind about that, whether or not there is pain, that it wouldn't be felt because under the circumstances there's an anesthetic that has been given to the patient, to the woman. Would an anesthesia, would local anesthesia affect the fetus or would the fetus be inside the uterine sack, would it be different, a different set of circumstances?

Dr. WHITE. Well, there are certain pharmacological agents that are administered as anesthetics, mainly in the use of general anesthetics, which do transfer through the placenta, and at a significantly reduced amount do reach the child.

There isn't the number of studies that we need on that. I think the difficulty is that under these circumstances and the evidence we have in terms of cardiovascular responses, certain chemistries that have been drawn from the fetus under these circumstances, demonstrate the fact that there is considerable stress and indeed, overwhelming pain.

There are enough studies in children of this age. Much in the age range that the nurse has demonstrated to us. I think there is really very little argument any longer that the fetuses that we are talking about in the gestational age, the idea is, they do receive pain and appreciate it. I don't want to bore you certainly in the question period, evidence and so forth. I personally think it is incontroversial.

But going back to what is said here, that when you actually attempt to divide, and it's not clear whether it's the spinal cord or the brain stem, and then suck out the brain, in a sense, modern medicine feels that the brain is the very essence of human existence. That is what the concept of brain death is based on, equals human death. You might as well cut the head off under those circumstances, because you are destroying the very organ that is the essence of humanhood.

But it is the procedure itself. The idea as Dr. Smith has shown, of a scissors being introduced into this area. I doubt these people even know where they are operating. I need a microscope to see this area. So it is very possible they could be removing this brain in this tragic way of extraction, sucking, whatever you want to call it, when the child is still alive under those circumstances.

Mr. HOKE. I guess what I don't understand about this when I hear the testimony is why those who are proponents of the procedure are trying to jump through such extraordinary hoops to say that it is not painful or that it is not inhumane, or that somehow there is—I mean, let's call it exactly what it is, and then if in fact under those circumstances it's something that a nation can tolerate, then that's fine. But let's not pretend that somehow this is not grotesquely painful to the fetus that it's been subjected upon.

I wanted to, there's one other—yes, Doctor.

Dr. WHITE. Sorry to interrupt. You are absolutely correct. Because the two papers that have been cited over and over again, and unfortunately Dr. Robinson hasn't read it, are the two experts in this field that do this sort of abortion. You will note that in their papers they do not stress the fact that because of the anesthesia administered to the mother, if indeed any, that the child, the infant, the fetus, is not suffering pain. That is not a part of their written remarks.

Mr. CANADY. The gentleman's time has expired. The time for this meeting has about expired. We're going to have to adjourn this hearing.

Mrs. SCHROEDER. Mr. Chairman.

Mr. CANADY. I'm sorry. There's a——

Mr. FRANK. Excuse me, Mr. Chairman. I thought we had a 1 o'clock meeting of the full committee. But Mrs. Schroeder not to be able to ask questions, we do have until 1 o'clock.

Mr. CANADY. The Republicans on the committee have a caucus which we are late for at this point, preliminary to the meeting.

Mrs. SCHROEDER. Mr. Chairman.

Mr. FRANK. Mr. Chairman, I do have to object. You guys scheduled these two meetings. To deprive our members of a chance to ask questions. Then be a few more minutes late or leave one person behind. But to deprive Ms. Schroeder and Ms. Jackson-Lee of a chance to answer questions while the panel is here, over 10 minutes.

Mr. CANADY. Mrs. Schroeder, you will be recognized for 5 minutes. I'm sorry, Ms. Jackson-Lee, you are not a member of this subcommittee. We will have to conclude at the end of your 5 minutes. Please proceed.

Mrs. SCHROEDER. Well, Mr. Chairman. I appreciate that. I was a little startled. I am sorry. I had an amendment on the floor so I was a little late getting back.

But let me just say my understanding is while I was gone, that the witnesses that testified for the bill said they really were against abortion at any stage. I take it that all of you would agree with the premise that this bill should go forward even if a doctor were to ascertain this medical procedure was

much better for a woman who was seeking abortion. Is that correct?

Dr. SMITH. No. First of all, there has been no proof that this procedure is safe for anybody.

Mrs. SCHROEDER. Wait a minute. Let me take back my time. That was not my question. I said if it is proven, and if a doctor says this is safer for the woman, would you still want this to pass? You still want to outlaw this procedure?

Dr. WHITE. I don't think that is possible. It is not scientific. I mean, you are going to violate science.

Mrs. SCHROEDER. I mean we have two big views of what science really is. We are hearing about pain. My understanding, birth is also painful for babies.

But one of the things I think we should do as we—Dr. Robinson, I understand you had some slides. Is that correct?

Dr. ROBINSON. Just pictures of congenital anomalies such as has already been adequately discussed here. I don't think it would necessarily enhance the proceedings. It would prolong it. They are simply standard pictures of babies in very poor shape.

Mrs. SCHROEDER. Because of the interest. I think it is very important that we have some balance there.

Dr. White, when you were talking about humanity comes from a brain. Does that mean if a baby does not have a brain then this procedure would be OK? Is that then not human?

Dr. WHITE. Well, even the anacephalic child has a brain stem. While we have a great deal of difficulty defining brain death, as we can do in adults, in children and certainly in infants, it is not true that under ordinary circumstances, a child would be born or would be at these gestational ages, totally without even a brain stem. I mean it's not impossible, but I mean the thing is, in general, the anacephalic child has a brain stem. Therefore, they have a part of a brain.

Going to your question, would I consider this appropriate under those circumstances, that is, with the brain stem retained. My answer would be no.

Mrs. SCHROEDER. And then what if it were a mole? Well, never mind.

Dr. WHITE. I don't know what you mean.

Dr. SMITH. He doesn't know what a mole is.

Mrs. SCHROEDER. I guess I feel a lot of pressure because the Chairman doesn't want me to ask questions. I have got many questions that I want to ask here.

One of the things I am so troubled by is I think as Congress moves in and starts micromanaging what OB/GYN's can teach, what the medical profession is saying, what kind of procedures are legal and illegal, where is the line, are you going to have Federal people in these operating rooms watching this?

You know what I think is going to happen is it is going to be very difficult to get high quality docs ever wanting to deal with women's issues, women's health issues, because who needs this, who needs this. It is the only area of medicine where I know that there is this kind of micromanaging.

I see two distinguished members of the medical profession sitting side by side. I think traditionally you would say that they have had very high ethics. You have had your own oath, you have had your own policing.

Mr. CANADY. There are three physicians here and another medical practitioner.

Mrs. SCHROEDER. Three physicians, I'm sorry. Three sitting side by side and a nurse. So we have four, OK. But let me say, you have had high standards. I don't think we probably need to get Congress into micromanaging down to the details of what is going on. That is why I am very troubled by this beginning, because I see this as a tremendous erosion. I see it as a backsliding.

I have talked to many deans of medical schools who are very troubled by this, who say, you know, we're not sure we really want to continue even dealing with obstetrics and gynecology. Long term, I think that hurts all women, because you don't have the safe standards. We know women's health has not been dealt with very well in this country any way. To begin this, I think is very troubling.

So, Mr. Chairman, I have a lot of questions that I would like to ask for the record, if that's OK, since you would like me to be quiet. I would like to yield the remaining time to Ms.——

Mr. CANADY. I have not wanted you to be quiet. As a matter of fact, we recognized you at the beginning of the hearing, and you will have the last word in the hearing as well, because your time is now expired. The full committee is commencing a meeting in about two minutes. In light of that, we're not going to be able to continue with this subcommittee meeting. I wish we could. There's an additional witness. Prof. David Smolin of the Cumberland Law School, who has come for the hearing today. I apologize to you, Professor, that due to this meeting of the full committee, that it was only scheduled yesterday, because of our inability to finish the work we had to conclude yesterday. We will not be able to continue.

I want to again thank all of the members of this panel for being here. We appreciate your valuable testimony. The subcommittee is adjourned.

Mr. SPECTER. Mr. President, how much time remains on my side?

The PRESIDING OFFICER. The Senator has 68½ minutes.

Mr. SPECTER. I thank the Chair and yield the floor to my distinguished colleague from New Hampshire.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Who yields time to the Senator from California?

Mr. SPECTER. How much time would the Senator—5 minutes.

Mrs. FEINSTEIN. I will do my best.

Mr. SPECTER. We have a number of Senators who have already requested time. I yield the Senator 5 minutes.

I say to my distinguished colleague from California that I wish we had more time, but we have many requests. I think it is important to hear the intentions of those in opposition who wish to respond. But I do yield 5 minutes to the Senator from California.

Mrs. FEINSTEIN. I thank the Senator.

Mr. President, I rise to support the motion to commit to the Judiciary Committee, and I do that as the only woman in the U.S. Senate on the Judiciary Committee. This is a matter which basically affects women, and I think it really is appropriate to have the hearings that have been requested and to come to grips with some of the problems that are inherent in this legislation.

I would like to give you my major reasons for suggesting that hearings in the Judiciary Committee are appropriate.

I believe that the language in this bill is unduly vague. It is not based on medical terminology. The bill holds a doctor criminally liable for a procedure that is defined not in medical terms but in a description devised by legislators. I think we need to come to grips with that and find out exactly which procedures would be impacted by this legislation.

Second, Roe versus Wade already provides for States to legislate in the third trimester. And, in fact, 41 States do already have statutes on the books which govern abortions in the third trimester. There are also very strong writings and beliefs that this bill would violate the Constitution. I think that is worthy of a hearing.

Finally, there is a very real human dilemma in this. Unfortunately, the genetic code which carries out God's creation is sometime's tragically faulty. And this produces heartbreaking circumstances in which children have developed in the fetus without brains, children have developed with the brain outside of the skull, children develop without eyes or ears, whose stomachs are hollow, and the materials having to do with intestines and bladder are created outside of the physical structure of the individual.

When we consider the nature of these heartbreaking pregnancies, these very dire circumstances, we must also consider the life and health of the mother. So I believe very strongly that this is the correct action to take, to have these hearings and to report this bill back to this body within a specified period of time.

Let me just very quickly speak to certain issues. In 1973, in Roe versus Wade, the Supreme Court established a trimester system to govern abortions. In that system, in the first 12 to 15 weeks of a pregnancy, when 95.5 percent of all abortions occur, and the procedure is medically the safest, the Government may not, under Roe, place an undue burden on a woman's right to an abortion.

In the second trimester, when the procedure in some situations poses a greater health risk, States may regulate abortion, but only to protect the health of the mother. This might mean, for example, requiring that an abortion be performed in a hospital or performed by a licensed physician.

In the later stages of pregnancy, at the point the fetus becomes viable and is able to live independently from the mother, Roe recognizes the State's strong interest in protecting potential human life. On that basis, States are allowed to prohibit abortions, except in cases where the abortion is necessary to protect the life or the health of the woman. I repeat, the life or the health of the woman.

Contrary to the many myths put forward by opponents, abortion in the latest stages of pregnancy is extremely rare and performed almost exclusively under the most tragic of circumstances—to protect the life or health of a woman who very much

wanted that pregnancy, or in the case of a severe and fatally deformed fetus.

As I said, 41 States have enacted laws restricting abortions in the later stages of pregnancy. Even when such abortions have been restricted, States have, in nearly every case, made exceptions to protect the life and the health of the mother.

States such as Alabama, Arkansas, Florida, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Missouri, Nebraska, Nevada, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and Utah—all these States, and many more, have recognized the crucial need to consider risks to a woman's health, in addition to risks to a woman's life, in balancing the important considerations of both the fetus and the mother. To do otherwise would be to fail to accord consideration to the safety and well-being of our Nation's women. To do otherwise would be callous, and cruel.

Certain States have chosen to remain silent on the issue—most likely because these abortions are so rare and considered so tragic, that new laws are not necessary to interfere with what many believe is a medical decision between a woman and her doctor.

THE FEDERAL GOVERNMENT SHOULD NOT BE STEPPING IN HERE

There are several compelling reasons why the Federal Government should not step in and interfere in this medical decision between a doctor and a patient.

First, there is no need to. Except in the rarest of cases, abortions late in the pregnancy simply do not occur, and when they do, as I have said, it is due to the most tragic of circumstances. Only one-half of 1 percent of all abortions are performed after the 20th week of pregnancy. Fewer than four one-hundredths of 1 percent (.04) occur in the third trimester, and nearly all of these are performed due to severe fetal abnormalities or grave risks to the health or life of the pregnant woman.

Many of the people pushing this legislation profess to believe in States' rights, and keeping government off our backs. Why, then, do they suddenly think Big Brother should step in when the issue is abortion? Roe versus Wade gave States the authority to regulate and even ban abortion after viability. Why, then, is there a compelling need for the Federal Government to interfere?

Lets be candid. Although this Congress has seen a host of back-door efforts to restrict women's access to abortions, this legislation represents a direct, and blatant, challenge to Roe versus Wade. Proponents of this measure openly admit that this is a strategic milestone in the road toward making abortion illegal in this country. If this measure passes and is enacted into law it will be a significant victory for the antichoice forces.

THIS IS A MEDICAL DECISION

Finally and most importantly, the reason politicians should stay out of this is because this is a medical decision, not a political one. It is important to remember that in the heartbreaking cases where medical intervention in pregnancy is warranted—these were wanted pregnancies. The decision to have an abortion for these women and their families was one that they desperately tried to avoid. And the Federal Government has no business making that decision any harder on these families. Take the case of Viki Wilson:

Viki Wilson is a nurse who lives in Fresno, CA, with her husband, Bill, an emergency room physician, and their two children, Jon and Kaitlyn. Viki and Bill very much wanted more children and she became pregnant in August 1993 with a baby girl.

After what seemed to be a normal, healthy pregnancy filled with baby showers, a freshly painted nursery, and family members touching Viki's stomach to feel the baby kick, Viki received the worst imaginable news: her beautiful baby girl had a fatal deformity, known as encephalocoeles—a condition where the brain forms outside the skull and is always, unconditionally, fatal.

Viki and Bill would have done anything on Earth to save their baby girl, whom they named Abigail. But she had no chance of survival.

Viki was warned that, if she continued the pregnancy, she risked rupturing her uterus, or causing a massive infection that would leave her unable to have more children. After consulting with their physicians, Viki and Bill decided that the safest thing to do was to abort the pregnancy.

An abortion at this late stage of pregnancy is not easy, and Viki's doctor recommended a procedure known as intact dilation and evacuation. In layperson's terms, it means attempting to induce cervical dilation artificially and removing the fetus intact. In cases such as Viki's, the deformed head of the fetus could not fit through the cervix, and fluid had to be extracted in order to complete the delivery safely.

This abortion procedure saved Viki Wilson's health and perhaps her life. It is the same procedure that opponents of abortion have called a ''partial birth abortion,'' in order to mislead people into believing that a live and healthy fetus is being disposed of. Nothing could be further from the truth.

After Viki Wilson's story was published, I received a letter from a constituent of mine who had been through a similar tragedy. She wrote:

My husband and I lost our baby on March 10, 1995. Our baby was diagnosed with a herniated diaphragm . . . preventing its heart and lungs from growing normally. My husband and I had to make the most devastating decision of our lives during my 19th week of pregnancy. This baby was our first child, and we had so much love and excitement for its birth. The doctors gave us two choices: terminate the pregnancy, or continue the pregnancy with surgery in utero, understanding that [the baby] would only live for a few weeks under life support after birth . . . My health was at risk if I carried to term and my baby would not live for even one month on this earth.

This woman needed the same procedure that Viki Wilson had, the same procedure that this bill would outlaw.

And a woman named Karen Ham became critically ill with diabetes during her second trimester and had to be flown 450 miles to a clinic in Colorado for an abortion necessary to save her life. When she arrived, she was in shock and about to go into cardiac failure.

THE NEED FOR HEARINGS

This body is attempting to legislate a complicated medical decision without even so much as an adequate public hearing on the matter. I listened to Senator SMITH on the floor some months ago. It was the first time I had seen photos depicted on C-SPAN full screen. With all due respects, I believe that his presentation was one-sided and fully misleading. If this legislation is to go forward, it is essential that the Judiciary Committee hold hearings on the bill, as this bill would create criminal liability for doctors who perform this late-term procedure.

We need to hear from the experts—the doctors and other health professionals, and from the parents who have been through this procedure.

There are many health risks that women can face during pregnancy, risks that could worsen during pregnancy, requiring a late-term abortion: heart disease, cancer, diabetes, just to name a few. These risks cannot be dismissed as we consider legislation that would ban what may be the only medically safe option to terminate a pregnancy.

S. 939 REPRESENTS A DIRECT CHALLENGE TO ROE VERSUS WADE

Every Senator in this Chamber should make no mistake about what this bill is: This bill is a direct challenge to Roe versus Wade.

Roe versus Wade firmly established that, after viability, abortion may be banned as long as an exemption is provided in cases where the woman's life or health is at risk. This provision was explicitly reaffirmed by the Court in Planned Parenthood versus Casey.

This bill is unconstitutional on its face because it allows for no exception in the case where the banned procedure may be necessary to protect a woman's health. Even further, the bill holds the doctor criminally liable unless he or she can prove that the banned procedure was the only one that would have saved a woman's life. The doctor must go to court to prove this. This places an undue burden on access to late-term abortions to save a woman's life under Roe versus Wade.

The Smith bill also ignores the viability line established in Roe and reaffirmed in Casey. The bill would criminalize use of a particular abortion procedure, virtually without exception, even before fetal viability. This again constitutes an undue burden—prohibiting a procedure that for some women would be the safest in light of their medical condition.

The proponents of this bill know quite well the challenges to Roe this legislation presents. That is their intent. The magnitude of this bill is enormous for the long-term preservation of safe and legal abortion in this country. It will have an immediate and direct effect on the lives of women facing tragic and health-threatening circumstances. This bill needs to be considered thoroughly before it is brought to the floor for a vote.

I urge my colleagues to vote for the motion to commit S. 939 to the Senate Judiciary Committee for hearings.

I would like to enter into the RECORD a letter written to the American Medical Association by a San Francisco physician, David Grimes.

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

Mrs. FEINSTEIN. May I have 1 minute?

Mr. SPECTER. The Senator may. Let me say we are going to have to proceed on a limited basis. I already have requests from about 10 Senators to speak. The Senator may have 1 additional minute.

Mrs. FEINSTEIN. I thank the Senator very much.

I would like to enter a letter into the RECORD from a physician, an obstetrician, a surgeon, who served as chief of the Abortion Surveillance Branch at the Centers for Disease Control in Atlanta, where he did some preliminary work in evaluating third-trimester abortions, and finds this issue to be largely a smokescreen for those opposed to abortion. He points out the rarity of these abortions. He points out that in a study in Atlanta, the rate of third-trimester abortions was 4 per 100,000 abortions. I think this letter provides some accurate and vital testimony.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD.

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

UNIVERSITY OF CALIFORNIA,
SAN FRANCISCO,
San Francisco, CA, October 11, 1995.

Re H.R. 1833/S. 939.

ROSS RUBIN, J.D.,
Legislative Council, American Medical Association, Chicago, IL.

DEAR MR. RUBIN: As a member of the AMA and a long-time provider of abortions, I write to express my concern about the reported intention of the AMA to endorse a ban of certain abortion techniques. As background, I have conducted research on the safety of abortion for two decades. Some of that research has appeared in JAMA. I am Board certified in both obstetrics and gynecology (for which I am an Examiner) and in preventive medicine. In the 1980's, I served as Chief of the Abortion Surveillance Branch at the Centers for Disease Control in Atlanta, where I was the principal federal agent responsible for determining the safety of abortion in the U.S. I have served as a consultant to the Planned Parenthood Federation of America and the American College of Obstetricians and Gynecologists concerning abortion issues. I currently chair the Steering Committee for the World Health Organization Task Force on Post-Ovulatory Fertility Control, which studies abortion internationally. I have testified before Congressional subcommittees several times concerning abortion issues.

First, the term being used by abortion opponents, ''partial birth abortion,'' is not a medical term. It is not found in any medical dictionary or gynecology text. It was coined to inflame, rather than to illuminate. It lacks a definition.

As I understand the term, opponents of abortion are using this phrase to describe one variant of the dilation and evacuation procedure (D&E), which is the dominant method of second-trimester abortion in the U.S. If one does not use D&E, the alternative methods of abortion after 12 weeks' gestation are ''total birth abortion:'' labor induction, which is more costly and painful, or hysterotomy, which is still most costly, painful, and hazardous. Given the enviable record of safety of all D&E methods, as documented by the Centers for Disease Control and Prevention (Lawson et al. Abortion mortality, United States, 1972 through 1987. Am J Obstet Gynecol 1994;171:1365–1372), there is no public health justification for any regulation or intervention in a physician's decision-making with the patient.

Second, the issue of alleged ''third-trimester abortion'' is largely a smoke screen of those opposed to abortion. Abortions after 24 weeks are exceedingly rare in the U.S. Indeed, my colleagues and I at the Centers for Disease Control investigated two years' worth of reports of such abortions in Georgia. Nearly all were coding errors concerning gestational age or fetal death in utero. We found two uterine evacuations for anencephaly, and one case with inadequate documentation. The rate of third-trimester abortion was 4 per 100,000 abortions. (Spitz et al. Third-trimester induced abortion in Georgia, 1979 and 1980. Am J Public Health 1983;73:594–595)

According to Congress Daily, the legislative council felt that some unspecified D&E variation is not a recognized medical procedure. If so, this may reflect only the composition and medical background of the legislative council. Several variations of the D&E technique have been widely used in the U.S. over the past twenty years (Grimes et al. Midtrimester abortion by dilation and evacuation: a safe and practical alternative. N Engl J. Med 1977;296:1141–1145) and are well known to gynecologists and others who provide abortions.

In summary, abortions after 24 week's gestation are exceedingly uncommon and are done for compelling fetal or maternal indications only. Variations of D&E are by far the most common means of abortion in the U.S. after 12 weeks' gestation. Outpatient D&E dramatically reduces medical costs and patient suffering, while having morbidity and mortality comparable to labor induction. From a public health perspective, any intrusion of Congress into this medical issue is both unwarranted and unjustified. I hope that the AMA will strongly oppose any such regulation of the practice of medicine by anti-abortion activists.

If I can be of help to the legislative council by providing references or by meeting with your group in Chicago, I would be glad to do so. Thanks very much for your consideration.

Sincerely yours,
DAVID A. GRIMES, M.D.,
Professor and Vice Chair.

Mrs. FEINSTEIN. I thank the Chair, and I yield the floor.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER (Mr. CAMPBELL). The Senator from New Hampshire.

Mr. SMITH. Mr. President, I yield whatever time I may consume to myself.

The PRESIDING OFFICER. The Senator from New Hampshire [Mr. SMITH] is recognized.

Mr. SMITH. Mr. President, I rise in opposition to Senator SPECTER's motion to refer H.R. 1833 to the Committee on Judiciary.

Make no mistake about what this motion is. Let us not kid ourselves. It is a motion made by the opponents of the bill that is intended to get the bill off the Senate floor, to get it out of the public spotlight, to spare the full membership of this body from having to face up to the grisly reality of partial-birth abortions. That is what this motion is all about. Nothing else.

They do not want to see what happens in this grisly, disgusting procedure. They do not want the American people to see it. That is why they want to move this bill off the floor and send it back to Judiciary.

But frankly, Mr. President, the American people are sick and tired of politicians doing just this: Ducking and weaving and dodging. The Ali shuffle, that is what it is here in the Senate: Let us not face up to reality, do not make the tough choice, do not give us a recorded vote, do not come out here and vote your conscience; shuffle it off to committee.

Originally, the Senator from Pennsylvania was going to make it a 45-day motion, which would have taken us to December 23, which means it would have taken us into the next year. Then he surprised us, I suppose, in this element of surprise which is so common here, and he now brought it back to December 7, 19 days, where he says we will report the bill with amendments, if any. Of course, what he does not say is they could report the bill with a recommendation to defeat it. He does not point that out.

This is dilatory. It is an act of cowardice. It is a refusal to face reality, to face the issue. That is what this is about.

I want to make it very clear to my colleagues, I may lose on this motion today. I hope not. I think when we get finished with the debate you will know why I hope not. But if I do, and this motion carries, I want my colleagues to understand that we are going to vote on this. We will vote on it on the next bill that comes in here if it is an hour after this, a day after this, a week after this, a month after this. The next time I can get this amendment attached, it is going on and we are going to vote on it because I am not going to let the U.S. Senate back off from going on record on this issue.

Not tomorrow, not after some hearings. We have already had hearings. The House has had hearings. The House has had a subcommittee markup, a committee markup, a report. We have had all of that. We have had a debate. Senator BOXER and I debated last night on two national programs.

Everybody knows what happens here, especially the opponents. They know what happens here in this process. I am going to show you what happens here in this process in a few moments. Everybody knows what happens, and you will notice the opponents do not talk about that. ''What we are talking about here is broad legal concepts, legalese,'' I hear from the Senator from Pennsylvania. This is not legalese.

Three inches from the head coming into the world with the rest of the baby's body, 3 inches and maybe 3 or 4 seconds, the difference between when that needle or if that needle, Mr. President, is injected into the head of that child. That is what we are talking about here, I say to my colleagues. That is what the issue is. That is why nobody wants to talk about it on the other side. Of course, they do not want to talk about it because it is a horrible, grisly, grotesque, gruesome killing of a child that is 3 inches from completion through the birth canal.

So 3 inches and 3 seconds before that happens, you insert the scissors in the neck, you open up a wound, you insert the catheter and you suck the brains out. But for 3 more seconds and 3 more inches, that child is under the full protection of the Constitution of the United States and, as the Senator from Pennsylvania pointed out, under the protection of the law. Three seconds and 3 inches; 3 seconds and 3 inches.

The opponents voted down an effort to send the matter back to the Rules Committee and did the job the American people sent them here to do in the House of Representatives 288 to 139—288 to 139. The House of Representatives had the courage to face this issue. It was debated, they had hearings, they had markups, subcommittee and full committee hearings, votes, full floor debate, committee report.

As if the American people would not know, as if the Senators here do not know what is going on. Does anybody really believe some Senator is going to change their vote as a result of 19 more days? Give me a break.

I have been called an extremist for pointing this out, I say to my colleagues—an extremist. It was said on the floor yesterday, not directly attributed to me, but it was said on the floor that those of us who support this bill are extremists. Senator KENNEDY said it. Senator BOXER said it. Others have said it.

Well, here is a list of some of those extremists: The Democratic leader in the House, RICHARD GEPHARDT; Democratic Whip DAVID BONIOR; Representative JOHN DINGELL, ranking Democrat on the Commerce Committee; Representative LEE HAMILTON, ranking Democrat on International Relations; Representative DAVID OBEY, ranking Democrat on Appropriations; Representative JOE MOAKLEY, ranking Democrat on the Rules Committee; Representative JOHN LAFALCE, ranking Democrat on the Small Business Committee; Representative PATRICK KENNEDY, Democrat of Rhode Island; Representative BLANCHE LAMBERT LINCOLN, Democrat of Arkansas, and on and on and on. MARCY KAPTUR, Democrat of Ohio, all extremists. Welcome aboard.

This is not an extremist issue. If we are extremist for wanting to stop this, what are the people who do it, who commit this act? It is really fascinating to hear the defense of this procedure on the floor of this Senate.

Let me tell you how they defend it. Listen carefully, I say to my colleagues, as you listen to the debate. Find one individual, just one, who will point to these charts that I am going to show you in a minute and talk about what happens to this baby when it comes out of the birth canal. Find me one.

No, no, we are not going to hear about that. We are going to hear about legal procedure, legalities, hearings. That is what we hear about, because nobody wants to accept reality here, and not only that, they do not even want to vote on it. The Senator from Pennsylvania does not even want to vote on it.

I want my colleagues to know what it is. I want them to know what this procedure is and, as I said yesterday on the floor of the Senate, I hope this time the press will get it right because last time, in case you missed it—I said this yesterday, I will repeat it—the press accused me of showing photographs of aborted fetuses, showing photographs of women giving birth, showing photographs of dead babies. None of it was true but, of course, that does not matter, just put it out there.

Here is what I am showing you: A medical drawing approved by the American Medical Association. A medical drawing.

Here is what happens. This is supposed to be an emergency, I hear the Senator from California say, and others, to save the life of a mother. If it is an emergency to save the life of the mother, why does the process take 3 days? Can anybody tell me that? Why is it that when the head is ready to come through the birth canal, the abortionist stops the child from being born by holding it, not letting the child come out of the birth canal, and stops it to kill it?

Tell me how that helps preserve the life of the mother. My God, this is the United States of America. Do we not have more important things to do than this? This is not a simple debate about pro-choice and pro-life. There are people who differ on this issue, and I respect that. That is not what this debate is about. This is about a specific, brutal, cruel way to kill a child. But for 3 inches, or 3 seconds, it is a child—after 3 inches more and 3 seconds. Here is a fetus that we can destroy.

I ask you—anyone, any of my colleagues, any American citizen listening to me now, if tomorrow morning you picked up your newspaper and the announcement in your community was on the headline of your paper that the local humane society, with a surplus of pets, reluctantly had to come to the conclusion to destroy surplus pets because nobody would adopt them, and they said they would use this method to destroy them, no anesthetic, open up the back of the skull with a pair of scissors, insert a catheter, suck the brains out of the dog or cat or horse, whatever it is; how would you feel about that? You would be outraged. There would be people screaming.

But do you know what? Not here on the floor of the U.S. Senate. We cannot even get a vote on it. We want to refer it back to committee, let alone stop it.

Let us look at what happens. They hate to hear this. I have to say it again, as I said it yesterday, because you are not going to hear this from the other side, but you need to know. This baby is inside this womb, anywhere from 20 weeks on, snug and warm inside womb. You know that baby has feelings, moves its fingers, its feet, kicks, it hears its mother. It is in that womb, snug and warm. Then come the forceps. Those forceps go up there and they take the feet of that child and turn the child so that the feet come out first.

As you can see in the next picture, why do we do that? Why do we do that? You know why? Because if the child is born head-first, it is breathing, it is alive. Now we have a problem, do we not? We cannot have a live birth. Oh, no, we cannot have that. So the baby, tiny little legs, moving toes—moving—clamp it on and pull the child from the birth canal.

The third illustration. This is the part that is the worst, the most sickening. If you think I enjoy standing on the floor of the U.S. Senate having to talk about this, you are wrong. If you think I enjoy standing on the floor of the U.S. Senate having to defend against this, to stop this, you are wrong. We should not have to be doing this. This is a basic right for this little baby to come into this world. It is a basic right.

I do not care what Senator SPECTER says about all his legal jargon. This is a baby. This is not some vague concept about choice. This is a baby. And that doctor, or abortionist—call him what you may—takes that child in his hands and those of you that have had children—and I have witnessed the birth of all three of mine and know what a beautiful thing that is—he takes that baby, moving feet, moving legs, moving fingers, holds it in his hands, feels the legs, feels the feet, feels that little bottom, soft as they are with these little babies, takes the torso, brings the arms and shoulders out and then stops it—stops it firmly, holds it. Do not let the baby be delivered.

The next picture. Then what? No anesthetic, no painkiller at all. Scissors are inserted into the back of the skull, open up the scissors, insert the catheter, and that little moving child is now hanging limp, dead—in the United

States of America. People here on the Senate floor—it is bad enough they would vote not to stop it; they do not want to vote. The Senator from Pennsylvania and seven of his colleagues do not want to vote on it. They want to have more hearings on it. One baby a day dies like this that we know of. So 19 will die by the time we get the bill back here, if we do not stop it.

As I said yesterday, 19 babies—who knows who might be in that 19, the first black President, the first woman President, another Senator, somebody who cures cancer or AIDS? Who knows? We will never know, will we? Snuffed out. But that is choice, is it not? That is the nebulous concept of choice. That is what that is.

Ladies and gentlemen, this is a brutal procedure that is not necessary. We have statements everywhere that it is not necessary to do this. If it is truly an emergency, why do we stop the baby from being born? Why do we stop it from being born? Why do we hold the head, refuse to allow the head to be delivered? It has nothing to do with the life of the mother—nothing. It has to do with the life of the child because when this child is born, that is the problem for the abortionists.

I am absolutely amazed—amazed—at the number of people who have taken the floor and spoken on this issue and have talked about deformities, as if we had the right to play God on deformities. What do you tell a young man or woman today with Down's syndrome, or some other deformity—perhaps a missing limb, perhaps they had some disease and they are in a wheelchair, but they are human beings and they are contributing to their country, making a life for themselves? What do they tell them? ''Gee, if we only thought of this procedure when you were in the uterus, we could have gotten rid of you and would not have had to deal with you.''

I am absolutely flabbergasted that we would make those kinds of decisions—that anybody would want to make those kinds of decisions. Down's syndrome—what do you use? What is the excuse? Let me be honest with you. Even though the deformity case is a horrible reason, the truth of the matter is that 80 percent of these types of cruel abortions—80 percent, and this is testimony from the doctors who perform them, not my numbers—80 percent of these types of abortion, they say, are elective. They are elective. It has nothing to do with deformities or anything else. It is just elective. We do not want the child and we are going to do it this way.

Now, that is Dr. Haskell himself. He stated, ''I will be quite frank. Most of my abortions are elective in that 20-to-24-week range. In my particular case, probably 20 percent are for genetic reasons, and the other 80 percent are purely elective.''

Pamela Smith said, ''In the situation where a mother's life was in danger, no doctor would employ the partial-birth method of abortion, which, as Dr. Haskell carefully describes, takes 3 days.''

It is all a phony argument. It is a phony argument to keep from getting to the facts of what is happening.

I say to my friends who claim to be pro-choice, let me repeat and go back to the basic issue here: 3 inches, 3 seconds. That is what we are talking about, the difference between living and dying.

What is the difference, Senator SPECTER, what is the difference between a child whose head is in the womb 3 inches from birth, 3 seconds from birth, and a child whose head is removed from the womb, 3 inches and 3 seconds later? Who are we to say that one should live and one should die? What is the difference?

Mr. SPECTER. Does the Senator yield for a response to a question?

Mr. SMITH. I yield for a response to that particular question.

Mr. SPECTER. The difference is the standards established by the laws of the United States as determined by State assemblies, by Congress, and permitted by the courts.

How does that differ upon a C section? Or how does that differ before the child has gone into the vaginal cavity or the vaginal canal?

Does the Senator from New Hampshire say that those late-term abortions are satisfactory? There you have a situation where you do not have the 3 inches which you talk about but you have reaching the fetus the same substantive contents, through a C section.

I ask the Senator to address that question. If you reach the fetus through a C section or you reach the fetus some other way before the fetus comes into the vaginal cavity, does that make it satisfactory in terms of the Senator from New Hampshire?

Mr. SMITH. No.

The Senator from New Hampshire believes wherever that fetus is, that is a life. That is not what we are talking about here.

I assume from the Senator's response that he assumes that this process is acceptable, that this process is acceptable because the head still remains in the vaginal canal; therefore, this is an acceptable procedure.

Mr. SPECTER. If I may respond.

Mr. SMITH. Is it acceptable?

Mr. SPECTER. I have not said it is acceptable. I do not know, and I do not know because I do not know the facts. I describe it as a chilling matter.

When the Senator from New Hampshire cites two doctors, neither of those doctors has testified, I want to know a little more than the short statement which appears on the chart. That is not enough for this Senator to legislate on a matter of great importance. That is just not enough.

If the Senator from New Hampshire says that it is not acceptable to have a C section on a late-term abortion or not acceptable to have an abortion which occurs before going into the vaginal canal, then let us make this legislation effective, if you really want to deal with this problem.

Does the Senator from New Hampshire disagree with the conclusions I stated in my opening statement, that this legislation would not reach a C section on a late-term abortion?

Mr. SMITH. This is a very specific, I say to the Senator from Pennsylvania, this is a very specific procedure that is so cruel in the way that it is performed that it ought to be outlawed.

The Senator knows, and I think I know his position—he knows mine—on the issue of abortion. That is not what we are talking about here.

We are talking about a specific process, procedure, which is cruel, which is used to abort a child. And indeed, some would say, to kill a child. I say to kill a child. That is the issue.

I do agree, I say to the Senator, I believe it is the taking of a life, yes, when it is a C section. That is my personal opinion. I am not engaging in that personal opinion in this debate. I am engaging in the particular procedure that we are talking about.

This procedure, when a child is that close to being born, whether or not this is not a cruel procedure to use against an unborn child that is 90 percent born, with feeling. That is the issue here.

Mr. SPECTER. If the Senator would yield for one final question on this subject, would the Senator not prefer a statute which dealt with a late-term fetus, in the same medical condition which also precluded a C section?

Mr. SMITH. The answer to that question is yes, but that is not what we are talking about here.

Mr. SPECTER. You may have that if it is referred back to the Judiciary Committee.

Mr. SMITH. I am smarter than that. I know what will happen when it goes back to the Judiciary Committee. I know full well what the Senator's position is.

The issue here is whether or not this type of abortion, and indeed whether it is an abortion—is that what we define as an abortion—a child that is brought purposely into the birth canal, 90 percent of which comes into the world with only 10 to 15 percent of the child still remaining in the birth canal, whether or not that is a birth or not. So we talk about partial birth.

Mr. INHOFE. Would the Senator yield for a couple of minutes, and before yielding, would the Senator read a statement from the registered nurse I discussed yesterday? I want to have that read before I make a comment.

Mr. SMITH. We have that and are happy to provide that to the Senator from Oklahoma.

Mr. INHOFE. If the Senator would not mind reading the statement of Brenda Shafer.

Mr. SMITH. This is a nurse named Brenda Pratt Shafer, an RN who assisted Dr. Haskell, I believe, in the clinic, or at least assisted a doctor who performed this. She was so overcome by what she saw that she basically

quit—she quit the clinic where this was performed and then became an advocate against this procedure.

What she says is very heartrending, frankly. I will read what she says, and it is up here on the chart.

The doctor kept the baby's head just inside the uterus. The baby's little fingers were clasping and unclasping, and his feet were kicking. Then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinch, a startle reaction, like a baby does when he thinks that he might fall.

Then she goes on to say, ''I'm Brenda Pratt Shafer, a registered nurse with 13 years of experience.'' And she goes on to talk about being there. She said she thought this assignment would be no problem for her to work in this clinic because ''I am pro-choice, but I was wrong. I stood at the doctor's side as he performed the partial-birth abortion procedure and what I saw is branded in my mind forever.''

The mother is 6 months pregnant, the baby's heart beat was clearly visible on the ultrasound. The doctor went in with forceps and grabbed the baby's legs and pulled them into the birth canal. Then he delivered the baby's body and the arms—everything but the head. The doctor kept the baby's head inside the uterus. ''The baby's little fingers were clasping and unclasping and his feet were kicking.'' Then the doctor put the scissors through the back of the head, the baby's arms jerked out and the doctor opened up the scissors, stuck a high-powered suction tube into opening and sucked the baby's brains out. Now the baby was completely limp.

The last line, and I yield to the Senator, that the nurse said is particularly compelling: ''I never went back to that clinic. But I am still haunted by the face of that little boy—it was the most perfect angelic face I have ever seen.''

I yield to the Senator from Oklahoma whatever time he may consume.

Mr. INHOFE. First of all, Mr. President, I was not planning to make any remark, but as I was presiding a few minutes ago and listening to some of the arguments, I remember that yesterday I had an occasion to meet the registered nurse, Brenda Shafer.

What was impressed upon me was that she went into that position as an acknowledged pro-choice nurse. That was the way she felt. When she went through the experience that was just expressed by the Senator from New Hampshire in such an emotional way—I have a hard time listening to that and maintaining composure—she changed her whole philosophy because she saw a child, a living child, dying in their hands and she was in some way a part of that.

I wish there were a way of getting her on the Senate floor to tell the story she had to tell. I say to the Senator from Pennsylvania, I do not mean this in a personal way, but as I was presiding a few minutes ago, I have never been so thankful that I am not a lawyer, because to have to try to find provisions in the law where you can almost rejoice in saying we found a loophole so we can take this baby's life and expand this whole idea of abortion to someone who is just about to take that first breath. And, when you say perhaps we need—that is the subject of this discussion right now, submitting it to a committee, if we did that.

Let us just say the committee reported it out and it passed. Let us say it took 3 weeks, that is an average time for something like this. We are talking about 400 more of these little babies who would have this procedure done to them.

Then the Senator talked about, under the 10th amendment, this is, perhaps, something that should be addressed by the States. I have been a defender of the 10th amendment. I think it has been abused too much, and I agree this is something that should be approached on a State level. But during that period of time, you are not talking about 4 weeks, now. You are talking about months and years. To quantify that in lives—I have not done the math yet so I cannot do that. But if you see one of these procedures, then you do not have to quantify it because one is enough.

Then we talk about how much pain there is. This is something that is difficult to quantify, too. But when you have this procedure taking place, as was described in such an articulate way by the Senator from New Hampshire, you know there is pain. You know the pain would be unbearable. But there is a loophole in the law that allows us to inflict that pain.

My wife and I have four children and we have three grandchildren. Actually, our third grandchild is not yet born, but it is still a grandchild. I am looking forward to Christmas Day when he will be born.

I do not think there has ever been any woman who has gone through a pregnancy and has reached, say, the 9th month or 8th month and has not gone through some degree of depression during that time. Certainly my wife did. It is a very difficult thing to go through.

I think this particular procedure is one where these people can fall prey, because in the event you go through some type of depression and you want to have this procedure, think of what that person must go through the rest of her life if she realizes what she has done.

I will conclude by only saying, if we had read that someplace back in ancient history, in some barbaric land or sometime in our history, this procedure had been used to perform abortions or to kill young children, we would look back and say, how in the world, back in those paganistic days, could they have taken a life in such a cruel way?

I think history, 400 years from now or 500 years from now, will reflect back to this moment saying here this body met in a deliberative way to stop this barbaric practice.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, before yielding to the distinguished Senator from Maine, I want to make a few further comments.

I find the comment by the Senator from Oklahoma curious, to put it mildly, that he has never been so thankful he is not a lawyer.

I hope the Senator from Oklahoma never needs a lawyer. But if he does, he might like to have a lawyer, especially a good lawyer, to protect his interests and to protect his constitutional rights. Sometimes we lawyers help to get it right. This is not a matter for broad gestures and grandiose statements. We are dealing here with matters which involve the Constitution. Pardon me——

Mr. INHOFE. Does the Senator yield?

Mr. SPECTER. No. And, pardon me—and pardon me if we need a lawyer or judges to help interpret the Constitution of the United States, which protects the rights of all of us.

Now that I finished my sentence, I will be glad to yield if it is on the time of the opponents of the motion.

Mr. INHOFE. I do want to respond. I hope I have made it abundantly——

Mr. SPECTER. Is it on Senator SMITH's time? I will yield on Senator SMITH's time.

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

The PRESIDING OFFICER. The Senator from New Hampshire has 54 minutes 30 seconds.

Mr. SMITH. I yield the time.

Mr. INHOFE. Mr. President, I hope the Senator from Pennsylvania was listening when I said I mean nothing personal about it. I have a great deal of respect for him. When I talk about being thankful that I was not a lawyer at this time, I was talking about looking for ways, loopholes around this thing, so this procedure can take place.

I acknowledge to the Senator that on two occasions in my 60-year life I have needed lawyers and I was thankful to have them at that time.

Mr. SPECTER. If I may respond——

Mr. INHOFE. On your time.

Mr. SPECTER. I am not getting involved now, as to whether I take it personally or not. But it has not just been this lawyer. It is the whole profession. It is the whole profession that somehow comes into disrepute, not just when we are talking about tort reform or product liability or medical malpractice—we are talking about the Constitution.

How about those nine lawyers across the street, the Supreme Court of the United States? How about Justice Thomas? Did Justice Thomas ever need a lawyer? How about all those pro-life Justices whom this Senator has supported because, as a matter of principle, they are lawyers and they have some useful function to perform?

So, when the comment is made that this Senator is engaged in legalese—and now, Mr. President, I will go to my time because I want to respond to the Senator from New Hampshire—I am just a little concerned, candidly, about some of the personal invective.

When the Senator from New Hampshire says that the Senator from Pennsylvania does not even want to look to see this, he is wrong. As soon as he puts his chart up, I go down and take a look at it.

When the Senator from New Hampshire says, I don't care what Senator SPECTER says about—legal jargon, I would say to the Senator from New Hampshire two things. First of all, he ought to be concerned about the Constitution. If he wants to call that legal jargon and minimize it, that is up to him. But these are not unimportant matters.

And when the Senator from New Hampshire says that there are people who do not want to see this matter come to the vote, that he is ''sick and tired of the ducking,'' this Senator does not duck. I have proved that again and again and again.

When the Senator from New Hampshire says people do not want to come out here and vote their conscience, I object to that. I do vote my conscience. And I do not call the Senator from New Hampshire an extremist. I do not get involved in those pejorative, name-calling matters. But I do expect that there be an accurate representation, that I am not talking legalese when I start off and I say the first two considerations that I have are the humanitarian matters and the matters of the medical procedure. That is before I get to the Constitution, before I get to statutory interpretation. Not that those matters are insubstantial.

I have heard the Senator from New Hampshire say ''grisly'' three times and ''cruel'' four times and ''brutal'' and ''horrible'' and ''grotesque'' and ''sickening.''

This Senator is very concerned about that. This Senator also witnessed the birth of his two sons, and this Senator held the placenta of his older son right after his son was born. And this Senator has a grandchild. And, like the Senator from Oklahoma, this Senator has another grandchild expected in December. And I am very much concerned about the pain and suffering.

When the Senator from New Hampshire says that there is no anesthetic, no pain killer, he may be right. And if he is right, there ought to be something done about it. That ought to be done in terms of what this body takes into consideration in the law. If the Senator from New Hampshire is right that this is an unacceptable procedure, then let us not just limit it to the vaginal canal. Let us cover C sections or let us cover conditions before it gets to the vaginal canal, if the Senator from New Hampshire is right.

If he says this Senator changed the 45 days, that is not true. Others had talked about the 45 days. My staff had talked about the 45 days. They do not make decisions for me. When I took a look at it, I said we ought to do it as fast as possible. And I will be willing to do it in 9 days. Let the Senate report it back by a week from Friday.

But the fact is, we are going to be in recess for 10 days beyond that time. So the 10 days do not really hurt anyone. It may be necessary in the hearings to call some other witnesses. We may not be able to get it all done in the snap of a finger. It is a matter which may require some time. So what I want to do is find out what this case is all about, what this statute is all about, and what this medical procedure is all about. I do not want to have it decided on a poster with three sentences from two doctors. I want to hear what they have to say. I may have a question or two that I want to ask.

When the Senator from New Hampshire and the Senator from Oklahoma say when the time passes other children are going to be involved—they could have brought this matter to the floor last week, last month, last year if they want to legislate on the subject, if they are concerned about every day. And this Senator is concerned about every day. That is why I talked about 9 days plus the recess time. So that is what I want to accomplish.

I now yield 5 minutes to my distinguished colleague from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. SNOWE. Mr. President, first of all, I want to thank the Senator from Pennsylvania for offering this motion. I am pleased to join him as a cosponsor to commit this bill to the Judiciary Committee for where it should be so that we can hold hearings on this legislation. As a Member of the Senate, I think it is absolutely critical that we have a hearing on an issue that raises profound constitutional questions. As a woman, I believe the failure of this body to hold hearings on this legislation represents an appalling disregard for the life and health of the mother.

I am concerned that all of a sudden we are saying we do not need to have hearings on this very significant piece of legislation. We have heard that the House has had hearings. The House had debate. The House heard the proponents and the opponents of this legislation. The last time I checked this was the U.S. Senate. We are two distinct bodies, and we are entitled to hold our own hearings, to make our own decisions, to ask our own questions on this very, very important question.

To hear the debate, at times I think that people actually believe that women casually and blithely make this decision about having an abortion under any circumstances. It is a difficult decision, but even more so when we are talking about late-term abortions. They are rare. They are exceptional. They are there because a woman's health is in danger. So it makes this decision all the more tragic. And it certainly is a nightmare for the woman. It is not something that she just does casually.

I think it is unfortunate that many have made this sort of impression about how women arrive at their decision. Twenty-two years ago the U.S. Supreme Court issued a landmark decision in the form of Roe versus Wade. It carefully crafted and balanced that decision, and said that a woman's interest in making the decisions about her reproductivity is paramount. But it also said that imposed a liability; that the States had the right to prohibit abortion so long as they allowed an exception for when a woman and her health is in danger. That is an important exception that this legislation does not allow. No matter what the Senator from New Hampshire says, it does not allow it. Oh, sure. Offer it as an affirmative defense. Once the doctor performs this procedure the doctor ends up in court and then he has to prove that. That burden of proof is going to be enormous.

So that is what we are talking about. There is no exception for the doctor making that medical decision. So now we are saying in this climate today where the doctors have already been killed on the issue of abortion—with death threats, intimidation, and harassment—they are now saying you are going to face criminal prosecution because you performed a procedure in order to save the life of the mother. That is what we are saying in this legislation.

I think they say, ''Well, what are the alternatives to this?''—which is what we should be discussing in the hearings—but what are the alternatives? It is easy for them to say the alternative is a Caesarean section, which interestingly enough has four times the risk of death, or induce labor, or potentially a life-threatening disorder such as cardiac edema, a hysterectomy, which means a woman cannot have any more children.

So that is what we are talking about in terms of tradeoff in this legislation—the life and health of the mother in order to avoid criminal and civil prosecution of her doctor. That is how this legislation is structured.

I hope that we will give this matter serious regard and hearings because this is an unprecedented intrusion in what should be properly a decision made between the doctor and his or her patient on what is a very, very critical decision for a woman having to make in these rare instances. I emphasize that because these are rare instances. And when the Senator from New Hampshire says, ''Well, these are elective procedures, that 80 percent are elective,'' let us talk about that. There is no medical definition for ''elective.'' It is when someone has to make the decision.

For example, if a person had a heart attack and they are in a coma and somebody performed CPR, that is not

elective because they were not involved in the decision. But if a person went to a doctor and the doctor said you have a serious heart condition, if you do not go tomorrow to the hospital and have surgery, you will die, that is elective because that person has made the decision.

So I think that there has been a lot of misrepresentation. This is a serious issue. We should have hearings. I cannot understand why anybody would be afraid of the facts. Why are we so afraid of the facts? Why are we so concerned that we cannot in opposition have hearings and hear the facts, and everybody have a chance to speak before the legislative committee?

So I urge the Members of this Senate to support the motion made by the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, how much time remains?

The PRESIDING OFFICER. Forty-eight minutes.

Mr. SPECTER. Mr. President, I yield 5 minutes to the distinguished Senator from Vermont, Senator JEFFORDS.

The PRESIDING OFFICER. The Senator from Vermont [Mr. JEFFORDS] is recognized for 5 minutes.

Mr. JEFFORDS. Mr. President, I rise today in support of the motion to commit the bill before us to the Judiciary Committee, and in defense of the constitutional right to privacy, as well as to protect the life of mother.

This bill has not been considered by any Senate committee, nor have Senators had the benefit of learning more about this bill from Senate hearings. It passed the House less than a week ago. I suggest that we need more time to study the broad-ranging implications of this bill. This motion suggests a time limit of 19 days, a very short time considering the complexity of this issue. But at least we will have an opportunity to learn more about what this procedure is, and why it is being utilized.

Mr. President, for the committee to consider and hold hearings on this far-reaching bill is of critical importance. I am disturbed by the misinformation that is floating around about this bill. This bill outlines a particular late-term abortion procedure subjecting the doctor who performs it to both criminal and civil suits. It matters not whether a procedure is medically necessary to save the life or health of the woman. That is the critical question here.

We all need to be clear about what exactly it is that we are not voting on today. We are not voting on whether or not we believe in the sanctity of human life. We are not voting on whether or not certain medical procedures can be described in grisly detail. We are not voting on whether or not we will intercede between pregnant women and their doctors to determine what medical procedures are or are not personally medically and ethically appropriate for all women in all circumstances. No. The women who have had these procedures speak passionately about their children, their families, and their sorrow at losing their pregnancy.

They also speak patiently in defense of keeping this procedure, this best of several difficult options for them and their families—to keeping it safe, available, and legal. Their lives were, and their lives are at stake.

This is an unprecedented intrusion into the practice of medicine. Congress has never before acted to ban any medical procedure. The American College of Obstetrics and Gynecologists, in writing about the bill—and I quote them:

> . . . does not support H.R. 1833, the Partial-Birth Abortion Ban Act of 1995. The college finds it very disturbing that Congress would take any action that would supersede the medical judgment of trained physicians and criminalize medical procedures that may be necessary to save the life of the woman.

Twenty-two years ago, the U.S. Supreme Court handed down a landmark decision, Roe versus Wade. The Court's decision established, under the right to privacy, a woman's right of self-determination in matters regarding her pregnancy and reproductive health, and I emphasize ''especially when her right to life is threatened.'' Since that time, we have seen many challenges to Roe in both Congress and in the courts, but the wisdom and structure of that decision has for the most part endured.

This bill has been designed as a direct challenge to that historic decision's protection of women's lives and health. While the decision acknowledged a State interest in fetuses after viability, the Court wisely left restrictions on postviability abortions up to the States. This strikes me as quite consistent with much of the legislation we have recently considered on many other matters, choosing to leave regulation to the States.

Roe versus Wade had a caveat, though, about these State-imposed postviability restrictions. States may not—may not—under any circumstances outlaw abortions necessary to preserve the life or health of the woman.

Also, subsequent Supreme Court decisions have held that States may not outlaw using specific abortion procedures in cases that endanger the woman's life or health.

These court decisions and, in my view, decency and common sense dictate that doctors must be able to put the welfare of their patient, the woman, first. Doctors must be able to use whatever procedure will, in their professional judgment, be safest for their patients.

This is a basic tenet of the practice and regulation of medicine in this country.

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

Mr. JEFFORDS. There are expert professional licensing boards, accreditation councils, and medical associations that guide doctors' decision-making in the complicated and difficult matters of life and death. Let us continue to leave it to the professionals.

The PRESIDING OFFICER. Who yields time?

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. Who yields to the Senator from Nebraska?

Mr. EXON. Will the Senator yield?

