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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable MARK DAYTON, a Senator from the State of Minnesota.

The PRESIDING OFFICER. Today's prayer will be offered by our guest Chaplain, Father Paul Lavin, Pastor of St. Joseph's on Capitol Hill.

PRAYER

The guest Chaplain offered the following prayer:

Let us listen to the word of the Lord given us by David in Psalm 140:

''Deliver me, O Lord, from evil men; preserve me from violent men, From those who devise evil in their hearts, and stir up wars every day.

''Save me, O Lord, from the hands of the wicked; preserve me from violent men Who plan to trip up my feet—the proud who have hidden a trap for me; They have spread cords for a net; by the wayside they have laid snares for me.

''Grant not, O Lord, the desires of the wicked; further not their plans. Those who surround me lift up their heads; may the mischief which they threaten overwhelm them.

''I know that the Lord renders justice to the afflicted, judgment to the poor. Surely the just shall give thanks to your name; the upright shall dwell in your presence.''

Let us pray.

God our Father, You reveal that those who work for peace will be called Your children. Help the men and women who serve in the United States Senate to work without easing for that justice which brings true and lasting peace. Glory and praise to You, for ever and ever.

PLEDGE OF ALLEGIANCE

The Honorable MARK DAYTON led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 14, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK DAYTON, a Senator from the State of Minnesota, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. DAYTON thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. WELLSTONE. Mr. President, speaking on behalf of the leader, we expect several amendments to be offered and debated today. No rollcall votes will occur today. The next rollcall vote will occur on Tuesday at approximately 11 a.m. on the adoption of the ESEA conference report.

AGRICULTURE, CONSERVATION, AND RURAL ENHANCEMENT ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 1731, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1731) to strengthen the safety net for agricultural producers, to enhance resource conservation and rural development, to provide for farm credit, agricultural research, nutrition, and related programs, to ensure consumers abundant food and fiber, and for other purposes.

Pending:

Daschle (for Harkin) Amendment No. 2471, in the nature of a substitute.

NOTICE

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Michael F. DiMario, *Public Printer*

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

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Smith of New Hampshire Amendment No. 2596 (to Amendment No. 2471), to provide for Presidential certification that the government of Cuba is not involved in the support for acts of international terrorism as a condition precedent to agricultural trade with Cuba.

Torricelli Amendment No. 2597 (to Amendment No. 2596), to provide for Presidential certification that all convicted felons who are living as fugitives in Cuba have been returned to the United States prior to the amendments relating to agricultural trade with Cuba becoming effective

Daschle motion to reconsider the vote (Vote 368) by which the motion to close further debate on Daschle (for Harkin) Amendment No. 2471 (listed above) failed.

The ACTING PRESIDENT pro tempore. Under the previous order, the senior Senator from Minnesota is recognized to offer an amendment.

AMENDMENT NO. 2602 TO AMENDMENT NO. 2471

Mr. WELLSTONE. I send an amendment to the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 2602 to amendment No. 2471.

Mr. WELLSTONE. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. WELLSTONE. Mr. President, I will be very brief in the summary of this amendment. This amendment restricts new or expanding large confined animal feeding operation, CAFOs, from receiving Environmental Quality Incentive Program (EQIP) funds for animal waste structures. We will go over the definitions as we get into this debate on Tuesday, but, for example, 1,000 animals is equal altogether to 9,090 hogs. These are big operations.

This amendment also deals with what we call multiple CAFOs. The amendment prohibits an entity with interests in more than one CAFO from receiving more than one EQIP contract, thus prohibiting double payments. This measure helps ensure that this Federal farm conservation programs and the funds are not used to promote consolidation and concentration of livestock production.

The third part to this amendment deals with flood plains. The amendment restricts the use of EQIP funds for new or expanding livestock waste facilities in a 100-year flood plains. Locating a large animal waste facility in a flood plain is contrary to all good conservation common sense.

Fourth, the amendment requires animal operations receiving EQIP funds for structures to also develop and follow a comprehensive nutrient management plan to ensure that the conservation assistance does not end with the storage of manure but that the entire operation be taken into account, including the ultimate disposition of the waste in terms of being applied to the land.

Finally, on payments, the amendment doubles the current annual payment limitation for EQIP, which I would rather not do. The amendment increases the annual payment from $10,000 to $20,000, and doubles the current payment limit per 5-year contract from $50,000 to $100,000 while retaining the current law waiver authority for the annual limitation at the discretion of USDA. The committee bill, by contrast, increases the cap of $50,000 and also a 3-year cap of $150,000.

My colleagues should know that the current average EQIP contract for animal waste structures is approximately $13,000. So this amendment would not affect the majority of those producers who receive and need assistance from this program. We are really talking about the very largest of operations here. And don't forget the existing CAFOs around the country would not be affected, this amendment only applies to new or expanding CAFOs.

I have summarized this amendment. It deals with a growing problem in agriculture; that is to say, the concentration in the livestock sector, the environmental pollution, and, frankly, Federal subsidies that go to these large farming operations and encourage yet more consolidation and more big business and, in this particular case, more environmental destruction.

The amendment is simple. It says we in the Congress should, and will, work to help alleviate the environmental and public health threats posed by these large-scale animal factories. However—I emphasize that word, ''however''—Congress should not be subsidizing the expansion of these large animal confinement operations. That is what this amendment says.

My colleagues should know that this amendment has broad support from both the farm and environmental community, from groups such as the National Farmers Union, Defenders of Wildlife, Environmental Defense, Environmental Working Group, Humane Society, National Wildlife Federation, Natural Resources Defense Council, and the Sustainable Agriculture Coalition.

I look forward to debating and adopting this amendment. I wanted to lay the amendment down today. I will get back to this debate on Tuesday.

Mr. HARKIN. Mr. President, I understand the amendment of the Senator from Minnesota has been laid down?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. HARKIN. This is the amendment on the Environmental Quality Incentives Program that would allow cost-share funds to all existing livestock operations, but would limit it for the largest ones that are new or expanded after this bill is enacted; is that right?

Mr. WELLSTONE. That is correct.

Mr. HARKIN. I thank the Senator from Minnesota. I rise in support of the amendment. I am proud to support this amendment with my colleague from Minnesota.

During the 1996 farm bill debate, I successfully offered an amendment that limited cost-share funding under EQIP for large confined animal feeding operations. That was the 1,000-animal unit limit that has existed under the farm bill since that time. I offered that amendment in 1996 because of the special environmental concerns associated with these large operations.

CAFOs, as they are called, confined animal feeding operations, CAFOs, these are operations of greater than 1,000 animal units. What that means—that is 455,000 broilers, 4,000 head of veal, 5,400 head of swine of an average weight of 185 pounds—these numbers are for the average number of livestock confined for 45 days over a 12-month period. So it is not 5,400 swine for the year. It is how many are confined for 45 days in any 12-month period. It could be double or triple that number of hogs over the year. That is a lot of animals.

Again, these are large operations. Over the last several years we have seen an increase in the development and enforcement of Federal, State, and local environmental laws regulating waste from animal feeding operations. I believe we need to help producers comply or avoid the need for regulations. We should provide cost-share funds to these existing CAFOs to build structures that will contain waste to protect water quality and to protect the environment generally. However, EQIP money was never designed to subsidize the expansion of livestock operations.

The underlying bill allows the use of cost-share funds for all existing operations, and that is fine. But, it also funds for new CAFOs and expanding operations to CAFOs. That is what is wrong because obviously, if you can use the money to fund expansion, it gives you an incentive to get larger.

This amendment, the amendment of the Senator from Minnesota, does not prevent the use of funds for small operations or for existing CAFOs. But it prohibits cost-share funding for new or expanding confined animal feeding operations; that is, operations over 1,000 animal units. It limits the subsidization of the growth for the very largest livestock operations.

I believe this amendment is consistent with the underlying bill. It still helps livestock producers who are now in operation who need to meet ever stricter environmental standards. We have put more money into EQIP. We have expanded the EQIP program over six times above the baseline over the next five years—from $1 billion to $6.2 billion. So we are putting in a lot of money. I think this is a good way to invest this money protecting the environment, helping the livestock producers meet the more stringent environmental standards.

Again, we have more money, but that money ought to be used for the ones that are there now, the ones that need this help now. We have taken the cap off of limiting funds to large CAFOs in

the underlying bill, we have gone above 1,000—again, that is fine. But we don't want people to see the EQIP funds as an incentive. We don't want people to say: Gee, I have 800 animal units, I can go up to 2,000, 3,000 animal units now and the Government is going to come in and help me build these structures. If they want to expand and build facilities on their own, we don't prohibit that, but we don't want to use Government money to encourage that.

So it is a good amendment. I think it should be adopted.

I understand some other people may want to debate it, but the order is we are going to lay this aside for other amendments; is that correct?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Arizona or his designee is recognized to offer an amendment.

Mr. HARKIN. I yield the floor.

Mr. LUGAR. Mr. President, before that occurs, since I will be the designee, I just want to make a comment about the amendment of the Senator from Minnesota, Mr. WELLSTONE.

I appreciate what he is attempting to do. I find the situation—one in which I argued fairly strenuously, but I think without necessarily persuading Senators—that the farm bill, at least as it is now constituted, will inevitably increase planting of corn, wheat, cotton, rice, soybeans—those things to which the money is directed. There is strong evidence the USDA pointed out our last farm bill stimulated about 4 million acres of additional production into the program crops.

One might argue that we were not subsidizing expansion. But the evidence is much of this increase in acreage came from our largest, most efficient producers, whose names appear in lists receiving the most subsidies. Perhaps if we were to try all this over again and look with some consistency as we take a look at the livestock portion of agriculture at the same time we deal with the crops and various other parts—and that is what the Senator has sought to do, to take a whole farm, whole income approach—perhaps this amendment might have some more equity. It probably has value for the reasons the distinguished Senator from Iowa, our chairman, has pointed out. Clearly, most persons involved in these reform movements, support the EQIP program. I believe it is an important one with regard to the environment, as well as some equity for livestock producers. They are loathe to admit that this might produce more livestock, greater herds subsidized by the Federal Government. Obviously it does.

The Senator from Minnesota is trying to plug up that particular hole, while it seems to me there are gaping holes in the dike all around that are likely to lead to very large expenditures. I will study the amendment carefully. I will likewise attempt to work with my colleagues to see if we can bring some equity in all parts of agriculture. We will take a look again at the whole farm situation.

Does my colleague wish further debate on the Wellstone amendment?

Mr. HARKIN. No.

AMENDMENT NO. 2603 TO AMENDMENT NO. 2471

Mr. LUGAR. I understand the Senator from Arizona, Mr. MCCAIN, has an amendment at the desk. Is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. LUGAR. On behalf of the Senator from Arizona, I call up the amendment at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The bill clerk read as follows:

The Senator from Indiana [Mr. LUGAR], for Mr. MCCAIN, for himself, Mr. GRAMM, Mr. KERRY, and Mrs. MURRAY, proposes an amendment numbered 2603 to amendment No. 2471.

Mr. LUGAR. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide for the market name for catfish)

At the appropriate place in the substitute, insert the following:

SEC. . MARKET NAME FOR CATFISH.

The term ''catfish'' shall be considered to be a common or usual name (or part thereof) for any fish in keeping with Food and Drug Administration procedures that follow scientific standards and market practices for establishing such names for the purposes of section 403 of the Federal Food, Drug, and Cosmetic Act, including with respect to the importation of such fish pursuant to section 801 of such Act.

SEC. . LABELING OF FISH AS CATFISH.

Section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002, is repealed.

Mr. SMITH of Oregon. Mr. President, I rise today in strong support of the McCain amendment. This amendment will effectively repeal a ban on catfish imports which was quietly tucked into the most recent Agriculture appropriations bill.

It may seem on the face of it that a ban on catfish imports is of little consequence if you are not from a state that produces catfish. However, put in the larger context of the multi-billion-dollar U.S. seafood industry, the implications are clear. If this ban on catfish imports were allowed to stand, it would pull the rug right out from under our own U.S. Trade Representative who is trying to fight similar protectionist actions against the U.S. seafood industry by our trading partners. Regardless of the intentions of proponents of this catfish ban, it has significant impacts for other U.S. fisheries and deserves greater scrutiny than was afforded during the consideration of the Agriculture Appropriations bill earlier this year.

The specific reason why I have come to the floor to speak on this matter is because of its implications for the Oregon pink shrimp fishery. The pink shrimp fishery in Oregon has become increasingly significant to Oregon fishers in recent years as the groundfish fishery has declined. Pink shrimp, along with West Coast groundfish and Dungeness crab form the foundation of the commercial fishing industry in my state. Unfortunately, the successful development of the Oregon pink shrimp fishery will always be handicapped as long as we are unable to get fair treatment in the European market for the variety of pink shrimp harvested in the waters of the Pacific Northwest. The Europeans have been able to shut Oregon pink shrimp out of their market through a tariff policy that is biased in favor of the shrimp varieties found in their waters. With that tariff regime in place, Oregon pink shrimp effectively cannot compete in the European Union. As a result, the situation has had negative impacts on the price paid to Oregon pink shrimp fishers.

Recently, it has been brought to my attention that there may be a similar problem in getting access to the European market for Oregon sardines. The recent reappearance of sardines off of Oregon has been attributed to a significant ocean regime change. In any case, I want to make sure that this resurgent Oregon sardine fishery has fair access to foreign markets as well.

Given time, I hope that the United States Trade Representative will be able to resolve some of these issues with our friends in the European Union. However, that simply cannot happen when we in the United States Senate invoke protectionist measures of our own to keep foreign seafood products from competing here. That is what happened with this attempt to bar Vietnamese catfish from the U.S. market. It is prudent for us to act today to repeal this catfish ban. At the very least, a proposal of such significance should have been subjected to a full debate in the Senate during consideration of the Agriculture Appropriations bill.

I thank the Senator from Arizona for putting forward this amendment. I hope that the Senate will act today to repeal the catfish ban and allow all the issues involved to be considered by the appropriate committees of jurisdiction.

Mr. LUGAR. Mr. President, I understand the order is the Chair might at this point lay this amendment aside. If so, I suggest that.

The ACTING PRESIDENT pro tempore. The amendment is laid aside.

Mr. LUGAR. Is the amendment laid aside?

The ACTING PRESIDENT pro tempore. Yes, it is.

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

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

The bill clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

Mr. HARKIN. Mr. President, again for the benefit of those in their offices, Senators who are here today, the farm bill is open right now for amendment. Under the agreement made by the leaders, yesterday, I guess, or the day before—obviously there are no votes today. We can still take the amendments. They can be laid down, we can debate them with whoever is here, and they will then be in line for voting when we come back on Tuesday, or further debate, also, when we come back.

I say to my friend, I see my friend from Kansas is here. Maybe my friend from Kansas has an amendment he would like to offer on the farm bill and get it in line so we could, perhaps, vote on this mythical Cochran-Roberts amendment that I keep hearing about but I can't see. It is sort of ephemeral—sort of out there somewhere, but we can't seem to get our fingers on it. Maybe we could get the Cochran-Roberts amendment over here today, lay it down, and start discussing it so we can have it here next Tuesday.

I urge any Senators who have amendments to come over to the floor and lay them down.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, are we on the farm bill?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. GRASSLEY. Mr. President, I will address the Senate for a short period of time today. Next week I hope to be able to speak on this subject with a potential amendment I might offer about the trade aspects of the farm bill.

I start with the premise that we have a farm bill—and we have had farm legislation for 60 or 70 years—with what we call a safety net to give structure to the economics of agriculture, to give some certainty to agriculture, and to help farmers in times of low prices and problems.

So much of farming is beyond the control of the individual farmer. One of those things is international trade. Maybe we don't think of that as often as we do things such as natural disasters that hit farmers, domestic politics which might cause prices to go up or down, and decisions of the Federal Reserve which affect the value of the dollar. Sometimes international policies affect the value of the dollar.

There are just a lot of things out there that affect the family farmer over which they don't have any control. Family farmers tend to be more in the position, unlike most businesses, of having to take a price the market dictates for the products they sell over which they don't have any control. Also, they do not have a lot of control over the cost of their input for the production of their products. They are one of the few segments of our economy that have to pay whatever the market demands for their input, and they receive from the market whatever it pays.

That is why we have a safety net. We have had a safety net for farmers of one form or another. There hasn't been a lot of difference in those programs over the last 70 years.

We tend to speak about farm bills as if this farm bill is much different from the previous farm bill, et cetera. I am not going to go into those things. But there hasn't been that much difference. The premise has been very much the same. We are going to have a safety net for farmers to guarantee a certain floor of income at times of low prices because there is so much affecting the economics of the family farmer that is beyond their control.

I start with the premise—and the extent to which my colleagues disagree with me on this, I welcome their disagreement and this debate on it—that the farm bill, whether it is a 1950-type farm bill, or the 1996 farm bill, or even the one we are debating right now, is meant to have a safety net, is meant to sustain farmers in business during the period of time of low prices, which a lot of times is caused by things beyond the farmers' control. This safety net doesn't guarantee profitability. I don't think there is anything in any farm bill I have ever seen to guarantee profitability.

That is where trade comes in. When we produce 40 percent more than we consume domestically, it means that farmers have to have the ability to export. Export is very important. When there is no profitability in the farm bill, then the only profitability in farming is going to come from the marketplace.

When you produce more than you can consume domestically, that means the world marketplace is where the profitability for agriculture is going to come. In other words, there is not profitability in a check from the Federal Treasury to a farmer when prices are low, as has been the case in recent years, particularly in emergency bills, but there is profitability in exports.

Let me put it this way: the only reason there is profitability for farmers is due to the exportation of our surplus agricultural products. That is why trade is an important part of any discussion of farm legislation, even though the trade policies of this country are decided by other committees. One of those happens to be the Finance Committee on which I serve. The Finance Committee has jurisdiction over all trade policy. The most recent one is just about out of committee now—it had an 18-to-3 vote on final passage—which was trade promotion authority.

That is why sometimes when newspeople ask me, what are we doing for farmers in the farm bill, I give the same spiel you just heard me give about the safety net aspects of farm legislation being very important to helping sustain farmers.

But there is no profitability in the check from the Federal Treasury when prices are low. The profitability for farming is going to come through trade. That is why I like to remind people that trade promotion authority, and other trade policies, are probably as important to the family farmer as what is in a farm bill, and particularly when it comes to profitability.

So I try to look at a farm bill to make sure it has these opportunities. But the most important fact is that we have had trade agreements. The last General Agreement on Tariffs and Trade, which created the World Trade Organization, had certain limits that could be spent in certain categories of farm support.

There is a limit on what we call trade distorting expenditures, that if you exceed those, the United States and, in turn, the U.S. farmer, can be retaliated against legally if those are exceeded. So we have to be concerned about those issues.

I am not here to say that in every respect all of the different farm proposals floating around here are unconcerned with trade implications. It does not matter whether it's the farm bill that is before us, it does not matter whether it is the Daschle amendment to that bill, it does not matter whether it is Senator ROBERTS' and Senator COCHRAN's proposal, and it does not matter even whether it is the House bill; it is legitimate to bring the issue of trade to the attention of our colleagues.

For instance, in the House bill, it is my understanding—and I have not read that bill in its entirety, obviously—but it is my understanding that the House Agriculture Committee was concerned about this, so they put a provision in their farm bill that if the Secretary of Agriculture found that legislation violated the WTO agreements, that it could be suspended. If that is exactly how it works and we have to spend more on agriculture, because that would be trade distorting, due to the fact that prices are low and then we could be retaliated against dollar-for-dollar for the excess expenditure and the farm program has to be suspended, then you are suspending the safety net for farmers at exactly the time they are going to need it. What the bill does is cut off payments when family farmers would very likely need those payments the most.

Now, this can be avoided. Maybe my colleagues who are writing these provisions will say they are taking that into consideration and they are going to avoid it, or they may say the conditions under which this happens are not as dangerous as maybe I lead people to believe. So I am not here to question anybody's intentions or motivations or anything. I am just here to ask my colleagues to give further thought to ways in which the legislation that is obviously going to become law—if it does

not become law before this year, it is going to become law early next year; and whenever it becomes law, it is going to become law in ample time so we have it for the next crop-year in 2003 that it is needed—to take these things of trade into consideration.

(Mrs. CARNAHAN assumed the chair.)

Mr. GRASSLEY. Each year our farmers become more reliant on overseas markets to sell their commodities. In fact, last year, farmers in my home State of Iowa exported more than $3 billion worth of corn, soybeans, meat products, and even live animals.

Nationwide, American farmers annually export close to half of their soybeans and 20 percent of their corn production. Given the importance of export markets to American agriculture, the United States must assume a leading role in eliminating tariffs, excess trade-distorting subsidies, and other barriers to trade.

In 1994 we joined our trading partners in the World Trade Organization to discipline domestic agricultural support programs and to facilitate more open trade. The agreement, called the Uruguay Round Agreement on Agriculture, capped the level of trade-distorting support that WTO members can provide to producers.

Worldwide, agricultural tariffs were reduced by an average of 36 percent over a 6-year period. The United States agreed to reduce its own trade-distorting domestic support, or what is referred to as ''amber box'' spending under this trade agreement, by 20 percent, down to a point of $19.1 billion per year.

The Senate must pass legislation that abides by this commitment or our trading partners could take retaliatory action against our farmers and against our agricultural exports. Unfortunately, the farm bills before us, and I think particularly the House bill—and even the bill that was passed out of the Senate Agriculture Committee—leads our Nation down a dangerous road toward exceeding our ''amber box'' limits and opening the door to this WTO legal retaliation. Retaliation through higher tariffs on our exports and reduced market access for our farmers would reduce the worldwide demand for our commodities, resulting in an overwhelmingly domestic surplus and depressing domestic commodity prices.

In light of the high stakes for America's farmers, I urge my colleagues to carefully consider the potential impact on America's farmers of a farm bill that could violate our international trade commitments. We need to revisit the piece of legislation that was passed out of committee and work to improve it before we conference with the House because, as I pointed out, I think the House bill has very dramatic problems in this area as well.

Our farmers know how important international trade opportunities are for our commodities. That is why farmers support issues such as trade promotion authority and trade with China. That was such a hot issue last year being dealt with in the Congress. But if we don't practice what we preach regarding our World Trade Organization commitments, how will we ever convince our potential trading partners around the world that they should lower their trade barriers? And that is a goal of not only this administration, but also we have to compliment the previous Secretary of Agriculture, Mr. Glickman, the previous Special Trade Representative, Charlene Barshefsky, when about 15 months ago they tabled in Geneva for negotiation purposes of the agricultural negotiations that were going on under the WTO as it was mandated to happen in 1993 to start in the year 2000. They tabled negotiation positions for our country's farmers that were in the best interests of our farmers of zero tariffs in agriculture.

This administration has followed through on that in the Doha Round that started in early November, which is the new round of WTO negotiations that are going on. And that is what trade promotion authority is all about, to give the President the authority to make such an agreement. We have followed on the very good suggestions of the Clinton appointees on what sort of direction our agricultural trade ought to take.

I don't think there is any partisan disagreement on what we want to do on international trade to help the American farmers. The only thing we have to do is make sure we write farm legislation that is compliant with the intentions of what was initiated in the Clinton administration and followed through on by the Bush administration.

As I have said in the past, the Government can provide support, but only the marketplace can provide profitability. This isn't putting anybody in a position of political posturing if they don't agree with that. I just think it is the cold hard truth about our agricultural economy, if we are going to produce to our potential we must sell our surplus on the world market. We surely don't want the alternative, which is to produce for the domestic market only and find ourselves in a position of taking 40 percent of our productive capacity out of production and, through the Federal Treasury, pay the farmers for doing that. I don't think the taxpayers would support that.

Worse yet, that might sustain farmers; you could even have support high enough to guarantee profitability. But you would ruin the economy of the United States if you produced 40 percent less farm machinery, 40 percent less input into agriculture. A lot of that comes from the small town main street businesses of the America. We don't want to do anything negative to them. We want to keep our rural areas vibrant. That means economic activity.

Economic activity in American agriculture is to produce and to produce not only for the American people but for the hungry of the world, to help our economy, but also to help the economy of other countries as well.

It is a simple fact of life that the profitability in farming ought to come from the worldwide marketplace because the Federal budget is not big enough to provide farmers profitable margins year after year.

If we don't establish a farm bill that helps us to lower trade barriers, we will not be able to assist the agricultural community develop this long period of profitability.

Last week the Food and Agricultural Policy Research Institute, which is located on two campuses—Iowa State University and the University of Missouri—published a paper stating that there was over a 30-percent likelihood that the farm bill coming out of the Senate Agriculture Committee would violate our trade commitments.

They could say the same thing about some other ideas floating around here. They surely could say it about the House agriculture bill.

Think of it this way: If there was a better than 30-percent likelihood that a ship would sink, you wouldn't get on board. The farm bill before us has the potential to impose significant harm on our family farmers by violating the current trade commitments. If this were to happen, our trading partners could refuse to accept our exports and this action, being legal, at the same time would decimate the price of U.S. commodities affected. We can do better.

I hope as the debate on this farm bill continues or the debate on any farm bill continues, these issues of compliance with our international obligations, which is for the benefit of American agriculture, because as we can reduce worldwide tariffs that average about 60 percent down to where U.S. tariffs are single digits on agricultural products, just those facts make it a no-brainer that the United States should pursue free trade policy in agriculture and that it will benefit the American farmer.

If our tariffs are here and the worldwide tariffs average 46 percent, whatever we do to negotiate to bring those down—and remember our goal under the Clinton administration, now followed by the Bush administration, is zero tariff—it is a no-brainer that this is going to affect very positively American agriculture and bring profitability to the farmer.

The only place for profitability in an industry that exports or that produces more than 40 percent more than we can consume domestically, the only profitability then is in the world market.

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.

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

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

Mrs. CARNAHAN. Mr. President, a few week ago, the Department of Agriculture announced that commodity prices had taken their biggest 1-month drop in more than 90 years.

It has been 5 years since Congress last passed a farm bill. Every year since then, we have needed an expensive bailout bill. These bailouts are usually referred to as emergency disaster assistance. But the real disaster has been our farm policy itself.

The 1996 farm bill provided farmers with flexibility in deciding what, when, and where to plant. But it left them utterly without a safety net. When floods came, the farm bill gave them nothing.

When droughts cut their output in half, the farm bill gave them nothing. When the bottom fell out of prices, when the cost of fuel skyrocketed, when armyworms destroyed an entire crop, the farm bill gave them nothing.

Only when Congress passed emergency spending bills did farmers get any relief. That is a raw deal for the people who feed our Nation—and the world. How can farmers and ranchers plan for the next year's crop not knowing what programs will be in place?

It is time for Congress to act on a new farm bill—one that promoted competitiveness and consumer choice, while providing adequate income to farmers.

This fall, I wrote to Chairman HARKIN outlining my priorities for the farm bill.

I shared with him the recommendations I have heard from farmers across Missouri. I am pleased so many of these ideas were included in the bill reported by the committee.

First and foremost, this farm bill recognizes the need for a safety net. The safety net is counter-cyclical—to give farmers assistance when they need it the most. It will buffer our farm economy in difficult times, and allow small producers to stay in business.

The bill also allows producers to update the baseline acreage used to calculate these payments, to ensure they reflect the realities of today.

Earlier this year I proposed legislation to expand tax credits and other incentives to promote ethanol, soy-diesel, and other value-added products.

I am pleased that this new farm includes an energy title that will harness the potential of these clean, renewable fuels.

They provide valuable economic development, they give farmers a greater market for their product, they cut pollution and they decrease our reliance on foreign oil.

I applaud Chairman HARKIN and the committee for crafting a farm bill that strongly encourage the continued development of biofuels. I hope amendments will be added that will further promote the use of these fuels.

The farm bill passed by the Agriculture Committee makes a historic commitment to conservation. It allocates $20 billion over the next 10 years in new spending for conservation programs. That is $5 billion more than the House passed, and we need every penny.

The farm bill would invest almost $750 million in conservation efforts for Missouri over the next 5 years.

The bill protects the property rights of landowners. It encourages producers to remove sensitive land from agricultural production. It also offers incentives for continuing conservation practices and adopting new ones. If offers technical assistance for farmers and ranchers. It gives greater opportunities for private landowners to voluntarily expand conservation on forested lands. And it provides livestock producers with resources to build waste management systems.

I also believe we need country-of-origin labeling, as called for under this legislation. America's farmers grow the best products. They are the most efficient. They sue chemicals that are proven to be safe. And they live by the strictest environmental standards in the world.

I believe consumers, if given the option, would choose American products every time.

Now more than ever, Americans are concerned about food security. They want to know where their food is coming from. Country-of-origin labeling would not only help our livestock producers, but would also assure consumers that the products that they buy are safe.

We need measures to help rural America and help the family farm stay in business. Missouri farmers have urged me to assist them in efforts to revitalize rural communities and promote economic development. Rural America needs improved drinking water, telecommunications, and other infrastructure. This bill provides funding to address many of these needs.

And it increases access to capital for rural business ventures, particular equity capital.

I am particularly concerned about our young farmers who need financing to begin farming or to stay in the business.

Under this bill, the Direct Loan Farm Service Agency Program of the Farm Service Agency will be strengthened to assist these young producers.

In addition, a new farm bill must include a strong nutrition title. We must provide the Food Stamp Program with the resources it needs. We cannot abandon families who have been hit hard by the recession, or those struggling to move from welfare to work.

Chairman HARKIN's bill invests more than $6 billion in this important title. The House bill provides only half that. But with so many people out of work, so many children going hungry, we need the full amount.

Chairman HARKIN's nutrition title will make the Food Stamp Program work better for the people it serves. It makes the process of applying for food stamp benefits more efficient. It helps families moving from welfare to work by extending transitional benefits. It restores the value of food stamps to help poorer families keep up with inflation. These changes will mean a great deal to those who are struggling with the essentials of daily life.

One deficiency of this bill is that it does not address the issue of competition. There is a growing problem of vertical integration and concentration among agribusiness firms. The small family farm is becoming an endangered species, and that's just not right.

We need a strong competition title to maximize consumer choices. We must facilitate farmers' choices in marketing products and meaningful price competition.

I hope that over the course of the next few days, this bill can be improved with a competition title that will ensure we have a vibrant farm economy.

Mr. President, this farm bill isn't perfect, but it makes sense for Missouri's farmers. And it makes sense for America. It expands markets. It protects the environment. It is fair to small family farmers. And, most importantly, it provides a safety net when farmers need help.

Fundamentally, this bill is about ensuring that the hardworking men and women who produce the food that feeds the world can earn a decent living. These farmers deserve our full support.

Once again I thank the chairman and the committee, and I hope the Senate will act quickly on this legislation.

I yield the floor.

The PRESIDING OFFICER (Mr. HARKIN). The Senator from Utah.

Mr. HATCH. I ask unanimous consent to proceed as in morning business.

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

(The remarks of Mr. HATCH are printed in Today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Iowa.

AMENDMENT NO. 2604

Mr. HARKIN. Madam President, I know two Senators are waiting to speak on the bill. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, Mr. GRASSLEY, Mr. FEINGOLD, Mr. WELLSTONE, and Mr. ENZI, proposes an amendment numbered 2604.

Mr. HARKIN. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To apply the Packers and Stockyards Act, 1921, to livestock production contracts and to provide parties to the contract the right to discuss the contract with certain individuals)

On page 941, strike line 5 and insert the following:

Subtitle C—General Provisions

SEC. 1021. PACKERS AND STOCKYARDS.

(a) DEFINITIONS.—Section 2(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(a)), is amended by adding at the end the following:

''(12) LIVESTOCK CONTRACTOR.—The term 'livestock contractor' means any person engaged in the business of obtaining livestock under a livestock production contract for the purpose of slaughtering the livestock or selling the livestock for slaughter, if—

''(A) the livestock is obtained by the person in commerce; or

''(B) the livestock (including livestock products from the livestock) obtained by the person is sold or shipped in commerce.

''(13) LIVESTOCK PRODUCTION CONTRACT.—The term 'livestock production contract' means any growout contract or other arrangement under which a livestock production contract grower raises and cares for the livestock in accordance with the instructions of another person.

''(14) LIVESTOCK PRODUCTION CONTRACT GROWER.—The term 'livestock production contract grower' means any person engaged in the business of raising and caring for livestock in accordance with the instructions of another person.''.

(b) CONTRACTORS.—

(1) IN GENERAL.—The Packers and Stockyards Act, 1921, is amended by striking ''packer'' each place it appears in sections 202, 203, 204, and 205 (7 U.S.C. 192, 193, 194, 195) (other than section 202(c)) and inserting ''packer or livestock contractor''.

(2) CONFORMING AMENDMENTS.—

(A) Section 202(c) of the Packers and Stockyards Act, 1921 (7 U.S.C. 192(c)), is amended by inserting '', livestock contractor,'' after ''other packer'' each place it appears.

(B) Section 308(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 209(a)), is amended by inserting ''or livestock production contract'' after ''poultry growing arrangement''.

(C) Sections 401 and 403 of the Packers and Stockyards Act, 1921 (7 U.S.C. 221, 223), are amended by inserting ''any livestock contractor, and'' after ''packer,'' each place it appears.

(c) RIGHT TO DISCUSS TERMS OF CONTRACT.—The Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), is amended by adding at the end the following:

''SEC. 417. RIGHT TO DISCUSS TERMS OF CONTRACT.

''(a) IN GENERAL.—Notwithstanding a provision in any contract for the sale or production of livestock or poultry that provides that information contained in the contract is confidential, a party to the contract shall not be prohibited from discussing any terms or details of any contract with—

''(1) a legal adviser;

''(2) a lender;

''(3) an accountant;

''(4) an executive or manager;

''(5) a landlord;

''(6) a family member; or

''(7) a Federal or State agency with responsibility for—

''(A) enforcing a statute designed to protect a party to the contract; or

''(B) administering this Act.

''(b) EFFECT ON STATE LAWS.—Subsection (a) does not affect State laws that address confidentiality provisions in contracts for the sale or production of livestock or poultry.''.

Mr. HARKIN. I send this amendment on behalf of myself, Senators GRASSLEY, FEINGOLD, WELLSTONE, and ENZI. I will just take a few minutes to describe it because I know Senator COCHRAN and Senator ROBERTS are waiting to speak.

With this amendment, I would like to continue on one of the important themes I have stressed throughout the farm bill debate, competition issues in agriculture. In fact, the occupant of the chair, the Senator from Missouri, spoke about that a few minutes ago, about needing better competition in agriculture.

We had a competition title in the original farm bill. I thought it was extremely important. That was defeated but for one provision, country of origin labeling. That succeeded on an independent vote in committee, but the rest of the title did not make it through committee.

Some of us vowed to resurrect a number of provisions on the floor, not the whole title but a number of key provisions that were in the competition title. Beyond the amendment I speak about, two amendments were agreed to yesterday which I cosponsored. Senator FEINGOLD introduced an amendment which prohibits forced arbitration in livestock and poultry contracts. That amendment was adopted. After that, Senator JOHNSON from South Dakota offered an amendment that prohibited the ownership of livestock by packers. That amendment was adopted.

The amendment I offer today will address one more issue in the competition arena and that is livestock production contracts and the right of a farmer to discuss those contracts with his closest advisers.

As I said, the cosponsors are Senators GRASSLEY, FEINGOLD, WELLSTONE, and ENZI. The American Farm Bureau, National Farmers Union, as well as dozens of other farm, community, and religious organizations, support the amendment. And for good reasons. Farmers are concerned about competition.

A 1999 Iowa State Extension Service Rural Life poll indicated that 89 percent of Iowa farmers thought there was too much power concentrated in the hands of a few large agribusiness firms. A similar poll recently released by Kansas State University that targeted 27 farm and ranch States found that 77 percent of producers favor maintaining or strengthening current antitrust laws.

To address just a small part of that concern, the amendment I introduced today will provide some minimal protections to livestock production contract growers. The amendment does two things. First, it closes a significant loophole in the Packers and Stockyards Act.

Presently, the act protects farmers who sell livestock to packers. The Packers and Stockyards Act also protects those who grow poultry for others under production contracts. That was adopted in 1935. So since 1935, it has applied to production contracts in poultry. But the act does not protect those who raise livestock under production contracts for packers in other areas, such as for swine and cattle.

Again, in 1935 production contracts were not a big issue in livestock. It was a whole different world at that time. Since that time we have seen the growth of production contracts, both in hogs and now extending into cattle. The amendment would close this loophole so farmers who raise livestock under production contracts will be protected by the prohibitions against unfair and deceptive practices under the Packers and Stockyards Act.

Second, the amendment will allow a producer to share his or her contract information with their business adviser, landlord, executive or manager, attorney, family, and State and Federal agencies charged with protecting parties to the contract. I understand in some States farmers already have some of these rights, but many farmers tell me they feel intimidated to share their contracts with even their trusted advisers, with their banker. That is because the contract specifically says that none of the terms of the contract are to be discussed with anyone else. So the farmer feels very intimidated about discussing that—and, frankly, could face either a lawsuit or the loss of the contract if, in fact, that farmer does discuss that with an with a banker.

Again, as I have said, the first part deals with production contracting. Right now these arrangements—production contracting arrangements—are like a franchisee-franchiser relationship. It is becoming more prevalent in hogs and growing in the cattle industry.

When we passed the Packers and Stockyards Act in 1921, the industry was different. Livestock was owned by the farmers. They took it to the stockyards. The packers bought the livestock at the stockyards. That is why we passed the 1921 Packers and Stockyards Act, because the packers and stockyard owners were collaborating and conspiring to drive down prices for farmers. So Congress passed the Packers and Stockyards Act to prohibit these unfair practices in 1921.

The act currently addresses relationships only between packers and those who sell livestock to packers. It does not address production contracts. Right now, as I said, more and more of these production contracts are becoming common.

An Iowa State study indicates that 34 percent of the hogs in America are raised under production contracts. Current law does not address this current situation, and this amendment closes that loophole and provides protection to livestock production contract growers.

Again, because of their relatively weak bargaining position, farmers feel intimidated under these contracts. The amendment would specifically limit livestock contractors from engaging in unfair, deceptive, and unjustly discriminatory practices, section 202 of the Packers and Stockyards Act; and second, it gives the farmers the right to discuss terms of their contract with certain people: a legal adviser, a lender, an accountant, an executive or manager, a landlord, a family member, or a Federal or State agency with responsibility for enforcing a statute designed to protect the party to the contract.

Importantly, this amendment doesn't require anyone to share any information. It doesn't require that the contract be made public in any way. It does not affect the confidentiality clauses that state farmer can't share the information with a neighbor, or with the contractor's competitors. They can still do that. It is important to note the distinction.

Again, this amendment takes a couple of small steps to protect farmers against unfair and deceptive conduct in the livestock and poultry contracting business.

It will provide some protection for these growers and bring them more in line with the poultry growers since 1935. They have had this protection since 1935. It is time now to extend it to our cattle and to our swine producers and other livestock producers in America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. ROBERTS. Mr. President, I rise today to discuss the pending legislation and the responsibility that we have in the Senate to carefully craft our Nation's future farm program policy. Note that I said ''carefully craft.''

In doing so, I am being joined by the distinguished Senator from Mississippi, my good friend and colleague, the former chairman of the subcommittee on appropriations for agriculture on the Senate Appropriations Committee, THAD COCHRAN. I do not know of any Senator in the Senate who has been more of a champion for our farmers and ranchers throughout our country. We refer to him as ''our banker'' on the Appropriations Committee, who has the tremendous responsibility and does it so well in making sure we meet our budget guidelines while also ensuring the needed investments we must make in agriculture.

I feel quite honored and privileged to have him as a coauthor of the alternative amendment to the bill pending in regard to farm program policy.

I also thank his staff, Mr. Hunter Moorhead, who has worked extremely hard many hours; and my two staffers, Mike Seyfert, who is sitting to my right, and I would like to let his wife Christy know he is here. He has been by my side early morning, day, and night for the past week. I want to let her know he is really doing fine. Matt Howe, who is sitting in the back, has helped me tremendously. We are only as good as our staff.

We think we have come up with a positive alternative with the current legislation which makes a great deal of sense. I thank THAD COCHRAN for his leadership and help and for being a coauthor on this amendment.

This legislation directly affects the daily life and well-being of every citizen in America and many throughout a very troubled and hungry world. You can't read the headlines about Afghanistan and not realize there is a humanitarian effort now taking place with many organizations. That effort is made possible by the food which is produced in this country going to our troubled and hungry world—and the modern miracle of productivity of American agriculture.

But more particularly, this legislation directly affects the livelihood of America's farm families, those who persevere and prevail despite all sorts of obstacles not of their own making and things beyond their control. Yet despite the tough times, they feed us and those in need, and their record of productivity is, indeed, a modern miracle.

So here we are, my colleagues, on a Friday morning with several Senators present. We have had quite a debate over the last 3 or 4 days on yet another farm bill.

Counting the years I have been here as a staff member, a Member of the House, and a Member of the Senate, this is my sixth farm bill. I can recall the former esteemed chairman of the House Agriculture Committee, the venerable Bob Poage of Texas who used to describe farm bills in this way:

> My colleagues, is this the best possible farm bill? He would say:
>
> No, but it is the best farm bill possible.

There is a difference.

That is usually the way legislation works as we try to reach a compromise and pass the ''best bill possible.''

We need to certainly do that this time around. Our Nation's farmers and ranchers remain in the midst of very difficult times. We are not in very good shape in regard to farm country.

The challenges that we face today in the domestic and global marketplace and the revolutionary times we face today in agriculture are certainly unique.

I had hoped we could carefully craft a bipartisan bill and pass it out of the Senate Agriculture Committee.

As a reminder, we did that in achieving significant crop insurance reform just a session ago. It took 18 months. That bill was coauthored by myself and Senator Bob Kerrey, the former Senator of Nebraska. In fact, we have had more interest in that particular bill than almost any bill I have been associated with since I have had the privilege of public office.

In farm country, if you call a meeting of farmers, and if I happen to be the speaker, there may be 30, 50, or 100 farmers present, depending on where you call a meeting. With crop insurance, you will have 1,000.

Those of us who are privileged to serve American agriculture are very much aware of the fact that we have a very disparate and independent bunch of farmers and ranchers. We know they are in much better hands if we work together, if the agriculture posse tries to ride in the same direction, more or less, despite our differences.

I regret to report to you, Mr. President, and my colleagues and our farmers and ranchers, that I don't think that is the case today. We, unfortunately, are at odds both in terms of policy, and some would even allege there is just a tad bit of politics being played in this year's farm bill deliberations. That is not only too bad, but it is downright counterproductive. In fact, in Dodge City we say it is ''a dirty shame.''

For the record, I thank the chairman of the committee. I thank him for asking my advice and for meeting with me and my staff to see if we could reach an accord on a bipartisan bill.

We just had a discussion to see if there was some way we could work this out. I hope we can. The chairman, his staff and mine met for several hours in private discussions. I believe we made some real progress toward a bipartisan proposal that could, and I think would, have garnered support of the majority of members on both sides of the committee.

Certainly the Harkin-Roberts bill would have caused some double takes and some jaw dropping on the part of a few veteran farm bill watchers. I am sure of that. I sincerely appreciate the effort by the chairman, who is a good colleague and a friend.

The key was in the mailbox, according to that old Country Western song. And he said: Come on in. Let us work something out.

We left town Friday before Veteran's Day, and I believe some progress was being made. Unfortunately, something happened during the weekend. When we returned the following week, both the key and the mailbox were missing, and we were told to plan immediately for a very different bill and some different marching orders.

I remember an old television program called ''Name That Tune.'' They would listen to the song on the record. Then two people would race down the corridor and grab onto something, and say: I can name that tune in about 3 seconds. I guess that is sort of dating myself. Unfortunately, with regard to the new committee bill, others have named the tune—more particularly, leadership—and there was a new game. It was called ''Name Your Price''—a game that is still in progress, by the way.

The end result was a bill that is now going back to loan rates and target prices as income protection. And the committee bill was passed on a party-line vote.

Now, I do not question the intent of people who truly believe we ought to go back to loan rates and higher target prices. I just think that is not the way we ought to go. I think we have a better alternative. I do not question the intent of my colleagues. But I do question the process and the policy, and both, in my view, are counterproductive. That is about the nicest way I can put it.

It is one thing, my colleagues, to decide you are going to do a partisan bill, but it is another to deny the minority of the right to review the language of the bill and, as a result, the right to debate in an effort to, once again, carefully craft policy that will better enable the farmer and the rancher and the consumer to survive the fast-changing and dynamic environment in today's agriculture.

Just when farmers and ranchers need new tools and new policy, and a new reality check, the committee is playing the lead role in ''Back to the Future.''

My colleagues, we did not even receive a final copy of the commodity title of this bill until 1 o'clock a.m. on the same morning of the markup. Now, that alone is ludicrous and a black mark on the committee. For those of us who have no offices to work from—I am one of those who is a Member of the ever-increasingly disgusted ''Hart Homeless Bunch'' where we do not have an office, no access to files, limited access to computers, limited access to telephones, and limited access to e-mail due to closure of the Hart Building—the situation was impossible. One o'clock in the morning we got the mark.

Markup on the committee bill started at 8:30. I was still trying to write my statement to summarize my concerns at 8:47. I noted it on the clock. Staff had not even had time to read the bill, let alone carefully craft a substitute with Senator COCHRAN, which we finally did. I mentioned before, I have been through six farm bills and some pretty tough debates with strong differences of opinion, but at least I knew, or staff knew, what was in the bill.

Now, there is more than one way to ''skin the minority cat'' than to put his head in a bootjack and pull on his tail. That is no way to run a committee. Certainly, that was not the way it was done when our distinguished ranking member, Senator LUGAR, was chairman.

I understand that maybe I am erring on the side of being too harsh. Maybe this effort to lock up $73 billion for agriculture over 10 years, in a 5-year farm bill, to meet the requirements of an already outdated and unrealistic budget and to accommodate the party leadership and old partisan constituencies, and to satisfy the insatiable needs of different commodity groups and farm organizations and your same party colleagues, was just too overwhelming. I don't know. It is a daunting task. It is a tremendously daunting task. I know; I have been there. And I sympathize and I empathize.

This task must be overwhelming, Mr. President, because the show is still going on. I would like to say last-minute major policy changes stopped when the bill passed the committee, but it did not. This bill is probably about 1,000 pages. I meant to have a copy of the bill to see if I could lift it, but I am not going to go through that.

Staff reports just a small $15 billion scoring problem with the dairy section of the committee-passed bill, something that may be of interest to the Presiding Officer. The answer was a ''technical correction'' that solved the problem that completely changed the content of the language in the dairy section. Now, that is quite a technical correction.

When we have the final bill language for floor debate and action, and wade through it, we not only find dramatic changes to the dairy title, but significant changes to the conservation title as well. It is like Topsy; it tends to grow with each passing day and each passing vote.

Mr. President, so much for process. After all, fair and reasonable deliberation is in the eyes of the beholder. Process does not mean much to the producer down at the feedlot or the country elevator or the coffee clatch. But, by golly, policy does. Policy sure counts. It counts because it directly affects the farmer's pocketbook and his future.

Today, as I said before, we are not in very good shape. I do not criticize this bill because of intent or even the politics of bringing back outdated farm program policies simply because it is in the calcified bones of its authors and supporters. We all have our prejudices. I criticize this bill because I think it will be counterproductive, because I do not think it is going to work, that it will take us back to policy that does not fit today, and it will increase additional farm assistance in the future. At the same time, through its use of front loading of spending and budget manipulation, the bill mortgages what we call future baseline or our ability to write future farm bills.

Latest figures: $45.2 billion over 5 years in regard to the Daschle-Harkin bill. That leaves $28.3 billion for the second 5 years. Basically, if we do this, we have eliminated much of the baseline in the outyears. We need to find $16.9 billion when we write the next bill just to get back to this first 5-year level. We are mortgaging our farm bill future.

There are also two other considerations of no small notice. In its current and ever-changing form, it will be almost impossible to conference with the House. The President opposes it. The administration opposes this. They have a statement of administration policy opposing this. More about that just a little bit later.

Let me spell it out. The bill before us takes us back to past farm program policies of trying to provide income protection with higher loan rates and target prices. Now, there is no question that the farmer needs income protection with all the variables that he has to face and all that has gone on that is not talked about much in regard to critics of agriculture spending: the loss of the Asian market, the value of the dollar, different buying patterns, the European Union spending incredible amounts of money, and on and on and on, a glut all across the world in regard to commodities, which is unprecedented. Not many people really take a look at that when they try to criticize the farm program policies that are spelled out either by the distinguished chairman or by Senator COCHRAN and myself.

At the same time, it pays for higher loan rates and target prices by phasing out direct payments to the farmer and by cutting some $2 billion from the bipartisan crop insurance reforms we passed last year. Now, I am not happy about that. We spent 18 months putting together crop insurance reform as one of the tools that we promised when we passed the Freedom to Farm bill. The Freedom to Farm bill was passed on one side. And then there were about six other promises that we made to try to complement that bill.

No farm bill by itself can do what we all want to do on behalf of the American farmer. It took 3 years to pass the crop insurance reform. Here we find that we are virtually phasing out direct payments. In order to pay a higher loan rate and target prices, we are cutting $2 billion from the crop insurance reform we passed last year. That is wrong.

This business is supposed to provide a better safety net again by phasing out direct safety net payments and cutting crop insurance, the one program we have passed in the last years that prompted an overwhelmingly positive response from farmers.

I want to restate that. I do not think I can restate it too many times. The bill takes money from a bipartisan reform bill passed last year to pay for a ''scheme''—that is not a nice word —a plan that is shaping up to be a party-line battle. I do not think that is progress.

Now, my friends, we have been down this road before, and it did not work. Some continue to insist that higher loan rates will mean more safety net protection for producers and will prop up prices. I know that. I have listened to that argument during six farm bills. It is an old argument. It is a good argument, but it is a misconception, in my view.

First, our farmers only receive a payment under the marketing loan program, the loan program, if the market price is below the loan level and if the farmer actually produces a crop. If the producer does not have a crop to harvest, if there is a crop failure, of which we have many—that is why the distinguished Senator from Mississippi, in his role on the Appropriations Committee, steps forward year after year, to make ends meet—when farmers suffer from crop failures, all across the country, guess what. Then there is no payment. So the loan rate really does not provide any income protection for a farmer who does not have a crop. When he needs it the most, the assistance is not there.

Second, under the target price proposal, which, by the way, does not take place until 2004—until 2004—farm prices have to be below the target price level to receive a payment.

The problem is, crop failures often result in reduced supplies that cause high prices above the target price. That occurred in Kansas in 1988 and then 1993. In 1995 there was a freeze, a drought. Again, a producer may have no crop, and if prices rise because of decreased production and supplies because of crop failures, there may well not be the so-called target price countercyclical payment.

Go through the history of past crop failures where they occurred, count the bad years. It is possible that a farmer could have no crop to harvest, still receive no assistance through the loan deficiency program and the so-called countercyclical programs in the committee bill. If that happens —and I hope it doesn't—does anybody here believe those producers and their farm organizations will not be back asking for additional emergency assistance or, for that matter, a higher loan rate or target price? It has happened before.

I remember the late 1970s, the American Agricultural Movement came to Washington. Was that an experience. As a result, we simply increased the target price from $2.41 to $2.90. I think that was what it was. The distinguished chairman of the committee at that particular time was Ambassador Tom Foley, Speaker Foley, from the State of Washington.

What happens is, we simply increase the loan rate or the target price. That is not a safety net. Relying on loan rates and target prices under those circumstances is not a safety net. It is a hammer. I think the farmer prefers the safety net.

All of the uncertainty and unfair competition and lack of an aggressive, consistent trade and export policy is why we moved away from the higher loan rates and target prices and provided a guaranteed direct payment that the producers and their lenders—don't forget the lenders—could count on every year, especially when they suffered a crop loss.

We made a deal. We made a contract. We even had a colloquy on the House floor. Is this a contract? Can't take it away? No. And we wrapped up what we thought was a reasonable investment in regards to farmers and farm programs only to face unbelievable changes about two crop-years after that, and we had to move to some emergency help. Even that was under the rubric or the architecture of the 1996 act.

Again, I am very concerned that the proposal before the Senate basically pays for higher loan rates and target prices through a virtual phaseout of these payments by 2006. This is the wrong way to go. We do not think we should take away a payment our farmers and lenders can bank on—no pun intended—when they are drawing up operating plans for each crop-year.

We also need to remind everyone that the commodity title before us today tends to be less environmentally and conservation friendly than the proposal Senator COCHRAN and I will put forward. Ours is the better bill in this regard because it is not coupled to production. That is a big difference. When you have a payment program that is more dependent on actual production, there is a greater incentive to farm fragile land and use excessive chemicals and pesticides to improve yields. That is why the 1996 act was the most favorable to the environment passed up to that date.

This bill, with some differences in conservation, will have that as a hallmark. I do credit the chairman of the committee for focusing on conservation. But if you couple production and your payments, that is what will happen under the committee-passed proposal. Here again, we go back to the future.

In addition, we made a conscious decision between two basic choices when we wrote the last farm bill. We could continue on a course of micromanaged planting and marketing restrictions that have often put our producers at a competitive disadvantage in the world market, or we could pursue a course that would eliminate these restrictions and allow farmers to make their own planting decisions based on domestic and world market demands, while also receiving guaranteed levels of transition payments.

That, in fact, was the primary purpose, the primary goal of the 1996 act and the much maligned Freedom to Farm bill. It was not to take the Government payments and transition them and march the farmer off the cliff when the free market does not exist. It was, in fact, to give more decision making power and decisions to the farmer and, with that flexibility, as I have indicated, five or six other initiatives: Tax policy changes, crop insurance reform, regulatory reform, aggressive trade policy, and sanctions reform. We might have been a little naive in thinking we could accomplish this, but I would hope we could accomplish this prior to consideration of the next farm bill. That was the goal.

Before these changes, farmers used to put the seed in the ground according to dictates issued by the Department of Agriculture. It was what I called a command-and-control farm program policy. We lined up outside the ASCS office, now the FSA office, walked in and talked to Aunt Harriet. She made out all the paperwork and forms. And you set aside this ground and then you waited on Washington to figure out how much you had to set aside and what you could plant, when you could plant it. We were paying farmers for not growing anything. We lost market share. We used to have 24 percent of the world market share in terms of global exports. Now we are down to about 18. Guess who is 17? The European Union. Guess who is going to be 18 next year and we will be 17, if we pass this bill? The United States. That is not right. That was a dead-end street.

We are pleased that whatever proposal will be before us does at least maintain the planting flexibility. At least we did retain that. But we are also concerned that because of the increased focus on loan rates and target prices, we may end up with budget exposures that will force us back to set-asides and supply management—it would be an easy thing to do—in order to avoid excessive budget costs. Then we are really back to the future. That would be one of the most counterproductive things we could do for U.S. agriculture which must compete in a global marketplace. We may not like it, but that is the way it is.

Furthermore, since the committee bill or the substitute's basic tenet is raising loan rates, let me reflect for a moment on what the purpose of a loan rate is. This seems to be the nexus of the dispute between the two bills. Is the loan rate a market clearing device, or is it price support? I don't think it can be both. If we set the price at $3 on wheat and $2.08 on corn—and you could do the corresponding number with other crops—it very well may become a ceiling on price.

We also understand the belief among many Members and some producers that a higher loan rate is a greater incentive to put the crop in storage and simply wait for a higher price. That is the alleged goal of the loan program.

The question is, Would that result in a greater income for farmers, or does it

mean that they will simply pay higher storage and interests costs that would more than offset any increase in the loan rate? We have to ask ourselves what raising loan rates does for those producers who again suffer no crops and disaster.

We are well aware of the problems our friends in the northern plains have faced in the form of floods and blizzards, crop disease in recent years. Time and time and time and time and time again, with chart after chart after chart, we have seen our distinguished colleagues and friends across the aisle come down to the floor, 4 years, 5 years, 6 years, 7 years straight, and talk to us about the blizzards and the intemperate weather, the infestation, and goodness knows what else. These are regional weather problems that would have occurred regardless of the farm policy we put in place.

I grieve for those farmers. I empathize with those farmers. We have that in high-risk country in Kansas as well; not to that extent, but at least we know what they are talking about. Can we guarantee that higher loan rates would have done anything for these producers because they had nothing to harvest? The answer is no. They wouldn't have gotten a payment without the crop under higher loan rates. So does it make sense to spend $73.5 billion on a new policy that won't provide assistance to producers when they need it?

It is because of these concerns that Senator COCHRAN and I are offering our amendment to this legislation. Our bill is the only one of these two proposals that is, No. 1, nonmarket or production distorting.

No. 2, it provides a guaranteed direct payment to producers when they suffer a crop loss, when they need it the most.

No. 3, it provides a new, innovative approach to a countercyclical program, which I will describe in a moment.

No. 4, it creates a stronger footing for our international trade negotiators by enhancing the level of green box support we are providing to our producers.

Let me stop for a minute and indicate that on the Daschle-Harkin bill we have been warned by the administration that box may not be amber, it may be red. We can get to the cutoff very quickly. If we are successful in the WTO negotiations—and I don't know if we will be or not—it could conceivably result in the WTO really taking us into the proceedings where the United States government and the Secretary of Agriculture would have to come back to our producers and ask them to give money back. Senator GRASSLEY has a bill to address that, and it is a very important bill. I can't imagine it would come to that, but why go down that road to begin with?

So certainly, this bill doesn't have that problem because you are in the green box, not the amber box. Those are the boxes we define as to whether you are WTO legal or whether you are working out an international trade agreement with which you can work.

No. 5, let me say this is supported by the administration, supported by the President, and can be conferenced. All these groups and commodity organizations that have come in here and written letter after letter saying ''move the bill,'' if you want to move the bill, that can be conferenced with the House Agriculture Committee, pass Cochran-Roberts, and it can be signed into law this year.

I think our approach is clearly the better way to go as it provides a direct payment that reflects the unique and very difficult times we face in agriculture today. As I have said probably 10 times—and now I will say it for the 11th—it ensures that our producers will get assistance when they need it the most, when they have no crop to harvest.

While our colleagues across the aisle have looked to the past in creating their countercyclical program, we have looked to the future. This is a unique program. It would ask the farmers and ranchers to pay a little attention. We have proposed the creation of a farm savings account, set up by a producer, in conjunction with the Department of Agriculture, at the bank of the producer's choosing.

Under our proposal, a producer can place a portion of their yearly earnings into a farm savings account. The Secretary of Agriculture will then provide a matching contribution of up to $10,000, which will be based on the producer's level of contribution and the total number of producers who participate in the program.

The total level of funding in the account at any one time cannot exceed 150 percent of a producer's 5-year average adjusted gross revenue. In addition, a producer can only pull funds out of the account in two instances: No. 1, when his or her adjusted gross revenue for the year falls below 90 percent of their 5-year adjusted gross revenue, or when the producer retires.

By putting in these withdrawal triggers, we are setting up a countercyclical program that will only be triggered when an individual producer's gross revenues fall below their historical levels. Thus, it becomes truly a countercyclical program that guarantees that a small, or regional, crop loss will not prohibit producers from obtaining assistance when they need it the most. Under the committee proposal, and the substitute—a thousand pages or more—producers may not receive assistance, again, when they need it the most.

There are three additional important points we want to make regarding this farm savings account. I want to make sure our colleagues understand this.

First, participation is voluntary. A producer only participates if he wants to, but the incentive is that they will receive a matching payment from the Secretary of Agriculture.

Second, specialty crop and livestock producers are eligible for this proposal. How many times have we heard the livestock producer and those who represent specialty crop producers—more especially from the Northeast—complain that the farm program left them out? That is not the case here. The producers of fruits, vegetables, forestry, and livestock are all eligible to receive matching payments from the Secretary. Ours is the only proposal that will provide assistance directly to specialty crop producers.

While the proposal across the aisle provides for specialty crop commodity purchases, where most of the funding goes to large cooperatives or businesses, ours goes directly into the hands of the specialty crop producers.

Finally, we want to clear up some false statements that have been put forward regarding our savings accounts. They are not tax provisions. These are not tax-deferred accounts as have been proposed in separate legislation in this and previous Congresses—I am for those, by the way. However, they can earn interest at a rate determined by the bank where the account is established.

Mr. President, the choice between the two proposals could not be clearer on the commodity titles, as I have demonstrated. The proposal put forward by the committee takes us back to the policies of the past while our proposal looks to the future and is more consistent with the bipartisan proposal passed in the House that largely maintains current loan rates and provides reasonable direct payments to our producers.

We also have serious concerns with the proposed conservation title. It has been changed considerably from what passed the committee, and, in an effort to attract votes, it is dangerously mortgaging future farm bills by taking funds from the budget baseline in the years beyond the 5-year length of this proposed farm bill. I already referred to that in terms of the one figure, $45.2 billion over 5 years, leaving only $28.3 billion for the second 5 years. So that is what we are talking about.

Specifically, they are jeopardizing the future of some of our most popular and successful environmental programs, including the Environmental Quality Incentives Program—EQIP—Wetlands Reserve Program, Wildlife Habitat Incentives Program, and the Farmland Protection Program.

Their proposal frontloads funding for these programs and then provides for draconian reductions in the baseline for 2006 through 2011. At the same time, it greatly increases funding for something called the Conservation Security Act. That is a new, interesting, but untested program in 2006 through 2011.

I don't argue that the Conservation Security Act's goal of providing conservation incentives on working lands is not a good one. It is a good one. In fact, in our alternative we set aside a portion of our EQIP funds for activities

on working lands. But I don't think it would be right, and I think it would be a critical and unfortunate mistake, to eliminate the future of many of the successful programs I just mentioned in 2006 and beyond and, instead, stake our conservation success on an untested program.

We also remind colleagues that those programs that would face the most severe cuts and restrictions in the outyears are those that most directly impact wildlife, livestock, and dairy producers.

Is this really the way we want to go? Senator COCHRAN and I don't believe so. That is why you see a significant investment in current conservation programs and the ramping up of these conservation programs in our bill. We gradually increase funding for the popular programs that farmers now enjoy and participate in over 5 years for all of the specific purposes that certainly are commensurate with the worth of the programs.

Let me say that we are not trying in this effort to point out the differences between the bills, to create a partisan fight in response to what happened regarding the process of the debate. We are simply putting forward what we believe is better policy and a more responsible use of the funds available to it.

The time is short in this session of Congress, and even shorter as we speak today on Friday. If we are serious about really finishing the farm bill this year, we should pass our proposal, which is very similar to the bipartisan bill passed by the House and, again, which could be conferenced with that bill in a matter of days.

Our alternative does not slow the process. Some are trying to say we are slowing down the process. We point out that all the other titles of the substitute proposal—Senator COCHRAN and I sat down and looked at each and every one of them—we put forth are very similar to those titles passed by the Agriculture Committee. We do not have a quarrel with those. We do not have any dispute.

Except for shifting some money from mandatory to discretionary and eliminating the partisan use of crop insurance reform funding as an offset, we have largely left those titles intact. We agree with many of the principles that are contained within these titles. As I said, there is no dispute.

We always try to pass the best possible bill when we are considering farm bills. I do not believe the underlying bill is the best we can do. It is not time to reinvent the wheel and go back to the policies of the past. We are at another one of those historical crossroads in agricultural program policy. We can look forward or we can look back. We can choose to return to the failed policies of the past and put our farmers and ranchers at a competitive disadvantage on the world market at the same time our dependence on the world market actually continues to increase, or we can take the necessary steps to provide our producers and trade negotiators with the tools necessary to open foreign markets and meet the demands of the world market.

The critics of our proposal have in past years stated on the Senate floor that one day we will wake up and discover that we are no longer the leader in agricultural exports. I just mentioned that we are about 18 percent in all of the commodity exports globally. The EU is 17, and the trend is not good. It is just like we lost the market in regard to automobiles. It is interesting to note that many of the pitfalls suffered by the U.S. auto industry in the seventies and early eighties were based on an unwillingness to change policies and adapt to the desires of the consumer market.

Could there be a similar effect for agriculture if we proceed with the proposal that is put forward by the committee and continue down the path of programs that will make us uncompetitive in world markets and hamper our bargaining power at the WTO negotiating table?

My colleagues are correct. The choices we make today and in the next few months will affect the future of agriculture in the United States. My hope is that we will continue to look, with our producers, toward the future, as I have indicated, and not in the rearview mirror and at the broken policies of the past.

I have a letter that was addressed to the Honorable TOM DASCHLE, majority leader of the Senate, and the Honorable TRENT LOTT, the minority leader, from quite a few commodity groups and farm organizations urging progress on the farm bill so we can get it done this year.

I emphasize again that I want the best possible bill we can get. Some producers in Kansas have been in touch with me and asked: Can we get this done?

I said: I hope so. But would you support a bill that would provide you $1.3 billion less over 5 years in Kansas than the bill we have proposed? Would you support a bill that robs crop insurance reform to pay for higher loan rates which may depress the market? Would you support a bill that has a brand new conservation package that out on the high plains we really do not know that much about? And all of the additions that have actually been proposed? The answer to that is no. The answer to that is we want a better bill, and if you have a better bill that can be conferenced more quickly and supported by the administration, it seems to me that is the way to go.

Which bill has better results for Kansas farmers? There is an outfit called the Agricultural Food Policy Center—the acronym is called AFPC—at Texas A and M University. They estimate our proposal will provide $1.3 billion more in Government assistance to wheat farmers from 2000 to 2006. It also shows sorghum producers will receive more funding, and according to analysis by the Food and Agricultural Policy Research Institute (FAPRI) Cochran-Roberts/Roberts-Cochran will result in higher market prices, i.e, overall returns from the marketplace, while the Daschle-Harkin bill will actually drive prices lower than what would occur if the current farm bill remains in place with no changes.

It is the same in Montana and in other areas of the country, according to the FAPRI study, an independent study.

Sure, I want a bill. I want to get it done. I want to get it done as fast as possible, but I do not want to support the worst possible bill of the two.

I thank my colleagues for allowing me to speak at great length. I apologize to my colleagues for taking this much time. I have not had an opportunity to talk about this yet. I have amendments to offer, but I wanted to take this time to fully explain my personal view and the hard work that went into the alternative that I think certainly merits the support of the majority in regard to where we go with the next farm bill.

I yield the floor.

Mr. COCHRAN. Mr. President, I am pleased to join the distinguished Senator from Kansas in offering a substitute, an alternative, to the Daschle proposal for agriculture legislation. It is important we recognize we are involved in a process that does naturally and routinely, whenever Congress addresses farm legislation, take a considerable amount of time.

At the outset, I am disturbed by hearing news conferences are called for the purposes of highlighting how Republicans are obstructing or slowing down the consideration of this farm bill and are putting in jeopardy the passage of a farm bill before this session of Congress adjourns. That is totally unfair and unjustified.

If we look over the history of farm bill consideration, the 1996 farm bill, for example, under which we are now operating, there were over 300 amendments considered to that farm bill during the consideration by the Senate. There have been only a handful of amendments considered so far during this farm bill debate. They have all been germane amendments, all conscience efforts to improve the bill or change it in a way that will help provide more support that is needed by farmers in this perilous economic situation we are in, or in other ways changes farm policy the Senate has a right to consider.

There are going to be amendments. I do not know how many amendments are now pending. I am told there are over 30, according to our count last night. The point is, this is a serious issue. It has huge ramifications, not only for those involved in agricultural production but also for American consumers and the agricultural economy worldwide. So it is not a subject that ought to be flippantly or quickly

rammed through the Senate under the pressures of the last closing days of the session.

If this was thought to be an appropriate time to bring up a farm bill by the Democratic leadership, under the obvious constraints of the time we have available, why did they wait so long? Why did they wait until the last few weeks of a session of Congress to bring up a bill such as this? The House passed a bill much earlier in the year, even though at the time many of us thought it was not necessary to pass a bill that early. The legislation we are under now does not expire until next September. Farmers are worried, and justly so, that because of declining balances in the Federal Treasury, more pressure on the budget to wage a war against terrorism, to deal with the realities we have to confront on that subject, it may be more difficult to get the level of financial support for production agriculture than we may be able to get if we could act during this year. So that is really one of the reasons.

Another reason is so there can be a predictable level of support committed by the Federal Government to production agriculture, those who are involved in planting the crops, those who are involved in financing the planting of the crops, a level of certainty and predictability so they can make plans for this next crop-year. So that is a legitimate concern as well.

So we are trying to accommodate those concerns and interests, but it is very difficult. The pressures are tremendous to get this done and to get it done quickly and get it to the President so it can be signed and enacted into law.

That brings into question, which process or which proposal, which alternative, will likely serve that goal? I suggest it is the Cochran-Roberts bill and not the Daschle substitute. The Daschle substitute has an enormously high level of loan rates in it. That is one of the big problems because that is not going to become law. That is just not going to happen. That is pie in the sky. It is not a realistic expectation, under the circumstances we have today, for a new farm policy to be enacted quickly without people understanding all the ramifications. It is such a dramatic departure from current law, past policies, and the impact it is going to have on commodity prices, the production levels of commodities will distort the world market to such an extent it is unacceptable. That is the big problem.

There are other problems with this bill as well. There are huge numbers of new mandatory spending programs contained in this Daschle bill. In the rural development section of the bill, which we considered in our committee, there are numerous new mandatory spending programs. What is that? These are programs where the spending of the money is directed by law at prescribed levels for certain activities in rural development. Those programs that have been authorized in the past authorized funding levels, and the appropriations process then analyzes the availability of funds, tries to deal with the allocation of resources in a fair and justifiable way, after hearings and consideration of what the needs are each year, so annually we make a decision as to how much money is to be spent.

This bill is going to predict and mandate over 5 years how much money has to be spent for each of those rural development programs. That is new. That is a dramatic change. That is really not good policy. The Senate had not heard about that, had not talked about it, but that is in this bill. That is in the Daschle substitute.

I complained about it during the markup. We received the markup papers in the middle of the night before we marked up at 9 a.m. This is another part of this rush to legislate. The committee did not take time to have hearings, to consider carefully the options for a new farm as did the House. The House had hundreds of days of consideration prior to the beginning of the markup of the House bill. They had hearings all over the country, hearings in Washington. Our committee had some hearings.

There was a transition that made some difference. In March, the party majority switched in the Senate and the new leadership of our committee had the responsibility of taking over abruptly. That made it a little more difficult. There was a startup problem. We have had the anthrax business in the Senate. Senators have been displaced from their offices. Staff members have been displaced from their offices. There have been problems. There have been challenges to the ability of the Senate to work quickly to respond to the legitimate needs we have for appropriations legislation and other legislation. That is the reality of the situation.

There are amendments that I may offer on the rural development side. In fact, the Cochran-Roberts bill changes these mandatory spending programs into authorized spending programs so we can annually make decisions about the level of funding available and justified. Instead of being able to project a long period into the future of budget surpluses, which was the case, we are confronting a new reality. We are not going to have as much money in surplus in the Federal budget as we expected. That may affect the funding levels realistically available for some of these rural development programs. All of them sound good, but we have to view them in the context of budget realities and legitimate needs and how effectively these funds will be used to try to address the problems they are designed to solve.

One other aspect of difference between the Cochran and Roberts bill and the Daschle substitute is the conservation title. We have a very strong conservation title in our bill. The commodity title is different, as well, not only in the loan rates I mentioned but also in the predicted constant level of Government support made available, directed to producers of agricultural commodities.

Let me point out in some detail the differences in the commodity title in Cochran-Roberts compared with the Daschle substitute. Our bill maintains planting flexibility with a fixed payment throughout the 5-year life of the bill. In the last few years, Congress has provided producers with supplemental assistance because of the depressed prices and because of natural disasters which have struck many States. The combination has created disastrous situations. Congress has responded. There is no guarantee under the budget realities of today that we are going to be able to continue that level of ad hoc special emergency funding to provide those levels of support in the future. That is another reason the Cochran-Roberts bill determines in advance and sets out in clear language and numbers in the bill the amount of payments the Federal Government will make to producers of agricultural commodities.

Another aspect of our bill that is different is we maintain the successful marketing loan programs with loan rates that do not distort market prices. They do not encourage overproduction and therefore have a depressing effect on market prices.

A new farm savings account is authorized in this legislation. This will be money available to farmers from the Government to match their own savings they invest in order to cushion the effect of years where commodity prices are lower. There are naturally going to be ups and downs in market prices in agriculture as there are in a lot of other economic activities. This account creates a new 401(k) program for farmers. The Federal Government will match the money that the farmers put into these accounts.

Another change that farmers will appreciate in this legislation we are proposing is a provision allowing them to update their base acres. A lot of farmers are convinced the system, the way it works now and the way the program is administered, penalizes them because it contains out-of-date information and is not an accurate reflection of the number of base acres that are farmed and on which the payments can be calculated under this program. This process allows farmers to be paid on a more recent production list.

The conservation title I mentioned briefly. Let me point out specifics in the conservation title in Cochran-Roberts and why it is a very strong commitment to the conservation of soil and water resources in our country. There are higher levels of authorization for the programs that have proved to be successful in encouraging farmers to produce their crops in environmentally friendly ways. The centerpiece of the conservation title is the Environmental Quality Incentives Program, known as EQIP. Under the current EQIP, there is an authorization

level of $200 million per year, or $1.2 billion over the 6-year life of the bill. The Cochran-Roberts substitute raises that authorization by $450 million, to a level of $1.65 billion for the life of the bill. The Conservation Reserve Program is also increased from 36.4 million acres to 40 million acres. The Wetlands Reserve Program is increased to 250,000 acres annually. The Wildlife Habitat Incentives Program authorized at $25 million annually is increased to $100 million each year. The Cochran-Roberts substitute contains a generous level of support for conservation programs.

In summary, these are the reasons why the Cochran-Roberts bill is a preferred alternative to the Daschle substitute. It is trade friendly; it is consistent with the WTO rules; loan rate levels are consistent with the House bill, which makes the bills more easily conferenced. The Daschle-Harkin approach is not going to be easily conferenced with the House. In my view, it will be impossible to conference with the House. It cannot be reconciled with the House because of that fundamental major departure. Cochran-Roberts provides a strong commitment to conservation. I mention that again because some are suggesting we are not providing enough support for conservation programs in our alternative. That is just not true.

We have a farm savings account which will help counter adverse price cycles. The administration supports our bill. The President will sign a bill that is based on the principles of the Cochran-Roberts bill. Support for Cochran-Roberts will produce a bill and a new farm law, not just a campaign issue.

I urge Senate support.

Mr. CRAIG. Mr. President, the last few years have been very hard on all of Agriculture because what farmers are getting for crops often does not cover the cost of production, let alone make a profit.

Because of the prolonged slump in commodity prices, earlier this year we were on the floor debating additional assistance to farmers. I supported the $5.5 billion in emergency farm aid for the last 3 years, because I believe if we want our farmers to stay in business and our rural communities to survive, we must help them until prices come back. However, Congress cannot keep doing these ad hoc disaster bills. We must provide more certainly to farmers across the Nation, which is why I am pleased Congress is taking up the farm bill. However, I am disappointed that such a bipartisan issue has been made partisan. It is my hope that we still have time to pass a farm bill with good agriculture policy to help our farmers, ranchers, and rural communities. That is why I support the Cochran-Roberts alternative. A proposal that will provide support for our farmers when they need it and not send signals to produce when the market can not bear the production. Harkin has high loan rates which cause farmers to produce for the loan deficiency payment, the over production cause prices to be further depressed.

I also support the improvements to the sugar program. The authority for inventory management will help restore balance to U.S. sugar market and prevent more of our farmers from going out of business. The elimination of the marketing assessment was long over due, as sugar was the only commodity to be taxed for debt reduction. Sugar is an important crop to my state and these improvements will help it remain a viable part of Idaho agriculture. Harkin does all of this and gets rid of the loan forfeiture penalty. This proposal does not contain a so-called national dairy program that benefits some dairy farmers at the expense of farmers in my State. We should work on a national policy that is fair to all farmers and that makes us more competitive on the world market. I am pleased that dry peas, lentils, and chickpeas were included as a farm program. Loan rates and LDP's will help these crops remain competitive with wheat and canola in rotations along the northern tier states, this is in Harkin. I also support the nonrecourse loans for wool and honey. Our wool growers have seen wool become an expense rather than additional income from their sheep, this program will help to overcome that. Both wool and honey, as other commodities, have been adversely impacted imports and it is time these commodities have programs as other commodities do. I am pleased with the increases in EQIP, Environmental Quality Incentives Program, funding and the improvements to this program that is vital to our cattlemen who are working to comply with water quality issues.