The PRESIDING OFFICER. Does the Senator from New Hampshire yield time? Who yields time to the Senator from Nebraska?

Mr. SMITH. I yield to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. I thank the Chair and I thank my friend. I have been following this debate with great and keen interest, and I have listened to the ''Nightline'' program last night that featured Senator BOXER and Senator SMITH. I have listened to the debate this morning as much as I could.

After the remarks just made by my great friend and colleague from Vermont, it leads me to ask this question which is troubling to this Senator. I have heard lots of remarks about people's experience in this regard in this Chamber. I do not know that I am a champion, but for 25 straight years I have been privileged to represent my constituents in high public office, and during that 25 years the matter of abortion keeps coming up again and again and again, and here we are again. It is one of these things that troubles America today. I am not sure that regardless of where you fall on the pro-life or pro-choice spectrum, anyone is always totally comfortable with their position. But we have to make these decisions, and therefore I think this is a very important vote.

As a father of three and a grandfather of eight, I have had some experience with regard to family and to family values that I hold very, very dear. From the very beginning on abortion, I have held, rightly or wrongly, that I was not in support of abortion except to save the life of the mother—underline that, save the life of the mother—or in promptly reported cases of rape or incest.

Now, a lot of people disagree with me, but at least that has been my position from the beginning all the way through these 25 years. What I come back to is the matter of conscience that I am very much dedicated to. So I ask this question of my friend and colleague from New Hampshire with regard to the saving the life of a mother.

I have heard the Senator from New Hampshire say on numerous occasions that if the life of the mother is in jeopardy, under the procedures that we are debating right now, there are provisions in the bill that would allow the doctor to proceed even with this late-term abortion, call it what you will, the doctor could do that if the doctor was convinced that this was the only procedure that would likely save the life of the mother if, indeed, the life of the mother was in danger.

Would the Senator from New Hampshire please explain to me if I have this correctly interpreted because it will be a key factor in the way I vote on this matter.

Mr. SMITH. I respond to the Senator from Nebraska by saying the Senator has it exactly right. There is a life-of-the-mother exception here. I will specifically refer to it in a moment. I would just say that in this process, this partial-birth abortion process, a lot of the medical experts that we have have indicated it is a very rare opportunity when the mother's life would be in danger, but if it is, we take care of that, and I will point that out in a second.

However, the issue here is that where you forcibly stop a birth by not allowing the head to be delivered, it would just seem to me, if the mother's life was threatened at that point, you would allow the baby to be born. Whatever happens to the baby after that, if your focus is on the mother, then let the baby be born. I cannot see how keeping the baby from being born and then going through the process that we have already described here helps or enhances the mother's health or life.

Mr. EXON. If I might interrupt then, if I understand what the Senator is saying, since for all practical purposes under the procedure outlined the birth has already taken place and therefore the mother's life could not be more in danger by allowing the head to emerge into the world—in other words, at this particular point it is not a test of whether or not the mother's life is in danger?

Mr. SMITH. At that point. Were that to be the case, then there are provisions here, and let me specifically refer to it so that the Senator will not have any concerns.

If it were to be the case—and I cannot imagine where it would be, but were it to be the case in subsection (e) of the bill, which we have here, it says that if a doctor reasonably believes that a partial-birth abortion is necessary to save the life of the mother, then he or she, that doctor, simply proceeds and cannot be convicted of the violation of the law, simple as that. So the life of the mother exception is there.

Again, I just want to point out that where you have a procedure that takes a period of 3 days, including dilation and anesthesia and all the things in preparation for this, the preparation is for the abortion so this is not an emergency as has been described on the floor by others in the sense there is some immediacy to save the life of the mother. Were there to be a complication—I am not a doctor, I do not want to interfere with the doctor-patient—this is a matter that the doctor would deal with and simply would not be convicted.

We have the right of self-defense. If someone broke into your home and you shot them, somebody could accuse you of murder, but you certainly were within your rights to do what you did to protect yourself, as a mother would be within her rights to protect her rights should this child, fetus, whatever, be an immediate threat to her life. We protect that.

Mr. EXON. I thank my friend for that explanation, and I thank him for yielding time to straighten this out to make sure I understood what I thought I understood. After listening to the Senator, I think that he has given me a satisfactory explanation of the legitimate concern in this Senator's mind.

Mr. SMITH. I appreciate the Senator's inquiry, and I am delighted to respond to it.

The PRESIDING OFFICER. Who yields time?

Mr. SMITH. Madam President, no one else at the moment is interested in time. How much time is remaining?

The PRESIDING OFFICER (Mrs. HUTCHISON). The Senator from New Hampshire has 47 minutes, 48 seconds.

Mr. SMITH. Madam President, I yield myself whatever time I may consume.

I just want to respond to a couple of points; they are minor points at this point in the debate. But in response to Senator SPECTER regarding this motion, we received a copy of a motion to commit with 45 days written on it. We came here today on the floor expecting to see that. Then it was changed to 19. It was crossed out. I will accept the Senator from Pennsylvania's word that he changed his mind or overruled his staff. That is fine. But this Senator received information from the Senator's staff that said 45 days, which would have delayed the bill on to the next year.

But regardless, in any case, the issue here is still dilatory and it is also the issue of killing the bill. You would have to not have any sense of humor whatsoever to not realize what is going on here.

There was a press conference yesterday with Kate Michelman.

Question: ''Do you have any read on the breakdown on the Judiciary Committee if it goes to the Judiciary Committee?'' [That is the bill.] ''And does it differ from the Senate as a whole? Do you have a better shot at getting the kind of changes you might want in it?''

Michelman: ''Which is our goal, is to have it end there.''

Question: ''What is the read on the committee makeup?''

Michelman: ''So the committee, the constitution of the Judiciary Committee and where we hope to see the demise of this legislation really is a mirror of the Senate as a whole. There—I think that there are some anti-choice Democrats, some pro-choice Republicans, but I think the committee—I don't remember the whole committee—but I would say it's going to be very close, a very close vote. But it does give us the possibility of really making some very important rational arguments, presenting some expert testimony that we won't have the opportunity to do if this bill comes up today in such a rush, a mad rush to pass this legislation.

''So I think there's a great chance of, again, having a more moderating influence over the House-passed legislation if we can get it to the committee today.''

In other words, it is to kill the bill. That is all there is to it. I respect the right of the Senate to defeat the bill. I respect that. Of course, I do. That is democracy. But I would also like to have Senators step up to the plate and vote yes or no.

I am going to again repeat that this Senate will vote on this before we go out for the Thanksgiving recess. We will vote on it on the debt limit, or on Bosnia, or on anything else that comes hear. The next vote that comes through here that I can get this on, it is going on if this thing goes to committee. We are going to vote on it because I want Senators on record either saying yes to this procedure or no to this procedure.

We are going to have that vote. I make that commitment. I promise you we will have this vote. So I am hopeful that we are not going to have this thing referred to committee to basically repeat a process that has been going on for weeks and weeks and weeks, months in the House of Representatives.

There has been plenty of materials written and plenty of studies, been plenty of hearings—a hearing in the House, markups, committee meetings, and so forth. So that is not the issue. If we were going to use as a prerequisite in the U.S. Senate not voting on anything that has never had a hearing, we could reduce the votes around here dramatically, believe me, probably by as much as 75 percent, because about 75 or 80 percent of our votes are on things we never had hearings on. So when it comes to something like this, one of the most important issues of our time, we want to shuffle it off to committee and try to kill it, because that is exactly what the goal is here as stated by Kate Michelman and other opponents of this bill.

Madam President, at this time I yield whatever time the Senator may consume to the Senator from Indiana.

Mr. SPECTER addressed the Chair.

Mr. COATS. I thank the Senator for yielding.

I wonder if my colleague from Pennsylvania has a question or——

Mr. SPECTER. No.

Mr. COATS. I would be happy to yield for a question.

Mr. SPECTER. I would be glad to withdraw my request for recognition.

Mr. COATS. Madam President, I thank the Senator from New Hampshire for yielding. I had asked him for some time, and I appreciate the opportunity to speak to this issue.

This is not a pleasant issue to debate on the Senate floor. It is not a comfortable issue to debate on the Senate floor, but we are not elected to come here just to discuss and debate pleasant issues. We are likely to face some

of the most difficult issues that the country has to face, face them honestly and openly, and in the end cast our position either for or against.

There probably is no issue that is potentially more divisive and certainly more emotional than the issue of abortion because it goes to the issue of the meaning of life itself. I am a pro-life Senator. I have argued on this floor a number of times that we, as a nation, as elected representatives of the American people, as individuals of conscience and conviction ultimately need to confront the issue of abortion, its impact on the question of life, and the meaning of life, to talk about the broader issue itself.

Advances in science and medical technology clearly will require that we will confront, both now and in the future, some ethical questions and some judgmental questions that are profoundly disturbing and profoundly important.

Science and medical technology reveals the unborn child as undeniably and uncomfortably human. We treat the unborn as a patient. We provide it with blood transfusions. We perform surgery. We know it is sensitive to pain. We know that it can be a victim of drug and alcohol abuse. And I think all of our best impulses are to reach out to help those that are considered the weakest in society.

Our history as a nation, our history as a Senate, has been to broaden access to participation in this wonderful experiment in democracy. Our history has been one of inclusion, not exclusion, and to try the find ways to incorporate into the human family ever-larger classes, to reach out to the disadvantaged and to the weakest. I find it somewhat ironic that some of the most outspoken, courageous, forward leaders of the movement of inclusion takes such a firm stand against inclusion of the weakest in our society.

And I think that is a debate that we have to pursue and continue. However the debate today is not on that issue. The debate today is on a much more specific medical procedure. It has been well-discussed on the floor, well-documented on this floor. It is difficult to discuss, difficult to view the graphic illustration of the procedure itself. Yet I think it is necessary. I will not repeat that graphic discussion.

But I think it is incumbent on every Senator before they vote to fully understand the medical procedure involved, fully understand just exactly what is taking place surgically and medically in the partial-birth abortion, or whatever term any Senator wants to place on this procedure. You do not have to call it partial-birth abortion. You do not have to label it at all. But it is extraordinarily important, I believe, for everyone to at least avail themselves of an understanding of what is taking place here medically, what the procedure is, because I think an understanding of this procedure, regardless of what label you give it, has to do more than just give us pause. It forces us to ask ourselves some very basic questions concerning whether or not we, as a society, have an obligation to state in law whether or not we condone or support such a procedure.

If this procedure were done in another country, we would not be standing here labeling it as a violation of human rights. If it were done in a war, we would call it a crime against humanity. But here we are trying to calmly, rationally discuss a procedure which is shocking in its description and which many have called descent into almost barbarism.

Madam President, I do not believe this is just another skirmish in the running debate between left and right. I believe this is an issue that raises some of the most basic questions that ought to be asked in any democracy: Who is my neighbor? Who is my brother? Who do I define as inferior and cast beyond my sympathy and beyond my protection? Who do I embrace and who do I value in both law and in love?

I do not believe this should be a matter of ideology. I think it is a matter and a question of humanity. It should not be a matter of what constituency we ought to side with. This is not just a matter of our Nation's politics, but a matter of our Nation's soul and how our Nation will be judged by God and by history.

In this body, we can agree and disagree on other matters of social policy, yet I think we ought to come together and agree on this: That a born child should not be subject to violence and to death. Surely, there is no disagreement on that. The question is, should an unborn child be subject to the same protection?

I hope that at least in this body we could come together, Republicans and Democrats, liberals and conservatives, and begin to define those situations in which an unborn, yet almost born, seconds from being technically born, but clearly a child defined by its physical appearance, defined by its medical condition, defined by its very aliveness can receive some protection from violence, can receive some protection which every other human being in this country receives.

Can we at least acknowledge there is a line that we will not cross, a line that we can say, ''While we may have disagreement over other aspects of when life begins, whether abortion is appropriate or not, at least here with this procedure, with this so obvious, visible view of the beginning at least of life that we will not terminate that, that we will refuse as a body to cross that line''?

This vote today is an opportunity to take a different path, an opportunity for Republicans and Democrats, liberals and conservatives, even for those who oppose abortion and those who support it, because by voting for this measure, we can begin to define some common ground: that every child born in America will be embraced by our community; that no one is expendable; that no one will be turned away from participation in this experiment in freedom and democracy.

We are faced with a vote in a short amount of time on a motion to commit. We have all participated in this exercise. We all know what it means. It means that we do not want to vote, we do not want to vote on the issue itself, we do not want to stand up and be counted on one side or the other; it is too politically sensitive, it is too uncomfortable, it is too difficult; I do not want to have to deal with this issue. So we are attempting to retreat to a time-honored procedural technique: We need to know more about this; we need to consign this to a committee so that they can study it and they can have hearings.

There is not anybody in this body who does not know what we are dealing with here. There is not anybody who has not had an opportunity to examine the medical procedure, to think through the question, to come to a conclusion. We are not elected to commit difficult issues, uncomfortable issues to an abyss of committee consideration that we know will paper over and delay and push a decision to some unknown point in the future. There is no lack of information available to Members. There are no unanswered questions outstanding relative to this procedure. All the materials are available for every Senator to look at and to discuss and to examine and to form a conclusion over.

So the motion to commit is what it is: It is a procedure to allow us to avoid dealing with an uncomfortable subject. Everyone needs to know that a motion to commit is simply an unwillingness to take a stand, to let people know where you stand.

There is nothing that is going to be gained by committing this to a committee so that they can deep six the issue. It is an issue we are going to be confronted with in the future anyway, so we might as well deal with it now. Let us have some courage to stand on our convictions one way or the other. Those who have spoken on the floor both for and against this procedure speak out of conviction. I am not here to question their motives. I accept their conviction. But we are not elected to avoid expressing that conviction by our vote. If cynicism exists in our electorate, it is because we keep playing these games.

The scriptural injunction is let your yea be yea and your nay be nay. Do we not at least have the courage to let our yea be yea and our nay be nay on the most fundamental question and issue probably facing this body, the very issue of the meaning of life? Are we going to take a pass? Are we going to say that is too tough for us to take? Are we going to say it is politically too sensitive?

Now, if we have learned anything about the opinion of the electorate toward this elected body, it is that it has

almost gotten to the point of dangerous cynicism about our ability to stand up and say what we believe and accept the consequences of that. I think what the public is looking for are some people with conviction one way or another, who are willing to stand up in front of a group of people back home and say, ''Look, this is what I believe. If you support that, I would like your vote. If you do not support that, that is fine, my life does not begin or end on whether or not I am elected to this office or any other office.'' But this is what I believe. We are not here to bide our time. We are here to express our convictions, as supported by the people in our States.

If this legislation is passed, it will mean that the circle of protection in our democracy begins to expand just a little bit more. We have brought in people of different ethnic backgrounds, different racial backgrounds, people with disabilities, an ever-expanding circle of protection provided by a democracy that promotes independence and liberty, but also guarantees the right to life.

This is a test of a just civilization. I think it is a standard by which each of us is going to be tested as well.

Madam President, I thank the Senator from New Hampshire for the time.

I yield the floor.

Mr. SPECTER. Madam President, before yielding to my colleague from Michigan, I want to make a few comments in response to what has been argued in opposition to the pending motion.

I agree with a good bit of what the distinguished Senator from Indiana just had to say, and I think that it is necessary to draw a line. I am prepared to do that. I must say that this Senator is not unwilling to take a stand. This Senator is not unwilling to have the courage of my convictions. I understand that I have been elected to take stands on tough issues and not to avoid expressing my views. And I concur that on the meaning of life, life does not begin or end on an election to the U.S. Senate. I have lost my share of elections, and I am prepared to do so in the future if my constituents do not agree with my views. I intend to express them forcefully and forthrightly.

But I point to the calendar here—if I may have the attention of the Senator from Indiana—as to what happened. This is not a matter of delay. This is not a matter to kill this bill in the Judiciary Committee. Whatever may be said by others—and the Senator from New Hampshire has quoted a Miss Michelman, who is not on the committee, and the idea to commit was ARLEN SPECTER's idea. My staff had a lot of ideas, like for 45 days, but we all know that sometimes Senators make their own decisions as to how we are going to proceed. The Senator from New Hampshire chuckles, and we agree on one item. Occasionally, it is healthy and helpful for Senators to make decisions instead of staffers.

So when the Senator from Indiana talks about sending this to an abyss, delay it until some unknown time in the future, that is not what is going to happen here. Under the express terms of the motion to commit, it has to be reported back and it has to be reported back, really, what is in 9 days of the life of the Senate. We would go out on recess on the 17th, so it is 9 days from today that we will be in session and 10 days when we come back, and it has to be reported on the 27th. It may be that in the interim, during Thanksgiving week, we will have hearings on that. I am prepared to do that in the Judiciary Committee. But it will be back in this Chamber, so that when the Senator from Indiana talks about the meaning of life, I am prepared to come to terms with that.

I would just like to know what the medical profession says about the pain and suffering, what the medical profession says about alternatives, if it is a C section, if it is not in the vaginal canal. I am not prepared to accept the debate on ''Nightline.'' I have been on ''Nightline,'' and sometimes on ''Nightline'' not a whole lot of usefulness is accomplished. So that when you have the sequence of events in the House of Representatives—this is really quite a sequence—I think we ought to focus on it.

This bill was introduced on June 14 in the House. The next day they had a 2½-hour hearing and did not get some medical experts on the other side of the issue. They marked it up the same day. That is on June 15. Then we know what our congressional schedule has been. It has been hectic, to put it mildly. We did have some time off in August and in September, and October we have been fully occupied on the reconciliation bill and the budget. Then it came up on November 1, where they voted. That is the state of the record. Now it comes to this body and we are asked to pass upon it without any hearing having been held. I have taken a look at the rules of the Senate—rule XIV and rule XV. It was only relatively recently in the life of the Senate that we have had no hearings on a bill. It used to be mandatory that the bill be referred under rule XXV. And now there is more latitude under rule XIV. But I question the propriety, or at least the wisdom if not the propriety, of putting this bill on the calendar for this kind of action. But I am not going to delay.

Mr. COATS. Will the Senator yield for an observation?

Mr. SPECTER. Yes, on the time of Senator SMITH.

Mr. COATS. My only observation is that the Senator indicated that a 45-day procedure is only 9 days of Senate time. Only in the U.S. Senate could an institution take 45 days to accomplish 9 days of work. I understand that is how this process works.

I thank the Senator for his explanation of the procedure in terms of the way this bill will be handled.

Mr. SPECTER. I thank my colleague from Indiana for those comments. I think we are entirely too dilatory around here. We had an issue that came to my Judiciary subcommittee on the Bureau of Alcohol, Tobacco and Firearms, and we had some problems with the Justice Department getting the witnesses in. We got them in and we did it in prompt time. Whenever we could find hearing days, we did it. We are about ready to issue a report. I think we ought to move with dispatch.

I am prepared to see us work on the Thanksgiving recess to come to terms here. When the Senator from New Hampshire says he is going to get a vote on it, he may or may not. This may be a matter of filibuster. I suggest we will not lose any time in this commitment.

I yield 5 minutes to the Senator from Michigan.

How much time remains on our side?

The PRESIDING OFFICER. The Senator has 36 minutes. There are 26 minutes on the other side.

The Senator from Michigan is recognized.

Mr. LEVIN. I thank my friend from Pennsylvania. I, too, think the Senate should vote, but only after there has been a reasonable length of time, and a few weeks is a reasonable length of time for the Judiciary Committee to consider and to report back to us on a number of very, very important issues in this case.

Under this bill, the Congress would be imposing a determination not of when an abortion may be performed, but of how it may be performed. The procedure addressed by this bill would be prohibited from being used even in the second trimester.

So this is a question of whether or not we should make a particular procedure criminal, whenever it is used. There are a number of important issues. Why have the States—with, I think, one exception—not criminalized this procedure? Under Roe versus Wade, States are given the authority to regulate abortions in the third trimester, except they cannot prohibit an abortion where the life or the health of the mother is at risk. Why have 49 States not made this particular procedure illegal, even in the third trimester?

The States are the place where Roe v. Wade says that abortion should be regulated in the third trimester, and yet with, I think, one exception States have left this particular procedure legal.

Now, this bill not only makes illegal and criminal a procedure that is not made criminal in all but one State, this bill leaves legal other procedures which can be used in the third trimester.

Are those other procedures as safe for the mother? Are those other procedures different in terms of the vividness as to the impact on the fetus? What are those other procedures? Why are they left legal, although at least

arguably, less safe for the mother, while one procedure, which in the eyes of many doctors is the safest for the mother, is made criminal?

Surely, it would be worth spending a few weeks to have a hearing in the Judiciary Committee to find out why one procedure is made criminal and other procedures are not. Other procedures, including inducing labor and delivery with drugs, is left legal despite the evidence of risk to the mother. Other procedures, including a Caesarean operation called a hysterotomy, is left legal even in the third trimester to save the life or protect the health of the mother.

Another procedure left legal by this bill is called standard D and E. This procedure does not deliver the fetus intact, but instead removes the fetus from the uterus piece by piece. Again, this procedure is left legal by this bill.

Should we not be told by the Judiciary Committee following a hearing from medical witnesses as to why other procedures, arguably in many cases apparently less safe for the mother, are left legal while this one procedure is made criminal, again, although all but one State has left the procedure at issue in this bill legal? That is worth finding out.

Of course, we should vote. I happen to agree with my good friend from Indiana; we should vote on this issue. But there is something else we should do. We should vote based on information from reliable and credible sources that have had an opportunity to present evidence at a hearing before a Judiciary Committee that can explore these kinds of issues.

There are other issues which I think we can usefully obtain some guidance on. One of those is the question of the affirmative defense. Of course, affirmative defenses have been approved by the Supreme Court in many cases but not in cases where there is a constitutional right as exists here, a right to have an abortion even in the third trimester where the life of the mother is involved.

We have a Congressional Research Service opinion on this issue. The Congressional Research Service has written us that cases that have permitted affirmative defenses have not permitted a Government to turn a constitutional right into an affirmative defense. If you have a constitutional right to an abortion to save the life of the mother, can we then make it a crime to provide such an abortion unless the doctor carries the burden of proof that he is acting constitutionally? Not according to the cases analyzed by the CRS.

Madam President, I ask unanimous consent that I have printed in the RECORD at the end of my statement the full report of the CRS on this issue and a Department of Justice letter that also addresses this issue.

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

(See exhibit 1.)

Mr. LEVIN. I simply say that there are a number of very important issues for which we should have at least some guidance and witnesses in a report from the Judiciary Committee. This is not a case of trying to evade an issue. It is a case of trying to deal with an issue based on a record of witnesses testifying on some very, very critical issues and some excruciatingly difficult issues for everyone.

In the situation we are discussing, the Supreme Court has ruled that the Constitution prohibits the Government from criminalizing abortions that are necessary to save the life of the mother. In the context of this bill Congress cannot constitutionally criminalize the abortion procedure at issue if such abortion were necessary to save the life of the mother.

The CRS memo explains it this way:

> In *Patterson* and *Martin* [the leading cases authorizing affirmative defenses in criminal cases], the Court specifically noted that the legislature was fully within its legislative authority to establish all the elements of the underlying offense, and that the defenses were established as affirmative grants to a defendant. As one commentator has indicated, a key factor in the Court's holding in *Patterson* was that the state could have constitutionally criminalized and punished the crime in question as defined, even absent the defense provided.

The opposite is true here. Under established law the Government cannot criminalize an abortion necessary to save the life of the mother. It would seem, therefore, that under the applicable Supreme Court cases, the Government must prove beyond a reasonable doubt that the mother's life was not at risk. It cannot, it would seem, shift its burden on this element of the case to the defendant the way the bill before us does. Surely we should at least have the benefit of a hearing to address this issue, and the benefit of a Judiciary Committee report.

Finally, even if an affirmative defense approach is allowed, the vagueness of the bill's affirmative defense language requiring the defendant to prove that no other procedure would suffice, leaves it unclear how a physician defendant would prove that no other procedure except intact D and E would have sufficed. What if the physician defendant could have performed another procedure that would have doubled the risk of death to the mother? Does that suffice? Under the bill before us, what is the measure of how much greater risk another procedure would or could impose on the mother's life in order not to suffice?

I don't think doctors facing criminal charges when acting to save a woman's life should face such uncertainties. But what do experts think? What does the Judiciary Committee think? Is it worth taking a few weeks to find out? I think so.

There are a number of serious issues raised by this legislation. We should send this bill to the Judiciary Committee for prompt hearings and report back. We should then vote. The impact of this legislation is potentially too grave to do less.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, November 7, 1995.

Hon. ROBERT DOLE,
Majority Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER: This letter represents the Department's views on H.R. 1833, a bill that would ban what it calls ''partial-birth abortions.'' This legislation violates constitutional standards recently reaffirmed by the Supreme Court. Most significantly, the bill fails to make adequate exception for preservation of a woman's health. Even in the post-viability period, when the government's interest in regulating abortion is at its weightiest, that interest must yield both to preservation of a woman's life and to preservation of a woman's health. *Planned Parenthood* v. *Casey*, 112 S. Ct. 2791, 2804, 2821 (1992). This means, first of all, that the government may not deny access to abortion to a woman whose life or health is threatened by pregnancy. *Id*. It also means that the government may not regulate access to abortion in a manner that effectively ''require[s] the mother to bear an increased medical risk'' in order to serve a state interest. *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U.S. 747, 769 (1986) (invalidating restriction on doctor's choice of abortion procedure because could result in increased risk to woman's health). That is, the government may not enforce regulations that make the abortion procedure more dangerous to the woman's health. *Id.; see also Planned Parenthood of Missouri* v. *Danforth*, 428 U.S. 52, 79 (9176) (invalidating ban on abortion procedure after first trimester in part because it would force ''a woman and her physician to terminate her pregnancy be methods more dangerous to her health than the method outlawed'').

If Congress were to ban this method of abortion, it appears that ''in a large fraction of the cases'' in which the ban would be relevant at all, *see Casey*, 112 S. Ct. at 2830 (discussing method of constitutional analysis of abortion restrictions), its operation would be inconsistent with this constitutional standard. It has been reported that doctors performing this procedure believe it often poses fewer medical risks for women in the late stages of pregnancy.[1] If this is true, then it is likely that in a ''large fraction'' of the very few cases in which the procedure actually is used, it is the technique most protective of the woman's health. Accordingly, a prohibition on the method, in the absence of an adequate exception covering such cases, impermissibly would require women to ''bear an increased medical risk'' in order to obtain an abortion.

H.R. 1833 would provide for an affirmative defense to criminal prosecution or civil claims when a partial-birth abortion is both (a) necessary to save the life of the woman, and (b) the only method of abortion that would serve that purpose. This provision will not cure the bill's constitutional defects. First, as discussed above, the provision is too narrow in scope, as it fails to reach cases in which a woman's health is at issue. Second,

[1] *See Hearings on H.R. 1833 Before the Subcomm. on the Constitution of the House Judiciary Comm.* (June 23, 1995) (statement of James T. McMahon, M.D., Medical Directive, Even Surgical Centers) (procedure shown to be safest surgical alternative late in pregnancy); *Id*. (June 15, 1995) (statement of J. Cortland Robinson, M.D., M.P.H.) (same); *see also* Tamar Lewin, *Wider Impact is Foreseen for Bill to Ban Type of Abortion*, The New York Times, November 6, 1995, at B7; Diane M. Gianelli, *Shock-Tactic Ads Target Late-Term Abortion Procedure*, American Medical News, July 5, 1993, at 3; Karen Hosler, *Rare Abortion Method Is New Weapon in Debate*, Baltimore Sun, June 17, 1995, at 2A.

the provision does not actually except even life-threatening pregnancies from the statutory bar. *Cf. Casey*, 112 S. Ct. at 2804 (even in post-viability period, abortion restriction must ''contain[] exceptions for pregnancies which endanger a woman's life or health''). Instead, the provision would require a physician facing criminal charges to carry the burden of proving, by a preponderance of the evidence, both that pregnancy threatened the life of the woman and that the method in question was the only one that could save the woman's life. By exposing physicians to the risk of criminal sanction regardless of the circumstances under which they perform the outlawed procedure, the statute undoubtedly would have a chilling effect on physicians;' willingness to perform even those abortions necessary to save women's lives.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

EXHIBIT 1

LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, November 6, 1995.

To: Senator Carl Levin, attention: Peter Levine.

From: American Law Division.

Subject: Validity of requiring a defendant to bear the burden of persuasion regarding a constitutionally mandated defense.

This is to respond to your rush request to evaluate the validity of requiring a defendant to bear the burden of persuasion regarding a constitutionally mandated defense. Specifically, you requested an analysis as to the constitutionality of the requirement under S. 939[1] that, in order to avoid criminal liability, a defendant prove that the performance of a ''partial-abortion'' was necessary to save the life of the mother.[2]

H.R. 1833 provides that a person who performs a ''partial-birth'' abortion shall be fined or imprisoned not more than two years.[3] If the person can prove, however, that the ''partial-birth'' abortion was necessary to save the life of the mother, and that no other procedure would suffice for that purpose, then the person is relieved of criminal liability.[4] Under the proposed bill, the defendant must carry the burden of persuading the judge or jury of this defense by a preponderance of the evidence.

The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment protects a defendant against conviction unless the government establishes every fact necessary to constitute the crime beyond a reasonable doubt.[5] The Court has extended this reasoning to provide that legislation may not impose a burden of persuasion upon a defendant regarding an element of a crime which the government is required under the relevant statute to prove as part of its case.[6] Thus, in the case of *Mullaney* v. *Wilbur*, the Court held that because the Maine homicide statute included a requirement of malice aforethought in order to obtain a murder conviction, that the government could not then require a defendant to carry the burden of disproving malice aforethought by showing that a killing occurred in the heat of passion.[7]

Two years later, however, the Court held that a state could require a defendant accused of murder to carry the burden of persuasion that the defendant had acted under the influence of extreme emotional disturbance. In *Patterson* v. *New York*, the Court distinguished the case by noting that the definition of murder under New York law merely required an intentional killing, and did not include a requirement of malice aforethought.[8] Consequently, the defense of extreme emotional disturbance did not go to disproving an element of the underlying crime, but was a separate issue which the defendant could be required to carry as the burden of persuasion.[9]

The Court reaffirmed this holding in *Martin* v. *Ohio*, noting that even if the elements of a case and a defense overlapped, that a statute which did not shift the full burden of that element to the defense would be valid.[10] In *Martin*, the Court upheld an aggravated murder statute which required that the government prove that the killing had been planned, but which also required a defendant pleading self-defense to carry the burden of proving self-defense.[11] The Court held that, because a defendant could theoretically have planned a murder but then have subsequently killed the victim in self-defense, the defense was not inherently inconsistent with an element of the crime.[12] Thus, the requirement that the defendant prove that the killing was in self-defense was upheld.

In the bill in question, it could be argued that the proposed crime of knowingly committing a ''partial-birth'' abortion, like the New York statute, simply forbids the intentional performance of the described procedure. Consequently, the proposed defense, that the procedure was necessary to save the life of the mother, does not appear to require the defendant to negate any of the elements of the proposed crime. Thus, the argument can be made that under *Patterson* and *Martin*, the affirmative defense requirement as set forth in S. 939 is constitutional.

It would appear, however, that the cases of *Patterson* and *Martin* can be distinguished. In *Patterson* and *Martin*, the Court specifically noted that the legislature was fully within its legislative authority to establish all the elements of the underlying offense,[13] and that the defenses were established as affirmative grants to a defendant.[14] As one commentator has indicated, a key factor in the Court's holding in *Patterson* was that the state could have constitutionally criminalized and punished the crime in question as defined, even absent the defense provided.[15] Thus, the question arises as to whether the Congress has the authority to pass S. 939 without including a defense for when a ''partial-birth abortion'' is necessary to save the life of the mother.

It would appear that Congress does not have the authority to punish a person for performing a ''partial-birth'' abortion which is necessary to save the life of a mother. In the case of *Roe v. Wade*, the Supreme Court held that the ''privacy'' interest of the Constitution limited the ability of a state to restrict a woman's ability to have an abortion during the first two trimesters, and provided that even in the third trimester a state could not restrict a woman from having an abortion that is necessary to preserve her life and health.[16] Consequently, it would appear that Congress could not pass a statute banning ''partial-birth'' abortions where such an abortion was necessary to save the life of the mother.

As the government would appear to be constitutionally required to include an exception for abortions to save the life of the mother, it can be argued that it is a required element of the government's case, and that the reasoning of *Patterson* and *Martin* does not apply. Consequently, should a court find that *Patterson* and *Martin* are distinguishable, it would appear that the government would be under an obligation to carry the burden of persuasion that a ''partial-birth'' abortion was not necessary to save the life of a mother, and that a requirement that a defendant carry such a burden would be unconstitutional.

KENNETH R. THOMAS,
Legislative Attorney, American Law Division.

FOOTNOTES

[1] 104th Cong., 1st Sess.

[2] This memorandum does not address the issue of whether the prohibition on ''partial-birth abortions'' contained in S. 939 is a violation of the right to privacy protected under the Fourteenth Amendment.

[3] S. 939, 104th Cong., 1st Sess. §2(a) & (b) provides the following:

(a) Whoever, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than two years, or both.

(b) As used in this section, the term 'partial-birth abortion' means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

[4] S. 939, 104th Cong., 1st Sess. §2(e) provides the following:

(e) It is an affirmative defense to a prosecution or a civil action under this section, which must be proved by a preponderance of the evidence, that the partial-birth abortion was performed by a physician who reasonably believed. (1) the partial-birth abortion was necessary to save the life of the woman upon whom it was performed; and

(2) no other form of abortion would suffice for that purpose.

[5] *In Re* Winship, 397 U.S. 358, 364 (1969).

[6] Mullaney v. Wilbur, 421 U.S. 684, 701 (1974).

[7] 421 U.S. at 704 (1974).

[8] 432 U.S. 197, 212–16 (1976).

[9] 432 U.S. at 207 (1976).

[10] Martin v. Ohio, 480 U.S. 228 (1996).

[11] 480 U.S. at 230 (1986).

[12] 480 U.S. at 234.

[13] 480 U.S. at 233 (''[t]he State did not excess its authority in defining the crime of murder as purposely causing the death of another with prior calculation and design''); 432 U.S. at 197 (1976) (''[b]ut in each instance of a murder conviction under the present law, New York will have proved beyond a reasonable doubt that the defendant has intentionally killed another person, an act which it is not disputed the State may constitutionally criminalize and punish'').

[14] 432 U.S. at 197 (''[i]f the State nevertheless chooses to recognize a factor that mitigates the degree of criminality or punishment, we think the State may assure itself that the fact has been established with reasonable certainty).

[15] Paul Robinson, *Criminal Law Defenses* §5(b)(3)(1984).

[16] 410 U.S. 113, 163–64 (1972).

Mr. SPECTER. Madam President, I am delighted to yield 5 minutes to the Senator from Washington.

Mrs. MURRAY. Thank you, Madam President.

Madam President, I rise in strong support of the motion offered by my colleague from Pennsylvania, Senator SPECTER, to commit S. 939 to the Judiciary Committee for a public hearing. This legislation deserves full and comprehensive hearings before we vote on it, and I am very concerned about the implications of proceeding without the benefit of a full, open committee process.

I was very disturbed by the debate on this bill in the House of Representatives; the misinformation and factual distortions put forth by the proponents of this legislation were staggering. And, now here in this Chamber, there is an effort to bring the bill before the full Senate without first going through the traditional committee process.

There is no justification for moving ahead without fully examining the consequences of this bill. I appeal to my colleagues to send this bill to committee where we can hear from the public

Footnotes at end of article.

and the experts about its impact and ramifications.

Because, make no mistake, this bill has dangerous, far-reaching, and precedent-setting implications.

Madam President, this is the first time in our Nation's history that Congress is even attempting to get involved in telling physicians what medical procedures are and are not acceptable. And this is the first time in our Nation's history that Congress is considering banning an abortion procedure. This bill directly challenges the Supreme Court ruling, Roe versus Wade. And this bill carries with it severe consequences for the women of this country whose health and lives will be compromised, and possibly even sacrificed, to further the agenda of an extreme few.

I cannot imagine the U.S. Senate would railroad this bill through without a single public hearing. To do so would be an appalling disrespect for the legislative process, and for the lives and health of the women involved.

This legislation sets a dangerous precedent—it criminalizes doctors for performing a legal, rare, and medically necessary procedure. Surely, there is not a Member of this body who could defend the notion that a bill with this intent is not worthy of a committee hearing. Surely, I am not the only Member of this Senate with questions, concerns, and reservations.

I do not want to get into the details of this bill. We have all seen the graphic photographs; we have heard the vivid and disturbing rhetoric. But, what many of us haven't seen or heard are the tragic stories of the women who have lived through the tragedy of a difficult pregnancy, or of a life-threatening complication which required them to have this procedure.

And, many of us have not had the benefit of the facts—as presented by the doctors and health professionals who can set the record straight.

I have spoken with women who had no choice but to give up a baby they desperately wanted to have. I have listened to their tragic stories. And, I have heard from doctors who are angry and offended by the misrepresentation of facts and mischaracterization of a life-saving, emotionally traumatic medical procedure.

That is what is at issue here today; we have the ability to ensure access to accurate and complete information. We need to do the right thing, and let the public and all the Members of this body have a real opportunity to look at this bill, and examine what it will mean for doctors, for women, their lives and their health.

I urge my colleagues to vote for the Specter motion to commit, so that we can have the opportunity to fully understand what this bill means for our Nation. Madam President, it is the right thing to do.

I yield my time back to the Senator from Pennsylvania.

Mr. SMITH. How much time is remaining?

The PRESIDING OFFICER. The Senator from New Hampshire has 26 minutes and 30 seconds; the other side has 25 minutes.

Mr. SMITH. In just a moment I will yield to the Senator from Ohio.

I might just ask the Senator from Washington while she is here if she wishes to respond and answer a question on my time, I am happy to have her do it.

Does the Senator from Washington support an abortion for the purpose of sex selection? If a woman wanted to have an abortion because she was having a female baby, would the Senator from Washington say that she has a right to do that?

Mrs. MURRAY. I will comment on the time of the Senator from New Hampshire and respond to the question that that is not what is being debated on this floor.

The procedure that we are debating is a medical procedure that is done at the end of a pregnancy or midterm of a pregnancy when a woman's life is at stake. That is a critical decision that we have not had the information on to make a decision at this time.

Mr. SMITH. Assume she wants to make that decision herself, which you say she has the right to do because it is a female baby, is that all right?

Mrs. MURRAY. I respond to my colleague, the legislation in front of us has to do with women making a decision because of a medical procedure that is involved, not because of sex.

Mr. SMITH. I am willing respond to the Senator from Washington back on my time. She did not answer my question, of course, which is typical in this debate. This is not a medical procedure that deals with the life of a woman. This is a medical procedure—it is a procedure that takes the life of a child.

We have had all kinds of testimony here on the Senate floor saying how one can explain to me—I have not had it explained to me yet—why preventing a fetus from being born, literally restraining the fetus from coming into the world, how that helps the life or protects the life of the mother? I am intrigued by the fact that no one will answer that question. Senator BOXER refused to answer it last night on ''Nightline,'' and we see it not answered again today on the floor.

I will, at this time, yield 5 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Madam President, I have had the opportunity to listen to this debate on the last 2 days. I will try very briefly to respond to a couple of points that have been made on the other side.

Yesterday, the senior Senator from Massachusetts very eloquently said the proponents of this bill employ terminology that is not recognized by the medical community. He said that the term ''partial-birth abortion'' is not found in medical school textbooks or in medical schools. I would say he is absolutely correct. I guess he and I come to a different conclusion, though, as to what relevance this has.

The Senator is correct. This procedure does not have an official medical name. The medical schools do not have a name for it. The medical textbooks do not have a name for it and doctors do not call it by that name. That really is exactly the point. The reason medical authorities do not have a name for it and the reason schools do not teach it is because the procedure is so inappropriate, so medically unnecessary, so bad that the medical community never had a reason to name it.

The doctors, the healers, will not even give it a name. They will not put it in their textbooks. They will not described it in their medical journals. It is so bad, in fact, that in September the American Medical Association, council on legislation, described the procedure as ''basically repulsive,'' and voted unanimously this procedure was ''not a recognized medical technique.'' That is why the procedure should clearly be banned.

Let me turn to another point that has been brought up by my friend and colleague from Maine as well as my friend and colleague from Michigan, that has to do with the affirmative defense issue.

It was stated earlier today by my colleague from Maine that having the affirmative defense in this bill creates an enormous burden on the defense. I respectfully disagree. It does not create an enormous burden. In fact, we have over 30 examples in the code, in the Federal Code, where the affirmative defense is used.

I know, as a former prosecutor at the State level and county level, it is used in virtually every State in the Union. The burden it places on the defense is a very, very low burden. It says, basically, in those instances where the defense has a unique capability of knowing and understanding the facts of what this defense would be, it is peculiarly in the knowledge of that person, that they then, after the prosecution has proven everything beyond a reasonable doubt, they have to prove by a preponderance of the evidence, the defendant does, which basically means it is more likely than not, that the procedure was in fact reasonable.

If you do not do it this way and if you place it into the statute, do not have an affirmative defense but put the exception in the statute, what it means is the prosecution would have to prove beyond a reasonable doubt that the partial-birth abortion was not necessary to save the life of the mother and would have to prove beyond a reasonable doubt that it was not true that no other procedure would suffice for that purpose. So this is, in the law, a commonly accepted way of dealing with this particular issue.

Let me conclude, if I could, by commenting on some of the debate I have heard. It seems to me the debate on the other side of the issue has really been

stretching, really been reaching to try to justify this procedure. Maybe a more fair way of describing their argument is not that they were trying to justify the procedure—because I really did not hear very much of that, if any of that—but rather that we just should not talk about it, we just should not deal with it.

My reaction to that, to my pro-choice friends, is simply this. Even if you are pro-choice, is there some limit to what a civilized society will accept? Is there not something that you view as so bad, so repulsive that in limited cases we say no, you simply cannot do this?

Let me just say that we spent a lot of time on this floor. I think my colleague from New Hampshire did a great job of stripping away the rhetoric and getting to the facts of this procedure. I would like to do the same thing about this motion to commit. Let no one who comes on this floor in the next hour and votes have any misconception about what this vote is about. This is not a procedural vote. It may be technically a procedural vote but what it really is, is a vote on the merits. This is the vote. This is the defining moment. As we vote, I would simply ask my colleagues to recall—particularly my colleagues on the other side of the aisle—one of my favorite quotes.

Madam President, I ask unanimous consent for 1 additional minute?

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

The Senator is recognized for 1 additional minute.

Mr. DEWINE. Hubert Humphrey, in 1977, defined the proper role of Government. This is what he said. I think, when you listen to this, it summarizes very well what this debate is all about.

> It was once said that the moral test of government is how that government treats those who are in the dawn of life, those who are in the twilight of life, and those who are in the shadow of life—the sick, the needy, the handicapped.

That is what this debate and vote is all about. This is a vote that we will be casting on the merits. It is not just a procedural vote. This vote will determine whether or not this bill moves forward or does not.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Madam President, I agree totally with the Senator from Ohio, there should be no misconception what this vote is about. And it is not to eliminate the bill. It is to send it to committee where there has been no hearing, and to do so for 9 days plus another 10-day recess. That is what the vote is about.

I agree totally with the Senator from Ohio about having a civilized society. What we are trying to do is to figure out what is an appropriate course in terms of humanitarian considerations on this matter. There was a colloquy earlier today about whether there was an exception for the life of the mother. I submit that the answer given by the Senator from New Hampshire to the question by the Senator from Nebraska was not correct. A number of Senators have raised this with me in the interim.

I have sent for the statute which shows how you make it an exception. In the current bill there is not an exception for the life of the mother. It is an affirmative defense, which is totally different. The way you provide an exception for the life of the mother is the way it was done in Public Law 103–333, on September 30, 1994, as follows:

> None of the funds appropriated under this Act shall be expended for any abortion except [then some irrelevancies] that such procedure is necessary to save the life of the mother * * * That is the way to provide an exception on the life of the mother, not by having it as an affirmative defense.

Before yielding to the distinguished Senator from Kansas, Madam President, I inquire as to how much time remains?

The PRESIDING OFFICER. The Senator from Pennsylvania has 23 minutes.

Mr. SPECTER. How much time would the Senator from Kansas like?

Mrs. KASSEBAUM. Madam President, if I could have 4 minutes.

Mr. SPECTER. So granted.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 4 minutes.

Mrs. KASSEBAUM. Madam President, I heard earlier today on the floor that those of us who would support the amendment to commit to the Judiciary Committee are not willing to take a stand. I would like to just say that I do not believe that is the case. This has always been a very difficult and troubling issue. But most of us have taken a stand. For myself, I have always believed abortion should be legal. I also think there should be restrictions. But I have always been really very concerned when the life of the mother and the life and health of the mother are at stake.

In Kansas, we have a law which bans third trimester abortions except for the health and the life of the mother. I do not have a problem with that personally, and I support the Kansas law, but there is an exception for the life and the health of the mother. Those are rare cases, and they should be rare cases.

It was debated here earlier between Senator EXON and Senator SMITH about whether there really is an exception for the life of the mother. I would suggest there is not an exception for the life of the mother. There is an affirmative defense after the doctor has been charged with criminal action. The burden of proof then would be on the doctor, as I understand it, at that point. So there is not an exception. There is merely a matter of legal procedure with affirmative defense.

I believe that is an important distinction, Madam President, because I think we here in the Congress cannot get into trying to determine medical procedures, no matter how tragic it appears. That should be left to the medical community, and with the consultation of the mother, the family, and the doctor.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. SMITH. Madam President, I yield 5 minutes to the distinguished Senator from Texas, Senator GRAMM.

The PRESIDING OFFICER. The distinguished Senator from Texas, Senator GRAMM.

Mr. GRAMM. Madam President, let me thank you for the recognition.

I want to begin by congratulating our dear colleague, the senior Senator from New Hampshire. I want to thank him for his leadership on this issue.

I first spoke on this issue when I came over to the floor of the Senate to speak on another issue. The distinguished Senator from New Hampshire was talking about partial-birth abortions. He was explaining how the process worked in its total gruesome details, and another Senator rose and talked about how offended that Senator was by the description that Senator SMITH had given. I felt compelled at that point to make what I think is the relevant point. If we are offended by the description of this brutal, violent act that the Senator's bill seeks to stop in America, should we not also be offended that the act is occurring? If the description of the act is offensive to us, then the fact that it is happening to living babies should be doubly offensive to us.

I think this is a very fundamental issue, Madam President. We have all heard the distinguished Senator from New Hampshire describe the partial-birth abortion, but it really comes down to this: This is a baby that is several inches away from the protection of the law. This is a baby that is in the process of being delivered. Only its head remains in the birth canal. It is several inches away from being protected by the law and by the Constitution as currently interpreted by the courts. And at this very moment, when the decision is life or death, this abortion process occurs which terminates the life of the child and crushes its skull. This is a process that I believe is offensive to any civilized society.

So the issue we are debating here, it seems to me, can be reduced down to a very simple issue. This is an act that any civilized society should find offensive. Even those who support allowing this to occur are offended by its description.

I believe America and the civilized world should be offended by the fact that it is occurring in our country. I think no civilized society can condone this action. I think it is very clear that if this bill is sent to the committee, it is going to be killed. We have an opportunity, since the House has acted by an overwhelming vote, to adopt this bill and to send it to the President.

I want to urge my colleagues to vote against the effort to send this bill to a

committee where we will not see it again, where we will not have the opportunity to vote on it again, and where the righteous indignation of a civilized people will be thwarted because we do not take action to stop what we know is wrong and unacceptable in a civilized society.

I want to conclude, Madam President, by again congratulating Senator SMITH. I think it took great political courage to raise this issue. I think it is always very difficult when you are talking about the kind of act that we are debating here today. It is offensive. It is hard to talk about. I do not feel comfortable talking about it. But most importantly, I do not feel comfortable about the fact that it is happening in the United States of America. That is the point.

If it is hard for us to talk about in the environment of the greatest deliberative body in the history of the world, it seems to me that it ought to be hard for us to continue to condone. I do not condone it. I want it to stop. And that is why I am going to vote for the Smith bill. That is why I am going to vote against this motion to kill it.

I believe this bill should be passed, and we, as a civilized nation, should say no to these partial-birth abortions.

Thank you, Madam President.

Mr. SPECTER. Madam President, if the Senator from California seeks recognition, she may have 5 minutes of our time. But first let me inquire how much time remains.

The PRESIDING OFFICER. The Senator has 20 minutes and 40 seconds.

Mr. SPECTER. I yield 5 minutes to the Senator.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Thank you very much, Madam President. I want to thank the Senator from Pennsylvania for offering us this very sensible amendment.

We have never in this Senate voted to outlaw a medical procedure. We have never, never voted to outlaw a medical procedure. When I was debating this issue with the Senator from New Hampshire, yes, we voted to outlaw the mutilation of the genitals of a girl. We voted a sense of the Senate. I was glad to do that. That is a battery; that is not a life-saving procedure. We have never voted to ban a life-saving procedure. And if that is what we are going to do, we are going to become physicians, and we are going to go down that slope.

We ought to have a hearing and have people who know what they are talking about appear before the Judiciary Committee, which is very fairly divided between people who vote pro-choice and people who vote anti-choice.

So what is before us is a bill to outlaw a medical procedure that is rare, that is used in the most tragic circumstances. It is not used for sex selection.

Let me repeat that. It is not used for sex selection. It is not used as a whim. It is not used because a woman at the end of her pregnancy said, ''You know, maybe I shouldn't have done that.''

It is a dangerous procedure, a late-term abortion. It is a rare thing that happens. To make it look like it is a whim is a great disservice to the families of this country, deeply religious families often, that are faced with these terrible circumstances.

In Roe v. Wade, the judges in their wisdom knew that late-term abortion was a different situation, and so they gave the States full authority to regulate late-term abortions. And what are we doing? We are stepping right in, big brother. And of course, it was most of my friends on the other side who said let the States decide everything else. They even voted to repeal nursing home standards, Federal nursing home standards because the States know better. But now they are saying we are going to step over all of these State laws and get into the operating room and tell a doctor that he or she cannot use an emergency procedure.

There is no exception in this bill for life of the mother. I tell my friends to turn to page 3. We have made exception for life of the mother before in Medicaid funding. This is an affirmative defense. In other words, you arrest the doctor, charge him if he uses the procedure, and then you tell him:

> Oh, yes, Doctor. By the way, when you are in court, you can use as a defense the fact that this was your only choice, and you have to show a preponderance of evidence and that there was no other procedure.

Very nice. Very nice way to treat someone who has just saved a life. My friend from Ohio quoted Hubert Humphrey. I love Hubert Humphrey. I just got a Hubert Humphrey award. I am so proud of that. The shadow of life, we must think of someone in the shadow of life, and a woman whose life is threatened is in the shadow of life. Whether that call comes in to any Senator here, I say to my friends, think about it, that it is your daughter. I am a grandma, and we have a lot of grandmas and grandpas here. It is your baby; it is your daughter who is going to have a child, and the doctor calls in the middle of the night and says, ''There is a horrible emergency. If I do not end this pregnancy, you will lose your child''—your baby.

I got a call yesterday during the debate from a woman from Santa Barbara who said, ''Remind these Senators that I have a baby''—yes, she is 36 and she got pregnant—''she is always going to be my baby, and we had to make that horrible choice.''

People like Viki Wilson, a registered nurse, a practicing Catholic, and her husband, Bill, a physician, were the parents of two children and planning a third. In the 8th month of pregnancy, they found out the baby's brain was growing outside the skull. The brain was twice the size of her actual head and lodged in Viki's pelvis.

May I have unanimous consent for 2 additional minutes off Senator SPECTER's time.

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

Mrs. BOXER. The brain was twice the size of her actual head and lodged in Viki's pelvis, causing pressure on what little brain the baby had. If Viki had carried Abigail to term—yes, they had a name for the baby—Viki's cervix could not have expelled Abigail. Viki's cervix would have torn or ruptured causing massive hemorrhages and possible infection, and, yes, Viki would have been in the shadow of life. And if Viki was your daughter and the call came in, you would say to the doctor, ''Did you do everything? Are you sure? Did you check? Did you doublecheck? Is there another way? Can we save the baby? Can we do an operation to save the baby?'' And if the answer came back no, I believe in my heart, subject to anyone who wants to say anything different, that, yes, you, as a United States Senator, would say, ''By the grace of God, save my child.''

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mrs. BOXER. We should support the Senator from Pennsylvania. He is rational about this. Let us bring forward the people who know about this and then let us vote.

I thank my friend.

Mr. PELL. Mr. President, in recent weeks, there has been much press attention given to a heretofore obscure procedure used to terminate late-term pregnancies. With this attention has come substantial public distress and alarm regarding the nature of this procedure, a discomfort that indeed, I share and understand. I must certainly agree that the procedure, as described by the proponents of the pending legislation, is repugnant on its face and one that is hopefully resorted to in only the rarest circumstances.

But today as the Senate considers legislation to ban the use of this procedure, we must make sure that our deliberations are thoughtful, reasoned, and considered.

It is very unfortunate that we are here debating this bill without having the benefit of the normal, established procedure of committee referral, hearings, and review from which a comprehensive record would have evolved detailing the pros and cons of the many complex and controversial issues at stake. This is particularly troubling because the issue at hand is so divisive and charged with emotion that, absent a thorough airing of the issues involved, it would be all too easy to retreat to a position on doctrinaire certitude and defiantly declare normal victory regardless of whether or not it is appropriate public policy.

The Senate has a long and established tradition of careful deliberation precisely because of its rules and procedures for legislating such difficult issues with thorough and adequate review. It is only rarely that we circumvent those procedures and then

only when the matters are noncontroversial and relatively noncomplex.

Here, the bill was introduced and not referred to any Senate committee. Consequently, no hearings have been held in the Senate despite a myriad of questions that need to be answered about the bill's provisions. These include: What are the alternatives? What are the ramifications for other abortion procedures as a consequence of the current vague definitions in the bill? Is it wise or desirable to create a Federal criminal statute governing medical procedures? I believe that it would be premature to attempt to come to a conclusion about whether to support or oppose this legislation without having the answers to these and other troubling questions.