The grasslands reserve program is a proposal I introduced earlier this year and I am pleased that it was incorporated in this amendment. This proposal will help keep working landscapes intact which will benefit the ranchers, rural communities and wildlife that are dependent upon them. There is much more to this amendment in all of the other titles but I will not go into detail, rather I would like to congratulate Senators COCHRAN and ROBERTS for assembling a well-balanced piece of legislation that works to address the different needs in every region of our country.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Montana.

Mr. BURNS. Mr. President, I rise today in support of the Cochran-Roberts approach to this problem. I think it is a middle-of-the-road approach to where we are under today's policies, what was proposed and what was voted out of the Agriculture Committee.

Yesterday there were a few of us who believed the cloture vote was not a good experience. Most of us who had amendments, and substantive amendments, had not been able to talk about those amendments or even file them. We believe they are very important. We all have the habit, in this debate, of being a little bit provincial. We look at what we need in our States. What we have experienced in the State of Montana—in the last 3 years especially, but basically we are in the middle of a 5-year drought. That cycle does not appear to be breaking in our State. We had a little snow here 3 weeks ago, but since then the temperatures have moderated and, again, we are into a very dry fall. It is unusual for Montana.

We have had winters when it has been very good in my State, even though we are on the northern tier. Nonetheless, it has been a dry fall and of course we live in the part of the country where, if it does not winter, it does not summer. We are afraid of that again.

The present legislation, the Daschle substitute, still offers some very troubling proposals. The day before yesterday, an extended debate was headed by our good friend from New Mexico, Senator DOMENICI. In the conservation title there is a section title dealing with CRP, to thrust the Government into a position where they can buy out, or coerce out, a farmer or rancher's water rights. This would involve going around the State water adjudication process, going around water trusts that have been set up for States such as Oregon and Montana and other Western States.

We are still looking at that section. Even though it was amended to allow States to opt into the program, we are still looking at it because I think the whole subsection of the conservation title should be stricken. We could talk about that and offer another amendment on that, but that would not be productive during this debate. But I do have a couple of amendments I am going to offer now.

I ask unanimous consent that other pending amendments be set aside.

The PRESIDING OFFICER. Is there objection?

In my capacity as a Senator from New Jersey, I object.

Mr. BURNS. While we are in the process of reviewing that, there are other areas of this legislation where we could offer amendments, areas which I believe have to be addressed by this body and by this Government.

We have a situation on the northern border with our good friends in Canada that is intolerable when it comes to movement of farm chemicals back and forth across the border. We have farmers in Montana who farm both sides of that international boundary. We would like to normalize those labels of like chemicals that are labeled to do the same things. So far, we have not been able to do that. I think it would be inappropriate, again, to offer an amendment, hard and fast, where we could deal with that problem. But I will be submitting some language because this does involve the EPA, the Department of Agriculture, and it also involves our International Trade Representative. To

get them involved, report language is going to be needed in order to deal with that problem.

We could also talk about captive shipper in those areas where we only have one railroad. There is an old saying in Montana that you farm the first year for the Government, the second year is for yourself, and the third year is for the railroad, because they take about a third of your crop just to move it to the processor or to the export terminals. We are in a position where it costs us more than it should. It is funny that you can ship grain from Omaha to Minneapolis or Portland cheaper than you can ship it from Montana. We have to deal with that, and so far we have not been able to come to grips with how to deal with monopolies in a State, especially when it impacts the movement from a State that produces raw materials.

Of course, we have that situation in grain. We have the situation in coal. It impacts the cost of energy. It also impacts the cost of farming. We forget around here that agriculture buys retail and sells wholesale, and usually pays the freight both ways.

We could also get on the old populist line, that what is lacking in agriculture today is that for years—and I suggest this to my friend from Kansas—for years we lived on the part of the consumer dollar that ranges from 15 cents to 20 cents. That is not true today. We are down to 9 cents or 10 cents.

We have no lever in the market. We can't just go to the marketplace and say: No, it cost me $4 to produce the grain. I am not going to sell it for less than $4; that would be silly. Because that is like going to a store or tractor dealer or fertilizer guy, who can say: No, it cost us so much for the fertilizer, and this is what it is going to cost you. And guess what. We pay them. But a farmer doesn't have that leverage in the market that he once had.

Yesterday we had an amendment dealing with packer concentration, basically, saying the packers could not own livestock, or, if they did, they could only own it for 14 days prior to the scheduled slaughter. I don't know how you get 14 days and I don't know how you define that—that is yet to be determined.

There is a reason for this. There is going to be a reason we should deal with the Packers and Stockyards Act, because that is a law that was written way back in the 1930s and it has never been amended or changed in a substantive way. Back in those years when I was a lad, I would say 80 percent of the livestock that was marketed went through terminal markets. We can remember the great stockyards in Kansas City, Omaha, Chicago, Minneapolis, or South St. Paul, Sioux Falls, and Sioux City, East St. Louis—all the great terminal markets. Over 80 percent were marketed that way. Packers specifically in that law were prohibited from owning a commission house or stockyards.

There was a reason for it. Back then, we had the ''big five.'' There was Wilson, Swift, and Cuttahay. I have a fantastic memory, but it is short. Back in those days we had the five major ones when we talked about livestock marketing and processing. Now the movement of slaughter animals to market is reversed. The chicken industry is a horizontal and vertical entry. In fact, I would say it is done 75 percent of the time in the hog business. They have ''chickenized'' the hog business. But in cattle, they have not. If 80 percent of the cattle are going to move to the plants without going through a stockyard, or commission house, or an auction market, then another firewall has to be built.

There is a very good reason for that. The intent of the law was good, and it worked. It worked to benefit the producer. That is why the amendment that was voted on yesterday in the Chamber which came from the livestock area was successful.

I ask the Chair, How are we doing? Can I offer my amendments?

The PRESIDING OFFICER. The Senator may offer his amendments.

Mr. BURNS. I ask unanimous consent to set the pending amendment aside.

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

Mr. BURNS. Thank you very much. I appreciate that.

I offer this amendment, and I will talk more about it later. But it is a limitation on the amount of acres that one landowner could put into CRP.

The CRP is a well-intentioned program, but it has been changed. I guess it evolved. It has been done mostly through Executive order rather than through legislation.

I think it is about time that we get the Conservation Reserve Program back to its original intent. The intent was to set aside those undesirable or highly erodible acres, and the Government would reimburse the farmer for good conservation practices. It was very successful. I don't know of a time in Montana when we have had a better habitat for our upland game birds—grouse and pheasant.

We had the situation where some people under farm programs were plowing from fence row to fence row. Lands that should have never ever been broken were going into cropland.

We kind of killed two birds with one stone. We said: OK. Let us set some of those lands aside. Maybe that will cut back a little bit on production. That will give us a better market. But those highly erodible and marginal lands could also be used for a very good use—for the environment and the maintenance of our habitat for our wildlife.

I don't know of a farmer or rancher who doesn't like a little bit of wildlife around. I know I do. My father even planted little areas of lespedeza, and put four rows of crops around it. It was covered with quail in those areas. They are a marvelous bird.

This amendment deals with the amount of land you can put into CRP.

There is also another reason for this amendment. We have seen in rural areas that our smaller towns have dried up. We have seen very good productive land put into the Conservation Reserve Program. Instead of the farmer selling the land to a young farmer, they have put it in there. And they go where the snow does not fly.

It is really not a bad deal, when you think about it. But it is counterproductive to our communities when the biggest base is production agriculture. Those lands should be kept in production. After all, the American people have decided they want their insurance policy, called ''plentiful food.'' They want the quality and the quantity. They also want the grocery store open 24 hours a day. That is the reason for this amendment.

I ask unanimous consent that the pending amendment be set aside.

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

AMENDMENT NO. 2607 TO AMENDMENT NO. 2471

Mr. BURNS. I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. BURNS] proposes an amendment numbered 2607 to amendment No. 2471.

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

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

The amendment is as follows:

(Purpose: To establish a per-farm limitation on land enrolled in the conservation reserve program)

On page 205, strike lines 8 through 11 and insert the following:

(c) MAXIMUM ENROLLMENT.—Section 1231(d) of the Food Security Act of 1985 (16 U.S.C. 3831(d)) is amended—

(1) by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—The Secretary'';

(2) by striking ''36,400,000'' and inserting ''41,100,000''; and

(3) by adding at the end the following:

''(2) PER-FARM LIMITATION.—In the case a contract entered into on or after the date of enactment of this paragraph or the expiration of a contract entered into before that date, an owner or operator may enroll not more than 50 percent of the eligible land (as described in subsection (b)) of an agricultural operation of the owner or operator in the program under this subchapter.''.

Mr. BURNS. Mr. President, that is the amendment on which I just had the opportunity to speak.

I ask unanimous consent that the amendment be laid aside and that I be allowed to offer the second amendment.

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

AMENDMENT NO. 2608 TO AMENDMENT NO. 2471

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. BURNS] proposes an amendment numbered 2608 to amendment No. 2471.

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

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

The amendment is as follows:

(Purpose: To direct the Secretary of Agriculture to establish certain per-acre values for payments for different categories of land enrolled in the conservation reserve program)

On page 212, strike lines 13 through 15 and insert the following:

reduce the amount of payments made by the Secretary for other practices under the conservation reserve program.

''(j) PER-ACRE PAYMENT LEVELS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall conduct a study to determine, and promulgate regulations that establish in accordance with paragraph (2), per-acre values for payments for different categories of land enrolled in the conservation reserve program.

''(2) VALUES.—In carrying out paragraph (1), the Secretary shall ensure that—

''(A) the per-acre value for highly erodible land or other sensitive land (as identified by the Secretary) that is not suitable for agricultural production; is greater than

''(B) the per-acre value for land that is suitable for agricultural production (as determined by the Secretary).''.

Mr. BURNS. Mr. President, this amendment also deals with conservation reserve. The original intent was to take those marginal and erodible acres out of production and set them aside.

This amendment pays the landowner more for the acres that he sets aside that are the lower class lands and soils and pays less for the productive land.

This is an incentive for the farmer or rancher to set aside the land that we really want to see in the Conservation Reserve Program, and it will do everything that we wanted to do that I spoke of on the first amendment.

It is fairly straightforward. If we think this program is important, then we must fulfill the intent of the program and give the producer the incentive to carry it out. I think that is what this does.

I will offer amendments as we go along, but those are the two main amendments that I wanted to offer to the Daschle substitute of the farm bill.

I hope as we march down this road to try to craft this legislation that we can at least take a commonsense look at these amendments.

It seems in agriculture when you start talking about a farm bill everybody becomes a farmer. Sometimes we get led astray when we are not living in the real world on what it is like in the country.

I want to tell you that there is only one problem in the country; that is the price. Everything else would go away if we were getting a fair price for the product. The price we get now has very little to do with the cost of the final product we buy in the grocery store.

As I said, we were very happy when we used to receive 15 to 20 cents of the consumer dollar. Now we are down around 9 or so. That becomes a real strain.

I thank the Chair, and I thank my good friends who are managing this bill because it is difficult to do that, at best. But we will start talking about two other items and offering some report language that deals with those items so that we can start the process to deal with that. Those items deserve to be debated. I think everybody in this body needs to know the particulars of what is involved with captive shippers and the problem we have in the normalization of labels when we talk about farm chemicals and fertilizers.

Mr. President, before I yield the floor, I ask unanimous consent that my amendments be set aside and we return to the amendment that was considered before I offered my two amendments.

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

Mr. BURNS. I thank the Chair.

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

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

Mr. DORGAN. Mr. President, this morning we have had a generous discussion of farm policy. Some see me come to the floor of the Senate and say: Oh, no, here comes the farm speech again. Probably that is the case because family farming is very important to this country, to its future, and the passion I have for trying to do something to keep a network of food producers in our country represented by families living on farms in America is a passion that doesn't dim. And so I will respond to some to the discussion to date.

We have been debating the farm bill all week. Today we are in a town largely vacated. We don't have record votes. The Chamber is largely empty. We are in a situation where we will now take the farm bill into next week because we had a cloture vote to try to cut off a filibuster yesterday, and we did not succeed. Fifty-four Members of the Senate voted to restrict debate so we could finish the farm bill, and that was not enough. It requires 60 votes.

We have some in this Chamber who have decided to slow-walk this farm bill. While that is not unusual—that happens on legislation—no one has actually confessed to that strategy. They just have done it. Actually, on a good day no one accuses the Senate of speeding. But on bad days, this is almost glacial in terms of its movement. That is what has happened in recent days with respect to the farm bill.

I listened carefully to the discussion this morning and to the discussion earlier in the week with respect to those who don't like the farm bill that came out of the Senate Agriculture Committee. I am reminded of the person who knows the cost of everything but the value of nothing.

We have had a lot of discussion with respect to a farm bill, and it is about numbers—carryover stocks, loan rates, direct payments, a whole range of numbers. No one really talks of values.

This debate is much more than just a discussion about numbers. It is a discussion about values: What kind of a country do we want to be. What kind of an economy do we want to have? Who do we want to produce America's food? Does it provide security to have a network of family producers scattered across this country, producing America's food? Does that produce a more secure food supply? Those are the questions we also ought to be discussing.

I have expressed to my colleagues previously my feelings about farming and family farmers and ranchers in my State and other States. The Presiding Officer today is from the State of New Jersey. It is a large State, an urban State. His experience and background would be different than mine. I come from a town of 300 people. The Presiding Officer likely grew up in a town slightly larger than that.

It seems to me that all of us coming together in this Chamber represent the gridwork of America, bringing different perspectives and different values from different parts of the country together in a discussion about who it is we are and what we want to be. That is why I rise to talk for a moment about family farming in North Dakota and what it provides for our rural lifestyle.

My little town of 300 people just had their last high school prom last May. It was the last high school prom because it was the last year of their high school. I graduated many years ago from that same school in a class of nine. There were seven boys and two girls.

(Mr. INOUYE assumed the chair.)

Mr. DORGAN. Well, the years passed and passed, and some more years passed, and they came to last May when the high school in Regent, ND, was closed. They held their last high school proposal. So the Regent Ranger basketball team and that high school are history. That is happening across much of the Farm Belt in the small towns that are shrinking like a plum to a prune, just shrinking up.

So the question for many is, Does it matter? Isn't that the inevitable march of progress, the drumbeat of moving ahead? Isn't that inevitable? Why not just accept it?

There are things that we lose in this country when we decide that that which is rural doesn't matter. I will give you some examples. I have mentioned before these examples. Nonetheless, they are important. If you are in need of a hotel room and are in Marmarth, ND, this evening, there is a hotel in Marmarth, ND. No one works there, however. You just go in and you take a bed, and the next morning when you leave, there is a cigar box attached to the inside of the door and they would like you to put some money in it, if you can. That is how you get a

hotel room in Marmarth. Admittedly, it is a small town. Marmarth has 70 or 80 people now. It is an old railroad bunkhouse that they use as a hotel. The door is open for you if you need a place to sleep. Just put some money in the cigar box.

That is part of a system of rural values that I think is important to understand. Another part of my State, down the road, also in the southern part of the State, is Havana, ND. People magazine did a story about Havana. They have a cafe in Havana, a little restaurant, but it is also a very small community. I believe it is under 100 people—perhaps just under 200. In any event, in order to keep the restaurant open, because they can't afford to keep it open under regular circumstances, they asked the townspeople to sign up each week for when they can work there for 2 hours—for free, for nothing. That is the way the community keeps the small town cafe open.

In Tuttle, ND, a little town of less than 100 people, they lost their grocery store. That wasn't satisfactory to the people in Tuttle, so the city council decided they would build their own grocery store. So you have a city-owned grocery store there. Some would call that socialism, but they simply wanted a grocery store, so the city built it. I was there the day they opened the new grocery store. They asked me to come. They cut a ribbon on Main Street. They had the high school band out on a beautiful day. The sun was shining, the wind was blowing gently, and the high school band played on the streets to celebrate the opening of the city-owned grocery store. Good for them.

In my hometown of Regent, they had a robbery. They had not had one for an awful long time. The county sheriff from Mott came rushing over in his car. He had his lights and siren on because he doesn't get a chance to use them that much. He came rushing in and discovered someone had stolen some money from a home. He investigated and announced that there was no sign of forced entry because these folks had gone on vacation for 2 weeks and had not locked their house. They had left some cash in their home and someone had stolen some cash. But there was no sign of forced entry because, having left for vacation for 2 weeks, they didn't lock their home.

The county sheriff said to the residents: There are two things you ought to consider doing. One, if you are going on vacation, consider locking your home. Two, if you are going to leave your vehicle on Main Street, consider taking your keys. The people in my hometown down at the cafe talking about that discovered there was a practical problem for the first suggestion. Most people didn't have keys for their homes. Regarding the second recommendation, the county newspaper pointed out that the county sheriff thought people should remove keys from vehicles on Main Street when they parked. They asked a rancher how he felt about that. His response was: Well, the question I have about the sheriff's suggestion is, what if somebody needs to use my pickup truck?

So that is where I come from. That is a set of rural values that you won't find in some other parts of the country. These are wonderful places in which to live and raise children, places with good neighbors. So this is more than just about dollars and cents. It is more than just about graphs and charts that people show with lines and bars on them. It is about values, a value system.

Let me speak for a minute about what is happening in rural America. The discussion we have heard this morning is about our plan versus their plan. Well, look, every plan that existed in the last 30 years had been a plan during which, when implemented, we have had this relentless march away from rural America.

There is a Lutheran minister in New England, ND, who told me that she conducts four funerals for every wedding. She says: For every wedding I conduct in my Lutheran Church, I conduct four funerals.

I thought, that is the opposite of that movie, ''Four Weddings and a Funeral.'' In rural America, it is four funerals and a wedding. Why is that the case? Because the population is growing older, young people are leaving, family farmers are going broke. This rural lifestyle of ours is decaying and atrophying. The question is whether the Congress cares about it, whether there is a public policy in Congress that matches the kind of public policy Europeans have already embraced that says: Do you know what we want for our future? We want a network of food producers represented by families, producing food on the land across Europe. We want that for food security purposes and for economic and cultural and social purposes. They have done it. Go to Europe and go to a small town and ask yourself whether that town is living or dying. It is alive. Do you know why? Because families out there are making a living on the land producing crops.

This country points to Europe and says it provides subsidies to its farmers, as if it is an accusation. Yes, it does, because that is the kind of economy it wants. When prices for food collapse on the international markets, Europe says they want to maintain a network of farmers in rural Europe. So, too, should the United States decide that family farmers matter. Family farming is much more than just the act of planting a seed. Family farming produces communities. It is the blood vessel that creates small communities. It is where we raise children and educate children, and those family values that start on the farm and roll from family farm to small towns to big cities nourish and refresh the value system of this country. That is why this issue is important to some of us.

We can ignore this, we can pretend the problem doesn't exist, and we can say everything is just fine. But that ignores the truth—the fundamental truth that somewhere all across rural America this morning families were waking up on farm after farm after farm wondering how long it is going to be before they lose their farm. How long before they lose their hopes and dreams of trying to make a living by scratching the land and planting a seed, how long?

You can't imagine the letters we receive from people who have lost everything. A woman called me a while ago. She and her husband got married just out of high school and started a farm. That was about 25 years ago. It was a dairy operation. If anybody knows anything about dairy, you know how hard that is. You milk every day, twice a day, early in the morning and at night. She said for 25 years they have scrimped on everything; they don't go to town on weekends or at night, and they don't spend money foolishly on anything. They wait an extra year to buy Levis for their kids for school. They called me and told me a story.

She said: The bank says they are going to foreclose on us because the price of milk is too low and we can't make a living milking 80 cows. What are we going to do? It is the only thing we know. It is what we decided to do after high school. Our dream was to run a family farm. We have done it for a quarter century. We are not trained for other things. Can you help us?

That plaintiff cry, ''Can you help us,'' comes from all corners of rural America to the U.S. Congress, asking: Do you care whether family farms produce America's food? If you do, give them a decent opportunity to make a living if they are good managers.

That brings me to the point of the numbers. When a family farm in rural America today raises a bushel of wheat, they are paid a pitiful sum for that bushel of wheat by the grain trade because the grain trade says that food they produce isn't worth anything.

It is inexplicable to me that in a hungry world where half a billion people go to bed at night with an ache in their belly because it hurts to be hungry, our farmers are told their food has no value. It is just inexplicable. That is what the grain trade says to the family farmer, but that food the grain trade tells the family farmer has no value is put on a railroad that in most places charges monopoly rates to a farmer to haul that grain to the market.

From that market, a cereal manufacturer will take from that bushel of wheat a kernel and puff it, and by the time they get that puffed kernel of wheat and stick it in a cereal box, seal it up, put bright colors on the box, send it to the grocery store, and put it on the shelf, they will sell that for $4 for a small box. All of a sudden that food does have value. It just had no value for the person who bought the tractor and planted the seed and took the risk.

The value is to the company that took the kernel of wheat and puffed it, or the rice or the corn and flaked it

and created the pop and the crackle, and then sold it for $4 or $5 a box. That is where the value is, apparently.

Farmers have increasingly lost their share of the food dollar as they are pressed from above and pressed from below by increasing monopolies in virtually every direction that a farmer looks—hauling their product, selling their product, buying their chemicals, buying their seed in virtually every direction. Then when the Federal Government gets about the business of dealing with trade, saying to farmers, by the way, we will let you sell overseas that grain you raised, we discover the trade agreements this country has negotiated with others are fundamentally bankrupt in the way they treat family farmers.

We negotiated one with Canada and sold out American farmers, just sold them out. We negotiated one with Mexico and sold out American farmers. And the list goes on.

Farmers need a little help. Farmers are asking Congress to stand on their side for a change.

Let me go to this question of what kind of plan will work. We have a plan before the Senate that comes from the Senate Agriculture Committee. I know the administration does not like it. I also know some of our colleagues who spoke this morning do not like it very much. The administration wrote a statement of administration policy; it is called SAP. There is an acronym for everything in this town. They said supporting prices is self-defeating.

The point is, we really should not support prices for family farmers. And I fundamentally disagree with that. If a big economic interest has a headache, this town is ready to give them an aspirin, fluff up their pillow, and put them to bed. This town is ready to help them at the drop of a hat.

How about a family farmer who does not have much power? How about a family farmer who discovers the grain they sell has no value? Colleagues say: Supporting prices is self-defeating. It is not self-defeating. Supporting prices for family farmers is an effort to help this country maintain a network of food production that promotes domestic security in this country, promotes a lifestyle and a culture in America that is very important. It is not self-defeating at all.

We have brought this bill out of the Senate Agriculture Committee, and Senator HARKIN and many others brought it to the floor of the Senate. It was reported out unanimously. Every title of the bill but one was voted on unanimously, and that was the commodity title. That title was voted on and had a Republican vote, so it has a bipartisan flavor to it. This bill was virtually unanimous coming out of the Senate Agriculture Committee.

Despite the fact there is an urgency to get this done and get it done now—we are trying to get it done by the end of the year—yesterday we could not break a filibuster because some do not like the price supports in the bill.

Today we have a discussion by some who say they want to offer an amendment. We have been waiting for that amendment for, I believe, 4 days now; the amendment will reduce price supports for every single commodity. It will reduce the price supports for wheat, corn, barley, oats, oil seeds, and soybeans.

It seems to me reducing price supports—and the bill that came out of the Senate Agriculture Committee, in my judgment, is not generous enough, but at least it gets us at the starting line of what we need to do to help family farmers—reducing price supports from that level, in my judgment, would make no sense at all.

The proposition is: Let's have a direct payment to farmers that has no relationship to price. That is Freedom to Farm, too. That is the current farm law. The current farm law, Freedom to Farm—which title is sort of incongruous, in my judgment, but nonetheless that is the title to it—has nearly bankrupted rural America.

Every single year Freedom to Farm has been in force, we have had to do an emergency bill at the end of the year to keep people afloat. Why? Because the underlying farm legislation is awful. It does not work, and everybody in the country knows it does not work.

The proposal that says what we really need to do now is have a fixed payment, notwithstanding what prices are in the marketplace, is saying: Let's continue what we have been doing. Freedom to Farm is a proposal that says: Let's have 7 years of declining payments. It does not matter what the market is.

If the market is $5.50 a bushel for wheat and you do not need the help, you are going to get it anyway. That is what Freedom to Farm is. They did not calculate that instead of $5.50 a bushel for wheat, it collapsed to $2.50, and Freedom to Farm was a miserable pittance in terms of what farmers needed to stay out of bankruptcy.

The circumstances are that a substitute is going to be offered that says: Let's go back to a fixed payment, and if prices improve, we will still give payments. That is not my interest. In my judgment, family farmers do not want a payment. If they get $5.50 for a bushel of wheat, they do not want, they do not need a payment, and they should not get a payment. It is just very simple.

What we ought to be doing for family farmers is something that is a countercyclical program that when prices are collapsing and times are tough, we help. When times are good, we do not need to help. That is common sense, in my judgment.

The bill that was brought to us by Senator HARKIN does exactly that. It makes a policy U-turn and says: Let's understand Freedom to Farm did not work, and let's put in place something that is truly countercyclical. It retains all the things farmers want; that is, planting flexibility. They want the flexibility to make their own planting decisions, and they should have that. Absolutely. They have it under the current law. They will have it under the new law. That makes good sense.

It does not make any sense to begin, even before this bill is passed, pulling the rug out from under price supports saying somehow we want to provide less to family farmers than they need to survive.

This is an extraordinarily important time. We are not in session today with votes. We are in session but have no votes. We return with votes on Tuesday. We will be working Wednesday and through the remainder of the week, I expect. We expected and hoped we would get this farm bill that came out of the Senate Agriculture Committee passed by yesterday or the day before. We were not able to break a filibuster. So now we have to, on Tuesday, come back and see if we can—or perhaps Monday with no votes but then Tuesday with votes—see if we can provide some additional votes on amendments and get to the end stage.

My hope is those who have been developing this slow-motion strategy will understand that it serves no real interest. We are going to finish this bill. The only thing that will have been accomplished is we will have delayed dramatically the ability to pass a farm bill, and we will not have had the opportunity to have a conference with the House of Representatives if this goes much longer.

We have a Republican chairman on the House side who is anxious to get to conference. Congressman COMBEST—good for him—told the White House and the administration some months ago when they said, Don't write a farm bill this year; we do not want you to write a farm bill, Congressman COMBEST said to his own party: It does not matter what you want; we need a new farm bill, and I am going to do it. Good for him. I commend him. He is a good, strong guy who pushed ahead and did it. He wants to go to conference with us; the sooner the better.

My colleague, Senator HARKIN, has now brought a bill out of the Senate Agriculture Committee, and we should be in conference today had we not had a filibuster.

Hopefully we can be in conference next Wednesday. We owe it to the family farmers in this country to get this bill done and get it done right.

We will, I suspect, hear from a lot of family farmers in the coming days through their farm organizations. Every farm organization in America, every one that I am aware of, has asked this Congress to do this job now. Farm organizations and commodity groups have said: We support this job being done now. It is just inexplicable to me that on behalf of family farmers this Congress will not rush to good policy. If this were some other economic sector with big companies and lobbyists filling the hallways, Congress would be rushing off and saying, When

can we get this done? But somehow when it comes to the farm bill, we have people who do not seem very anxious to complete the work.

I began by talking about small towns and values, and let me end again by saying this is about values. What does this country want for its food production in the future? Does it want family producers? If it does, then it has to develop public policy that complements those desires. I mentioned before that Europe has done it. We have not. Some of our friends point to Europe and say they are subsidizing their farmers. Yes, they are doing that. Good for them.

Do you know why they are doing it? Because Europe has been hungry, and it has decided it is never going to be hungry again. We have people who are just benign about family farmers. We have people who say it does not matter who farms America. We have big agrifactories that can line up tractors on farms from California to Maine. That would be fine. All that has been lost is families. Yard lights are not needed if there is nobody living out there. One can fly from Los Angeles to New York and see almost no lights then. I do not think that advances America's interest. I think that retards it.

I think there is a difference in terms of this country's future about who produces America's food, and if we stand with family farmers and believe in a future with family farmers producing America's food and believe the values that come from rural America are important to our country's future, then it seems to me we have an obligation and an opportunity now to do the right thing.

Doing the right thing is passing the bill that came out of the Senate Agriculture Committee, getting it into conference, and joining with Congressman COMBEST and Senator HARKIN in getting this bill to the desk of the President. I do not know whether the President will sign it. That is up to him. It is not our job to anticipate what this President might or might not do in agricultural policy. It is our job to write the best farm bill possible, and that is what we should be about doing.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. 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. HARKIN. Mr. President, I take the remaining few minutes we are in session today to respond to earlier statements of my colleagues, Senator ROBERTS and Senator COCHRAN.

Before I do that, I will respond to the editorial in the Washington Post today at the bottom of the editorial page, entitled ''A Piggy Farm Bill.'' I thought in honor of that I would wear my piggy tie today. I have a tie with pigs on it, but they are little pigs, not big pigs. That is what the farm bill is about—helping the little person, helping the family farmer who does not have a lot of economic power like the big corporations and the big businesses all over this country.

The Washington Post has it all wrong. They say the farm bill ''would institutionalize the insupportable excesses of the past few years. . . .'' Excessive spending in the farm bill is what they are alleging. They say we are spending too much money, we should not do this because it is too much money going out to our farmers.

I had my staff do a little research. I thought I would put it in light of what we are spending in this country. During the Depression, public support to farmers was first established. In 1940, Federal farm support accounted for 3.9 percent of the Federal budget and .4 of a percent of the U.S. gross domestic product. In 1963, farm support accounted for 3.1 percent of the Federal budget and .55 of U.S. GDP. Over the last 3 years, Federal farm support has accounted for about 1.1 percent of the Federal budget and .2 of a percent of U.S. GDP.

In the farm bill we have before the Senate, S. 1731, for the next 5-year period, Federal farm support is projected to account for about .65 percent of the Federal budget, the lowest ever, and .1 percent of U.S. GDP, the lowest ever. In 1963 it was .55 percent of U.S. GDP.

When the Washington Post says we are spending too much of our national income on agriculture, I have to wonder, what are they talking about? Look at the past. We are spending less and less of our national income on agriculture. I will have more to say about that next week.

Now I will respond to Senator ROBERTS and Senator COCHRAN, and Senator GRASSLEY, my colleague from Iowa, who spoke this morning about the possibility that this bill would violate the WTO. He was greatly concerned about making sure we maintain our support to agriculture within the WTO limitations. I agree. I believe we should. We helped hammer out the WTO; we should remain within it. However, we should not be slaves to it to the point of neglecting the interests of U.S. farmers just because of WTO limitations.

Here is the data. This chart is complex, but under the so called ''amber'' box we are allowed every year $19.1 billion to spend on support for agriculture in this category. That is what the concern is about. Right now the ceiling is $19.1 billion. That is what we are allowed to spend under WTO annually. Right now, the yellow is where we are, at a little over $11 billion. Under the projections of S. 1731, the bill before the Senate, under the baseline projection, we will go up to slightly less than $15 billion over the 5 years, in any given year over the 5 years; the maximum would likely be right at $16.6 billion—a lot less than the $19.1 billion we are allowed.

To hear some Members talk, one would think our support to U.S. farmers ought to be way down here. But as my colleague from North Dakota, Senator CONRAD, pointed out, time and time again, if we are down there, we are unilaterally disarming against the Europeans who are way up here. My point is, under the bill in the Senate, we are nowhere near coming to the $19.1 billion allowed under the WTO. I hope people do not have some kind of scare tactics out there that we cannot do anything to have an effective farm program. We cannot have loan rates. No, we cannot do that. We cannot have countercyclical payments. No, that might disrupt WTO. I will point to this chart next week to show we are nowhere near the $19.1 billion.

My main objective on this farm bill is to have a sound farm bill for our farmers. My principal goal is not to satisfy the bureaucrats at the World Trade Organization in Geneva, Switzerland. I repeat that: My principal goal is to help farmers in America, it is not to satisfy the bureaucrats at the World Trade Organization in Geneva, Switzerland. We want to stay under the $19.1 billion. And we will. But there is no reason we have to be so intimidated that we do not design a program that utilizes fully our ability to operate within that $19.1 billion.

We have a safety valve in our bill. If the Secretary of Agriculture at any time estimates we are going to be above the $19.1 billion, she can take action ahead of time, in an orderly manner, to limit our support to U.S. agriculture.

Second, in response to trade, we have been diligent in our farm bill in responding to the needs of our farmers to sell their products abroad. In this bill for five years, we devote $1.1 billion in added funding to promote trade overseas, such as through the Market Access Program and in the Foreign Market Development Program, Food for Progress, and a new biotechnology and trade program. Over 10 years, the CBO estimates that our bill would provide a total of $2.1 billion in added funding for advancing our trade opportunities overseas.

Again, the bill we have before the Senate, S. 1731, came out of the committee on a voice vote and with a unanimous vote on all titles—you cannot get much more bipartisan than that; every single title was unanimous, except the commodity title. It was not unanimous, but it was bipartisan.

Senator ROBERTS earlier this morning said our bill would take us back to the failed agricultural policies of the past. I have heard that phrase so many times before—I thought we had given up on that phrase. Which farm policy is he talking about that failed? Obviously the most failed farm income protection policy we have had is the so-called Freedom to Farm policy of the last 5 years. Don't take my word for it. Ask

any farmer in America what they think about the Freedom to Farm bill. They have suffered through years of depressed incomes and have had to rely on the uncertain prospect of emergency farm income assistance year after year. You will not find a more failed agricultural policy in this country than Freedom to Farm.

But the Cochran-Roberts bill continues Freedom to Farm. That is all it is. It is the son or the daughter of Freedom to Farm. It is Freedom to Farm II. I say to all my friends in agriculture, if you like Freedom to Farm, you will love Cochran-Roberts because that is exactly what it is.

When my friend from Kansas, Senator ROBERTS, says the farm bill will take us back to the failed policies of the past, he must be talking about his own proposal because it is Freedom to Farm that has failed us.

What we do is we build four strong legs for farm income support in our bill. Yes, we do keep direct payments, but not as much as what Cochran-Roberts does. Then we have modestly higher loan rates to help farmers when they need it the most. We have a countercyclical payment to farmers when prices are low. And we have conservation payments to farmers for being good stewards on their land.

The Cochran-Roberts bill is really focused on only one thing, direct payments, exactly what we have had under the failed Freedom to Farm. There is a farm income stabilization account proposal, but it is only an add-on to the direct fixed payments. So if you have low prices, you get the same payment as you got when you had high prices.

I will admit that if we have high prices for the next 3 or 4 years, the Cochran-Roberts bill will give farmers more money than what they would get under S. 1731. That is what they told farmers in 1996. In 1996 we had high prices for agricultural products. It was a good year for farmers. So they said: Oh, what we will do is we will have these direct payments out there. No matter what you get, we will have the direct payments. It looked good to farmers. Then commodity prices went in the toilet, we had very low prices, and every year for the past four years Congress has had to come in with an emergency bailout, emergency money for farmers. Is that what Cochran-Roberts wants? More of that? Where every year we have to come back, again and again, for more emergency money for a failed farm program? That is what will happen. That is what will happen if Cochran-Roberts is adopted. It will be just like we had in the last 5 years.

At least under our bill we have better loan rates, loan rates that will guarantee farmers that they will not get any less than a certain amount. Couple that with our countercyclical payments, and farmers will know that no matter how low that price goes, they will have income protection at a set level. They are going to have that support in our legislation.

My friend from Kansas said the problem with loan rates is you have to produce the crop to get the loan rate. If you do not produce it, if you do not get a crop, you don't get a loan rate. Every farmer knows that. That doesn't come as any big revelation.

What he is saying is their direct payment is better because they put more money into direct payments than into loan rates. So if the producer does not have a crop, there is at least the higher direct payment. I am surprised to hear my friend from Kansas say that the direct fixed payments are needed to cover crop loss. He has been taking credit, with former Senator Kerrey from Nebraska, for being the author of the crop insurance reform bill that we passed last year. That bill beefed up the crop insurance program, both in terms of loss of crops and in revenue protection. So not only do you have crop insurance but you have revenue loss insurance. That is what crop insurance is there for. That is why we put money into it.

The Senator from Kansas with good reason touted his crop insurance bill last year. Now he must be saying that crop insurance is not enough after all to protect against crop losses. I don't know for certain if that is what he is saying. I look forward to hearing from him on that question next week.

So that is what crop insurance is for. If you have a lost crop, that is why we have a very sound, good, crop insurance program. The reason we have a loan rate is so at harvest time, when prices are the lowest, that is when farmers need the money and that is when they can get that loan rate. And it goes to the farmer. It doesn't go to the landlord in the way direct payments do. It goes to the farmer. That is where the loan rate goes.

The Senator from Kansas said farmers and lenders can bank on direct payments. He forgot one thing: And landlords can bank on it, too. There is probably nothing that has driven up land prices more and created more of a land price bubble in the last few years than Freedom to Farm payments. AMTA payments are creating a land price bubble out there that has created real uncertainty and risk.

So what our bill does is provide direct payments that phase down but continue. We also have modestly higher loan rates. We keep those loan rates at the set level. We don't allow the Secretary to reduce them.

Under the current farm bill, the Secretary may reduce loan rates. We say she cannot any longer. We also establish a good countercyclical payment in case of low prices. And of course we have our direct payments under the conservation program.

So, again, that is why I believe S. 1731 is a more balanced bill. It is one that has a safety net for farmers. Yes, I will be the first to admit that if prices are high—they aren't now—but if prices are high, farmers will receive more payments under Cochran-Roberts. If you believe the prices will be high, as they were in 1996, you may want to vote for Cochran-Roberts. But if you think we will have some years where prices are low, as they are now our bill is the better bill. And look at the projections. We are not having projected huge increases in prices in our commodities in the next few years. S. 1731, the bill that is before us, the committee-passed bill, is the one that provides that safety net to farmers.

Last, I want to thank so much our majority leader, a valuable member of our committee. He is someone who knows agriculture intimately, who has spent his entire adult life, in both the House and the Senate, working on behalf of farmers. Senator DASCHLE has provided the leadership that we need to get this farm bill through committee and here on the floor. He has taken that leadership position to make sure that our farmers have that safety net, that we have good conservation programs, and other programs in this bill, including especially the new energy title in this farm bill.

I pay my respects to Senator DASCHLE for his great leadership on this. He has provided that leadership because he knows what the farmers, not only of South Dakota, need, but he knows what farmers all across this country need. They need the bill we passed out of committee. And we need to get it done.

We are here on Friday. We will be back again the first of the week. We will have another cloture vote on Tuesday, and we will see if our Republican colleagues are willing to let us come to closure on this bill.

I say to my good friend from Indiana—and he is my friend; I know we have a little disagreement here on some aspects of this bill, but this is the crucible of democracy, to work these things out. Senator LUGAR knows I respect him highly and have great admiration for him.

I hope we can obtain a finite list of amendments; I hope we can list those amendment and bring this bill to closure early next week. The farmers and rural communities of America are demanding this. They need it. They need it before the new year comes. I am hopeful next week we can bring this to a close and we can give the farmers the Christmas present they need and they deserve, and that is a farm bill that they can count on, one that will shore up farm income, one that will keep us within the WTO limits, but also one that will make sure that if there are low prices, we are going to be there for our farmers and we are going to have a countercyclical payment and we will have that safety net there for farmers which we have not had in the present farm bill.

Again, I hope we can bring this matter to a close early next week.

AMENDMENT NO. 2604, AS MODIFIED

Mr. HARKIN. Mr. President, I send to the desk a technical modification of my amendment No. 2604.

The PRESIDING OFFICER (Mr. DORGAN). Without objection, the amendment is modified.

The amendment (No. 2604), as modified, is as follows:

On page 941, after line 5 insert the following:

SEC. . PACKERS AND STOCKYARDS.

(a) DEFINITIONS.—Section 2(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(a)), is amended by adding at the end the following:

''(12) LIVESTOCK CONTRACTOR.—The term 'livestock contractor' means any person engaged in the business of obtaining livestock under a livestock production contract for the purpose of slaughtering the livestock or selling the livestock for slaughter, if—

''(A) the livestock is obtained by the person in commerce; or

''(B) the livestock (including livestock products from the livestock) obtained by the person is sold or shipped in commerce.

''(13) LIVESTOCK PRODUCTION CONTRACT.—The term 'livestock production contract' means any growout contract or other arrangement under which a livestock production contract grower raises and cares for the livestock in accordance with the instructions of another person.

''(14) LIVESTOCK PRODUCTION CONTRACT GROWER.—The term 'livestock production contract grower' means any person engaged in the business of raising and caring for livestock in accordance with the instructions of another person.''.

(b) CONTRACTORS.—

(1) IN GENERAL.—The Packers and Stockyards Act, 1921, is amended by striking ''packer'' each place it appears in sections 202, 203, 204, and 205 (7 U.S.C. 192, 193, 194, 195) (other than section 202(c)) and inserting ''packer or livestock contractor''.

(2) CONFORMING AMENDMENTS.—

(A) Section 202(c) of the Packers and Stockyards Act, 1921 (7 U.S.C. 192(c)), is amended by inserting '', livestock contractor,'' after ''other packer'' each place it appears.

(B) Section 308(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 209(a)), is amended by inserting ''or livestock production contract'' after ''poultry growing arrangement''.

(C) Sections 401 and 403 of the Packers and Stockyards Act, 1921 (7 U.S.C. 221, 223), are amended by inserting ''any livestock contractor, and'' after ''packer,'' each place it appears.

(c) RIGHT TO DISCUSS TERMS OF CONTRACT.—The Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), is amended by adding at the end the following:

''SEC. 417. RIGHT TO DISCUSS TERMS OF CONTRACT.

''(a) IN GENERAL.—Notwithstanding a provision in any contract for the sale or production of livestock or poultry that provides that information contained in the contract is confidential, a party to the contract shall not be prohibited from discussing any terms or details of any contract with—

''(1) a legal adviser;

''(2) a lender;

''(3) an accountant;

''(4) an executive or manager;

''(5) a landlord;

''(6) a family member; or

''(7) a Federal or State agency with responsibility for—

''(A) enforcing a statute designed to protect a party to the contract; or

''(B) administering this Act.

''(b) EFFECT ON STATE LAWS.—Subsection (a) does not affect State laws that address confidentiality provisions in contracts for the sale or production of livestock or poultry.''.

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

Mr. LUGAR. Mr. President, I appreciate the comprehensive statement the chairman has just concluded. Likewise, I have appreciated the statements of Senator ROBERTS and Senator COCHRAN because they have also given a comprehensive view of their thinking regarding their substitute amendments. Senator BURNS of Montana offered constructive amendments this morning, as did Senator WELLSTONE, to initiate our process earlier in the morning.

I believe it has been a good day, a constructive debate. Senators who are following the farm bill debate have a pretty good idea of the parameters of the present discussion and likewise the choices that are going to be before us on Tuesday when amendments come up for further debate and votes.

Let me interject into the debate today what I thought was a timely editorial which appeared in the editorial page of the Washington Post this morning. I was startled by the headline of the editorial, which is: ''A Piggy Farm Bill''.

It says:

The Farm bill that Democratic leaders—Majority Leader Tom Daschle, Agriculture Committee Chairman Tom Harkin—are trying to push through the Senate before Congress adjourns for the holidays is obscene.

Those are very strong words to describe legislation we are now discussing.

It would institutionalize the insupportable excesses of the past few years, in which billions of dollars in supposedly emergency payments have regularly been made to some of the nation's largest and least-needy producers.

In the House, the Republican leadership won approval of a similar bill over mild administration objections in October. Senate passage would make the indulgent policy hard to alter when Congress reconvenes and the bills are put before a House-Senate conference committee next year. Farm lobbyists and their congressional supporters would far rather the Senate vote now than then, when the excessive supports in the bill are likely to look less affordable. But that's all the more reason why the Senate should delay.

I am not in agreement that the Senate should delay, but I do take at least some cognizance of the Washington Post's evaluation of where things stand to date.

Congressional Republicans passed a farm bill in 1996 that was supposed to reduce producers' reliance on government payments; they would provide for the market instead. Still in effect, that act provides basic payments mainly to grain and cotton producers of roughly $10 billion a year. In each of the past few years, however, Congress has also provided billions of additional ''emergency'' payments. The effect of the new bill would be to regularize those, thereby abandoning the five-year experiment in supposed market reform.

That is a severe indictment that this farm bill abandons the philosophy of Freedom to Farm in 1996.

I continue with the editorial:

Some of the extra money in the Harkin bill—a couple of billion a year—would be directed to conservation programs. The policy is good, and the political effect has been to buy off environmental groups that might otherwise have opposed the broader pig-out in which they now share. A little of the extra would also be used to shore up the food stamp and lesser feeding programs for the poor. But these are relatively small amounts and a sop to conscience.

Sen. Richard Lugar tried the other day to change the priorities in the bill—limit the farm supports, spread them across more producers and use the bulk of the savings to strengthen the feeding programs, especially food stamps, which have been allowed to wither a bit. He lost 70 to 30; only three Democrats supported him. It's possible there will be other such efforts before the bill is passed. This bill is not redeemable, but it is improvable. At the very least, a larger share of the enormous sum could be spent on people in need instead of on large producers who love to preach free enterprise but not to practice it. Is that not something Democrats support?

We still have an opportunity to make substantial improvements on the priorities as well as the aspects of programs in which moneys provide a safety net, provide proper incentives to produce for the market, and provide support for our trade negotiators.

Each one of us at one time or another has given many speeches about the salvation of American agriculture coming from the great productive mechanism of our farm situation and exports and feeding people around the world—the humanitarian aspects as well as the commercial ones. That has been elusive for a great number of reasons—some beyond our control as the European Community and others have stymied these efforts. Nevertheless, our farm bill should not do so.

I appreciate the chairman's careful attention to the green and amber payment situation of the WTO. I have no doubt this is going to come into play in the event we pass a farm bill coincident with that which now lies before us without taking more precautionary measures. That concerns me and a good number of others who are simply interested in the prosperity of this country generally. Movement of goods and services in foreign trade I believe will enhance all of our wealth, especially that of agricultural America.

I think we have to take a look at priorities. I thought the initial amendment offered this morning by Senator WELLSTONE of Minnesota was very interesting. It clearly has the effect of limiting payments to large feeding operations. The whole intent of it was to suggest that the import of the current bill that lies before us might stimulate overproduction of livestock and further subsidize the overproduction. I think he is probably right.

What we are doing with regard to the row crops—the so-called program crops—in a very big way stimulates overproduction, and has for the past 5 years, and is bound to do more of this. That is what I find to be very difficult as I look at the future and see a farm bill deliberately creating overproduction and low prices.

The cycle of this, Mr. President, as you well know, is that prices go lower,

and people give speeches that they can't ever think of a time when they were lower and, therefore, an emergency payment is needed. And it is debated first in June, July, and August with regularity, fully predictable. It is fully predictable now in the event we pass this bill.

Despite all the protestations to the contrary, we will be back. The distinguished chairman will hear the drumbeat of persons who want him to bring another farm bill out 6 months after he passes this one to remedy the deficiency. There will be low prices created by overproduction and stagnation in world trade, which exacerbates the problem.

There could be a year in which the weather situation is truly disastrous. I remember such a year in 1988 in which as many as 20 States, as I recall, had such severe weather problems, and a delegation of Senators talked to President Reagan in the White House and advised him that literally half the country and most of the agricultural country had been devastated by drought in particular. And the President supported a fairly large emergency proposition at that time.

Usually, as the distinguished chairman has pointed out, the weather devastation situations are less than 20 States, and therefore Senators come a crop at a time, or whatever happens to have been in harm's way.

As Senator HARKIN complimented Senator COCHRAN earlier on, Senator COCHRAN, at least in recent years, often had been there to add money to the Agriculture appropriations bill to help those folks out. But that really has not been enough.

The general proposition is that prices are low and, therefore, a double AMTA payment has been sent out. The chairman has pointed out correctly, the AMTA payments may not be the proper vehicle for total equity. They may include people who no longer are in farming but had a history, as in the 1996 bill. But for purposes of efficiency, so money would get to farmers, the rolls are there at USDA. They have been utilized. The money was gone as of the end of August of this year. It was received, to the applause of country bankers who were assured of getting repaid and farmers who were thinking about getting back in the field again. I understand that, as does the distinguished Presiding Officer.

All I am pointing out is that I had hoped, in this farm bill, we would not repeat this cycle of predictable results. It does not do justice to farmers in the United States who, at some point, do want to produce for the markets and do want to have a safety net that is not unpredictable. And any safety net based upon loan rates is certainly unpredictable. It may, in fact, be a cap on prices as opposed to a support.

I hope that some version, at least, of the concept I presented—namely, that farmers have assurance of some percentage of income every year, some money with which to purchase that assurance—I think, in fact, mechanisms, through bipartisan wisdom, have been set up in the crop insurance program that provide the mechanics for that kind of safety net.

I had attempted to propose a formula in which—using whole farm income applicable to all 50 of our States equally and to all crops and all livestock operations—money would be provided through a voucher, but money, indeed, from the Federal Government, a transfer payment from taxpayers to assure a safety net for farmers, but with assurance, year in and year out, of a certain stream of revenue.

If Senators were to suggest that perhaps 80 percent, as a proposition, is too low a net, I would certainly be prepared to take pencil and paper in hand with any Senator and try out 85 percent. That is the level of crop insurance that I purchased for my own farm operation this year under the policies we have adopted. I think that is a sound thing to do, and to have a marketing strategy based upon the certainty you have 85 percent of your crop before you even plant it. That is possible under current legislation and, in fact, I think to be encouraged with producers all over the country who are always at risk.

But I hope we will move toward more of a basis as I have suggested as we proceed through the debate. I certainly will encourage that as I listen to alternatives that are presented.

Mr. President, this concludes at least my thoughts for the day on the agriculture bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I will just take a couple of minutes, not so much in response to the Senator. But as I listened to my friend from Indiana—the very thought-provoking speech he made—I had some further thoughts.

My friend, the Senator from Indiana, said that under the bill we have, we could expect more emergency farm assistance bills. I know he said farmers will be coming to the chairman saying: We have to have an emergency bill.

If we continue on the present course, that will be true. But we have built into S. 1731 a countercyclical payment program that has an income support wherein we should not have to come back.

I will say this: The reason we had—I believe for each of the last 4 years—to come in and provide for emergency funding for agriculture for farmers was because there was no effective safety net under Freedom to Farm.

I would ask my friend from Indiana to go back before Freedom to Farm, to go back before that was enacted—and I could be wrong; I have not researched this thoroughly—but I cannot remember in all the years I have been here that we came in with that kind of annual emergency funding because of low prices for farmers. We came in, sometimes, with disaster payments for a drought, flood or a hurricane, or something like that, but we did not as far as I can remember—and I can be proven wrong—but I cannot remember coming in with legislation because prices and income were so low we had to pass emergency legislation to get money out to farmers broadly based all over America. That started with Freedom to Farm, when we took away that safety net.

If we continue on with the Freedom-to-Farm type program, I dare say, yes, you are right, they are going to be coming to me and saying: We need emergency funding.

That is why I feel so strongly about the safety net provisions we enacted in S. 1731 with the countercyclical type of payments. If prices are low—and the lower they go, the larger the payment. On the other hand, if prices are good, then there is not the need for payments that magnitude.

So under that scenario, I really do not see why we would have to come in with emergency legislation other than some naturally occurring disaster or something like that, I say to my friend.

Mr. LUGAR. If the Senator will yield?

Mr. HARKIN. I am delighted to yield.

Mr. LUGAR. The Senator, I think, is historically correct. Within my memory, we had the 1988 crisis with the 20 States. As I recall, we passed some legislation to alleviate that during the appropriations process. That is, at least, my recollection.

Mr. HARKIN. Wasn't that the credit bill we did then?

Mr. LUGAR. No. It was this huge emergency created by the drought. And many of us were involved, in a bipartisan way.

Mr. HARKIN. Yes.

Mr. LUGAR. Probably the Senator himself. The memory grows dim as you go 13 years back in the farm business.

Mr. HARKIN. That is true.

Mr. LUGAR. I suppose my query is just this: You are correct, we have had all these annual situations since the 1996 legislation. But in this particular year, the Secretary of Agriculture, at the time we were debating the emergency in August, pointed out the net farm cash income was $61 billion. And this is historically an all-time high in terms of income in the country. It was higher than last year, but the last year was more than the year before that. In essence, even in the face of much higher net farm cash income, we have been reappearing.

The safety net under the bill we now have, of course, was these AMTA payments. These were the fixed payments that went to farmers regardless of what else happened. They were to diminish after 7 years, and have been heading down from, say, $5 billion of Federal expenditures into the $4 billion range, and so forth, each year, and then the loan deficiency payments, at least for certain of our rural crops.

For example, in my State $1.89 for corn is the loan deficiency payment level, which means you have $1.89 regardless of what the market price is, however low it may be recorded. At the time, admittedly, $1.89 seemed like a price that would not be approached as frequently as it now is.

During harvest time, we are regularly below $1.89 in terms of people coming into the elevator at that point. So this has led to much greater Federal Government expenditures; $6 billion, I think, last year to loan deficiency, and not just for corn but for other crops. But that was meant to be the safety net. And it is arguable as to whether it should go higher or lower. It depends upon the Federal outlays, I suspect, quite apart from the fact that more production occurs.

I saw yesterday, as perhaps the chairman did, on the cover of USA Today, their first page, a chart on soybean production in the country. Soybean production, right through the Freedom to Farm experience, had been going up every year. This year's crop is prophesied to be a whopper and, clearly, an all-time high. Given planting intentions, it might appear that next year's would follow.

I mention this because I hope the chairman is right. Let us say, for example, his bill and the Daschle substitute are adopted, but as it turns out farmers think their incomes are not adequate. My point, I suppose, has been that a part of the reason, even in the face of what I think have been fairly record incomes in the aggregate, although not for all States and not for all crops, and a fairly good safety net, is that both of the political parties represented in this body have been competitive for the allegiance of farm voters and people who were sympathetic to farmers.

I admit, throughout these emergency bills, it has been my privilege to serve as chairman. I have stood with you or with Senator LEAHY managing these bills. I was perfectly aware on our side of the aisle that a large majority of our Members wanted more money for farmers. It appeared that was true on your side of the aisle. Whoever was managing this legislation was left with at least the thought of trying to get it right technically so the farmers got the money in as soon a time as possible so, if there were emergencies, these were met, right now as opposed to the hereafter.

So we strove to expedite a process that clearly our membership wanted. That seemed to be true on the other side of the Capitol as well.

None of these bills were vetoed by whoever was President during this period of time. If the White House had a budget objection to these, it was pretty mild or nonexistent.

I mention all this because I think that helps explain a part of the impetus for this bill. In other words, there is almost an annual expectation of correction or of enhancement of whatever may have occurred. Most of us have voted for that. The two of us may even have helped manage it in one form or another, to try to bring it into clear channels, to have the proper hearings and committee meetings. It may very well be—you are not discovering this but sort of enduring the process—that the expectations of Members on both sides of the aisle are very large when it comes to their States and their constituents. As you strive to find a majority to vote for a farm bill, for a final product, to get the bill out and on to conference, you are forced daily to take into consideration the needs of various Members, some of them very legitimate and poignant. In the same way on our side of the aisle, we attempt to do likewise.

I say this not in sympathy because the chairman is a strong person and fully able to take care of himself and the situation. But I had hoped perhaps to try to guide the process in a different direction.

I would admit, having heard the debate and having seen the votes as recorded dutifully by the Washington Post and others, 70 to 30 is not close. I understand that. On the other hand, we were trying to find something that, as the chairman has pointed out, may have been too much of a change all at one time, may not have been completely understood in terms of the arithmetic, how people come out. So I accept that fact. But nevertheless, I thought it was important to try to make some arguments for maybe a new day somewhere over the horizon.

In the meanwhile, I will continue to work with the chairman with the product we have at hand.

One reason why it has not moved expeditiously is that I suspect there are still some lingering thoughts on both sides of the aisle about limiting payments, for example. We heard a little bit of that from Senator WELLSTONE this morning with regard to the EQIP program and specific extensions of livestock. I think we will hear more from the distinguished occupant of the chair and maybe others who have been concerned about the equities here involved. Therefore, in part, perhaps, the land bubble situation created not only, as the chairman says, by the AMTA payments but by overextension, as people plant for the program, fully supported by this, but sometimes at the expense of their smaller competitors who do not have the research background, the capitalization, even the managerial skills, but for whom our farm bills have been dedicated, the saving of the small family farm or even the medium-size farm in a situation that appears to be more consolidated as time goes on.

Each of these amendments that deal with limits will get into this philosophically, and they are important to hear.

Senator GRASSLEY's comments today about trade—and the chairman has responded to that very ably—this is still a troubling area in which all the ramifications are not clear, and they do bump dangerously into the 19.1 or the area of the charts that the chairman had which were helpful in giving some idea as to where all of these different lights appear. We will have to be careful there because clearly we need to export. We need if not an overall WTO breakthrough, at least a good number of bilaterals that will be helpful to us.

These are issues that are not easily resolved, but I think they will be as we have debates commencing again on Tuesday, as these issues come up again.

I look forward to working with the chairman in a vigorous attempt as we proceed on Tuesday.

Mr. HARKIN. I appreciate my friend's comments. Quite frankly, I find little with which I can disagree. Everything you have said is basically correct in terms of the historical analysis, where we are, and the various pressures that go on in the Chamber. We all understand that. I will take a little bit of sympathy anyway. I don't mind. But we all have these different demands and expectations, as the Senator full well knows from his stewardship of this committee in the past.

The only further thing I might point out again is the old numbers game. Last year was the highest net cash income, things like that. We have heard that before. I think I mentioned this to the Secretary one time. I said: If your income last year was $1 million and mine was zero, our average is $500,000, so why should I have any help? So last year the livestock sector in America did pretty darn well. The crop sector was low, but if you averaged it all out, it looked pretty good. If you just look at the crops, we weren't in very good shape. That is basically what this bill is about, the crops.

The last thing I will say again to my friend, I am not so upset about the amount of money we spend on agriculture. The Washington Post editorial this morning, I know, called it a piggy bill. I said earlier, in honor of that I wore my piggy tie today. It has little pigs on it. We are in favor of the little pigs.

I pointed out earlier—I don't know if my friend from Indiana caught this—that I looked at historically how much of our GDP we spent on agriculture: In 1940, about four-tenths of a percent of U.S. GDP on agriculture; in 1963, .55 percent of U.S. GDP on agriculture; over the last 3 years, two-tenths of a percent of U.S. GDP; under our bill, S. 1731, projected about .13 percent of GDP. I don't think that is a lot of our gross domestic product, .13 percent to spend on agriculture. I don't think that is a lot.

Again, we can debate on how the funds are spent. I do not agree on how it all has gone out. The bigger you are, the more you get. Almost every day we have had a hearing in the committee, I always ask the same question: Should we support every bushel, bale, and pound that is produced in this country?

That is what I think the debate ought to be—how we fashion those programs to help shore up a safety net, but not to encourage people to get bigger and actually use the Government largess to help people get bigger and to artificially boost up land prices. Certainly, that is a principle motivation for my focus on greater support for conservation and on a new program of income assistance tied to conservation.

I have said enough on this matter today. I yield the floor.

Mr. SMITH of Oregon. Mr. President, I rise today to recognize the importance of the Food Stamp Program addressed in the farm bill. I was recently surprised and dismayed to discover that a recent USDA study found Oregon to have the highest rate of hunger in the nation. I think my colleagues would also be surprised to discover how many people in their own home States go to bed hungry.

I have long been concerned that in many cases, children across the country are going to bed hungry simply because America's families do not know about the resources available to them through the Food Stamp Program. It is astounding to note that among persons eligible for this important program, participation rates dropped from 74 percent in 1994 to 57 percent in 1999. More worrying is the fact that participation rates are also low among working poor families with children and the elderly. With additional outreach and targeting, the Food Stamp Program can make it easier for families to access the food support they need with dignity. I am pleased that improvements to this vital program are currently being addressed on the Senate floor as part of the reauthorization of the farm bill.

I would also like to take this opportunity today to recognize the other side of nutrition support: our Nation's network of food banks. Places like the Oregon Food Bank in my home State are filling the plates of America. The Oregon Food Bank and its coalition partners have been working overtime to identify and address the root causes of hunger. Today, I would like to salute them for their hard work and dedication, which has come to fruition in the recent opening of a statewide food recovery and distribution center, all under one roof. Food banks are a vital component of the safety net for America's families, but they alone cannot meet every need. They are straining under the growing demand for emergency food, but we can help them by maintaining a strong Food Stamp Program.

In a country as blessed with abundance as ours, no family should go hungry, and I encourage my colleagues to support improvements to the Food Bank Program in the farm bill.

Mr. GRASSLEY. Mr. President, for years I have worked to decrease our reliance on foreign sources of energy to accelerate and diversify domestic energy production. I believe public policy ought to promote renewable domestic production that burns clean energy. That's why, earlier this year, I introduced the Providing Opportunities With Effluent Renewable, or POWER Act, which seeks to cultivate another homegrown resource: swine and bovine waste nutrients.

The benefits of swine and bovine waste nutrient as a renewable resource are enormous. Currently there are at least 20 dairy and hog farms in the United States that use an anaerobic digester or similar system to convert manure into electricity. These facilities include swine or dairy operations in California, Wisconsin, New York, Connecticut, Vermont, North Carolina, Pennsylvania, Virginia, Colorado, Minnesota, and my home State of Iowa.

By using animal waste as an energy source, a livestock producer can reduce or eliminate monthly energy purchases from electric and gas suppliers. In fact, a dairy operation in Minnesota that uses this technology generates enough electricity to run the entire dairy operation, saving close to $700 a week in electricity costs. This dairy farm also sells the excess power to their electrical provider, furnishing enough electricity to power 78 homes each month, year round.

The benefits of using an anaerobic digester do not end at electricity production. Using this technology can reduce and sometimes nearly eliminate offensive odors from the animal waste. In addition, the process of anaerobic digestion results in a higher quality fertilizer. The dairy farm I referenced earlier estimates that the fertilizing value of the animal waste is increased by 50 percent. Additional environmental benefits include mitigating animal waste's contribution to air, surface, and groundwater pollution.

The amendment I am offering will allow livestock producers the option of developing methane recovery systems as a structural practice under the Environmental Quality Incentives Program. This option will provide livestock producers another opportunity when determining what is best for the future of their family farms. Livestock producers will have the ability to meet their own individual energy needs and possibly supply green, renewable energy to other consumers.

Using swine and bovine waste nutrient as an energy source can cultivate profitability while improving environmental quality. Maximizing farm resources in such a manner may prove essential to remain competitive and environmentally sustainable in today's livestock market.

In addition, more widespread use of this technology will create jobs related to the design, operation, and manufacture of energy recovery systems. The development of renewable energy opportunities will help us diminish our foreign energy dependence while promoting ''green energy'' production.

Using swine and bovine waste nutrient is a perfect example of how the agriculture and energy industries can come together to develop an environmentally friendly renewable resource. My legislation will foster increased investment and development in waste to energy technology thereby improving farmer profitability, environmental quality, and energy productivity and reliability.

This amendment is good for agriculture, good for the environment, good for energy consumers, and promotes a good, make that great, renewable resource that will reduce our energy dependence on foreign fuels. It is my hope that all of my colleagues join with me to advance this important piece of legislation.

Ms. SNOWE. Mr. President, I rise today to praise the consensus that has been reached on dairy programs within the farm bill we are considering today. The farm bill, which needs authorization every 5 years, not only addresses farm income and commodity price support programs, but also includes titles on agricultural trade and foreign food aid, conservation and environment, nutrition and domestic food assistance, agricultural credit, rural development, and agricultural research and education.

I am particularly pleased that the Harkin bill before us restores the safety net for diary farmers in Maine and in 11 other States in the Northeast and Mid-Atlantic with a provision that will again give monthly payments to small dairy producers only when fluid milk prices fall below the Boston price of $16.94 per hundredweight.

As my colleagues are aware, the successful Northeast Interstate Dairy Compact was allowed to expire on September 30. Throughout New England, this compact literally kept small dairy farms in production. When it was in effect, this compact paid for the program by adding a small incremental cost to the price of milk already set by the current Federal milk marketing order system, which determines the floor price for fluid milk in New England.

Along with 38 of my Senate colleagues and the legislatures and Governors of 25 States, I have made numerous attempts throughout this past year to have the compact reauthorized and a new Southern Compact authorized. Dairy compacting is really a States rights issue more than anything else, as the only action the Senate needed to take was to give its congressional consent under the Compact Clause of the United States Constitution, Article I, section 10, clause 3, to allow the 25 States who requested to compact to proceed with these two independent compacts.

Unfortunately, we could not get a majority of votes for the Senate's permission to allow dairy compacting to go forward even though half of the States in the country had requested this approval. So, since my number one agricultural priority has been to assure that Maine dairy farmers have a safety net when prices are low that would

allow them to stay on their small family farms, I have attempted to bridge the gap with opponents of compacts.

I am very pleased that we were able to forge a compromise that is included in the Harkin amendment in the nature of a substitute to the Agriculture Committee-passed farm bill that pledges $2 billion to help dairy farmers throughout the Nation. Most important to me, the provision provides $500 million to establish the very safety net for New England dairy farmers, and also for farmers in the States of New York, New Jersey, Pennsylvania, Delaware, Maryland, and West Virginia, that was provided by the Northeast Dairy Compact, that of monthly payments to producers when the price of Class I, or fluid, milk drops below the Boston, MA price of $16.94. These States produce approximately 20 percent of the Nation's milk and under this provision will receive about 20 percent of the funding, so this is a very fair balance of payments.

Dairy farmers from other States will also benefit through a $1.5 billion provision that will extend the current national dairy price support system for farmers in the other 36 contiguous States, requiring the Commodity Credit Corporation, CCC, to purchase surplus nonfat dry milk, cheese, and butter from dairy processors, thus protecting the industry from seasonal imbalances of supply and demand.

The authority for this price support system that pays $9.90 per hundredweight was due to expire this December, but was extended for 5 months, or until May 2002, in the fiscal year 2002 Agriculture appropriations bill. The farm bill before us extends both of these dairy programs for 5 years.

Do I believe this is the best way to fund dairy programs? In my estimation, the Northeast Dairy Compact was preferable because not one cent came out of Federal funds and it also had no appreciable effect on consumer prices.

So, the provisions in the farm bill we are considering, unfortunately, will cost the Government $2 billion. This is not much considering the billions of dollars that go to for price supports for other farm commodities, but it is Federal money nonetheless. But, the reality is that compromises must be made to ensure that the majority of Senators feel that a consensus has been reached that they can live with, and I thank the Senators from the upper Midwest, who did not want a compact-like dairy program for their region but preferred direct yearly Federal payments, for working together with us on the dairy provisions.

My motive throughout this year has been a simple one: I do not want to see one more small family dairy farmer in Maine, or in any other rural area of the country, go out of business. And I do not want to see any more acreage of pastoral farmland in New England, most of which has been in families for three generations, turned over to suburban sprawl. So I am pleased with the compromise and feel that my goal has been reached, not for myself, but for the dairy farmers to whom I have pledged not to give up the fight.

The farm bill before us also recognizes the diversity and regional differences in agriculture, and shifts $1 billion to voluntary agriculture programs, especially in regions that have been traditionally underserved by past farm bills, such as my State of Maine, I want to thank the bipartisan group that worked with me through the ''Eggplant Caucus'', an ad hoc group of bipartisan Northeast Senators, to make these funds a reality and for bringing regional equity through an increase in Federal funding to our States.

This conservation funding, for which Maine stands to receive a minimum of $12 million a year for the next 5 years, will help our farmers improve water quality, restore wildlife habitat and stave off suburban sprawl. In the past, more than half of our farmers have been turned away from conservation assistance because these popular programs have not had the funding to meet the applcations.

More funding for the Environmental Quality Incentives Program, or EQIP, for instance, will allow many more farmers to enroll in contracts to manage natural resource concerns. The voluntary program offers cost share and incentive payments and technical assistance to design and install practices for locally-designated natural resource priorities.

Another aspect of regional equity in the bill are provisions that improve assistance to our Nation's fruit and vegetable growers, the specialty crop sector. This growing sector of the U.S. farm economy represents almost one-fifth of all farm cash receipts and a growing portion of our Nation's agriculture exports. I am very pleased to note provisions for a fruit and vegetable pilot promotion program and a USDA purchase program for specialty crops, providing funds so that the USDA can purchase those fruits and vegetables that are the most prevalent crops grown in the Northeast to be used in the Federal nutrition programs, such as potatoes, blueberries and cranberries from my State of Maine.

I would like to add that I have heard from farmers in my State of their support for the creation of tax-sheltered savings accounts, or ''rainy day accounts'', to which farmers could contribute during prosperous years, and from which they could draw during lean years. While not contained in the Harkin bill, I believe this idea should be further explored on its merits, and would hope that the Senate would consider hearings on this in the near future.

Taken in its totality, the Harkin bill gives our dairy producers a safety net through a mutually agreeable dairy program, regional equity in the disbursement of federal funding for voluntary conservation programs, funding for a variety of forestry programs important to our private landowners, and promotion for specialty crops grown in Maine. Additionally, if Maine participated in all the options for the Food Stamp Program, the State would realize approximately as much as $32 million over the next 10 years.

I believe the Harkin bill before us gives needed assistance to the agricultural community throughout the Nation. We should never forget that these hard working men and women are responsible for providing our Nation with the highest quality of a tremendous variety of quality food products easily accessible at our local markets and at the lowest cost of any nation in the world.

Mr. GRAHAM. Mr. President, I rise today in strong support of the farm bill before us.

While we have heard about many components of the bill today, I would like to focus my remarks on the title that is of particular importance to me, the nutrition title. it is easy to forget how many people go hungry in the United States. The Department of Agriculture classifies 31 million Americans as ''food insecure,'' meaning that they do not know from month to month whether they will be able to get enough food for themselves and their families.

Families with children are disproportionately more likely to experience hunger. Last year, over 3 million children and 6 million adults in the United States were hungry to malnourished. Without the Federal Food Stamp Program, which provided nutrition assistance to over 17 million people, the majority of them children, elderly people and the disable, the number would have been far higher.

I am also acutely aware of the role the Food Stamp Program plays in helping families leave welfare for work. The typical mother leaving welfare is earning about $7 an hour and may not be able to get 40 hours of work a week. For a parent like that, food stamps can make a difference between being able to feed the family and having to return to public assistance. A single mother with two children and a typical postwelfare income can double her income if she gets food stamps and the EITC. If she gets both, she can almost reach the Federal poverty line. Without them, she often cannot make ends meet.

I supported the 1996 welfare reform law. Some of my original interest in the Food Stamp Program grew out of my desire to see welfare reform succeed.

Knowing how important it was for people leaving welfare to stay connected to programs like Food Stamps and Medicaid, I was disturbed to find out that food stamp participation had dropped by more than a third since we passed welfare reform, and the improved economy accounted for only about half of the drop.

Among single-parent families with earnings, the most common demographic of people leaving welfare, food stamp participation dropped 12 percentage points between 1995 to 1998. A recent study the General Accounting Office conducted identified a ''growing gap'' between the number of children in poverty and the number of children receiving food assistance. At the same time, emergency food providers reported that their clientele had changed since 1996.

On November 14, America's Second Harvest, the organization representing our Nation's food banks, released it's annual ''Hunger in America'' report, its results were chilling. The study found that in 2001, 23.3 million Americans nationwide sought and received emergency hunger relief from our Nation's food bank network. This is nearly 2 million more people than sought similar services in 1997. And this, on the heels of one of the longest periods of economic growth in recent history.

In addition to showing increased requests for aid, ''Hunger in America'' report punctures the myth that hunger is only a problem of the inner cities, homeless, or the chronically unemployed. The study found that nearly 40 percent of the households that received assistance from us in 2001 included an adult who was working. Fully 19.7 percent of all the clients served by our network are seniors. This is up from 16 percent in 1997.

The facts about children are even more disturbing. More than nine million children received emergency food assistance this year, which is roughly 2 million more people than the total population of New York City.

The bill before us today takes steps toward recognizing that America's food banks, churches, synagogues and mosques can play a part in feeding America, they cannot bear the burden alone, the Federal Government must play its part.

The nutrition title in the Harkin farm bill allows the Senate to step up to the plate so that we can play a real role on the team fighting hunger in our Nation.

Last year, working with many of you, the Agriculture Appropriations Subcommittee, and the former administration we were able to designate $5.5 million to be used for food stamp outreach and education, to get some of these eligible families and children back on the program, $3.5 million has already been awarded to community organizations and emergency food providers across the country. These groups are taking imaginative steps to reach out to families in need, I encourage all of you to find out more about the grantees in your area.

Last month, USDA announced that it would award an additional $2 million to State-community partnerships that wanted to test strategies for enrolling more senior citizens in the food stamp program. Currently, only 30 percent of eligible seniors participate. I am here today because outreach, while critical, is only the first step. We need to restore some of the cuts to food stamps made in 1996, and we need to improve the program to make it work better for working families. The Harkin bill provides new funds to do just that.

Cuts in food stamp benefits were not part of achieving our basic welfare reform goal of moving people from welfare to work. In fact, many Republican and Democratic Members agree that one of the most disturbing outcomes of the 1996 law is the one-third drop in food stamp participation and what GAO described as the ''growing gap'' between the number of children in need and the number of children getting food assistance.

A provision of the 1996 law also cut off food stamps to legal immigrants. This was unnecessary to achieve the goals of the law, since over 90 percent of legal immigrants are working. We have succeeded in restoring eligibility for children and elderly people who were here before 1996, but much more needs to be done. One of the results of the cutoff of adult legal immigrants has been a 74 percent drop in the number of citizen children of immigrants who get food stamps.

As we debate this bill, I would urge my colleagues to remember the millions of children and families who depend on the Food Stamp Program to help them purchase the food our farmers grow. Without the Food Stamp Program, it seems likely that the 17 million people currently getting benefits would join the 9 million Americans who are hungry or malnourished.

I would also urge my distinguished colleagues to consider the many provisions in this bill that will improve the Food Stamp Program to better assist working families and finish the work of welfare reform by getting families out of poverty.

I would call particular attention to would accomplish the following: restoration benefits to legal immigrant children—most of whom are members of working families; making outreach and education a permanent part of the program; reforming the quality control system, making the program simpler and more accessible to working families; and providing 3 more months of transitional food stamps for families moving off welfare for work.

This important legislation would improve basic benefits for senior citizens, people with disabilities, and working citizen and legal immigrant families with children.

We have an obligation to our Nation to pass this title as it is, in tact. It is the least that we can do to do our part to accomplish our collective goal of abolishing hunger in America once and for all.

Mr. JOHNSON. Mr. President, I rise today to discuss the very real importance of completing action on the farm bill, the Agriculture, Conservation, and Rural Enhancement Act of 2001, which is now before the Senate. It is my desire that we pass a comprehensive farm bill within the next few days to ensure that America's family farmers, ranchers, consumers, and rural citizens have greater economic security. I wish to applaud my good friend and South Dakota colleague, Senator DASCHLE, for his superb and steady leadership on this issue, and for making certain this important farm bill legislation made it to the floor for consideration before we adjourn. It is critical for us to act promptly, to conference with our House colleagues in an expeditious manner, and for the President to sign a bill into law, as soon as possible. Much of the credit for our being able to discuss this bill on the floor today has to do with our chairman, Senator HARKIN, for his ability to craft what is perhaps the most complex piece of legislation one can imagine, and for his work to ensure the committee completed its job on the farm bill. Chairman Harkin included a number of items in this farm bill that will serve to benefit South Dakota's family farmers, ranchers, and rural communities, and I thank him for a job well done.

Unfortunately, stall tactics are being employed by some in the U.S. Senate to prevent us from passing this comprehensive farm bill. While family farmers and ranchers are working hard to keep their operations competitive and running smoothly, some Senators are stalling, delaying, and placing road blocks in front of the ultimate passage of this bill. Just yesterday, on a vote to end excessive debate and delay on the farm bill, we did not garner the 60 votes necessary to remove the procedural slow-down hurdle known as a filibuster. This needless delay must stop and Congress must take action to pass a farm bill now.

I have repeatedly said it is crucial for Congress to complete action on the farm bill, conference with the House, and send a bill to the President for his signature this year, if not very early next year, in order to ensure two very important things.

First, that we capitalize upon the $73.5 billion in additional spending authority provided by this year's budget resolution, because given the shrinking budget surplus and unprecedented demands on the federal budget now, there are no assurances this money will be available in 2002, when a new budget resolution will be carved out of a very limited amount of resources. Second, that we mend the farm income safety net now because the experience of the 1996 farm bill has painfully taught us that it does not provide family farmers and ranchers a meaningful income safety net when crop prices collapse. Thus, the need for a new farm bill is clear.