Therefore, I intend to support the motion to refer this legislation to the Judiciary Committee where I hope it will be thoroughly reviewed and made the subject of public hearings to discuss the issues involved. At that point, the Senate will have a much more adequate record than it does now upon which it can make the reasoned, careful decision that is incumbent upon us as elected representatives to make.

Mr. KERRY. Mr. President, the U.S. Government is one of the least intrusive governments in the world. We pay the lowest taxes of any industrialized country. We have a constitution that guarantees an extensive list of freedoms upon which the government cannot infringe. Many believe that one of the causes of the 1994 election results was a desire by the public to minimize government's role in the everyday lives of its citizens. Yet Senators have brought a bill to the floor that would require women to risk their lives.

Perhaps the sponsors of this bill do not understand the issue at hand. The Supreme Court has ruled that abortions are legal. It is completely legal for a woman who wants to have an abortion to obtain the services of a doctor who is willing to provide an abortion. Now we as a legislature are going to start decreeing to both pregnant women and their physicians which procedures a woman can choose? This is not our role. We are not obstetricians, and we should not insert ourselves in this picture.

Yet proponents of this bill come to the floor to introduce legislation that would force women whose lives are most at danger, whose fetuses are usually malformed in some way, to either endure the painful and life-threatening procedure of birth or to endure another form of abortion that may be more dangerous or painful. This is tantamount to torture and I am appalled that we are standing here debating this issue.

But I know why we are here. In fact, every Member of this body knows why we are here. We are here because abortion opponents are exploiting this painful, rare surgical procedure to try to convince the public that all abortions are similar to this procedure.

Mr. President, any surgical procedure is disgusting if described to a layman. I could stand here and describe any number or legal medical procedures and probably convince someone out there that the procedure sounds terrible and wrong. But describing and discouraging a legal medical procedure is not my job. I could also stand here and describe the horrible details of a birth of a malformed fetus that kills both the fetus and the mother and does so in the worst and most chilling fashion. But unlike others who have held this floor, I see no benefit to scare tactics.

Mr. President, proponents of this bill hope that this bill and the proceedings surrounding it will further stigmatize abortion and humiliate women who have had or who may someday have legal abortions. They also hope to chip away one piece at a time the constitutional right to terminate a pregnancy. Theirs is an unbecoming effort.

I believe this effort will fail. I believe that the public knows more and is more perceptive than this bill's proponents think. I urge my colleagues to stand in opposition to this bill. Send it to the Judiciary Committee when it can be properly analyzed.

Mr. CRAIG. Mr. President, there are very few issues that provoke the kind of passionate debate abortion policy continues to provoke. It's unfortunate the debate has deteriorated into pro-choice and pro-life labels because, in reality, it is a hugely significant conflict over when life begins and what life comprises. That's perhaps why it divides people along unpredictable lines; even in my State of Idaho, people of like political beliefs can take different positions on this issue.

I mention this because today we are dealing with an aspect of the abortion issue that even causes divisions among those who generally find abortion acceptable. What we saw in the House of Representatives just a few days ago demonstrated this. The overwhelming vote in support of the bill included many who usually identify themselves as pro-choice.

Let me repeat that: Even those who accept abortion found this particular procedure so objectionable they voted in favor of banning it.

A ban is an extraordinary step for Congress to take—but then, this is an extreme and hideous abortion procedure. We've heard it described in detail; we've seen diagrams that those performing this procedure have certified to be accurate. And Mr. President, I have seen strong men and women look away, to avoid dealing with the reality of this procedure.

I urge any of my colleagues who have reservations about this bill to take the time to understand exactly what's involved. Then you will understand why even abortion proponents draw the line here.

To put it simply, we're talking about causing and then stopping a delivery, to kill a baby mere inches and seconds before he or she is protected by our laws as a living human being.

Some would like to defend this procedure by claiming it is only used when the life of the mother is at stake or when the baby is shown to have genetic deformities. However, the testimony from those who perform these late-term abortions contradicts these arguments. Even Dr. Martin Haskell, who originated the technique, estimated as many as 80 percent of the procedures he performed were elective, not for genetic or life-saving reasons.

It's important to note that this bill contains an exception for situations in which the life of the mother truly is at stake and no other procedure can save it. Those who are honestly worried about this issue should be reassured. But it's also important to note that this procedure is hardly risk-free to the mother; medical professionals agree it poses dangers to both the lives and the future reproductive health of the women involved.

Mr. President, we all are thankful for today's life-saving advances in medical technology. It's appalling to think this particular procedure twists those advances in a legalistic game, with a human life in the balance.

In closing, I urge all my colleagues not to let political labels blind them to the facts. This radical, barbaric procedure goes much too far. Let's draw the line here, now, and pass the Partial-Birth Abortion Ban Act.

Mr. ABRAHAM. Mr. President, during the debate on the partial-birth abortion ban, opponents have made claims about this procedure and this legislation that simply are not supported by the facts. I ask unanimous consent that a fact sheet by the National Right to Life entitled ''Partial-Birth Abortions: A Look Behind the Misinformation'' and a letter from Barbara Bolsen of the American Medical News along with the accompanying material be printed in the RECORD.

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

PARTIAL-BIRTH ABORTIONS: A LOOK BEHIND THE MISINFORMATION

(Congress is currently considering legislation that would place a national ban on the partial-birth abortion method (H.R. 1833, S. 939). The bill was approved by the House Judiciary Committee on July 18. Pro-abortion lobbying groups have made claims regarding this abortion method, and about the legislation, that are contradicted by substantial evidence. Yet, some of these erroneous claims have been uncritically adopted by various editorial commentators and reporters. This factsheet addresses some of the major disputed issues. All documents quoted in this factsheet may be obtained from the National Right to Life Committee, Federal Legislative Office, (202) 626–8820)

WHAT TYPE OF ABORTION IS BANNED BY H.R. 1833/S. 939?

H.R. 1833 is sponsored by Congressman Charles Canady (R–Fl.), with 150 House cosponsors. The companion bill, S. 939, is sponsored by Senator Bob Smith (R–NH). The

purpose of the legislation is to ban those abortions that are performed by (1) partially delivering a living fetus into the vagina, and then (2) killing him or her. Under the bill, this method of killing a human fetus/baby could only be used if there was no other way to save a woman's life.

The bill is aimed at the basic method described and practiced by Dr. Martin Haskell of Dayton, Ohio, and Dr. James McMahon of Los Angeles—and by some other abortionists who have not chosen to widely publicize the fact.

The Los Angeles Times accurately described this abortion method in a June 16 news story: ''The procedure requires a physician to extract a fetus, feet first, from the womb and through the birth canal until all but its head is exposed. Then the tips of surgical scissors are thrust into the base of the fetus' skull, and a suction catheter is inserted through the opening and the brain is removed.''

In 1992, Dr. Haskell wrote a paper on this abortion method, which was sent out to members of the National Abortion Federation (those being abortionists and abortion clinics). The paper (''Dilation and Extraction for Late Second Trimester Abortion'') described in detail, step-by-step, how to perform the procedure, which Dr. Haskell said that he employed beginning at 20 weeks—4½ months in layman's parlance—through 26 weeks into pregnancy. (Dr. McMahon uses essentially the same procedure to a much later point—in some cases, to 40 weeks, which is full term.) [1]

Dr. Haskell's ''how-to-do-it'' paper was obtained and publicized by the National Right to Life Committee. The National Abortion Federation (NAF) quickly claimed that NRLC was making distorted claims about the procedure. During the course of investigating this controversy, the American Medical News—the official newspaper of the American Medical Association—in 1993 conducted tape-recorded interviews with both Dr. McMahon and Dr. Haskell. These interviews originally were quoted in an article titled ''Shock-tactic ads target late-term abortion procedure,'' which appeared in the July 5, 1993 edition of American Medical News. The American Medical News article is often quoted by supporters of the proposed legislation; the article is cited several times in this factsheet.

Recently, for the first time, the National Abortion Federation and Dr. Haskell attempted to disavow some of the most revealing quotes from the article. In response, on July 11, 1995, American Medical News released transcripts of the portions of a tape-recorded 1993 interview to prove that Dr. Haskell was indeed quoted accurately on certain key points (e.g., that ''80%'' of the partial-birth abortions he performs are ''purely elective''), and that the fetuses are usually alive when he performs the procedure on them.

ACTIONS BY THE AMERICAN MEDICAL ASSOCIATION

On September 23, the national Council on Legislation of the American Medical Association (AMA) voted unanimously to recommend AMA endorsement of the Partial-Birth Abortion Ban Act (H.R. 1833). (Congress Daily, Oct. 10.) The Council on Legislation is made up of about 12 physicians of different specialities, who are charged with studying proposed federal legislation with respect to its impact on the practice of medicine. According to an October 23 letter from AMA headquarters in Chicago, ''The AMA Board of Trustees has determined that it will not take a position on H.R. 1833 at this time.''

THE CASE OF VIKI AND ABIGAIL WILSON

Critics of the bill have relied heavily on the personal account of Viki Wilson, whose unborn daughter Abigail died at the hands of Dr. McMahon during the ninth month of the pregnancy. Abigail's brain had developed partly outside of her skull. Setting aside for the moment all that might be said about the ethics of what was done to Abigail, the procedure utilized in this case, if performed as described in published accounts quoting Mrs. Wilson, would not be banned by the Partial-Birth Abortion Ban Act. That is because the baby's life was ended before the baby was moved into the birth canal (according to Mrs. Wilson); under the bill, this is not a ''partial-birth abortion.'' Moreover, Mrs. Wilson has asserted that continuing the pregnancy ''possibly'' would have endangered her life. H.R. 1833 allows a physician to utilize the defined procedure on the basis of a reasonable belief that no alternative medical intervention would save the mother's life.

HOW MANY PARTIAL-BIRTH ABORTIONS ARE PERFORMED?

Dr. Haskell said in his 1992 paper that he begins using the procedure at 20 weeks (4½ months). There are 13,000 abortions annually after 4½ months, according to the Alan Guttmacher Institute (New York Times, July 5, 1995), which should be regarded as a conservative estimate. The National Abortion Federation now says that Drs. McMahon and Haskell between them perform about 450 such abortions every year. [2]

Both practitioners have been enthusiastic advocates for the method; Dr. Haskell's paper explains in detail how to perform it, and Dr. McMahon is director of abortion training at a major teaching hospital. There is no way to know how many other abortionists are now using the method, but without writing papers or giving interviews on the subject as Drs. Haskell and McMahon have done. The National Abortion Federation acknowledges that the method is probably employed at times by other practitioners, and the 1993 American Medical News report spoke of ''a handful of other doctors'' employing the method. In short, there is insufficient information on which to base a reliable estimate of how many partial-birth abortions are performed in the United States.

Even with respect to Drs. Haskell and McMahon alone, the figure of ''450'' may be low. Dr. McMahon has circulated literature in which he refers to having performed a ''series'' of ''more than 2,000'' abortions by the method. However, in the article by Karen Tumulty that appeared in the January 7, 1990 issue of Los Angeles Time Magazine, Dr. McMahon was quoted as saying, ''Frankly, I don't think I was any good at all until I had done 3,000 or 4,000,'' referring to abortions ''in later pregnancies.'' That article also reported that Dr. McMahon performs 400 ''later abortions'' a year. In literature he has circulated seeking abortion referrals, Dr. McMahon strongly advocates the partial-birth method for later abortions, so presumably most of his late abortions are being done using this method.

As for Dr. Haskell, he said in his 1992 paper that he had performed ''over 700'' such abortions.

His wife recently told an Ohio paper that he performs ''less than 200'' a year.

Defenders of partial-birth abortions often stress that they are ''a small percentage'' of all abortions. Yet, for each individual, unique human being who ends up at the pointed end of the surgical scissors, each such procedure is a 100 percent proposition.

SHOULD THE PROCEDURE BE CALLED THE ''PARTIAL-BIRTH ABORTION METHOD,'' OR BY SOME OTHER TERM?

In his 1992 paper, Dr. Haskell referred to the method as ''dilation and extraction'' or ''D&X''—noting that he ''coined the term.'' However, that nomenclature is rejected by Dr. McMahon, who refers to the method as ''intact dilation and evacuation'' and (in an interview in the Los Angeles Times Magazine in 1990) as ''intrauterine cranial decompression.'' There are also some variations in the procedure as performed by the two doctors. Dr. Haskell's 1992 paper refers to Dr. McMahon's approach as ''a conceptually similar technique.''

Some critics of the bill, such as the National Abortion Federation (a trade association of abortion providers) complain that the term ''partial-birth abortion'' is ''a non-medical term,'' is ''inaccurate,'' and is ''offensive and upsetting.'' They also insist that it is ''vague.'' It is quite evident, however, that NAF's problem with the term ''partial-birth abortion'' is not that it is too vague, but precisely that it is much too explicit. They prefer euphemistic pseudo-medical jargon that conveys nothing substantive regarding the nature of the procedure.

However, none of the terms that the abortion practitioners prefer would be workable as a legal definition. The bill creates a legal definition of ''partial-birth abortion,'' and would ban any variation of that method—no matter what new idiosyncratic name any abortionist may invent to refer to it—so long as it is ''an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.''

Congress establishes such legal definitions all the time—often, in ways not entirely pleasing to the industries or practices being regulated. For example, by act of Congress, firearms that incorporate certain specified features are now legally defined as ''assault weapons,'' even though manufacturers, gunsmiths, and users refer to these same firearms in other fashions. Likewise, if H.R. 1833/S. 939 is enacted, abortions that involve partial vaginal delivery of a live baby, followed by killing, will be legally defined as ''partial-birth abortions,'' even if apologists for late-term abortions would continue to prefer a term that is not so explicitly descriptive.

Beyond the legal point, the term ''partial-birth abortion'' is accurate and in no way misleading. In explaining how to perform the procedure in his 1992 instruction paper, Dr. Martin Haskell wrote: ''With a lower [fetal] extremity in the vagina, the surgeon uses his fingers *to deliver* the opposite lower extremity, then the torso, the shoulders and the upper extremities.'' [Haskell paper at page 30, emphasis added]

Dr. J. Courtland Robinson, a self-described ''abortionist'' who testified on behalf of the National Abortion Federation at a June 15 hearing before the House Judiciary Constitution Subcommittee, said, ''Never in my career have I heard a physician who provides abortions refer to any technique as a 'partial-birth abortion.'\'' But Dr. Robinson's objection seems a mere quibble in light of his later testimony: ''In our tradition we have other terms. I am surprised the word 'partial-extraction' was not used. This is a standard term in obstetrics that we use for delivering. That [term] could have been used.''

Professor Watson Bowes of University of North Carolina at Chapel Hill School of Medicine, co-editor of the Obstetrical and Gynecological Survey and a leading authority on maternal and fetal medicine, wrote in a letter dated July 11, 1995: ''The term 'partial-

birth abortion' is accurate as applied to the procedure described by Dr. Martin Haskell in his 1992 paper entitled 'Dilation and Extraction for Late Second Trimester Abortion,' distributed by the National Abortion Federation. . . . There is no standard medical term for this method. The method, as described by Dr. Haskell in his paper, involves dilation of the uterine cervix followed by breech delivery of the fetus up to the point at which only the head of the fetus remains undelivered. At this point surgical scissors are inserted into the brain through the base of the skull, after which a suction catheter is inserted to remove the brain of the fetus. This results in collapse of the fetal skull to facilitate delivery of the fetus. From this description there is nothing misleading about describing this procedure as a 'partial-birth abortion,' because in most of the cases the fetus is partially born while alive and then dies as a direct result of the procedure . . . ''

IN WHAT CIRCUMSTANCES ARE PARTIAL-BIRTH ABORTIONS PERFORMED?

Misinformation: The New York Times (June 19, 1995): ''[H.R. 1833/S. 939 is] a bill to outlaw one of the rarest types of abortions—a highly specialized procedure that is used in the latter stages of pregnancy to abort fetuses with severe abnormalities or no chance of surviving long after birth.'' National Public Radio Morning Edition (July 14, 1995): ''Anti-abortion groups call it partial-birth abortions . . . Doctors resort to this rare procedure only for late-term abortions if the fetuses have severe abnormalities and no chance of survival.''

Critique: Alarmed by the progress of H.R. 1833 in Congress, lobbying groups representing the abortion industry and pro-abortion advocacy groups have recently claimed that the partial-birth abortion method is used mainly in rare circumstances involving danger to the life of the mother or very grave disorders of the fetus. Many editorial writers and columnists (e.g., Ellen Goodman, Richard Cohen) have uncritically embraced such claims. So have some reporters, such as those quoted above. Indeed, the NPR assertion that the procedure is used ''only . . . if fetuses have severe abnormalities and no chance of survival'' is an even more egregiously erroneous statement than the claims made by the abortion-clinic lobby itself.

In truth, there is ample documentation to establish that many—indeed, most—partial-birth abortions do not involve ''severe abnormalities and no chance of survival'' or danger to the life of the mother.

In 1992, after NRLC's publicizing of Dr. Haskell's paper engendered considerable controversy, the American Medical News—the official newspaper of the AMA—conducted a tape-recorded interview with Dr. Haskell, in which he said: ''In my particular case, probably 20% [of this procedure] are for genetic reasons. And the other 80% are purely elective.''

This single statement from Dr. Haskell's own lips shreds the most widely disseminated piece of disinformation regarding partial-birth abortions. But there is much more.

Dr. James McMahon—who has performed at least 2,000 of these procedures—told American Medical News that he also uses the method to perform what he calls ''elective'' abortions up to 26 weeks (six months). Moreover, after the 26-week point, Dr. McMahon said, he uses the method to perform ''non-elective'' abortions (all the way to 40 weeks, which is full term). In materials provided in June to the House Judiciary Constitution Subcommittee, Dr. McMahon revealed that his definition of ''non-elective'' is extremely expansive. For example, he listed ''depression'' as the largest single ''maternal indication'' for such so-called ''non-elective'' abortions.

Dr. McMahon's materials also show that he uses the method to destroy ''flawed fetuses,'' as he calls them. These include unborn humans with a wide variety of disorders, including conditions compatible with a long life with or without disability (e.g., cleft palate, spina bifida, Down syndrome). True, some of the babies have more profound disorders that will result in death soon after birth. But these unfortunate members of the human family deserve compassion and the best comfort-care that medical science can offer—not a scissors in the back of the head. In some such situations there are good medical reasons to deliver such a child early, after which natural death will follow quickly.

After conducting interviews with Dr. McMahon, reporter Karen Tumulty wrote in the Los Angeles Times Magazine (January 7, 1990): ''If there is any other single factor that inflates the number of late abortions, it is youth. Often, teen-agers do not recognize the first signs of pregnancy. Just as frequently, they put off telling anyone as long as they can.''

It is also noteworthy that when NRLC originally publicized the partial-birth abortion procedure in 1993, the then-executive director of the National Abortion Federation (NAF) distributed an internal memorandum to the members of that organization which acknowledged that such abortions are performed for ''many reasons'': ''There are many reasons why women have late abortions: life endangerment, fetal indications, *lack of money or health insurance, social-psychological crises, lack of knowledge about human reproduction, etc.*'' [emphasis added]

Likewise, a June 12, 1995 letter from NAF to members of the House of Representatives noted that late abortions are sought by, among others, ''very young teenagers . . . who have not recognized the signs of their pregnancies until too late,'' and by ''women in poverty, who have tried desperately to act responsibly and to end an unplanned pregnancy in the early stages, only to face insurmountable financial barrier.''

DOES THE BILL MAKE ALLOWANCE FOR JEOPARDY TO THE LIFE OF THE MOTHER?

The bill contains a provision under which a doctor could utilize the partial-birth abortion method if no other medical procedure would suffice to save the mother's life. Eminent medical authorities, including Prof. Watson Bowes of the University of North Carolina at Chapel Hill and Dr. Pamela Smith, head of the obstetrics teaching program at Mt. Sinai Hospital in Chicago, have said that no such case would ever arise—nevertheless, the bill makes allowance for such a circumstance. In a letter to Congressman Charles Canady (R-Fl.), prime sponsor of HR 1833, Prof. Bowes said: ''Critics of your bill who say that this legislation will prevent doctors from performing certain procedures which are standard of care, such as cephalocentesis (removal of fluid from the enlarged head of a fetus with most severe form of hydrocephalus) are mistaken. This procedure is not intended to kill the fetus, and, in fact, is usually associated with the birth of a live infant . . . [Also,] the technique of the partial-birth abortion could be used to remove a fetus that had died in utero of natural causes or accident. Such a procedure would not be covered by the definition in your bill, because it would not involve partially delivering a live fetus and then killing it.''

ARE THE DRAWINGS OF THE PARTIAL-BIRTH ABORTION METHOD CIRCULATED BY NRLC ACCURATE, OR ARE THEY MISLEADING?

Misinformation: On June 12, the National Abortion Federation—an association of abortion providers—sent a letter to House members in which NAF claimed—on the authority of Dr. J. Courtland Robinson of Johns Hopkins Medical School—that the drawings of the partial-birth abortion procedure distributed by Congressman Canady in a letter to House members were ''highly imaginative'' and ''misleading.'' These drawings had earlier been distributed by the National Right to Life Committee.

Critique: Three days after the mailing of the letter quoted above, Dr. Robinson testified before the House Judiciary Constitution Subcommittee, representing the National Abortion Federation. However, under questioning from subcommittee chairman Rep. Charles Canady, Dr. Robinson admitted he had not to that day even read Dr. Martin Haskell's unique 1992 paper describing how to perform the procedure. Questioned by Mr. Canady about the drawings—which were displayed in poster size next to the witness table—Dr. Robinson agreed that they were ''technically accurate,'' and added: ''That is exactly probably what is occurring at the hands of the two physicians involved.''

Moreover, American Medical News (July 5, 1993) reported: ''Dr. Haskell said the drawings were accurate 'from a technical point of view.' But he took issue with the implication that the fetuses were 'aware and resisting.'

Professor Watson Bowes of the University of North Carolina at Chapel Hill, wrote in a letter to Congressman Canady: ''Having read Dr. Haskell's paper, I can assure you that these drawings accurately represent the procedure described therein. Furthermore, Dr. Haskell is reported as saying that the illustrations were accurate 'from a technical point of view.' Firsthand renditions by a professional medical illustrator, or photographs or a video recording of the procedure would no doubt be more vivid, but not necessarily more instructive for a non-medical person who is trying to understand how the procedure is performed.''

IS THE BABY ALREADY DEAD BEFORE BEING PULLED INTO THE BIRTH CANAL DURING THE PROCEDURE?

In the partial-birth abortion method, a woman visits the abortion clinic on three successive days. On the first two days, her cervix (the opening to the uterus) is mechanically dilated with materials called laminaria. The baby is removed on the third day. American Medical News reported in 1993, after conducting interviews with Drs. Haskell and McMahon, that the doctors ''told AM News that the majority of fetuses aborted this way are alive until the end of the procedure.''

Recently, after introduction of the proposed federal ban, Dr. Haskell and NAF for the first time disputed this and other revealing quotes in the American Medical News story. In response, the editor of American Medical News sent a letter to the Judiciary Committee, dated July 11, stating: ''AM News stands behind the accuracy of the report. . . . We have full documentation of these interviews, including tape recordings and transcripts.'' She also released the transcript of the tape recording of the pertinent portions of the interview with Dr. Haskell. The transcript contains the following exchange:

American Medical News. Let's talk first about whether or not the fetus is dead beforehand.

Dr. HASKELL. No it's not. No, it's really not. A percentage are for various numbers of reasons. Some just because of the stress—intrauterine stress during, you know, the two days that the cervix is being dilated [to permit extraction of the fetus]. Sometimes the membranes rupture and it takes a very small superficial infection to kill a fetus in utero when the membranes are broken. And

so in my case, I would think probably about a third of those are definitely are [sic] dead before I actually start to remove the fetus. And probably the other two-thirds are not.

In another interview, quoted in the Dec. 10, 1989 Dayton News, Dr. Haskell again conveyed that the scissors thrust is usually the lethal act: ''When I do the instrumentation on the skull * * * it destroys the brain tissue sufficiently so that even if it (the fetus) falls out at that point, it's definitely not alive, Dr. Haskell said.''

On July 9, 1995, Brenda Pratt Shafer, R.N., sent a letter Congressman Tony Hall (D-Ohio), in which she related her experience as a nurse whose agency assigned her to work at Dr. Haskell's Dayton abortion clinic in 1993. Nurse Shafer said she had no difficulty accepting the assignment because she was strongly ''pro-choice.'' But she quit after witnessing three partial-birth abortions close up. ''It was the most horrifying experience of my life,'' she wrote.

Here''s how Nurse Shafer described the end of the life of one six-month-old ''fetus'': ''The baby's body was moving. His little fingers were clasping together. He was kicking his feet. All the while his little head was still stuck inside. Dr. Haskell took a pair of scissors and inserted them into the back of the baby's head. Then he opened the scissors up. Then he stuck the high-powered suction tube into the hole and sucked the baby's brains out. I almost threw up as I watched him do these things.''[3]

That the babies are generally alive at the time of their ''extraction'' is further supported by the account of an eyewitness very sympathetic to Dr. McMahon: Dr. Dru Elaine Carlson, who is a perinatologist and director of Reproductive Genetics at Cedars-Sinai Medical Center in Los Angeles. In a June 27, 1995 letter to Congressman Henry Hyde opposing the bill, Dr. Carlson wrote: ''Since I refer Dr. McMahon a large number of families, I have gone to his facility and seen for myself what he does and how he does it * * * Essentially he provides analgesia for the mother that removes anxiety and pain and as a result of this medication the fetus also is *sedated*. When the cervix is open enough for a safe delivery of the fetus he uses altrasound guidance to gently deliver the fetal body up to the shoulders and then very quickly and expertly performs what is called a cephalocentesis. Essentially this is removal of cerebrospinal fluid from the brain *causing instant brain herniation and death*'' [emphasis added]

It is impossible to reconcile eyewitness accounts such as those of Nurse Shafer and Dr. Carlson with the claim made by NAF in a July 27 letter to Congress that ''fetal demise does in fact occur early on in the [three-day] procedure.''

DOES THE BABY FEEL PAIN DURING THE PARTIAL-BIRTH ABORTION PROCEDURE?

In his 1992 paper, Dr. Haskell says that he performs the procedure after giving the woman ''local anesthesia'' and nitrous oxide (''laughing gas''), neither of which would prevent pain in the baby.

Dr. McMahon says in a June 23 written submission to the House Judiciary Constitution Subcommittee: ''The fetus feels no pain through the entire series of procedures. This is because the mother is given narcotic analgesia at a dose based upon her weight. The narcotic is passed, via the placenta, directly into the fetal bloodstream. Due to the enormous weight difference, a medical coma is induced in the fetus. There is a neurological fetal demise. There is never a live birth.''

The New York Times (July 5, 1995) interpreted this statement by Dr. McMahon to mean that the drug causes ''brain death'' in the baby, which does indeed seem to be the impression that Dr. McMahon attempts to convey. But his claim cannot survive critical scrutiny.

Dr. Watson Bowes, an internationally recognized authority on maternal and fetal medicine, is a professor of both obstetrics/gynecology and pediatrics at the University of North Carolina at Chapel Hill School of Medicine. In a July 11 letter, Professor Bowes wrote: ''Dr. James McMahon states that narcotic analgesic medications given to the mother induce 'a medical coma' in the fetus, and he implies that this causes 'a neurological fetal demise.' This statement suggests a lack of understanding of maternal/fetal pharmacology. It is a fact that the distribution of analgesic medications given to a pregnant woman result in blood levels of the drugs which are less than those in the mother. Having cared for pregnant women who for one reason or another required surgical procedures in the second trimester, I know that they were often heavily sedated or anesthetized for the procedures, and the fetuses did not die. . . . Although it is true that analgesic medications given to the mother will reach the fetus and presumably provide some degree of pain relief, the extent to which this renders this procedure pain free would be very difficult to document. I have performed in-utero procedures on fetuses in the second trimester, and in these situations the response of the fetuses to painful stimuli, such as needle sticks, suggest that they are capable of experiencing pain.''

In June 15 testimony before the House Judiciary Constitution Subcommittee, Professor Robert White, Director of the Division of Neurosurgery and Brain Research Laboratory at Case Western Reserve School of Medicine, said: ''The fetus within this time frame of gestation, 20 weeks and beyond, is fully capable of experiencing pain.'' Prof. White analyzed the partial-birth procedure step-by-step and concluded: ''Without question, all of this is a dreadfully painful experience for any infant subjected to such a surgical procedure.''

DOES THE BILL CONTRADICT SUPREME COURT PRECEDENTS?

In written testimony submitted to the House Judiciary Constitution Subcommittee, David Smolin, a professor at Cumberland Law School at Samford University, testified that he believed that the Partial-Birth Abortion Ban Act could be upheld even under the Supreme Court precedents that block most government limitations on abortion. ''The spectre of partially delivering a fetus, and then suctioning her brains, may mix the physician's disparate roles at childbirth and abortion in such a way as to particularly shock the conscience. . . . It is possible that at least some of the fetuses killed by partial-birth abortions are constitutional persons. The Supreme Court in *Roe* v. *Wade* held that the word 'person', as used in the Fourteenth Amendment, does not include the unborn.'' The Court, however, has never addressed the constitutional status of those who are ''partially born.'' [Prof. Smolin's complete testimony is available on request.]

However, pro-abortion advocacy groups insist that even the partial-birth abortion procedure is completely protected by *Roe* v. *Wade*. If this is true, it will be news to a lot of people—and it is a powerful argument for re-examining *Roe* v. *Wade*.

ENDNOTES

[1] Unfortunately, some lawmakers and some other observers demonstrate bias or ''denial mechanisms'' that resist exposure even to impeccable documentation. For example, after sitting through a July 12 House Judiciary Committee meeting in which many of the documents quoted herein were cited and circulated, Associated Press reporter Nita Lelyveld wrote, ''Opponents of the bill say the scissors method is very rare if it exists at all.'' Actually, however, not even the National Abortion Federation has been audacious enough to suggest that the ''scissors method'' may not ''exist at all.'' Dr. Haskell's readily available paper, which has been provided to Ms. Lelyveld and other reporters, refers five times to the use of scissors. For example, Dr. Haskell writes, ''the surgeon forces the scissors into the base of the skull.'' The scissors are described as a Metzenbaum surgical scissors, which is about seven inches long.

[2] Some press accounts have mistakenly reported that the bill would affect only ''third-trimester'' abortions. In fact, the bill would ban use of the partial-birth abortion method in either the second or the third trimester of pregnancy. It is noteworthy that there is a dispute over how many third-trimester abortions, by all methods, are performed every year. American Medical News (July 5, 1993) reported. ''Former Surgeon General C. Everett Koop, MD, estimated in 1984 that 4,000 *third-trimester* abortions are performed annually. The abortion federation [National Abortion Federation] puts the number at 300 to 500. *Dr [Martin] Haskell says that 'probably Koop's numbers are more correct.' '' [Emphasis added]*

[3] At a July 12 meeting of the House Judiciary Committee, Congresswoman Patricia Schroeder (D-Co.) charged, based on a July 12 letter from Dr. Haskell, that Brenda Shafer had never worked at the clinic. Rep. Schroeder abandoned this charge (although without apology) after committee members were provided with copies of the bill sent to Dr. Haskell's clinic by the nursing agency, which contained the nurse's license and social security numbers. Dr. Haskell's letter also disputed Shafer's account of witnessing abortions at 25 and 26½ weeks because, he claimed, he observes a ''self-imposed and established limit of 24 weeks.'' But Dr. Haskell's own 1992 paper, explaining how to perform the procedure, said that he employs the method from 20 to 26 weeks into pregnancy.

AMERICAN MEDICAL NEWS,
Chicago, IL, July 11, 1995.

Hon. CHARLES T. CANADY,
Chairman, Subcommittee on the Constitution, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR REPRESENTATIVE CANADY: We have received your July 7 letter outlining allegations of inaccuracies in a July 5, 1993, story in American Medical News, ''Shock-tactic ads target late-term abortion procedure.''

You noted that in public testimony before your committee, AMNews is alleged to have quoted physicians out of context. You also noted that one such physician submitted testimony contending that AMNews misrepresented his statements. We appreciate your offer of the opportunity to respond to these accusations, which now are part of the permanent subcommittee record.

AMNews stands behind the accuracy of the report cited in the testimony. The report was complete, fair, and balanced. The comments and positions expressed by those interviewed and quoted were reported accurately and in-context. The report was based on extensive research and interviews with experts on both sides of the abortion debate, including interviews with two physicians who perform the procedure in question.

We have full documentation of these interviews, including tape recordings and transcripts. Enclosed is a transcript of the contested quotes that relate to the allegations of inaccuracies made against AMNews.

Let me also note that in the two years since publication of our story, neither the

organization nor the physician who complained about the report in testimony to your committee has contacted the reporter or any editor of AMNews to complain about it. AMNews has a longstanding reputation for balance, fairness and accuracy in reporting, including reporting on abortion, an issue that is as divisive within medicine as it is within society in general. We believe that the story in question comports entirely with that reputation.

Thank you for your letter and the opportunity to clarify this matter.

Respectfully yours,

BARBARA BOLSEN,
Editor.

Attachment.

AMERICAN MEDICAL NEWS TRANSCRIPT

AMN. Let's talk first about whether or not the fetus is dead beforehand . . .

HASKELL. No it's not. No, it's really not. A percentage are for various numbers of reasons. Some just because of the stress—intrauterine stress during, you know, the two days that the cervix is being dilated. Sometimes the membranes rupture and it takes a very small superficial infection to kill a fetus in utero when the membranes are broken. And so in my case, I would think probably about a third of those are definitely are (sic) dead before I actually start to remove the fetus. And probably the other two-thirds are not.

AMN. Is the skull procedure also done to make sure that the fetus is dead so you're not going to have the problem of a live birth?

HASKELL. It's immaterial. If you can't get it out, you can't get it out.

AMN. I mean, you couldn't dilate further? Or is that riskier?

HASKELL. Well, you could dilate further over a period of days.

AMN. Would that just make it . . . would it go from a 3-day procedure to a 4- or 5-?

HASKELL. Exactly. the point here is to effect a safe legal abortion. I mean, you could say the same thing about the D&E procedure. You know, why do you do the D&E procedure? Why do you crush the fetus up inside the womb? to kill it before you take it out?

Well, that happens, yes. But that's not why you do it. You do it to get it out. I could do the same thing with a D&E procedure. I could put dilapan in for four or five days and say I'm doing a D&E procedure and the fetus could just fall out. But that's not really the point. He point here is you're attempting to do an abortion. And that's the goal of your work, is to complete an abortion. Not to see how do I manipulate the situation so that I get a live birth instead.

AMN, wrapping up the Interview. I want to make sure I have both you and (Dr.) McMahon saying 'No' then. That this is misinformation, these letters to the editor saying it's only done when the baby's already dead, in case of fetal demise and you have to do an autopsy. But some of them are saying they're getting that misinformation from NAF. Have you talked to Barbara Radford or anyone over there? I called Barbara and she called back, but I haven't gotten back to her.

HASKELL. Well, I had heard that they were giving that information, somebody over there might be giving information like that out. The people that staff the NAF office are not medical people. And many of them when I gave my paper, many of them came in, I learned later, to watch my paper because many of them have nver seen an abortion performed of any kind.

AMN. Did you also show a video when you did that?

HASKELL. Yeah. I taped a procedure a couple of years ago, a very brief video, that simply showed the technique. The old story about a picture's worth a thousand words.

AMN. As National right to Life will tell you.

HASKELL. Afterwards they were just amazed. They just had no idea. And here they're rabid supporters of abortion. They work in the office there. And . . . some of them have never seen one performed.

Comments on elective vs. non-elective abortions:

HASKELL. And I'll be quite frank: most of my abortions are elective in that 20–24 week range . . . In my particular case, probably 20% are for genetic reasons. and the other 80% are purely elective . . .

[From the American Medical News, July 5, 1993]

SHOCK-TACTIC ADS TARGET LATE-TERM ABORTION PROCEDURE—FOES HOPE CAMPAIGN WILL SINK FEDERAL ABORTION RIGHTS LEGISLATION

(By Diane M. Gianelli)

WASHINGTON.—In an attempt to derail an abortion-rights bill maneuvering toward a congressional showdown, opponents have launched a full-scale campaign against late-term abortions.

The centerpieces of the effort are newspaper advertisements and brochures that graphically illustrate a technique used in some second- and third-trimester abortions. A handful of newspapers have run the ads so far, and the National Right to Life Committee has distributed 4 million of the brochures, which were inserted into about a dozen other papers.

By depicting a procedure expected to make most readers squeamish, campaign sponsors hope to convince voters and elected officials that a proposed federal abortion-rights bill is so extreme that states would have no authority to limit abortions—even on potentially viable fetuses.

According to the Alan Guttmacher Institute, a research group affiliated with Planned Parenthood, about 10% of the estimated 1.6 million abortions done each year are in the second and third trimesters.

Barbara Radford of the National Abortion Federation denounced the ad campaign as disingenuous, saying its ''real agenda is to outlaw virtually all abortions, not just late-term ones.'' But she acknowledged it is having an impact, reporting scores of calls from congressional staffers and others who have seen the ads and brochures and are asking pointed questions about the procedure depicted.

The Minneapolis Star-Tribune ran the ad May 12, on its op-ed page. The anti-abortion group Minnesota Citizens Concerned for Life paid for it.

In a series of drawings, the ad illustrates a procedure called ''dilation and extraction,'' or D&X, in which forceps are used to remove second- and third-trimester fetuses from the uterus intact, with only the head remaining inside the uterus.

The surgeon is then shown jamming scissors into the skull. The ad says this is done to create an opening large enough to insert a catheter that suctions the brain, while at the same time making the skull small enough to pull through the cervix.

''Do these drawings shock you?'' the ad reads. ''We're sorry, but we think you should know the truth.''

The ad quotes Martin Haskell, MD, who described the procedure at a September 1992 abortion-federation meeting, as saying he personally has performed 700 of them. It then states that the proposed ''Freedom of Choice Act'' now moving through Congress would ''protect the practice of abortion at all stages and would lead to an increase in the use of this grisly procedure.''

ACCURACY QUESTIONED

Some abortion-rights advocates have questioned the ad's accuracy.

A letter to the Star-Tribune said the procedure shown ''is only performed after fetal death when an autopsy is necessary or to save the life of the mother.'' And the Morrisville, Vt., Transcript, which said in an editorial that it allowed the brochure to be inserted in its paper only because it feared legal action if it refused, quoted the abortion federation as providing similar information. ''The fetus is dead 24 hours before the pictured procedure is undertaken,'' the editorial stated.

But Dr. Haskell and another doctor who routinely use the procedure for late-term abortions told AMNews that the majority of fetuses aborted this way are alive until the end of the procedure.

Dr. Haskell said the drawing were accurate ''from a technical point of view.'' But he took issue with the implication that the fetuses were ''aware and resisting.''

Radford also acknowledged that the information her group was quoted as providing was inaccurate. She has since sent a letter to federation members, outlining guidelines for discussing the matter. Among the points:

Don't apologize: this is a legal procedure.

No abortion method is acceptable to abortion opponents.

The language and graphics in the ads are disturbing to some readers. ''Much of the negative reaction, however, is the same reaction that might be invoked if one were to listen to a surgeon describing step-by-step almost any other surgical procedure involving blood, human tissue, etc.''

LATE-ABORTION SPECIALISTS

Only Dr. Haskell, James T. McMahon, MD, of Los Angeles, and a handful of other doctors perform the D&X procedure, which Dr. McMahon refers to as ''intact D&E.'' The more common late-term abortion methods are the classic D&E and induction, which usually involves injecting digoxin or another substance into the fetal heart to kill it, then dilating the cervix and inducing labor.

Dr. Haskell, who owns abortion clinics in Cincinnati and Dayton, said he started performing D&Es for late abortions out of necessity. Local hospitals did not allow inductions past 18 weeks, and he had no place to keep patients overnight while doing the procedure.

But the classic D&E, in which the fetus is broken apart inside the womb, carries the risk of perforation, tearing and hemorrhaging, he said, So he turned to the D&X, which he says is far less risky to the mother.

Dr. McMahon acknowledged that the procedure he, Dr. Haskell and a handful of other doctors use makes some people queasy. But he defends it. ''Once you decide the uterus must be emptied, you then have to have 100% allegiance to maternal risk. There's no justification to doing a more dangerous procedure because somehow this doesn't offend you sensibilities as much.''

BROCHURE CITES N.Y. CASE

The four-page anti-abortion brochures also include a graphic depiction of the D&X procedure. But the cover features a photograph of 16-month-old Ana Rosa Rodriquez, whose right arm was severed during an abortion attempt when her mother was 7 months pregnant.

The child was born two days later, at 32 to 34 weeks' gestation. Abu Hayat, MD, of New York, was convicted of assault and performing an illegal abortion. He was sentenced to up to 29 years in prison for this and another related offense.

New York law bans abortions after 24 weeks, except to save the mother's life. The

brochure states that Dr. Hayat never would have been prosecuted if the Federal ''Freedom of Choice Act'' were in effect, because the act would invalidate the New York statute.

The proposed law would allow abortion for any reason until viability. But it would leave it up to individual practitioners—not the state—to define that point. Postviability abortions, however, could not be restricted if done to save a woman's life or health, including emotional health.

The abortion federation's Radford called the Hayat case ''an aberration'' and stressed that the vast majority of abortions occur within the first trimester. She also said that later abortions usually are done for reasons of fetal abnormality or material health.

But Douglas Johnson of the National Right to Life Committee called that suggestion ''blatantly false.''

''The abortion practitioners themselves will admit the majority of their late-term abortions are elective,'' he said. ''People like Dr. Haskell are just trying to reach others how to do it more efficiently.''

NUMBERS GAME

Accurate figures on second- and third-trimester abortions are elusive because a number of states don't require doctors to report abortion statistics. For example, one-third of all abortions are said to occur in California, but the state has no reporting requirements. The Guttmacher Institute estimates there were nearly 168,000 second- and third-trimester abortions in 1988, the last year for which figures are available.

About 60,000 of those occurred in the 16- to 20-week period, with 10,660 at week 21 and beyond, the institute says. Estimates were based on actual gestational age, as opposed to last menstrual period.

There is particular debate over the number of third-trimester abortions. Former Surgeon General C. Everett Koop, MD, estimated in 1984 that 4,000 are performed annually. The abortion federation puts the number at 300 to 500. Dr. Haskell says that ''probably Koop's numbers are more correct.''

Dr. Haskell said he performs abortions ''up until about 25 weeks'' gestation, most of them elective. Dr. McMahon does abortions through all 40 weeks of pregnancy, but said he won't do an elective procedure after 26 weeks. About 80% of those he does after 21 weeks are nonelective, he said.

MIXED FEELINGS

Dr. McMahon admits having mixed feelings about the procedure in which he has chosen to specialize.

''I have two positions that may be internally inconsistent, and that's probably why I fight with this all the time,'' he said.

''I do have moral compunctions. And if I see a case that's later, like 20 weeks where it frankly is a child to me, I really agonize over it because the potential is so imminently there. I think, 'Gee, it's too bad that this child couldn't be adopted.'

''On the other hand, I have another position, which I think is superior in the hierarchy of questions, and that is: 'Who owns the child?' It's got to be the mother.''

Dr. McMahon says he doesn't want to ''hold patients hostage to my technical skill. I can say, 'No, I won't do that,' and then they're stuck with either some criminal solution or some other desperate maneuver.''

Dr. Haskell, however, says whatever qualms he has about third-trimester abortions are ''only for technical reasons, not for emotional reasons of fetal development.''

''I think it's important to distinguish the two,'' he says, adding that his cut-off point is within the viability threshold noted in Roe v. Wade, the Supreme Court decision that legalized abortion. The decision said that point usually occurred at 28 weeks ''but may occur earlier, even at 24 weeks.''

Viability is generally accepted to be ''somewhere between 25 and 26 weeks,'' said Dr. Haskell. ''It just depends on who you talk to.

''We don't have a viability law in Ohio. In New York they have a 24-week limitation. That's how Dr. Hayat got in trouble. If somebody tells me I have to use 22 weeks, that's fine. . . . I'm not a trailblazer or activist trying to constantly press the limits.''

CAMPAIGN'S IMPACT DEBATED

Whether the ad and brochures will have the full impact abortion opponents intend is yet to be seen.

Congress has yet to schedule a final showdown on the bill. Although it has already passed through the necessary committees, supporters are reluctant to move it for a full House and Senate vote until they are sure they can win.

In fact, House Speaker Tom Foley (D, Wash.) has said he wants to bring the bill for a vote under a ''closed rule'' procedure, which would prohibit consideration of amendments.

But opponents are lobbying heavily against Foley's plan. Among the amendments they wish to offer is one that would allow, but not require, states to restrict abortion—except to save the mother's life—after 24 weeks.

Ms. MOSELEY-BRAUN. Mr. President, today, as it has been since the landmark 1973 Supreme Court Decision of Roe versus Wade, the concept of reproductive freedom is under assault.

Choice is a matter of freedom. Choice is a fundamental issue of the relationship of female citizens to their Government. Choice is a barometer of equality and a measure of fairness. Choice is central to our liberty. While I do not believe in abortion, I do believe, fundamentally, in choice.

In spite of the fact that the majority of the American people embrace the freedom to choose reproduction, the efforts to use Government intervention as a bar to the right to choice have taken on a new ferocity. And today, some in the U.S. Senate would prevent Senators and citizens alike from the chance to even hold hearings on the latest assault on a woman's right to choose.

The newest assault is H.R. 1833/S. 939, an unconstitutional, vague ban on a rare medical procedure used to terminate pregnancies late in the term, when the life or health of the mother is at risk, and or when the fetus has severe abnormalities.

The procedure that is the intended focus of this bill involves giving anesthesia to a mother over a period of days while gradually dilating her cervix—the fetus dies during the first dose of anesthesia—then draining the brain fluid after death so that the cervix is forced to withstand less trauma as the fetus is removed, preserving the woman's ability to conceive.

H.R. 1833/S. 939 would make it a criminal offense to perform certain types of late term abortions. A doctor who performed such an abortion would face up to 2 years in prison and fines.

The doctor and the hospital or clinic where he or she worked would also be liable for civil action brought by the father of a fetus or the maternal parents of the woman if she was under 18.

Instead of providing an exception for cases where the banned procedure is used to save the life of the mother, doctors would be required, after being reasonably believed that no other method would have saved the woman's life.

Before I talk about the constitutional and policy implications of H.R. 1833/S. 939, I want to tell the story of Vikki, she is from Naperville, in my home State of Illinois.

Vikki and her husband were expecting their third child. At 20 weeks she went for a sonogram and was told by her doctor that she and her child were healthy. She named the boy Anthony.

At 32 weeks Vikki took her two daughters with her to watch their brother on the sonogram. The technician did not say a word during the sonogram and then asked Vikki to come upstairs to talk with the doctor. Vikki thought maybe it was because the baby was breach. She is a diabetic and any complications could be serious.

The doctor was too busy to see Vikki, but called at 7 a.m. the next morning to say that the femurs—leg bones—seemed a little short. He assured her that there was a 99 percent chance that nothing was wrong, but asked her to come in for a level 2 ultrasound.

Vikki and her husband found out that their child had no brain. There were eight abnormalities in all.

Vikki had to make the hardest decision of her life. This is how she explained it: ''I had to remove my son from life support —that was me.''

For Vikki, the hardest thing for a parent to do is to watch her child hurt. It is hard enough just watching a child get teased at the bus stop.

The procedure took four visits to the doctor. She received anesthesia on the first visit. Her son stopped moving the first night. She knew he was gone. This was before the procedure to remove the fetus took place.

Having an D&E procedure was particularly important because Vikki wanted to know if this was something that she would pass on to her two daughters.—With a D&E an autopsy can be performed.—Luckily, it was just one of those things and her girls will be able to have children of their own.

Vikki's D&E was the closest thing for her body to natural birth. She was able to preserve her fertility, and I am happy to say is now 30 weeks pregnant. The baby looks fine.

I wanted to tell my colleagues that story, because it is true, it is about a real woman, and it is about a family handling an awful, horrible situation in the best way that it can.

This is the kind of case where my colleagues want to substitute their judgement for the judgement of the family and their doctor.

Now what are the implications for banning these abortions, beyond the affect that it would have on the lives of women like Vikki and their families?

Doctors are going to be too scared to perform legal abortions and medically necessary abortions because of the threat of criminal or civil prosecution. H.R. 1833/S. 939 is vague. The definition of abortions covered under this legislation is ''partial-birth.'' That is a term used for its shock value, not its medical value. There is no such medical term and doctors cannot agree on what the legislation is intended to ban.

Women are going to face life and health risks as well as the loss of fertility as they undergo more dangerous procedures. H.R. 1833/S. 939 is dangerous. If a doctor chooses to perform an abortion covered by this bill, it is because he or she considers the procedure to be the most medically sound for the woman. By choosing to arbitrarily prohibit one type of procedure, but not others, regardless of which procedure most protects the life, health, and fertility of the woman, Congress is micro-managing decisions best made in a doctor's office.

Women's constitutional rights will be taken away. H.R. 1833/S. 939 is unconstitutional. Under Roe versus Wade and Planned Parenthood versus Casey, the Supreme Court standard is that a state may not prohibit post-viability abortions necessary to preserve the life or health of a woman. Under H.R. 1833/S. 939, there is an exception only for life and then only by way of an affirmative defense.

While H.R. 1833/S. 939 is focused on late-term abortions, doctors who perform early-term abortions by the loosely defined means covered by the bill are subject to the same liability. Choosing to have an abortion when the fetus is not yet viable is clearly a constitutionally protected right under Roe versus Wade.

These are some of the policy implications of H.R. 1833/S. 939. This threat to a doctor's ability to care for his or her patient, disregard of a woman's health, and attack on a woman's constitutional rights are all part of a broader attack on choice.

The 104th Congress has already seen a dramatic erosion in the right of a woman to choice.

First came the Hyde amendment. Poor women were limited in their reproductive choices because Government contributed to payment of their health care. Their rights became more than their pocketbooks could protect.

Then came the battle of parental notification. Very young women were limited in their reproductive choices, except in cases of rape or incest, because of their age—not their condition—teens became the victims of bad timing and thus the State asserted a right to intervene.

Then came the women in the military—who by virtue of their own decision, or that of their spouse, to serve their country, would be limited in their reproductive choices.

Then came legislation earlier this year, which eliminated abortion coverage from Federal health insurance. Employee benefits for Federal workers are now restricted in ways which, I hope, would be unthinkable in the private sector.

Now comes a bill to fine or jail doctors who perform abortions for women who need them late in their term because their life and health are in danger or because of the severity of the deformities of their fetus.

These actions remind me of a famous poem by Martin Niemoller, a Protestant minister interred in a German concentration camp for 7 years. I would like to read you my own, more contemporary version of his parable. I call it ''The Assault on Reproductive Rights.''

First they came for poor women
and I did not speak out—
because I was not a poor woman.
Then they came for the teenagers
and I did not speak out—
because I was no longer a teenager.
Then they came for women in the military
and I did not speak out—
because I was not in the military.
Then they came for women in the federal government
and I did not speak out—
because I did not work for the government.
Then they came for the doctors
and I did not speak out
because I was not a doctor.
Then they came for me—
and there was no one left
to speak out for me.

What we are faced with here today is another attempt to erode a woman's right to choose. And we must remember, the fight for choice is a quintessential fight for freedom.

I do not favor abortion. My own religious beliefs hold life dear, and I would prefer that every potential child have a chance to be born.

But I am not prepared to substitute the Government's judgement for the judgements of women, their families, and their doctors in this most personal of all decisions.

When Vikki made the decision to remove her child from life support—her body—she made a decision, with the help of her husband and her doctor, that only she could make.

And the fact that the Senate would even consider placing our judgement above hers without holding hearings—without fully understanding the consequences of our actions, without hearing from women, their families, and their doctors first hand—is appalling.

For the first time in history, the Senate is attempting to make a specific medical procedure criminal, and none of the work has been done. The Senate is attempting to prohibit a woman from undergoing a medical procedure that could save her life and her ability to conceive, and none of the work has been done. Well I say, we must do the work.

The State has no right to intervene in this relationship between a woman and her body, her doctor, and her God.

At the very least, I urge my colleagues to support Senator SPECTER's motion to commit this legislation to the Judiciary Committee.

Ms. SNOWE. Mr. President, I rise to speak as a cosponsor of the motion made by my colleague from Pennsylvania, Senator SPECTER, to commit this bill to the Senate Judiciary Committee for hearings.

I rise to speak because I am deeply concerned that we stand here on the floor today to discuss legislation on such a serious issue, without ever having held any hearings on the matter.

As a Member of the Senate, I am deeply concerned that hearings have not been held on this legislation which raises significant constitutional questions.

But as a woman, I believe that the failure of this body to hold hearings demonstrates an appalling disregard for the lives and health of women across this Nation.

There is no question that any abortion is an emotional, wrenching decision for a woman and her family under any circumstance. When a woman must confront this decision during the later stages of a pregnancy because she knows that the pregnancy presents a direct threat to her own life, such a decision becomes a nightmare.

Mr. President, 22 years ago, the Supreme Court issued a landmark decision in Roe versus Wade, carefully crafted to be both balanced and responsible while holding the rights of women in America paramount in reproductive decisions.

This decision held that women have a constitutional right to abortion, but after viability, States could ban abortions as long as they allowed exceptions for cases in which a woman's life or health is endangered.

Let me repeat—as long as they allowed exceptions for cases in which a woman's life or health is endangered.

The Supreme Court has reaffirmed this decision time and time and time again. And to date, 41 States—including my home State of Maine—have exercised their right to impose restrictions on post-viability abortions. All, of course, provide exceptions for the life or health of the mother, as constitutionally required by Roe.

H.R. 1833, however, does not provide an exception for the life or health of the mother. Let me repeat, it does not provide an exception for the life or health of the mother. And, as a result, it represents a direct, frontal assault on Roe and on the reproductive rights of women everywhere.

And despite the apparent unconstitutionality of this legislation, the Senate has not held hearings on the subject. Not in the Judiciary Committee. And not in the Labor and Human Resources Committee.

I find the Senate's lack of hearings on this issue deeply disturbing for another reason as well. Not since prior to Roe versus Wade has there been efforts to criminalize a medical procedure in this country. But that's exactly what this bill does.

This legislation is an unprecedented expansion of congressional regulation of women's health care. Never before has Congress intruded directly into the practice of medicine by banning a safe and legal medical procedure that is absolutely vital to protect the health or lives of women.

In effect, the Senate is clearly attempting to substitute congressional judgment for that of a medical doctor regarding the appropriateness of a medical procedure.

As quoted in the New York Times, one doctor said: ''I don't want to make medical decisions based on congressional language. I do not want to be that vulnerable. And it is not what I want for my patients.'' He is right.

This legislation sets new, frightening precedents for congressional action to limit on a wide range of medical procedures. It is open to even wider legal interpretations that may have an even broader impact on women's lives.

Because of the vagueness of the bill, doctors across the Nation may interpret the language differently at the expense of the health and life of the mother involved.

Now, some of my colleagues may rise to insist that the legislation somehow contains an exception for the life of the mother. However, this is simply untrue, and I urge my colleagues not to be misled by this rhetoric.

As it now reads, the legislation only provides doctors with a so-called affirmative defense. I say so-called because there is nothing affirmative about this law for doctors. And there is no genuine defense allowed for them under this legislation because the guilty verdict is rendered the moment they attempt the medical procedure.

It means that a doctor cannot avoid criminal prosecution if he or she uses their best medical judgment and decides that it is necessary to perform this procedure to save the life of a patient.

Mr. President, it is only after that doctor is on trial that he is finally given an opportunity to prove that the procedure was necessary to save the life of that patient and that no other procedure would have sufficed—an almost impossible burden to prove. But that is exactly the intent of this bill.

In other words—in a twisted angle on one of our most cherished judicial tenets—these doctors are presumed guilty until proven innocent. Thus, doctors will refuse to perform this procedure, which they know to be medically safer for their patient, even when the woman's life is threatened.

Not only that, but doctors would also be subject to civil lawsuits brought on by the parents of the mother who undergoes the procedure or by the father. This opens up an entire new realm of judicial proceedings and civil lawsuits.

Even if a doctor is able to survive the trial phase of affirmative defense, then he or she would be subjected to a further judicial hurdle of civil lawsuits. The possibilities go on and on.

But—in the larger context—look at what this legislation does overall, and its intent is perfectly clear: First, intimidate doctors with prison terms.

Second, threaten them with horrendous Federal fines in the vicinity of $250,000. Third, harass them with possibility of civil lawsuits—and that should keep anyone from wanting to perform any kind of medical procedure involving women's reproductive health.

We're going to do this in a climate where—according to a recent statistic—94 percent of all American counties no longer have or never had a provider of full reproductive services for women. We're going to do this in a climate where doctors already face demonstrations, death threats against them and their family, and even violence.

Now, we are telling them they must face the additional concern of criminal prosecution, jail, and costly trials. We are doing this to doctors who are only really trying to save the lives of women in dire circumstances to the best of their medical expertise. In this sense, it is a chilling frontal assault on every women's rights.

How chilling? The proponents of this legislation are willing to risk the lives and health of women facing medical emergencies.

My opponents will say that a number of other alternatives are available to these women.

What alternatives? The only alternatives I know of are far more dangerous and traumatic. Has anyone asked the physicians? Has anyone looked at the medical evidence? This is another reason why we should be holding hearings:

Are C-sections, which cause twice as much bleeding and carries four times the risk of death as a vaginal delivery—really an option?

Is induced labor, which carries its own potentially life-threatening risks such as cardiac edema—really an option?

Are hysterectomies, which leave women permanently unable to conceive—really an option?

In the end, this legislation would order doctors to set aside the paramount interests of the woman's health, and to trade-off her health and life and future fertility in order to avoid the possibility of criminal prosecution.

Yes, despite these significant risks to a woman's life and health created by this legislation—and despite the historic new precedents that are set—the Senate has never held hearings on this subject.

We enter this debate today on H.R. 1833 with profound and critically important questions—legal, moral, and medical—unanswered and unconsidered. Why the rush? Why the hurry?

That's why hearings deserve to be held. And that's the course of action that this Chamber must take. No one truly knows the legal ramifications. No one here truly knows the medical statistics or facts. No one has had the time to ask questions and receive answers. No one has anticipated the court challenges that will ensue.

Doctors will be threatened. Physicians will be intimidated. The medical profession will wonder where the next assault on health care by the Federal Government will come from or where it will be felt.

And what about the women? Who has thought about them? They will be more scared than ever before. Their rights will be more restricted than ever before. Their lives—their lives—will be more threatened than ever before.

Mr. President, I urge my colleagues to think of the women who are faced with this procedure. I urge my colleagues to consider the effect on doctors. And I urge my colleagues to support the motion to commit this bill to the Judiciary Committee.

Thank you, Mr. President. I yield the floor.

Mr. HATCH. Will the Senator from New Hampshire yield some time to me?

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

The PRESIDING OFFICER. The Senator has 12 minutes, 45 seconds.

Mr. SMITH. How much time does the Senator need?

Mr. HATCH. If the Senator will yield 5 minutes, I will try to conserve that.

Mr. SMITH. I will yield 5 minutes to the distinguished chairman of the Judiciary Committee, Senator HATCH.

Mr. HATCH. I thank my dear friend.

Mr. President, a number of my colleagues have inquired of my view toward referring the pending bill to the Judiciary Committee. I have no objection to the full Senate taking up H.R. 1833 at this time, and I intend to vote against this motion.

The Senate over the years has conducted a lot of hearings on the subject of abortion. The other body has done the same. There is nothing unique about this bill except its approach toward what really amounts to third trimester abortions, something that I have trouble understanding why anybody would fight.

I remind my colleagues that on February 10, 1964, the other body overwhelmingly voted in favor of the Civil Rights Act of 1964, a sweeping landmark civil rights bill—one that I would have voted for had I been here at the time. Then-Senate majority leader Mike Mansfield placed the bill on the Senate Calendar, just like this one was. A motion was made to refer the bill to the Judiciary Committee. The Senate rejected the motion. Why? Because it was sincerely believed that such a referral would kill a landmark civil rights bill.

Today, the strategy for killing the pending measure is the same—send it to the committee. As a matter of procedure, if the Senate could take up the sweeping Civil Rights Act of 1964 directly from the Senate Calendar, it can today do the same with a bill that addresses one aspect of the whole abortion issue.

My present purpose in mentioning the procedural precedent of the 1964 Civil Rights Act is not to engage in a comparison of the rights at stake then and the ones at stake in the Chamber today.

I understand that there are strong views on both sides of the underlying issue. I respect those who disagree with my views on this issue. But many of us believe that the rights of the unborn present important enough issues to justify a procedure allowing the Senate to vote up and down on the merits of H.R. 1833. There is, indeed, Senate precedent for doing so if the cause is urgent enough.

I believe the cause is sufficiently urgent, and I ask my colleagues to keep in mind we are talking about one particular abortion procedure that kills the fetus in the most heinous way by sucking the brain out of the baby. It is hard for me to understand why anybody would fight this bill. We are not even talking about the entire framework of abortion rights here, but just one procedure.

Let me also say that if I had my way, we would abolish all late-term abortions except to save the life of the mother. There are between 14,000 and 20,000 of those abortions a year. I think morally it is very difficult to justify that type of a thing.

One final thing. As the chairman of the Judiciary Committee, I must correct a legal misunderstanding being expressed here. The Clinton administration and other opponents of this bill claim that this bill is unconstitutional because it permits a doctor to justify a partial-birth abortion only as an affirmative defense to a prosecution. The fact that the bill provides the exception required by the case law in an affirmative defense does not unduly burden the right to an abortion.

Many of our constitutional rights arise only as an affirmative defense. Many of the protections of the Bill of Rights—freedom of speech, freedom of religion, freedom of assembly, freedom of petition, the right to bear arms, freedom from unreasonable searches and seizures, the right to grand jury, the right against double jeopardy, the right against self-incrimination, the right to a speedy trial, the right to indictment, the right to assistance of counsel—sometimes can only be raised as a defense to a prosecution. Indeed, any of us may be innocent of a crime and prosecuted and make our claim of innocence only as a defense in court.

To claim that the right to an abortion is not protected by an affirmative defense demeans the explicit protections of the Bill of Rights, and it raises abortion above any right mentioned in the Constitution.

The PRESIDING OFFICER. The Senator has spoken for 5 minutes.

Mr. HATCH. I ask unanimous consent that I be given another 1 minute.

Mr. SMITH. I yield 1 more minute.

Mr. HATCH. Accordingly, I will vote against the motion to commit to the Judiciary Committee this bill that I believe is fully legal under the true meaning of the Constitution and under the Supreme Court's current abortion jurisprudence.

To me it is amoral, except to save the life of the mother, to kill these infants in this way. We are talking about children after 20 weeks in the mother's womb, most of whom are capable of living outside the womb. We are not talking about when the spirit comes into the body or any of the other questions that have arisen concerning the abortion issue. We are talking about fully developed children.

Now, I can understand both sides of the abortion issue. I know how sincere are those who are on the other side. But on this issue I have trouble understanding the logic that they are using. I know my colleague from Pennsylvania is sincere in his motion here today, but I do not see any reason why we need to go to that motion. I think we ought to face it, and vote up or down. Everybody understands this issue. We ought to face it right here and now.

I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator from Wisconsin?

Mr. SPECTER. How much time remains?

The PRESIDING OFFICER. The Senator has 13 minutes 47 seconds.

Mr. SPECTER. I yield 5 minutes to the Senator from Wisconsin.

Mr. FEINGOLD. I thank the Senator from Pennsylvania.

Mr. President, I support the motion to commit this bill to the Judiciary Committee for hearings before the Senate acts upon this measure. And I want to particularly thank the senior Senator from Pennsylvania and the junior Senator from California for their leadership and courage in trying to do the right thing on this issue, making sure that there is a proper hearing in the Judiciary Committee on the matter.

This bill, as it is currently drafted, would criminalize the actions of physicians who perform medical procedures which they believe may be necessary to save the life or protect the health of their patient. It is a very serious matter that the Senate ought not to act upon without deliberation and consideration.

There have been no Senate hearings on this measure. The chairman of the Judiciary Committee refers to hearings on abortion as a general subject. But there have been no hearings on this particular and very difficult topic. The bill before us was simply placed on the Senate Calendar.

Unfortunately, there has been a fair amount of misinformation communicated concerning the nature of the procedure being considered. There has been little focus by the proponents of the bill on the risk to the health of women if this alternative is not available, the types of health problems that compel late-term abortions in the first place, and the important question of the constitutional implications of withholding access to a procedure that may, in fact, be necessary to save the life or preserve the health of a pregnant woman facing a tragic pregnancy.

Mr. President, let me stress that I have very grave reservations about the wisdom of this body acting upon a measure that would insert the Federal Government into the decisionmaking process of physicians as to what medical procedures are appropriate in a particular case.

In just this last Congress we had an extensive and heated debate over whether Congress or the Federal Government ought to be designing a national health care system. Yet today many of the very same individuals who argued strenuously against the Federal Government's role in health care policy are now urging that we literally legislate the specific procedure that a doctor may choose in dealing with a very difficult and painful pregnancy. I think the decision about abortion ought to remain a private and personal decision between a woman and her doctor.

I recognize that this is a tremendously divisive and emotional area. And I do respect the views of people on both sides of the issue. But, fundamentally, I do not think we should be substituting the judgment of Members of Congress for the judgment of those directly involved, particularly where issues of the life and health of the woman are at stake.

Late-term abortions under Roe versus Wade can be restricted to those cases where the woman's life or health are at stake. That means that the procedures at issue take place in those most tragic circumstances where a pregnancy threatens a woman's life or health. For the Senate today to step into this area and legislate without even the benefit of hearings, where all sides of this issue can be heard, seems, to me, to be irresponsible at a minimum.

It is particularly important that we exercise caution in this area that is so emotionally charged. The proponents of this measure have made assertions about the procedures at issue that have been strenuously challenged by the opponents. And the opponents have raised a number of serious issues about the circumstances under which alternative procedures will increase the risk to the woman's life or health. These are important questions that actually should be addressed before we vote. If the Senate decides to legislate in this area, it certainly ought to do so only on the basis of a significant record which thoroughly explores these issues.

For example, Mr. President, we need to know what alternatives, if any, would be available to women who must have a late-term abortion. What are the increased risks for these alternative procedures for the survival of the woman or her future ability to bear children? Those are just a couple of the

questions that, at a minimum, must be asked before the Senate acts upon this measure. It is also important that a record be developed which sets out the reason why late-term abortions are performed in the first place. It is estimated we are talking about roughly 600 abortions per year that take place under the most dire circumstances.

Now, some of the proponents of this legislation have distorted the debate by asserting that the majority of late-term abortions are elective, misusing medical terminology to imply that the termination of pregnancy at this stage is somehow by choice. In fact, these abortions take place only when the life or health of the woman is at risk. We need to be fully aware of the pain and suffering that is endured by these families when a much-wanted pregnancy turns into a nightmare. We need to be careful that the Federal Government does not make these tragic situations even more difficult and painful for these families.

Mr. President, let me also say that if the motion to commit this bill to the committee fails, I will support amendments to be offered that will make it clear that this legislation is not to be construed to prohibit any physician from carrying out any medical procedure which the physician in his or her medical judgment determines necessary to preserve the life or health of a woman.

At a minimum, no physician should be placed in a position where he must sacrifice the life or health of his patient, because the Federal Government has chosen to substitute its judgment for professional medical judgment.

I yield the floor.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

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

The PRESIDING OFFICER. The Senator has 6 minutes 28 seconds.

Mr. SMITH. I will yield 4 minutes to the Senator from Missouri.

Mr. ASHCROFT. Thank you.

Abortion is, and always has been, one of the most divisive moral issues of our day. It strikes at the very core of who we are as a people and as a nation. It challenges us to define life and to measure liberty—difficult things both. But it is an issue that will not go away and so it demands of us civil debate and reasoned discourse. And so I rise to speak today in tempered tones about the untempered terror of partial-birth abortions.

Lest there be any confusion, what we are talking about is an abortion procedure that allows a child to be partially removed from the mother's womb only to have its skull crushed and brain extracted by a doctor pledged to ''do no harm.''

What message do we send by allowing this slaughter of innocents to continue? What does it say about who we are? What does it say about the moral condition of America when people of faith are unfaithful to the most vulnerable among us? I would suggest that a nation that allow this mindless brutality to continue is a nation out of touch with the most basic dictates of humanity.

The procedure in question is so cruel and so inhumane as to defy rational, reasoned support. Advocates of partial-birth abortions are attempting to defend the indefensible—and they cannot. So, instead, they raise the specter of confusion, introduce rhetorical nonsense, and obfuscate with absurdity. We are almost tempted to forget that which we are debating. This amendment is not about the right of choice, it is about the right of this Nation to act in a manner befitting its founding. It is about the right of America to say that it will not allow the brutality of partial-birth abortions to continue.

Over 30 million lives have perished since Roe versus Wade became the law of the land. An almost incomprehensible number. I am pained to my core by this tragedy and stand ready to reverse it. We can begin by putting an end to a medical procedure which takes an unborn child, one able to be sustained outside the womb, and kills it.

The question is simple: Do we want to continue to allow that procedure or do we want to outlaw it? The American people clearly want the latter. They overwhelmingly oppose this barbarism. They know to be true that which we are forced to debate. Namely, that this procedure has no place in a civilized society.

A final point. There is a legitimate place for hearings. They can be important. They can be illustrative. They can be used for probing areas of uncertainty. Mr. President, there is no uncertainty here. We do not need hearings to determine that partial-birth abortions are the monstrous, barbaric, and hideous destruction of human life. We do not need hearings to say, ''No more partial-birth abortions.''

The House of Representatives passed this measure last week with 288 votes. Let us lend our voice to their cause. For our party must be about more than a higher standard of living. It must also be about a higher standard of character.

The task before us is a simple one. It is to reaffirm humanity, reject brutality, and ban partial-birth abortions.

I yield the floor and reserve the remainder of the time.

The PRESIDING OFFICER. Who yields time? The Senator from Pennsylvania has 8 minutes. The Senator from New Hampshire has 2 minutes 30 seconds.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, there have been requests from other Senators to speak in support of the motion. I remind my colleagues that if they choose to do so, we are in the last stage of the debate—it is now 12:22—under a 3-hour time agreement, with the time having started at 9:30.

In the absence of any of my colleagues who choose to speak, I will make a comment or two with respect to the issue on the life of the mother.

I tried to write down what the Senator from Missouri had said contemporaneously with his statement when he said the issue of the life of a mother is nonsense, I believe he put it. I strenuously disagree with him about that. The life of the mother has been a recognized exception to any prohibition on abortion of all time, and the current legislation does not provide for an exception for the life of a mother.

There is a major difference between having an affirmative defense and between having an exception. The customary language that is used in the appropriations bill was cited earlier and illustrated by Public Law 103–333, September 30, 1994, where there is an exception. The language is plain:

None of the funds appropriated under this act shall be expended for any abortion except—

And then irrelevant language, but commenting on any abortion except—

. . . that procedure is necessary to save the life of a mother.

In the pending legislation, there is no such exception. There is a provision only for an affirmative defense so that the criminal prosecution can be brought against the doctor under this statute, because there is no exception for the life of a mother.

After the criminal prosecution is brought, then it is a matter of affirmative defense which has to be proved by the defendant doctor as opposed to having an exception in the statute.

Mr. President, how much time remains?

The PRESIDING OFFICER. Five minutes twenty seconds. The Senator from New Hampshire has 2 minutes 30 seconds.

Mr. SPECTER. Mr. President, in the absence of any other Senator seeking recognition, permit me to summarize briefly, and I yield myself 2 minutes, reserving the remainder of the time for others.

What we have here is a bill which has been placed on the calendar in an unusual way. Until relatively recently, the provisions of rule XXV of the Senate require a referral to committee. That has been changed by an interpretation of rule XIV, but I question the propriety and especially the wisdom of having this matter proceed without having a hearing.

In the House of Representatives, the bill was introduced on June 14 and one day later, there was a hearing, and on the same day there was a markup. Very limited testimony was presented.

The House was then engaged virtually continuously on the budget matters, except for the August recess. They took the matter up on November 1, and they passed the bill. Then it came to the Senate, and now we are on November 8, just 7 days later, when action is requested on this bill without any hearing in the Judiciary Committee.

I have made a motion for referral to committee on a very limited basis, really for 9 days, between today, November 8, and November 10 when the Senate is scheduled to go out of session, and then the extended time over the recess for 10 more days, from November 17 until November 27.

There are very important considerations which we need to inquire into on humanitarian grounds. The question has been raised of anesthetic, which has to be fairly taken up, a very substantial controversy on the medical evidence, complex issues on medical procedures, as well as the humanitarian concept, and then the formulation of the law itself, since this statute can be circumvented in a number of ways on medical procedures through C section or otherwise.

Mr. President, how much time remains?

The PRESIDING OFFICER. Two minutes thirty seconds.

Mr. SPECTER. I yield the floor and reserve the remainder of my time.

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

The PRESIDING OFFICER. Two minutes twenty-five seconds.

Mr. SMITH. I yield the remainder of my time to the only physician in the U.S. Senate, Dr. FRIST.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I rise today in support of the partial-birth abortion ban and against the motion to refer this bill to committee. I have had the opportunity over the last several weeks to consult with a number of my colleagues in obstetrics and gynecology, and with those at academic health care centers and tertiary health care centers who would most likely be faced with performing this procedure. And I can say after these consultations that I know of no doctor who uses or approves of this procedure as described in this bill.

Among these colleagues that I contacted are people who perform abortions in the third trimester under very selected circumstances, and they have told me that they condemn this procedure. They tell me that it is an unnecessary procedure and has no place in the medical armamentarium.

Mr. President, it is understandable that over the last 2 days a number of people have expressed concern for the life of the mother. But this bill provides for the mother. It only requires a doctor to show that he or she reasonably believed that this procedure was necessary to save the mother's life. I will repeat, this bill does not endanger the life of a mother in any way.

I do not want new laws. As a physician, I can tell you that physicians do not want new laws dictating their practice in any way. No physician does. But this procedure is so brutal, so uncalled for, so inhumane, and so unnecessary that this ban is justified.

We have broad bipartisan support for this bill, both pro-life and pro-choice, and I think that shows this is an important issue that goes beyond the debates of pro-life and pro-choice. We have that support because the partial-birth abortion procedure, as described specifically in the bill, deeply offends our sensibilities as human beings, and as people who care for one another and feel people deserve to be treated with respect, dignity, and compassion.

The PRESIDING OFFICER. The Senator's time has expired. The Senator may ask for additional time with consent.

Mr. FRIST. I ask unanimous consent for an additional 1 minute.

Mrs. BOXER. Reserving the right to object, and I will not object. I want to make sure that I can ask my friend a question before he gets the additional minute. I ask unanimous consent to make it a 2-minute request.

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

Mrs. BOXER. I say to my friend, he said he talked to a lot of doctors—gynecologists and obstetricians. Is he aware that the American College of Obstetricians and Gynecologists has written a letter to Senator DOLE objecting very strenuously to this bill?

Mr. FRIST. Yes, he is.

Mrs. BOXER. I thank the Senator.

Mr. FRIST. Mr. President, this procedure, as described, is a brutal procedure. It is a procedure that I consider inhumane, as do a number of people, including obstetricians. I just got off the telephone with one who, again, performs abortions in that third trimester. He told me, point blank, that ''it is unnecessary.''

Those of us who oppose this procedure do care deeply about women, about their health care, and about the horrific circumstances and situations they face. But how can we answer to our children, to our patients, to our constituents, and to others if we continue to allow babies to be aborted through this unnecessarily brutal partial-birth procedure?

Mr. President, it is with compassion, but with steadfast resolve, that I register my support for the partial-birth abortion ban.

The PRESIDING OFFICER. The Senator from Pennsylvania has 2 minutes 30 seconds.

Mr. SPECTER. Mr. President, I express my very high regard for the distinguished Senator from Tennessee, who is our only doctor in the Senate. I can understand the consultations which he has had, but I emphasize as forcefully as I can that consultations that anyone has are not the same as having hearings. The Senate has had no hearing on this matter. The House had only one limited hearing, and the pending motion is a very limited one, for 9 working days in the Senate, from today, November 8, until November 17, including the weekend and then the recess period. I think the comprehensive answer to the submission by Senator FRIST is from the American College of Obstetricians and Gynecologists, who wrote to Senator DOLE on November 6.

I ask unanimous consent that this be printed in the RECORD.

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

THE AMERICAN COLLEGE OF,
OBSTETRICIANS AND GYNECOLOGISTS,
Washington, DC, November 6, 1995.

Hon. ROBERT DOLE,
Majority Leader,
Washington, DC.

DEAR MAJORITY LEADER DOLE: The American College of Obstetricians and Gynecologists (ACOG), an organization representing more than 35,000 physicians dedicated to improving women's health care, does not support HR 1833, the Partial-Birth Abortion Ban Act of 1995. The College finds very disturbing that Congress would take any action that would supersede the medical judgment of trained physicians and criminalize medical procedures that may be necessary to save the life of a woman. Moreover, in defining what medical procedures doctors may or may not perform, HR 1833 employs terminology that is not even recognized in the medical community—demonstrating why Congressional opinion should never be substituted for professional medical judgment.

Thank you for considering our views on this important matter.

Sincerely,

RALPH W. HALE, MD,
Executive Director.

Mr. SPECTER. Mr. President, I ask unanimous consent that the opinion of the U.S. Department of Justice that the pending legislation is unconstitutional be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
Washington, DC, November 7, 1995.

Hon. ROBERT DOLE,
Majority Leader,
U.S. Senate, Washington, DC.

DEAR MR. LEADER: This letter represents the Department's views on H.R. 1833, a bill that would ban what it calls ''partial-birth abortions.'' This legislation violates constitutional standards recently reaffirmed by the Supreme Court. Most significantly, the bill fails to make an adequate exception for preservation of a woman's health. Even in the post-viability period, when the government's interest in regulating abortion is at its weightiest, that interest must yield both to preservation of a woman's life and to preservation of a woman's health. *Planned Parenthood* v. *Casey*, 112 S. Ct. 2791, 2804, 2821 (1992). This means, first of all, that the government may not deny access to abortion to a woman whose life or health is threatened by pregnancy. Id. It also means that the government may not regulate access to abortion in a manner that effectively ''require[s] the mother to bear in increased medical risk'' in order to serve a state interest. *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U.S. 747, 769 (1986) (invalidating restriction on doctor's choice of abortion procedure because could result in increased risk to woman's health). That is, the government may not enforce regulations that make the make the abortion procedure more dangerous to the woman's health. Id,; see also Planned *Parenthood of Missouri* v. *Danforth*, 428 U.S. 52, 79 (1976) (invalidating ban on abortion procedure after first trimester in part because would force ''a woman and her physician to terminate her pregnancy by methods more dangerous to her health than the method outlawed'').

If Congress were to ban this method of abortion, it appears that ''in large fraction

of the cases'' in which the ban would be relevant at all, see Casey 112 S. Ct. at 2830 (discussing method of constitutional analysis of abortion restrictions), its operation would be inconsistent with this constitutional standard. It has been reported that doctors performing this procedure believe it often poses fewer medical risks for women in the late stages of pregnancy.[1] If this is true, then it is likely that in a ''large fraction'' of the very cases in which the procedure actually is used, it is the technique most protective of the woman's health. Accordingly, a prohibition on the method, in the absence of an adequate exception covering such cases, impermissibly would require women to ''bear an increased medical risk'' in order to obtain an abortion.

H.R. 1833 would provide for an affirmative defense to criminal prosecution or civil claims when a partial-birth abortion is both (a) necessary to save the life of the woman, and (b) the only method of abortion that would serve that purpose. This provision will not cure the bill's constitutional defects. First, as discussed above, the provision is too narrow in scope, as it fails to reach cases in which a woman's health is at issue. Second, the provision does not actually except even life-threatening pregnancies from the statutory bar. Cf. Casey, 112 S. Ct. at 2804 (even in post-viability period, abortion restrictions must ''contain [] exceptions for pregnancies which endanger a woman's life or health''). Instead, the provision would require a physician facing criminal charges to carry the burden of proving, by a preponderance of the evidence, both that pregnancy threatened the life of the woman and that the method in question was the only one that could save the woman's life. By exposing physicians to the risk of criminal sanction regardless of the circumstances under which they perform the outlawed procedure, the statute undoubtedly would have a chilling effect on physicians' willingness to perform even those abortions necessary to save women's lives.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

Mr. SPECTER. Mr. President, on a matter of this enormous import, where we are talking about the meaning of life, as articulated by the Senator from Indiana earlier, we ought to have a hearing in a limited period of time. We ought not to rely upon hearsay statements that are brought to the floor of the Senate, where we do not have an opportunity to question and elicit more detailed information.

We ought not allow ''Nightline,'' as urged by some on the floor of this body, to substitute for deliberations by the U.S. Senate. This is a matter which could have been brought to the floor at any earlier time, and certainly for the world's greatest deliberative body, it is not asking too much to have a very brief period of time—some 19 days—for the Judiciary Committee to hold hearings, report this matter back, and then the Senate could express its will in accordance with Senate procedures.

The PRESIDING OFFICER. The controlled time has expired.

Mr. SPECTER. Has all time expired on the amendment, Mr. President?

The PRESIDING OFFICER. The time for controlled debate has expired.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

Mrs. BOXER. I object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk continued with the call of the roll.

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

Mrs. BOXER. Mr. President, I object.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Objection is heard. The clerk will continue to call the roll.

The bill clerk continued with the call of the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded, that I be allowed to speak for 5 minutes as if in morning business, and that the business of the Senate will then return to a quorum call and to its present state.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Mr. President, reserving the right to object—I will not object—I want to make sure from my friend that morning business is nothing about the pending bill.

Mr. PRESSLER. It is nothing about the pending bill.

Mrs. BOXER. I shall not object.

The PRESIDING OFFICER. Without objection, it is so ordered, and the Senator from South Dakota [Mr. PRESSLER] is recognized to speak as if in morning business for 5 minutes.

AIR SERVICE OPPORTUNITIES IN CONTINENTAL EUROPE

Mr. PRESSLER. Mr. President, I rise today to discuss existing and emerging air service opportunities on the European Continent for U.S. passenger and cargo carriers. These opportunities include not only serving destinations within Europe, but also points beyond such as the Middle East and Asia-Pacific markets. As the British continue to refuse to open their skies to our carriers, developments in other countries represent alternatives that are increasingly attractive and are taking on greater significance.

Unfortunately, recent negotiations with the United Kingdom seeking to liberalize our air service relationship with that country have hit an impasse. At this time, it is unclear whether that impasse is insurmountable. As is often the case with the British, the primary sticking point is our request for greater access to London Heathrow Airport, the main hub of British Airways. Access to Heathrow is particularly important to our carriers since it is an international gateway airport offering connecting service opportunities beyond the United Kingdom to markets virtually worldwide.

Another key and often overlooked area of disagreement is our request for full liberalization of air cargo services between and, importantly, beyond our two countries. Currently, the ability of our cargo carriers to serve the United Kingdom, load additional freight there, and fly on to other countries is severely limited by the United States-United Kingdom bilateral aviation agreement. British negotiators continue to reject our requests for fully liberalized air cargo opportunities, despite a March 1994 recommendation by the House of Commons Transport Committee to that effect. What does all this mean?

The answer to that question is contained in the insights of one aviation authority who wrote recently ''[a]irlines and passengers are free agents. If extra capacity is not developed at Heathrow, the airport will not be able to satisfy demand and airlines will expand their business at continental airports.'' The author added ''if airlines are denied the opportunity to grow at Heathrow, many will choose Paris, Frankfurt, or Amsterdam.''

Mr. President, this is not rhetoric. It is not a threat by U.S. interests designed to gain negotiating leverage. To the contrary, the author of these quotes is BAA plc, the British company that owns and operates Heathrow as well as other United Kingdom airports. BAA is very perceptive. Obviously, BAA recognizes that in today's global economy the long-term consequence of protecting one's air service market amounts to little more than the stimulation of competitive opportunities elsewhere. One need only look across the English Channel to continental Europe to confirm that already is taking place.

There was a time when geographic factors and the limited range of commercial aircraft made the United Kingdom the international gateway of necessity for United States carriers serving Europe and beyond. Times have changed. New generation long-range aircraft have made the option of overflying the United Kingdom viable from both an operational and economic standpoint. Simply put, if the British do not want the business of our air carriers, United States carriers can and will look to the European Continent for new gateway airport opportunities. Today, I wish to discuss a few of these existing, emerging, and potential air service opportunities.

First, there is tremendous growth in international passenger traffic at Amsterdam's Schiphol Airport. This is

[1] *See Hearings on H.R. 1833 Before the Subcomm. on the Constitution of the House Judiciary Comm.* (June 23, 1995) (statement of James T. McMahon, M.D., Medical Director, Eve Surgical Centers) (procedure shown to be safest surgical alternative late in pregnancy); *id.* (June 15, 1995) (statement of J. Cortland Robinson, M.D., M.P.H.) (same); *see also* Tamar Lewin, *Wider Impact is Foreseen for Bill to Ban Type of Abortion*, The New York Times, November 6, 1995, at B7; Diane M. Gianelli, *Shock-Tactic Ads Target Late-Term Abortion Procedure*, American Medical News, July 5, 1993, at 3; Karen Hosler, *Rare Abortion Method Is New Weapon in Debate*, Baltimore Sun, June 17, 1995, at 2A.

due, in large part, to the successful alliance between Northwest Airlines and KLM Royal Dutch Airlines, and clearly demonstrates BAA's prediction already is coming to pass. How did it happen? Recognizing the significant mutual benefits that result from free trade among nations, in 1992 the Netherlands signed an open-skies agreement with the United States. That agreement permits the marketplace, not Government restrictions, to determine air service between the two countries. The results speak very loudly.

Between 1992 and 1994, total passenger traffic between the United States and the Netherlands grew an astounding 56 percent while total passenger traffic between the United States and the United Kingdom grew just 7.5 percent. In 1992, 18.6 million international passengers arrived and departed from Schiphol. By 1994, that number grew to 22.9 million passengers—an increase of more than 23 percent. It is anticipated this growth will continue with nearly 28 million international passengers using Schiphol by 2000. What does this illustrate? Among other things, it clearly demonstrates Schiphol is drawing passenger traffic originating in the United States away from United Kingdom airports, particularly Heathrow.

Cargo opportunities also are booming at Schiphol. In 1992, nearly 725,000 metric tons of international cargo were loaded and unloaded at the airport. By 1994, that number grew to 838,127 metric tons, an increase of nearly 12 percent. By the year 2000, it is estimated 1.2 million metric tons of international air cargo will pass through Schiphol.

Consistent with that forward-looking view of aviation relations, the Dutch also have in place a long-term airport growth plan to enable Schiphol to accommodate the rapidly expanding traffic the United States-Netherlands open skies has spurred. The goal is no less than making Schiphol one of the major European hubs for intercontinental passenger and cargo traffic. By the year 2015, that plan calls for Schiphol to have the capacity to serve up to approximately 56 million passengers and 4 million metric tons of cargo annually.

Mr. President, the Dutch clearly want the business of United States carriers. Based on the growth of international passenger and cargo traffic at Schiphol, it is clear U.S. carriers are responding to this message.

Second, our recently completed ninenation European open-skies initiative should stimulate additional new continental gateway airport opportunities. The nine European countries with which the United States recently signed open-skies agreements are Austria, Belgium, Denmark, Finland, Iceland, Luxembourg, Norway, Sweden, and Switzerland.

Brussels Zaventem Airport illustrates my point well. Even before the United States-Belgium open-skies agreement was signed a few months ago, international passenger and cargo growth at Brussels Airport was impressive. For instance, between 1993 and 1994 international passenger traffic grew to more than 11 million, a 12-percent increase. During the same period, international freight passing through Brussels Airport rose a remarkable 24 percent to more than 380,568 metric tons.

No question, Brussels Airport is emerging as an important European gateway airport for intercontinental traffic. The recent open-skies agreement should cause existing growth to accelerate. To ensure this comes to pass, the Belgians recently expanded Brussels Airport to put it in a position to fully capitalize on new service opportunities. Earlier this year, a new terminal opened at Brussels Airport which has more than doubled the airport's capacity from 10.5 to 21 million passengers annually. This terminal expansion initiative, coupled with significant runway capacity, will make Brussels very attractive to U.S. carriers.

Indeed, a number of U.S. passenger carriers already provide nonstop service from the United States to Brussels. Delta Air Lines, through its code-sharing alliance with the Belgian national carrier Sabena, also provides nonstop service from key United States gateway cities including New York, Boston, and Chicago.

One clear indication the United States-Belgium open-skies agreement will be a catalyst for increased transatlantic service from the United States to Belgium appeared in a recently filed application by Delta seeking antitrust immunity for its alliances with Sabena as well as Swissair and Austrian Airlines. In that filing, Delta indicated it plans no less than to use the Delta-Sabena alliance to make Brussels Airport one of a multihub network in continental Europe. No wonder, Brussels Airport is regarded as Europe's only true hub-and-spoke operation.

Third, a potentially tremendous opportunity for United States carriers may soon emerge in Germany. The United States and Germany commenced air service negotiations in July which I very much hope will result in an open-skies agreement. It is my understanding those talks are progressing well.

What would an open-skies agreement with Germany mean for United States carriers? In short, it would mean significant new air service opportunities for our carriers between the United States and Germany. Equally important, German airports would provide well-situated gateway opportunities for our carriers to serve points beyond Germany such as the booming Asia-Pacific market.

One such opportunity is the airport in Frankfurt which already is being used by some U.S. carriers as an alternative to Heathrow. Frankfurt-Main Airport's ideal location in Europe already has fueled tremendous growth for that facility. As a matter of fact, it already ranks as the second busiest airport in Europe next to Heathrow. Last year, for instance, 27.6 million international passengers passed through Frankfurt as well as more than 1.2 million metric tons of air freight. Each total represented nearly a 10-percent increase over 1993 traffic levels.

Frankfurt Airport is not resting on its laurels. In fact, the Germans have ambitious plans to ensure Frankfurt Airport can meet rapidly expanding demand. Last year, a new terminal complex was completed which enables the airport to handle an additional 12 million passengers annually. In addition, the runways at Frankfurt Airport already have the capacity to handle nearly as many aircraft movements per hour as those at Heathrow.

By the year 2010, forecasts indicate Frankfurt Airport will handle approximately 53 million passengers. As far as air cargo is concerned, new freight facilities are expected to more than double air cargo passing through Frankfurt from its current level of 1.2 million metric tons. Unquestionably—particularly under an open-skies regime—Frankfurt represents an attractive option for U.S. carriers who are frustrated by their inability to gain or expand access at Heathrow.

There also are other important air service opportunities elsewhere in Germany. Last year, 8.3 million international passengers passed through the airport in Munich. Plans by Lufthansa to make Munich its second largest hub, including using it as a gateway for some Asia-Pacific service, should spur additional international passenger growth at the airport. An additional option is Dusseldorf's Rhine-Ruhr Airport which last year served 10.3 million international passengers.

A United States-Germany open-skies agreement undoubtedly will foster additional growth in the number of international passengers using the airports in Frankfurt, Munich, and Dusseldorf. Also, it could accelerate construction of a planned new airport in Berlin. The new Berlin-Brandenburg airport would offer yet another gateway opportunity for U.S. carriers.

Mr. President, as I have said on other occasions in statements to this body, we must continue pressing for a liberalized air service agreement with the United Kingdom. We owe that to consumers on both sides of the Atlantic who unquestionably would be the biggest winners if such an agreement were reached.

Concurrently, however, I believe we should intensify our efforts to secure an open skies agreement with Germany. In combination with existing and emerging opportunities for United States carriers in continental Europe, such an agreement would put tremendous competitive pressure on the British to open Heathrow to United States carriers. Moreover, if the British doubt that the restrictive United States-United Kingdom bilateral agreement is forcing United States carriers to

overfly the United Kingdom to European continental airports, an open-skies
agreement with Germany that furthers the exodus of United States flights to the continent would dramatically make this point. If Britain does not want our business, clearly there are other nations who do.

Mr. President, may I proceed for 2 more minutes on the same subject?

The PRESIDING OFFICER. Is there objection?

No objection is heard. Without objection, it is so ordered. The Senator is recognized for 2 additional minutes.

Mr. PRESSLER. Mr. President, to summarize what I have said, as a chairman of the Commerce Committee and a member of the Aviation Subcommittee, I am very eager to see us move forward on efforts to liberalize our bilateral aviation agreement with the United Kingdom. I am very concerned about the problem of access to Heathrow and resulting limitations on the ability of our carriers to serve markets beyond the United Kingdom. Also, I am disturbed by British restrictions on the beyond rights of our cargo carriers. Similarly, I am also concerned about attempts by the Government of Japan to prevent our carriers from fully participating in the booming Asia-Pacific market beyond Tokyo.

Very frankly, what these countries try to do is they have a system to block out U.S. passenger and cargo carriers as well as to prevent our carriers from serving beyond markets. I believe we should put the emphasis on jumping over Heathrow if the British are unwilling to cooperate by opening their skies to United States carriers. I have urged our Secretary of Transportation, Secretary Peña, who I think does a good job in international aviation negotiations, to treat international aviation as a trade issue and to focus on maximizing economic benefits for our country. I understand this is very difficult for Secretary Peña to do since each time he attempts to follow this course, a group of Senators and Representatives who represent a certain airline criticize what he is doing. We have to support our Secretary of Transportation when he is trying to negotiate these difficult agreements. We need to put the interests of the U.S. economy first.

The situation with the British is very frustrating and unacceptable. Britain is dragging its feet on liberalizing our air service agreement. They are stalling. I think we should make it very clear to the British if they continue to severely restrict opportunities for our carriers to serve the United Kingdom and points beyond, United States passenger and cargo carriers will turn to Germany and Amsterdam and other points in Europe. I would hope that continued progress in liberalizing our aviation relations with countries in continental Europe, and the continued exodus of United States carriers to capitalize on these opportunities, will drive home this point. Simply put, our carriers are not being treated fairly by the British. Unfortunately, the same is true in Japan where the Government of Japan is trying to prevent our carriers from fully participating in the rapidly expanding Asia-Pacific market.

I hope our Secretary of Transportation stands firm with the British and the Japanese. I support him, and I urge the Members of this body to do so. He is doing a good job in international aviation matters under difficult circumstances.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent to be able to continue as in morning business, not in reference to the pending business, but another matter, with the understanding that, if there is someone seeking recognition not under the same standard, then we return to a quorum call.

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

TRIBUTE TO YITZHAK RABIN

Mr. LEAHY. Mr. President, my wife and I were in California visiting my youngest son and his wife this past weekend. After what had been a very pleasant day out hiking and walking about, we came back to their home, and there were a series of messages for me from the White House and my chief of staff. I called back and heard the terrible news about Yitzhak Rabin. I was also asked if it would be possible to make the connection back to Washington in time to accompany the President and the others to Israel.

Mr. President, like so many millions of people, I turned to the radio and the television in disbelief. I hoped, even though the first news was so discouraging, that somehow he had survived the assassin's bullet. It seemed inconceivable that an old soldier who had survived so much, who had risked his life so many times, could be struck down this way, following a rally for peace.

Those unable to attend the ceremony in Jerusalem watched it and wept. For all the reasons said so eloquently by so many people—and I think of our own President, President Clinton, Jordan's King Hussein, the man who had a close personal relationship, one based on trust and respect, with Prime Minister Rabin, and Egypt's President Mubarak, and perhaps most of all Prime Minister Rabin's granddaughter Noa. We listened to them and know we will not forget Yitzhak Rabin.

Prime Minister Rabin was a man of great courage, of great vision, of great warmth, and, above all, great love for his country. In fact, for me it is almost impossible to think of Israel without thinking of him. My heart's hopes go out, not only to his family, but to Shimon Peres, who now takes on the awesome duties of Prime Minister at such a difficult time. To him I offer my support with the deep respect he knows I feel for him.

In remembering Prime Minister Rabin, it was his undying love for Israel, his absolute commitment to Israel's survival, that enabled him to change course, to choose the path of peace in his final years. It was a choice and a challenge for all of us, but especially the people of the Middle East. It was a choice that was embraced by a majority of Israelis and Palestinians. It was spurned only by those too blinded by hate to see the historic opportunity that Yitzhak Rabin had seized.

Like so many others in the Senate, I was fortunate to know Yitzhak Rabin, for nearly a generation. I am going to miss him very, very much. I will miss that great and wonderful voice, and his strength and his wisdom which you could feel just standing next to him.

I had the privilege to accompany President Clinton to Aqabah last October, a year ago, for the signing of the Israeli-Jordanian peace agreement. I remember standing there in 110 degree heat, the wind blowing across the desert, as I listened to those two soldiers, Yitzhak Rabin and King Hussein, men who had fought against each other but who now stood with voices filled with emotion speaking of the need for peace.

I knew from my private conversations both with Prime Minister Rabin and with King Hussein that these were men who could rely totally and utterly on each other's words, on each other's commitment, on each other's integrity and on each other's ability for leadership. And when the ceremony ended and the grandchildren of those who had fallen in the war, Jordanians and Israelis, came and presented flowers to the leaders, you knew that it was the leadership of Yitzhak Rabin and those who joined with him made that moment possible.

Israel and the world have suffered a terrible and irreplaceable loss. We all remember the immeasurable loss after the assassination of President John Kennedy. I was not old enough to vote for President Kennedy. I was a student here in Washington when he died. And like everybody else who was old enough to know that day, I remember precisely where I was, exactly what I was doing, and the emotions I had at the time. And like so many other Americans, I wondered how we might go on.

I know that there are those same feelings in the minds of people in Israel today. But I do not fear for Israel because we can find hope in the outpouring of love and respect for Yitzhak Rabin's memory by Jews, by Arabs, by people of all faiths around the world, because more than anything, it was Yitzhak Rabin's commitment to peace that inspired that outpouring of love and respect. So many generations have yearned for it, but it was Yitzhak Rabin who defied the prejudice, hatred, and violence of the past to make it possible for us to believe that peace is possible in the Middle East. That was the message of the handshake on the White House lawn. It is our challenge and our

duty to complete Prime Minister Rabin's vision.

The Congress can be a potent force for peace. Too often we have seen some Members of Congress make fervent speeches and sponsor amendments that may have won points with constituencies here or at home but actually serve to sow divisiveness and undermine progress toward peace in the Middle East.

Just as Prime Minister Rabin pleaded so passionately at the White House for an end to blood and tears, let us put an end to partisan political maneuvering on a subject so important and fragile as peace in the Middle East. Let us stop conceiving of ways to legislate obstacles to the very policies of those who are risking their lives for peace. Let us remind ourselves that even though we might get some short-term political gain by trifling legislatively with the peace process in the Middle East, we do it here in the safety of this Chamber, we do it in the safety of our home States, but it is the lives and the aspirations and the hopes and the dreams of the people in the Middle East who are affected. Let us put an end to these political games and wholeheartedly support peace in the Middle East.

Let us do that for the memory of Yitzhak Rabin. Let us be united in continuing his legacy. Let each of us join the millions of Israelis who put their faith in him to prove the enemies of peace wrong. Let us listen to the words of Leah Rabin, his wife of so many decades, that wonderful woman who calls on us to unite in support of peace.

Mr. President, it was only a couple of weeks ago, here in this building, that I and Leah Gluskoter of my office last spoke with Prime Minister Rabin. I remember him coming over and putting his arm around me and we chatted as the friends I was proud we had become.

We talked a little bit about a longer conversation we had a couple of weeks before. In that conversation, he had thanked me for something I had been able to do for him that he felt helped the peace process. He said I had taken some political risks. I said, ''Mr. Prime Minister, you are the one who takes the real political risk. You risk your political life every day.'' I paused and I said, ''No, you risk your life, your actual life every day.''

In that deep and wonderful voice, he responded he did not worry about that. He really did not fear for his life. He only feared for the continuation of the peace process. This is a man whose own political life, his own future, his own actual life was secondary to what he was trying to accomplish.

I told him in that conversation that I felt when the history of this century is written, there will be a handful of people who will stand out as true peacemakers of this century, and he will be among them. He will be one of the most noted, certainly, of my lifetime.

Now he is gone, and it is our job to go forward. Let me say again that we can give the greatest respect to Yitzhak Rabin's memory by supporting those who believe, as he did, that Israel and its Arab neighbors have seen enough of hatred, of occupation, of bloodshed, and that there is another way. The other way is the peace process he began and which will now be carried on by acting Prime Minister Shimon Peres. Our country remains a partner with Israelis and Arabs in this effort. Let us go forward in the memory of a great man who gave his life for it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

PARTIAL-BIRTH ABORTION BAN ACT OF 1995

The Senate continued with the consideration of the bill.

Mr. SMITH. Mr. President, I ask unanimous consent that a vote on the pending question occur on the motion to commit at 3:30 this afternoon, and that the time divided between now and then be equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SMITH. Mr. President, at this time, I will say for my colleagues that Senator SPECTER is en route to the floor.

At this point, I suggest the absence of a quorum, and ask unanimous consent that the time be equally divided between the two sides.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. SNOWE). Without objection, it is so ordered.

Mr. DASCHLE. Madam President, so much has already been said about the pending legislation, but, prior to the vote, I want to very briefly articulate my position and urge my colleagues to express themselves in the vote at 3:30 in opposition to the legislation as currently drafted and in support of the Specter motion to refer the bill to Judiciary and report back in 19 days.

I say that for a couple of very important reasons. First of all, there are extraordinarily complex issues surrounding this medical procedure that ought to be explored through the normal hearing process.

There are medical issues. There is the need to hear from physicians and others on the ramifications of a strict ban on late-term abortions. This is an emergency medical procedure reserved for cases where the life and health of the mother could be endangered or where severe fetal abnormalities are a major factor in the decision made by a woman and her physician. Whether or not we can delineate very clearly and legislatively when a doctor should and should not perform that very difficult procedure is something that ought to be explored in ways other than those we have employed so far on the Senate floor. So, clearly there are medical issues that this debate simply does not allow us to discuss and consider adequately prior to making a fundamental decision about the legality or justifiability of this procedure in various cases.

Second, there are constitutional issues. As the distinguished Senator from California and others have laid out very clearly, this is a challenge to the fundamental decision made in Roe versus Wade. Decisions relating to whether or not States ought to have the ability to restrict late-term abortions in cases where the life and health of the mother is endangered—that, to me, is a question that ought to be pursued much more carefully, much more deliberately, much more clearly than we have done in the debate in the last couple of days.

Finally, there are legal issues. This bill would criminalize a medical procedure for the first time. There ought not be any mistake about that. It would be an unprecedented intrusion by Congress into the practice of medicine. If a doctor is convinced it is an emergency procedure needed to save the life of the mother, he can use that affirmative defense only in the context of a criminal prosecution. Should doctors be prosecuted for saving a woman's life? I do not think so. In an emergency situation, do we want doctors hesitating to perform life-saving measures because they fear they will face criminal prosecution for doing so? I do not think we ought to put any doctor, or any woman, in that position.

So there clearly are situations here where we owe it to doctors, we owe it to mothers, we owe it to women, we owe it to the American people, to explore far more carefully than we have so far the far-reaching implications of this legislation. So, for those reasons if nothing else, this legislation ought to be referred to the committee for very, very careful consideration.

Second, Madam President, if the procedure is being abused, then we should consider restricting it. But it is unclear that it is being abused. There is a lot of confusion and misinformation about this procedure. We need hearings to clarify whether or not abuse has ever been documented and, if so, how best to stop it.

There have been no hearings in the Senate and only one hearing in the House. Without having had the opportunity to listen to one expert, every Senator in this Chamber is being asked

to make a decision that I do not think they are prepared to make. I am not prepared to make it.

I doubt that anyone, regardless of whether they have read the record or not, is capable of deciding today whether in these extraordinary circumstances a woman is going to be protected from life-threatening circumstances, a doctor is going to be protected from criminal prosecution for saving a life, and the rights of all Americans are going to be considered.

So let us let the experts give us their guidance. Let us make a considered decision, not a rush to judgment.

The motion to refer to the Judiciary Committee is completely reasonable. But if the facts show that restrictions are necessary, we can base our actions on those facts at that time. Let us take time to get the facts and consider the implications.

All we are asking is for the bill to be considered in the next 19 days. Is that too much to ask? Is it too much to ask to give the Senate 19 days to consider this issue more carefully, to bring in the experts, to look at each one of these concerns, and make a decision? There is nothing wrong—in fact, there is everything right—with delaying our decision to make sure we get it right.

That is what this vote is all about at 3:30. That is why it is so important that the majority of Members of this body now support the Specter motion. And that is why I strongly support it this afternoon.

With that, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SMITH. Madam President, how much time remains?

The PRESIDING OFFICER. Two and one-half minutes.

Mr. SMITH. As I said yesterday, this bill is a straightforward and much needed remedy to a procedure that deserves to be condemned. Senator DOLE and I believe, as many of my colleagues do, that this procedure cannot be defended on its merits. But as I understand it, opponents of this bill are arguing that they need a hearing in committee to explore the issues involved here.

Senator DOLE and I have discussed this. While neither one of us think this is necessary, we do think it may not be a bad idea in that the more one learns about this horrible procedure the harder it is to defend it. So our view is that we are willing to be fair. Let us go ahead and hold a hearing. After that, this bill will return to the calendar in 19 days, and we can consider it again.

Senator DOLE and I hope to take the bill up again, and I hope that the opponents of this bill will be as fair to us as we are being to them. And, when the time comes, I hope they will allow us to have an up-or-down vote on the merits and not engage in procedural tactics designed to kill this important bill.

So with that, Madam President, in behalf of Senator DOLE and myself, we are asking our colleagues to support the Specter amendment.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Madam President, I ask for a couple of minutes of leader time to respond to the distinguished Senator from New Hampshire.

I am very pleased with this announcement. This comes as somewhat of a surprise. But I think it confirms what we have said—that, obviously, having the opportunity to listen more carefully to the experts, to consider more carefully the ramifications of something that is certainly in everyone's best interests, there is an acknowledgment of that on both sides of the aisle.

I expect now a unanimous vote. I want to thank him, thank the majority leader, and thank those, including the distinguished Senator from Pennsylvania and the Senator from California, for their work on this effort in the last couple of days.

I yield to the distinguished Senator from California.

Mrs. BOXER addressed the Chair.

Mr. SMITH. Parliamentary inquiry. How much time is remaining?

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senate minority leader has minority leader time.

Mr. SMITH. Did the minority leader yield?

Mr. DASCHLE. That is correct.

Mrs. BOXER. I thank the distinguished Democratic leader for yielding. I thank my friend from New Hampshire. I think what happened as a result of this is we avoided a very, very difficult split in this Senate, a split that really was not along party lines at all.

I think this is a wise decision. I think with a hearing in the Judiciary Committee, which is really equally divided on this issue, which is important, every side would be heard. Physicians who deal with this will come forward and testify to this; nurses; families who have gone through the tragedy; and then all of us can make a far more reasoned judgment.

I thank the Senator from Pennsylvania [Mr. SPECTER], for his extraordinarily courageous leadership on this issue. I think the way he handled debate was exemplary. I also want to say to my friend from New Hampshire, we are friends, and we were never disagreeable. We just disagreed. This is, I think, a good thing for the Senate.

I thank again the Democratic leader for yielding me this time. I yield the floor.

The PRESIDING OFFICER. The question is now on agreeing to the motion.

Mr. SPECTER. Madam President, I ask for the yeas and nays, if they have not been ordered.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Indiana [Mr. LUGAR] is necessarily absent.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is absent because of illness in the family.

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

The result was announced—yeas 90, nays 7, as follows:

[Rollcall Vote No. 563 Leg.]