In the course of the last 4 years, the economic setting for family farmers and ranchers in South Dakota and across the nation has reached a serious and depressed level. Most farmers I talk to in South Dakota believe the combination of poor returns for crops

and livestock combined with an inadequate safety net in the current farm bill may have inflicted irrevocable results, a loss of family farmers, an economic recession in small, rural communities, and growing market power by a few, mega-operators and agribusinesses. While the farm bill probably isn't intended to correct all of the problems in our rural economy, it should better sustain the lives of family producers and rural communities. Additionally, it should provide a more predictable safety net than the current farm bill.

The outlook for positive indicators in farming and ranching has been dimmed by a number of factors. For several years now, commodity prices have collapsed, production costs have skyrocketed, and harsh weather has destroyed agricultural production. Furthermore, meatpacker concentration and unfair trade agreements have crippled the ability for independent farmers and livestock producers to prosper. While some of us wanted to change the underlying farm bill in a way to alleviate these tough conditions, we were told the 1996 farm bill was a sacred cow that could not be touched, and efforts to amend it or to provide a better economic safety net were defeated. I am not suggesting the 1996 act was the source of all the problems farmers faced these last few years, but the lack of a real safety net and low loan rates in the bill did not provide fair support for America's agricultural producers.

Four years of ad hoc emergency assistance for farmers and ranchers totaling approximately $23 billion, over and above farm program payments contained in the 1996 farm bill, has painfully taught us that depressed conditions in rural America matched with an inadequate safety net resulted in a very expensive price tag for U.S. taxpayers as well. Fortunately, today we have a chance to improve farm policy, providing family farmers and ranchers with a better farm bill containing a more meaningful safety net. Moreover, it is my hope this bill provides taxpayers with some assurance that the need for multi-billion dollar ad hoc emergency programs will be forestalled.

While it is not perfect, I am pleased that a number of my farm bill priorities, and the priorities of South Dakota farmers and ranchers, are included in S. 1731, the Senate farm bill. First, the bill passed out of the Senate Agriculture Committee includes my legislation, S. 280, the Consumer Right to Know Act of 2001, requiring country of origin labeling. It requires country of origin labeling for beef, pork, lamb, and ground meat, fruits, vegetables, peanuts, and farm-raised fish. The House farm bill only includes country of origin labeling for fruits and vegetables. Also, my carcass grade stamp legislation was added to the Senate farm bill. It prohibits the use of USDA quality grades, such as USDA Prime or USDA Choice, on imported meat. This provision is not in the House farm bill. The country of origin labeling language in the bill is supported by a clear majority of American producers and consumers, as is demonstrated by the fact the largest consumer and farm groups in the country have written me in support of this bill.

I would like to insert in the RECORD a series of four letters expressing strong support for my country of origin labeling language in the Senate farm bill. The letters are as follows: first, a letter signed by the overwhelming majority of cattle producing groups in the United States, signed by 55 cattle organizations, from Alabama to Idaho, from California to New Jersey, and everywhere in between. These 55 cattle groups say, ''The U.S. cattle industry has invested considerable time, effort, and money to improve, promote, and advertise its finished product U.S. beef. The cattle industry now needs the ability to identify its beef from among the growing volume of beef supplied by foreign competitors. The ability to differentiate domestic beef from foreign beef is necessary to ensure that U.S. cattle ranchers have a competitive, open market that allows consumer demand signals to reach domestic cattle producers. It is now time to take the next logical step and require country-of-origin labeling so consumers can identify the beef U.S. cattlemen have worked so hard to promote.''

Second, a letter from the two largest farm organizations in the United States, the American Farm Bureau Federation and the National Farmers Union. It is comforting to know we have the full support of these two groups. Third, I also received a letter signed by 87 farm, ranch, and consumer organizations, in support of my country of origin labeling legislation which was added to the farm bill in the Agriculture Committee. Some of the 87 groups signing this letter include most of the Florida and California fruit and vegetable associations, the major consumer groups in the United States, and national farm and ranch groups. Moreover, approximately half of all the Farmers Union and Farm Bureau state organizations signed this letter. These 87 groups say, ''We seek your support for inclusion of a measure to provide mandatory country of origin labeling for fresh produce and meat products in the Senate farm bill. American consumers prefer to know where their food is grown.''

Finally, I have a letter from three of the largest consumer groups in the United States, the Consumer Federation of America, the National Consumers League, and Public Citizen, expressing their strong support for country of origin in the farm bill. These groups say, ''When the Senate takes up the farm bill, please support legislation to require country of origin labeling at retail for meat and fresh fruits and vegetables. We thank Senator JOHNSON for introducing this legislation, the Consumer Right to Know Act of 2001, S. 280. Please oppose efforts to water down country of origin labeling legislation by allowing domestic origin labels on beef that has been slaughtered and processed—but not born—in this country.''

Some of the other groups supporting my country of origin labeling language include; all of the SD farm, ranch, and livestock groups, the National Association of State Departments of Agriculture, the National Association of Counties, the American Farm Bureau Federation, the National Farmers Union, Ranchers Cattlemen Legal Action Fund of the United States, RCALF-USA, the American Sheep Industry Institute, the Consumer Federation of America, the National Consumers League, the Western Organization of Resource Councils, the Organization for Competitive Markets, the American Corn Growers Association, and 55 of the State cattlemen and stock grower organizations. The National Cattlemens Beef Association supports the carcass grading provision in the Senate farm bill, which ensures that imported meat carcasses do not display USDA quality grades at the retail level.

It has been brought to my attention that there are unique concerns about how perishable agricultural commodities are labeled under the country of origin labeling provision in the farm bill. Unlike meat products that are oftentimes either wrapped or displayed behind glass, shoppers physically handle produce to evaluate such characteristics as size or ripeness. Quite honestly, after being handled by a consumer, a fruit or vegetable item is not always returned to the original bin in which the product was displayed. For this reason, each individual produce item may need to be labeled when physically possible to ensure accuracy about the country of origin information. I am confident the method of notification language in the labeling provision in the farm bill will ensure responsibility in information-sharing on the part of processors, retailers, and others under this act. Our language requires any person that prepares, stores, handles, or distributes a covered commodity for retail sale to maintain records about the origin of such products and to provide information regarding the country of origin to retailers. Nonetheless, I understand retailers have some concerns about making sure they are provided with accurate information. Therefore, so that we can be confident this is workable for retailers and others, I would like to recommend to my lead cosponsor of this legislation, Senator GRAHAM of Florida, that we consult with the growers, packers and retailers to develop a means to provide such labels or labeling information to the grocery stores.

Finally, I have learned that identical language for country of origin labeling has been included in the proposed alternative amendment to be offered by Senator's Cochran and Roberts. After

reviewing that proposal and confirming that my provision is included word-for-word, I am driven further to see the farm bill conference report finalized with the same country-of-origin labeling language. I feel confident that the final version between my colleagues in the Senate and House will include the exact language for country-of-origin labeling that is included in both S. 1731 and the Cochran-Roberts proposal. I believe that my colleagues will recognize the importance of not only keeping the provision in the final farm bill, but to ensuring that the language is not watered down by outside interests. Anything less is unacceptable to America's consumers and livestock producers.

Country of origin labeling and quality grade certification were integral components in the proposed ''Competition Title'' which Chairman HARKIN included in his farm bill proposal. I led a bipartisan effort to include the Competition Title in the farm bill when one-fifth of the Senate, both Republicans and Democrats, signed a letter I authored to Chairman HARKIN seeking this new Competition Title. Regrettably, the Competition Title was defeated, resulting in a win for large agribusinesses to continue to muscle their way into the marketplace, only to hurt family farmers and ranchers. This is very frustrating, considering the record profits made by agribusiness recently; Cargill increased profits by 67 percent in the last quarter, Hormel increased profits by 57 percent, and Smithfield increased profits nearly 30 percent. Finally, Tyson, now the single largest meat processor in the world with its purchase of IBP, tripled profits in its most recent quarter.

Conversely, crop prices took a nose dive so severe in September that it marked the worst 1-month drop in crop prices since USDA has been keeping records, some 90 years now. We must inject some real competition, access, transparency, and fairness into the marketplace if we are to see these tragic circumstances change.

That is why I authored an amendment which was accepted by a 51–46 vote in the Senate yesterday to prohibit meatpackers from owning livestock prior to slaughter. This amendment was modeled after legislation I crafted last year, S. 142, the Rancher Act. I thank Senators GRASSLEY, WELLSTONE, HARKIN, THOMAS, DORGAN, and DASCHLE for cosponsoring this amendment. It prohibits meat packers from owning cattle, swine or sheep more than 14 days before slaughter. However, it exempts cooperatives as well as all producer owned plants with less than 2 percent of the national slaughter. Packer ownership and control of livestock has been disrupting markets and hampering competition at the farm gate level for a long time. This amendment is a major first step towards correcting the problem. If this passes, packers will now have less opportunity for self dealing and giving preference to their own supplies. Rather, they will have to go out on the market and compete for livestock.

In addition to competition, another new farm bill strategy I promoted was to increase the capacity of renewable energy produced on American soils. Agricultural producers in South Dakota are poised to dramatically increase the production of ethanol and biodiesel for our Nation, and the farm bill's energy title will provide incentives to move those value-added opportunities along. Everyone should recognize that homegrown, renewable fuels need to become an integral part of our national security strategy, which is why I asked Chairman HARKIN to include a new ''energy title'' in the farm bill. The energy title in the Senate bill includes loan and grant programs to promote the increased production of ethanol, biodiesel, biomass, and wind energy. This is a landmark change to farm policy because neither the current farm bill nor the new proposal in the House contains this innovative energy title.

Farmers, ranchers, and their lenders also need some assurances that price supports in the new farm bill will be predictable and meaningful, especially in times of woefully low crop prices and rising input costs. Again, this farm bill is not perfect, but, I remain confident the changes made in the Senate proposal will better stabilize farm income, minimize the impact of catastrophic market losses, and reduce the financial risks associated with production agriculture. Specifically, I believe that the commodity support provided through loan rates, countercyclical payments, and direct payments in the Senate farm bill is a significant improvement over the current farm bill.

The Senate bill retains total planting flexibility which has proven extremely popular among the Nation's farmers, moreover, it allows producers the option to update their base acres and yields, using planted acreage and yield data from 1998–2001, for the purpose of receiving both direct (AMTA-like), payments and the new countercyclical payment, which is made when crop prices fall below a certain target level. While an outside observer may think it is only fair to base payments on a farm's current yields from crops that are actually planted on a farm, remarkably, this is not the case with the 1996 farm bill. Rather, the current farm bill bases payments on what farmers planted 20 years ago and calculates payments upon 20-year-old yields.

Therefore, this significant change to update yields and planted acres contained only in the Senate farm bill may prove one of the most important ways we can improve support to South Dakota's farmers. Crop yields in South Dakota have made enormous advances over the last twenty years, primarily because South Dakota farmers have become more productive, efficient and prolific in their use of innovative cropping methods and practices. I am very pleased that the Senate farm bill proposal offers a reward to South Dakota farmers for these yield improvements. The direct and countercyclical payments will be made on 100 percent of a farmer's updated base acreage and yield.

I am troubled by the fact that the alternative expected to be offered by Senators COCHRAN and ROBERTS, as well as the House-passed farm bill, does not reward farmers with an allowance to update their yields for basing payments—yields used to make payments under the Cochran-Roberts and House bill will remain at 1985 levels. While updating base acres for calculating payments, the House farm bill and Cochran-Roberts alternative do not benefit South Dakota family farmers for yield increases or an update on yields to calculate support under the fixed payment and countercyclical programs. Moreover, the House farm bill and the Cochran-Roberts alternative simply make payments on 85 percent of a farmer's 20-year-old yields and updated acres. Unfortunately, these proposals perpetuate some of the most glaring failures of the 1996 farm bill.

Finally, the Senate bill continues the availability of 9-month marketing loans or loan deficiency payments for program crops: wheat, feed grains, soybeans, oilseeds, and new marketing loan authority for wool, honey, lentils, and chickpeas. The loan rates in the Senate bill are set higher than both the House bill, and the Cochran-Roberts alternative, because both proposals freeze loan rates at levels in the 1996 farm bill. It appears to me that the Cochran-Roberts and the House farm bill fail to recognize the desire that most producers have for a modest increase in loan rates, as marketing loans and are one form of countercyclical support.

As we take this legislation up in the Senate, I may work with my colleagues to provide for more targeted payment limitations. The current farm bill essentially contains meaningless payment limits, and the House and Senate proposals aren't a whole lot better. We must tighten the payment limits and redirect benefits to small and mid-sized family farmers. The single most effective thing Congress could do to strengthen the fabric of family farms across the Nation is to stop subsidizing mega farms that drive their neighbors out of business by bidding land away from them. From 1996 to 2000, the top 10 percent of individuals and farm corporations in the U.S. snagged two-thirds of all the Federal farm payments and disaster aid, averaging $40,000 annually per individual. Conversely, the bottom 80 percent of farmers averaged a mere $1,089 per year. The current program especially hurts beginning farmers because it increases the cost of getting a start in farming. Current farm legislation subsidizes and induces large farmers to engage in aggressive competition for market share by bidding up land values in hopes of becoming the high-volume, low-cost producers. By reducing the number of middle-size and

beginning farmers, the current payment structure has deprived rural communities and institutions of the population base they need to thrive. We have the opportunity to stop millions of dollars going into the pockets of large farms, in which the end result will be viability of family-sized farms and ranches.

Additionally, I may work to provide an amendment to the farm bill that permits farmers to elect a pre-harvest 'lock-in' price for loan deficiency payments, LDP, prior to the time in which they harvest a crop. Currently, when the local cash price for corn or wheat falls below a commodity's loan rate price, producers are able to receive a loan deficiency payment as one means of counter-cyclical support. However, experience under current legislation has uncovered some regional inequities in the marketing loan and LDP provisions. For instance, when wheat harvest begins in Texas and Oklahoma in the Spring, the winter wheat crop in South Dakota and other Northern Plains States is virtually still in its developing stage. During this time, wheat stocks are often low and local cash prices have been below the loan rate, therefore, wheat growers in southern States have enjoyed the opportunity to trigger large counter-cyclical support by receiving sizable LDP payments early in the harvest season.

Unfortunately, the farm bill prohibits wheat farmers across the rest of the country from receiving this same kind of support through an LDP at that same time. So, by the time July or August rolls around and wheat is ripe for harvest in South Dakota and other States in the Upper Midwest, oftentimes, a different set of market conditions limits farmers' choices to secure an LDP. This is due to the fact that harvest is nearly complete, a surplus of wheat may be hanging over the market, and the difference between the cash price and the loan rate is not as large as in the Spring. Therefore, I may offer an amendment to allow farmers to select an LDP prior to harvest.

The farm bill is about many national priorities, and I am pleased the rural development title of this bill addresses the small, rural communities that serve as the backbone of our economy. It is important that our farm bill provide opportunities for value-added agriculture, small businesses, and rural communities. The level of funding for rural development initiatives in S. 1731 is a huge win for rural citizens and communities in South Dakota. Namely, I am pleased with the $75 million per year for value-added grants. South Dakota has been on the cutting edge of developing value-added projects in recent history. With the expansion of funding for these grants, we can expect to see profits from value-added agriculture increase in South Dakota. As in much of the Upper Midwest, unpredictable weather is a way of life for South Dakotans. With $2 million in funding to acquire more weather radio transmitters, people in rural communities can rest easy knowing they will have better access to accurate and up to the minute weather reports as a result of the farm bill.

Additionally, South Dakota is one of the States included in the reauthorized Northern Great Plains regional authority in the rural development title. This Authority has access to $30 million per fiscal year to provide grants to states in the Northern Great Plains Authority for projects including transportation and telecommunication infrastructure projects, business development and entrepreneurship, and job training. I applaud the chairman for all of his hard work in maintaining a priority for America's rural communities.

A priority of mine, the Senate farm bill provides more emphasis on conservation than any farm bill passed by the House or Senate heretofore. Our bill contains a number of conservation programs, including a reauthorization of the very successful Conservation Reserve Program and an increase in the total acreage eligible for the program to 41.1 million acres. While this is not the 45 million acre cap that I have advocated with legislation in the past, it is a step in the right direction. As we move forward to expand CRP, it is my belief that Congress and USDA must look at the criteria chosen by USDA to award contracts to landowners. Too often, South Dakota producers and landowners have been penalized by the Environmental Benefits Index which now requires very costly mixtures of seed varieties to be planted on new CRP tracts. It is my hope we can apply some greater flexibility to the EBI so this program can be effective in South Dakota. I believe the farm bill must direct more attention towards programs such as CRP which protect soil and water, promote habitat and wildlife growth, and compensate family farmers and ranchers for taking measures to conserve our resources. Additionally, the bill includes a version of the Harkin-Johnson Conservation Security Program which is a new initiative placing emphasis on conservation practices that are compatible to working lands on farms and ranches. Furthermore, the conservation title includes a reauthorization of my Farmable Wetlands Pilot, which is reauthorized through the life of the new farm bill, 2002 to 2006. This Farmable Wetlands Program was crafted last year by South Dakotans to protect small and sensitive farmed wetlands and to compensate producers for taking these acres out of production. When USDA would not administratively implement this idea, Senator DASCHLE and I introduced legislation which was signed into law. The legislation called for a two-year pilot program to enroll small, farmed wetlands, up to 5 acres in size, into CRP. I am very proud that South Dakota common-sense left an imprint on the conservation title of this farm bill with the extension of this Farmable Wetlands program. Finally, the conservation title contains a new Grassland Reserve Program to protect prairie and grasslands across the country.

Finally, I am also pleased with the nutrition title within the Senate farm bill that would ease the transition from welfare to work, increase benefits for working families and children, simplify regulations within, and increase outreach for the Food Stamp Program. Given our Nation's current economic conditions, it is especially important now that we reach out and provide services to our South Dakota neighbors in need. I would like to make special note of a provision included in this bill that would prevent the School Lunch Program from losing at least $100 million over the next 2 years by adjusting the way the program counts the value of commodities in the program. I introduced legislation earlier this year to prevent this problem, and I am pleased that this provision was included in the committee version of the bill.

In agriculture, I think the best economic stimulus is a long-term strategy that provides a meaningful income safety net for family farmers and ranchers. Therefore, the farm bill is the economic stimulus for rural America and family farmers and ranchers. The facts about the need to act are clear. In September, crop prices experienced the most dramatic one-month price drop in recorded history. We must enact a farm bill to provide greater economic security to our Nation's family farmers and ranchers.

I ask unanimous consent to print the letters in the RECORD.

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

DECEMBER 2, 2001.

Hon. TOM HARKIN,
Chairman, Senate Committee on Agriculture, Nutrition, and Forestry, U.S. Senate.
Hon. RICHARD G. LUGAR,
Ranking Member, Senate Committee on Agriculture, Nutrition, and Forestry, U.S. Senate.
Hon. LARRY COMBEST,
Chairman, House Agriculture Committee, House of Representatives.
Hon. CHARLES W. STENHOLM,
Ranking Member, House of Representatives, Washington, DC.

DEAR CHAIRMAN HARKIN AND COMBEST, SENATOR LUGAR, AND REPRESENTATIVE STENHOLM. The U.S. cattle industry invested considerable time, effort, and money to improve, promote, and advertise its finished product—U.S. beef. The U.S. cattle industry now needs the ability to identify its beef from among the growing volume of beef supplied by its foreign competitors. The ability to differentiate domestic beef from foreign beef is necessary to ensure that U.S. cattle producers have a competitive, open market that allows consumer demand signals to reach domestic cattle producers.

We strongly support the mandatory country-of-origin labeling language passed by the Senate Agriculture Committee. Specifically, we strongly support the following key elements: (1) Mandatory country of origin labeling for beef, lamb, pork, fish, fruits, vegetables, and peanuts. (2) Only meat from animals exclusively born, raised, and slaughtered in the United States shall be eligible for a USA label. (3) The USDA Quality Grade Stamp cannot be used on imported meat.

Several importing and processing industry groups are aggressively working to weaken the Senate Farm Bill's mandatory country-of-origin labeling language. They want to eliminate the exclusively born, raised, and slaughtered definition of origin. They also want to exempt ground beef from among the meat covered by the legislation. We strongly oppose any such changes as they would severely impair the competitiveness of U.S. cattle producers.

Since 1987, the U.S. cattle industry has invested millions toward a mandatory check-off program to research, promote, and advertise beef. It is now time to take the next logical step of requiring country-of-origin labeling so consumers can identify the very beef U.S. cattle producers have worked so hard to promote. Proper labeling of beef will benefit all check-off contributors. The identification of meat in the marketplace is also becoming increasingly important given the global threat of bio-terrorism. Without labeling, we cannot segregate or recall meat now flowing through our food distribution channels if a contamination or outbreak were announced by any one of our many trading partners. Finally, consumers deserve to have accurate country-of-origin labeling so they can make informed purchasing decisions.

We respectfully urge you to fully support the mandatory country-of-origin language passed by the Senate Agriculture Committee and now included in the Senate Farm Bill.

Sincerely,

Adams County Cattlemen's Association (Washington), Alabama Cattlemen's Association, American Indian Livestock Association, Baker County Livestock Association (Oregon), Beartooth Stockgrowers Association (Montana), Belgian Blue Beef Breeders, Bent-Prowers Cattle and Horsegrowers' Association (Colorado), Big Horn Cattlemen's Association (Wyoming), Bitterroot Stockgrowers Association (Montana), Black Hills Angus Association (South Dakota), Bonner-Boundary Cattle Association (Idaho), British White Cattle Association of America, LTD, Cattlemen's Weighing Association (North Dakota), Colstrip Community Stockyard Association, Crazy Mountain Stockgrowers (Montana), Eagle County Cattlemen's Association (Colorado), Fallon County Stockgrowers' and Landowners' Association (Montana), Grant County Cattlemen's Association (Washington), Holy Cross Cattlemen's Association (Colorado), Idaho-Lewis Cattle Association (Idaho).

Independent Cattlemen's Association of Texas, Kansas Cattlemen's Association, Kansas Hereford Association, Kootenai Cattlemen's Association (Idaho), Lane County Livestock Association (Oregon), Livestock Marketing Association, Minnesota Cattlemen's Association, Mississippi Cattlemen's Association, Missouri Stockgrower's Association, Montana Stockgrowers Association, Nevada Cattlemen's Association, Nevada Live Stock Association, New Jersey Angus Association, New Mexico Cattlegrowers' Association, North Central Stockgrowers Association (Montana), North Dakota Stockmen's Association, North-East Kansas Hereford Association, North Idaho Cattlemen's Association (Idaho), Owyhee Cattlemen's Association (Idaho).

Pennsylvania Cattlemen's Association, Pueblo County Cattlemen Association (Colorado), Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R–CALF USA), Sheridan County Stockgrowers (Wyoming), South Dakota Livestock Auction Markets Association, South Dakota Stockgrower's Association, Southeastern Montana Livestock Association, Southern Colorado Livestock Association, Spokane County Cattlemen's Association (Washington), Stevens County Cattlemen's Association (Washington), Utah Cattlemen's Association, Valier Stockmen's Association (Montana), Virginia Cattlemen's Association, Washington Cattlemen's Association, Western Montana Stockgrowers Association, Western Ranchers Beef Cooperative (California), Wyoming Stock Growers Association.

DECEMBER 4, 2001.

Member,
U.S. Senate, Washington, DC.

DEAR SENATOR: On behalf of the members of the American Farm Bureau Federation (AFBF) and the National Farmers Union (NFU), we write to urge your support for country of origin labeling when you vote for the farm bill. The Senate Agriculture Committee-passed farm bill requires mandatory country of origin labeling for fresh fruits and vegetables, peanuts, and meat products including beef, lamb, pork and farm-raised fish.

Producers and consumers both benefit. Country of origin labeling is a valuable marketing opportunity that may improve the ability of U.S. producers to compete in a highly regulated market and costly environment. Likewise, consumers have expressed strong support for country of origin labeling for agricultural products. According to a March 1999 Wirthlin Worldwide survey, 86 percent of consumers support country of origin labeling for meat products.

The U.S. General Accounting Office has reported that, according to surveys conducted by the fresh produce industry, between 74 and 83 percent of consumers favor country of origin labeling for fresh produce. The Farm Foundation's, ''The 2002 Farm Bill: U.S. Producer Preference for Agricultural, Food and Public Policy'' indicates that support for labeling the country of origin on food products is nearly unanimous, with 98 percent in agreement, among producers.

The Senate Agriculture committee-passed farm bill requires meat products, peanuts, and perishable agricultural commodities to be labeled as to the country of origin. In order to qualify as U.S.-produced, meat products must come from an animal born, raised and slaughtered in the U.S. and fresh produce and peanuts must be exclusively grown and processed in the U.S. Language is included stating that there will not be a system of mandatory identification imposed and that a system will be based on a current program used by USDA to verify that the animals are born, raised and slaughtered in the U.S.

A significant number of U.S. trading partners have country of origin labeling laws for produce and meat products. According to the USDA's 1998 Foreign Country of Origin Labeling Survey, the United States is among only six of the 37 reporting countries that do not require country of origin labeling on processed meat. Since the time of the 1998 survey, additional countries, such as Japan, have begun requiring country of origin labeling of meat. In addition, some 35 out of the 46 surveyed countries require country of origin labeling for fresh fruits and vegetables.

Farmers and ranchers believe consumers have a right to know where their food is produced. We hope that you will support country of origin labeling as it moves to the Senate floor.

Sincerely,

BOB STALLMAN,
President, American Farm Bureau Federation.

LELAND SWENSON,
President, National Farmers Union.

OCTOBER 30, 2001.

Hon. TOM HARKIN,
Chairman, Senate Committee on Agriculture, Nutrition and Forestry U.S. Senate.

Hon. RICHARD G. LUGAR,
Ranking Member, Senate Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Washington, DC.

DEAR CHAIRMAN HARKIN AND SENATOR LUGAR: We are writing to ask for your support for an initiative that will allow consumers to make more informed choices about their purchases of fruits, vegetables and meats. We seek your support for inclusion of a measure to provide mandatory country-of-origin labeling for fresh produce and meat in the Senate version of the farm bill.

American consumers prefer to know where their food is grown. In multiple national surveys, more than 70 percent of produce shoppers support country-of-origin labeling for fruits and vegetables. In Florida, where such labeling has been the law for more than 20 years, more than 95 percent favor produce origin labeling in stores. Consumer surveys also indicate that 86 percent of Americans prefer labeling country-of-origin for meat products.

The Consumer Right to Know Act of 2001 (S. 280) would mandate point-of-purchase labeling for fruits, vegetables and other fresh perishables, as well as meat products such as beef, lamb and pork. Food service establishments would be exempt. The bill grants USDA the authority to coordinate enforcement with each state.

Of course, manufactured goods sold in the U.S. have carried mandatory country-of-origin labels since the 1930s. Today, at a time when retailers sell fresh produce from dozens of countries, our nation's fruits and vegetables need to carry that same important information. Furthermore, consumers are misled into thinking the USDA inspected grade equates a country of origin label for meat products.

Recently, the House of Representatives overwhelmingly passed a similar country-of-origin labeling measure (mandating labeling for fresh produce only) as part of the farm bill package.

We urge you to consider the benefits of S. 280 and support inclusion of it in the Senate version of the farm bill.

Sincerely,

Alaska Farmers Union, American Corn Growers Association, Alabama Farm Bureau Federation, Arizona Farm Bureau Federation, Arkansas Farm Bureau Federation, Arkansas Farmers Union, Burleigh County Farm Bureau, California Asparagus Commission, California Citrus Mutual, California Grape & Tree Fruit League, California Farm Bureau, California Farmers Union, Center for Food Safety, Consumer Federation of America, Desert Grape Growers League of California, Florida Citrus Mutual, Florida Department of Agriculture & Consumer Services, Florida Farm Bureau Federation, Florida Farmers & Suppliers Coalition, Inc., Florida Fruit and Vegetable Association.

Florida Tomato Exchange, Georgia Farm Bureau Federation, Georgia Fruit and Vegetable Growers Association, Idaho Farm Bureau Federation, Idaho Farmers Union, Illinois Farmers Union, Independent Cattlemen's Association of Texas, Indiana Farmers Union, Indian River Citrus League, Intertribal Agriculture Council, Iowa Farmers

Union, Kansas Cattlemen's Association, Kansas Farmers Union, Livestock Marketing Association, Louisiana Farm Bureau Federation, Maryland Farm Bureau, Michigan Asparagus Advisory Committee.

Michigan Farmers Union, Minnesota Farm Bureau Federation, Minnesota Farmers Union, Missouri Farmers Union, Mississippi Farm Bureau Federation, Montana Farm Bureau Federation, Montana Farmers Union, National Catholic Rural Life Conference, National Consumers League, National Family Farm Coalition, National Farmers Organization, National Farmers Union, National Onion Council, National Potato Council, Nebraska Farmers Union, New York Farm Bureau, New York Beef Producers' Association, New York State Forage & Grassland Council, New Jersey Farm Bureau, Nevada Livestock Association.

North Dakota Farm Bureau, North Dakota Farmers Union, North Idaho Cattlemen's Association, Northwest Horticultural Council, Ohio Farm Bureau Federation, Ohio Farmers Union, Oklahoma Farmers Union, Oregon Farm Bureau Federation, Oregon Farmers Union, Organization for Competitive Markets, Public Citizen, Pennsylvania Farm Bureau, Pennsylvania Farmers Union, Ranchers-Cattlemen Action Legal Fund (R-CALF USA), Rhode Island Farm Bureau Federation, Rocky Mountain Farmers Union, South Carolina Farm Bureau.

South Dakota Farm Bureau Federation, South Dakota Farmers Union, Southern Colorado Livestock Association, Texas Farmers Union, United Fruits and Vegetable Association, Utah Farmers Union, Virginia Farm Bureau, Washington Farmers Union, Washington State Farm Bureau, Western Organization of Resource Councils (WORC), Wisconsin Farmers Union, Wyoming Farm Bureau Federation, Wyoming Stock Growers Association.

NOVEMBER 6, 2001.

DEAR SENATOR: When the Senate takes up the 2001 farm bill, please support legislation to require country-of-origin labeling at retail for meat products and fresh fruits and vegetables. Senator Tim Johnson (D–S.D.) has introduced this legislation as S. 280, the Consumer Right to Know Act of 2001. Please oppose efforts to water down country-of-origin labeling legislation by allowing domestic origin labels on beef that has been slaughtered and processed—but not born—in this country.

While not a food safety program, country-of-origin labeling will give consumers additional information about the source of their food. As a matter of choice, many consumers may wish to purchase produce grown and processed in the United States or meat from animals born, raised and processed here. Without country-of-origin labeling, these consumers are unable to make an informed choice between U.S. and imported products. In fact, under the Agriculture Department's grade stamp system, they could be misled into thinking some imported meat is produced in this country. Country-of-origin labeling may also assist small producers, many of whom are suffering from low prices, consolidation among processors, and weather-related problems.

Several food industry trade associations and two farm organizations have proposed a voluntary ''Made in the USA'' label for retailers who want to promote and market U.S. beef. Their effort falls short on two counts. First, industry already has voluntary labeling authorization and it has not resulted in country-of-origin labeling for beef. In addition, the industry proposal allows meat from cattle that have been in this country for a few as 100 days to be labeled ''U.S. Beef.'' This could mislead consumers into thinking a product is of U.S. origin when, in fact, it is not. Meat products identified as ''U.S. Beef'' or ''Made in the U.S.A.'' should originate from animals born, raised, slaughtered and processed here.

When country-of-origin labeling is discussed, two additional issues invariably come up: cost and trade retaliation. On cost, the General Accounting Office concluded that country-of-origin labeling would increase costs for both industry and government but that ''the magnitude of these costs is uncertain.'' Federal law, however, already requires country-of-origin markings on the packaging of all meat and produce imported into this country. In addition, slaughter plants already segregate beef carcasses by grade and grade levels already following products to the retail level. How costly would it be to expand these efforts to include country-of-origin labeling at retail? In Florida, which has had country-of-origin labeling for produce since 1979, it reportedly costs less than $10 per month per store. In terms of compliance, Florida says its program is ''not costly if conducted by the same inspection authority that is usually in food stores.'' Florida put statewide industry compliance costs for country-of-origin labeling through 1998 at less than $300,000 per year. Costs of this magnitude would be a reasonable tradeoff to assure accurate labeling of meat and fresh produce.

On trade, numerous foreign countries have their own country-of-origin labeling requirements for perishable agricultural commodities. Twenty-two of our own trading partners—including Canada, Mexico, Japan and many members of the European Union—have country-of-origin labeling for produce. If our trading partners have these requirements, why shouldn't we? In addition, many other consumer products, including automobiles, must meet country-of-origin labeling requirements in this country. Why should agricultural products be exempt?

Many polls, including a 1998 CBS News poll and two polls by the National Cattlemen's Beef Association, have found overwhelming consumer support for country-of-origin labeling. In Florida, more than 95 percent favor labeling produce by country of origin.

Earlier this fall, the House of Representatives included country-of-origin labeling for produce as part of its farm bill. The amendment adding this provision passed by a wide margin. Please support S. 280 or similar legislation when the Senate debates its farm bill.

ARTHUR JAEGER,
Consumer Federation of America.
PATTY LOVERA,
Public Citizen.
LINDA GOLODNER,
National Consumers League.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I ask unanimous consent that I might be able to proceed for about 3 minutes as in morning business.

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

MILITARY TRIBUNALS

Mr. LEAHY. Mr. President, over the past few weeks, the Committee on the Judiciary has examined the administration's proposal to use military tribunals to try suspected terrorists. I think our work has been very helpful and productive. We used the constitutional oversight powers of the Senate to hold a series of hearings on a number of recent developments. Assistant Attorneys General asked to testify and we accommodated them. The Attorney General responded to a bipartisan request and we accommodated him with respect to the date and timing of his participation. We had a dialog on the question of military tribunals. We heard from other witnesses at our earlier hearings and through the course of the last few weeks informally from literally thousands of people.

We did this because it appeared to many of us that we had sort of a unilateral edict on the part of the administration regarding military tribunals. We were hearing, from the left to the right, concern that it was so unilateral that it might not stand constitutional muster. So in seeking as many voices on this as possible, we heard from some who endorsed wholeheartedly the use of military tribunals, others who said we should only use our court system—the tried and tested method of the court system, and still others who said—and I find myself in this category—sometimes military tribunals can be appropriate provided they are duly authorized and provided there are reasonable limits and proper safeguards for them.

I will put in the RECORD a copy of a letter from a large number of lawyers and law professors on this issue, and also a summary of some of the things we found in our committee hearings. I also include a proposal. I put this in the RECORD because I know Senators have been considering proposals for a military tribunal. Several Members of both parties have come forward with very constructive suggestions. I want to make sure if we are going to use military tribunals, we bring the procedure into compliance with international law, but with treaty obligations we have elsewhere. I want to make sure we set out very clearly the question of what our limits are, what the U.S. says about military tribunals.

We all know our various Presidents over the years have had to call other countries and say: You are holding an American. You can't put that American before a secret military tribunal. There have to be safeguards and we have to know what is going on. Certainly, you must carry out your own laws, but let's do it in the open and make sure they have a chance to speak, that they know what the evidence is against them, and that they have a chance for appeal.

A military tribunal is not a court-martial. Our courts-martial in the United States follow very specific procedures—in fact, some of the best in the world. If it is simply a question of these being, in effect, a court-martial, I don't think there would be any problem.

But what is a military tribunal? Senators have asked: Does it mean that a bare majority, or even less, could vote for the death penalty? What is the standard of proof? Is it mere suspicion, or is it preponderance of the evidence,

or is it beyond a reasonable doubt? Does the person accused have any chance to give any kind of a defense? These are all issues that should be laid out.

If we are going to use military tribunals, let's make sure we are putting forth the best face of America. We have so much for which to be proud. We have a great deal to be proud of in our civil courts and in our military courts. At a time when we are asking nations around the world to join us in our battle against these despicable acts of terror—the acts we saw on September 11 in New York, the Pentagon, and in a lonely field in Pennsylvania—as we properly and appropriately defend ourselves and seek to eradicate the source of this terror, let's make sure, as we line up countries around the world to join us in that battle, that we keep those countries as our allies for further battles. Even after bin Laden is gone—and eventually he will be—there will be other terrorists—if not now, in later years. We want to make sure that countries join with us in the battle against terrorism, respecting the fact that we uphold our Constitution and our highest ideals as Americans.

THE CONTINUING DEBATE ON THE USE OF MILITARY COMMISSIONS

Assistant Attorney General Chertoff testified on November 28 before the Senate Judiciary Committee that ''the history of this Government in prosecuting terrorists in domestic courts has been one of unmitigated success and one in which the judges have done a superb job of managing the courtroom and not compromising our concerns about security and our concerns about classified information.''

I am proud that the Senate Judiciary Committee is playing a role in sponsoring this national debate, and I appreciate the participation and contributions of all members of the committee—no matter their point of view. Leading constitutional, civil rights and military justice experts have generously shared their time and analyses with the committee, as well as the Attorney General and other representatives of the Department of Justice. No one participant, no one person, and no one party holds a monopoly on wisdom in this Nation. I know that spirited debate is a national treasure. I know what the terrorists will never understand, that our diversity of opinion is not a weakness but a strength beyond measure.

I do not cast aspersions on those who disagree with my views on this subject. I do not challenge their motives and seek to cower them into silence with charges of ''fear mongering.'' I challenge their ideas, and praise them as patriots in a noble cause.

Already, our oversight has provided a better picture of how the administration intends to use military commissions. According to William Safire of the New York Times, Secretary of Defense Donald Rumsfeld called the discourse over military commissions ''useful'' and is reaching outside the Pentagon for input. It now appears that the administration is reconsidering some of the most sweeping terms of the President's November 13 military order. On its face, that order has broad scope and provides little in the way of procedural protections, but the more recent assurances that it will be applied sparingly and in far narrower circumstances than is suggested by the language of the order have been helpful. While the Judiciary Committee hearings were ongoing, the administration clarified its plans for implementation of the military order in five critical aspects.

First, as written, the military order applies to non-citizens in the United States, which according to testimony before the committee would cover about 20 million people. Two days after we began our series of hearings, the President's counsel indicated that military commissions would not be held in the United States, but rather ''close to where our forces may be fighting.'' Anonymous administration officials have also indicated in press reports that there is no plan to use military commissions in this country but only for those caught in battlefield operations.