YEAS—90

Abraham	Ford	McCain
Akaka	Glenn	McConnell
Ashcroft	Gorton	Mikulski
Baucus	Graham	Moseley-Braun
Bennett	Grams	Moynihan
Biden	Grassley	Murkowski
Bingaman	Gregg	Murray
Bond	Harkin	Nickles
Boxer	Hatch	Nunn
Breaux	Hatfield	Pell
Brown	Heflin	Pressler
Bryan	Hollings	Pryor
Bumpers	Hutchison	Reid
Burns	Inhofe	Robb
Byrd	Inouye	Rockefeller
Campbell	Jeffords	Roth
Chafee	Johnston	Santorum
Cohen	Kassebaum	Sarbanes
Conrad	Kempthorne	Shelby
Coverdell	Kennedy	Simon
Craig	Kerrey	Simpson
D'Amato	Kerry	Smith
Daschle	Kohl	Snowe
Dodd	Kyl	Specter
Dole	Lautenberg	Stevens
Domenici	Leahy	Thomas
Dorgan	Levin	Thompson
Exon	Lieberman	Thurmond
Feingold	Lott	Warner
Feinstein	Mack	Wellstone

NAYS—7

Coats	Faircloth	Helms
Cochran	Frist	
DeWine	Gramm	

NOT VOTING—2

Bradley	Lugar

So the motion to commit was agreed to.

Mr. SPECTER. Madam President, I move to reconsider the vote by which the motion was agreed to.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. FORD. Madam President, may we have order, please? We need to hear the Senator.

The PRESIDING OFFICER. May we have order in the Chamber? We cannot

proceed unless we have order in the Chamber.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho has recognition.

Mr. CRAIG. Madam President, I yield to the majority leader.

MORNING BUSINESS

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

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

The Senator from Idaho.

Mr. CRAIG. I thank the Chair.

(The remarks of Mr. CRAIG pertaining to the introduction of S. 1402 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

(Mr. BENNETT assumed the chair.)

THE DEMOCRATS ARE ALIVE AND WELL

Mr. DORGAN. Mr. President, on November 6, 1995, one of the leading periodicals in our country hit the newsstands—U.S. News & World Report. It says ''The Democrats: Is the Party Over?'' It is one of those stories about ''the Democrats are dead.''

Well, I encourage the U.S. News & World Report to get some airline tickets for some of those reporters and move them around the country today and ask what happened in the country yesterday. I suggest that they go to Kentucky, go to Maine, travel to New Jersey, visit with some folks who have pitched their tents on principles, once again, and see the campfires all around this country of Democrats, who stand for things that are important to the future of this country.

I think it was Mark Twain who said, in response to a report in the newspaper that he had died, ''The reports of my death are greatly exaggerated.'' Well, those who, for months, have been dancing around the bonfire chanting about ''the death of the Democratic Party,'' the resurrection of the Republican Party, and the lasting control of the Republicans in the American political system, might want to take a deep breath and look around at the results of yesterday's elections in our country.

Yes, it is true that yesterday, as is almost always the case, the Democrats were badly outspent. In many cases in these races, it was 4-to-1, 6-to-1, 8-to-1. The Republicans had more money. But the Democrats were never outworked, and never will be in our political system. Yesterday, county to county, town to town, all across this country, Democrats sent a message that we are alive, well, fighting, and winning, for things that are important to our country's future.

I think part of it yesterday was the American people responding again to our agenda about creating a growing economy, building good jobs with good incomes, educating our children in the world's finest schools, cleaning up our environment, and standing for the values and virtues that made this a great country and will make it a great country in the future. And, yes, even more than that, people from Kentucky, to Maine, to New Jersey, to the west coast, yesterday, also stood up and not only spoke for Democratic candidates—candidates who ran on a platform of hope and opportunity, a platform of building for the future, understanding we have always had the burden of being the builders.

If you look at almost anything that has been built in this country that represents hope and progress, it has been the Democrats who decided that is what ought to be done for America's future. We have had folks that always had seat belts on saying, no, we do not want to move ahead, do not want to do this or do that.

I am proud of our legacy and heritage, and I am proud to note that although we may be outspent, we are not outworked, and there are lots of Democrats across this country who are willing to stand for and fight for the kind of policies that will build a better future in America.

Yesterday, voters also spoke, in my judgment, about another agenda, the agenda of the new Speaker, Mr. GINGRICH, the Contract With America, and leadership in that direction.

I think the American people rejected yesterday an agenda that has as its centerfold tax cuts for the wealthiest Americans and budget cuts for the rest of Americans; an agenda that says we do not have enough money to provide an entitlement for a poor kid to have a hot lunch at school, that says we do not have enough money for health care for the elderly and the poor, but an agenda that says we have plenty of money for star wars, we have plenty of money for B–2 bombers nobody ordered, F–16's and F–15's that nobody asked for, for planes, ships, and submarines that nobody wanted. We have lots of money for those things, but we do not have enough money for the 55,000 kids now on Head Start who get kicked off.

That is what the voters were saying. Those priorities are out of whack. Those are not mainstream values. Those are extreme kinds of positions that the voters have told Speaker GINGRICH and others we reject.

I am proud, today, proud that so many around our country, men and women, State after State, were willing to stand up and speak out as part of our political process and stand for the values and the things that we believe in as Democrats—fought and won, in many cases, against the odds. When you are outspent, when the other side has more resources, you have to work harder.

I say in the context of this, I am proud of everybody that participates in this political process, Republicans and Democrats. The easiest thing for people to do is do nothing and complain about it. The toughest thing is to stand in the ring and stand up and speak out for things you believe in.

I believe everyone who participates is owed a debt of thanks in our system, but I am especially proud in light of the kind of things we see in our country, written about a party that I am proud of, things that say the Democrats maybe are dead; the Democratic Party, the party is over for you folks.

I am particularly proud yesterday that all across this country we had people, American people—yes, Democrats—sending a message back to those who pronounced our death, and say, as Mark Twain did, ''Reports of our death are greatly exaggerated.''

We believe in something special for the future of this country. We preach hope and opportunity. We preach values and virtue. We preach a return to the days in this country where everybody can understand that we are doing things for America as a whole.

We believed, in North Dakota years ago when the wagon trains forged West, we believed in that lesson that was learned the hard way, that no wagon train ever moves ahead by leaving some wagons behind.

We have a policy in this country these days by those who have the votes to enforce it that says some folks are out of fashion. If you are poor, tough luck. If you are old, that is even tougher luck. Somehow if you did not make your way, you are left behind.

That is not the best of our country. Our country will be strongest and our country will meet the future with the kind of opportunity we should have forever, when we decide that public policies that invest in jobs, expanded opportunities and education are the kind of policies that will come out of the U.S. House and the U.S. Senate.

In the coming weeks and months, my hope is the American people, having sent a message yesterday through the ballot box, my hope is the American people will see the best of this political system. The best of this system will provide that those on the Republican side of the aisle and those on the Democratic side of the aisle will offer their best ideas and will choose from those good ideas, that menu of good news that comes from all sides, and then use those ideas to move America ahead. That will be the best our political system can offer to the American people. It is my hope for the coming months.

I wanted to take the floor today to say that yesterday, at least for me, was wonderful news. I think for our country it was good news. Our country needs a healthy two-party system. Those who believe somehow that on this side of the aisle we do not have the strength, vitality or ideas to compete in America's political system any more are dead wrong. That was proved yesterday in the elections across America, and it will be proved again and again leading up to the Presidential elections and

elections for Congress and State and local offices all across this country in November 1996.

Then, I think U.S. News and other periodicals will write another headline, another cover page. I have a hunch I know what that cover page will be. I hope to come on the floor with a broad smile and say that happy days are here again and the vision and the hope and the dreams of Democrats for a better America will be realized again and again and again in the future.

I yield the floor. I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. GRAHAM. 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. GRAHAM. Mr. President, I ask unanimous consent I be allowed to proceed for up for 25 minutes.

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

RECONCILIATION

Mr. GRAHAM. Mr. President, on Friday of last week and again yesterday, I began a series of talks on the Medicaid Program. In my first discussion, I pointed out to the successes of Medicaid —successes at reducing infant mortality by 21 percent in this Nation between 1984 and 1992.

Yesterday, I discussed trends that have led to the growth in Medicaid spending. These included: demographic changes, including the fact that our population is living longer and that this greater longevity means more people are relying on Medicaid for longer periods; problematic changes that have expanded coverage to combat infant mortality among our Nation's children and to provide long-term care for our Nation's frail elderly and disabled; and the loss of private-sector health insurance, the fact that a shrinking percentage of America's children are insured through their parents' employer.

This last point, Mr. President, was reaffirmed in today's Journal of the American Medical Association, which says that 3 million children lost private health insurance between 1992 and 1993.

Mr. President, I ask unanimous consent that today's article in the Washington Post, entitled ''Medicaid's Safety Net for Children Could Be Imperiled,'' be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. GRAHAM. These, Mr. President, are major factors that have contributed and will contribute to Medicaid growth.

Today, I want to talk about the policies of the Senate which have been adopted for the future of Medicaid.

Mr. President, Halloween came early this year. In the dark of night, immediately prior to the passage of the Budget Reconciliation Act on the Friday before Halloween, the Medicaid formula was written by the architects on the reconciliation package.

Amazingly, the rewritten, revised Senate bill handed out treats—treats in the form of $10.2 billion mainly to States that were the prime abusers of Medicaid disproportionate share hospital funds in recent years. The Senate is preparing to reward States that have manipulated the Medicaid system by making permanent their past misdeeds.

How did the authors of this amendment pay for these treats dished out on the Friday night before Halloween? They imposed trickery on the elderly by raiding $12 billion from the Social Security trust fund.

What are these Medicaid misdeeds that are about to be rewarded and made permanent? They are what is referred to in Medicaid as the disproportionate share hospital program, known as DSH.

What is disproportionate share? The intent of the disproportionate share hospital payments originally enacted in 1981 is to assist hospitals that treat high volumes of Medicaid and low-income uninsured patients with special needs. Recognizing that these hospitals would have a small private insured patient base with which to recover funding for the cost of treating these uninsured, Congress intended that these disproportionate share hospitals receive payments to supplement their other Medicaid payments.

In fiscal year 1989, Federal funding for Medicaid DSH payments was just $400 million.

However, in coming up with their share of those funds, some States begin to see the huge potential in the use of donations and provider tax revenue as the State share of Medicaid expenditures.

Provider taxes and donations allowed States to draw down Federal Medicaid funds while backing out of providing their State matching share and sometimes effectively pocketing the Federal share of money meant for disproportionate share hospitals.

The original good intention, to meet the special need of hospitals, was creatively abused by States across the Nation.

Abuse was so great that, between fiscal year 1989 and fiscal year 1993, Federal spending for Medicaid disproportionate share hospital payments grew, if you can believe this, from $400 million in 1989 to $14.4 billion in 1993, a 3600-percent increase.

By 1993, DSH payments amounted to one-of-every-seven Medicaid dollars.

According to the Kaiser Commission on the Future of Medicaid, DSH payments were roughly equal to the sum of Medicaid spending for all physician, laboratory, x ray, outpatient, and clinic services that year.

In Alabama, Connecticut, Louisiana, Maine, Missouri, New Hampshire, and South Carolina, Medicaid disproportionate share hospital payments actually exceeded regular Medicaid payments for inpatient hospital services.

This rapid growth, a 3,600-percent increase in just 4 years, was a major factor in the overall Medicaid growth from 1989 to 1993.

I discussed that issue in more detail in my remarks delivered yesterday.

The Urban Institute, in a 1994 publication, estimated that between 1990 and 1991, DSH payments accounted for 20 percent of all Medicaid spending growth. In that 1-year period, DSH payments were 20 percent. But, between 1991 and 1992, DSH payments were responsible for 51 percent of Medicaid spending growth.

How did this occur? According to the Health and Human Services Inspector General Richard Kusserow, who served during the administration of President Bush, in a report dated July 25, 1991:

> The growing popularity of provider [tax and donation] programs, in our opinion, is due to States' awareness that a window of opportunity exists for them to alleviate their own budget programs to the expense of the Federal Government.
>
> States are fully aware that they had better take advantage of this opportunity while it exists.
>
> One State official went so far to say that ''State officials might be regarded as derelict if they did not take advantage of the Federal law.''

Incredibly, this occurred in a manner that, although named the disproportionate share hospital program, provided some heavily impacted Medicaid hospitals with little or no benefit.

This and other types of scams by States were detailed by the Prospective Payment Assessment Commission in a report requested by Congress and completed on January 1, 1994.

As the Commission noted,

> Although State Medicaid programs reported spending $20 billion more in fiscal year 1992 than in fiscal year 1990 for inpatient services in short-term hospitals, these hospitals received substantially less than a $20 billion increase in Medicaid revenue. Part of this discrepancy is attributable to situations in which state Medicaid programs allocate DSH payments to hospitals that never actually received or controlled the payment as revenue.

In an April 1995 report, the General Accounting Office noted that States often churned or even laundered Federal Medicaid dollars through State hospitals.

The GAO report said:

> State hospitals received $4.8 billion in DSH payments. However, hospital officials indicated that only a small share of the gains were actually retained and available to pay for health care services, such as uncompensated care. Instead, most of the gains were transferred back to state general revenue accounts.

In sum, paper transactions without paper money.

In fact, researchers at the Urban Institute concluded that:

> [A] high share of the funds are being diverted from direct health care to general

state coffers. It is reasonable to ask if Medicaid is an appropriate vehicle for general revenue sharing between the Federal Government and the States.

In reviewing such scams, analysts at the Health Care Financing Administration have estimated that the actual Federal share of Medicaid funds in 1993 was 64.5 percent instead of the reported 57.3 percent, primarily because of the manipulation of the DSH Program.

Good news: As a result of these scams, illusory tactics, and raids on the Federal treasury, Congress enacted legislation in 1991 and again in 1993 to create State-specific ceiling limits on each State's spending for DSH payment adjustments to 12 percent of the State's total Medicaid spending for the year. That is, no State could have more than 12 percent of its total Medicaid in the category of disproportionate share hospitals.

This limit, combined with other changes to the amount of money a single hospital can receive and the definition of what constitutes a provider tax, have been effective at controlling these costs.

In fact, the 20 States that have 12 percent of their overall Medicaid spending in DSH payments are capped at the absolute dollars they received in 1993.

For example, New Hampshire, which has over 50 percent of its entire Medicaid Program budget included in disproportionate share payments, is capped at a Federal disproportionate share payment of $196 million.

As a result, according to CBO estimates, Federal Medicaid DSH payments increased slightly from $9.6 billion in 1993 to $9.8 billion in 1994.

In fiscal year 1995, CBO projects that Federal DSH spending to drop to $8.5 billion, then increase by approximately half a billion dollars annually over the next 5 years. That is the good news. The Congress saw the problem. Congress acted. The actions tended to suture the hemorrhage.

Now the bad news. Incredibly, Congress is prepared to reward and make permanent the raids made on the Federal treasury in the past.

How was this done?

This was accomplished in the dead of night on the Friday before Halloween in an amendment that trimmed the Federal reduction in Medicaid from $187 billion to $176 billion.

Some of the winners and losers are well known by now.

Approximately $11.2 billion in additional Medicaid dollars will be distributed to States with two Republican Senators over the next 7 years, in the Senate proposal, while States with two Democratic Senators will lose an additional $3.6 billion. That has been well reported.

Less well known is the fact that States which have excessive Medicaid disproportionate share programs in the past are also the big winners.

New Hampshire and Louisiana, the most renowned examples of excess, have special fixes in the Senate bill which allows those two States to not have to fully match the Federal funding they will receive over the next few years.

Meanwhile, nine other States—Texas, Missouri, Connecticut, Kansas, Alabama, New Jersey, South Carolina, Tennessee, and Michigan—all which have disproportionate share programs that far exceed the national average and some that have been well documented as having schemed the Federal treasury in the past, those nine States will receive $14.8 billion in increased Medicaid funding over the next 7 years as a result of the late Friday evening deal, that currently would cap these ''high-DSH'' States' programs.

The Senate Finance Committee bill would have cut off excessive disproportionate share payments above 9 percent of overall Medicaid Program costs.

That was the bill that we had on the floor on that Friday before the late night raid which eliminated that constraint on the use of disproportionate share, and resulted in $14.8 billion flowing to those States that had been the primary abusers of the disproportionate share program.

However, the late evening deal would allow these States to not only keep what they had in the past and make it permanent, but would also allow them to increase that money annually, based on the larger base year funding which the inclusion of their full disproportionate share amounts allowed them to have. Thus, the $14.8 billion windfall for nine high DSH States.

The rest of the Nation's States—mostly low-DSH States—will lose another $3.6 billion from an amendment that added $10.2 billion to the Medicaid Program.

This is a perverse Washington logic where spending is saving—where bad is good—and locking in the past is heralded as reform.

But rewarding some States that had abused the disproportionate share of the hospital program was not enough bad policy for one night. The Friday night raid went on. The Senate made it worse by paying for these supplemental Medicaid allocations through mandating a 2.6 percent cost-of-living adjustment for 1996.

Mr. President, I ask unanimous consent that a Washington Post editorial on this subject entitled ''Medipork'' printed on November 6 be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. GRAHAM. Mr. President, under the Roth amendment that we adopted on that Friday night before Halloween, the money to fund the additional payments, largely to the States which had previously abused the Medicaid system, this money was found when the Government declared that the cost-of-living adjustment for 1996 would be 2.6 percent, which was lower than the 3.1 percent projected when the budget bills began moving through Congress last spring.

The result of the lower cost-of-living factor, said proponents, would be lower outlays for programs tied to the Consumer Price Index such as Social Security.

Mr. President, at first glance that sounds reasonable. Upon closer inspection, however, the logic fails, and it becomes clear that we have two choices. Either the funding is phony, nonexistent and, therefore, contributes to an additional deficit by spending funds without an equivalent additional source of revenue or—what I am afraid is the more likely alternative—a raid on the Social Security trust fund.

In order to understand this, I want to briefly discuss how the Federal budget is scored.

In March of this year, the Congress established an economic baseline. This baseline forecasts the level of Federal revenues and expenditures for the next 7 years predicated on current law and current and projected economic data. In making these economic projections, the Congressional Budget Office makes assumptions regarding a number of factors. The factors that are included in the assessment of the economic baseline include inflation, interest rates, number of qualified beneficiaries for the principal programs such as the number of beneficiaries for Social Security, the gross domestic product, revenues, and court decisions that might affect Federal policy.

Those are some of the factors which are included in arriving at the economic baseline.

From that baseline, the Congressional Budget Office can estimate the impact that changes in law will have on Federal revenues or expenditures.

Almost 8 months have passed since the economic baseline was established. Some of the assumptions turned out to be too high; others too low. For example, inflation has been lower than expected. The gross domestic product has been slightly higher than expected. Interest rates have been higher than projected. Obviously, if the economic baseline was updated to reflect actual experience in the last 8 months, we would obtain a more accurate picture of our Federal income statement and balance sheet for the next 7 years.

Mr. President, that was not what was done. Instead, we reached in and took just one economic factor—the fact that the Consumer Price Index increased only 2.6 percent and we require that legislation follow this monofactor directive. The Congressional Budget Office says it does not update its economic baseline unless it takes into account all economic and other factors—not just one.

The reason? If it could pick and choose, then Congress would cherry pick the positive economic changes and ignore the negatives. The result would be a budget deficit much greater than anticipated because we had predicated

our economic actions on unsound assumptions because the only economic changes unclaimed would be those generating higher outlays and lower revenues than expected.

In fact, if on October 27 the Congressional Budget Office had taken all economic factors into account—gross domestic product, interest rate, court decisions affecting Federal obligations and inflation—the deficit in the year 2002 would have been higher than anticipated last March. We would not have had a $12 billion false figure to use to finance additional Medicaid payments. We would actually have had to find additional revenue because, taking into account all of those factors, the Congressional Budget Office would have said our deficit had grown—not diminished—since March.

In other words, while the 1996 cost-of-living will be 2.6 percent rather than 3.1 percent resulting in $13 billion in lower outlays, this will be more than offset by other factors, such as higher interest rates, that increase outlays or decrease revenues.

That is why some would say that the Senate's financing of the additional Medicaid funds is phony. That is why I asked Senator DOMENICI on the floor whether these savings were real or not. He responded, ''they are real dollars.'' And I assume that the Republicans intended that they use real money to finance their changes and to finance the additional spending through Medicaid.

So assuming that these funds are not phony, where does this money come from? Let us look at the language of the Roth amendment which was adopted on that Friday night.

Notwithstanding any other provision of law, in the case of any program within the jurisdiction of the Committee on Finance of the United States Senate which is adjusted for any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) for United States city average for all items, any such adjustment which takes effect during fiscal year 1996 shall be equal to 2.6 percent.

Mr. President, this clearly specifies that the money comes from programs or outlays. Exactly what outlay programs are we talking about? Are we talking about the Pentagon, the Department of Defense outlays? No. Those are not under the jurisdiction of the Finance Committee. Are we talking about funding for roads and bridges? Are we talking about funding for foreign aid? No. Those programs are not under the jurisdiction of the Finance Committee. Just what outlays are within the jurisdiction of the Finance Committee?

There happen to be a number of those programs. But I am afraid that I must report that the overwhelming majority of dollars in those programs—$12 billion of the $13 billion removed—is Social Security.

So the only conclusion is that the Senate has taken $12 billion from the Social Security trust fund to pay for more Medicaid allocations to a selected few States—States which in large numbers had been those that had abused the Medicaid system in the past.

How can that be, you ask? How can a half of 1-percent reduction in the CPI constitute a raid on the Social Security trust fund? Let us look more closely still.

The Roth amendment takes into account only outlays impacted by the lower 2.6 percent cost-of-living adjustment. But there are other ramifications of the lower cost of living. For example, many workers' salaries are tied to the Consumer Price Index, and if those salaries only rise by 2.6 percent rather than the previous estimated 3.1 percent, then what happens to payroll? What happens to payroll taxes? They are both lower, and, therefore, less money will flow into the Social Security trust fund than would have flowed had the cost of living been at the earlier projected 3.1 percent.

The correct question is not how will a lower cost of living impact Social Security outlays. The proper question is what is the net effect of all of the economic changes this year to the Social Security trust fund?

The answer has two components: outlays, expenditures, and revenues.

The Social Security outlays will be reduced by a total of $18 billion—$12 billion from the COLA reduction, the 2.6 percent, and $6 billion from other changes.

But the economic data accumulated since March also will affect revenues going into the Social Security trust fund, and according to the Congressional Budget Office updating the economic baseline will result in a $62 billion decrease—decrease—in Social Security trust fund revenues over the next 7 years.

Accordingly, the net effect to the Social Security trust fund of revising congressional economic estimates is not to increase the size of the trust fund but, rather, to decrease it by $44 billion.

So if we want to face economic reality, the Social Security trust fund will have $44 billion less in it than our budget assumes. And while the Social Security trust fund is losing $44 billion as a result of economic changes since March, the Senate has approved diverting an additional $12 billion from the Social Security trust fund.

It is difficult for me to believe that this Senate actually wants to raid the Social Security trust fund to pay for anything. Just yesterday, House Republicans were threatening to attach provisions to a limited debt ceiling extension that would have had the effect of precluding the Secretary of the Treasury from utilizing Social Security trust funds for anything other than Social Security obligations.

I am afraid this sounds like selective enforcement.

It is ironic that the House Republicans would be so concerned about the Social Security trust fund that they would tie Secretary of the Treasury Rubin's hands to preclude him from even borrowing from the trust fund, but at the same time the Senate Republicans seem quite willing to raid the Social Security trust fund to finance additional Medicaid allocations.

We cannot have it both ways. If the reduction in the cost of living is not a real cut in spending but merely reflecting reality, then it does not represent savings and should not qualify to offset real new Medicaid spending. If, however, the reduction in the cost of living is real, then it constitutes a diversion of funds from the Social Security trust fund.

Either conclusion justifies jettisoning this midnight amendment that changed the Medicaid funding formula, rewarding the States that abused the disproportionate share hospital program.

Mr. President, I conclude by saying we should look instead for an alternative allocation solution, and I will present that alternative solution tomorrow and urge careful consideration of a better way to achieve our goal of fiscal responsibility and fairness.

Thank you, Mr. President.

EXHIBIT 1

[From the Washington Post, Nov. 7, 1995]

MEDICAID'S SAFETY NET FOR CHILDREN COULD BE IMPERILED, REPORTS WARN

CHANGES MAY CUT COVERAGE TO SOME IF PARENTS LOSE PRIVATE INSURANCE

(By Spencer Rich)

For years Medicaid has picked up the slack when children lost health insurance based on changes in their parents' employment situation, but that safety net could be weakened substantially by Medicaid changes moving rapidly through Congress, according to today's Journal of the American Medical Association.

The result could be highly damaging to the health of children and also could eventually increase health costs per child, according to articles in the association journal.

''From 1992 to 1993 an estimated 3 million children lost private health insurance'' as people lost jobs or employers stopped providing health insurance, Paul Newacheck of the University of California and five co-authors said in one journal article.

But until now, increases in Medicaid coverage, resulting from past legislation that broadened eligibility and from more people sinking into poverty and becoming eligible, ''largely offset the changes that occurred in private health insurance coverage,'' the authors said.

Statistics developed by the Urban Institute for the Kaiser Commission on Medicaid support this assertion. In 1988, 66 percent of all children under age 18 had health insurance based on the employment of a family member, and 16 percent were covered by Medicaid. But in 1994, the share with employer-based insurance had dropped to 59 percent and the Medicaid percent had jumped to 26 percent.

However, now that situation is about to end as Republican-sponsored Medicaid changes already approved by both chambers of Congress in different form impose a ''cap'' that would cut the growth of program spending from about 10 percent a year to 4 percent, and give states far more latitude than now in deciding whom to cover, Newacheck and his co-authors said.

''If federal spending is capped as proposed,'' they said, ''states, at a minimum, will have to reduce the scope of their existing Medicaid program'' and will be unable to keep

picking up children who have lost employer-based coverage.

Passage of the Medicaid proposals, said physician Stephen Berman in an editorial, would ''reduce the capacity of the public sector to absorb the increasing number of children losing private insurance [and] would swell the number of uninsured children.'' The impact of gaps in health insurance for children was sketched out in a third journal article, written by Michael D. Kogan of the Centers for Disease Control and Prevention and six others.

The article did not address the current legislative proposals but reported on a nationally representative sample of 8,129 children whose mothers were interviewed in 1991 when the children were about 3 years old.

Based on the survey, the article said, ''About one-quarter of U.S. children (22.6 percent) were without health insurance for at least one month during their first three years of life. Over half of these children had a health insurance gap of more than six months.''

About 40 percent of the children, estimated conservatively, did not receive care continuously at a single site—for example, the office of a family doctor—and breaks in insurance coverage are often the cause of sporadic medical care at this critical stage of physical development.

''Children are in particular need of primary care providers who can track developmental milestones, assure the maintenance of immunization and other health maintenance schedules, monitor abnormal conditions and serve as the first contact of care,'' wrote Kogan and his co-authors, especially in finding and treating ''emerging disabilities, chronic illnesses or birth defects'' and in providing preventive care.

''A schedule of routine primary care is much easier and usually more cost-effective when these activities are carried out in an organized manner over time with successive office visits at the same site,'' they said.

Berman said, ''Having a regular source of care has been shown to reduce child expenditures by 21.7 percent compared with not having a regular source of care.''

EXHIBIT 2

[From the Washington Post, Nov. 6, 1995]

MEDIPORK

When the current Congress set out on the path of turning the major programs for the poor into block grants, Sen. Daniel P. Moynihan (D-N.Y.) issued an interesting warning. Once Washington gives up on making policy and instead just ships off billions and billions to state governments, he said, politics will turn away from substance and instead become one big formula fight as states and regions battle over who will get the biggest pots of cash.

His prediction has become fact, as a report in The Post by Judith Havermann and Helen Dewar documented last week. In the scramble to pass their budget, Republican leaders in the Senate found they had to pass around billions of extra dollars in Medicaid payments to states to buy the votes of—pardon us, we mean secure the support of—Republican senators. It seems that many senators are worried about the impact of the Medicaid proposal on their state budgets.

They should be. The pressure this budget puts on the program that serves the poor and many among the elderly and the disabled is simply too much. Facing potential rebellion, the leadership kept rejiggering the formula to please wavering senators. And given that the leadership knew it would have to find votes for its budget from Republican senators, guess what? The increases largely went to states represented by Republicans. The cuts were mostly reallocated to states with Democratic senators whose votes the leadership knew it couldn't win anyway.

Thus, an analysis by Sen. Bob Graham (D-Fla.) found that states with two Democratic senators lost a net of $3.6 billion in the Medicaid reshuffling; states with two Republican senators gained $11.2 billion. Texas alone (with two Republican senators) gained about $5 billion; California (represented by two Democrats) lost $4 billion.

Ginny Koops, a Senate Finance Committee aide, had it about right when she said: ''This formula will be redone again in conference and again and again. It is just incredibly difficult to come up with something that makes 5 states happy; somebody always complains.''

Ms. Koops' comment goes to the heart of what's wrong with his whole Medicaid approach: Of course many will keep complaining about the formulas of a so-called reform that dumps upon the states the responsibilities of running Medicaid and then asks them do do that job with huge cuts in the rate of expected growth in the program.

Medicaid costs do need to be contained; the Republicans are right about that part. But this budget's approach to Medicaid will not only keep producing comical mathematical games; it will also cause real harm to the states and to the medical care of many among the most vulnerable Americans.

GREAT FALLS CHURCH DESECRATION

Mr. BAUCUS. Mr. President, last weekend, somebody in Great Falls, MT, spray painted satanic icons and racist slogans on the walls of the Mount Olive Christian Fellowship. The congregation of Mount Olive is mostly African-American, and they were the direct target of this perverted mind. But this attack really was on the whole community, and I am very proud to say that the whole community responded.

I congratulate and thank all of the 200 citizens of Great Falls, MT, who came to the church on Monday to show their support for the Reverend Phillip Caldwell. Members of the congregation, city manager Lawton, our State Representative Deb Kottel, and many others turned out. I am proud of them, and like the vast majority of Montanans, I am with them in our State's fight against hate groups. On my next visit to Montana, I hope to attend services at Mount Olive.

The desecration of Mount Olive is a sickening event and one which shows that as a State and a country, we still have a long way to go in our fight against hate. But its aftermath also shows us something else. Many Americans are concerned, and rightly so, about a decline of civic spirit, a growing indifference to our neighbors, and a general loss of moral values in our country.

However, the rally this Monday showed us that our courage, our willingness to meet our responsibilities as citizens, and our basic decency are stronger than the pessimists admit.

Thank you, Mr. President. I yield the floor.

MIKE WALLACE CAN DISH IT OUT BUT NOT TAKE IT

Mr. GORTON. Mr. President, for 27 years, Mike Wallace has been a hard-hitting, pull-no-punches investigative journalist primarily on ''60 Minutes.'' Relentless in pursuing a story, there are few tactics he will not employ—bullying, insults, confrontation, ambush journalism.

That is fine, because however you feel about Mr. Wallace, he works in America, and here in America the first amendment secures our right to free speech. We Americans can say or write just about anything we like, and, no matter how offensive it may be, how distasteful, repugnant, however uncomfortable it may be to others, we have the right to express our views. Mike Wallace has the inestimable privilege of expressing those views on network television to tens of millions of people.

I had been under the impression that, given his profession and his unorthodox modus operandi, Mr. Wallace was a first amendment advocate, but in today's Washington Post we find evidence that suggests the venerable Mr. Wallace has a peculiarly narrow devotion to free speech.

Yesterday, Marlin Fitzwater, a longtime spokesman for Presidents Reagan and Bush, was waiting to appear on the cable television show ''Politically Incorrect.'' Mr. Fitzwater has just published his memoirs of his time in the White House, and in that book he offers some mild criticism of both ''60 Minutes,'' calling it ''liberal'' and always framed in terms of ''good versus evil,'' and of Mr. Wallace himself. I quote:

> As a small boy . . . I would watch Mike Wallace . . . as he insulted his talk show guests, drove women to cry and performed his pioneering version of talk show extremism.

Mr. Fitzwater's book also mentions Mr. Wallace's son, ABC reporter Chris Wallace, criticizing the younger Wallace for his privileged background.

All this is prefatory to the main event. The studio in which the cable show ''Politically Incorrect'' is taped is located in the CBS building in New York. While Mr. Fitzwater was waiting to go on the air, Mr. Wallace called Mr. Fitzwater in the studio and began shouting at him and then swearing at him over his book. A few minutes later, the Post reports, Mr. Wallace stormed into the studio and continued with the shouting and swearing and obscenities. Mr. Fitzwater, wisely, I believe, and astounded, left the studio posthaste.

Now, as they say, Mr. President, what is the deal? What is going on? The Lexis-Nexis system would blow a fuse if you tried to reach all the times Mr. Wallace criticized others on the air. After all the years that he has been in this peculiarly tough field of journalism, you would think he would be accustomed to criticism. A few years ago, for example, ''60 Minutes'' ran a program on the pesticide Alar and helped

destroy the living of a significant number of Washington State apple growers without justification.

I see no evidence that that bothered Mr. Wallace in the least. But now he throws a temper tantrum over a mere slight. Indeed, Mr. President, after all the hard-hitting pieces Mr. Wallace has run on people, institutions, and even whole governments, one is amazed at his vitriol and verbal attacks on Marlin Fitzwater.

Perhaps, Mr. President, Mr. Wallace's support for the first amendment is a single-edged sword. He can use it, but it cannot be used against him. Perhaps Mr. Fitzwater's criticisms struck a raw nerve. Either way, one fact is certain. Mike Wallace can dish it out, but he cannot take it. Shameful, Mr. President, but funny at the same time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

CHANGE OF VOTE

Mr. FAIRCLOTH. Mr. President, on the rollcall vote number 563, I voted aye, and it was my intention to vote no. Therefore, I ask unanimous consent that I be permitted to change my vote, and this will in no way change the outcome of the vote. It has been cleared with the leadership of both parties.

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

Thank you, Mr. President, and I yield the floor.

(The foregoing tally has been changed to reflect the above order.)

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

TRIBUTE TO BLUEFIELD STATE COLLEGE

Mr. BYRD. Mr. President, a century ago, a college was opened in the city of Bluefield, West Virginia. For the past 100 years, Bluefield State College and its antecedents have performed an outstanding service in providing a reasonably priced and quality education for thousands of students from Southern West Virginia, Southwestern Virginia, and other States throughout our country as well as many foreign nations. Today, I join the alumni, students, the faculty, parents, and admirers of Bluefield State in hailing its 100th anniversary as a premier institution of higher education—an institution oriented toward, and dedicated to, the preparation of men and women of widely separated age groups for quality careers in health care, education, business, and other important occupations.

Following its inception a century ago, Bluefield State College quickly gained acclaim as one of the country's outstanding traditionally black colleges. Bluefield State has built upon its early strengths and has become a major center of practical education in Southern West Virginia and Southwestern Virginia. The college is a fully accredited coeducational institution offering a variety of programs at the associate and baccalaureate degree levels and provides ready educational opportunities to people impacted by the declining coalfields.

Bluefield State College attracts students from a broad segment of the population and helps make the American Dream real for many of them. This institution attracts large numbers of adult students with its extensive evening program, and it provides reasonably priced education with quality standards and quality outcomes, with an emphasis on preparing its students for a solid future.

Created to provide better educational services for black Americans in the area, the college later expanded its regional influence by enhancing its curriculum to provide formal teacher training. In the ensuing years, to keep up with the ever-changing job market, new academic areas such as engineering technology, computer science, business administration, and health science were added to the curriculum.

I particularly salute Dr. Robert Moore for the outstanding leadership that he has provided to this educational institution in my home State, and I congratulate the faculty and staff of Bluefield State for the professional and caring fashion in which they teach and guide their students. In those areas served by graduates of Bluefield State College, the reputation of the graduates of this school is one of growing admiration and esteem—hallmarks of the well-grounded and pragmatic performances being rendered by the alumni of Bluefield State College.

Too often, unfortunately, colleges and universities set themselves above the needs of the communities and the students whom they were instituted to serve. The growing favor that is developing for Bluefield State College throughout its service area is an indication that Bluefield State has not fallen into the trap of academic pride. Rather, Bluefield State has dedicated itself to preparing industrious men and women to play productive and profitable roles in whatever walks of American life they enter, and to contribute patriotically and unselfishly to the upbuilding, both economically and morally, of the cities, towns, counties, and States in which those graduates find themselves.

Again, Mr. President, I congratulate Bluefield State College, Bluefield, WV, as it celebrates its centennial year, and I know that I speak for citizens throughout Southern West Virginia and Southwestern Virginia in expressing my admiration for this institution of higher education and my appreciation for all that it has come to mean to the people of the Southern Appalachian Highlands. Since its founding in 1895, this fine institution has flourished, and I hope that the next 100 years will prove to be as prosperous and as beneficial.

Mr. ROCKEFELLER. Mr. President, I rise with Senator BYRD today to recognize Bluefield State College as it celebrates its centennial.

Since its founding in 1895, Bluefield State College has been committed to providing quality education in southern West Virginia. These many years are a heroic story of hard-won and remarkable achievement, truly an inspiring legacy.

Founded to improve education for African-American students in the region, the college began as the Bluefield Colored Institute [BCI]. It served the segregated schools of turn-of-the-century coal camps. Through the dedication of local citizens and its first president, Hamilton Hatter, BCI flourished, even operating for 2 years without State funds.

As time went on, the school established formal teacher instructions. By 1954, Bluefield became an integrated school serving all students in southern West Virginia.

Over the years, the school has worked to strengthen the institution and to expand its curricula to serve the changing needs of its students. Recent efforts include expanding Bluefield State College's degree program into areas including engineering technology, computer science, business administration, and the health sciences. These new fields of studies are designed to prepare the students of today for the challenges of the 21st century.

Mr. President, as Bluefield State College celebrates its centennial, Senator BYRD and I think it is fitting to praise its dedicated faculty and staff, including current President Robert Moore, for their educational vision and creative spirit.

Bluefield State College, proud of its strong past, stands ready to meet the changing needs of an expanding and dynamic region of the State. It has done an exemplary job of offering educational opportunities to many students in southern West Virginia. We join every West Virginian in congratulating Bluefield State College for 100 years of dedicated education and community leadership. We wish it continued success for the next century. This fine institution has made all of us very proud.

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

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

The bill clerk proceeded to call the roll.

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

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

TRIBUTE TO YITZHAK RABIN

Mr. LAUTENBERG. Mr. President, before the events of the last few days fade from memory, and the recollection of the assassination of Prime Minister Yitzhak Rabin gets obscured by other events in the world, I want to take this opportunity to reflect somewhat on my visit there during the funeral and just to discuss, for a moment, my view of this man, this great man, someone I knew very well for a period of more than 25 years.

Mr. President, the world now knows so well that the Israeli people have lost a courageous, visionary leader, and the world has lost a peacemaker. As Prime Minister Yitzhak Rabin was laid to rest on Monday in the holy city of his birth, Jerusalem, millions witnessed the funeral and grieved at the loss. His brutal assassination represents the worst of so many tragedies in Israel's recent history. It demonstrated too vividly the depths to which intolerance can drag the human spirit. The people of Israel are in shock, stunned and saddened by the senseless, cold-blooded murder of their unique leader, soldier turned peacemaker.

Many felt the pain of the bullet that took away their Prime Minister, and that the assassin tore asunder at the same moment the spirit and the soul of Israel. The residents of the community, and those that know the Jewish people, cannot comprehend how one Jew could kill another in the name of God, when all, at times, have been victims.

I, along with millions of Americans, share their grief and sense of loss. At this delicate time in Israel's history, the United States Government must remain unequivocal in showing its strong support for the Government of Israel and in its leader, acting Prime Minister Peres, as the head of the Government. He has the credentials to ably lead the people of Israel in the tumultuous days ahead. The United States commitment to Israel will remain strong. It cannot be shattered by an assassin's bullet.

Mr. President, during the decades in which Yitzhak Rabin faithfully served his government, the American people observed, with great admiration, his evolution from soldier to statesman to politician to peacemaker. Always, he had our respect as an outstanding leader.

Yitzhak Rabin was a man of great courage and determination. His concern, to his last moments, was for the security of the people of Israel and the attainment of peace. Though his life was cut short by the bullet of an intolerant, self-righteous assassin, his legacy of peace will live on with his countrymen in future generations of Israeli citizens. In his memory, I believe that the peace process will continue to move forward at, perhaps, an even faster pace. Because the Jewish extremists took up arms against the peace process, Israel must not be dissuaded from pursuing and strengthening regional peace. To abandon the process now would give succor to the extremists and terrorists of all religious persuasion.

Because Rabin was a man of such character and courage and so deeply committed to peace, dignitaries and government officials from 80 different nations came to his funeral in Israel to pay him their last respects. Five thousand guests were invited from all around the world. President Clinton and former Presidents Bush and Carter attended the funeral, along with Secretary of State Christopher and former Secretaries Vance and Shultz. Thirty-five Members of Congress attended.

Heads of State, Cabinet Ministers, and government officials from the international community traveled to Jerusalem to mourn the loss of this great leader, many of whom did not really know him but knew about him, read about him, heard about him, and saw his commitment—unyielding commitment—to his people to show support for continuation of the peace process.

The global gathering at his funeral was testament to the fact that under Rabin's leadership Israel had been welcomed into the international family of nations as never before. Nowhere was his accomplishment in ushering in a new era of acceptance for his country more evident than in the reputation from Middle Eastern countries.

Never in their wildest dreams could people imagine that Jordan's King Hussein would stand in Jerusalem, the city where his grandfather was assassinated—which he mentioned in his comments—in 1951 by Islamic militants, people in his own religion, his own communities, the city that was reunified by Israel in 1967. He came to say farewell to his former foe, Yitzhak Rabin calling him a brother—a brother, a colleague, and a friend. I saw him wiping tears from his eyes.

Never did I imagine that the Egyptian President, Hosni Mubarak, who had traveled to Jerusalem to pay Prime Minister Rabin his last respects—even dignitaries from countries like Oman and Qatar, which have no diplomatic relations with Israel, came, beyond their formalities, to cross the border to say farewell to this visionary leader.

I, too, Mr. President, was at the funeral on Mt. Herzl where so many of Israel's military and spiritual leaders are buried. As the siren sounded throughout the country announcing a 2-minute period of silence and mourning for his death, I recalled many of the heroic moments of Yitzhak Rabin's life.

I saw the flag of Israel draped over his coffin and envisioned Soldier Rabin leading the fight to keep the supply link between Jerusalem and the sea in the war of independence. We traveled that road from the airport to Jerusalem where along the roadbed still were the hulk of trucks and tanks and weapons that are left there as a reminder of what the price was that was paid to keep that road open and to create the independent State of Israel.

I remembered reading about his exploits and how heroic this very young man at the time was. He was a brigade commander still in his early twenties.

I envisioned Army Chief of Staff Rabin strategizing to recapture the city of Jerusalem and claim victory in the 6-day war of 1967. I recall the Ambassador to the United States Yitzhak Rabin arguing for a strong United States-Israel relationship from his Embassy office in Washington. I could almost sense Minister of Defense, twice Prime Minister, Rabin's steely determination in defending the security of the people that he loved so dearly, the people of Israel.

Mostly, however, I recalled the day that Prime Minister Rabin did the inconceivable and made peace with enemies. I recalled sitting on the lawn of the White House and how still the world was as he shook hands with Chairman Arafat after signing the Declaration of Principles, then the day that he and King Hussein of Jordan did the same, in the same location, after making peace.

Those are handshakes of courage and of bravery, of hope for attaining, at long last, safety and security through peace as opposed to security with weapons.

History will say that Yitzhak Rabin, who fought in so many of Israel's wars, gave his life for peace, a task to which he devoted himself completely. It is appropriate, therefore, that his last words were of peace.

I was a military man for 27 years. I waged war as long as there was no chance for peace. I believe there is now a chance for peace, a great chance, and we must take advantage of it for those who are standing here, and for those who are not here—and they are many. I have always believed that the majority of the people want peace and are ready to take a chance for peace. Violence erodes the basis of Israeli democracy. It should be condemned and wisely expunged and isolated. It is not the way of the State of Israel. There is democracy. There can be disputes but the outcome will be settled by democratic elections.

He said in his remarks, ''Peace is not only in prayers * * * but it is in the desire of the Jewish people. This rally,'' as he addressed the group, ''must broadcast to the Israeli public, to the world Jewish public and many in the Western and outside world, that the people of Israel want peace, support peace.''

It is my profound hope that the people of Israel will strive to heal the wound and the national spirit that Yitzhak Rabin's assassination has caused and that they will be able to move forward as a unified nation, continuing in the quest for peace.

That would be Prime Minister Rabin's greatest legacy and most fitting tribute. It is something that the United States and all the nations of the world must strongly support.

As I said, I was there to say goodbye to this man who was an old friend, someone who commanded the respect

and affection of millions who did not know him but respected his commitment, respected the fact that he was willing to take the risks that he took, risking his own life.

The most disappointing moments of his days, he told me 2½ weeks ago in New York City, was when people from his own faith, some of them religious leaders, reportedly religious leaders, said he should be a target for assassination because he was giving away too much of his country. This man who fought to create the state, this man who gave his life unflinchingly to the well-being of his people, criticized, called traitor, depicted in Nazi uniforms, outrageously berated in his quest to secure the safety and well-being of the State of Israel and its people.

The messages that came from people who spoke at the funeral, from our President, President Clinton, who said that he was a man chosen by God. King Hussein, who I mentioned, saluted him, his memory as a pro, and compared the assassination of his grandfather to the assassination of Yitzhak Rabin. He was standing there, wearing traditional dress, a headdress common to the Arab world, proud of his heritage, but willing to recognize that this leader of the Jewish people was someone whom had respected and wanted to acknowledge as a friend.

President Mubarak, President of the first Arab nation to make peace with Israel, he was there in his first visit ever to the country. And other leaders who spoke—the President of the European Union, the Prime Minister of Russia, and then, finally, his family.

I think the world listened very attentively as his 17-year-old granddaughter spoke about her grandfather and declared him as a light unto nations. It is almost a Biblical intonation. She said her grandfather's life would continue to light the way for peace, but the light that he gave her was extinguished, that she would no longer see the light nor bask in his glow of love and affection. Elegant, elegant words for a 17-year-old, but expressing what so many failed to see because they did not have the personal contact. But they were reminded that included in the greatness of this individual was a very significant human side.

One of his senior, most dedicated staff members stood, a man named Eitan Haber, who wrote some of Prime Minister Rabin's speeches. I kind of joked with him at a few meetings, because I said I wished that I could find such a speech writer. And he reminded me that the speech writing was the least significant part of a great speech. It took a great speech deliverer to make a memorable talk.

Through his tears, through Mr. Haber's tears as he stood in front of the thousands gathered there and the millions watching across the world, he took out a piece of paper that the prime minister had in his pocket. As Shimon Peres, now the Acting Prime Minister, said, it was the first time in all the years of public service that Yitzhak Rabin had ever, ever agreed to sing in public, and he joined in a chorus in this rally of more than 100,000 people, singing a song of peace that was written to be sung by those gathered there and throughout the country. And he sang the song.

This was a man who was not comfortable making speeches or in large public gatherings. Even though the greatness that he had internally shown through, you could see, when he was with the President or on public platforms, he was always ill-at-ease, always moving around, his body language indicating some insecurity.

He sang the song, the first time and last time that he ever sang a song in public. And Mr. Haber, the speech writer, read from that song at the funeral ceremony when he took out this blood-spattered song. Because the bullet hit close to where the song was stored in Prime Minister Rabin's breast pocket.

What an anomaly, this man singing for the first time in public, for peace, putting the song, the music for the song in his pocket, and then struck down by a bullet. There is something in the coincidence of those movements that perhaps none of us will ever quite understand, but it certainly is a symbol that will always be remembered.

This was quite a week in the history of Israel, the history of democracy, the history of man. Lessons were taught in a short burst of gunfire that must caution us that extremes in language, in gesture, in tone, can turn into much more menacing things. Civility has to come back to our people, to people across the world, to democratic nations.

Mr. President, we see it in the Congress of the United States, where anger and rage takes over discussion. It has an effect that pervades our society. We should not let it happen and this tragic incident should remind us all that we have to control our speech, our relationships, our view, if our mission is to make peace. One does not have to be in a formal war to want to make peace.

So, we say goodbye with heavy hearts to this great man who proved by his own existence, his own experience, that making war could not save lives, it could not have people living in peace together, but a serious effort at shaking hands across a sea of differences could make the difference.

When I saw Chairman Arafat in his traditional dress that I had come to despise over the years—he wore a gun on his hip when he went to the United Nations—I could not forgive him for their terrorist activities. But I forgave him when he came here and shook hands. That was the moment that he earned my respect.

So, from that place where it all began in the Middle East, in those holy sites, perhaps the time has come when we will be, once again, able to make peace with one another. That is the proper place. This is the proper time.

I yield the floor and 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. SIMON. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

DIRECT LENDING PROGRAM

Mr. SIMON. Mr. President, it so happens that today is the 30th anniversary of the signing of the Higher Education Act of 1965 by President Lyndon Johnson. Everyone knows it was a great step forward.

Today, according to press reports, the conferees on reconciliation agreed that they would cut back on assistance to higher education and direct lending, which is now used by more than 1,300 colleges and universities in this Nation, including some colleges and universities in Oklahoma, every one of whom wants to keep the system.

There is not a college or university that is using direct lending that wants to shift back into the old system. Let me just say, the new system reduces paperwork, makes it much easier for students and colleges and universities, and the new system is good for taxpayers. The old system has all kinds of paperwork. The old system says, ''If you have a student loan, you have to pay back x number of dollars whether you're employed or unemployed.''

The new system permits a student to have an income-contingent loan, so that if a student wants to become a teacher and not earn so much, then the student could pay back a smaller percentage or a smaller sum; while if a student became a lawyer, or a stockbroker, maybe earning quite a bit of money, that student would pay back a larger sum. If a student was unemployed, while that student was unemployed, you would not pay back anything.

What happened in conference is they have agreed to cut back from 40 percent assistance, 40 percent of the schools, which is the cap now, down to 10 percent.

Now, I do not know who is going to tell those students in Oklahoma which three out of four of them are going to be out of the direct loan program. I am glad I am not going to have to make that decision. And I am pleased that the President, I think, is going to veto this.

Who benefits by cutting it back to 10 percent, giving a 90 percent monopoly to the banks and to the guaranty agencies? The banks and the guaranty agencies do. The guaranty agencies, incidentally, were created by us. These are not free enterprise operations. The guaranty agencies have the Federal Government guarantee. The one in Indianapolis, for example, the chief executive officer of the guaranty agency in

Indianapolis is paid $627,000 a year. We pay the President of the United States $200,000 a year. And they are spending $750,000 to lobby against us.

It is very interesting, Mr. President, my chief cosponsor on direct lending was the distinguished Republican Senator from Minnesota, Senator David Durenberger. And Senator Durenberger said in response, when he was asked about this, ''Shouldn't we let the free enterprise system work?''—that is what I want; I want to see competition; I want to see the schools in Oklahoma and Illinois and every other State have a choice between the old system and the new system and have competition—but Senator David Durenberger said, ''This is not the free market. It is a free lunch.''

It is not competition. We say in the law, banks get the Treasury rate plus 3.1 percent. We write into the law what their profits are, and they do not want to give it up.

Now, if we want to have a banking assistance act, let us call it that. But if we want to have a student assistance act, then let us try and see what we can do to help the students.

I hear all kinds of speeches about paperwork on both sides of the aisle. Here is a program that cuts down dramatically on paperwork, and we are going to put it back in. I just do not think it makes sense.

There is an article in Rolling Stone. I confess, I am not a regular reader of Rolling Stone, Mr. President, but here is an article on this. I ask unanimous consent to have this article printed in the RECORD.

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

[From the Rolling Stone, Oct. 19, 1995]

STUDENT LOANS—THE PRICE OF POLITICS

(By David Samuels)

It was a nightmare,'' says Karen Fooks, director of financial aid at the University of Florida, recalling the bad old days of guaranteed student loans. ''We have about 35,000 students, who come from all over the country, and so every time a student came in to find out what was going on with his loan, it became a game of hide-and-seek: Was it a student problem, a bank problem, a guarantee-agency problem? Nobody knew,'' With 8,000 banks making loans and 38 guarantee agencies backing the loans with support from the government, Fooks' confusion is understandable. ''At the beginning of the year,'' says Susan O'Flaherty, acting director of financial aid at the University of Colorado at Boulder, ''we ran a phone bank with six or seven full-time people. And 70 to 80 percent of the calls that came in had something to do with student loans.''

Vanishing checks and bureaucratic red tape, however, are only bad memories now at Florida, CU-Boulder and more than 100 other schools nationwide, where last year the federal direct-lending program replaced multiple applications, banks and guarantors with a single application and a single lender: the federal government. This fall, direct lending is debuting on an additional 1,400 campuses nationwide and will cover close to 40 percent of all student loans. What should students expect from the new direct-loan system? ''We can answer students' questions,'' O'Flaherty says. ''And our counseling staff was like 'Wow! We're not spending all our time chasing paper. We're actually talking to students.''' Karen Fooks is more enthusiastic still. ''Students understand it; we understand it; the money comes in faster,'' she says. ''We think we died and went to heaven.'' Students have even more reason to like direct lending: They can pay back their loans over 25 years as a percentage of income—between 3 percent and 15 percent, depending on their salary and number of children.

If direct lending is a success on campus, however, a very different story is now unfolding in Washington, where Congressional Republicans are threatening this fall to use the budget-reconciliation process to kill what one Colorado State University student called ''the best thing since microwaveable brownies.'' What is odd here is that direct lending is as much the brainchild of Republicans as of Democrats: Direct lending was proposed—and a pilot program implemented—by George Bush's Department of Education; Rep. Tom Petri, R–Wis., has long been direct lending's leading advocate in the House. With the Republican Congress having promised to balance the federal budget, direct lending should be more appealing than ever: Slashing federal subsidies to banks and guarantors will save taxpayers as much as $12 billion during the next five years.