Second, the White House counsel has also indicated that the order will only apply to ''non-citizens who are members or active supporters of al-Qaida or other international organizations targeting the United States'' and who are ''chargeable with offenses against the international laws of war.''

Third, while the military order is essentially silent on the procedural safeguards that will be provided in military commission trials, the White House counsel has explained that military commissions will be conducted like courts-martial under the Uniform Code of Military Justice. I have great confidence in our courts-martial system, which offers protections for the accused that rival, and in some cases even surpass, protections in our Federal civilian courts and includes judicial review.

Fourth, nothing in the military order would prevent commission trials from being conducted in secret, as was done, for example, in the case of the eight Nazi saboteurs that has most often been cited by the administration as its model for this order. However, Mr. Gonzales assured us that ''Trials before military commissions will be as open as possible, consistent with the urgent needs of national security.'' Mr. Chertoff's testimony before the committee was along the same lines.

This is in sharp contrast to the statements before our hearings that the ''proceedings promise to be swift and largely secret, with one military officer saying that the release of information might be limited to the barest facts, like the defendant's name and sentence.''

Finally, the order expressly states that the accused in military commissions ''shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly . . . in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal.'' Yet, the administration's most recent statements are that this is not an effort to suspend the writ of habeas corpus.

These explanations of the military order by both anonymous and identified administration representatives suggest that, one, the administration does not intend to use military commissions to try people arrested in the United States; two, these tribunals will be limited to ''foreign enemy war criminals'' for ''offenses against the international laws of war''; three, the military commissions will follow the rules of procedural fairness used for trying U.S. military personnel; and four, the judgments of the military commissions will be subject to some form of judicial review. We hope that the Attorney General's responses to written questions from the committee will continue to clarify these critical matters.

The administration apparently contends that an express grant of power from this Congress to establish military commissions is unnecessary. The Attorney General testified before the Judiciary Committee on December 6 that, ''the President's power to establish war-crimes commissions arises out of his power as Commander in Chief.'' A growing chorus of legal experts casts doubt on that proposition, however. Nevertheless, the administration appears to be adamant about going it alone and risking a bad court decision on the underlying legality of the military commission. Why take a chance that the punishment meted out to terrorists by a military commission will not stick due to a constitutional infirmity in the commission's jurisdiction?

I have received a letter signed by over 400 law professors from all over the country, expressing their collective wisdom that the military commissions contemplated by the President's Order are ''legally deficient, unnecessary, and unwise.'' More specifically, these hundreds of legal scholars point out that Article I of the Constitution provides that Congress, not the President, has the power to ''define and punish . . . Offenses against the Law of Nations.'' Absent specific congressional authorization, they say, the order ''undermines the tradition of the Separation of Powers.''

At our last hearing with the Attorney General, some of my colleagues on the other side of the aisle suggested that the administration had ''essentially won'' the argument on military commissions. This impression is wholly mistaken and I would urge my colleagues to review the record of the hearings before the Senate Judiciary Committee on this issue.

This debate is not about following the polls and playing a game of political ''gotcha'' when the cameras are rolling. When more than 400 law professors speak with one voice, and anyone who has been to law school knows that it is no easy matter to get even two law professors to agree on something, we must carefully consider their opinion that there are serious legal and constitutional problems with the President's course of action.

Their views are consistent with the concerns raised by the constitutional and military justice experts who testified before the committee. Let me just cite a few examples.

Retired Air Force Colonel Scott Silliman and law professor Laurence Tribe argued that the legal basis of the President's Military Order is weak and should be remedied by Congress.

Cass Sunstein of the University of Chicago recommended that basic requirements of procedural justice be met if commissions are established.

Neal Katyal of Yale Law School opined that the order ''usurps the power of Congress'' and ignores the focus of our Constitution's framework.

Kate Martin, Director of the Center for National Security Studies states that the military order ''violates separation of powers as the creation of military commissions has not been authorized by the Congress and is outside the President's constitutional powers.'' She compares this current situation to that ''[w]hen the Supreme Court approved the use of military commissions in World War II'' and ''Congress has specifically authorized their use in Articles of War adopted to prosecute the war against Germany and Japan.''

Phillip Heymann of Harvard Law School testified that he regards the Military Order ''as one of the clearest mistakes and one of the most dangerous claims of executive power in the almost fifty years that [he has] been in and out of government.''

Kathleen Clark of Washington University Law School, St. Louis, in submitted testimony, examines each of the four sources cited by the President for authority for the order and concludes, ''None of these authorize the creation of this type of military tribunal.'' She concludes that ''In this time of uncertainty and fear, it is as important as ever for Congress to ensure that the executive branch abides by the constitutional limits on its authority.''

Timothy Lynch, Director of the CATO Institute's Project on Criminal Justice contends that ''because Article I of the Constitution vests the legislative power in the Congress, not the Office of the President, the unilateral nature of the executive order clearly runs afoul of the separation of powers principle.''

Legal experts around the country are concerned that the President's order does not comport with either constitutional or international standards of due process. As pointed out in the letter from over 400 law professors, this defect has both practical and legal consequences. Legally, it means that the order may be inconsistent with our treaty obligations, which under our Constitution are the ''supreme Law of the Land.'' Practically, it give political cover to those less democratic regimes around the world to mistreat foreign defendants in their courts, and thereby places Americans around the world at risk.

On December 5, I forwarded to the Attorney General in advance of the Judiciary Committee hearing proposed legislation to authorize the President to establish military tribunals to try terrorists captured abroad in connection with the September 11 attacks. In that proposal I outlined a number of procedural safeguards to fulfill the President's command in his military order for a ''full and fair hearing.'' These procedures would bring these tribunals into compliance with our Nation's obligations under international law and treaties to which the United States is a party.

The authorization for and literal terms of the order present serious questions and require some corrective action. That is why I have offered to work with the administration and other members to draft and pass legislation that will clearly authorize and establish procedures for military commissions.

Those of us who take an oath of office to uphold the Constitution, both in the Congress and the administration, have a duty to do more than just listen to the polls. The important thing, after all, is not who wins some political debate the important thing is that America gets this right.

I ask unanimous consent to have the law professors' letter dated December 5, 2001, and an outline of safeguards and the sources for them be printed in the RECORD.

DECEMBER 5, 2001.

Hon. PATRICK J. LEAHY,

Chairman, Senate Judiciary Committee, Russell Senate Office Bldg., U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: We, the undersigned law professors and lawyers, write to express our concern about the November 13, 2001, Military Order, issued by President Bush and directing the Department of Defense to establish military commissions to decide the guilt of non-citizens suspected of involvement in terrorist activities.

The United States has a constitutional court system of which we are rightly proud. Time and again, it has shown itself able to adapt to complex and novel problems, both criminal and civil. Its functioning is a worldwide emblem of the workings of justice in a democratic society.

In contrast, the Order authorizes the Department of Defense to create institutions in which we can have no confidence. We understand the sense of crisis that pervades the nation. We appreciate and share both the sadness and the anger. But we must not let the attack of September 11, 2001 lead us to sacrifice our constitutional values and abandon our commitment to the rule of law. In our judgment, the untested institutions contemplated by the Order are legally deficient, unnecessary, and unwise.

In this brief statement, we outline only a few examples of the serious constitutional questions this Order raises:

The Order undermines the tradition of the Separation of Powers. Article I of the Constitution provides that the Congress, not the President, has the power to ''define and punish . . . Offenses against the Law of Nations.'' The Order, in contrast, lodges that power in the Secretary of Defense, acting at the direction of the President and without congressional approval.

The Order does not comport with either constitutional or international standards of due process. The President's proposal permits indefinite detention, secret trials, and no appeals.

The text of the Order allows the Executive to violate the United States' binding treaty obligations. The International Covenant on Civil and Political Rights, ratified by the United States in 1992, obligates State Parties to protect the due process rights of all persons subject to any criminal proceeding. The third Geneva Convention of 1949, ratified by the United States in 1955, requires that every prisoner of war have a meaningful right to appeal a sentence or a conviction. Under Article VI of the Constitution, these obligations are the ''supreme Law of the Land'' and cannot be superseded by a unilateral presidential order.

No court has upheld unilateral action by the Executive that provided for as dramatic a departure from constitutional norms as does this Order. While in 1942 the Supreme Court allowed President Roosevelt's use of military commissions during World War II, Congress had expressly granted him the power to create such commissions.

Recourse to military commissions is unnecessary to the successful prosecution and conviction of terrorists. It presumes that regularly constituted courts and military courts-martial that adhere to well-tested due process are unable to handle prosecutions of this sort. Yet in recent years, the federal trial courts have successfully tried and convicted international terrorists, including members of the al-Qaeda network.

It is a triumph of the United States that, despite the attack of September 11, our institutions are fully functioning. Even the disruption of offices, phones, and the mail has not stopped the United States government from carrying out its constitutionally-mandated responsibilities. Our courts should not be prevented by Presidential Order from visibly doing the same.

Finally, the use of military commissions would be unwise, as it could endanger American lives and complicate American foreign policy. Such use by the United States would undermine our government's ability to protest effectively when other countries do the same. Americans, be they civilians, peacekeepers, members of the armed services, or diplomats, would be at risk. The United States has taken other countries to task for proceedings that violate basic civil rights. Recently, for example, when Peru branded an American citizen a ''terrorist'' and gave her a secret ''trial,'' the United States properly protested that the proceedings were not held in ''open civilian court with full rights of legal defense, in accordance with international judicial norms.''

The proposal to abandon our existing legal institutions in favor of such a constitutionally questionable endeavor is misguided. Our democracy is at its most resolute when we meet crises with our bedrock ideals intact and unyielding.

Respectfully submitted,

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Peter J. Spiro, Professor of Law, Hofstra University Law School; Joan Steinman, Distinguished Professor of Law, Chicago-Kent College of Law; Barbara Stark, Professor of Law, University of Tennessee College of Law; Margaret Stewart, Professor of Law, Chicago-Kent School of Law; Katherine Stone, Professor of Law, Cornell Law School; Victor J. Stone, Professor Emeritus of Law, University of Illinois at Urbana-Champaign; Robert N. Strassfeld, Professor of Law, Case Western Reserve University School of Law; Peter L. Strauss, Betts Professor of Law, Columbia Law School; Beth Stephens, Associate Professor of Law, Rutgers-Camden School of Law; Ellen Y. Suni, Professor of Law, University of Missouri-Kansas City School of Law; Michael Sweeney, Esq., Eleanor Swift, Professor of Law, School of Law (Boalt Hall), University of California at Berkeley; David Taylor, Professor of Law, Northern Illinois College of Law; Kim Taylor-Thompson, Professor, New York University School of Law; Peter R. Teachout, Professor of Constitutional Law, Vermont Law School; Harry F.

Tepker, Calvert Chair of Law and Liberty and Professor of Law, University of Oklahoma; Beth Thornburg, Professor of Law, Dedman School of Law, Southern Methodist University; Lance Tibbles, Professor of Law, Capital University Law School; Mark Tushnet, Georgetown University Law Center; Kathleen Waits, Associate Professor, University of Tulsa College of Law; Neil Vidner, Duke University Law School; and Joan Vogel, Professor of Law, Vermont Law School.

Rhonda Wasserman, Professor of Law, University of Pittsburgh School of Law; Mark Weber, Professor of Law, DePaul University College of Law; Harry H. Wellington, Sterling Professor of Law Emeritus, Yale Law School, Professor of Law, New York Law School; Carwina Weng, Assistant Clinical Professor, Boston College Law School; Jamison Wilcox, Quinnipiac School of Law; Cynthia Williams, Associate Professor, University of Illinois College of Law and Visiting Professor Fordham University Law School; Verna Williams, Assistant Professor of Law, University of Cincinnati College of Law; Harvey Wingo, Professor Emeritus of Law, Southern Methodist University; Stephen L. Winter, Professor of Law, Brooklyn Law School; Zipporah B. Wiseman, Thomas H. Law Centennial Professor of Law, University of Texas; Stephen Wizner, William O. Douglas Clinical Professor of Law, Yale Law School; Arthur D. Wolf, Professor of Law, Western New England College School of Law; Richard Wright, Professor of Law, Chicago-Kent College of Law; Larry Yackle, Boston University School of Law; Professor Ellen Yaroshefsky, Jacob Burns Ethics Center, Cardozo Law School, Yeshiva University; and Karen Kithan Yau, Robert M. Cover Clinical Teaching Fellow, Yale Law School and Member of the Connecticut, Massachusetts and New York State Bars.

PROCEDURAL SAFEGUARDS FOR MILITARY TRIBUNALS

(i) That the tribunal is independent and impartial—Sources: Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol II) Part II, Art. 6, No. 2; International Covenant on Civil and Political Rights (ICCPR), Part III, Art. 14, No. 1; Universal Declaration of Human Rights (UDHR), Art. 10.

(ii) That the particulars of the offense charged or alleged against the accused are given without delay—Sources: Protocol II, Part II, Art. 6, No. 2(a); ICCPR, Part III, Art. 14, No. 3(a) and (c); Statute of the International Criminal Tribunal for former Yugoslavia (ICTY), Art. 20(3), 21(4)(a); Additional Protocol I to the Geneva Conventions (Protocol I), Art. 75(4)(a); U.S. Rules of Courts-Martial (RCM) 308; RCM 405(f)(1), (2), and (6); and RCM 602.

(iii) That the proceedings be made intelligible by translation or interpretation—Sources: ICCPR, Part III, Art. 14, No. 3(a) and (f); ICTY, Art. 21(4)(a) and (f); Geneva Convention 3, Art. 105; Implicit in Protocol I, Art. 4(a).

(iv) That the evidence supporting the conviction is given to the accused, with exceptions only for demonstrable reasons of national security or public safety—Sources: ICCPR, Part III, Art. 14, No. 1; Geneva Convention 3, Art. 105; Protocol I, Art. 75(4)(g); Universal Declaration of Human Rights, Art. 11; ICTY 21(4)(e); RCM 308; RCM 405(f)(3) and (5); RCM 405(g)(1)(B); RCM 703(f); Military Rules of Evidence (MRE) 401.

(v) That the accused has the opportunity to be present at trial—Sources: Protocol II, Part II, Art. 6, No. 2(e); ICCPR, Part III, Art. 14, No. 3(d); ICTY, Art. 21(4)(d); Implicit in Geneva Convention 3, Art. 99; Protocol I, Art 75(4)(e); RCM 804.

(vi) That the accused may be represented by counsel—Sources: ICCPR, Part III, Art. 14, No. 3(b) and (d); ICTY, Art. 21(4)(b) and (d) implicit in Protocol II, Part II, Art. 6, No. 2(a); RCM 405(d)(2); RCM 405(f)(4); RCM 506.

(vi) That the accused has the opportunity to respond to the evidence supporting conviction and present exculpatory evidence—Sources: ICCPR, Part III, Art. 14, No. 3(e); Geneva Convention 3, Art. 105; RCM 405(f)(10) and (11).

(vii) That the accused has the opportunity to cross-examine adverse witnesses and to offer witnesses—Sources: ICCPR, Part III, Art. 14, No. 3(e); ICTY, Art. 21(4)(e); Geneva Convention 3, Art. 105; Protocol I, Art. 75(4)(g); Universal Declaration of Human Rights, Art. 11; RCM 405(f)(8) and (9); RCM 703(a); MRE 611(b).

(viii) That the proceeding and disposition are expeditious—Sources: ICCPR, Part III, Art. 14, No. 3(c); ICTY, Art. 20(1), Art. 21(4)(c); implicit in Protocol II, Part II, Art. 6, No. 2(a); Geneva Convention 3, Art 105; Additional Protocol 1 to the Geneva Conventions, Art. 75(4)(g); UDHR, Art. 11; RCM 707(a) (calls for arraignment within 120 days).

(ix) That reasonable rules of evidence, designed to ensure admission only of material with probative value, are used—Sources: This is a suggestion made by Cass Sunstein in testimony before the Judiciary Cmte on 12/4/2001; it responds to section 4(c)(3) of the President's military order; see also Geneva Convention 3, Art 103; Protocol I, Art. 75(4)(a); MRE 401–403 (NOTE: protections are nearly equal to safeguards in federal civilian courts).

(x) That before and after the trial, the accused is afforded all necessary means of defense—Sources: Protocol II, Part II, Art. 6, No. 2(a); ICCPR, Part III, Art. 14, No. 3(b).

(xi) That conviction is based only upon proof of individual responsibility for the offense—Sources: Protocol II, Part II, Art. 6, No. 2(b); ICTY, Art. 21(4)(b); Geneva Convention 3, Art. 105.

(xii) That conviction is not based upon acts, offenses or omissions which were not offenses under the law at the time they were committed—Sources: Protocol II, Part II, Art. 6, No. 2(c); UDHR, Art. 11(2); ICTY, Art 7; Protocol I, Art. 75(4)(b).

(xiii) That the penalty for an offense is not greater than it was at the time that the offense was committed—Sources: Protocol II, Part II, Art. 6, No. 2(c); UDHR, Art. 11(2); ICTY, Art. 10; ICCPR, Art. 15; Protocol I, Art. 75(4)(c).

(xiv) That the accused is presumed innocent until proved guilty—Sources: Protocol II, Part II, Art. 6, No. 2(d); ICCPR, Part III, Art. 14, No. 2; Art. 15; UDHR, Art. 11(1); ICTY, Art. 21(3); Protocol I, Art. 75(4)(c).

(xv) That the accused is not compelled to confess guilt or testify against himself—Sources: Protocol II, Part II, Art. 6, No. 2(f); ICCPR, Part III, Art. 14, No. 3(g); ICTY, Art. 21(4)(g); RCM 405(f)(7); MRE 301; Implicit in Geneva Convention 3, Art 99; Protocol I, Art. 75(4)(d).

(xvi) That the trial is open and public, including public availability of the transcripts of the trial and pronouncement of judgment, with exceptions only for demonstrable reasons of national security or public safety—Sources: ICCPR, Part III, Art. 14, No. 1; ICTY,. Art. 20(4) and 21(2); Protocol I, Art. 75(4)(f); RCM 806; RCM 922; RCM 1007.

(xvii) That a convicted person is informed of remedies and appeals and the time limits for the exercise thereof—Sources: Protocol II, Part II, Art. 6, No. 3; ICCPR, Part III, Art. 14, No. 5; UDHR, Art. 10, 11; Protocol I, Art. 75(4)(i); RCM 1010.

(xviii) That a convicted person is informed of remedies and appeals and the time limits for the exercise thereof—Sources: Protocol II, Part II, Art. 6, No. 3; ICCPR, Part III, Art. 14, No. 5.; Geneva Convention 3, Art 106; Protocol I, Art. 75(4)(j) [to be informed if available]; UDHR, Art. 14; ICTY, Art 25.

Mr. LUGAR. Mr. President, I want to take advantage of the presence of the distinguished Senator from Vermont and the present chairman of the Agriculture Committee, who are the sole survivors of the agriculture debate today. This may be indicative of the kind of stamina required for this work.

It would be my hope to proceed in morning business to, in fact, give a statement about national security. I ask the Chair informally, because he has had a very long week, and I had not anticipated that he would be assuming this responsibility—nor do I wish to take advantage of that—if I may, I would like to proceed in morning business.

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

NATIONAL SECURITY

Mr. LUGAR. Mr. President, I found in the current issue of the National Journal a very important article entitled ''Nuclear Nightmares,'' by James Kitfield, who has written knowledgeably in the past about matters of national security, and particularly those involving nuclear energy and weapons of mass destruction.

I want to place this article by James Kitfield into the RECORD. I ask unanimous consent that it be printed in the RECORD.

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

[From the National Journal, Dec. 14, 2001]

NUCLEAR NIGHTMARES

(By James Kitfield)

The recent disclosure that documents about nuclear bombs and radiological ''dirty bombs'' had been found at captured Al Qaeda terrorist network facilities in Kabul, Afghanistan, immediately triggered alarms among the nuclear scientists who work atop the high desert mesas in this remote region of New Mexico. For more than 50 years, nuclear experts at Los Alamos and at nearby Sandia National Laboratories have studied terrorist and criminal groups for any signs that they were on the verge of cracking the nuclear code first broken here. Everything they knew about Al Qaeda told them that these terrorists might be drawing too close to a terrible discovery.

Indeed, ever since members of the Manhattan Project tested the first atomic bomb in New Mexico in 1945, scientists at Los Alamos have been the pre-eminent keepers of the nuclear flame. When the former Soviet Union created the secret nuclear city ''Arzamas-16'' as the birthplace of its own atomic bomb, it hewed closely to the Los Alamos blueprint. So much so, in fact, that Russian residents later jokingly referred to their town as ''Los Arzamas.''

Almost from the inception of the nuclear age, no one understood better the apocalyptic threat of these weapons than the nuclear scientists who made them. J. Robert Oppenheimer, the director of the Manhattan Project and the father of the atomic bomb, eventually feel out of favor with the U.S.

military at least partly over his strident support for arms control and his opposition to development of the much more powerful hydrogen bomb. The scientists at Los Alamos developed and help train and man the Energy Department's secretive Nuclear Emergency Search Teams that for 30 years have stood poised to respond to the threat of nuclear terror or the smuggling of a nuclear weapon onto U.S. soil.

Most important, the scientists at the Los Alamos, Sandia, and Lawrence Livermore national laboratories helped devise a U.S. nuclear doctrine designed to strictly limit the spread of nuclear weapons and technology, and to render their use unthinkable through the dynamic tension of ''mutually assured destruction.'' And for the past decade, they have watched with growing concern as unpredictable world events have repeatedly tested the tolerances of that careful calculation and narrowed its margins for error.

WEAKENED SECURITY

The breakup of the former Soviet Union, followed by the fundamental restructuring of a Russian society that accounted for the world's largest stockpile of both nuclear weapons and the fissile material necessary to make them, created a gaping hole of vulnerability in terms of nuclear proliferation. U.S. experts concede that hole remains open to this day.

''We've been worried about Russia for 10 years, because initially the Russians insisted they didn't need any help securing their weapons and nuclear material, which was a ludicrous assertion,'' Siegfried Hecker, a senior fellow and former longtime director of Los Alamos National Laboratory, told National Journal. ''The Russians simply failed to take into account how dramatically their country had changed with the breakup of the Soviet Union. With the evolution toward an open society, the old Soviet security system based on guns, guards, and gulags was simply not good enough anymore. So we've spent a lot of time educating the Russians about the gaps in their own security system, and I still don't think the Russian leadership fully appreciates just how real the continued vulnerabilities are in the Russian nuclear complex.''

On top of Russian instability has come the rise of Islamic fundamentalism particularly the Taliban regime in Afghanistan, which has—or had, until recent weeks—strong links with the government of Pakistan, an emerging nuclear power. Pakistan's detention of two of its nuclear scientists for suspected connections to Osama bin Laden and his Al Qaeda network, and recent news reports suggesting previously undisclosed contacts between other Pakistani nuclear weapons experts and Al Qaeda, underscore the difficulty such societies have in safeguarding their nuclear secrets in times of extreme turmoil.

John Immele, a deputy director of Los Alamos, said: ''The biggest security threat in terms of nuclear weapons or expertise falling into the wrong hands has always been the ''inside job,'' because it short-circuits so many of the traditional barriers to nuclear proliferation. From that standpoint, the threat to the Pakistani government from Islamic fundamentalists, and the close ties between fundamentalists inside the government and Pakistan's nuclear weapons program, are obviously causes for concern. If a terrorist group were to get its hands on nuclear fissile material,'' he said, ''the main impediment to making a bomb would be to find an expert to assemble it. As cases concerning Pakistani and some Russian nuclear scientists in the past have shown, there are an increasing number of nuclear experts out there, and some find themselves in desperate circumstances. That's one more way the bar to a terrorist group acquiring a nuclear device has dropped.''

Perhaps the greatest disruption to the equilibrium of the nuclear ''balance of terror'' is the emergence of criminal and terrorist organizations with a level of power and technological sophistication once associated only with nation-states. Should Al Qaeda or another one of these terrorist groups with global reach succeed in acquiring nuclear weapons, experts say, it would turn on its head a nuclear doctrine that is based on the deterrent value of mutually assured destruction. Doomsday cults or religious zealots bent on martyrdom may not care much about traditional theories of deterrence.

Roger Hagengruber, the senior vice president for national security at Sandia, has spent much of his career contemplating the threat of nuclear terror. ''For 50 years, the United States has closely watched various terrorist organizations for telltale indications that they might become a nuclear threat,'' he told National Journal. Possible warning signs include evidence of state sponsorship, a display of rapidly increasing technological sophistication, or persistent attempts to acquire materials or expertise associated with nuclear weapons.

''The reason we've been so concerned about Al Qaeda for some time is because all the warning indicators are positive,'' Hagengruber said, citing bin Laden's statements that acquiring nuclear and other weapons of mass destruction was a ''religious duty'' for Muslims, and intelligence reports of persistent attempts by Al Qaeda operatives to acquire nuclear fissile material. ''You have a large, seemingly well-funded terrorist organization that has persisted over a long period of time. They have operated with either direct or indirect state support in a region of the world where the security infrastructure guarding nuclear materials is under significant stress. And they have an unprecedented degree of enmity toward the United States. I still think it's relatively unlikely that bin Laden actually acquired a crude nuclear weapon, or even significant amounts of weapons-grade fissile material, but that is not a set of circumstances that engenders either confidence or complacency. The consequences of being wrong or not paying the requisite attention are just too catastrophic.''

SUITCASE BOMBS

Even a brief visit to the National Atomic Museum at the Sandia National Laboratories in Albuquerque, N.M., reveals the degree to which the nuclear flame threatened to become a wildfire during the arms race of the 1950s and '60s. On display are full-scale models of both of the original nuclear bombs dropped on Hiroshima and Nagasaki, ''Little Boy'' and ''Fat Man,'' and a mockup of a Titan II intercontinental ballistic missile with multiple thermonuclear warheads, arguably the most fearsome weapon ever devised. In between sit replicas of virtually every nuclear weapon designed at Los Alamos and fielded by the U.S. military: nuclear air-to-air missiles, atomic mines, atomic depth charges and torpedoes, nuclear artillery shells—even the equivalent of an atomic bazooka to put atom-splitting destructiveness into the hands of the U.S. infantry.

Implied by this exhibit of nuclear inventiveness run amok, but not on display at the museum, are perhaps the least-talked-about of all nuclear weapons—portable atomic demolition charges, or nuclear ''suitcase bombs.'' Speculation has been heated, although unsubstantiated, that Al Qaeda may have acquired such weapons from the former Soviet arsenal.

Gen. Aleksandr Lebed, a former Russian national security adviser, sparked the speculation in 1997 when he told CBS's 60 Minutes that the Russian military had lost track of more than 100 suitcase-sized nuclear weapons, out of a total arsenal of some 250. The Russian atomic energy commission denied the report—and even the existence of such weapons—and Lebed later seemed to back away from his own assertions. However, other Russian experts have confirmed the reality of such bombs. For instance, the Los Angeles Times recently quoted Russian START II negotiator Nikolai Sokov as saying the suitcase bombs existed but speculating that they have been dismantled. Russian scientist Alexei Yablokov, a former member of the Russian National Security Council, told Congress that the suitcase nukes were actually controlled by the KGB, the former Soviet intelligence service, and were thus outside the inventory-accounting system of the Russian military.

Yossef Bodansky, the director of the U.S. Congressional Task Force on Terrorism and Unconventional Warfare, heightened concerns over the Russian suitcase bombs. Citing unnamed intelligence sources in his 2000 book, Bin Laden: The Man Who Declared War on America, Bodansky claimed: ''Although there is debate over the precise quantities of weapons purchased, there is no longer much doubt that bin Laden has finally succeeded in his quest for nuclear suitcase bombs. Bin Laden's emissaries paid the Chechens $30 million in cash, and gave them two tons of Afghan heroin worth about $70 million'' for the bombs. Bodansky's book seemed to lend credence to bin Laden's assertion in a recent interview that Al Qaeda possessed nuclear weapons as a ''deterrent.''

Nuclear experts at Sandia and Los Alamos confirm that both the Soviet Union and the United States developed portable nuclear weapons. The U.S. weapon is the MK–54 Small Atomic Demolition Munition. Given the stringent security systems that nuclear states create to guard such weapons, however, the scientists consider the threat of loose mini-nukes as the least likely of all nuclear terror threats.

''Every state that has ever created a nuclear arsenal has come to a sobering realization of what it possesses, and has established extraordinary levels of security to protect those weapons,'' said Hagengruber of Sandia. ''So while we can never dismiss the possibility of a stolen Russian nuclear weapon, that would be extremely difficult to accomplish, and the Russian president would almost certainly know about such a theft immediately.''

Immele of Los Alamos concurs. ''There is no question that both the United States and the Russians developed suitcase-sized atomic demolition munitions,'' he said. ''We studied Lebed's comments very closely and compared them to our extensive knowledge about what the Russian military has done to account for its nuclear weapons, however, and we have no intelligence leading us to believe that those weapons have escaped Russian control. What you find is that even a country with 25,000 nuclear weapons and a less-than-state-of-the-art accounting system will keep a very close accounting and jealously guard control of its actual nuclear weapons.'' However, he cautioned, ''nuclear materials and expertise are much harder to account for and keep track of, which is why so much of our concerns about Russia are focused on its nuclear fissile material and scientists.''

DOOMSDAY INGREDIENTS

Most analysts cite as a success story the joint U.S.-Russian programs designed to rid the former Soviet states of their nuclear

weapons, and to help Russia secure and dismantle its own weapons. The United States has spent roughly $4 billion on the Nunn-Lugar Cooperative Threat Reduction program (named for legislative co-sponsors former Sens. Sam Nunn, D–Ga., and Richard Lugar, R–Ind.). To date, the Nunn-Lugar program has deactivated 5,700 nuclear warheads, destroyed 434 ICBMs and 483 air-to-surface missiles, and eliminated hundreds of Russian bombers, submarines, and missile launchers.

However, attempts to consolidate and safeguard the much larger Russian stockpile of nuclear fissile material—the essential ingredient of these doomsday weapons—have had a more checkered record. Indeed, the first indication that Russia might be leaking lethal nuclear material from its increasingly decrepit inventory came as early as 1992, when a Russian was caught attempting to steal 1.5 kilograms of highly enriched uranium from a facility in Podolsk. Other incidents soon followed. In March 1993, authorities in St. Petersburg seized 6.6 pounds of weapons-grade uranium from smugglers. In August 1994, police in Munich, Germany, seized 360 grams of plutonium and 5 pounds of uranium, part of a shipment apparently stolen from a nuclear research center in Obninsk, Russia. In one of the most worrisome incidents, an anonymous tip enabled the Czech police to seize 2.7 kilograms of highly enriched uranium in December 1994.

Because nuclear experts consider the difficulty of acquiring weapons-grade fissile material as the single greatest impediment to a group or nation that wants to build nuclear weapons, these seizures sounded a loud wake-up call. The theft of significant amounts of uranium is particularly frightening because uranium can be used as the key ingredient in relatively rudimentary nuclear devices that experts consider most within the technological grasp of fledgling nuclear states or terrorist groups.

The Energy Department's efforts, under its ''Lab-to-Lab'' initiative, to protect Russia's stockpile of fissile material have encountered severe obstacles. One is the continuing Russian reluctance to open its secret nuclear cities and research facilities to prying Western eyes. The second has been the unwillingness of both Russian and American authorities to acknowledge the vast scope of the problem of securing the enormous Russian stockpile of fissile material.

''I think it's fair to say that the Russians themselves didn't have a complete handle on the quantities and scattered locations that made up their fissile-material stockpile,'' said Kent Biringer, who works on cooperative international programs at Sandia. ''As we started out on these programs, we didn't have a solid baseline from which to work that told us what we were trying to get our arms around.''

When the true size of the Russian stockpile eventually came into clearer focus, U.S. officials realized they had greatly underestimated the challenge. Richard Wallace, the program manager for material protection, control, and accounting in the Russian Nonproliferation Program at Los Alamos, said: ''What we found was that Russia had produced roughly 10 times more nuclear fissile material during the Cold War than the United States, and they had it scattered at many more sites. They also had 10 secret nuclear cities,'' Wallace said, ''and each one dwarfed one of our comparable nuclear weapons laboratories. The Russians also had to go through a major cultural change in how they thought about security at their stockpile sites.''

Eventually, U.S. experts were able to estimate that Russia had a total of 850 metric tons of weapons-usable missile material—enough for more than 70,000 nuclear weapons—stored at 95 separate sites. Because it takes only about 17.5 pounds of plutonium or 55 pounds of enriched uranium to make a nuclear bomb, securing that vast trove of fissile material became one of the United States' top nonproliferation priorities of the 1990s.

The lax security systems at some of those Russian sites have become legendary within the weapons-lab community. Security experts talk about perimeter fences with gaping holes; fissile material stored in unguarded boxes in hallways of poorly guarded facilities; and facilities without air conditioning, where windows without bars were routinely kept open to ease the summer heat. According to experts at Los Alamos, managers of Russian nuclear reactors also routinely set aside extra stashes of plutonium and uranium ''off the books'' to make up for potential shortfalls in their production quotas at the end of each accounting period.

U.S. experts thus focused in the early years of the Lab-to-Lab program on rudimentary fixes such as consolidating fissile material at fewer sites, and protecting it with radiation detectors, closed-circuit television camera systems, electronic sensors on perimeter fences, and computerized accounting systems. Even some of these relatively simple fixes went awry. U.S. experts discovered, for instance, that the batteries in some of their security systems failed in the harsh Siberian winters. Levels of radiation dust and radiation contamination on workers that were considered routine at some Russian facilities often set off U.S. radiation detectors.

Today, U.S. experts at Los Alamos estimate that roughly 570 tons of Russia's total 850 tons of weapons-usable material are more secure as a result of the security upgrades. They concede, however, that more than 200 tons of fissile material remain largely unsecured. A May 2000 report by the General Accounting Office, Congress's investigative arm, found that U.S. officials have yet to gain access to 104 of 252 nuclear sites ''requiring improved security systems.''

''There is still a lot of room for improvement in securing Russia's fissile materials,'' according to Larry Walker, the manager of Cooperative International Programs at Sandia. ''What you find is, the closer you get to Russia's actual nuclear weapons, the more secretive and less willing to give access the Russians become. Access remains an issue, because it's difficult to improve security unless you can actually see a storage site and witness how things are stored and handled.''

STALLED PROGRESS

After making significant headway in the early years, the U.S.-Russian cooperative programs to secure Moscow's fissile-material stockpile got stock in 1998 and have not yet recovered. The reasons for the lagging progress are varied, experts say. As the materials protection program grew in cost from a few million dollars to more than $100 million annually, Congress and Administration officials began demanding a higher level of access to Russian nuclear facilities, and the Russians balked. A bureaucracy that had been thrown into disarray by the dissolution of the Soviet Union in the early 1990s also began to reassert itself, throwing up red-tape barriers to greater Western access. And the Russians angered the United States by insisting on exporting a civilian nuclear reactor to Iran. The State Department lists Iran as the most active state sponsor of terrorist groups in the world.

Political tensions over the bombing of Serbia, NATO expansion, and a U.S. national missile defense system also soured relations between senior American and Russian officials in the late 1990s. Finally, because of a financial collapse in 1998, many Russian nuclear scientists and technicians were not paid for months at a time, raising fears that they would peddle their expertise on the world market. The Japanese doomsday cult Aum Shinrikyo, for instance, was known to have actively recruited Russian nuclear design specialists, and even student physicists from Moscow State University, in an attempt to acquire nuclear weapons.

''After making enormous progress in the first three to four years, our cooperative programs with the Russians basically ground to a halt, and I don't think many officials in the Bush Administration still understand just how broken this process now is,'' said Hecker, the former director of Los Alamos. ''Partly because the U.S. government lost its way and switched from an approach of cooperation to one that dictated an unnecessarily intrusive level of access into sensitive Russian facilities, we've lost the spirit of partnership necessary to make these programs work. Couple that with the fact that the Clinton Administration never really had a strategic vision or overarching strategy for dealing with the Russian nuclear complex and setting priorities among all these various programs, and you have a process that has essentially ground to a standstill in many respects. And until we can restore a common sense of purpose between us and the Russians, no amount of money will fix the Russian nuclear security problems.''

Meanwhile, indications of serious Russian security lapses continue. Russian officials in 1998 broke up a conspiracy by employees of a major nuclear facility in the Chelyabinsk region of the Ural Mountains to steal 18.5 kilograms of weapons-usable material. The Center for Nonproliferation Studies at the Monterey Institute of International Studies has documented 11 cases involving diversion and recovery of Russian weapons-grade material between 1992 and 1997. The International Atomic Energy Agency further documents six seizures of weapons-grade material linked to states of the former Soviet Union between 1999 and 2001. Four Russian sailors were arrested at a base on the Kamchatka Peninsula in January 2000, with radioactive materials that they were suspected of stealing from a Russian nuclear submarine. According to a New York Times report, Turkey recently revealed that its undercover police had broken up a smuggling ring holding 2.2 pounds of what appeared to be enriched uranium, brought from a Russian of Azeri origin. The head of the Russian agency responsible for nuclear security recently told reporters that, on two occasions last year, terrorists had staked out Russian nuclear facilities. Earlier this month, on December 6, Russian police arrested members of a criminal gang who were trying to sell uranium for $30,000.

Reports coming in a steady drumbeat from U.S. commissions and blue-ribbon panels have warned that the inadequate security of the fissile-material stockpile of the former Soviet union remains a glaring weakness in the global system designed to prevent a nuclear catastrophe. A 1997 Defense Science Board Study noted: ''Defense planners are increasingly concerned about possible state and non-state use of radiological dispersal devices [dirty bombs] against U.S. forces and population centers abroad and at home, as technological barriers have fallen and radiological materials have become more plentiful.'' A 1999 congressional commission chaired by former CIA Director John Deutch and Sen. ARLEN SPECTER, R–Pa., warned that power outages, inadequate inventory control, and unpaid Russian guards and technicians had all increased the threat of an ''insider'' diversion of Russian nuclear fissile material.

Perhaps the starkest warning was issued earlier this year by an Energy Department advisory group headed by former Sen. Howard Baker, R–Tenn., and former White House counsel Lloyd Cutler. ''The most urgent unmet national security threat to the United States today is the danger that weapons of mass destruction or weapons-usable material in Russia could be stolen or sold to terrorists or hostile nation-states,'' the Baker-Cutler study concluded. The group recommended that the United States spend $30 billion over the next eight to 10 years on a crash program to finally secure Russia's weapons of mass destruction and its stockpile of fissile material.