Why are Republicans turning against a program they sponsored? One explanation may be what Sen. Paul Simon calls ''pure commercial politics'': What students and taxpayers gain under direct lending, banks and guarantee agencies will lose. Short of high-interest credit cards, guaranteed student loans are the most profitable loans a bank can make, miles ahead of auto loans and home mortgages. The ''guarantee'' in every guaranteed student loan means that it is impossible for the banks to lose money: 98 to 100 percent of every loan is guaranteed by the government, along with a built-in profit of 3.1 percent above the prime lending rate, plus fees and bonuses. The subsidies paid out to guarantee agencies alone—including the interest on $1.8 billion in taxpayer funds they control, a bonus of 27 percent of every defaulted loan on which they collect and borrowers' fees that can climb as high as $80 for every $1,000 in loans—add up to an annual $638 million tax-free gift from the federal government. ''This is not the free market,'' former Republican Sen. Dave Durenberger famously remarked of the guaranteed student loan, ''it's a free lunch.''

Students struggling to make ends meet on borrowed dollars will be interested to learn how the guarantee agencies divide their share of the student-loan pie. Assistant Inspector General Steven McNamara, a nonpartisan Education Department employee, has conducted audits of guarantee agencies under presidents Reagan, Bush and Clinton. ''We looked at 12 guarantee agencies, which accounted for 68 percent of new-loan volume,'' McNamara says, citing the inspector general's recent report on the seamier side of the student-loan business. ''Nine of the 12 were affiliated with organizations that they were required by law to monitor, and our conclusion was that these potential conflicts of interest placed about $11 billion in student-loan funds at risk.''

State by state, the guarantee agencies' record of fraud, conflict of interest and other abuses demonstrates that they are as cavalier with taxpayer dollars year-round as they are with loan checks at the beginning of the semester:

In South Dakota, the directors of the Education Assistance Corp. used federal funds to purchase an office building from themselves for $150,000, while buying furs, artwork and cars for the enjoyment of the corporation staff. Board meetings and retreats were held in such educational locales as the Don CeSar resort, in Florida, and the Marriott Desert Springs resort, in California.

Indiana's USA Group built itself a palatial 30-acre headquarters, including a 450-seat employee cafeteria and a 150-seat theater—and paid its CEO, Roy Nicholson, $619,949 in 1993. Nicholson's salary is exceeded only by the amount USA plans to spend this year on lobbying Congress—$750,000, according to one published report.

In Massachusetts, officers of American Student Assistance set up a corporation that billed their own guarantee agency $540,000, a use of public-sector funds that—under current law—is legal.

The Texas Guaranteed Student Loan Corp. gave the Austin law firm of Ray, Wood & Fine a loan-collection contract worth $5 million. Subsequently, the firm contributed at least $10,000 to the reelection campaign of Lt. Gov. Bob Bullock, who sat on the Texas board. ''Buck Wood happens to be a good friend of mine,'' Bullock told the *Houston Chronicle*. ''I talk to him frequently about a lot of things.'' The inspector general's investigation found that Wood's law firm didn't bother to write the required semiannual collection letter to 104 out of 136 randomly selected students. Conflicts of interest at the Texas guaranteed-student-loan agency have reportedly cost taxpayers $178 million.

Pennsylvania's state guarantee agency has 2,000 employees—as many as are employed in the Department of Education's headquarters in Washington. Jobs at the agency are such political plums that President Jay Evans was offered a $1 million ''platinum parachute'' to retire so Gov. Robert Casey could put a top aide in the job. When Evans declined to retire, he was given a no-show job with the agency at a salary $20,000 higher than the governor's.

Inefficiency and outright fraud are so common under the guaranteed-student-loan system that even some Republicans have broken with their party's traditional support for corporate interests. According to Charles Kolb, assistant secretary for planning, budget and evaluation in the Bush Education Department, ''Conservatives in Congress are being terribly misled'' by loan-industry lobbyists anxious about preserving their profits. ''I'm a conservative Republican,'' Kolb says, ''and I'm a big believer in what Newt Gingrich has done. If what you're trying to do is reduce the role of the government, you ought to be in favor of eliminating the middlemen and all the red tape.'' Asked whether direct lending will replace private enterprise with hundreds of government bureaucrats, as some Republicans have charged, Kolb laughs. ''If socialized profits are private enterprise, then, yeah, maybe, sure.''

Rep. William Goodling of Pennsylvania, chairman of the Committee on Economic and Educational Opportunities, which will determine the fate of direct lending in the House, has his doubts. ''We have no idea whether the Education Department can be the biggest bank in the country,'' he says, ''and the biggest debt collector as well.'' Legislation that Goodling sponsored last term in the House would have limited direct lending to 40 percent of existing loans; he is now in favor of eliminating direct lending entirely, he says, because he believes it will save money, and because of the ''arrogance'' of the Education Department officials. ''I'm not the person who drove us to this point,'' Goodling says, sounding—in this moment, at least—less like a believer in the merits of the old guaranteed student loan than like a man whose toes have been stepped on once too often. ''It was their president who said to us, bluntly, 'You go jump in a lake. We're

doing this in two years no matter what happens.''

The fate of direct lending in Congress this fall may have more to do with partisan politics than with the merits of either the old guaranteed student loans or the new direct loans. What Bill Goodling objects to the most, it seems, is what he describes as a White House ploy to turn direct lending into ''the cornerstone of this president's term in office.'' He points to the multimillion-dollar Education Department publicity campaign—including television commercials, print ads and millions of individual letters to borrowers—trumpeting the merits of what it calls ''President Clinton's New Direct Student Loan Program.'' Are the Democrats playing politics with student loans, too? Secretary of Education Richard Riley defends the advertisements, noting that ''if the program was a failure, it would surely be President Clinton's program.''

With both Democrats and Republicans intent on turning direct loans into a political football, students may find themselves facedown in the dust. Which is a shame, because, as Richard Riley puts it, ''borrowing is easier and faster, and students I talk to are almost elated about the difference. And it's clearly a savings for taxpayers.'' The banks and guarantee agencies that disagree with Riley are already having their say in Congress; students, so far, have been silent.

Mr. SIMON. Mr. President, it says:

State by State, the guarantee agencies' record of fraud, conflict of interest and other abuses demonstrates that they are as cavalier with taxpayer dollars year-round as they are with loan checks at the beginning of the semester.

Another quotation:

The fate of direct lending in Congress this fall may have more to do with partisan politics than with the merits of either the old guaranteed student loans or the new direct loans.

It should not be political. One of the things—and I am sure the Senator from Oklahoma, who is presiding, has heard me say this before—one of the things that is bad about Congress, worse than when I came to Congress 21 years ago, is the increasing partisanship on both sides. Both parties are to blame. But this is an issue that should not be partisan. It was originally conceived of by Congressman Tom Petri of Wisconsin, a Republican. I took the idea from him and introduced it in the U.S. Senate.

It is interesting, the ''BOND Buyer,'' a publication also I do not read regularly, I have to say, Mr. President, talking about this new agreement of a 10-percent limit, says:

This is an important step in the right direction for State guarantee agencies.

I want to take an important step for students, for colleges and universities.

It also points out that these agencies have tax-exempt bonds for those who are interested in the tax-exempt bond market. One of the pluses of direct loans is, frankly, they do not use tax-exempt bonds, so the Federal Treasury gets additional income, one of the things that is not calculated in this skewed calculation we make.

This is one program the President of the United States really understands. He came to my office when he was a candidate, and we talked about this. He gave a speech at Georgetown University about direct lending and how we have to simplify loans and reduce the paperwork and do a better job for the students of the United States. He spoke about it frequently on the campaign trail. He was down in Carbondale, IL, which is near my home, just a few weeks ago at Southern Illinois University and spoke about the program. He has spoken about it at Rutgers and elsewhere.

I hope when we get past the Presidential veto; that we sit down and ask ourselves, No. 1, what is best for the students; No. 2, what is best for the colleges and universities; and No. 3, what is best for the taxpayers. I think if we ask those three simple questions, then I hope we will come to the conclusion the best way is to give people the option: If you want to go with the old program, you can go with the old program. If you want to go with the new program, you can go with the new program. But to say to the schools in Oklahoma and Illinois, three-fourths of you who like the new Direct Loan Program, three-fourths of you are going to have to get rid of that program, I do not think we should do that. Talk about unfunded mandates. They not only reduce paperwork, they reduce the work of personnel in colleges and universities. That is what we ought to be about.

So, Mr. President, I hope we do the right thing after we get through this first phase of reconciliation that is going nowhere, and then sit down and work together and come up with what is sensible for the students, for the future of our country.

It is interesting that some years back, prior to your being here or my being here, Mr. President, right after World War II, there was a big debate among veterans organizations. The American Legion wanted to have an education program, and the other veterans groups wanted to have a cash bonus. Fortunately, the American Legion won out, and we had the GI bill, which has been a huge plus for the country. If we had had the cash bonus, it would have been frittered away, and we would have gotten nothing out of it.

We kind of face the same thing now. Do we cut back on assistance to students, or do we have this tax cut? The tax cut is $345 billion, and the cutback on students is only $10 billion. We can have both, but I do not think you build a better, finer America by cutting back on educational opportunities.

THE 30TH ANNIVERSARY OF THE HIGHER EDUCATION ACT—AN UNHAPPY BIRTHDAY

Mr. KENNEDY. Mr. President, 30 years ago today President Johnson signed into law the Higher Education Act of 1965. I served on the committee that approved the bill, and it passed the Senate by voice vote, without opposition.

When he signed the bill at Southwest Texas State College, in San Marcos, TX, President Johnson noted that: ''The President's signature upon this legislation passed by Congress will swing open a new door for the young people of America. For them, and for this entire land of ours, it is the most important door that will ever open—the door to education.''

Yet today, for the first time in 30 years, we are in danger of closing that door. The Republican budget proposes the largest education cuts in the Nation's history—$36 billion over the 7-year budget period. This is an extraordinarily severe cutback that will harm schools and colleges, parents and children across the country.

Under the Republican plan, student loans for college will be cut by $4.9 billion. The remainder of the cuts will come from Pell grants, College Work Study, Head Start, Title One, Goals 2000, and other initiatives that Congress has passed with strong bipartisan support.

This is no time to cut education. When we passed the Higher Education Act, the post-war baby-boom students were entering college in record numbers. In the years ahead, the sons and daughters of that generation will be applying to colleges in record numbers—yet Congress will be slamming the door on them.

The Republican budget means that 1,000,000 students will lose the chance for Pell grants, or see them reduced in value by 40 percent. It will dismantle the direct loan program that has brought lower costs and better service to students and colleges. It will slash aid to public schools across the country. Cutting education as we enter the information age is like cutting defense at the height of the cold war. It is wrong, and it makes no sense.

For 30 years, we have honored the principle that education is the key that unlocks the American dream. On this anniversary, I urge Congress to recommit itself to that fundamental principle. There is still time to do the right thing for education in the current budget battle.

THE 30TH ANNIVERSARY OF THE HIGHER EDUCATION ACT

Mr. SARBANES. Mr. President, today marks the 30th anniversary of the enactment of the Higher Education Act of 1965 and I am pleased to take this opportunity to comment on what is, in my view, a truly landmark piece of legislation in this country.

Every nation puts a premium on education in order to develop the skills and talents of its people in order to succeed in a modern, complex economic society. That is true whether the country is governed as a democracy or a dictatorship or somewhere in between—each is concerned with enhancing the skills of its people in the workplace. Improving the skills of the American worker and providing education opportunities for all are goals which epitomize the spirit of what it

means to be an American. They are worthwhile, honorable goals that have always been a priority of this Senator.

The Higher Education Act, enacted in 1965 to provide disadvantaged students with greater educational opportunities, recognized the shared benefit of providing every American a chance to maximize his or her potential. As a result of the passage of this legislation, doors have been opened to millions of citizens who otherwise would not have had the access or the resources to obtain a higher education. Although the act has been amended over the years through the reauthorization process, the central purposes of the legislation has remained the same—to ensure access, choice and opportunity in higher education.

In light of the tremendous success of this legislation, I am disturbed by the draconian budget cuts being advanced by the current congressional leadership which would effectively undermine the directives of the Higher Education Act. It is particularly distressing when you realize that those who are now seeking to draw back from the American commitment to education through the cuts included in budget reconciliation are, at the same time, propounding the necessity for America to compete more successfully in the world's economy. In my view, they are asserting a basic contradiction. Our success as a competitor in the world's economy rests upon educating our future generations.

Republican budget proposals would dramatically decrease educational opportunity in order to finance tax cuts for the wealthy and to meet arbitrary deficit reduction targets. In my view, Republican budget proposals clearly renege on our historical commitment to improving access to higher education by placing an undue burden on students and their families over the next 7 years. It makes little sense to cut investments in programs which give people the skills to function in a modern, complex society. It makes even less sense to do so in a document which is repeatedly purported to be a budget for our Nation's future.

As you know, the Senate was successful in eliminating several of the more onerous provisions in the education portion of the budget reconciliation—including the .85 percent tax on colleges and universities on their Federal student loan volume, the 6-month post graduation interest-free grace period on student loans, and the interest increase on PLUS loans. However, I remain concerned about what will be contained in the final package.

I also regret that efforts to retain current law with respect to the Federal direct lending program were unsuccessful. The Republican budget plan severely curtails the Federal direct lending program by placing a 20 percent cap on loan volumes. The Department of Education estimates that by the close of the current academic year, direct lending will represent between 35–40 percent of this year's student loan volume. Should this provision become law, nearly half of the students involved in the direct loan program will have their financial aid disrupted, subjecting them to additional conversion fees and the tremendous anxiety involved in having your financial aid in question.

I have heard from students and educators from across Maryland who have expressed their deep concern about proposed modifications to the direct lending program. One of the first campuses to offer direct lending to its students is in my hometown of Salisbury. The president of Salisbury State University, as well as the chancellor of the University of Maryland System—which enrolls more than 130,000 students, strongly support the direct lending program as beneficial to both students and university administrators.

Mr. President, education in this country has always provided an essential ladder of opportunity for our people and the Higher Education Act has been and continues to be a critical rung in this ladder. In a nation which believes that a person's merit and talent should take them as far as they can go, we must continue to foster a path which allows them to maximize this potential. Many of us here today have benefited from this philosophy and have achieved certain levels of success as a direct result of the opportunities afforded by such principles. It is ironic, at best, that many of those who have utilized these opportunities to advance themselves are now trying to severely limit them for others through draconian budget measures.

As we commemorate the enactment of the Higher Education Act of 1965, it is important to understand that the value of programs authorized by this bill cannot be measured simply in terms of dollars spent. Without Federal support, millions of Americans would not have been able to attend college or receive the advanced training required to make them contributing, productive members of society. If this Nation is to continue to thrive in an ever-evolving global economy, we must not underestimate the value of the Federal Government's commitment to higher education. The celebration of the passage of this bill affords us the opportunity to reaffirm the Federal role in making certain that education remains a top national priority.

THE 30TH ANNIVERSARY OF THE HIGHER EDUCATION ACT

Mr. PELL. Mr. President, 30 years ago today, president Lyndon B. Johnson signed into law the Higher Education Act. We should not let this anniversary pass without recognizing the profound effect this act has had in opening the doors of higher education for millions of deserving Americans who otherwise would have found a college education beyond their financial reach.

I have said many times that education is a capital investment. No piece of Federal legislation is more compelling evidence of the benefit of that investment than is the Higher Education Act. Every study we know demonstrates that an individual's climb up the economic ladder is directly related to the amount of education he or she receives. Without question, the opportunities provided because of the higher Education Act and its reauthorizations over the past 30 years demonstrate not only the importance of this investment but also the gains we have made because of this act.

It is through the Higher Education Act that vital programs such as guaranteed student loans, aid to developing colleges, and educational opportunity grants have developed into the critical initiatives that they are today. It was within the context of this legislation that we developed the Pell grant program, which combined with the guaranteed loan program, has become far and away the largest source of aid for low- and middle-income students. Today, Federal student aid constitutes more than 75 percent of all aid available to students to pay for a college education.

Over the years, it is unquestionable that without Federal student aid, literally millions of American students would have been unable to attain a college degree and to pursue productive, meaningful careers that otherwise would have been beyond their reach.

I am honored to have been here when this act began, and to have strongly supported its establishment. Through my work on the Education Subcommittee, I am honored to have played a part in refining it over the years. And I am especially honored to be here today to acknowledge its very significant achievements.

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, on that evening in 1972 when I first was elected to the Senate, I made a commitment to myself that I would never fail to see a young person, or a group of young people, who wanted to see me.

It has proved enormously beneficial to me because I have been inspired by the estimated 60,000 young people with whom I have visited during the nearly 23 years I have been in the Senate.

Most of them have been concerned that the total Federal debt which is about $15 billion shy of $5 trillion—which will be exceeded this year. Of course, Congress is responsible for creating this monstrosity for which the coming generations will have to pay.

The young people and I almost always discuss the fact that under the U.S. Constitution, no President can spend a dime of Federal money that has not first been authorized and appropriated by both the House and Senate of the United States.

That is why I began making these daily reports to the Senate on February 25, 1992. I wanted to make a matter of daily record the precise size of the Federal debt which as of yesterday, Tuesday, November 7, stood at $4,985,913,011,032.65 or $18,926.61 for every man, woman, and child in America on a per capita basis.

The increase in the national debt since my report yesterday—which identified the total Federal debt as of close of business on Monday, November 6, 1995—shows an increase of $1,175,550,073.33. That increase is equivalent to the amount of money needed by 174,311 students to pay their college tuitions for 4 years.

YITZHAK RABIN

Mr. FRIST. Mr. President, Israel and the world have lost one of the greatest leaders of our generation. As so many great men before him, Yitzhak Rabin lost his life at the hands of an assassin: an angry young man, a spoiler of peace, and a traitor to his people and all those who sought peace in that troubled region.

Yitzhak Rabin was first a military hero and, late in life, a soldier for the cause of peace. It is as this role as peacemaker that we Americans have come to know him best. He was the man who did what none would have thought possible by extending his hand to shake the hand of his long-time enemies, and to begin to deliver peace to his nation and to its neighbors.

It is the sad reality of a violent world that great men make many enemies and the peacemaker is the object of the hatred of those who do not believe in peace. However, this great leader has left a legacy for all to carry on and, someday, to reap the rewards. Yitzhak Rabin helped give his nation its first breath of life, and has led his nation toward a better future. He helped bring flowers to a desert usually covered in blood, and has given to future generations the gift of the prospect of peace in our time. Yitzhak Rabin will surely be missed by his countrymen and by Americans alike; his family, his country, and those who will carry on his legacy are in our thoughts and prayers.

TRIBUTE TO DOROTHY HUSTEAD

Mr. PRESSLER. Mr. President, today I pay tribute to Dorothy Hustead, the woman who helped put Wall Drug on maps all over the world. Dorothy, who recently passed away, was a charming and pleasant woman who inspired many people. Dorothy was a South Dakota legend in her own time. She took great pride in her work, her family, her community, and her faith. She was an example of the commonsense values that are typical of a true South Dakotan.

It was Dorothy Hustead who invented the famous ''free ice water'' slogan that helped transform a small, struggling drugstore in the geographical center of nowhere into one of South Dakota's top tourist attractions, drawing 15,000 to 20,000 people a day during the busy summer months. The Hustead Drugstore, better known simply as Wall Drug, officially opened on December 31, 1931. On a hot Sunday afternoon in July 1936, Dorothy came up with the idea to use highway signs to advertise free ice water—a scarce item in that decade. Today, 270 highway signs advertise the drugstore, including one strategically placed in my Senate office reception room. It reads, ''1,523 miles to Wall Drug''.

Even though the first 7 years of business were painfully hard, Dorothy was always optimistic. Success was inevitable with her enthusiasm and dedication. Mrs. Hustead once summed up her philosophy: ''I believe any person with patience, faith, humility, and courage can—by hard work, enthusiasm, and by following a plan—succeed.''

Born on August 29, 1904, Dorothy began her rich and fulfilling life in the town of Colman, SD. This small town upbringing and her strong family ties instilled in her a deep respect for traditional values. She graduated from Colman High School and attended the University of Nebraska at Lincoln, where she was a member of the Delta Delta Delta Sorority. It was there that she met her husband, Ted Hustead of Aurora, NE. Dorothy graduated from the University of Nebraska with a degree in English and taught English and drama at Cathedral High School in Sioux Falls, SD.

The young Husteads lived and worked in several South Dakota towns—Colman, Dell Rapids, Sioux Falls, Oldham, and Canova—before purchasing their small drugstore in Wall. Throughout the years, Dorothy worked steadfastly beside Ted as a full partner at Wall Drug, acting as one of the floor managers in charge of receipts. She was on the board of directors of Wall Drug Inc. until her recent death.

Dorothy was a member of the Society of Mayflower Descendants, the Wall Book Club—of which she was one of the founders—and St. Patrick's Catholic Church. She, along with Ted, received the first Ben Black Elk Award in 1979, for excellence in the travel industry. November 12, 1988, was proclaimed by South Dakota Gov. George Mickelson as ''Dorothy and Ted Hustead Day''.

Dorothy Hustead was a true friend to me and to thousands of other South Dakotans, as well as visitors to our State. I always will remember her fondly.

HENRI TERMEER WINS THE ADL TORCH OF LIBERTY AWARD

Mr. KENNEDY. Mr. President, it is a privilege to take this opportunity to congratulate Henri Termeer on receiving the Torch of Liberty Award from the Anti-Defamation League of the New England Region.

As chairman, chief executive officer, and president of Genzyme Corp., the largest biotechnology company in Massachusetts and the fourth largest in the world, Henri Termeer is well known to many of us in Congress as a leader of the industry and as chairman of the Biotechnology Industry Organization. In the course of his distinguished career, he has received numerous awards and extensive national recognition for his accomplishments.

He also believes very deeply in the importance of public service, and his career is an excellent example to others in the business world. He serves as chairman of the Mount Auburn Corporate Fund for Free Care, which provides free hospital care to homeless citizens and others in need. He is also a director of the Massachusetts Cystic Fibrosis Foundation and a member of the Massachusetts Bay Endowment Committee of the United Way.

Henri also has a strong commitment to education at all levels. He has organized a variety of programs to enhance math and science education in public schools in the Boston area. In addition, Genzyme sponsors scholarships for local high school students to pursue college studies in biotechnology and medicine, and the company conducts an extensive summer internship program for local youths. Genzyme also provides grants to the Tactical Training Initiative Program, which retrains displaced workers for manufacturing positions in the biotechnology industry.

Henri's service as a trustee of the Boston Museum of Science and co-chairman of the museum's Biotechnology Committee has emphasized the preparation of minority youths for careers in biotechnology. Last year, he received an award from the Biomedical Science Careers Project for his leadership in supporting the education of minorities. The project is a cooperative effort of Harvard Medical School, the New England Board of Higher Education, and the Massachusetts Medical Society.

In presenting the Torch of Liberty Award, the Anti-Defamation League also praised Henri for his commitment to human rights. As the ADL statement says,

> Henri's leadership on issues of human rights and in the promotion of understanding between people of diverse religious, ethnic, and racial backgrounds makes him an example by which others can be measured. The Anti-Defamation League is proud to honor a man who has demonstrated a lifetime of commitment to the goals and ideals which so closely match the ADL's mission.

I commend Henri Termeer for this well-deserved award. Massachusetts is proud of his leadership, and all of us who know him are honored by his friendship.

THE ASSASSINATION OF PRIME MINISTER YITZHAK RABIN

Mr. FORD. Mr. President, just over 2 years ago, I watched as Chairman of the Palestinian Liberation Organization Yasir Arafat and Prime Minister

Yitzhak Rabin shook hands across a centuries old divide. With that handshake, they shed the weight of the past so they might find strength to conceive a different future.

Even the desk where they signed the Declaration of Principles establishing Palestinian self-rule was symbolic of the long road they had taken. It was the same desk used in 1979 by Egyptian President Anwar Sadat and Israeli Premier Menachem Begin when they signed the Camp David Accord.

But Saturday's assassination showed us all too painfully that even such powerful symbols cannot prevent the evil that is borne of extremism. They certainly can never prepare us for the deep sense of loss that cuts across religious, political and national lines.

And too, Rabin's assassination is an unfortunate reminder that all too often, it is death and crisis, rather than life and peace, that binds us one to the other.

A writer for the Washington Post commented that Rabin's casket ''looked too small somehow to contain the enormity of his passing,'' and a store owner in Jerusalem put up a closed sign with the message, ''We are all orphans now.''

They understood the enormity of Rabin's passing, yet it was the smallest voice—the voice of his grandaughter—that reminded all of us what the universal struggle for peace is all about. She understood that our fallen heros are the mothers and fathers, sons and daughters, brothers and sisters of a country. And for those they've left behind, there is no consolation.

When she spoke, the world understood that the stain of her grandfather's death would forever cast a shadow over the ultimate goal of peace—a chill felt by the millions of others who have lost someone in that quest.

It was upon his descent into the inferno that Dante said ''I would not have thought, death had undone so many * * *.'' But he might just as well have been speaking about Israel as the country mourned the loss of a remarkable leader, a remarkable man.

Mr. President, let me close by joining the countless others who have expressed their sadness and regret at this senseless loss, and their renewed commitment to the peace process.

OSCAR DYSON, A FRIEND OF FISHERIES

Mr. MURKOWSKI. Mr. President, I rise today to note with great regret the passing of one of Alaska's most prominent citizens, Oscar Dyson, on Saturday, October 28.

Oscar Dyson was a true pioneer and an authentic Alaskan sourdough who epitomized the can-do spirit of the Last Frontier.

Born in Rhode Island, he first came to Alaska in 1940, after working his way across the country. When World War II began, he went to work building airstrips for the Army Corps of Engineers. When Japanese airplanes attacked Dutch Harbor and invaded the Aleutian Islands, Oscar Dyson was there.

After the war, Oscar truly came into his own. He started commercial fishing in 1946, beginning a career that would span generations and would make him one of the most well-known and admired figures in the U.S. fishing industry.

Over the years, Oscar pioneered fishery after fishery. Starting as a salmon and halibut fisherman after the war, he branched out into shrimp, king crab, and ultimately, into groundfish. In 1971, he made the first-ever delivery of Alaska pollock to a shore-based U.S. processor, starting an industry that now has an annual harvest of over three billion pounds—the largest single fishery in the United States and the fourth in value—which now represents a full 30 percent of the U.S. commercial harvest.

In the 1970's, while remaining an active fisherman, Oscar also diversified, joining with several other fishermen to purchase what became a highly successful and innovative seafood processing company.

Oscar thought of himself—first, last, and always—as a fisherman. But to those of us who knew him, he was far more. He knew that good citizens must be ready to give something back to this great Republic, and he was as good as his word. He served 13 years on Alaska's Board of Fisheries, and three terms on the Federal North Pacific Fishery Management Council. He also served his country as an advisor and representative in international fishery negotiations with Japan and Russia.

He didn't stop there. He was a founding member of the United Fishermen's Marketing Association and the Alaska Draggers Association. He gave his time to the Kodiak City Council, the Kodiak Community College, the Alaska Seafood Marketing Institute, and the Alaska Governor's Fishery Task Force, to name a few of many. And he worked tirelessly toward the goals of the Alaska Fisheries Development Foundation, and Kodiak's Fishery Industrial Technology Center. Always, he helped lead his fellow fishermen toward a stronger, sustainable future.

In 1985, Oscar was chosen by National Fisherman magazine to receive its prestigious Highliner of the Year awards. And this year, just days before the fatal accident that took his life, he was made the National Fisheries Institute's Person of the Year, the institute's highest honor.

In all his endeavors, Oscar was strengthened and encouraged by the loving support of his wife, Peggy, who is herself known far and wide for radio weather reports that have for years enhanced the safety of life at sea and provided the daily comfort of a familiar and friendly voice to mariners.

Finally let me note, and let us all remember, Oscar's strong belief in our Nation's youth. Both by example and by application, his kindness, humor, understanding, and sage advice guided generations of young people. He helped them learn the ropes, and they gained the confidence to go out into the world and—like Oscar himself—to make it better. There can be no greater memorial.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, 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.)

REPORT OF THE NOTICE OF THE CONTINUATION OF THE EMERGENCY REGARDING WEAPONS OF MASS DESTRUCTION—MESSAGE FROM THE PRESIDENT—PM 91

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

To the Congress of the United States:

On November 14, 1994, in light of the dangers of the proliferation of nuclear, biological, and chemical weapons (''weapons of mass destruction'') and of the means of delivering such weapons, I issued Executive Order No. 12938, and declared a national emergency under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) Under section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), the national emergency terminates on the anniversary date of its declaration, unless I publish in the *Federal Register* and transmit to the Congress a notice of its continuation.

The proliferation of weapons of mass destruction continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. Therefore, I am hereby advising the Congress that the national emergency declared

on November 14, 1994, must continue in effect beyond November 14, 1995. Accordingly, I have extended the national emergency declared in Executive Order No. 12938 and have sent the attached notice of extension to the *Federal Register* for publication.

As I described in the report transmitting Executive Order No. 12938, the Executive order consolidated the functions of and revoked Executive Order No. 12735 of November 16, 1990, which declared a national emergency with respect to the proliferation of chemical and biological weapons, and Executive Order No. 12930 of September 29, 1994, which declared a national emergency with respect to nuclear, biological, and chemical weapons, and their means of delivery.

The following report is made pursuant to section 204 of the International Emergency Economic Powers Act (50 U.S.C. 1703) and section 401(c) of the National Emergencies Act (50 U.S.C. 1641(c)), regarding activities taken and money spent pursuant to the emergency declaration. Additional information on nuclear, missile, and/or chemical and biological weapons (CBW) nonproliferation efforts is contained in the annual Report on the Proliferation of Missiles and Essential Components of Nuclear, Biological and Chemical Weapons, provided to the Congress pursuant to section 1097 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190), also known as the ''Nonproliferation Report,'' and the annual report provided to the Congress pursuant to section 308 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Public Law 102–182).

The three export control regulations issued under the Enhanced Proliferation Control Initiative (EPCI) are fully in force and continue to be used to control the export of items with potential use in chemical or biological weapons or unmanned delivery systems for weapons of mass destruction.

In the 12 months since I issued Executive Order No. 12938, 26 additional countries ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC) for a total of 42 of the 159 signatories; the CWC must be ratified by 65 signatories to enter into force. I must report my disappointment that the United States is not yet among those who have ratified. The CWC is a critical element of U.S. nonproliferation policy and an urgent next step in our effort to end the development, production, stockpiling, transfer, and use of chemical weapons. As we have seen this year in Japan, chemical weapons can threaten our security and that of our allies, whether as an instrument of war or of terrorism. The CWC will make every American safer, and we need it now.

The international community is watching. It is vitally important that the United States continue to lead the fight against weapons of mass destruction by being among the first 65 countries to ratify the CWC. The Senate recognized the importance of this agreement by adopting a bipartisan amendment on September 5, 1995, expressing the sense of the Senate that the United States should promptly ratify the CWC. I urge the Senate to give its advice and consent as soon as possible.

In parallel with seeking Senate ratification of the CWC, the United States is working hard in the CWC Preparatory Commission (PrepCom) in The Hague to draft administrative and implementing procedures for the CWC and to create a strong organization for verifying compliance once the CWC enters into force.

The United States also is working vigorously to end the threat of biological weapons (BW). We are an active participant in the Convention on the Prohibition of the Development and Stockpiling of Bacteriological (Biological) and Toxic Weapons and Their Destruction (BWC) Ad Hoc Group, which was commissioned September 1994 by the BWC Special Conference to draft a legally binding instrument to strengthen the effectiveness and improve the implementation of the Convention. The Group convened its first meeting in January 1995 and agreed upon a program of work for this year. The first substantive meeting took place in July, making important progress in outlining the key issues. The next meeting is scheduled for November 27 to December 8, 1995. The U.S. objective is to have a draft protocol for consideration and adoption at the Fourth BWC Review Conference in December 1996.

The United States continues to be active in the work of the 29-member Australia Group (AG) CBW nonproliferation regime, and attended the October 16–19 AG consultations. The Group agreed to a United States proposal to ensure the AG export controls and information-sharing adequately address the threat of CBW terrorism, a threat that became all too apparent in the Tokyo subway nerve gas incident. This U.S. initiative was the AG's first policy-level action on CBW terrorism. Participants also agreed to several amendments to strengthen the AG's harmonized export controls on materials and equipment relevant to biological weapons, taking into account new developments since the last review of the biological weapons lists and, in particular, new insights into Iraq's BW activities.

The Group also reaffirmed the members' collective belief that full adherence to the CWC and the BWC will be the only way to achieve a permanent global ban on CBW, and that all states adhering to these Conventions have an obligation to ensure that their national activities support these goals.

Australia Group participants are taking steps to ensure that all relevant national measures promote the object and purposes of the BWC and CWC, and will be fully consistent with the CWC upon its entry into force. The AG considers that national export licensing policies on chemical weapons-related items fulfill the obligation established under Article I of the CWC that States Parties never assist, in any way, the acquisition of chemical weapons. Moreover, inasmuch as these measures are focused solely on preventing activities banned under the CWC, they are consistent with the undertaking in Article XI of the CWC to facilitate the fullest possible exchange of chemical materials and related information for purposes not prohibited by the CWC.

The AG agreed to continue its active program of briefings for non-AG countries, and to promote regional consultations on export controls and nonproliferation to further awareness and understanding of national policies in these areas.

The United States Government determined that two foreign companies—Mainway Limited and GE Plan—had engaged in chemical weapons proliferation activities that required the imposition of sanctions against them, effective May 18, 1995. Additional information on this determination is contained in a classified report to the Congress, provided pursuant to the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

The United States carefully controlled exports which could contribute to unmanned delivery systems for weapons of mass destruction, exercising restraint in considering all such proposed transfers consistent with the Guidelines of the Missile Technology Control Regime (MTCR). The MTCR Partners continued to share information about proliferation problems with each other and with other possible supplier, consumer, and transshipment states. Partners also emphasized the need for implementing effective export control systems.

The United States worked unilaterally and in coordination with its MTCR partners in multilateral efforts to combat missile proliferation by nonmembers and to encourage nonmembers to export responsibly and to adhere to the MTCR Guidelines. Three new Partners were admitted to the MTCR with U.S. support: Russia, South Africa, and Brazil.

In May 1995, the United States participated in an MTCR team visit to Kiev to discuss missile nonproliferation and MTCR membership criteria. Under Secretary of State Davis met with Ukraine's Deputy Foreign Minister Hryshchenko in May, July, and October to discuss nonproliferation issues and MTCR membership. As a result of the July meeting, a United States delegation traveled to Kiev in October to conduct nonproliferation talks with representatives of Ukraine, brief them on the upcoming MTCR Plenary, and discuss U.S. criteria for MTCR membership. From August 29–September 1, the U.S. participated in

an informal seminar with 18 other MTCR Partners in Montreux, Switzerland, to explore future approaches to strengthening missile nonproliferation.

The MTCR held its Tenth Plenary Meeting in Bonn October 10–12. The Partners reaffirmed their commitment to controlling exports to prevent proliferation of delivery systems for weapons of mass destruction. They also reiterated their readiness for international cooperation in peaceful space activities consistent with MTCR policies. The Bonn Plenary made minor amendments to the MTCR Equipment and Technology Annex in the light of technical developments. Partners also agreed to U.S. initiatives to deal more effectively with missile-related aspects of regional tensions, coordinate in impeding shipments of missile proliferation concern, and deal with the proliferation risks posed by transshipment. Finally, MTCR Partners will increase their efforts to develop a dialogue with countries outside the Regime to encourage voluntary adherence to the MTCR Guidelines and heightened awareness of missile proliferation risks.

The United States has continued to pursue my Administration's nuclear nonproliferation goals with success. Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) agreed last May at the NPT Review and Extension Conference to extend the NPT indefinitely and without conditions. Since the conference, more nations have acceded to the Treaty. There now are 180 parties, making the NPT nearly universal.

The Nuclear Suppliers Group (NSG) continues its efforts to improve member states' export policies and controls. Nuclear Suppliers Group members have agreed to apply technology controls to all items on the nuclear trigger list and to adopt the principle that the intent of the NSG Guidelines should not be undermined by the export of parts of trigger list and dual-use items without appropriate controls. In 1995, the NSG agreed to over 30 changes to update and clarify the list of controlled items in the Nuclear-Related Dual-Use Annex. The NSG also pursued efforts to enhance information sharing among members by establishment of a permanent Joint Information Exchange group and by moving toward adoption of a United States Department of Energy-supplied computerized automated information exchange system, which is currently being tested by most of the members.

The increasing number of countries capable of exporting nuclear commodities and technology is a major challenge for the NSG. The ultimate goal of the NSG is to obtain the agreement of all suppliers, including nations not members of the regime, to control nuclear exports in accordance with the NSG guidelines. Members continued contacts with Belarus, Brazil, China, Kazakhstan, Lithuania, the Republic of Korea (ROK), and Ukraine regarding NSG activities. Ambassador Patokallio of Finland, the current NSG Chair, led a five-member NSG outreach visit to Brazil in early November 1995 as part of this effort.

As a result of such contacts, the ROK has been accepted as a member of the NSG. Ukraine is expected to apply for membership in the near future. The United States maintains bilateral contacts with emerging suppliers, including the New Independent States of the former Soviet Union, to encourage early adherence to NSG guidelines.

Pursuant to section 401(c) of the National Emergencies Act (50 U.S.C. 1641(c)), I report that there were no expenses directly attributable to the exercise of authorities conferred by the declaration of the national emergency in Executive Order No. 12938 during the period from May 14, 1995, through November 14, 1995.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *November 8, 1995*.

MESSAGES FROM THE HOUSE

At 10:29 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendments of the Senate to the bill (H.R. 436) to require the head of any Federal agency to differentiate between fats, oils, and greases of animal, marine, or vegetable origin, and other oils and greases, in issuing certain regulations, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 927) to seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes, and asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. GILMAN, Mr. BURTON, Ms. ROS-LEHTINEN, Mr. KING, Mr. DIAZ-BALART, Mr. HAMILTON, Mr. GEJDENSON, Mr. TORRICELLI, and Mr. MENENDEZ as the managers of the conference on the part of the House.

At 11:08 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill in which it requests the concurrence of the Senate:

H.R. 2589. An act to extend authorities under the Middle East Peace Facilitation Act of 1994 until December 31, 1995, and for other purposes.

At 12:24 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House passed the following bills and joint resolutions:

H.R. 207. An act to authorize the Secretary of Agriculture to enter into a land exchange involving the Cleveland National Forest, California, and to require a boundary adjustment for the national forest to reflect the land exchange, and for other purposes.

H.R. 238. An act to provide for the protection of wild horses within the Ozark National Scenic Riverways and prohibit the removal of such horses.

H.R. 1585. An act to expand the boundary of the Modoc National Forest to include lands presently owned by the Bank of California, N.A. Trustee, to facilitate a land exchange with the Forest Service, and for other purposes.

H.R. 1838. An act to provide for an exchange of lands with the Water Conservancy District of Washington County, Utah.

H.R. 2437. An act to provide for the exchange of certain lands in Gilpin County, Colorado.

H.R. 1163. An act to authorize the exchange of National Park Service land in the Fire Island National Seashore in the State of New York for land in the Village of Patchogue, Suffolk County, New York.

H.R. 1581. An act to establish a national public works program to provide incentives for the creation of jobs and address the restoration of infrastructure in communities across the United States, and for other purposes; to the Committee on Agriculture, Forestry, and Natural Resources.

H.J. Res. 69. Joint resolution providing for the reappointment of Homer Alfred Neal as a citizen regent of the Board of Regents of the Smithsonian Institution.

H.J. Res. 110. Joint resolution providing for the appointment of Howard H. Baker, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution.

H.J. Res. 111. Joint resolution providing for the appointment of Anne D'Harnoncourt as a citizen regent of the Board of Regents of the Smithsonian Institution.

H.J. Res. 112. Joint resolution providing for the appointment of Louis Gerstner as a citizen regent of the Board of Regents of the Smithsonian Institution.

ENROLLED BILL SIGNED

The message also announced that the Speaker signed the following enrolled bill:

H.R. 436. An act to require the head of any Federal agency to differentiate between fats, oils, and greases of animal, marine, or vegetable origin, and other oils and greases, in issuing certain regulations, and for other purposes.

The enrolled bill was signed subsequently by the President pro tempore (Mr. THURMOND).

At 4:04 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 31. Concurrent resolution honoring the life and legacy of Yitzhak Rabin.

At 5:59 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 395) to authorize and direct the Secretary of Energy to sell the Alaska Power Administration, and to authorize the export of Alaska North Slope crude oil, and for other purposes.

MEASURES REFERRED

The following bills and joint resolutions were read the first and second times by unanimous consent and referred as indicated.

H.R. 207. An act to authorize the Secretary of Agriculture to enter into a land exchange involving the Cleveland National Forest, California, and to require a boundary adjustment for the national forest to reflect the land exchange, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 238. An act to provide for the protection of wild horses within the Ozark National Scenic Riverways and prohibit the removal of such horses; to the Committee on Energy and Natural Resources.

H.R. 1163. An act to authorize the exchange of National Park Service land in the Fire Island National Seashore in the State of New York for land in the Village of Patchogue, Suffolk County, New York; to the Committee on Energy and Natural Resources.

H.R. 1581. An act to establish a national public works program to provide incentives for the creation of jobs and address the restoration of infrastructure in communities across the United States, and for other purposes; to the Committee on Agriculture, Nutrition and Forestry.

H.R. 1585. An act to expand the boundary of the Modoc National Forest to include lands presently owned by the Bank of California, N.A. Trustee, to facilitate a land exchange with the Forest Service, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1838. An act to provide for an exchange of lands with the Water Conservancy District of Washington County, Utah; to the Committee on Energy and Natural Resources.

H.R. 2437. An act to provide for the exchange of certain lands in Gilpin County, Colorado; to the Committee on Energy and Natural Resources.

H.J. Res. 69. Joint resolution providing for the reappointment of Homer Alfred Neal as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

H.J. Res. 110. Joint resolution providing for the appointment of Howard H. Baker, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

H.J. Res. 111. Joint resolution providing for the appointment of Anne D'Harnoncourt as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

H.J. Res. 112. Joint resolution providing for the appointment of Louis Gerstner as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

MEASURE COMMITTED

The following bill was committed as indicated:

H.R. 1833. An act to amend title 18, United States Code, to ban partial-birth abortions; to the Committee on the Judiciary.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on November, 1995 he had presented to the President of the United States, the following enrolled bill:

S. 457. An act to amend the Immigration and Nationality Act to update references in the classification of children for purposes of United States immigration laws.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mrs. KASSEBAUM, from the Committee on Labor and Human Resources:

James Charles Riley, of Virginia, to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 2000.

Elisabeth Griffith, of Virginia, to be a Member of the Board of Trustees of the James Madison Memorial Foundation for the remainder of the term expiring September 27, 1996.

Theodore M. Hesburgh, of Indiana, to be a Member of the Board of Directors of the United States Institute of Peace for a term expiring January 19, 1999.

Walter Anderson, of New York, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2000.

C. Richard Allen, of Maryland, to be a Managing Director of the Corporation for National and Community Service.

Louise L. Stevenson, of Pennsylvania, to be a Member of the Board of Trustees of the James Madison Memorial Fellowship Foundation for a term expiring November 17, 1999.

Anne H. Lewis, of Maryland, to be an Assistant Secretary of Labor.

Susan Robinson King, of the District of Columbia, to be an Assistant Secretary of Labor.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. COCHRAN, from the Committee on Agriculture, Nutrition, Forestry:

Michael V. Dunn, of Iowa, to be an Assistant Secretary of Agriculture.

Michael V. Dunn, of Iowa, to be a Member of the Board of Directors of the Commodity Credit Corporation.

John David Carlin, of Kansas, to be an Assistant Secretary of Agriculture.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BENNETT (for himself, Mr. THOMAS, Mr. SIMPSON, Mr. WARNER, and Mr. HATCH):

S. 1401. A bill to amend the Surface Mining Control and Reclamation Act of 1977 to minimize duplication in regulatory programs and to give States exclusive responsibility under approved States program for permitting and enforcement of the provisions of that Act with respect to surface coal mining and reclamation operations, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. CRAIG (for himself, Mr. JOHNSTON, and Mr. KEMPTHORNE):

S. 1402. A bill to amend the Waste Isolation Pilot Plant Land Withdrawal Act and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. INOUYE:

S. 1403. A bill to amend the Organic Act of Guam to provide restitution to the people of Guam who suffered atrocities such as personal injury, forced labor, forced marches, internment, and death during the occupation of Guam in World War II, and for other purposes; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself and Mr. KYL):

S. 1404. A bill to enhance restitution to victims of crime, and for other purposes; to the Committee on the Judiciary.

By Mr. FRIST:

S. 1405. A bill to eliminate certain benefits for Members of Congress; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BENNETT (for himself, Mr. THOMAS, Mr. SIMPSON, Mr. WARNER, and Mr. HATCH):

S. 1401. A bill to amend the Surface Mining Control and Reclamation Act of 1977 to minimize duplication in regulatory programs and to give States exclusive responsibility under approved States program for permitting and enforcement of the provisions of that act with respect to surface coal mining and reclamation operations, and for other purposes; to the Committee on Energy and Natural Resources.

THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 AMENDMENTS ACT OF 1995

Mr. BENNETT. Mr. President, today I am introducing legislation in behalf of myself, Senators THOMAS, SIMPSON, WARNER, and HATCH to amend the Surface Mining Control and Reclamation Act of 1977. I encourage my colleagues to support this legislation.

The Surface Mining Control and Reclamation Act [SMCRA] was signed into law by President Carter in the aftermath of the energy crisis, when coal regulation was considered crucial to the success of his national energy program. In 1977, when this legislation was passed, there were more than 6,000 operating coal mines. Today, the number of operating mines has been reduced approximately to half of the 1977 level. The questions which were first raised back then regarding the States' abilities to effectively operate regulatory programs have been satisfactorily answered and now is the time that we should reexamine the role of OSM and the effectiveness of the current law.

When Congress passed SMCRA, it was agreed that the time had arrived for tougher environmental standards for surface mining operations. SMCRA established specific environmental guidelines for surface mines, including requirements for water and soil treatment and remediation as well as reclamation requirements for old and abandoned mines. It also established the Abandoned Mine Reclamation Fund and the Office of Surface Mining. Most

importantly, it established a framework under which States and the Federal Government could work in unison to administer this new law.

SMCRA was hailed as a model of cooperative State and Federal efforts. Congress passed it with the understanding that after an initial phase-in period, the States would assume responsibility for administering the law. It was understood that once States established environmental standards which were equally as tough as Federal standards, States would assume primacy and could administer their own administrative and environmental programs subject to approval of those programs by the Office of Surface Mining.

Today 23 of the 26 coal producing States have assumed the role as the SMCRA regulating authority in these States. These primacy States have their mining programs periodically reviewed by OSM, which has occasionally exercised its Federal regulatory authority as necessary and expected under the SMCRA agreements.

Unfortunately, OSM has not relinquished full administrative oversight of SMCRA and still retains a great deal of regulatory authority that rightly belongs to the primacy States. The result has been the creation of a problematic, dual regulatory scheme in which OSM regularly issues notice of violations [NOV's] directly to coal mine operators in primacy States whenever OSM is dissatisfied with the way these States are administering their own programs. This daily intervention in State program matters impacts the coal operators most who are often caught in between Federal-State disputes.

For example, the State of Utah obtained primacy for the administration of SMCRA in 1983. We mine 24 million tons of coal annually from 13 active mines. These mines operate in compliance with the environmental requirements of the Utah regulatory program and the mined lands are being returned to productive nonmining uses. In short, the regulatory program is working and the intent and purpose of SMCRA is being fulfilled.

Since January 1993, OSM has taken five direct Federal enforcement actions against Utah. All five were based on disagreements between OSM and the State of Utah over interpretation of the program's language. Not one of the five violations concerned any environmental safety or environmental hazard. Three of the five enforcement actions were dismissed by the Department of Interior's own administrative law judges. The other two concerned a dispute between OSM and Utah concerning the jurisdictional reach of the regulatory program. Both these disputes concerned coal handling and processing equipment located at power plants. One has since been upheld and the other is pending an appeal. In each instance, OSM cited the operator for a practice or condition which had already specifically been approved by the Utah program. Again, none of the violations concerned adverse off-site environmental impacts.

Direct Federal enforcement has not helped protect the citizens of Utah or the environment. Instead it has diverted scarce resources away from other, more productive work conducted by OSM, Utah, and Utah coal operators. Longstanding disagreements between OSM and the primacy States have retarded the development of State regulatory programs, and continue to inhibit effective implementation. While significant improvements have been made by OSM in recent months, several structural problems continue to interfere with effective and efficient implementation of the coal regulatory program. Again, the most troublesome of these problems is the dual enforcement authority. Direct Federal enforcement in Utah has not only been ineffective and expensive, it has been counterproductive environmentally.

Clearly there is a need to amend SMCRA to return the balance of authority to the primacy States as originally intended by the law. This legislation would make several technical amendments designed to acknowledge the role of those States as the primary regulatory agency where there is an approved State program. These proposed revisions would eliminate the redundancy and confusion that occurs when duplicative State and Federal program provisions are applied directly to mining operations.

This legislation would also clarify that the authority to issue notices of violations [NOV's] in primacy States rests exclusively with the State regulatory authority, unless OSM first determines that the State regulatory authority has failed to properly administer the program, in which case direct Federal authority can be implemented. We have also deleted the redundant reference to the Federal program provisions to avoid any implication of Federal oversight authority to suspend permits in a State with an approved regulatory program. I believe this clarifies the intent of SMCRA as originally passed.

The legislation would clarify that an operator's responsibility is to conform his operations to the terms and conditions of the approved permit for the mine. It also clarifies the regulatory agency's authority to require revisions to a permit as necessary to ensure compliance with the program requirements. Since many decisions of the administrative law judges remain pending on appeal before the Interior Board of Land Appeals for several years before a decision is issued under the existing format, the legislation would eliminate the unnecessary requirement that, as established in OSM's rules, appeals of certain agency decisions proceed through two layers of administrative review prior to seeking judicial review. Finally, this legislation would place a 3-year time limitation upon commencement of actions for alleged violations. This would encourage the more prompt initiation of any administrative or other actions.

In conclusion, Mr. President, the coal regulatory program created by SMCRA has provided great benefit to the environment, the citizens of Utah, and the coal-mining community. The issues raised by this legislation are not the fault of coal regulation itself, but are the products of an unclear delineation of responsibilities and authorities between the Federal OSM and the primacy States. These amendments will reestablish the intent of SMCRA by reinforcing the role of the States in administering their own regulations. This legislation makes good sense and I encourage my colleagues to join me in cosponsoring this legislation.

By Mr. CRAIG (for himself, Mr. JOHNSTON, and Mr. KEMPTHORNE):

S. 1402. A bill to amend the Waste Isolation Pilot Plant Land Withdrawal Act and for other purposes; to the Committee on Energy and Natural Resources.

THE WASTE ISOLATION PILOT PLANT LAND WITHDRAWAL ACT

Mr. CRAIG.

Madam President, today Senators JOHNSTON, KEMPTHORNE, and I are introducing legislation to expedite the opening of the waste isolation pilot plant. This legislation removes unnecessary and delaying bureaucratic requirements, achieves a major environmental objective, saves the taxpayers money and, most significantly for the Nation and Idaho, begins the process of successfully cleaning up and decommissioning the nuclear weapons complexes and temporary storage facilities.

The waste isolation pilot plant is located in southeast New Mexico. It is truly a unique project. Its specific purpose is to provide for the safe disposal of transuranic radioactive and mixed waste resulting from defense activities and programs of the U.S. Government. The importance of WIPP, however, extends beyond its stated mission.

Idaho currently stores the largest amount of transuranic waste of any State in the Union, but Idaho is not alone as a waste storage State. Washington, Colorado, South Carolina, and New Mexico also have large amounts of transuranic waste in temporary storage. Until the WIPP opens, little can be done to clean up and close these temporary storage sites.

The agreement recently negotiated between the State of Idaho, the DOE, and the U.S. Navy, states that transuranic waste currently located in Idaho will begin to be shipped to WIPP by April 30, 1999. This legislation will assure this commitment is fulfilled.

We cannot solve the environmental problems at sites such as Idaho's National Engineering Laboratory, or Rocky Flats Weapons Facility, or Savannah River, or others, without this facility in New Mexico. The reason is

obvious, Madam President. Without a place to dispose of the waste, cleanup is impossible. Without cleanup, further decommissioning cannot occur.

The goal of this bill is simple: To deliver on Congress' longstanding commitment and open the WIPP facility by 1998.

This bill amends the Waste Isolation Pilot Plant Withdrawal Act of 1992 in several very important and significant ways.

It deletes obsolete language of the 1992 act. Of particular importance is the reference and requirements for test-phase activities. Since the enactment of the 1992 act, the Department of Energy has abandoned the test phase that called for underground testing in favor of aboveground laboratory test programs. Thus, the test phase no longer exists, as defined in the 1992 law, and needs to be removed so it does not complicate the ongoing WIPP process.

Most important, this bill will streamline the process, remove duplicative regulations, save taxpayers dollars—repeat, save taxpayers dollars, hundreds of millions of dollars—and have the following effects:

The existing law contains a 180-day waiting period between the time the Secretary of Energy makes a decision to operate the WIPP and the actual commencement of disposal operations. My bill eliminates this waiting period. The 180 days constitutes an unnecessary delay. Eliminating 180 days saves $140 million or more in operational expenses during the waiting period and will start the removal of this type of waste from the aboveground storage in Idaho and other affected States 6 months earlier than now scheduled.

The bill requires the Secretary of Energy to determine if engineered or natural barriers in the facility are necessary. This change is consistent with the concept of allowing actions at the WIPP to be based on the technical needs of the WIPP.

Section 7, ''Compliance With Environmental Laws and Regulations,'' will streamline DOE's compliance with applicable environmental laws.

In other words, Madam President, we are not stepping aside from the current environmental commitment. We are assuring that all of it is met, but that it is met on time and under standard.

Section 8 repeals the retrievability requirement which was an outgrowth of below-ground testing. With the replacement of the test phase by laboratory testing, retrievability no longer is needed. All tests are now performed in the laboratory and no transuranic waste is used in testing at the WIPP.

The bill deletes the need for a decommissioning plan which is a duplicative and costly legislative mandate. This plan is covered by the disposal standards of the Land Withdrawal Act of 1992 and thus is not needed.

It deletes the requirement for a no-mitigation determination. In a letter to Senator KEMPTHORNE and me dated September 8, 1995, the Environmental Protection Agency started that a no-mitigation variance is duplicative because the WIPP is held by the other statutes to a higher standard. EPA states, ''A demonstration of nonmitigation of hazardous constituents will not be necessary to adequately protect human health and the environment.'' Despite this view, EPA further states that unless the current law is amended, the WIPP will be forced to comply with the no-mitigation standards. This unnecessary duplication would be time consuming and costly.

It allows the Secretary of Energy to dispose of a small amount of nondefense transuranic waste in the WIPP. In my opinion, this is a cost effective and safe way to dispose of a relatively minor amount of waste.

But just as important, I would like to make clear what my bill does not do.

This bill does not remove EPA as the DOE regulator of the WIPP. DOE has stated numerous times that it does not want to self-regulate. The Department believes that having EPA as the regular will instill additional public confidence in the certification process and the facility itself, once it opens.

I am skeptical regarding EPA. EPA has a poor record of meeting deadlines. The WIPP, as a facility, is ready to operate now and is basically waiting on EPA's final approval. The schedule DOE has established to meet the opening dates is an aggressive but not entirely workable timetable. It is aggressive only if EPA can accomplish its tasks on time. Because of EPA's demonstrated inability to meet schedules and to avoid imposing unnecessary large financial burdens on the taxpayer, there is a strong sentiment in the Congress to remove EPA from the WIPP regulatory role. Based on assurances made to me by the EPA, my bill does not follow this course. However, if EPA again falters, I will have to reconsider this position in future legislation.

Idaho and the Nation need to have the WIPP opened sooner rather than later. Each day of delay is costly, and the potential dangers to the environment and human health resulting from the temporary storage of this waste continue.

It is time to act. We must, if we are to clean up sites such as Idaho's. We must act to dispose of this task permanently and safety for future generations. This bill clears the way for action.

I encourage my colleagues to become cosponsors of this legislation. We hope to move it expeditiously through the necessary committee and hearing process so that it can become law.

By Mr. INOUYE:

S. 1403. a bill to amend the Organic Act of Guam to provide restitution to the people of Guam who suffered atrocities such as personal injury, forced labor, forced marches, internment, and death during the occupation of Guam in World War II, and for other purposes; to the Committee on the Judiciary.

THE GUAM WAR RESTITUTION ACT

• Mr. INOUYE. Mr. President, on August 14, 1945, Japan signed a declaration of surrender, facilitating the end of World War II. This year we celebrated Victory Over Japan Day, to commemorate those who valiantly fought for humanity and those who were the victims of unspeakable acts of racism, hate, and violence during World War II. We must also remember those who were forced to endure Japanese occupation during World War II. For nearly 3 years, the people of Guam endured war-time atrocities and suffering. As part of Japan's assault against the Pacific, Guam was bombed and invaded by Japanese forces within 3 days of the infamous attack on Pearl Harbor. At that time, Guam was administered by the U.S. Navy under the authority of a Presidential Executive order. It was also populated by then-American nationals. For the first time since the War of 1812, a foreign power invaded U.S. soil.

In 1952, when the United States signed a peace treaty with Japan, formally ending World War II, it waived the rights of American nationals, including those of Guamanians, to present claims against Japan. As a result of this action, American nationals were forced to seek relief from the Congress of the United States.

Today, I rise to introduce the Guam War Restitution Act, which would amend the Organic Act of Guam and provide restitution to those who suffered atrocities during the occupation of Guam in World War II.

The Guam War Restitution Act would establish a Guam Restitution Claims Fund, which would provide specific damage awards to those who are survivors of the war, and to the heirs of those who died during the war. The specific damage awards would be as follows: First, $20,000 for the category of death; second, $7,000 for the category of personal injury; and third, $5,000 for the categories of forced labor, forced march, or internment.

This act would also establish a Guam Restitution Trust Fund to provide restitution to the heirs of those individuals who sustained injuries during the war but died after the war. Eligible heirs would receive restitution in the form of postsecondary scholarships, first-time home ownership loans, and grants for other suitable purposes. In addition, the trust fund could provide research and public educational activities to honor and memorialize the wartime events of Guam.

The U.S. Congress previously recognized its moral obligation to the people of Guam and provided reparations relief by enacting the Guam Meritorious claims act on November 15, 1945 (Public Law 79–224). Unfortunately, the claims act was seriously flawed and did not adequately compensate Guam after World War II.

The Claims Act primarily covered compensation for property damage and limited compensation for death or personal injury. Claims for forced labor, forced march, and internment were never compensated because the Claims Act excluded these from awardable injuries. The enactment of the Claims Act was intended to make Guam whole. The Claims Act, however, failed to specify postwar values as a basis for computing awards, and settled on prewar values, which did not reflect the true postwar replacement costs. Also, all property damage claims in excess of $5,000, as well as all death and injury claims, required congressional review and approval. This action caused many eligible claimants to settle for less in order to receive timely compensation. The Claims Act also imposed a 1-year time limit to file claims, which was insufficient as massive disruptions still existed following Guam's liberation. In addition, English was then a second language to a great many Guamanians. While a large number spoke English, few could read it. This is particularly important since the Land and War Claims Commission required written statements and often communicated with claimants in writing.

The reparations program was also inadequate because it become secondary to overall reconstruction and the building of permanent military bases. In this regard, the Congress enacted the Guam Land Transfer Act and the Guam Rehabilitation Act (Public Laws 79–225 and 79–583) as a means of rehabilitating Guam. The Guam Land Transfer Act provided the means of exchanging excess Federal land for resettlement purposes, and the Guam Rehabilitation Act appropriated $6 million to construct permanent facilities for the civic populace of the island for their economic rehabilitation.

Approximately $8.1 million was paid to 4,356 recipients under the Guam Meritorious Claims Act. Of this amount, $4.3 million was paid to 1,243 individuals for death, injury, and property damage in excess of $5,000, and $3.8 million to 3,113 recipients for property damage below $5,000.

On June 3, 1947, former Secretary of the Interior Harold Ickes testified before the House Committee on Public Lands relative to the Organic Act, and strongly criticized the Department of the Navy for their ''inefficient and even brutal handling of the rehabilitation and compensation and war damage tasks.'' Secretary Ickes termed the procedures as ''shameful results.''

In addition, a committee known as the Hopkins Committee was established by former Secretary of the Navy James Forrestal in 1947 to assess the Navy's administration of Guam and American Samoa. An analysis of the Navy's administration of the reparation and rehabilitation program was provided to Secretary Forrestal in a March 25, 1947 letter from the Hopkins Committee. The letter indicated that the Department's confusing policy decisions greatly contributed to the programs' deficiencies and called upon the Congress to pass legislation to correct its mistakes and provide reparations to the people of Guam.

In 1948, the U.S. Congress enacted the War Claims Act of 1948 (Public Law 80–896), which provided reparation relief to American prisoners of war, internees, religious organizations, and employees of defense contractors. The residents of Guam were deemed ineligible to receive reparations under this act because they were American nationals and not American citizens. In 1950, the U.S. Congress enacted the Guam Organic Act (81–630), granting Guamanians American citizenship and a measure of self-government.

The Congress, in 1962, amended the War Claims Act to provide for claimants who were nationals at the time of the war and who became citizens. Again, the residents of Guam were specifically excluded. The Congress believed that the residents of Guam were provided for under the Guam Meritorious Claims Act. At that time, there was no one to defend Guam, as they had no representation in Congress. The Congress also enacted the Micronesian Claims Act for the Trust Territory of the Pacific Islands, but again excluded Guam in the settlement.

In 1988, the Guam War Reparations Commission documented 3,365 unresolved claims. There are potentially 5,000 additional unresolved claims. In 1946, the United States provided over $390 million in reparations to the Philippines, and over $10 million to the Micronesian Islands in 1971 for atrocities inflicted by Japan. In addition, the United States provided over $2 billion in postwar aid to Japan from 1946–51. Further, the United States Government liquidated over $84 million in Japanese assets in the United States during the war for the express purpose of compensating claims of its citizens and nationals. The United States did not invoke its authority to seize more assets from Japan under article 14 of the Treaty of Peace, as other Allied Powers had done. The United States, however, did close the door on the claims of the people of Guam.

A companion measure to my bill, H.R. 2041, was introduced in the House of Representatives by Representative ROBERT UNDERWOOD. H.R. 2041, however, includes a provision assessing a 0.5 percent fee on the sale of United States military equipment to Japan. My bill does not include the fee provision because, in my view, it would cause U.S. manufacturers to be less competitive with other foreign manufacturers. Imposing such a fee could lead to the loss of American jobs, which is of concern in light of the decline in defense spending.

The issue of reparations for Guam is not a new one for the people of Guam and for the U.S. Congress. It has been consistently raised by the Guamanian Government through local enactments of legislative bills and resolutions, and discussed with congressional leaders over the years.

The Guam War Restitution Act cannot fully compensate or erase the atrocities inflicted upon Guam and its people during the occupation by the Japanese military. However, passage of this act would recognize our Government's moral obligation to Guam, and bring justice to the people of Guam for the atrocities and suffering they endured during World War II. I urge my colleagues to support this measure.

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

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

S. 1403

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 ''Guam War Restitution Act''.

SEC. 2. AMENDMENT TO ORGANIC ACT OF GUAM TO PROVIDE RESTITUTION.

The Organic Act of Guam (48 U.S.C. 1421 et seq.) is amended by adding at the end the following new section:

''SEC. 36. RECOGNITION OF DEMONSTRATED LOYALTY OF GUAM TO UNITED STATES, AND SUFFERING AND DEPRIVATION ARISING THEREFROM, DURING WORLD WAR II.

''(a) DEFINITIONS.—For purposes of this section:

''(1) AWARD.—The term 'award' means the amount of compensation payable under subsection (d)(2).

''(2) BENEFIT.—The term 'benefit' means the amount of compensation payable under subsection (d)(3).

''(3) COMMISSION.—The term 'Commission' means the Guam Trust Fund Commission established by subsection (f).

''(4) COMPENSABLE INJURY.—The term 'compensable injury' means one of the following three categories of injury incurred during and as a result of World War II:

''(A) Death.

''(B) Personal injury (as defined by the Commission).

''(C) Forced labor, forced march, or internment.

''(5) GUAMANIAN.—The term 'Guamanian' means any person who—

''(A) resided in the territory of Guam during any portion of the period beginning on December 8, 1941, and ending on August 10, 1944; and

''(B) was a United States citizen or national during such portion.

''(6) PROOF.—The term 'proof', relative to compensable injury, means any one of the following, if determined by the Commission to be valid:

''(A) An affidavit by a witness to such compensable injury.

''(B) A statement, attesting to compensable injury, which is—

''(i) offered as oral history collected for academic, historic preservation, or journalistic purposes;

''(ii) made before a committee of the Guam legislature;

''(iii) made in support of a claim filed with the Guam War Reparations Commission;

''(iv) filed with a private Guam war claims advocate; or

''(v) made in a claim pursuant to the first section of the Act of November 15, 1945 (Chapter 483; 59 Stat. 582).

''(7) TRUST FUND.—The term 'Trust Fund' means the Guam Trust Fund established by subsection (e).

''(b) REQUIREMENTS FOR CLAIMS AND GENERAL DUTIES OF COMMISSION—

''(1) REQUIRED INFORMATION FOR CLAIMS.—Each claim for an award or benefit under this section shall be made under oath and shall include—

''(A) the name and age of the claimant;

''(B) the village in which the individual who suffered the compensable injury which is the basis for the claim resided at the time the compensable injury occurred;

''(C) the approximate date or dates on which the compensable injury occurred;

''(D) a brief description of the compensable injury which is the basis for the claim;

''(E) the circumstances leading up to the compensable injury; and

''(F) in the case of a claim for a benefit, proof of the relationship of the claimant to the relevant decedent.

''(2) GENERAL DUTIES OF COMMISSION TO PROCESS CLAIMS.—With respect to each claim filed under this section, the Commission shall determine whether the claimant is eligible for an award or benefit under this section and, if so, shall certify the claim for payment in accordance with subsection (d).

''(3) TIME LIMITATION.—With respect to each claim submitted under this section, the Commission shall act expeditiously, but in no event later than 1 year after the receipt of the claim by the Commission, to fulfill the requirements of paragraph (2) regarding the claim.

''(4) DIRECT RECEIPT OF PROOF FROM PUBLIC CLAIMS FILES PERMITTED.—The Commission may receive proof of a compensable injury directly from the Governor of Guam, or the Federal custodian of an original claim filed with respect to the injury pursuant to the first section of the Act of November 15, 1945 (Chapter 483; 59 Stat. 582), if such proof is contained in the respective public records of the Governor or the custodian.

''(c) ELIGIBILITY.—

''(1) ELIGIBILITY FOR AWARDS.—A claimant shall be eligible for an award under this section if the claimant meets each of the following criteria:

''(A) The claimant is—

''(i) a living Guamanian who personally received the compensable injury that is the basis for the claim, or

''(ii) the heir or next of kin of a decedent Guamanian, in the case of a claim with respect to which the compensable injury is death.

''(B) The claimant meets the requirements of paragraph (3).

''(2) ELIGIBILITY FOR BENEFITS.—A claimant shall be eligible for a benefit under this section if the claimant meets each of the following criteria:

''(A) The claimant is the heir or next of kin of a decedent Guamanian who personally received the compensable injury that is the basis for the claim, and the claim is made with respect to a compensable injury other than death.

''(B) The claimant meets the requirements of paragraph (3).

''(3) GENERAL REQUIREMENTS FOR ELIGIBILITY.—A claimant meets the requirements of this paragraph if the claimant meets each of the following criteria:

''(A) The claimant files a claim with the Commission regarding a compensable injury and containing all of the information required by subsection (b)(1).

''(B) The claimant furnishes proof of the compensable injury.

''(C) By such procedures as the Commission may prescribe, the claimant files a claim under this section not later than 1 year after the date of the appointment of the ninth member of the Commission.

''(4) LIMITATION ON ELIGIBILITY FOR AWARDS AND BENEFITS—

''(A) AWARDS.—

''(i) No claimant may receive more than 1 award under this section and not more than 1 award may be paid under this section with respect to each decedent described in paragraph (1)(A)(ii).

''(ii) Each award shall consist of only 1 of the amounts referred to in subsection (d)(2).

''(B) BENEFITS.—

''(i) Not more than 1 benefit may be paid under this Act with respect to each decedent described in paragraph (2)(A).

''(ii) Each benefit shall consist of only 1 of the amounts referred to in subsection (d)(3).

''(d) PAYMENTS.—

''(1) CERTIFICATION.—The Commission shall certify for payment all awards and benefits that the Commission determines are payable under this section.

''(2) AWARDS.—The Commission shall pay from the Trust Fund 1 of the following amounts as an award for each claim with respect to which a claimant is determined to be eligible under subsection (c)(1):

''(A) $20,000 if the claim is based on death.

''(B) $7,000 if the claim is based on personal injury.

''(C) $5,000 if the claim is based on forced labor, forced march, or internment and is not based on personal injury.

''(3) BENEFITS.—The Commission shall pay from the Trust Fund 1 of the following amounts as a benefit with respect to each claim for which a claimant is determined eligible under subsection (c)(2):

''(A) $7,000 if the claim is based on personal injury.

''(B) $5,000 if the claim is based on forced labor, forced march, or internment and is not based on personal injury.

''(4) REDUCTION OF AMOUNT TO COORDINATE WITH PREVIOUS CLAIMS.—The amount required to be paid under paragraph (2) or (3) for a claim with respect to any Guamanian shall be reduced by any amount paid under the first section of the Act of November 15, 1945 (Chapter 483; 59 Stat. 582) with respect to such Guamanian.

''(5) FORM OF PAYMENT.—

''(A) AWARDS.—In the case of a claim for an award, payment under this subsection shall be made in cash to the claimant, except as provided in paragraph (6).

''(B) BENEFITS.—In the case of a claim for a benefit—

''(i) IN GENERAL.—Payment under this subsection shall consist of—

''(I) provision of a scholarship;

''(II) payment of medical expenses; or

''(III) a grant for first-time home ownership.

''(ii) METHOD OF PAYMENT.—Payment of cash under this subsection may not be made directly to a claimant, but may be made to a service provider, seller of goods or services, or other person in order to provide to a claimant (or other person, as provided in paragraph (6)) a benefit referred to in clause (i).

''(C) DEVELOPMENT OF PROCEDURES.—The Commission shall develop and implement procedures to carry out this paragraph.

''(6) PAYMENTS ON CLAIMS WITH RESPECT TO SAME DECEDENT.—

''(A) AWARDS.—In the case of a claim based on the compensable injury of death, payment of an award under this section shall be divided, as provided in the probate laws of Guam, among the heirs or next of kin of the decedent who file claims for such division by such procedures as the Commission may prescribe.

''(B) INDIVIDUALS PROVING CONSANGUINITY WITH CLAIMANTS FOR BENEFITS.—Each individual who proves consanguinity with a claimant who has met each of the criteria specified in subsection (c)(2) shall be entitled to receive an equal share of the benefit accruing under this section with respect to the claim of such claimant if the individual files a claim with the Commission by such procedures as the Commission may prescribe.

''(7) ORDER OF PAYMENTS.—The Commission shall endeavor to make payments under this section with respect to awards before making such payments with respect to benefits and, when making payments with respect to awards or benefits, respectively, to make payments to eligible individuals in the order of date of birth (the oldest individual on the date of the enactment of this Act, or if applicable, the survivors of that individual, receiving payment first) until all eligible individuals have received payment in full.

''(8) REFUSAL TO ACCEPT PAYMENT.—If a claimant refuses to accept a payment made or offered under paragraph (2) or (3) with respect to a claim filed under this section—

''(A) the amount of the refused payment, if withdrawn from the Trust Fund for purposes of making the payment, shall be returned to the Trust Fund; and

''(B) no payment may be made under this section to such claimant at any future date with respect to the claim.

''(9) TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Awards and benefits paid to eligible claimants—

''(A) shall be treated for purposes of the internal revenue laws of the United States as damages received on account of personal injuries or sickness; and

''(B) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

''(e) GUAM TRUST FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury of the United States the Guam Trust Fund, which shall be administered by the Secretary of the Treasury.

''(2) INVESTMENTS.—Amounts in the Trust Fund shall be invested in accordance with section 9702 of title 31, United States Code.

''(3) USES.—Amounts in the Trust Fund shall be available only for disbursement by the Commission in accordance with subsection (f).

''(4) DISPOSITION OF FUNDS UPON TERMINATION.—If all of the amounts in the Trust Fund have not been obligated or expended by the date of the termination of the Commission, investments of amounts in the Trust Fund shall be liquidated, the receipts of such liquidation shall be deposited in the Trust Fund, and any unobligated funds remaining in the Trust Fund shall be given to the University of Guam, with the conditions that—

''(A) the funds are invested as described in paragraph (2);

''(B) the funds are used for scholarships to be known as Guam World War II Loyalty Scholarships, for claimants described in paragraph (1) or (2) of subsection (c) or in subsection (d)(6), or for such scholarships for the descendants of such claimants; and

''(C) as the University determines appropriate, the University shall endeavor to award the scholarships referred to in subparagraph (B) in a manner that permits the award of the largest possible number of scholarships over the longest possible period of time.

''(f) GUAM TRUST FUND COMMISSION.—

''(1) ESTABLISHMENT.—There is established the Guam Trust Fund Commission, which shall be responsible for making disbursements from the Guam Trust Fund in the manner provided in this section.

''(2) USE OF TRUST FUND.—The Commission may make disbursements from the Trust Fund only for the following uses:

''(A) To make payments, under subsection (d), of awards and benefits.

''(B) To sponsor research and public educational activities so that the events surrounding the wartime experiences and losses of the Guamanian people will be remembered, and so that the causes and circumstances of this event and similar events may be illuminated and understood.

''(C) To pay reasonable administrative expenses of the Commission, including expenses incurred under paragraphs (3)(C), (4), and (5).

''(3) MEMBERSHIP.—

''(A) NUMBER AND APPOINTMENT.—The Commission shall be composed of 9 members who are not officers or employees of the United States Government and who are appointed by the President from recommendations made by the Governor of Guam.

''(B) TERMS.—

''(i) Initial members of the Commission shall be appointed for initial terms of 3 years, and subsequent terms shall be of a length determined pursuant to subparagraph (F).

''(ii) Any member of the Commission who is appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

''(C) PROHIBITION OF COMPENSATION OTHER THAN EXPENSES.—Members of the Commission shall serve without pay, except that members of the Commission shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Commission in the same manner that persons employed intermittently in the United States Government are allowed expenses under section 5703 of title 5, United States Code.

''(D) QUORUM.—5 members of the Commission shall constitute a quorum but a lesser number may hold hearings.

''(E) CHAIRPERSON.—The Chairperson of the Commission shall be elected by the members of the Commission.

''(F) SUBSEQUENT APPOINTMENTS.—

''(i) Upon the expiration of the term of each member of the Commission, the President shall reappoint the member (or appoint another individual to replace the member) if the President determines, after consideration of the reports submitted to the President by the Commission under this section, that there are sufficient funds in the Trust Fund for the present and future administrative costs of the Commission and for the payment of further awards and benefits for which claims have been or may be filed under this title.

''(ii) Members appointed under clause (i) shall be appointed for a term of a length that the President determines to be appropriate, but the length of such term shall not exceed 3 years.

''(4) STAFF AND SERVICES.—

''(A) DIRECTOR.—The Commission shall have a Director who shall be appointed by the Commission.

''(B) ADDITIONAL STAFF.—The Commission may appoint and fix the pay of such additional staff as it may require.

''(C) INAPPLICABILITY OF CERTAIN PROVISIONS OF TITLE 5, UNITED STATES CODE.—The Director and the additional staff of the Commission may be appointed without regard to section 5311 of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may be paid 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 the compensation of any employee of the Commission may not exceed a rate equivalent to the minimum rate of basic pay payable for GS–15 of the General Schedule under section 5332(a) of such title.

''(D) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

''(5) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of funds, services, or property for uses referred to in paragraph (2). The Commission may deposit such gifts or donations, or the proceeds from such gifts or donations, into the Trust Fund.

''(6) TERMINATION.—The Commission shall terminate on the earlier of—

''(A) the end of the 6-year period beginning on the date of the appointment of the first member of the Commission; or

''(B) the date on which the Commission submits to the Congress a certification that all claims certified for payment under this section are paid in full and no further claims are expected to be so certified.

''(g) NOTICE.—Not later than 90 days after the appointment of the ninth member of the Commission, the Commission shall give public notice in the territory of Guam and such other places as the Commission deems appropriate of the time limitation within which claims may be filed under this section. The Commission shall ensure that the provisions of this section are widely published in the territory of Guam and such other places as the Commission deems appropriate, and the Commission shall make every effort both to advise promptly all individuals who may be entitled to file claims under the provisions of this title and to assist such individuals in the preparation and filing of their claims.

''(h) REPORTS.—

''(1) COMPENSATION AND CLAIMS.—Not later than 12 months after the formation of the Commission, and each year thereafter for which the Commission is in existence, the Commission shall submit to the Congress, the President, and the Governor of Guam a report containing a determination of the specific amount of compensation necessary to fully carry out this section, the expected amount of receipts to the Trust Fund, and all payments made by the Commission under this section. The report shall also include, with respect to the year which the report concerns—

''(A) a list of all claims, categorized by compensable injury, which were determined to be eligible for an award or benefit under this section, and a list of all claims, categorized by compensable injury, which were certified for payment under this section; and

''(B) a list of all claims, categorized by compensable injury, which were determined not to be eligible for an award or benefit under this section, and a brief explanation of the reason therefor.

''(2) ANNUAL OPERATIONS AND STATUS OF TRUST FUND.—Beginning with the first full fiscal year ending after submission of the first report required by paragraph (1), and annually thereafter with respect to each fiscal year in which the Commission is in existence, the Commission shall submit a report to Congress, the President, and the Governor of Guam concerning the operations of the Commission under this section and the status of the Trust Fund. Each such report shall be submitted not later than January 15th of the first calendar year beginning after the end of the fiscal year which the report concerns.

''(3) FINAL AWARD REPORT.—After all awards have been paid to eligible claimants, the Commission shall submit a report to the Congress, the President, and the Governor of Guam certifying—

''(A) the total amount of compensation paid as awards under this section, broken down by category of compensable injury; and

''(B) the status of the Trust Fund and the amount of any existing balance thereof.

''(4) FINAL BENEFITS REPORT.—After all benefits have been paid to eligible claimants, the Commission shall submit a report to the Congress, the President, and the Governor of Guam certifying—

''(A) the total amount of compensation paid as benefits under this section, broken down by category of compensable injury; and

''(B) the final status of the Trust Fund and the amount of any existing balance thereof.

''(i) LIMITATION OF AGENT AND ATTORNEY FEES.—It shall be unlawful for an amount exceeding 5 percent of any payment required by this section with respect to an award or benefit to be paid to or received by any agent or attorney for any service rendered in connection with the payment. Any person who violates this section shall be fined under title 18, United States Code, or imprisoned for not more than 1 year, or both.

''(j) DISCLAIMER.—No provision of this section shall constitute an obligation for the United States to pay any claim arising out of war. The compensation provided in this section is ex gratia in nature and intended solely as a means of recognizing the demonstrated loyalty of the people of Guam to the United States, and the suffering and deprivation arising therefrom, during World War II.

''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section, including the administrative responsibilities of the Commission for the 36-month period beginning on the date of the appointment of the ninth member of the Commission. Amounts appropriated pursuant to this section are authorized to remain available until expended.''.●

By Mr. GRASSLEY (for himself and Mr. KYL):

S. 1404. A bill to enhance restitution to victims of crime, and for other purposes; to the Committee on the Judiciary.

THE VICTIM RESTITUTION ENHANCEMENT ACT OF 1995

● Mr. GRASSLEY. Mr. President, I introduce the Victim Restitution Enhancement Act of 1995, an important piece of legislation—called for in the Contract With America—which will help victims of crime. I have long thought that swift and decisive congressional action is needed in order to change some of the basic injustice associated with our criminal justice system. I believe that the way to do this is to change the focus of our energy and time to assisting and protecting victims of crime. And some of the bills that have been introduced by Senator NICKELS and Senator HATCH do an admirable job of changing the focus.

Mr. President, this morning the Judiciary Committee, under the able leadership of Senator HATCH, conducted a very thorough hearing on mandatory victim restitution. At that hearing, we heard testimony from a number of excellent witnesses, and one theme was particularly evident: We in Congress

need to make sure that victims can actually receive the restitution they are due.

First and foremost, I am a practical man—somebody who looks at the way good ideas and good legislation actually functions in reality. My concern with victim restitution is making sure that crime victims actually receive the restitution they are entitled to.

That is why I am introducing the Victim Restitution Enhancement Act to make sure that crime victims receive full restitution from criminals.

In drafting this bill, I consulted with former U.S. attorneys and others who have actually participated in the current system for victim restitution. And I have incorporated practical, real world suggestions from these seasoned professionals.

Let me briefly summarize the key provisions of my bill:

First, my bill forces criminals to submit sworn affidavits listing their assets after being convicted. If criminals try to hide their assets, or lie about them, they can be prosecuted for perjury, since their asset listing is under oath.

Second, my bill requires that criminals pay off their restitution debts immediately, or at least within 5 years; currently, some criminals have been able to stretch payments over an extended period of time, making victims wait longer for their due.

Third, my bill provides that bankruptcy proceedings will not discharge a criminal's duty to pay restitution.

Fourth, my bill establishes an automatic lien on all of a criminal's assets immediately upon conviction for an offense which gives rise to restitution liability.

Fifth, importantly, my bill provides that prisoners who file prisoner lawsuits must notify their victims in writing of the lawsuit and turn any monetary award over to the victims if the prisoner has not fully satisfied his duty to pay restitution. I think this will help deter many prisoner lawsuits, because criminals will realize that even if they hit the jackpot they can't keep the money.

That is what the bill does. It makes sure that good pieces of legislation, like the draft bill circulated by Senator HATCH, will really work in the real world.

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

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

S. 1404

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 ''Victim Restitution Enhancement Act of 1995''.

SEC. 2. RESTITUTION.

Section 3663 of title 18, United States Code, is amended—

(1) in subsection (f)—

(A) by striking paragraphs (1) through (3);

(B) by inserting the following new paragraph:

''(1)(A) The order of restitution shall require the defendant to—

''(i) submit a sworn statement listing all assets owned or controlled by the defendant; and

''(ii) make payment immediately, unless, in the interest of justice, the court provides for payment on a date certain or in installments.

''(B) If the court provides for payment in installments, the installments shall be in equal monthly payments over a payment period prescribed by the court unless the court establishes another schedule.

''(C) If the order of restitution permits other than immediate payment, the payment period shall not exceed 5 years, excluding any term of imprisonment served by the defendant for the offense.'';

(C) by redesignating paragraph (4) as paragraph (2); and

(D) by amending paragraph (2), as so redesignated, by striking ''under this section,'' and all that follows through the end of the paragraph and inserting ''under this section.'';

(2) in subsection (h)—

(A) by striking ''(h) An order'' and inserting ''(h)(1) Subject to paragraph (2), an order'';

(B) by redesignating paragraphs (1)(A), (1)(B), and (2) as subparagraphs (A)(i), (A)(ii), and (B), respectively; and

(C) by adding at the end the following new paragraph:

''(2) Notwithstanding any other law that applies a shorter time limitation, a victim may bring an action to enforce an order of restitution on or until the date that is 20 years after the date of the order.''; and

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

''(j) No discharge of debt pursuant to a bankruptcy proceeding shall render an order of restitution under this section unenforceable or discharge liability to pay restitution.

''(k)(1) An order of restitution imposed pursuant to this section or by any State court is a lien in favor of the designated agent for a victim of crime entitled to restitution by reason of any Federal or State law, or if such victim cannot be identified, in favor the United States or any State agency charged with providing restitution to victims of crime, upon all property belonging to the person against whom restitution is ordered. The lien arises at the time of the entry of the order and continues until the liability is satisfied, remitted, or set aside. The court ordering restitution shall notify all potential claimants entitled to restitution. On application of the person against whom restitution is ordered, the Attorney General or any other person or entity holding a lien pursuant to this section, shall—

''(A) issue a certificate of release, as described in section 6325 of the Internal Revenue Code, of any lien imposed pursuant to this section, upon his acceptance of a bond described in section 6325(a)(2) of the Internal Revenue Code; or

''(B) issue a certificate of discharge, as described in section 6325 of the Internal Revenue Code, of any part of the person's property subject to a lien imposed pursuant to this subsection, upon his determination that the fair market value of that part of such property remaining subject to and available to satisfy the lien is at least three times the amount of the restitution ordered.

''(2) The provisions of sections 6323, 6331, 6332, 6334 through 6336, 6337(a), 6338 through 6343, 6901, 7402, 7403, 7424 through 7426, 7505(a), 7506, 7701, and 7805 of the Internal Revenue Code of 1986 and of section 513 of the Act of October 17, 1940 (54 Stat. 1190), apply to an order of restitution and to the lien imposed by paragraph (1) as if the liability of the person against whom restitution is ordered were for an internal revenue tax assessment where the Attorney General is the lienholder, except to the extent that the application of such statutes is modified by regulations issued by the Attorney General to accord with differences in the nature of the liabilities. For the purposes of this paragraph references in the preceding sections of the Internal Revenue Code of 1986 to 'the Secretary' shall be construed to mean 'the Attorney General' and references in those sections to 'tax' shall be construed to mean 'order of restitution'.

''(3) A notice of the lien imposed by paragraph (1) shall be considered a notice of lien for taxes payable to the United States for the purposes of any State or local law providing for the filing of a notice of a tax lien. The registration, recording, docketing, or indexing, in accordance with section 1962 of title 28, United States Code, of the judgment under which an order of restitution is imposed shall be considered for all purposes as the filing prescribed by section 6323(f)(1)(A) of the Internal Revenue Code of 1986.

''(4) Notwithstanding any other provision of this subsection, an order of restitution may be enforced by execution against the property of the person against whom it is ordered in like manner as judgments in civil cases.

''(5) No discharge of debts pursuant to a bankruptcy proceeding shall render a lien under this section unenforceable.

''(6)(A) If a person against whom restitution is ordered and whose assets are subject to a lien under this subsection files any civil action seeking money damages, including an action filed during a period of incarceration, such person shall serve notice, at the expense of that person, of the filing of the action upon each person entitled to receive restitution, or the designated agent of such person, and the Attorney General.

''(B) Failure to timely provide actual notice shall be grounds for dismissal of the underlying civil action.

''(C) A person entitled to receive restitution under this section, the Office of Victims of Crime of the Department of Justice, or any agency or instrumentality of any State charged with providing restitution to victims of crime, may intervene in the civil action described in subparagraph (A) if the court determines that such intervention would be in the interests of justice.''.

SEC. 3. COSTS RECOVERABLE.

Section 1918(b) of title 28, United States Code, is amended by inserting before the period the following: '', including any amount advanced to purchase contraband in a sting operation during the investigation resulting in the conviction''.●

By Mr. FRIST:

S. 1405. A bill to eliminate certain benefits for Members of Congress; to the Committee on Governmental Affairs.

THE CITIZEN CONGRESS ACT OF 1995

● Mr. FRIST. Mr. President, I rise today to introduce the Citizen Congress Act of 1995, a bill that ends many of the perks and privileges that separate Members of Congress from the American people.

The Founding Fathers envisioned a Congress of citizen legislators who would leave their families and communities for a short time to write legislation and then return home to live under the laws they helped to pass. Unfortunately, we have strayed far from

that vision. Enacting term limits would be the best way to recreate a citizen legislature, and I remain committed to passing a term-limits amendment to the Constitution. In the meantime, reforming congressional pensions, pay, and perks offers an immediately achievable step toward making Congress more directly responsible and accountable to the American people.

A strong perception exists among the American people that elected officials in Washington have placed themselves above the laws and have separated themselves from the public with perks and privileges. With enactment of the Congressional Accountability Act and lobbying and gift reform earlier this year, we have begun to address this problem in a bipartisan way. However, we still have a long way to go. To restore confidence in Congress and our democratic form of Government, we must restore confidence in the lawmakers who serve there.

The Citizen Congress Act begins reform of our Government with the Members of Congress themselves. That is why, today, on the 1-year anniversary of last year's elections, I am introducing this important legislation.

I thank the Chair and ask unanimous consent that the full 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. 1405

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 ''Citizen Congress Act''.

SEC. 2. LIMITATION ON RETIREMENT COVERAGE FOR MEMBERS OF CONGRESS.

(a) IN GENERAL.—Notwithstanding any other provision of law, effective at the beginning of the Congress next beginning after the date of the enactment of this Act, a Member of Congress shall be ineligible to participate in the Civil Service Retirement System or the Federal Employees' Retirement System, except as otherwise provided under this section.

(b) PARTICIPATION IN THE THRIFT SAVINGS PLAN.—Notwithstanding subsection (a), a Member may participate in the Thrift Savings Plan subject to section 8351 of title 5, United States Code, at anytime during the 12-year period beginning on the date the Member begins his or her first term.

(c) REFUNDS OF CONTRIBUTIONS.—(1) Nothing in subsection (a) shall prevent refunds from being made, in accordance with otherwise applicable provisions of law (including those relating to the Thrift Savings Plan), on account of an individual's becoming ineligible to participate in the Civil Service Retirement System or the Federal Employees' Retirement System (as the case may be) as a result of the enactment of this section.

(2) For purposes of any refund referred to in paragraph (1), a Member who so becomes ineligible to participate in either of the retirement systems referred to in paragraph (1) shall be treated in the same way as if separated from service.

(d) ANNUITIES NOT AFFECTED TO THE EXTENT BASED ON PRIOR SERVICE.—Subsection (a) shall not be considered to affect—

(1) any annuity (or other benefit) entitlement to which is based on a separation from service occurring before the date of the enactment of this Act (including any survivor annuity based on the death of the individual who so separated); or

(2) any other annuity (or benefit), to the extent provided under subsection (e).

(e) PRESERVATIONS OF RIGHTS BASED ON PRIOR SERVICE.—(1) For purposes of determining eligibility for, or the amount of, any annuity (or other benefit) referred to in subsection (d)(2) based on service as a Member of Congress—

(A) all service as a Member of Congress shall be disregarded except for any such service performed before the date of the enactment of this Act; and

(B) all pay for service performed as a Member of Congress shall be disregarded other than pay for service which may be taken into account under subparagraph (A).

(2) To the extent practicable, eligibility for, and the amount of, any annuity (or other benefit) to which an individual is entitled based on a separation of a Member of Congress occurring after such Member becomes ineligible to participate in the Civil Service Retirement System or the Federal Employees' Retirement System (as the case may be) by reason of subsection (a) shall be determined in a manner that preserves any rights to which the Member would have been entitled, as of the date of the enactment of this Act, had separation occurred on such date.

(f) REGULATIONS.—Any regulations necessary to carry out this section may be prescribed by the Office of Personnel Management and the Executive Director (referred to in section 8401(13) of title 5, United States Code) with respect to matters within their respective areas of responsibility.

(g) DEFINITION.—As used in this section, the terms ''Member of Congress'' and ''Member'' mean any individual under section 8331(2) or 8401(20) of title 5, United States Code.

(h) RULE OF CONSTRUCTION.—Nothing in this section shall be considered to apply with respect to any savings plan or other matter outside of subchapter III of chapter 83 or chapter 84 of title 5, United States Code.

SEC. 3. DISCLOSURE OF ESTIMATES OF FEDERAL RETIREMENT BENEFITS OF MEMBERS OF CONGRESS.

(a) IN GENERAL.—Section 105(a) of the Legislative Branch Appropriations Act, 1965 (2 U.S.C. 104a; Public Law 88–454; 78 Stat. 550) is amended by adding at the end thereof the following new paragraph:

''(4) The Secretary of the Senate and the Clerk of the House of Representatives shall include in each report submitted under paragraph (1), with respect to Members of Congress, as applicable—

''(A) the total amount of individual contributions made by each Member to the Civil Service Retirement and Disability Fund and the Thrift Savings Fund under chapters 83 and 84 of title 5, United States Code, for all Federal service performed by the Member as a Member of Congress and as a Federal employee;

''(B) an estimate of the annuity each Member would be entitled to receive under chapters 83 and 84 of such title based on the earliest possible date to receive annuity payments by reason of retirement (other than disability retirement) which begins after the date of expiration of the term of office such Member is serving; and

''(C) any other information necessary to enable the public to accurately compute the Federal retirement benefits of each Member based on various assumptions of years of service and age of separation from service by reason of retirement.''.

(b) EFFECTIVE DATE.—This section shall take effect 1 year after the date of the enactment of this Act.

SEC. 4. ELIMINATION OF AUTOMATIC ANNUITY ADJUSTMENTS FOR MEMBERS OF CONGRESS.

The portion of the annuity of a Member of Congress which is based solely on service as a Member of Congress shall not be subject to a COLA adjustment under section 8340 or 8462 of title 5, United States Code.

SEC. 5. ELIMINATION OF AUTOMATIC PAY ADJUSTMENTS FOR MEMBERS OF CONGRESS.

(a) PAY ADJUSTMENTS.—Paragraph (2) of section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31) is repealed.

(b) CONFORMING AMENDMENT.—Section 601(a)(1) of such Act is amended—

(1) by striking ''(a)(1)'' and inserting ''(a)'';

(2) by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively; and

(3) by striking '', as adjusted by paragraph (2) of this subsection''.

SEC. 6. ROLLCALL VOTE FOR ANY CONGRESSIONAL PAY RAISE.

It shall not be in order in the Senate or the House of Representatives to dispose of any amendment, bill, resolution, motion, or other matter relating to the pay of Members of Congress unless the matter is decided by a rollcall vote.

SEC. 7. TRAVEL AWARDS FROM OFFICIAL TRAVEL OF A MEMBER, OFFICER, OR EMPLOYEE OF THE HOUSE OF REPRESENTATIVES TO BE USED ONLY WITH RESPECT TO OFFICIAL TRAVEL.

(a) IN GENERAL.—Notwithstanding any other provision of law, or any rule, regulation, or other authority, any travel award that accrues by reason of official travel of a Member, officer, or employee of the House of Representatives may be used only with respect to official travel.

(b) REGULATIONS.—The Committee on House Oversight of the House of Representatives shall have authority to prescribe regulations to carry out this section.

(c) DEFINITIONS.—As used in this section—

(1) the term ''travel award'' means any frequent flier mileage, free travel, discounted travel, or other travel benefit, whether awarded by coupon, membership, or otherwise; and

(2) the term ''official travel'' means, with respect to the House of Representatives, travel performed for the conduct of official business of the House of Representatives.

SEC. 8. BAN ON MASS MAILINGS.

(a) IN GENERAL.—(1) Paragraph (6)(A) of section 3210(a) of title 39, United States Code, is amended to read as follows:

''(6)(A) It is the intent of Congress that a Member of, or Member-elect to, Congress may not mail any mass mailing as franked mail.''.

(2) The second sentence of section 3210(c) of title 39, United States Code, is amended by striking ''subsection (a) (4) and (5)'' and inserting ''subsection (a) (4), (5), and (6)''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Section 3210 of title 39, United States Code, is amended—

(A) in subsection (a)(3)—

(i) in subparagraph (G) by striking '', including general mass mailings,''; and

(ii) in subparagraphs (I) and (J) by striking ''or other general mass mailing'';

(B) in subsection (a)(6) by repealing subparagraphs (B), (C), and (F), and the second sentence of subparagraph (D);

(C) by repealing paragraph (7) of subsection (a); and

(D) by repealing subsection (f).

(2) Section 316(a) of the Legislative Branch Appropriations Act, 1990 (39 U.S.C. 3210 note) is repealed.

(3) Subsection (f) of section 311 of the Legislative Branch Appropriations Act, 1991 (2 U.S.C. 59e(f)) is repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect at the beginning of the Congress next beginning after the date of the enactment of this Act.

SEC. 9. RESTRICTIONS ON USE OF MILITARY AIR COMMAND BY MEMBERS OF CONGRESS.

(a) RESTRICTIONS.—(1) Chapter 157 of title 10, United States Code, is amended by adding at the end the following:

''§ 2643. Restrictions on provision of air transportation to Members of Congress

''(a) RESTRICTIONS.—A Member of Congress may not receive transportation in an aircraft of the Military Air Command unless—

''(1) the transportation is provided on a space-available basis as part of the scheduled operations of the military aircraft unrelated to the provision of transportation to Members of Congress;

''(2) the use of the military aircraft is necessary because the destination of the Member of Congress, or an airfield located within reasonable distance of the destination, is not accessible by regularly scheduled flights of commercial aircraft; or

''(3) the use of the military aircraft is the least expensive method for the Member of Congress to reach the destination by aircraft, as demonstrated by information released before the trip by the member or committee of Congress sponsoring the trip.

''(b) DESTINATION.—In connection with transportation provided under subsection (a)(1), the destination of the military aircraft may not be selected to accommodate the travel plans of the Member of Congress requesting such transportation.

''(c) AIRCRAFT DEFINED.—For purposes of this section, the term 'aircraft' includes both fixed-wing airplanes and helicopters.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following:

''2643. Restrictions on provision of air transportation to Members of Congress.''.

(b) EFFECT ON MEMBERS CURRENTLY RECEIVING TRANSPORTATION.—Section 2643 of title 10, United States Code, as added by subsection (a), shall not apply with respect to a Member of Congress who, as of the date of the enactment of this Act, is receiving air transportation or is scheduled to receive transportation in an aircraft of the Military Air Command until the Member completes the travel plans for which the transportation is being provided or scheduled.

SEC. 10. PROHIBITION ON USE OF MILITARY MEDICAL TREATMENT FACILITIES BY MEMBERS OF CONGRESS.

(a) PROHIBITION.—(1) Chapter 55 of title 10, United States Code, is amended by adding at the end the following:

''§ 1107. Prohibition on provision of medical and dental care to Members of Congress

''A Member of Congress may not receive medical or dental care in any facility of any uniformed service unless—

''(1) the Member of Congress is eligible or entitled to such care as a member or former member of a uniformed service or as a covered beneficiary; or

''(2) such care is provided on an emergency basis unrelated to the person's status as a Member of Congress.''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following:

''1107. Prohibition on provision of medical and dental care to Members of Congress.''.

(b) EFFECT ON MEMBERS CURRENTLY RECEIVING CARE.—Section 1107 of title 10, United States Code, as added by subsection (a), shall not apply with respect to a Member of Congress who is receiving medical or dental care in a facility of the uniformed services on the date of the enactment of this Act until the Member is discharged from that facility.

SEC. 11. ELIMINATION OF CERTAIN RESERVED PARKING AREAS AT WASHINGTON NATIONAL AIRPORT AND WASHINGTON DULLES INTERNATIONAL AIRPORT.

(a) IN GENERAL.—Effective 30 days after the date of the enactment of this section, the Airports Authority—

(1) shall not provide any reserved parking areas free of charge to Members of Congress, other Government officials, or diplomats at Washington National Airport or Washington Dulles International Airport; and

(2) shall establish a parking policy for such airports that provides equal access to the public, and does not provide preferential parking privileges to Members of Congress, other Government officials, or diplomats.

(b) DEFINITIONS.—As used in this section, the terms ''Airports Authority'', ''Washington National Airport'', and ''Washington Dulles International Airport'' have the same meanings as in section 6004 of the Metropolitan Washington Airports Act of 1986 (49 U.S.C. App. 2453).●

ADDITIONAL COSPONSORS

S. 295

At the request of Mrs. KASSEBAUM, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 295, a bill to permit labor management cooperative efforts that improve America's economic competitiveness to continue to thrive, and for other purposes.

S. 1035

At the request of Mr. DASCHLE, the names of the Senator from Wyoming [Mr. SIMPSON] and the Senator from Michigan [Mr. ABRAHAM] were added as cosponsors of S. 1035, a bill to permit an individual to be treated by a health care practitioner with any method of medical treatment such individual requests, and for other purposes.

S. 1072

At the request of Mr. THURMOND, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 1072, a bill to redefine ''extortion'' for purposes of the Hobbs Act.

S. 1200

At the request of Ms. SNOWE, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 1200, a bill to establish and implement efforts to eliminate restrictions on the enclaved people of Cyprus.

S. 1228

At the request of Mr. D'AMATO, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 1228, a bill to impose sanctions on foreign persons exporting petroleum products, natural gas, or related technology to Iran.

S. 1249

At the request of Mr. FRIST, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1249, a bill to amend the Internal Revenue Code of 1986 to establish medical savings account, and for other purposes.

S. 1279

At the request of Mr. DOLE, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 1279, a bill to provide for appropriate remedies for prison condition lawsuits, to discourage frivolous and abusive prison lawsuits, and for other purposes.

S. 1316

At the request of Mr. KEMPTHORNE, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1316, a bill to reauthorize and amend title XIV of the Public Health Service Act (commonly known as the ''Safe Drinking Water Act''), and for other purposes.

S. 1396

At the request of Mr. PRESSLER, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1396, a bill to amend title 49, United States Code, to provide for the regulation of surface transportation.

SENATE CONCURRENT RESOLUTION 26

At the request of Mr. LOTT, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of Senate Concurrent Resolution 26, a concurrent resolution to authorize the Newington-Cropsey Foundation to erect on the Capitol Grounds and present to Congress and the people of the United States a monument dedicated to the Bill of Rights.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, November 8, 1995, at 10 a.m., to hold a hearing on mandatory victim restitution.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for an executive session, during the session of the Senate on Wednesday, November 8, 1995, at 9:30 a.m.

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

COMMITTEE ON SMALL BUSINESS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Senate Committee on Small Business hold a joint hearing with the House Committee on Small Business regarding ''Railroad Consolidation: Small Business Concerns'' on Wednesday, November 8, 1995, at 2 p.m., in room 2123 of the Rayburn House Office Building.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. CRAIG. Mr. President, I ask unanimous consent that the Select

Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, November 8, 1995, at 2 p.m., to hold a closed hearing on intelligence matters.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. CRAIG. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, November 8, 1995, at 4 p.m., to hold a closed briefing regarding intelligence matters.

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

SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER DEVELOPMENT AND RELATED MATTERS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Special Committee to Investigate Whitewater Development and Related Matters be authorized to meet during the session of the Senate on Wednesday, November 8, and Thursday, November 9, 1995, to conduct hearings pursuant to Senate Resolution 120.

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT AND THE DISTRICT OF COLUMBIA

Mr. CRAIG. Mr. President, I ask unanimous consent that the Subcommittee on Oversight of Government Management and the District of Columbia, Committee on Governmental Affairs, be permitted to meet during a session of the Senate on Wednesday, November 8, 1995, at 9 a.m., to hold a hearing on oversight of the courthouse construction program.

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

ADDITIONAL STATEMENTS

PENSION REVERSION PROVISIONS IN BUDGET RECONCILIATION LEGISLATION

• Mrs. KASSEBAUM. Mr. President, the budget reconciliation legislation passed by the House of Representatives includes a measure that would generate approximately $10 billion in tax revenue by doing away with penalties Congress imposed in 1990 on pension fund withdrawals. The House proposal allows companies to withdraw so-called excess funds from pension plans for any purpose, without informing plan participants or beneficiaries.

As my colleagues know, the Senate on October 27 voted overwhelmingly to remove a similar provision from the Senate reconciliation legislation. While the Senate reversion provision was more narrowly tailored in many respects than its companion in the House bill, 94 members of this body voted to remove it.

The reason that members of this body rejected that proposal so resoundingly, I believe, is because even the more modest provisions contained in the Senate bill would have represented a significant shift in pension policy. Moreover, the Senate Committee on Labor and Human Resources Committee has not considered fully the ramifications of such a change.

And those ramifications are, potentially, tremendous. There are approximately 22,000 pension plans covering 11 million workers and 2 million retirees that have assets in excess of 125 percent of current liability, and the Joint Committee on Taxation estimates that the pension reversion provisions contained in both the House and Senate bills could result in the removal of tens of billions of dollars in surplus assets from these plans.

The last time Congress did address the reversion issue, we acted decisively to enact strong measures to protect workers' pensions. In response to a wave of corporate takeovers and pension raids in the 1980s, Congress in 1990 imposed a 50 percent excise tax on pension fund reversions, except in limited circumstances. The idea was to make it costly for companies to take assets from their pension plans. And, in fact, the raids on assets ceased almost entirely. Before this change, however, about $20 billion was siphoned from pension funds in just a few years, many pension plans were terminated, and thousands of workers saw their pensions replaced by risky annuities that in many cases provided lower benefits.

Let me be clear. There may be valid reasons to reconsider this policy. I believe strongly, however, that any changes in this area, and of this magnitude, should be made based on sound pension policy and not to satisfy budgetary demands. Therefore, I do not believe that changes to the current pension reversion policy should be included in budget reconciliation and I strongly urge the Senate conferees to insist on the Senate position.

Having said that, Mr. President, I realize the difficult task ahead for all budget conferees. While the Finance Committee budget conferees have a strong vote to bolster the Senate position, I realize that the House will be equally insistent.

If pension reversion provisions are to be included in the final reconciliation package, they should be carefully and conservatively constructed to ensure—above all—that each pension plan retains a cushion sufficient to weather changes in the current business climate, and ultimately to meet its obligations to participants and retirees. In this regard, I would like to associate myself with the very excellent and thoughtful remarks made on October 26 by Representative HARRIS W. FAWELL. Representative FAWELL is one of the most knowledgeable Members of the House on issues regarding employee benefits, and he has been an outspoken leader on the issue of pension reversions.

Because the threshold beyond which assets may be withdrawn under the House proposal can be less than the threshold of assets required in the event of an actual plan termination, the House proposal effectively would allow even companies in bankruptcy to terminate a plan or remove funds from a plan with no guarantee that the remaining assets would be sufficient to pay for all plan benefits. This clearly is unacceptable.

To ensure that pension assets are as safe as possible, it is essential that the formula for allowing employers to remove funds from pension trusts be based on the most conservative of actuarial principles. Therefore, I believe companies should be required to use a minimum asset cushion based on the greater of 125 percent of termination liability based on PBGC assumptions, rather than current liability, or accrued liability, whichever is greater.

To further ensure that pensions are secure, companies must be required to use conservative actuarial assumptions for interest, mortality, and expected retirement based on the guidelines issued by the Pension Benefit Guaranty Corporation [PBGC]. I realize some would prefer to leave this calculation to the discretion of a company's actuary. However, I do not believe it is prudent to allow absolute discretion without more fully considering the possible risks that may result from allowing the use of differing assumptions.

For example, the PBGC estimates that a plan whose current liability is 125 percent funded may in fact be less than 100 percent funded for purposes of its liability at plan termination. While the PBGC calculations may not be perfect, the risk to participants and taxpayers from an underfunded plan dictates that companies taking reversions rely on these assumptions.

In addition, there should be real limits both on the use of excess pension funds, and on the types of situations in which companies are allowed to take reversions. For example, a company generally should not be allowed to withdraw funds for new plant and equipment while it leaves another pension plan underfunded or fails to meet its obligations toward a defined contribution plan. Nor should a company in bankruptcy be allowed to take a reversion without further protections.

Finally, as the Senate provision originally provided, plan participants and beneficiaries must be given notice of pension withdrawals in advance, and must be afforded all the protections normally provided under title I of the Employee Retirement Income Security Act [ERISA].

Mr. President, let me emphasize again that I strongly prefer that no changes be made in this area—at least until such changes can be properly considered by the Labor Committee. But if, and when, such changes are to be made, they must be crafted carefully and conservatively to protect participants, retirees, and taxpayers; they must include protections normally provided to participants and retirees

under title I of ERISA; and, most importantly, they must be premised on principles of sound, long-term pension policy instead of temporary revenue generation.