Ominously, the steady stream of warnings in recent years resembles similar unheeded alarms raised before September 11 about the possibility of a catastrophic terrorist attack. Nonproliferation advocates were thus dismayed that the Bush Administration's fiscal 2002 budget proposed cutting the Pentagon's Nunn-Lugar programs by 9 percent (from $443.4 million in fiscal 2001 to $403 million), and the Energy Department's nonproliferation programs by 11.5 percent (from $872.4 million in fiscal 2001 to about $773.7 million). Congress has since moved to restore some of the proposed funding cuts, however. And in a December 11 speech at the Citadel, Bush promised expanded efforts and increased funding for securing Russian fissile material and for finding peaceful employment for Russian nuclear scientists.

In an attempt to jump-start the stalled threat-reduction programs, Senate Foreign Relations Chairman JOSEPH R. BIDEN Jr., D–Del., and LUGAR recently introduced the Debt Reduction for Non-Proliferation Act, which would forgive Russia's debt of $3.7 billion to the United States in exchange for its cooperation with U.S. efforts to secure and monitor Russian weapons of mass destruction and fissile material.

''Time after time, the United States has put together groups of objective, bipartisan policy experts to study this problem, and each time, they have concluded that this is an urgent national security issue—and every time, their reports are ignored,'' said Joseph Cirincione, the director of the Non-Proliferation Project at the Carnegie Endowment for International Peace in Washington. Part of the problem, he says, is that such programs have no natural domestic constituency in Russia, and in the United States they smack of unpopular foreign aid. And because cooperative threat-reduction programs do not command the same priority within the Administration as missile defense, they can easily get shoved off the summit-level agenda.

''Another problem is, this seems like a distant threat because nothing terrible has happened yet,'' Cirincione said. ''The general feeling among experts, however, is that we've been lucky so far. There is absolutely no doubt that there are bad people out there trying very hard to get their hands on Russian weapons of mass destruction and nuclear materials, and if we don't secure the source, sooner or later they will succeed. After September 11, the once-inconceivable is now all too easily imagined.''

AN UNSEEN HAND

A decade's worth of seizures and the breakup of numerous smuggling rings in Russia and Europe clearly point to a lucrative black market in nuclear fissile materials. No one knows with any certainty whether terrorists have successfully smuggled any of that material through the porous southern Russian border into Central Asia or nearby Afghanistan. Few intelligence experts doubt, however, that one of the unseen hands creating the demand for fissile material was that of Osama bin Laden.

The most unambiguous testimony to date on Al Qaeda's methodical, well-financed campaign to acquire nuclear bomb-making material came from Ahmed Al-Fadl, an Al Qaeda operative who turned state's witness in the trial earlier this year of men accused of bombing two U.S. embassies in East Africa in 1998. Al-Fadl claimed he was the middleman in a mid-1990s deal between Al Qaeda and Sudanese officials for the purchase of $1.5 million worth of highly enriched uranium, apparently diverted from South Africa's former nuclear program. Though Al-Fadl was not present for the final exchange, his testimony convinced U.S. prosecutors that ''at least since 1993, bid Laden and others made efforts to obtain components of nuclear weapons.''

Recent years have yielded a steady stream of news reports and intelligence leaks about Al Qaeda's attempts to acquire fissile material. In 1998, for instance, bid Laden aide Mamdouh Mahmud Salim was arrested in Munich and charged with acting on behalf of Al Qaeda to acquire nuclear materials. As The Christian Science Monitor recently reported, a Bulgarian businessman claimed to have met bin Laden himself last year to talk over a complex deal to transship nuclear materials across Bulgaria to Afghanistan.

Pakistan, meanwhile, continues to detain Sultan Bashiruddin Mahmood and a second nuclear scientist considered key to Pakistan's nuclear program. Mahmood has reportedly acknowledged meeting bin Laden and Taliban leader Mohammed Omar during at least three visits to Afghanistan last year, and he is said to have talked at length about developing nuclear and biological weapons. According to the New York Times, CIA Director George J. Tenet, during his recent trip to Pakistan, raised U.S. concerns about additional contacts between Pakistani nuclear weapons experts and Al Qaeda.

If the Al Qaeda network has successfully acquired enough weapons-grade uranium, U.S. experts say the group's last major challenge in eventually constructing a workable nuclear bomb would be to entice a trained nuclear scientist to spearhead the project. ''The history of nuclear programs suggest that they depend on only a few key, knowledgeable scientists, with sufficient time and bankrolling, to bring a program to fruition,'' said Biringer of Sandia. ''That's why we have focused a lot of effort on trying to retrain Russian scientists in other disciplines so they will not attempt to sell their services on the open market.''

U.S. experts say that Russian nuclear scientists are generally much better off today than in 1998, when they went unpaid for up to eight months because of a financial crisis and the collapse of the ruble. Nevertheless, they worry that Energy's ''Nuclear Cities Initiative,'' designed to retrain Russian scientists and shrink the Russian nuclear complex, has suffered from erratic funding and tepid congressional support.

''Virtually all Russian scientists we have dealt with are enormously loyal and patriotic, and most of them would like to stay where they are and continue to conduct meaningful work and research,'' Hagengruber said. ''So we are not worried about Russian hemorrhaging nuclear scientists. These scientists remain one of our major concerns, however—because unfortunately, all it takes is enough fissile material and one or two good scientists to create a real problem. Even a 99 percent solution is not really good enough.''

Experts at Los Alamos and Sandia doubt that Al Qaeda has had the requisite time, weapons-grade fissile material, and nuclear expertise to actually construct a crude nuclear weapon, though they would not rule the possibility out. One expert who concurs in those doubts is Iraqi defector Khidhir Hamza who headed Saddam Hussein's secret nuclear bomb program through the mid-1990s and co-authored the book, Saddam's Bombmaker. Despite obvious weaknesses in global nuclear nonproliferation defenses, Hamza insists that the difficulties inherent in constructing a nuclear weapon remain daunting.

''We in Iraq were in the market for nuclear materials, and not a week passed without us getting an offer from somebody to sell us such materials,'' he told CNBC's Geraldo Rivera on October 26. ''People came to Baghdad with bags of samples, and left with bags of money, and we never got any serious nuclear materials. Despite what people say, the [protections of such materials] are not that loose, and this radioactive material is very difficult to transport.'' As for actually constructing a nuclear bomb, ''that's not that easy either,'' Hamza said. ''Iraq is a country with thousands of nuclear workers, and we still couldn't get a bomb ready in time for the Gulf War''

U.S. experts are much less skeptical that Al Qaeda or another terrorist organization could build a dirty bomb by packing a conventional explosive with fissile material that would kill and injure, mainly through radioactive dispersal and contamination. On the spectrum of nuclear threats, experts consider this a ''high-likelihood, low-lethality'' scenario.

Bruce Blair, an arms control expert and former nuclear missileer who is now the president of the Center for Defense Information in Washington, said: ''There's almost no credible evidence that Al Qaeda acquired a portable nuclear device that could actually split the atom, but I think it's very plausible that bin Laden acquired fissile material that could be wrapped around dynamite and exploded in an urban center like Lower Manhattan to cause panic and terror, and require the evacuation of large portions of the city for a considerable period of time.''

According to Blair, the Defense Department ran an analysis of just such a worst-case scenario involving a dirty bomb made with 50 kilograms of nuclear power plant spent fuel packed around 100 pounds of conventional explosives. ''The calculation was that lethal doses of radiation would be dispersed over roughly a half-mile area, leading to hundreds, if not thousands, of casualties,'' Blair said. ''There is also considerable data on what would be involved in cleaning up after such a terrorist attack, and that dates back to 1966, when an Air Force plane carrying nuclear weapons crashed in Spain.''

Indeed, a display at Sandia's National Atomic Museum depicts the collision of a B–52 and a KC–135 tanker during midair refueling over Palomares, Spain, on January 17, 1966. Photos document how three thermonuclear weapons that burst open in the crash contaminated a 285-acre area with highly enriched plutonium, which has a half-life of 24,000 years. More than 4,000 Air Force personnel were drafted into the cleanup effort, which required plowing hundreds of acres and removing 4,810 barrels of plutonium-contaminated earth to a storage site in South Carolina. In 2001 dollars, the cleanup operation cost $230 million.

In a post-September 11 world, a Palomares-type incident occupies the ''high-likelihood, low-lethality'' end of the spectrum of threats to U.S. national security. Such a classification is a testament to the almost unthinkable menace posed by nuclear-armed terrorists.

Mr. LUGAR. I wish to quote liberally from what I think are remarkable summaries of some very tough decisions that we will need to make. The author begins:

The recent disclosure that documents about nuclear bombs and radiological ''dirty bombs'' had been found at captured Al Qaeda terrorist network facilities in Kabul, Afghanistan, immediately triggered alarms among the nuclear scientists who work atop the high desert mesas in this remote region of New Mexico. For more than 50 years, nuclear experts at Los Alamos and at nearby Sandia National Laboratories have studied terrorist and criminal groups for any signs that they were on the verge of cracking the nuclear code first broken here. Everything they knew about Al Qaeda told them that these terrorists might be drawing too close to a terrible discovery.

Indeed, ever since members of the Manhattan Project tested the first atomic bomb in New Mexico in 1945, scientists at Los Alamos have been the pre-eminent keepers of the nuclear flame. When the former Soviet Union created the secret nuclear city ''Arzamas-16'' as the birthplace of its own atomic bomb, it hewed closely to the Los Alamos blueprint. So much so, in fact, that Russian residents later jokingly referred to their town as ''Los Arzamas.''

Almost from the inception of the nuclear age, no one understood better the apocalyptic threat of these weapons than the nuclear scientists who made them.

J. Robert Oppenheimer, the director of the Manhattan Project and the father of the atomic bomb, eventually fell out of favor with the U.S. military at least partly over his strident support for arms control and his opposition to development of the much more powerful hydrogen bomb. The scientists at Los Alamos developed and help train and man the Energy Department's secretive Nuclear Emergency Search Teams that for 30 years have stood poised to respond to the threat of nuclear terror or the smuggling of a nuclear weapon onto U.S. soil.

Most important, the scientists at the Los Alamos, Sandia, and Lawrence Livermore national laboratories helped devise a U.S. nuclear doctrine designed to strictly limit the spread of nuclear weapons and technology, and to render their use unthinkable through the dynamic tension of ''mutually assured destruction.'' And for the past decade, they watched with growing concern as unpredictable world events have repeatedly tested the tolerances of that careful calculation and narrowed its margins for error.

The breakup of the former Soviet Union, followed by the fundamental restructuring of a Russian society that accounted for the world's largest stockpile of both nuclear weapons and the fissile material necessary to make them, created a gaping hole of vulnerability in terms of nuclear proliferation. U.S. experts concede that that hole remains open to this day.

''We've been worried about Russia for 10 years, because initially the Russians insisted they didn't need any help securing their weapons and nuclear material, which was a ludicrous assertion,'' said Siegfried Hecker, a senior fellow and former longtime director of Los Alamos National Laboratory. . . .

Mr. Hecker continues:

''The Russians simply failed to take into account how dramatically their country had changed with the breakup of the Soviet Union. With the evolution toward an open society, the old Soviet security system based on guns, guards, and gulags was simply not good enough anymore. So we've spent a lot of time educating the Russians about the gaps in their own security system, and I still don't think the Russian leadership fully appreciates just how real the continued vulnerabilities are in the Russian nuclear complex.''

On top of this Russian instability has come the rise now of Islamic fundamentalism, particularly the Taliban regime in Afghanistan, which has—or had, until recent weeks—strong links with the government of Pakistan, an emerging nuclear power. Pakistan's detention of two of its nuclear scientists for suspected connections to Osama bin Laden and his Al Qaeda network, and most recent news reports suggesting previously undisclosed contacts between other Pakistani nuclear weapons experts and Al Qaeda, underscore the difficulty such societies have in safeguarding their nuclear secrets in time of extreme turmoil.

John Immele, a deputy director of Los Alamos, said: ''The biggest security threat in terms of nuclear weapons or expertise falling into the wrong hands has always been the 'inside job,' because it short-circuits so many of the traditional barriers to nuclear proliferation. From that standpoint, the threat to the Pakistani government from Islamic fundamentalists, and the close ties between fundamentalists inside the government and Pakistan's nuclear program, are obviously causes for concern. If a terrorist group were to get its hands on nuclear fissile material,'' he said, ''the main impediment to making a bomb would be to find an expert to assemble it. As cases concerning Pakistani and some Russian nuclear scientists in the past have shown, there are an increasing number of nuclear experts out there, and some find themselves in desperate circumstances. . . .

Perhaps the greatest disruption to the equilibrium of the nuclear ''balance of terror'' is the emergence of criminal and terrorist organizations with a level of power and technological sophistication once associated only with nation-states.

Quoting again from James Kitfield:

Should Al Qaeda or another one of these terrorist groups with global reach succeed in acquiring nuclear weapons, experts say, it would turn on its head a nuclear doctrine that is based on the deterrent value of mutually assured destruction. Doomsday cults or religion zealots bent on martyrdom may not care much for traditional theories of deterrence.

Mr. President, in a piece in the Washington Post published from my writings last week, I tried to say the bottom line I thought in this war was the search for al-Qaida and then nuclear cells wherever they may be in many countries where such have been identified. That is critical and that continues even as we speak with important American forces and a broad coalition.

The second path is equally, if not more, crucially important, and that is as weapons of mass destruction or materials that might produce weapons of mass destruction are identified in various countries, U.S. policy, and hopefully the alliance policy, must be, first, to gain accountability and transparency as to what there is, and, secondly, to work with each of those countries to make sure that material is secure, not an invasion of a sovereignty, and I mentioned Pakistan and India in my article in particular because these are very vital cases in the area we are now talking about, Afghanistan.

We offer, I hope, some assistance to make certain, first of all, those Governments know what they have; that it is secure; that if they do not have the money, the United States and others may work with them, and likewise with the security apparatus, which has become a part of our experience and, to a great extent, the Russian experience.

And finally, we encourage, whenever possible, and maybe even help finance, the destruction of this material or those weapons.

The opening up of those societies may not be easy. So as people talk about the next step, the next step is essentially attempting to define who will cooperate. I have no way of knowing whether our new friendship with India and Pakistan will lead us to believe they might be more cooperative than they would have been prior to September 11, but that is possible.

The stories about Pakistan's own striving to bring about security, its placement, as press reports give it, in six different locations, even a very far stretch of the imagination that the Chinese might be entrusted as trustees for it to get it out of harm's way in the event Pakistan was in harm's way, indicates how serious this is.

The question comes: What about situations in which there may be less cooperation? We do not know for certain what Libya has or if the Syrians are involved. We have strong beliefs that Iran and Iraq have been very active. And what if there is not cooperation with the international community, either the United Nations inspections teams or anybody else's inspections teams?

This is why the war against terrorism is likely to have some life to it beyond Afghanistan because there clearly is, in my judgment, a need to make certain this intersection does not occur. It is easy enough to read the paragraph I have just read, but clearly I think it has come into the purview of our policymakers that mutually assured destruction may or may not have been the guiding post between the United States and Russia. It apparently is not going to be the way we will proceed in the future, and the President and others have said we are on a different course of cooperation. But it did serve as a deterrent for a long time as thousands of nuclear warheads were aimed at us, and we had thousands aimed at the Russians.

Now the problem is, as we take a look at the aircraft going into the World Trade Center and into the Pentagon, mutually assured destruction does not seem to pertain to that kind of arrangement. Suicidal missions do not take into consideration mutually assured destruction, in part because those who committed suicide destroyed themselves.

There are no assets back in a home country of governmental buildings, headquarters, utilities. What is there to destroy? What is the downside? This, of course, is the problem, that those with the suicidal tendency who have their hands on the materials, the weapons, for whatever reasons—religiously based, zealotry—decide to create havoc in the world and could do so in a monstrous way.

I continue with a bit more of Mr. Kitfield's analysis. It appears to me when he says the consequences of being wrong or not paying attention to these matters is catastrophic—we have been down the trail in various ways. Take a look at suitcase bombs. General Lebed of Russia came over and suggested that it may or may not confirm his point of view. But never the less, the Los Alamos people are taking a look at Lebed's contentions and those of others who have said ''nuclear materials and expertise are much harder to account for'' than bombs, even suitcases, anything encased. That is why ''concerns about Russia are focused on fissile material and its scientists.''

The problem is now it appears Russia produced a great deal more fissile material than we anticipated. So much more that the destruction of it or even the securing of it has gone well beyond all of our best attempts. Mr. Kitfield's article mentions the 5,700 nuclear warheads, 434 ICBMs, 484 air-to-surface missiles, bombers, submarines, and what have you, destroyed. However, he goes on to say, ''attempts to consolidate and safeguard the much larger Russian stockpile of fissile material—the essential ingredient of these doomsday weapons—have had a more checkered record. Indeed, the first indication that Russia might be leaking lethal nuclear material from the decreasingly decrepit inventory is as early as 1992.'' He goes through each of the well-known documented cases and attempts to pilfer kilograms here, pounds there, of weapons-grade uranium.

The Russians still contend that all of these situations have been stopped, that the perpetrators were caught, whether in Prague or St. Petersburg or elsewhere.

''Today, U.S. experts at Los Alamos estimate that roughly 570 tons of Russia's total 850 tons of weapons-usable material are more secure,'' but this leaves 280 tons that are not. They believe at Los Alamos that clearly more than 200 tons of fissile material remaining largely unsecured are in 104 of the 252 nuclear sites in which U.S. officials have yet to gain access.

From my own personal experience, it is not easy to gain access to areas in which the officials of the country do not wish you to gain access. It is a bargaining process, trip by trip, site by site—whether nuclear or biological or chemical. It is the first comprehensive figure I have ever seen, however, that details there are 252 known sites where there is fissile material—not warheads or ICBMs—and we have yet to gain access to 104 of these, almost 40 percent.

To make my point again, while I counsel we approach Pakistan and India with the thoughts of accessibility, accountability, and security, we have a great deal of work still to do with friends in Russia with whom we have been working for 10 years. The 10th anniversary of the Nunn-Lugar Act occurred 2 days ago, and in this body. It was late in that session in 1991 when the legislation was passed. For 10 years, we have been at work, these two countries, Russia and the United States. Yet even at this point, extraordinary amounts of material remain perhaps less secure than they ought to be, and unavailable, at least for our inspection even in this cooperative program.

Finally, the problems with the scientists are always speculative. From the beginning, the thought has been, in addition to the material, as Mr. Kitfield points out, there has to be one individual who has the expertise with the program to bring it together if a weapon actually is to be usable. The hope has been, through the International Science and Technology Committee—and this body has appropriated funds, again, from the State Department appropriation process—of a generous contribution to that effort. In the past, there have been contributions by Japan, by European countries, by Saudi Arabia and others.

In my own business, at their headquarters, I found our contribution now unfortunately has risen to 60 percent. I say unfortunately because it means others may have dropped off of the program. But with good diplomacy, others may drop back in.

Under this program, over 20,000 Russian scientists have been paid stipends to furnish them money to do other work—work in commercially viable propositions in Russia that do not involve weapons of mass destruction. I cannot overstate how vital this has been in sustaining the interests of those scientists in continuing to live in Russia as they wanted to do, provided there was any work—at a time that the Russian military establishment was winding down. Obviously, programs producing fissile material have been virtually stopped.

I have no idea how many scientists there are in Russia who at any one time were involved as experts in weapons of mass destruction. We have no way of knowing whether 20,000 represents most of them or a majority. We have, according to Mr. Kitfield and the experts at Los Alamos and Sandia, luck that the coincidence of scientists, material, cell groups have not quite come together yet.

The point of this statement at this late hour today is to say that we cannot count on that. America has been staggered and shocked and grieved by September 11. Horrible circumstances.

Testimony before a committee I chaired involving those deeply involved in this subject and who knew a great deal about it, brought a witness who had the proverbial thin suitcase. He laid it down on the witness table. At the appropriate time, he opened it and there was a machined piece of metal, something like a pineapple in both its shape and size. He assured us this was not highly enriched uranium. Nevertheless, there were materials in this particular piece that a counter would register.

At this point, many in the audience backed away from the table. This hearing was turning into somewhat more of an interesting situation than some asked for. He made the point this was probably equivalent in size to 16 pounds of highly enriched uranium.

The article states some scientists say you need 55 pounds of highly enriched uranium in order to have a nuclear weapon. Some would say it is more like 100 pounds. So 16 pounds would not get the job done, nor did he purport that it would. He suggested, however, enlarging this pineapple with a few more layers would get you to that point.

This came just after the tragedy at Oklahoma City and the bombing of the courthouse by McVeigh and whoever was involved with him. That would now be classified, in many circles, as sort of the forerunner of the dirty bomb situation. That is, you have some materials, at least, that have properties that are nuclear but they are not at the highly enriched level. But you use common or garden variety explosives and you create a mess. McVeigh, as far as we know, was not attempting to combine the explosives with nuclear material at any level.

So I cite this example as only illustrative, in two ways. One was that half of that Federal courthouse was destroyed, along with a number of Americans, innocents, who were in that courthouse at the time.

The witness made the point, however, that if you had the proper expertise and you had the suitcase and the 55 or 100-pound weapon in this same pineapple shape, this would have had the effect of taking out 4 square miles of Oklahoma City, not just half of the Federal building.

Others have made the point that even without highly enriched uranium, the so-called dirty bomb, which does include some nuclear material but simply with an explosive device, could render the same territory in New York City uninhabitable for a fairly sizable period of time after the destruction of many lives in the process of the fallout of this material, much like the effects down range from the Chernobyl explosion in Ukraine where hundreds of thousands of acres will not be farmed for our lifetime and many after that, or, if they are farmed, may have devastating health consequences, given the spoiling of the soil, the trees, the animals—everything that was involved. In short, this is the danger.

I think our officials understand this. But I am hopeful that as we proceed in subsequent years with our military appropriations, and our Department of Energy appropriations, and our State Department appropriations—because all of these efforts are divided in several ways, each one of them vital to the overall objective—that we have an understanding of how large a proposition this is.

This does not for a moment negate the need for the very best trained and

paid American troops we have, and support of them, and all of the instruments of conventional warfare that are now being produced. But I am saying that once again the bottom line of the war, as I perceive it, is that even as we are very successful with these so-called conventional means, and with remarkable, talented American service personnel, on the homefront, here in the home defense situation, we need to understand the vulnerability we have in the same way that we explained it to those in Moscow and London and Rome and other beautiful capital cities of our world that are at risk if in fact this intersection between cells of terrorism and materials and weapons of mass destruction should develop.

There are people who say this is so pervasive and so comprehensive that school is out, it is beyond remedy. The numbers of terrorists, the numbers of countries, numbers of programs, regimes all believing they must have weapons of mass destruction or at least the threat of these to stave off whoever—and I understand that, as the Presiding Officer does. But our objective, at least, as policy leaders in this country, has to be a ''go to it'' spirit.

If at this point we simply accept it is there, we have to accept that at some point a very large part of one of our cities or our basic institutions could be under attack and this time could disappear, with absolutely devastating results for our country or any other country that was victimized in this way.

If we ask the basic questions we would have asked before September 11—Who could possibly do this? And for what reason?—we are staggered as we watch the tape of Osama bin Laden or listen to interviews with people who seem to be committed to a very different course of action that most of us find even remotely conceivable, morally or as human beings.

Unless we are prepared simply to forget September 11, roll the clock back into a simpler time, then we will have to deal with more complex times.

I thank the Chair for allowing me to proceed in morning business with a message that I believe is important.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

PROGRESS ON THE FARM BILL

Mr. DASCHLE. Mr. President, I come to the floor for a couple of minutes prior to the time we finish our Senate business for the week to, first, compliment the Presiding Officer who has been our floor manager on the farm bill now for 1 entire week.

This afternoon marks 1 complete week of deliberation on the farm bill. I know this has not been easy on many, nor easy on the ranking member, as they have attempted to deal with the bill itself.

I compliment the Chair for his outstanding leadership and patience and the extraordinary effort he has made to manage this bill in a way that accommodated virtually every Senator.

I am disappointed that we weren't able to achieve cloture on the bill. I have indicated that we are going to keep trying to reach that point where we can bring debate to a close. I know there are a number of other amendments. We accommodated those on the other side of the aisle who wish to bring up an alternative to the committee-passed bill, the so-called Roberts-Cochran bill.

I believe we have had a good debate. I hope we can complete our work this coming week. I would not want to have to come back after that, but we will entertain the possibility of coming back additional days after Christmas, if need be, to get this job done. There is nothing that says we can't keep coming back until the 23rd of January, if necessary. We will look at all the options. But we need to bring this bill to a close. As I have said on other occasions, we need to do it for a number of reasons. Some of us have outlined those reasons throughout the week.

I think as we close out the week and mark the fact that we have now spent a week on the bill, we remind all colleagues that we have a budget window that may close. If that budget window closes and we are precluded even by a few billion dollars from dealing with all the needs in this bill, what a mistake that would be. What a moment of admission of failure that would be. I hope we can avoid doing that and avoid that scenario.

Secondly, I know, based on many conversations the managers and I have had and others have had with regard to the continuity, of the need to have a clear roadmap on how we transition from Freedom to Farm to whatever it is that Congress ultimately passes, something that every farmer and rancher would like to know.

I think that is the reason I got calls again this morning from farmers and ranchers in South Dakota who said: Please pass this legislation as quickly as you can because we need to know. We need to plan.

There is so much uncertainty in farm legislation as it is. There is so much uncertainty with agriculture as it is. To exacerbate that uncertainty by refusing to act, or not acting as quickly as we should, is compounding the problem unnecessarily.

We have seen a 75-percent reduction in farm prices since 1996. That is a remarkable demonstration of the need to do something now.

I hasten once again to note the importance of completing our work. I also say that as complicated as farm administration is, it is important that the Department of Agriculture be given as much lead time to make the transition as smoothly as they can.

There is no question, from a farm income point of view, from a farm certainty point of view, from the smoothness in transition point of view, and from the budget point of view, one could add more and more reasons that it is important for us to finish our work. No one has said it more eloquently or passionately than the chairman of the committee, my friend from Iowa, Senator HARKIN.

I simply come to the floor to again reiterate that we are determined to finish this bill. We are determined to do all we can to finish it not only on the floor but in conference. We will do whatever it takes to stay, to work, to cooperate, and to find ways to compromise. But it has to be a two-way street.

We have to continue to keep the pressure on. That is certainly my intention. I know it is the intention of the distinguished chair of committee. It has been 1 week. If necessary, it will be 2 weeks. And, if necessary, it will be 3 weeks, or more. But we are going to get this bill done.

I am just reminded that while we have been on the bill for a week, we actually made the motion to proceed 2 weeks ago. One could argue that we have been on the bill in one form or another for 2 whole weeks already. I do not know what the record is, but, clearly, we have a lot of work to do. With the holidays coming up, it certainly warrants putting all the time and effort we possibly can into getting this job done. I know there is interest in doing that.

MORNING BUSINESS

Mr. DASCHLE. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 5 minutes each.

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

The Chair recognizes the Senator from Rhode Island.

Mr. REED. Mr. President, I ask unanimous consent that I be allowed to speak for up to 10 minutes as in morning business.

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

REVIEW OF BACKGROUND CHECK RECORDS

Mr. REED. Mr. President, I rise today to talk about our fight against terrorism and a report in the New York Times last Thursday about the Justice Department's denial of requests from the FBI to review background check records for gun purchases as part of its antiterrorist investigation.

When I met with Justice Department officials on November 1, I was informed that in the immediate aftermath of the

September 11 attacks, the Department of Justice compared the audit log of approved gun sales under Brady law's National Instant Criminal Background Check System to the Federal Government's terrorist watchlists.

The New York Times reported that on September 16, 5 days after the terrorist attacks, the Bureau of Alcohol, Tobacco, and Firearms requested the FBI center that operates the National Instant Criminal Background Check System to check a list of 186 names against the NICS audit log. The names were identified as aliens whose identities had been developed during the ongoing terrorist investigation. The FBI got two hits, meaning that two of the persons on the watchlist had been approved to buy guns.

The ATF's request and the resulting hits underscore the point that the NICS audit log has a clear investigative value for law enforcement and our counterterrorist efforts.

Yet the day after the FBI made its initial check, the Attorney General's lawyers prohibited further reviews of the audit log by the FBI for the purposes of the terrorist investigation.

The Congress passed and the President signed the Patriot Act earlier this year to give the Attorney General expanded powers to fight terrorism. The Attorney General has used these powers and others created by the administration, without congressional input, to permit, for example, eavesdropping on detainees' conversations with their attorneys, to implement new wiretapping authority, and to look into the backgrounds of truck drivers and crop duster pilots, and immigrants.

When President Bush addressed Congress on September 20, he said:

> We will direct every resource at our command—every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence, and every necessary weapon of war—to the disruption and to the defeat of the global terror network.

Now we find the Attorney General is bending over backwards to protect the special interests of the gun lobby at the expense of the safety of the American people and the investigation into terrorism. Rather than seeking every opportunity to give law enforcement all the information at hand, the Attorney General has chosen, erroneously in my view, to interpret the Brady law and related Justice Department regulations as prohibiting the use of the audit log for investigative purposes beyond the performance of the system.

Even if the Attorney General believed he did not have the authority to review the audit log for investigative purposes, why then did he not ask Congress for that authority back in September when he was putting together his proposals for the Patriot Act? Why wouldn't he want Federal law enforcement officers to know if a suspect or potential informant had recently purchased a firearm when they go to question or detain that person? Finally, why would he continue to seek to reduce the retention time for the audit log from 90 days to 1 business day, forcing ATF to ask more than 70,000 federally licensed gun dealers to review their sales records every time law enforcement authorities conduct a review for names associated with gun crimes but particularly associated with terrorist activities?

We can only conclude that politics and the powerful influence of the gun lobby have trumped gun policy once again. I hope the Attorney General will reconsider his position. None of us really knows what the next terrorist attack will look like. We cannot assume that because the attacks on September 11 did not involve firearms, the next one will not also involve firearms. We should give law enforcement every tool at our disposal to prevent terrorists from gaining access to firearms, and to know about it when they do.

If the Attorney General insists upon the narrowest interpretation of allowable uses of the NICS audit log, we need legislation to make it absolutely clear that law enforcement authorities can review these records if they have reason to believe that a person under investigation, particularly under investigation for terrorist activity, may have purchased a firearm.

I am pleased to join Senator SCHUMER as a cosponsor of S. 1788, to clarify that NICS audit log records may be accessed by the Federal authorities for the purposes of responding to an inquiry from any federal, state or local law enforcement agency, and also to ensure that these records be maintained for at least 90 days to ensure a reliable auditing system is in place.

I also look forward to consideration at the earliest possible time next year of my legislation to close the gun show loophole, so that we can prevent convicted felons, fugitives from justice, and, yes, even terrorists, from buying guns from private dealers at gun shows without a background check.

There has been a lot of misinformation about the technical requirements of conducting Brady Law background checks at guns shows. It has been suggested that gun shows in rural areas are not equipped with the technology to make background checks feasible. The only technology needed to run a Brady background check is a telephone. At most gun shows, federally licensed firearms dealers use cell phones to conduct background checks. At others, telephone ''land lines'' are made available. Under my bill, these federally licensed dealers would run checks on behalf of unlicensed sellers at the gun show, ensuring that a background check is run every time a gun is sold at more than 4,000 gun shows held each year in America.

I should also add that 95 percent of these checks are completed within two hours, and no new technology would be required beyond access to a telephone, a device that has been with us for a long time. My constituents in Rhode Island and all Americans pay a universal service fee as part of their monthly phone bills to ensure that telephone service is available to every part of this country, no matter how rural or how remote.

Let's close the gun show loophole so that convicted felons, domestic abusers, terrorists, and other prohibited persons do not use gun shows to purchase firearms without a Brady background check.

When we confront terrorists, and when we hear the President say every tool available to law enforcement will be used, let us ensure every tool is used. Let us ensure there is no area that is off limits because of the powerful influence of the gun lobby. Let us give our law enforcement officials every opportunity to protect America from terrorist attacks.

I yield the floor.

NOMINATION OF EUGENE SCALIA

Mr. HATCH. I rise to join many of our colleagues to express my frustration with the leadership for failing to permit a floor vote on the nomination of Eugene Scalia to be the Solicitor General of the Labor Department. I was mystified as to what reasons there could possibly be to hold up the President's choice, his pick, for this vital position at a time when it is of national urgency for the Labor Department to have its team in place.

I have heard it said in the press it is because Scalia is the son of Justice Antonin Scalia and that this is some sort of payback for the Bush v. Gore decision. I personally find that hard to believe. Such a motive would be far below the dignity of the Senate. The notion that this Chamber would in effect punish a Supreme Court Justice or his family for a decision, any decision, would be abhorrent to anyone who loves this institution or the Constitution.

I also find it hard to believe because the Senate confirmed Ted Olsen, who litigated the Bush v. Gore case, although some did try to stop his confirmation despite his unquestionable qualifications. We also confirmed Janet Rehnquist, the daughter of the Chief Justice, to be inspector general of the Department of Human Services. But that is what is being said to the public. We wonder why the public is so cynical about the Congress.

I, personally, do not believe that is the reason Mr. Scalia is being held up. But I have also heard, and this reason is very troubling to me, that it is because Eugene Scalia is a devout, pro-life Catholic. He is being targeted by radical fringe elements because his name has symbolic value. I only hope this is not true. If that is true, this is also troubling because it shows that an appearance has been created that there is an ulterior partisan motive.

I ask unanimous consent to have printed in the RECORD an op-ed by Marianne Means, who wrote, ''Two

Scalias In Our Government Are Too Many.''

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

TWO SCALIAS IN OUR GOVERNMENT ARE TWO TOO MANY

(By Marianne Means, Hearst News Service)

WASHINGTON.—When President Bush nominated the son of conservative Supreme Court Justice Antonin Scalia to the third-highest post in the Labor Department, the terrorist attacks had not occurred and Bush was not yet in a political unity mode.

This week, however, Eugene Scalia's nomination to be the department's solicitor—its top lawyer—was before the Senate Judiciary Committee threatening to blow up the fragile aura of bipartisanship the president is currently trying to foster. During his hearing, Scalia was sternly grilled by Democratic members and lavishly praised by the Republicans.

Giving Scalia power to interpret the administration's policies toward organized labor, which worked hard to defeat Bush in the 2000 election, was a deliberately vengeful move. Looming over the selection is the dark shadow of his cranky father, the architect of the court's rightward drift on civil rights and the mastermind of the court's convoluted ruling that handed the presidency to Bush. Eugene Scalia's nomination inescapably looks like a gigantic political payback, meant to reaffirm Bush's authority by slapping the Democrats in the face.

In April when he picked Scalia, Bush had embarked on a crusade to drive the country to the right, rolling over the Democratic congressional minority and his own party's moderates. In those days, he had no interest in bipartisanship.

His first choice as Labor Secretary, the conservative anti-labor commentator Linda Chavez, proved to be too controversial and was forced to withdraw her name. She was replaced by Elaine Chao, whose attitude is less ideological than Chavez's and is therefore less objectionable to the major unions. Scalia, 37, seems to have been selected to give Chao the backbone to be tough on the labor movement whenever possible.

During his career as a labor lawyer, Scalia campaigned vigorously to repeal Clinton-era federal ergonomics rules designed to reduce repetitive-motion injuries and lower back problems. He said he doubted the ''very existence'' of the problem, which union officials take very seriously, and mocked ergonomics as ''junk science.'' The Clinton rule was killed by the Republican-controlled Congress earlier this year, and Chao is currently reviewing proposals for revised ergonomics rules.

Senate Health, Education, Labor and Pensions Committee Chairman Edward Kennedy, D-Mass., is unequivocal in his opposition to Scalia. The senator says his writings and his record ''clearly suggest that his views are outside the mainstream on many issues of vital importance to the nation's workers and their families.''

The committee is divided along party lines, with all 10 Democrats opposed to Scalia and all 10 Republicans supporting him. When the committee votes next week, the tie will be broken by former Republican-turned-independent James Jeffords of Vermont. Recently Jeffords said awkwardly, ''I think I'll probably support him . . . reluctantly.''

That means the nomination will go to the Senate floor, where Kennedy vowed ''there will be a battle.'' Business groups have lined up behind Scalia, and the AFL-CIO is campaigning against him, making the outcome uncertain.

The floor vote is likely to break down along party lines, marking the first serious tear in the bipartisan fabric Bush is trying to weave.

He visited the Labor Department Thursday and warned, ''This is not a time to worry about partisan politics.''

He should have thought of that before he picked such a partisan nominee. Scalia, a choice left over from the pre-unity era, is a flagrant example of the partisan excesses of that period before the terrorist attacks. It is impossible for the Democrats to embrace Scalia, and Bush knew it when he chose him. It would be disingenuous of the president to claim now to be shocked that the nomination has provoked a partisan confrontation.

If Bush is really serious about working in a bipartisan fashion, he should withdraw the nomination. There are other qualified Republican labor lawyers who would not raise so many hackles and cost the president so much in good will.

Mr. HATCH. Members can see why I am concerned. I have always tried to judge nominations without bias or self-interest. I am concerned, however, that the Senate is not demonstrating similar fairness to the President and this nominee. But these partisan remarks, extraneous to Mr. Scalia's qualifications, are bound to arise when the Democratic leadership refuses to allow Mr. Scalia and his qualifications to be openly debated in the light of day.

If you do not like Mr. Scalia for any reason at all, including the fact that he is a pro-life Catholic, or the fact that he is Justice Scalia's son, then vote against him and show your bigotry that way.

But the fact is, he ought to have a vote. The President ought to have a vote. Even if Members do not like Mr. Scalia, he is the President's choice. He ought to have a vote.

I have to say the allegation by some that it is because he is a pro-life Catholic bothers me. As a practicing member of the Church of Jesus Christ of Latter Day Saints, I have known much bigotry due to my faith, and especially because I am a pro-life member of my faith. As we all know, mine is the only denomination that had mobs go against it, with a pogrom ordered against it within the United States of America. I find bias against a person because of his or her religious beliefs particularly repugnant. I worry about that type of thing.

I know people in the Congress who will not vote for anybody who is pro-life. I believe there are some people who will not vote for anybody because they are pro-choice. I think that is abysmal. I think the President, whomever he or she may be, should be given tremendous support with regard to the nominees they send up here—unless there is some legitimate reason for rejecting the nominee. That is another matter.