Because of the extreme complexity of this issue, it is difficult to believe that all aspects have been appropriately considered. To cite just a few examples, there may need to be special consideration given to employee contribution plans, and to plans covering a very small number of participants. Neither the House nor the Senate proposals take these situations into consideration.

In closing, therefore, I would like my colleagues to know that the Labor and Human Resources Committee may very well consider the issue of pension reversions early next year. Should a pension reversion proposal emerge from the House-Senate reconciliation conference that varies markedly from the goals I have outlined here, there is a much greater likelihood that the Labor and Human Resources Committee will revisit this issue.

Thank you, Mr. President. I yield the floor. ●

CHEMICAL WEAPONS CONVENTION

● Mr. LAUTENBERG. Mr. President, a constituent of mine who teaches at Rutgers University in New Jersey, Adjunct Professor Leonard A. Cole, recently joined in organizing an appeal calling on the Senate to ratify the Chemical Weapons Convention. I believe the Senate should debate this convention without delay and ask that the text of a letter from Mr. Cole, along with a news article on the appeal he helped to organize be printed in the CONGRESSIONAL RECORD.

The material follows:

RUTGERS UNIVERSITY,
DEPARTMENT OF POLITICAL SCIENCE,
Newark, NJ.

DEAR SENATOR: Having organized the effort to produce the enclosed statement in The New York Times, I wanted to bring the matter to your attention. The statement urges support for the Chemical Weapons Convention, a treaty to ban chemical weapons from the face of the earth. It was paid for and signed by 64 leaders from every sector with a close interest in chemical weapons issues—from the scientific, intelligence, military, diplomatic, arms control, and business communities. The list includes eight Nobel laureates.

The terms of the treaty were negotiated with scrupulous care by nations around the world, and received input from every affected U.S. interest group. It enjoys broad support. Before the U.S. signed in 1993, 75 senators went on record in favor of the treaty. Nevertheless, as you may know, the chairman of the Foreign Relations Committee, Jesse Helms, has expressed reluctance to allow a vote on ratification.

Current U.S. inaction on the treaty sends a very dangerous message to the rest of the world. By our failing to ratify, other countries can only believe the U.S. does not think banning these weapons important. U.S. leadership is crucial to maintaining a moral atmosphere that does not allow for these weapons. Without the treaty, more and more countries are likely to arm themselves with these low-cost, low-tech weapons of terror and mass destruction.

In the interest of this nation, indeed of all humanity, we hope you will join in a vigorous effort to press for ratification of the Chemical Weapons Convention. If you would like to talk further about this, please do not hesitate to contact me. Thank you.

Sincerely,

LEONARD A. COLE,
Adjunct Professor.

[From Chemical & Engineering News, Oct. 23, 1995]

SCIENTISTS, OTHERS URGE SENATE TO RATIFY CHEMICAL ARMS TREATY

Sixty-four prominent scientists, military and government officials, academicians, and business figures have endorsed an appeal in the form of an ad, for the U.S. Senate to ratify the Chemical Weapons Convention. The treaty bans the production, use, storage, and distribution of chemical weapons. The U.S. is among 159 countries that have signed the treaty. Forty nations—but not the U.S. or Russia—have ratified it. ''Many countries are waiting for the U.S. to act,'' says Leonard A. Cole; an adjunct professor at Rutgers University. Cole and prominent Harvard University biochemist Matthews S. Meselson, who are among those signing the appeal, spearheaded the ad effort. The treaty has the support of the Clinton Administration, the Pentagon, intelligence community spokesmen such as former CIA Director William E. Colby, arms control experts, and the Chemical Manufacturers Association (CMA). It also has the bipartisan support of a large number of senators. Among the ad's signers are Nobel Laureate chemists David Baltimore, Ronald Hoffmann, and Glenn T. Seaborg, Will D. Carpenter, who represented CMA during treaty negotiations, has also signed the appeal, Sen. Jesse Helms (R-N.C.), chairman of the Foreign Relations Committee, is holding the treaty hostage.●

KENO GAME USHERS IN NEW ERA OF GAMBLING IN NEW YORK

● Mr. LUGAR. Mr. President, I ask that the attached article be printed in the RECORD.

The article follows:

[From the New York Times, Sept. 7, 1995]

KENO GAME USHERS IN NEW ERA OF GAMBLING IN NEW YORK

(By Ian Fisher)

Bill Fox played the numbers in his birthday, his wife's birthday, the birthday of a grandson, and then for good measure, plucked a few random digits from his head.

''Ahhh, it's a shot,'' he said after betting—and losing—$5 a short time after New York State's new Quick Draw keno game went on line yesterday morning.

The little colored balls that bopped around the video screen at the Blarney Stone on Ninth Avenue, and at hundreds of other businesses across the state, bounced New York into a new era of gambling, the most significant expansion in the state lottery's 28-year history. Starting at 10 A.M. yesterday, the state began holding lottery drawings every 5 minutes for 13 hours a day in bars, restaurants, bowling alleys, Offtrack Betting parlors—even a hardware store or two—2,250 by the end of the month, lottery officials project.

Gov. Mario M. Cuomo, who pushed for the keno game to help close several budget gaps, used to liken it to bingo. Pataki administration officials say it is simply another lottery game, no different from Pick 10. Critics, though, say that the game's pace makes it more akin to casino-style gambling—and more prone to pocket-draining abuse.

But Mr. Fox and other newly minted keno players were not interested in moralizing. Although the game seemed to get off to a slow start in the morning, as several bars in Manhattan complained that the equipment did not work or was still not installed, those who played early said they liked Quick Draw precisely because of the promise of a quick reward.

''You don't have to wait,'' said Mr. Fox, a 46-year-old plumber who played a few games at his lunch break. ''It's right there in front of you: you are a winner or a loser.''

A small taste of the critics' fears played out at Handyman Hardware and Paint in the Oakwood Shopping Center on Staten Island, where three tables and a dozen chairs became a makeshift keno parlor.

''I came here a half an hour ago to buy milk and diapers,'' said Katherine Petersen, 37, a marine-insurance broker. ''I'm still here. It's addicting.''

''I play the daily number, but you have to wait until 7:30 to know,'' she said. ''This is quicker—five minutes—it's like being in Atlantic City.''

''I won a dollar,'' she said. ''I bet $7. I have no more money for the diapers and the milk. But I had fun.''

New York is the eighth state to offer keno, a game that Republicans and Democrats alike had opposed in Albany for years.

But it was approved this year with apparent reluctance in the face of a nearly $5 billion deficit, as lawmakers scrambled to find money to prevent increases in college tuition or cuts in welfare and Medicaid. The game is expected to bring in $180 million in its first full year of operation.

''There was a line we were drawing in the sand, and we had to be more open, I should say, to new additional revenue sources,'' said Patricia Lynch, a spokeswoman for Assembly Speaker Sheldon Silver, a Manhattan Democrat who had been a staunch opponent of keno. ''That's the bottom line.''

Lawmakers, especially Democrats, were also courted aggressively by half a dozen lobbyists hired by the Gtech Corporation of West Greenwich, R.I., which runs the game on behalf of the lottery. The company will be paid 1.525 percent of the sales.

Except for the pace and setting, Quick Draw is played like any other keno-style lottery game. A player picks 1 to 10 numbers from a field of 80, filling out a card that is fed into a lottery machine by the bartender or other employee. The player bets $1, $2, $3, $4, $5, or $10 each game and may play a maximum of 20 games or $100 on each card. But players can effectively bet whatever they like by simply filling out more than one card.

Every five minutes, a central computer at the lottery's headquarters spits out 20 random numbers, which zip through phone lines and are displayed simultaneously on terminals around the state. Players win according to how many numbers they match and how much they bet: the highest prize for a $1 bet is $100,000, if the player bets on 10 numbers and matches all of them. If the player matches five numbers on that bet, he would be paid $2.

Like any other lottery game, players can redeem prizes of up to $600 on site. For larger prizes, they must file a claims form and receive their winnings from the lottery department.

The businesses that install keno games receive 6 percent of the total sales, with no extra commission for any winning tickets they sell. That percentage is less than what many establishments earn for food and drinks, but many bars and restaurants

agreed to the game in the hope of attracting customers both to gamble and, they hope, to spend more on food and drink as well.

But many bars have turned down Quick Draw, both because of worries it may not pay off financially and because they feel it essentially turns their establishments into betting parlors.

''I think it demeans my restaurant and bar,'' said Don Berger, owner of the Riverrun in TriBeCa. ''It smacks of Atlantic City, honky-tonk and we don't do that, I am not interested in that one bit.''

In Massachusetts, which has run a keno game for a year and a half, a debate has ignited over placing keno terminals in convenience stores—which critics say brings gambling into places where children can watch. In New York, the law was written to exclude most convenience stores by requiring outlets to have a minimum of 2,500 square feet. But the game is being installed in some liquor stores, supermarkets, pharmacies and other outlets that do meet the space requirements.

It is too early to know whether any strong opposition to Quick Draw will emerge, but if the experience of other states is any guide, the game will probably be popular among those who play.

''People are going to gamble anyway, if not in New York, then in New Jersey,'' said Geno Gulli, a retired barber, as he placed a losing $2 bet in Keenan's bar on 231st Street and Broadway. The profits to the state, he said, were ''good for the state for a good cause.''

As he spoke, Bert Patel, a candy store owner, basked in the glow of a $10 win. ''I just got my beer money back,'' he said.

SALE OF POWER MARKETING ADMINISTRATIONS

• Mr. DORGAN. Mr. President, recently during the debate on the fiscal year 1997 energy and water appropriations conference report, attention was called to some of the fine print within that report regarding the sale of power marketing administrations.

It was agreed in the conference report to retain the prohibitions against the six Federal public power authorities from conducting studies related to pricing hydroelectric power and against the executive branch to study or take other actions to transfer federal power marketing authorities out of Federal ownership.

I am very pleased that the Senate prevailed in its position and overturned efforts within the House of Representatives to forward a bad idea that would have had consequences at a bad time for rural America.

There simply is no reason for Congress to have to repeatedly say ''No'' to the sale of our Nation's power marketing administrations. Such sales would be both poor public policy and shortsighted fiscal policy.

Yet I am not convinced that the perpetrators of this bad idea have gotten the message.

Within the report is the following statement:

> The conferees agree that the statutory limitations do not prohibit the Legislative Branch from initiating or conducting studies or collecting information regarding the sale or transfer of the power marketing administrations to non-Federal ownership.

This statement is factually correct. The prohibitions in law that were retained by the conference report were that neither the power marketing administrations nor the executive branch could use Federal funds to study this bad idea.

This language however does not mean that such studies by the legislative branch would be a good idea. This language should not be interpreted as an invitation for the legislative branch to once again spend money pursuing a bad idea.

Those who would pervert this language as some form of authorization for a study by the legislative branch simply haven't understood the message.

The message is simple—if we prohibit one branch of Government from foolishly spending money pursuing a bad idea, it would be just as foolish for another branch to use tax dollars for similar studies.

We do not need any more studies to confirm that this is bad idea, with bad consequences, at a bad time for rural Americans. It is time to understand the will of Congress and move on and leave this bad idea in the trash can where it belongs.•

TRIBUTE TO JIM HAUTMAN

• Mr. GRAMS. Mr. President, I want to take this opportunity to congratulate a fellow Minnesotan, Jim Hautman of Plymouth, MN, on submitting the winning entry for the 1994–95 Federal Duck Stamp Design Competition.

What is particularly impressive about the selection of Mr. Hautman's entry as the winner of this year's Federal duck stamp competition is that this is the second time he has won the contest, having also produced the winning entry in 1989. In fact, the Hautman family has a history of submitting winning entries into the competition. Brother Joe Hautman's entry won the competition in 1991, while brother Bob Hautman won a second place award in 1994.

Each year, the U.S. Fish and Wildlife Service sponsors the duck stamp design competition to determine the final design of the following year's stamp. The artwork is judged by a panel of art, waterfowl, and stamp experts who must select the winning design from up to 1,000 entries.

The contest is the only annual art competition sponsored by the Federal Government, with the winning entry released for sale to sportsmen and women and stamp collectors each June 30. The revenues generated by the sales of each year's winning entry are used by the Federal Government to buy or lease habitat lands for migratory waterfowl species.

Since the Federal Duck Stamp Design Program was first initiated in 1934, Minnesota has produced nine winners of the annual competition, more than any other State. As this year's winner, Mr. Hautman not only continues this impressive tradition of competition winners from Minnesota, but also a tradition of producing winning entries within his own immediate family. For the RECORD I am pleased to submit yesterday's Washington Post article on the Hautman family's legendary success in the duck stamp contest.

Mr. President, as a Senator representing a State which has a proud history of maintaining and providing waterfowl and wildlife habitat, I want to again congratulate Mr. Hautman on winning this prestigious contest for the second time and also recognize and laud the achievements of the Federal Duck Stamp Program in providing habitat for migratory waterfowl species.

The article follows:

[From The Washington Post, Nov. 7, 1995]

QUACKERJACK ARTISTS; FOR THE STAMP CONTEST, THE HAUTMAN BROTHERS HAVE THEIR DUCKS IN A ROW

(By William Souder)

PLYMOUTH, MINN.—The ducks have pretty much taken over Bob Hautman's house. There are loaded decoy bags in the middle of the living room floor, and loose decoys—fat bluebills and graceful canvasbacks—are scattered about seemingly everywhere. Stuffed ducks, locked in perpetual flight, rest on shelves that are a few weeks between dustings. Out on the driveway a dun-painted duck boat sits on a trailer hooked up to Hautman's car, which is pointed toward the street for an easy pre-dawn exit.

''Fixing these guys up,'' Hautman says, turning over a freshly spray-painted bluebill decoy. He is tall and thin, dressed in jeans and a zippered camouflage sweat shirt. The decoy he is holding is a gamy smudge of black and light gray. ''I was out hunting today, and I thought they looked pretty beat up. I am going out again in the morning.''

For Hautman, 36, it is another autumn, another duck season, another chance at waterfowling immortality. He interrupts his hunting this week to come to Washington for the annual federal duck stamp competition—far and away the most prestigious honor in wildlife painting and surely one of the richest art prizes in the world. Hautman is one of 453 wildlife artists from around the country who submitted entries in September, and while many of the others will be too nervous to attend the judging today and tomorrow [see related article, Page E6], Hautman will be right there in the audience waiting to see if his 7-by-10-inch painting will become next year's stamp.

And why not? After all, he finished second in last year's contest and came in fourth the three years prior to that. Plus, he is a Hautman—a member of America's ruling duck stamp dynasty—and he is due.

The current $15 duck stamp—the one riding around on the backs of more than 1 million hunting licenses—was engraved from a painting of a pair of mallards submitted last year by Hautman's younger brother Jim. That made two wins for Jim, who at the age of 25 had become the youngest winner ever with a painting of black-bellied whistling ducks that appeared on the 1990 stamp. Jim got married earlier this year and moved out of the house on the hill in Plymouth, but he still has studio space there in a cluttered bedroom down the hall from Bob's. Because artists cannot enter the contest for 3 years after a win, Bob will not be competing against Jim this week.

But then there is Joe, another Hautman brother, who is back in the hunt this year after winning in 1992 with a spectacled eider.

Joe, 39, lives in Jackson, N.J., and has a PhD in physics. He gave up science after doing postdoctoral research at the University of Pennsylvania so he could become a full-time wildlife artist, too. Jim and Joe are the only brothers ever to win the federal competition. Joe's submission this year is a Barrow's goldeneye, one of the four ducks the U.S. Fish and Wildlife Service has solicited for the 1996 stamp. Bob, the shyest of the three brothers and the one most anxious about the competition, would not say which bird he painted for the contest.

If Joe were to win again, Bob would at least get a chance every other wildlife artist in the country covets, the chance to compete next year without going up against a Hautman.

''We do get calls every year from artists wanting to know if the Hautmans are going to be in the contest,'' says Terry Bell, special events coordinator for the Federal Duck Stamp Program. ''They are all a little intimidated.''

THE DUCK MARKET

Duck stamp painting is a high-stakes subspecies of wildlife art—itself a genre held in low regard by the fine-art world but adored by millions of sportsmen and collectors. The stamp paintings are intensely realistic—anatomical correctness is required of every entry—but the rewards of winning a stamp competition are decidedly unreal. Officially, the Federal Duck Stamp Program offers the winner only a sheet of stamps and a handshake from the secretary of the interior. But there is a thriving private-sector market for limited-edition prints of the winning painting.

That market peaked in the mid-1980s, when winners of the federal competition could count on making a minimum of $1 million in fees and royalties from their prints, not to mention the overnight increase in the value of their other works. For a variety of reasons—including large print runs that glutted the market, careless investments by speculators, and a continuing decline in the number of duck hunters—the payoff for winning the federal contest is not what it used to be, though it remains enormous. This year's winner can expect to earn somewhere between $500,000 and $1 million.

''When you win, the phone does not stop ringing for days,'' says David Maass, another Minnesota artist who's won the federal competition.

''This is the Olympics of wildlife art,'' says Robert Lesino, chief of the Federal Duck Stamp Program. ''No other event in the life of an artist can launch a career like this can. When you win the federal duck stamp, everything changes.''

SHOOTING AND SKETCHING

''I never really thought the boys showed that much artistic talent,'' says Elaine Hautman of her sons. ''They always had their crayons, and they could always draw nicely. I guess other people thought that was unusual, but to us it was just sort of normal.''

Hautman, who worked in the 1940s as a commercial artist in Minneapolis and who remains a sharp-eyed critic of her sons' work, says they got their love of the outdoors from her late husband, Tom, who took them hunting and taught them how to look at game in its natural environment. ''I think by the time they could talk they could already tell one bird from another,'' she says.

Joe Hautman says that he, Jim and Bob have never thought of themselves as being unique.

''It seems sort of natural to us,'' he says. ''There are seven kids in the family, so it is not like we are all into this. The three of us have always done art, and I do not think we tend to see ourselves in the same way others see us. I guess it is like the way people in the same family sometimes do not think they look like each other when in fact they do.

''The three of us just got back from a long hunting trip in Minnesota and Manitoba, and in two weeks we did not talk about art at all.''

It is one thing to be a genetically predisposed wildlife artist. It is another thing altogether to set out purposefully to win duck stamp competitions. Besides the federal stamps they've illustrated, the brothers Hautman have collectively won 15 State duck or pheasant stamp competitions, and Jim has won the Australian national contest. No wonder other artists are spooked. The Hautmans are not prolific—none of them produces more than a dozen paintings a year, and they publish only a fraction of their output for collectors—but when a bird flies off one of their easels there's a very good chance it will land on a hunting stamp.

Everyone into duck art recognizes that the Hautmans share an uncommon natural talent, just as they recognize the brothers' distinctive style—the strong lighting, the stark contrasts so well suited to the engraving process, the meticulous anatomical perfection. But what seems to have really separated them from other artists is their single-mindedness.

''More than any other wildlife artists I know, they are students of duck stamp design,'' says Frank J. Sisser, editor and publisher of U.S. Art magazine in Minneapolis and one of the five judges for the 1992 competition. ''They study what's been successful. And they make no bones about painting primarily for stamp competitions. They are not as distracted by other projects as many artists are.

''But they are also brothers and best friends who serve as each other's harshest critics. If they can survive having their paintings inspected by one another, they are going to have a very good chance at winning.''

The Hautmans have traveled to Kodiak Island to observe and shoot species found only near the Bering Sea. They have hunted snow geese and the ubiquitous mallard in the marshes of Manitoba, Canada. They always hunt in Minnesota, and Bob says he wouldn't mind getting down to Texas sometime to look for the little-seen mottled duck, a brown-on-brown bird similar in appearance to a hen mallard and one of the four North American ducks that has never been on the Federal stamp.

When the brothers failed to bag a rare spectacled eider in Alaska a few years ago, Joe's research for his winning painting took him to the Philadelphia Zoo, which had a live hen, and to a natural history museum up in Ottawa, which had a collection of dead eiders that had been shot by Eskimos early in this century.

''I thought they would be mounted,'' says Joe, ''but they were just in drawers, kind of laid out flat. The museum let me examine them, and I made a lot of photographs and sketches.''

Whenever they can, the Hautmans shoot their own specimens and have them mounted, to study and work from over time. ''You can bend them into whatever pose you want if you work on them when they are still wet from the taxidermist,'' says Jim.

Of course, they do not always have to go so far to find them, either. Minnesota lies between two major migratory routes—the Mississippi Flyway on the east side of the State and the Central Flyway on the west. Every fall a great southward movement of birds that breed all the way up to the Arctic Circle sweeps down across Minnesota—thousands of geese and ducks and swans in an immense, colorful profusion. Minnesota is duck country, and, in a way, the capital of American duck culture. Nine Minnesotans, more than from any other State, have won the Federal duck stamp competition, and several of them—including Jim Hautman, David Maass and the legendary Les Kouba—have won twice.

The process is meticulous. Bob Hautman says finding the right image involves many false starts and dead ends as he makes preliminary sketches.

''I am trying to find an effect that will make the painting alive as opposed to lifelike,'' he says. ''A photograph looks realistic, but frozen. But with a painting, when you look at it you should see something that looks living.

''Surprisingly, the background is often the hardest part. Sometimes it takes weeks. Sometimes it takes months.''

Robert Lesino thinks the Hautmans' methodical approach is not typical of many wildlife artists.

''A lot of the guys who enter the stamp competition wait until the last minute and then hurry the painting to get it in on time,'' Lesino says. ''The Hautmans start a year ahead of time. They just put in more effort than other people do.''

''I start thinking about the next painting right after the contest,'' says Jim. ''I am a slow painter. It takes me a long time.''

THE PARADOX

The results of those long labors are breathtakingly beautiful to duck aficionados and more or less a complete mystery to everyone else. Despite the insistent realism, duck art is variable in its effect. Some stamp images die in front of your eyes—they're accurate but cataleptic. Others are quite arresting. Dan Smith, another Minnesota painter, won the Federal contest in 1988 with a moody, suggestive image of a lone snow goose winging along a foggy lake shore at dawn. The painting was a marvel of depth and technical wizardry. Smith said at the time that painting a snow goose—which is basically a white oval with wings—was ''like trying to paint an egg.''

To non-hunters, duck art is contradictory all the way around—an art with no aesthetic. Why shoot a duck so you can paint it to raise money for habitat for more ducks to shoot? The answer, for painters from John James Audubon to the Hautman brothers, is ineffable, but the fundamental assumption—that hunting is heartless and hunters are unfeeling—is problematic. The truth is that hunters are hopeless sentimentalists, filled with nostalgic longing for days spent in frigid sloughs under steely skies. They are touched to the core by images of birds on the wing in blustery weather.

''Some people just cannot relate to duck hunting or to duck hunters,'' says Bob Hautman. ''I understand that. Sometimes when you are out there in a boat in a swamp wringing a duck's neck, I guess you might think to yourself that it is kind of a tough sport. But it is where I start. Wildlife artists are generally hunters first.''

Randy Eggenberger, president of Wild Wings, a leading wildlife art publisher based in Lake City, Minn., which has handled the Hautmans' work for 10 years, thinks wildlife art is simply democratic art.

''These are paintings that appeal to the masses,'' he says. ''And that is what I think art should be about—creating something that Joe Blow can hang on his wall and enjoy.''

Jim Hautman says whatever it is about duck painting that people like cannot really be analyzed.

''I guess hunting is a paradox to many people,'' he says. ''And what I do is hard to explain. All I can say is that if I did not love ducks, I wouldn't hunt them.''

DUCK TALE: BIRTH OF A STAMP

The Federal Duck Stamp Program was created by Congress in 1934 to raise revenue to purchase and manage waterfowl habitat within the National Wildlife Refuge System. The first stamps, which cost $1, were painted by artists commissioned by the U.S. Fish and Wildlife Service. Since 1949 the image engraved on the stamp, which now costs $15, has been chosen in an annual open competition. It is the only art competition officially sponsored by the Federal Government, and one of the longest-running and most successful conservation programs in the country. Ninety-eight percent of the revenue from duck stamp sales goes directly to purchase wetlands. Since its inception, the program has generated half a billion dollars in revenue and added more than 4 million acres of wetlands to the refuge system.

Federal duck stamps are required on all duck hunting licenses in the United States, and hunters will purchase about 90 percent of roughly 1.5 million stamps that will be sold this year. The remainder are bought by conservationists and stamp collectors.

This year's competition opened yesterday, in the auditorium at the Department of the Interior building at 18th and C streets NW, when all 453 entries went on display. Judging begins today, from 10:30 a.m. to 4:30 p.m., with an initial in-or-out elimination round that will winnow the entries down to 50 or so paintings. Tomorrow, judges will score the paintings, with announcement of a winner expected around noon. All sessions are free and open to the public.

The identity of the five judges, who are picked from all over the country each year, is kept secret before the competition. However, program chief Robert Lesino confirms that one judge this year will be Jane Alexander, chairman of the National Endowment for the Arts.

The Fish and Wildlife Service limits the competition in alternating years to those ducks that have never appeared on the Federal stamp—the so-called ''ugly ducks.'' This is an ugly duck year, with the black scoter, surf scoter, Barrow's goldeneye and mottled duck to choose from.

TRIBUTE TO OUR NATION'S VETERANS

• Mr. LEVIN. Mr. President, this Saturday, November 11, 1995, is Veterans Day. This is the day when citizens across the country honor the men and women who have served in our Nation's armed services. I would like to take this time to acknowledge the contributions of all those who have served the United States as members of the armed services. In particular, I would like to highlight the achievements of the many women who have served our Nation in the military.

This year is especially significant because it marks the 50th anniversary of the end of World War II. It was during World War II that our Nation's women showed the country what they have to offer to the military. While women had always actively supported our Nation's military, World War II saw an increased number of women volunteers breaking new ground in the uniformed services. Women served in all four branches of the military and the Coast Guard, filling such varied roles as assembly line workers, pilots, and nurses. During World War II, more than 100 women from my State of Michigan volunteered for military service. I thank these women for their response to the call of duty and their sacrifices on behalf of their country.

Over the past 50 years, women have continued to prove that they can contribute to our Nation's military. In order to honor the women who serve and have served in the armed services, Women in Military Service for America broke ground on the construction of a memorial this past June. It is the hope of Women in Military Service in America to place into this memorial a comprehensive list of all the women who have served our country.

This Veterans Day, when we reflect on the many who have volunteered to protect our freedoms, I hope that there will be renewed pride in the contributions women have made. The women who served before them and beside them, those who have paved the way for the achievement gained in rank, honor, and respect are highly deserving of our recognition on this day. •

BUDGET SCOREKEEPING REPORT

• Mr. DOMENICI. Mr. President, I hereby submit to the Senate the budget scorekeeping report prepared by the Congressional Budget Office under section 308(b) and in aid of section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate scorekeeping of section 5 of Senate Concurrent Resolution 32, the first concurrent resolution on the budget for 1986.

This report shows the effects of congressional action on the budget through November 6, 1995. The estimates of budget authority, outlays, and revenues, which are consistent with the technical and economic assumptions of the 1996 concurrent resolution on the budget, House Concurrent Resolution 67, show that current level spending is below the budget resolution by $2.1 billion in budget authority and above the budget resolution by $4.5 billion in outlays. Current level is $44 million below the revenue floor in 1996 and $0.7 billion below the revenue floor over the 5 years 1996 to 2000. The current estimate of the deficit for purposes of calculating the maximum deficit amount is $250.2 billion, $4.6 billion above the maximum deficit amount for 1996 of $245.6 billion.

Since my last report, dated October 25, 1995, Congress cleared and the President signed the Fishermen's Protective Act Amendments of 1995—Public Law 104–43. The President has also signed the Alaska Native Claims Settlement Act—Public Law 104–42. Congress also cleared for the President's signature the following appropriation bills: Energy and Water Development—H.R. 1905, Transportation—H.R. 2002, and Legislative Branch—H.R. 2492. These actions changed the current level of budget authority and outlays. In addition, the revenue aggregates have been revised to reflect the recommended level in House Concurrent Resolution 67. My last report had revised the revenue aggregates pursuant to section 205(b)(2) of House Concurrent Resolution 67 for purposes of consideration of S. 1357.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 8, 1995.

Hon. PETE DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report for fiscal year 1996 shows the effects of Congressional action on the 1996 budget and is current through November 6, 1995. The estimates of budget authority, outlays and revenues are consistent with the technical and economic assumptions of the 1996 Concurrent Resolution on the Budget (H. Con. Res. 67). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended.

Since my last report, dated October 25, 1995, Congress cleared and the President signed the Fishermen's Protective Act Amendments of 1995 (P.L. 104–43). The President has also signed the Alaska Native Claims Settlement Act (P.L. 104–42). Congress also cleared for the President's signature the following appropriation bills: Energy and Water Development (H.R. 1905), Transportation (H.R. 2002) and Legislative Branch (H.R. 2492). These actions changed the current level of budget authority and outlays. In addition, at the request of Budget Committee staff, the revenue aggregates shown for the budget resolution have been changed to reflect the recommended levels in H. Con. Res. 67.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, *Director*).

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, FISCAL YEAR 1996, 104TH CONGRESS, 1ST SESSION, AS OF CLOSE OF BUSINESS NOVEMBER 6, 1995

[In billions of dollars]

	Budget resolution (H. Con. Res. 67)	Current level [1]	Current level over/under resolution
ON-BUDGET			
Budget authority	1,285.5	1,283.4	−2.1
Outlays	1,288.1	1,292.6	4.5
Revenues:			
1996	1,042.5	1,042.5	−0.[2]
1996–2000	5,691.5	5,690.8	−0.7
Deficit	245.6	250.2	4.6
Debt subject to limit	5,210.7	4,893.6	−317.1
OFF-BUDGET			
Social Security outlays:			
1996	299.4	299.4	0.0
1996–2000	1,626.5	1,626.5	0.0
Social Security revenues:			
1996	374.7	374.7	0.0
1996–2000	2,061.0	2,061.0	0.0

[1] Current level represents the estimated revenue and direct spending effects of all legislation that Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] Less than $50 million.

THE ON-BUDGET CURRENT LEVEL REPORT FOR THE U.S. SENATE, 104TH CONGRESS, 1ST SESSION, SENATE SUPPORTING DETAIL FOR FISCAL YEAR 1996, AS OF CLOSE OF BUSINESS NOVEMBER 6, 1995

[In millions of dollars]

	Budget authority	Outlays	Revenues
ENACTED IN PREVIOUS SESSIONS			
Revenues	.....	.....	1,042,557
Permanents and other spending legislation	830,272	798,924	.....
Appropriation legislation	.....	242,052	.....

THE ON-BUDGET CURRENT LEVEL REPORT FOR THE U.S. SENATE, 104TH CONGRESS, 1ST SESSION, SENATE SUPPORTING DETAIL FOR FISCAL YEAR 1996, AS OF CLOSE OF BUSINESS NOVEMBER 6, 1995—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Offsetting receipts	(200,017)	(200,017)	
Total previously enacted	630,254	840,958	1,042,557
ENACTED THIS SESSION			
Appropriation Bills:			
1995 Rescissions and Department of Defense Emergency Supplementals Act (P.L. 104–6)	(100)	(885)	
1995 Rescissions and Emergency Supplementals for Disaster Assistance Act (P.L. 104–19)	22	(3,149)	
Agriculture (P.L. 104–37)	62,602	45,620	
Military Construction (P.L. 104–32)	11,177	3,110	
Authorization Bills:			
Alaska Native Claims Settlement Act (P.L. 104–42)	1	1	
Fishermen's Protective Act Amendments of 1995 (P.L. 104–43)		(1)	
Self-Employed Health Insurance Act (P.L. 104–47)	(18)	(18)	(101)
Total enacted this session	73,684	44,679	(101)
PENDING SIGNATURE			
Appropriation Bills:			
Energy and Water (H.R. 1905)	19,336	11,502	
Legislative Branch (H.R. 2492)	2,125	1,977	
Transportation (H.R. 2002)	12,682	11,899	
Total pending signature	34,144	25,378	
CONTINUING RESOLUTION AUTHORITY			
Continuing Appropriations, FY1996 (P.L. 104–31)[2]	410,247	249,857	
ENTITLEMENTS AND MANDATORIES			
Budget resolution baseline estimates of appropriated entitlements and other mandatory programs not yet enacted	135,049	131,736	
Total Current Level[3]	1,283,378	1,292,609	1,042,456
Total Budget Resolution	1,285,500	1,288,100	1,042,500
Amount remaining:			
Under Budget Resolution	2,122		44
Over Budget Resolution		4,509	

[1] Less than $500,000.

[2] This is an estimate of discretionary funding based on a full year calculation of the continuing resolution that expires November 13, 1995. It includes all appropriation bills except Agriculture and Military Construction, which have been signed into law, and Energy and Water, Legislative Branch and Transportation, which have been cleared for the President's signature.

[3] In accordance with the Budget Enforcement Act, the total does not include $3,400 million in budget authority and $1,590 million in outlays for funding of emergencies that have been designated as such by the President and the Congress.

Note.—Detail may not add due to rounding. Numbers in parentheses are negative.●

THE RIGHT WAY TO REDUCE THE CAPITAL GAINS TAX

● Mr. LEAHY. Mr. President, as I speak today, the Republican leadership of this Congress is discussing an issue of great importance to the family farmers and small businessmen of America: the capital gains tax.

Current law in the area of capital gains leaves something to be desired. I grew up in a small business family. My father owned his own printing shop, and he poured his heart and soul and countless late hours into that business. My father's printing shop was more than his livelihood. It was his investment in his retirement and his family's future. I know many hardworking Vermonters are in the same position. They work hard all their lives to build up their farms and small businesses. The capital gains tax, when they decide to sell the farm or business to fund their retirements, can be close to punitive.

I am receptive to a capital gains reduction that favors Americans who save for retirement by investing in their personal business, primary residence, or family farm. When these taxpayers retire, they sell their business, home, or farm to live off their lifetime investment. We ought to be encouraging that kind of investment, not punishing it.

I am concerned, however, that the Republican plan to reduce taxes on capital gains targets the wrong type of investment and cost too much. The capital gains tax break that the Republican leadership is discussing will benefit primarily people other than family farmers and small businessmen.

Current law taxes capital gains at a lower rate than other forms of income. Under the 1993 Budget Reconciliation Act, the maximum tax rate on capital gains remains 28 percent, as compared to 39.6 percent for ordinary income. In addition to the lower rate, the tax on capital gains is deferred until the capital asset is sold and the tax is forgiven at death. Given those preferences, and given the fact that most proposals to reduce the capital gains tax benefit mostly very wealthy investors, I am very wary of making changes in the tax law right now.

I agree with the targeted capital gains approach adopted in the 1993 Budget Reconciliation Act. The act allows investors who purchase newly issued stock in small companies to exclude from their income 50 percent of the gain when they sell the stock if it is held for at least 5 years. For stock to qualify for the tax break, the company must have less than $50 million in gross assets. This approach encourages long-term investment in small businesses—the engine of job growth in the 1990's.

By contrast, the capital gains tax breaks in the House and Senate versions of the Republican budget reconciliation bill are part of gigantic tax giveaway packages that will increase the deficit and mostly benefit well-heeled Wall Street investors.

Under the Senate bill, the corporate capital gains rate is reduced from 35 percent to 28 percent. Individuals would be able to exclude 50 percent of capital gain income from taxation. I voted against the bill when it was debated in the Senate, but it passed by a vote of 52–47. The House included a larger capital gains reduction in its version of the budget bill. The corporate capital gains rate is reduced to 25 percent and the individual rate is capped at 19.8 percent. In addition, the House indexes capital gains for inflation. Let us remember that according to the Congressional Research Service, over half of all capital gains—excluding personal residences—are earned by corporate stock and real estate investors. Farmers and small business owners account for a relatively small portion of capital gains.

The Treasury Department estimates that the House capital gains proposal would cost $170.4 billion over the next 10 years, and would mostly benefit people earning over $200,000 a year. The Senate bill is not much better. At a time when the national debt is approaching $5 trillion, we just cannot afford that kind of a tax giveaway going mostly to people who do not need it.

As House and Senate conferees discuss changes in the capital gains tax, I hope they will consider ensuring that it does not mostly benefit very wealthy investors but rather is targeted toward small businessmen and family farmers who have poured sweat equity into their businesses.●

FOREIGN CURRENCY REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following report(s) of standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1995

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Ted Stevens:									
France	Franc	4,211.04	849.00					4,211.04	849.00
Steven J. Cortese:									
France	Franc	4,211.04	849.00					4,211.04	849.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1995—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Charlie J. Houy:									
France	Franc	3,918.40	790.00					3,918.40	790.00
Peter Dean Lennon:									
France	Franc	3,850	776.21					3,850	776.21
Kimberly Davis Range:									
France	Franc	4,161.04	839.33					4,161.04	839.33
Total		4,103.54							4,103.54

MARK O. HATFIELD,
Chairman, Committee on Appropriations, Aug. 2, 1995.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY COMMITTEE ON APPROPRIATIONS, FROM JUNE 30 TO JULY 8, 1995

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Tom Harkin:									
Vietnam	Dollar		1,210.00						1,210.00
Thailand	Baht	3,697.50	150.00					3,697.50	150.00
Senator Dale Bumpers:									
Vietnam	Dollar		859.28						859.28
Thailand	Baht	5,250.50	213.00					5,250.50	213.00
Senator Frank Lautenberg:									
Vietnam	Dollar		1,000.74						1,000.74
Thailand	Baht	5,250.50	213.00					5,250.50	213.00
Peter Reinecke:									
Vietnam	Dollar		1,050.00						1,050.00
Thailand	Baht	5,250.50	213.00					5,250.50	213.00
Peter Rogoff:									
Vietnam	Dollar		1,150.00						1,150.00
Thailand	Baht	5,250.50	213.00					5,250.50	213.00
Mark Van de Water:									
Vietnam	Dollar		1,150.00						1,150.00
Thailand	Baht	5,250.50	213.00					5,250.50	213.00
Delegation expenses: [1]									
Vietnam							3,166.24		3,166.24
Thailand							2,114.82		2,114.82
Total			7,635.02				5,281.06		12,916.08

[1] Delegation expenses include direct payments and reimbursements to State Department and Defense Department under authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384, and Senate Resolution 179, agreed to May 25, 1977.

MARK O. HATFIELD,
Chairman, Committee on Appropriations, Sept. 5, 1995.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1995

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Sam Nunn:									
Denmark	Krone	100	18.45					100	18.45
Norway	Krone	1,475	236.37					1,475	236.37
United States	Dollar		22.21						22.21
John W. Douglass:									
Denmark	Krone	755.5	139.35					755.5	139.35
Norway	Krone	1,806.25	289.46					1,806.25	289.46
United States	Dollar				188.50		129.90		318.40
Charles S. Abell:									
Germany	Mark	595.49	401.00					595.49	401.00
United States	Dollar				795.00				795.00
Senator John Warner:									
Italy	Lira	38,250	202.00						202.00
Croatia	Kuna	1,285.20	238.00						238.00
Senator Jeff Bingaman:									
China	Dollar		1,005.00						1,005.00
China	Dollar		968.00						968.00
Japan	Dollar		1,248.00						1,248.00
Japan	Dollar		1,071.00						1,071.00
South Korea	Dollar		1,268.00						1,268.00
South Korea	Dollar						374.71		374.71
Steve Clemmons:									
China	Dollar		1,005.00						1,005.00
China	Dollar		968.00						968.00
Japan	Dollar		1,248.00						1,248.00
Japan	Dollar		1,071.00						1,071.00
South Korea	Dollar		1,268.00						1,268.00
Steve Clemmons:									
South Korea	Dollar						374.71		374.71
Patrick Von Bargen:									
China	Dollar		1,005.00						1,005.00
China	Dollar		968.00						968.00
Japan	Dollar		1,248.00						1,248.00
Japan	Dollar		1,071.00						1,071.00
South Korea	Dollar		1,268.00						1,268.00
South Korea	Dollar						374.71		374.71
Total			18,226.84		983.50		1,254.03		20,464.37

STROM THURMOND,
Chairman, Committee on Armed Services, Sept. 25, 1995.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1995

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Brent Franzel:									
Switzerland	Franc	1,695.50	1,475.00		2,804.35			1,695.50	4,279.35
Patrick A. Mulloy:									
Switzerland	Franc	1,695.50	1,475.00		2,804.35			1,695.50	4,279.35
Robert Giuffra, Jr.:									
England	Dollar		852.00		577.15				1,429.15
Total			3,802.00		6,185.85				9,987.85

ALFONSE D'AMATO,
Chairman, Committee on Banking, Housing, and Urban Affairs, Oct. 31, 1995.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE BUDGET, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1995

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Gregory D. Vuksich:									
Croatia	Dollar		1,128.00		168.00				1,296.00
Yugoslavia	Dollar		572.00		547.00				1,119.00
United States	Dollar				2,226.15				2,226.15
Total			1,700.00		2,941.15				4,641.15

PETE V. DOMENICI,
Chairman, Committee on the Budget, Oct. 30, 1995.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1995

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Larry Pressler:									
United States	Dollar				4,341.85				4,341.85
United Kingdom	Pound	1,123.78	1,776.00					1,123.78	1,776.00
Michael E. Korens:									
United States	Dollar				957.85				957.85
United Kingdom	Pound	1,123.78	1,776.00					1,123.78	1,776.00
Carl W. Bentzel:									
United States	Dollar				913.85				913.85
United Kingdom	Pound	1,498.36	2,368.00					1,498.36	2,368.00
Total			5,920.00		6,213.55				12,133.55

LARRY PRESSLER,
Chairman, Committee on Commerce, Science, and Transportation, Oct. 12, 1995.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1995

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator J. Bennett Johnston:									
China	Yuan	11,731.50	1,442.00					11,731.50	1,422.00
Mongolia	Dollar		918.00						918.00
United States	Dollar				6,979.93				6,979.93
Eric Silagy:									
China	Yuan	11,731.50	1,422.00					11,731.50	1,442.00
Mongolia	Dollar		918.00						918.00
United States	Dollar				4,405.37				4,405.37
Total			4,680.00		11,385.30				16,065.30

FRANK MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, Oct. 20, 1995.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1995

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Nancy L. Kassebaum:									
China	Yuan	20,427	2,476.00					20,427	2,476.00
Hong Kong	Dollar	5,634	728.00					5,634	728.00
United States	Dollar				4,899.00				4,899.00
Peter Cleveland:									
Israel	Dollar		812.00						812.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1995—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Jordan	Dollar		470.00						470.00
Syria	Dollar		1,280.00						1,280.00
United States	Dollar				4,469.65				4,469.65
Bonnie L. Coe:									
Thailand	Baht	14,000	560.00					14,000	560.00
Indonesia	Dollar		1,167.00						1,167.00
United States	Dollar				6,176.65				6,176.65
Michael Haltzel:									
Croatia	Kuna	5,076	940.00					5,076	940.00
United States	Dollar				3,367.75				3,367.75
Michael G. Harper:									
China	Yuan	20,427	2,476.00					20,427	2,476.00
Hong Kong	Dollar	5,634	728.00					5,634	728.00
United States	Dollar				4,899.00				4,899.00
Elizabeth Lambird:									
Thailand	Baht	3,189,888	1,278.00					3,189,888	1,278.00
United States	Dollar				2,047.00				2,047.00
Robyn Lieberman:									
Ethiopia	Dollar		626.20						626.20
Uganda	Dollar		538.00						538.00
Rwanda	Dollar		392.00						392.00
Kenya	Dollar		530.00						530.00
United States	Dollar				6,004.35				6,004.35
Todd D. Lyle:									
Colombia	Dollar		324.00						324.00
Michelle Maynard:									
Turkey	Dollar		524.00						524.00
Turkey	Lira	51,036,560	1,078.00					51,036,560	1,078.00
United States	Dollar				4,469.00				4,469.00
Patricia McNerney:									
Ukraine	Dollar		160.00		140.00				300.00
Russia	Dollar		1,200.00						1,200.00
Kazakhstan	Dollar		400.00						400.00
United States	Dollar				5,419.05				5,419.05
Christopher Moore:									
Israel	Dollar		1,458.00						1,458.00
Syria	Dollar		1,620.00						1,620.00
United States	Dollar				3,088.65				3,088.65
Diana Ohlbaum:									
Ethiopia	Dollar		626.20						626.20
Uganda	Dollar		538.00						538.00
Rwanda	Dollar		392.00						392.00
Kenya	Dollar		475.00						475.00
United States	Dollar				6,004.35				6,004.35
George Pickart:									
Israel	Dollar		812.00						812.00
Jordan	Dollar		470.00						470.00
Syria	Dollar		1,280.00		161.30				1,441.30
Turkey	Dollar		200.00						200.00
United States	Dollar				3,294.65				3,294.65
Danielle Pletka:									
Israel	Dollar		1,458.00						1,458.00
Syria	Dollar		1,620.00						1,620.00
United States	Dollar				3,088.15				3,088.15
Tunisia	Dinar	155,841	166.00					155,841	166.00
Morocco	Dirham	815,926	950.00					815,926	950.00
United States	Dollar				3,623.55				3,623.55
Daniel Shapiro:									
China	Dollar		1,682.00						1,682.00
United States	Dollar				3,867.95				3,867.95
Timothy P. Trenkle:									
China	Yuan	20,427	2,476.00					20,427	2,476.00
Hong Kong	Dollar	5,634	728.00					5,634	728.00
United States	Dollar				4,899.00				4,899.00
Christopher Walker:									
Thailand	Dollar		1,384.00						1,384.00
United States	Dollar				3,087.00				3,087.00
Anne V. Smith:									
Ukraine	Dollar		200.00		140.00				340.00
Russia	Dollar		1,300.00						1,300.00
Kazakhstan	Dollar		600.00						600.00
United States	Dollar				5,419.05				5,419.05
Peter Cleveland:									
United States	Dollar				4,670.25				4,670.25
Senator Hank Brown:									
Taiwan	Dollar		173.00						173.00
Cambodia	Dollar		216.02						216.02
Myanmar	Dollar		110.90						110.90
India	Dollar		401.46						401.46
Pakistan	Dollar		192.20						192.20
Syria	Dollar		272.36						272.36
Israel	Dollar		103.77						103.77
Egypt	Dollar	424.88	157.04					424.88	157.04
Belgium	Franc	7,900	293.93					7,900	293.93
F. Carter Pilcher:									
Taiwan	Dollar		200.00						200.00
Cambodia	Dollar		160.00						160.00
Myanmar	Dollar		105.00						105.00
India	Dollar		392.06						392.06
Pakistan	Dollar		300.00						300.00
Syria	Dollar		254.80						254.80
Israel	Dollar		286.89						286.89
Egypt	Dollar	333.52	123.27					333.52	123.27
Belgium	Franc	5,000	186.03					5,000	186.03
Thomas J. Callahan:									
S. Africa	Dollar		904.00						904.00
Zimbabwe	Dollar		390.00						390.00
Ghana	Dollar		212.00						212.00
Botswana	Dollar		422.00						422.00
Morocco	Dollar		456.00						456.00
Total			45,435.13		83,235.35				128,670.48

JESSE HELMS,
Chairman, Committee on Foreign Relations, Oct. 20, 1995.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1995

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Robert Lockwood:									
Germany	Dollar		150.00		3,175.65				3,325.65
Paul Matulic:									
Hungary	Forint	2,396	24.00					2,396	24.00
	Dollar		300.00		1,197.35				1,497.35
Senator Orrin Hatch:									
Hungary	Forint	2,396	24.00					2,396	24.00
	Dollar		300.00		1,197.35				1,497.35
Total			798.00		5,570.35				6,368.35

ORRIN HATCH,
Chairman, Committee on the Judiciary, Aug. 4, 1995.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1995

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Trina Vargo:									
United States	Dollar				1,286.95				1,286.95
Ireland	Pound	700.52	1,145.00	304	185.99			1,004.52	1,330.99
United Kingdom	Pound	477.41	803.00	27.50	18.70			504.91	821.70
Total			1,948.00		1,491.64				3,439.64

ORRIN HATCH,
Chairman, Committee on the Judiciary, Oct. 2, 1995.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), SELECT COMMITTEE ON INTELLIGENCE, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1995

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator J. Robert Kerrey			795.00		3,574.55				4,369.55
Christopher Straub			780.00		3,269.55				4,049.55
Arthur Grant			848.00		3,269.55				4,117.55
Senator Richard Shelby			4,777.63						4,777.63
Tom Young			4,421.44						4,421.44
Peter Dorn			2,500.99						2,500.99
Senator Kay B. Hutchison			384.83						384.83
Donald Stone			1,487.00						1,487.00
Don Mitchell			1,596.00						1,596.00
Melvin Dubee			2,206.00						2,206.00
Gary Reese			2,356.00		4,403.25				6,759.25
Lorenzo Goco			2,356.00		4,403.25				6,759.25
Alfred Cumming			1,197.50		3,803.35				5,000.85
Senator Arlen Specter			1,547.60						1,547.60
Charles Battaglia			464.00						464.00
William Morley			1,544.00						1,544.00
Patricia Hanback			308.00						308.00
Total			29,569.99		22,723.50				52,293.49

ARLEN SPECTER,
Chairman, Select Committee on Intelligence, Oct. 24, 1995.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE REPUBLICAN LEADER FROM JULY 1, TO SEPT. 30, 1995

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Ronald A. Marks:									
Vietnam	Dollar		1,155.00						1,155.00
Thailand	Baht	5,250.50	213.00					5,250.50	213.00
Sally Walsh:									
Vietnam	Dollar		1,150.00						1,150.00
Thailand	Baht	5,250.50	213.00					5,250.50	213.00
Randy Scheunemann:									
Haiti	Dollar		448.00		648.95				1,096.95
Total			3,179.00		648.95				3,827.95

ROBERT J. DOLE,
Republican Leader, Oct. 23, 1995.

ORDERS FOR THURSDAY, NOVEMBER 9, 1995

Mr. DASCHLE. I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10 a.m. on Thursday, November 9; that following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, that the call of the calendar be dispensed with, the morning hour be deemed to

have expired, the time for the two leaders be reserved for their use later in the day, and there then be a period for morning business until the hour of 12 noon, with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Senator MURKOWSKI, 20 minutes; Senator GRAHAM, 20 minutes; Senator HATCH, 10 minutes; and Senator BINGAMAN, 60 minutes.

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

PROGRAM

Mr. DASCHLE. Mr. President, for the information of Senators, it is the hope of the majority leader to begin consideration of the continuing resolution tomorrow at 12, following morning business. It is also the hope of the leader to consider the debt limit extension during Thursday's session. Rollcall votes are therefore expected to occur during Thursday's session of the Senate and a late night session could be anticipated in order to complete the action of these measures.

ORDER FOR ADJOURNMENT

Mr. DASCHLE. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order following the remarks I am about to make.

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

ELECTION RESULTS

Mr. DASCHLE. Mr. President, before the day closes, I wanted to comment on yesterday's election results from around the country. I have had the opportunity now to consult with people around the country in many of the States in which the elections were held. I think it is very clear that the country sent a rejection notice to the extreme agenda of the right wing.

The message to many Republicans should be very clear: Back off, you are going too far. It is time to work together. It is time to achieve a bipartisan consensus. It is time to recognize that in many of the extreme proposals now being offered by the Republicans the American people have now concluded they go too far. They cannot agree with the Republican direction.

Democrats retained control of the statehouse in Kentucky and the legislature in Virginia. We have retained control of the Maine House of Representatives and even made gains in the New Jersey Assembly despite being outspent by more than 4 to 1.

In particular, the elections in Virginia and Kentucky are very instructive. The Republican State party in Virginia made this election a referendum on the extreme politics that Democrats have been fighting against. In Virginia, voters called for a halt in the GOP assault. In Kentucky, the Democratic Governor-elect made it clear in his campaign he was running against the Gingrich Contract, against the cuts in Medicare, against cuts in education. In short, he ran against everything that the Republican budget would accomplish—and was affirmed at the polls.

Mr. President, this was a victory of priorities over politics, a realization that the so-called GOP revolution is too extreme for mainstream America, a realization that I believe had much to do with General Powell's decision today. In today's Republican Party, moderation is off message. People now understand that the Republican policies we have been fighting on this floor hurt working families and reward special interests.

The American people cannot abide a budget that guts Medicare to pay for huge tax cuts. Americans are coming home to the Democratic message of opportunity and fairness. Voters in the States are speaking directly to Republican leaders in Washington: Your cuts are too extreme.

We want to balance the budget but Democrats will not let the ends justify the means. We believe we have a contract with the American people, and its elements are ones we have been talking about for 10 months: We will protect Medicare. We are going to invest in our children. We will enhance our educational system. We are going to preserve the environment. We will provide jobs and opportunity for the future.

Speaking for this side of the aisle, the results of this election will serve to redouble our efforts in the crucial budget battle ahead. I yield the floor.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate now stands in adjournment until 10 a.m. Thursday, November 9, 1995.

Thereupon, the Senate, at 6:28 p.m., adjourned until Thursday, November 9, 1995, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate November 8, 1995:

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

NORMAN I. MALDONADO, OF PUERTO RICO, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE HARRY S TRUMAN SCHOLARSHIP FOUNDATION FOR A TERM EXPIRING DECEMBER 10, 1999, VICE MARGARET TRUMAN DANIEL, TERM EXPIRED.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

WALLACE D. MCRAE, OF MONTANA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE ARTS FOR A TERM EXPIRING SEPTEMBER 3, 1993, VICE ROBERT GARFIAS, TERM EXPIRED.

IN THE ARMY

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADES INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTIONS 618, 624, AND 628, TITLE 10, UNITED STATES CODE.

ARMY

To be colonel

TRAVIS L. HOOPER, 000–00–0000
JULIUS G. SCOTT, JR., 000–00–0000
WAYNE D. TAYLOR, JR., 000–00–0000
STEPHEN D. WILSON, 000–00–0000

To be lieutenant colonel

FREDERICK B. SEEGER, 000–00–0000

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADES INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTIONS 624 AND 628, TITLE 10, UNITED STATES CODE.

ARMY COMPETITIVE

To be lieutenant colonel

BOBBY T. ANDERSON, 000–00–0000
ROBERT A. CHILDERS, 000–00–0000
GREGORY P. DAVIS, 000–00–0000
JOHN F. D'AGOSTINO, 000–00–0000