I have also heard it is because Mr. Scalia may have a differing opinion on ergonomics. My gosh, ergonomics could not get through the Congress because a majority happened to be against the ergonomics proposal. It seems very bad to hold it against Mr. Scalia because he may differ with a minority in the Congress.

There is no apparent reason for some of these things, and in my years on the Judiciary Committee I have learned a thing or two about judging the qualifications of lawyers who serve in our Government. It is clear that Eugene Scalia is highly qualified to hold the position for which the President has nominated him. Mr. Scalia has a distinguished career in private practice and has been an influential writer and laborer in employment law.

He has been strongly supported by lawyers to whose views my Democratic colleagues and I normally give great weight—William Coleman, former Secretary of Transportation and a great civil rights leader, a dear friend to most all in this body; Professor Cass Sunstein, one of the two or three leading advisers to my Democratic colleagues on the Judiciary Committee, not known for conservative politics, but liberal politics, a very good guy; and Professor William Robinson, the chair of the College of Labor and Employment Lawyers who describes how Mr. Scalia taught on a volunteer basis at the UDC law school when that predominantly minority institution had financial difficulties and could not afford to pay a full faculty.

This person gives his time voluntarily in a primarily minority institution, a law school, and does not ask for a cent and does it out of the goodness of his heart. That ought to be given some consideration around here.

This is hard to believe, but Mr. Scalia was nominated more than 7 months ago. Seven months ago! He was reported favorably out of committee and has been waiting for a floor vote for 6 weeks.

Still a vote has not been scheduled. Why not? Well, it saddens me, but it is becoming ever more believable that Mr. Scalia is being treated this way for reasons beyond his qualifications, whatever they may be, and I hope they are not the two I have mentioned. Whether because of the Bush v. Gore Supreme Court decision or otherwise, they want to punish Eugene Scalia for his association with his father's opinions, and I surely hope it is not because he is pro-life and a devoted member of the Catholic faith.

The President of the United States is working hard for the American people. The least we can do in the Senate is to confirm his qualified nominees to serve in his administration unless there is something gravely wrong with their records. We owe this to the President. We owe it to the American people. We need to let President Bush staff up his administration so he has the people he needs to get the job done.

Every time we play partisan games with a Presidential nomination, we make the President's job that much harder and we fail to discharge our constitutional duty. We prevent the President and his top people at the White House from focusing on the war

effort, getting the economy moving, and a host of other things the American people care about.

The Labor Department has front line responsibilities for worker safety and economic security. It has been working hard to help employers deal with the anthrax threat, and it has been helping employees laid off by the economic downturn. We are not helping the Labor Department, we are hurting it, and we are hurting American workers if we do not allow a vote so the Department can have its top lawyer in place.

Some have said the reason he is not getting a vote in the Senate is that the unions do not want him. I have to say there are times when people on our side have not wanted what the unions want, and there are people on the other side who have not wanted what the unions want. The ergonomics rule was the perfect illustration. The resolution of that issue should not be held against anybody. People ought to have a right within the framework and the mainstream of the law to think what they want.

I have to admit, I am sure the AFL-CIO, as much as I respect it, as much as I respect its leadership—having been one of the few Senators who have actually held a union card—I went through an informal apprenticeship, became a journeyman in the AFL–CIO, I understand there are irritations with some of President Bush's nominations, but no less than there were with President Clinton's nominations. They were put through, or at least they were allowed a vote.

Mr. Scalia is one of the finest people I know yet he is not even given the consideration of a vote. Back in July, five former Solicitors of Labor urged us to move quickly on this nomination. Both of President Clinton's Labor Solicitors joined that letter. We not only have the ones I have mentioned, who are strong Democrats, but the two Clinton Solicitors of Labor who said Mr. Scalia deserves a vote and should be supported. The five Solicitors said it was harming the Department of Labor and the workers whom the Department serves the longer we delay this decision. So I say let us have a vote on this highly qualified nominee before we adjourn.

Last but not least, and changing the subject, I praise the distinguished Senator from Vermont, Mr. LEAHY, for the movement we have had in the last month on Federal district court judges. Admittedly, they are people who have Democrat support, or have both Democrat and Republican support. They are people who are slam dunks, unanimous consent type of people, but I think virtually everyone President Bush has nominated to the judiciary is a slam dunk, unanimous consent supported individual.

What is bothering me is we have an inordinate number of circuit court of appeals judge nominations that are not being brought up. At our last confirmation hearing for district court nominees, a point was made that those nominees had been pending for less than 60 days since receipt of their American Bar Association ratings. If this is the standard, then the committee is falling woefully behind, especially on circuit court of appeals nominations. There are 8 circuit court nominees who have been languishing for 157 days or more since receiving their ABA ratings. In fact, some of them have been pending for more than 180 days since being rated by the ABA and nearly 220 days since their nomination.

I agree with the suggestion that 2 months should be the standard limit to review nominees. We should apply this standard or better to the circuit court nominees President Bush sent to the Senate nearly 220 days ago. These are not just nominees, these are some of the finest lawyers ever nominated to the circuit courts of appeals, and I will mention two of them.

John Roberts, who was left hanging at the end of the first Bush administration, who is considered one of the two best appellate lawyers in the country, and who is not known as a partisan Republican, he was left hanging then, and now he has been left hanging for almost 220 days.

I have heard so many complaints during other Republican administrations of not enough women and minorities being nominated, but now we have one of the leading minority lawyers in the country, Miguel Estrada, and he cannot even get a hearing. He has argued 14 cases before the Supreme Court; Roberts, many more. Most lawyers never argue a case before the Supreme Court. Estrada is respected by the courts of this country. He is one of the brightest lawyers in this country today.

What really moves me, even more than that, is this is a young man who came from a country of abject poverty, graduated with honors from Columbia University, then was at the top of his class at Harvard Law School, became a law clerk and, of course, has had a distinguished legal career. There is not one thing any reasonable person would find against him. And he is Hispanic. We are trying to do what is right.

I do not understand it. If we do not get these judges on the Circuit Court of Appeals for the District of Columbia and in other circuits as well, we are going to be very directly harmed in this country. The people will suffer. We have to quit playing games with this.

I have to admit there were times when during the Clinton administration I wished that I, as chairman of the committee, could have done better. There were some people on our side who I think acted irresponsibly, as there are people on the other side today acting irresponsibly. People of good will, those of us who really believe a President's nominees ought to be given their votes, these people ought to prevail in this body, and we ought to start establishing a system that works with regard to judicial nominations.

Lest anybody think President Clinton was mistreated, the all-time confirmation champion was Ronald Reagan with 382 Federal court judges who were confirmed. By the way, President Reagan had 6 years of his own party in control of the Senate. President Clinton had 5 fewer than Reagan, 377, and would have had 3 more than Reagan had it not been for Democrat holds on the other side. Frankly, even President Clinton told me he thought we did a good job.

Were there some exceptions? Sure. There always are. There have been for my whole 25 years in the Senate. Somebody has a hold or somebody does not like somebody for some stupid reason or another. But the fact of the matter is that President Clinton was well treated. When we finished, there were 67 vacancies. President Clinton once said that 63 vacancies, when Senator BIDEN was the chairman on the Democrat side, was a full judiciary.

Today we have almost 100 vacancies, and we have to do something about it, but we are not doing it with regard to these circuit court of appeals judges and I sure want to get that going.

I hope our distinguished chairman and others on the committee will help this President get done the nominations he has so carefully, I think, selected.

I yield the floor.

Mr. HARKIN. I am constrained, after listening to my good friend from Utah talk about nominating judges and vacancies—I cannot let the moment pass without pointing out that on the Eighth Circuit Court of Appeals there is a vacancy today. That vacancy is there because my friends on the other side of the aisle would not let us vote last year on the former attorney general of Iowa, Bonnie Campbell, to take that position as circuit court judge on the Eighth Circuit Court.

She had a hearing, she came out of committee, but they would not let us bring her name up on the floor for a vote. She was perfectly qualified to be on the Eighth Circuit Court of Appeals. As I said, we had all the hearings. She was supported by everyone. Yet they would not permit her name to come up for a vote before we left last year.

Bonnie Campbell is not on the Eighth Circuit Court of Appeals today because of pure politics. Because the Republicans, those on that side, last year—I guess correctly—thought they were going to win the national election and therefore they didn't have to put through any judges on the circuit courts.

So Bonnie Campbell—there is a vacancy there today because of politics. Not that she wasn't qualified. I always said bring her up for a vote; if people want to vote against her, vote against her—just the same argument the Senator from Utah made right now. I made the same argument last year. Bonnie Campbell is qualified. No one says she is not. Let's bring her up for a vote. Yet the leadership on that side prevented us from ever having a vote on

Bonnie Campbell's nomination to be Eighth Circuit Court judge.

I hope my friend from Utah doesn't want to preach too much to me, to this Senator, about politics being involved in circuit court judges. I know full well what happened last year. It is on the record. This Senator stood at the desk right back there, day after day, asking that Bonnie Campbell's name come up for debate and vote. Every time it was objected to by the other side. So I don't really need any lectures about politics being involved in judicial nominations.

ELECTION REFORM AGREEMENT

Mr. DASCHLE. Mr. President, I am pleased that Senators DODD, MCCONNELL, SCHUMER, BOND, and TORRICELLI were able to reach agreement on a strong, bipartisan election reform bill.

Studies of the 2000 elections have made it clear that outdated and unreliable technology, confusing ballots, language barriers, lack of voter education, lack of poll-worker training, and inaccurate voting lists all added up to the disenfranchisement of six million voters.

These problems are unacceptable, and, as a Nation, we can't afford to repeat them. Our Federal system leaves it to individual States to conduct their own elections; but Congress has an obligation to see to it that election mechanisms and procedures in every county in every State guarantee every eligible citizen a voice in the democratic process

Under this agreement, States will be required to meet minimum standards, and a bipartisan committee will be created to set those standards.

This bill requires that election officials notify voters of overvotes and give them the opportunity to correct a flawed ballot before it is cast. It will establish statewide computerized voter registration lists.

This bill further guarantees that voting machines be made accessible to people with limited English proficiency and people with disabilities, and that provisional ballots be made available to people whose names do not appear on voting lists. Those ballots would be set aside until it can be determined whether the individual's name was mistakenly left off the registration list. If it was, the vote is then counted.

Finally, this bill provides the real resources these real reforms demand.

As we protect our democracy from its external enemies, we must also fix its internal flaws. That is what this compromise bill will do, and I look forward to working to get it passed early in the next session.

TRIBUTE TO MARIE MOORE

Mr. LOTT. Mr. President, I wish to pay tribute to one of my departing staff who has been working in my personal office for almost 4 years. Marie Moore has served as my Deputy Press Secretary since May 1998, and has distinguished herself in many ways. She has handled her duties with grace and professionalism, and quite frankly has set the standard for those who will follow her in this very demanding position.

Marie has served with me during some of our Nation's most historic and sometimes very difficult and dramatic events. On occasion these events have demanded very much of her, as they did all Senate staff members but particularly those who are required to deal one on one with a sometimes skeptical or hostile media. She certainly leaves Washington with some memories and experiences which will benefit her professional career and her personal life for many years to come.

Marie's tenacious work ethic and organizational skills have benefited our office's operation greatly. Both are exemplary. Maybe she learned these attributes at Ole Miss, where she graduated with a journalism degree just before coming to Washington. However, I suspect the best of Marie Moore is a product of her wonderful family and upbringing back in Holly Springs, MS. Only a few short days after joining my staff, Marie began reorganizing the press shop, adding new filing cabinets, rearranging furniture, finding more space for this or that, all for the better. She has demonstrated a tremendous capacity for leadership. She knows how to take charge and really get things done with presented with virtually any challenge. For instance, in addition to working on my staff, Marie has been an active member of the Mississippi Society of Washington, helping to organize events and recruit new members. She has also selflessly assisted me and my staff in a number of other duties, not necessarily in her job description, but tasks which must be done and require an exceptional degree of patience, understanding, and skill.

She is excellent with my constituents who come to Washington. Marie has always provided a friendly face and warm welcome for the many visitors I receive each day, and she is always quick to entertain them with refreshments or conversation if the have to wait. Additionally, she has done a wonderful job in handling the many photographs which are required of a U.S. Senator. Marie always makes sure those seeking a photo with me have that opportunity, and that these many photos get back to those with whom I have met.

Marie has proven to be press savvy, something we all value here in Washington. She has a keen mind for what may or may not be a news item, and in their regard shows experience well beyond her years. Marie knows how to meet deadlines, how to prioritize and most importantly how to get information to the public in an effective, comprehensive and timely manner.

We all know people who are somehow just prone to being successful in anything they undertake. Marie is one of those people. I have no doubt, that whatever career path is are in Marie Moore's future, she will succeed.

May I add, for those Americans who sometimes make negative generalization about America's younger people, Marie Moore is just the opposite in every way. She is an example of the best in America's future. She is an asset to our country and to this institution. I will miss her very much, and so will many other people in the U.S. Senate who work with Marie on a daily basis. Marie made it a point to know names, remember faces throughout the Capitol and Senate Office Buildings, just as she did with our visitors. I know the folks down in the Senate recording studio, the photo studio, the service department and a host of other Senate offices share my sentiments about Marie, and our loss. But, we wish Marie the very best in her new endeavor, and I certainly hope she will stop by and visit when back in Washington.

SECRET HOLDS ON THE 21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

Mr. LEAHY. Mr. President, I am disappointed that one or more Republican Senators are holding up final passage of the 21st Century Department of Justice Appropriations Authorization Act, H.R. 2215.

This bipartisan bill is supported by the Bush Administration and cosponsored by Senator HATCH, the ranking Republican Member of the Judiciary Committee. It was unanimously approved by the Senate Judiciary Committee back on October 30.

This bill, with a bipartisan amendment authored by Senator HATCH and myself, has cleared the Democratic cloakroom for final passage but someone on the other side of the aisle has placed a secret hold on it. I would urge my Republican friends to permit the Senate to take up and pass this critical legislation.

The 21st Century Department of Justice Appropriations Authorization Act, provides permanent enabling authorities which will allow the Department of Justice to efficiently carry out its mission.

At a time when the Department of Justice is conducting the most sweeping investigation into terrorist conspiracies in our Nation's history, the Senate should pass this legislation.

Indeed, Title II our bipartisan bill provides the Department of Justice with additional law enforcement tools in the war against terrorism. Section 201 permits the FBI to enter into cooperative projects with foreign countries to improve law enforcement or intelligence operations, and Section 210 provides special ''danger pay'' allowances for FBI agents in hazardous duty locations outside the United States.

In addition, the bill as passed by the Committee, contains language offered by Senator FEINSTEIN to authorize a number of new judgeships.

Title III of this bipartisan legislation authorizes eight new permanent judgeships as follows: five judgeships in the Southern District of California; two judgeships in the Western District of Texas; and one judgeship in the Western District of North Carolina. Section 312 would also convert two temporary judgeships in Illinois into permanent judgeships, create one new temporary judgeship in the Western District of North Carolina, and extend the temporary judgeship in the Northern District of Ohio for five years.

I strongly support Senator FEINSTEIN'S amendment, as do many of my colleagues on the Judiciary Committee on a bipartisan basis, including Senator DEWINE, Senator DURBIN, Senator EDWARDS, and others. I believe that the need for these new judgeships is acute.

Finally, the bill creates a separate Violence Against Women Office to combat domestic violence. This section of the bill was crafted by Senator BIDEN and Senator SPECTER—another bipartisan partnership in this legislation. There is strong bipartisan support in the House and Senate to create a separate Violence Against Women Office within the Department of Justice.

Senator HATCH and I have also worked together to craft a bipartisan floor amendment which compiles a comprehensive authorization of expired and new Department of Justice grants programs and improvements to criminal law and procedures.

For example, our bipartisan floor amendment authorizes Department of Justice grants to establish 4,000 Boys and Girls Clubs across the country before January 1, 2007. This bipartisan amendment authorizes Department of Justice grants for each of the next 5 years to establish 1,200 additional Boys and Girls Clubs across the Nation. In fact, this will bring the number of Boys and Girls Clubs to 4,000. That means they will serve approximately 6 million young people by January 1, 2007.

In 1997, I was very proud to join with Senator HATCH and others to pass bipartisan legislation to authorize grants by the Department of Justice to fund 2,500 Boys and Girls Clubs across the Nation. We increased the Department of Justice grant funding for the Boys and Girls Clubs from $20 million in 1998 to $60 million in 2001. That is one reason why we have now 2,591 Boys and Girls Clubs in all 50 States and 3.3 million children are being served. It is quite a success story.

But the authorization for these Department of Justice grants to Boys and Girls Clubs across the country has expired. This bipartisan legislation will renew and expand these grants.

Parents, educators, law enforcement officers, and others know we need safe havens where young people can learn and grow up free from the influence of the drugs and gangs and crime. That is why the Boys and Girls Clubs are so important to our Nation's children.

Our bipartisan amendment also includes the Drug Abuse Education, Prevention, and Treatment Act of 2001. I am pleased that we have included in this package the version of S. 304 that the Judiciary Committee passed unanimously on November 29. This legislation ushers in a new, bipartisan approach to our efforts to reduce drug abuse in the United States. It was introduced by Senator HATCH and I in February. Senator HATCH held an excellent hearing on the bill in March, the Judiciary Committee has approved it, and the full Senate should follow the committee's lead. This is a bill that is embraced by Democrats and Republicans alike, as well as law enforcement officers and drug treatment providers.

This legislation provides a comprehensive approach to reducing drug abuse in America. I hope that the innovative programs established by this legislation will assist all of our States in their efforts to address the drug problems that most affect our communities.

Our bipartisan amendment also includes provisions to protect witnesses who provide information on criminal activity to law enforcement officials by increasing maximum sentences and other improvements to the criminal code.

And our bipartisan legislation contains amendments, authored by Senator SESSIONS, that modify the Paul Coverdell National Forensic Science Improvement Act of 2000 to enhance participation by local crime labs and to allow for DNA backlog elimination. I was proud to cosponsor the Coverdell grants bill last year and support it to help bring the necessary forensic technology to all states to improve their criminal justice systems.

The 21st Century Department of Justice Appropriations Authorization Act should result in more effective, as well as efficient, Department of Justice for the American people. But it must pass the Senate soon and be reconciled with the House-passed bill in a conference.

I urge my colleagues on the other side of the aisle to lift the secret hold on this bipartisan legislation to support the Department of Justice.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of this year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred January 14, 1993 in Macon, GA. Elizabeth Davidson, a 25-year-old lesbian, was fatally shot in a bar. The attacker, Deion N. Felton was charged with murder in connection with the crime. An accomplice, Shawn Hightower, 16, pleaded guilty to conspiracy to commit aggravated assault. Felton and Hightower allegedly were engaged in a plan to rob homosexuals at the time of the killing.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

GUNS AND TERRORISTS

Mr. LEVIN. Mr. President, I am concerned about the Attorney General's decision to deny law enforcement access to the National Instant Criminal Background Check System database. According to a December 6 story in The New York Times, following the events of September 11, FBI officials checked the NICS database for the names of 186 suspects being detained in connection with the terrorist attacks. The search turned up two matches of detained individuals approved to buy guns.

According to the Attorney General, existing law does not give him the authority to approve law enforcement's review of these records. But despite knowledge of this gap, the Attorney General did not request this authority in the comprehensive USA PATRIOT Act signed into law by the President on October 26. Since September 11, over 500 individuals have been detained, but law enforcement has not been able to audit the NICS database for gun purchases by detained individuals. I believe the Attorney General's actions are at odds with his own priorities. That is why I was pleased to cosponsor the Use NICS in Terrorist Investigations Act introduced by Senators KENNEDY and SCHUMER. This bill would establish a 90-day period for law enforcement to retain NICS data. It would also give the FBI the authority they need to review the NICS database. I urge the Attorney General to endorse this legislation and give law enforcement the comprehensive tools they need.

VETERANS EDUCATION AND BENEFITS EXPANSION ACT OF 2001

Mr. DODD. Mr. President. I rise to comment on important legislation passed by the Senate last evening, H.R. 1291, the Veterans Education and Benefits Expansion Act of 2001. This compromise agreement is the product of negotiations between the House and the Senate to craft an agreement between the Senate- and House-passed bills aimed at improving a wide array of benefits affecting veterans and their families. Included in this legislation is funding for improving educational benefits under the Montgomery GI Bill, enhancing veterans' compensation, and increasing home loan guarantees. This legislation also makes important investments in vocational training, education, and outreach programs to improve economic and educational opportunities for veterans who served our

country. And, this legislation expands the definition of service-connected disability to include symptoms associated with ''Gulf War syndrome'' thereby enabling those veterans suffering from Gulf War-related symptoms to receive the compensation and care they deserve. Our nation's veterans have served our country with distinction and have sacrificed in the defense of our country. These veterans deserve benefits commensurate to their service to our country. In many ways, this legislation recognizes the sacrifices and commitment of our nation's veterans, and rightfully rewards their service and valor.

I wanted to take some time to talk about a very important aspect of this legislation—Section 502—which is a provision pertaining to providing VA grave markers for deceased veterans. On December 7, 2001, the Senate unanimously passed S. 1088, the Veterans' Benefits Improvement Act of 2001. This legislation included a provision which is based on legislation that I introduced this year and in the 106th Congress. It has the support of every major veterans group and a wide array of organizations including the Veterans of Foreign Wars, the American Legion, Disabled American Veterans, Paralyzed Veterans of America, the Air Force Sergeants Association, and the National Funeral Directors Association. It also has strong bipartisan support and enjoys the support of 21 of my Senate colleagues who cosponsored this legislation. The cosponsors include Senators BINGAMAN, BYRD, CONRAD, CRAIG, DEWINE, DORGAN, FEINGOLD, JOHNSON, KENNEDY, KERRY, KOHL, LEAHY, LEVIN, LIEBERMAN, LINCOLN, MILLER, SANTORUM, SESSIONS, STABENOW, STEVENS, and VOINOVICH.

Section 402 of S. 1088 would authorize the Secretary of Veterans Affairs to furnish a grave marker for the grave of a deceased veteran, irrespective of whether the grave has already been marked privately by the family. Current law—which dates back to the Civil War—does not allow the Department of Veterans Affairs to provide such a marker to already-marked graves. This arcane provision of federal law effectively precludes an estimated 25,000 families each year from appropriately commemorating their loved one's service to our country. Sadly, this number will only increase as our nation's veteran population ages. Indeed, according to the Department of Veterans Affairs, some 1,500 American World War II veterans will pass away each day. With our aging population of veterans and with our nation's armed forces currently in harm's way in the war against terrorism, it is critically important to act promptly to secure this final tribute to suitably recognize the service of past and future veterans.

This archaic law was originally intended to ensure that our fallen soldiers were not buried in unmarked graves. Of course, in today's age rarely, if ever, does a grave go unmarked. Prior to 1990, the surviving family of a deceased veteran could receive from the VA, after burial or cremation, partial reimbursement for a private headstone, a VA headstone, or a VA grave marker. The choice was solely up to the deceased veteran's family. However, budgetary tightening measures enacted in 1990 eliminated the reimbursement component and prevented the VA from providing an official headstone or grave marker when the family had already done so privately. This change in law precludes veterans' families from receiving an official VA grave marker if the family has already made private funeral arrangements.

Suffice it to say, this provision of law is a major source of frustration for veterans families as they seek to honor their deceased loved one's service to our nation. At the time of a veteran's death, grief stricken family members invariably concern themselves with making necessary funeral arrangements and providing comfort and support to loved ones, not investigating the complexities of VA regulations. Nonetheless, for veterans' families that make private funeral arrangements prior to contacting the VA—such as purchasing a private headstone or marker—these families unwittingly forfeit their right to receive an official marker to honor their loved one's military service. This inequity in current law is unfair to those veterans who have served our country. Indeed, the denial of this benefit to veterans' families is one of the major sources, if not the major source, of complaints lodged with the VA.

One of the countless families negatively effected by this provision of federal law is the Guzzo family of West Hartford, Connecticut. Back in the summer of 1998, I was approached by a young man named Tom Guzzo whose father Agostino Guzzo had recently passed away. While Agostino's service in the Army in the Philippines during World War II entitled him to full military honors from the VA, he was not eligible for an official VA marker because the family had already purchased a private marker.

I became involved in this matter to correct what I believed to be a bureaucratic error, and I wrote to the then-Secretary of Veterans Affairs to resolve this matter. However, when the Secretary informed me that he was unable to furnish a VA grave marker to the Guzzos because of federal law, I introduced legislation to correct this inequity. Last year, the VA headstone and grave markers legislation that I authored unanimously passed the Senate as an amendment to the FY 2001 Department of Defense Authorization bill. However, the House-passed version of the Department of Defense Authorization bill did not include a comparable VA grave marker provision, and regrettably this measure was stripped in conference committee. Last week, once again, the Senate passed a provision based on legislation that I introduced in the Senate that would authorize the Secretary of the VA to furnish grave markers to deceased veterans, regardless of whether the grave is privately marked. And, once again, the House failed to adopt this reasonable provision, and this important measure was the subject of negotiations between the House and Senate to resolve this matter.

The legislation before us today allows grave markers for veterans who pass away after the date of enactment. This is good news for veterans today. However, I continue to be concerned about the more than 5 million veterans who passed away over the past decade and whose families have tried in vain to obtain an official commemoration from the VA. My legislation was retroactive and would have assisted all affected veterans families back to 1990—when the aforementioned change in federal law occurred. As part of the compromise agreement between the Senate, House, and the Administration, this legislation would allow for the Secretary of Veterans Affairs to ''implement this provision in a flexible manner in light of requests for grave markers pre-dating this provision.'' While I am pleased that this compromise will allow for the Secretary of Veterans Affairs to help the Guzzo family and may help other families who have struggled to receive official recognition for their deceased loved one's service through administrative means, this problem should have been addressed by a change in law—not through an ad-hoc, case-by-case, administrative procedure. Nonetheless, while this is not by any means a perfect agreement, it will allow deceased veterans' families to obtain this official grave marker in the future.

I would like to take a moment to thank and recognize the tremendous leadership of Chairman ROCKEFELLER with regard to this issue and to veterans issues in general. Chairman ROCKEFELLER and his talented staff, in particular, were extremely helpful in working with me to ensure that the service of our Nation's veterans are suitably recognized. I would also like to commend Congresswoman NANCY JOHNSON and her efforts to reach a workable compromise with respect to this issue. Finally, I would like to commend and recognize the hard work and vigilance of the Guzzo family, particularly Tom Guzzo, in ensuring that Agostino Guzzo's service to our Nation—and the military service of countless other veterans—can from now on be recognized by the U.S. Government with this final, modest gesture from a grateful Nation.

ABM TREATY WITHDRAWAL

Mr. KERRY. Mr. President, I want to take just a few moments today to place President Bush's announcement that he is withdrawing the United States from the 1972 ABM Treaty into a broader context, to try and redefine a debate

about our security which too often has been argued at the margins.

The undergirding objective behind any American foreign policy should be to make Americans safer, to make our position in the world more secure, not less. That is the only objective measurement of foreign policy, and it is by that measurement that I want to offer any construction concerns about today's announcement.

First, let me be clear: I support the development of an effective defense against ballistic missiles that it deployed with maximum transparency and consultation with U.S. allies and with other major powers, including Russia and China. I've voted as has the Senate, to support an approach which delivers that kind of security measure. In the end, it boils down to common sense: If there is a real potential of a rogue nation firing a few missiles at any city in the U.S., responsible leadership requires that we make our best, most thoughtful efforts to defend against that threat. The same is true of accidental launch. If it ever happened, no leader could ever explain not having chosen to defend against the disaster when doing so made sense.

The broader question we must ask today is what constitutes not just effective defense against the ballistic missile threat, but whether in its entirety we are pursuing a national security strategy which makes us as safe as we can be against the whole range of threats we face as a nation, and what should have been clear before September 11 and what is evident with frightening clarity today is that there are urgent and immediate vulnerabilities to our security which can and must be addressed, practically, pragmatically, today.

The President's announcement today reflects, I fear, misplaced priorities—an unyielding obsession almost with a threat which most measurements would suggest is of lesser likelihood, and an almost cavalier willingness to nickel and dime security priorities of the first order. I remain disappointed that the Bush Administration continues to focus so much on its attention on the issue of missile defense and a missile defense plan which will be enormously expensive while at the same time they cite expense as a reason why they will not today make the investment towards meeting our tremendous homeland security challenges.

Missile defense is important, but it is a response of last resort, when diplomacy and deterrence have failed. No missile defense system can be 100 percent effective, and so we would be remiss to discard entirely the logic of deterrence that has kept us safe for 40 years. Even in periods of intense animosity and tension, under the most unpredictable and isolated of regimes, political and military deterrence have a powerful, determining effect on a nation's decision to use force. We saw it at work in the Gulf War, when Saddam Hussein was deterred from using his weapons of mass destruction by the sure promise of a devastating response from the United States. For 30 years, the ABM Treaty has helped to anchor nuclear deterrence, and I believe that people of the world have been safer for it. Yes, I would have preferred that the Bush administration continue to work with Russia to find a way to amend, rather than end, the ABM Treaty. It appears that Russia was willing to allow the Bush administration great leeway in pursing its robust testing plan for missile defense, but the President was unwilling to accept any restrictions on his plans. Given their past statements, it comes as no surprise that the Administration does not seem to have offered much to Russia by way of a compromise or an attempt to amend and preserve the Treaty. What the Administration has done, and it is their prerogative to do so, is gamble successfully on the fact that the Russian leadership would wisely determine not to allow this issue to derail the improvements we have seen in the last 3 months in the U.S.-Russian relationship. President Putin has called this decision on the ABM Treaty a mistake and expressed his regret that President Bush intends to go forward with this, but Putin and others in his administration have pledged that they will continue to work with us on reducing strategic nuclear arsenals and building a new Russian relationship with NATO. The response from Russia could have been much different, much more dangerous and destabilizing, and I believe it would have been, before the events of September 11 changed Russia's perception of the threats it faces and the importance of cooperating with the United States. But I am gratified that the Russians remain partners in a global effort to increase security.

The situation with China is more murky. While the administration has briefed the Chinese leadership on its missile defense plans, I don't believe enough time or diplomatic effort has been invested in convincing Beijing that this system is not directed at eroding China's small nuclear deterrent. The Administration must do more to reach a common understanding with China that there is a real threat from isolated regimes bent on terrorism and accidental or unauthorized launches. If we fail to take this task seriously, we will jeopardize stability in the Pacific.

But, in my judgment, what is more striking about the President's announcement today is the homeland security measures left unaddressed, and unfunded, in the Administration's security wish list.

In his statements about missile defense over the last several months, President Bush has said over and over that this is only one part of a comprehensive national security strategy. I could not agree more, but I am deeply concerned that the President's words are not matched by the deeds of his administration. Especially in the world after September 11, a comprehensive national security strategy must emphasize the things we need to do to keep the American people safe from terrorism. But just last week, the President defeated attempts by Democrats in the Senate to provide additional funding for homeland security as part of the Defense Department appropriations bills.

I am deeply concerned that, at a time when the Administration tells us that financial resources for defense are highly limited, we must be more prudent about our spending priorities, we need a debate about choices for our national security agenda.

Let's be clear about what every national security expert told us before September 11 and has amplified since. We need to fund our efforts to deliver airline and rail security, border security, the ability of our fire fighters, police and emergency workers to respond to terrorist attacks, and the ability of our health care system to respond to the threat we face from bio-terrorism. And we are at war. We need to ensure that our fighting men and women have the tools and support they need to prosecute this war on terrorism successfully. Finding an effective defense against missile attacks is important, but these challenges are immediate, critical, and regrettably they are being left unmet today.

Pushing forth first and foremost with national missile defense does nothing to address what the Pentagon, even before September 11, considered a much more likely and immediate threat to the American homeland from terrorists and non-state actors, who might attack us with weapons of mass destruction. As we are learning more about Osama bin Ladin's attempts to possibly acquire nuclear weapons and develop chemical or biological weapons, it is crucial that we stay focused on meeting the WMD threat.

Our first defense against that threat is a robust international effort on nonproliferation. but the President's FY 2002 budget actually cut U.S. funding for counter-proliferation programs to deal with the huge weapons stockpiles of the former Soviet Union. Our former colleague, Senator Howard Baker, was part of a study of these counter-proliferation programs released earlier this year. That study concluded that the threat of proliferation from the weapons stockpiles of the former Soviet Union is very grave, and efforts to secure and destroy those weapons demand our immediate, robust support. The study recommended an increase of $30 million in funding for these programs, but supporters of these programs on both sides of the aisle have struggled mightily just to keep the funding from being slashed.

Consider also the homeland security needs so clearly being given short shrift in an agenda dominated by national missile defense. Our security needs are enormous, for certainly the

last months have at least demonstrated where some of the vulnerabilities lie.

We must shore up not just the safety of our nuclear plants around the country, but plants and nuclear weapons facilities around the globe. From making nuclear facilities less vulnerable from the air, to investing in the trained personnel to ensure that cargo ships in American ports are not carrying dangerous or stolen nuclear materials meaningful steps can be taken to protect Americans against a threat which was real before September 11 and looms larger today.

The Administration can't speak about preparing to deal with bioterrorism, and in the next breath ignore that medicine must be stockpiled, that nurses and medical professionals must be trained, and that massive investments in vaccines for diseases long believed to have been eradicated must be made at a rapid pace.

We can't honor firefighters, police and rescue workers who died in the World Trade Center if we aren't willing to invest in the technology and innovation that make these jobs safer. There is little solace for postal workers killed by Anthrax if the government is not committed to putting in place innovative ways to detect and combat future biological and chemical threats.

Making our Nation's rail system safe will come with a high price tag, but it's trivial compared to the devastation that could be wrought by a single terrorist attack on passenger rail. More than 300,000 people pass through the century-old rail tunnels under New York City each day, tunnels lacking both ventilation and sufficient emergency exits. It is time to shore up the security of our transportation infrastructure before they become targets, not when it is too late.

These are security needs of a nation at war and a nation bent on returning to normalcy in the months and years ahead, and they must be addressed. I would say to you today, it's time we break out of a debate over whether we're going to have a missile defense system or rely entirely on deterrence, a fruitless debate, ideological shadowboxing and end the days of arguing at the margins. We need a serious, thoughtful debate on the comprehensive steps required, in every issue of national security, to make our Nation as safe as it can be, and until we do that we are not offering the kind of leadership our citizens and our country demands of us. And that is a debate of the first order of urgency, a debate too important to delay.

Mr. HARKIN. Mr. President, I am deeply disappointed that the President has announced that the United States is withdrawing from the Anti-Ballistic Missile Treaty. The President is adamantly pursuing a unilateral approach at a time when we so clearly need international cooperation in the war against terrorism. We now know beyond dispute that we cannot simply withdraw within our border, with a magical shield to protect us. All our gold-plated weapons systems could not prevent the terrorist attack, and they can't hunt down every terrorist. Our national security depends on international intelligence, international law enforcement, international financial transactions, international aid, in short on our relations with other nations.

Yet for the first time since World War II we are walking away from a major treaty, dismaying our friends and inciting those who could become our enemies. While Russian President Putin has given a measured response, I fear our intransigence could endanger cooperation not only on terrorism in Asia but also on further reductions in nuclear arms. And China, whose much smaller missile arsenal is most directly threatened by our missile defense plans, will almost certainly build more missiles, making the world less safe.

For our close allies, abandoning what we used to call the ''cornerstone'' of arms control is just the latest in a series of provocations. Last week we torpedoed negotiations on the Biological Weapons Convention, having earlier axed a verification protocol, at a time when we face a biological weapon attack. Wouldn't a little verification of foreign labs that use anthrax be useful right now? We abandoned negotiations on the Kyoto global warming accord, gutted the small arms treaty, and walked away from the United Nations Conference on Racism. We rejected the Comprehensive Test Ban Treaty and dismissed the convention on land mines. How can we expect full cooperation from other nations on terrorism, when we dismiss their concerns, refusing even to negotiate, on critical issues including biological weapons, nuclear arms control, and global warming?

Make no mistake, we have no technical need to withdraw from the ABM treaty at this time. Most experts agree that research and testing could continue for years without violating the present treaty. And the Russians have offered to amend the treaty if needed. Unfortunately, this administration refused to take yes for an answer. If we are to maintain international cooperation in defeating the terrorists, and also in protecting the global environment, ending child labor abuses and promoting human rights, and improving the global economy, we must ourselves show some regard for international norms and concerns. Friendship is not a one-way street. I hope we wake up to that fact before it is too late.

RESERVISTS PAY SECURITY ACT OF 2001

Ms. MIKULSKI. Mr. President, I take great pride in supporting Senator DURBIN in introducing the Reservists Pay Security Act of 2001. This legislation will ensure that the Federal employees who are in the military reserves and are called up for active duty in service to their country will get the same pay as they do in their civilian jobs.

According to the U.S. Office of Personnel Management, the federal government is by far the largest employer of our nation's military reservists. These reservists stand ready to serve our country with honor, during times of peace as well as war. They are the finest examples of dedication and service our nation has to offer.

When federal employees who also serve as reservists are called to duty, they respond with pride, often facing significant pay cuts as they lose their normal civilian salaries. But the federal government does not supplement the lost pay of our reservists. This is a travesty.

Our Nation has always placed a high value on the spirit of public service. That's why so many private employers, both large and small, are making significant changes to provide more generous military leave policies, even in the midst of a recession. If Safeway, IBM, Intel and Verizon can provide for their employees during times like these, then our federal government must care for its own as well.

Family members of federally-employed reservists are already starting to feel the pinch of service. Amy Bennett, of Centreville, MD, can't afford the payments that she and her husband, a lieutenant in the Army Reserve, must pay for their home. Their family income will drop by $50,000 per year. To respond to this, she was at first going to sell her car. Now, with an 8-month-old son to care for, she must move in with her parents until her husband returns. She'll keep the car, but even worse, she may be forced to sell their home.

Janice Riley, of St. Mary's County, will work two jobs now that her husband, Sgt. Rob Riley, has been sent to Texas for training. Until he returns, he is forced to ask his mother to help Janice out with the bills. Lynn Brinker, of Columbia, MD, expects her family to lose about $30,000 this year because her husband, Mark, was sent to Texas to join the rest of his 443rd Military Police Battalion. As a result, her neighbors are buying her meals, her babysitter and hairdresser are working for free, and she has taken a line of credit against her house because no one can take over the home improvement business Mark began 10 years ago.

Fifty-five thousand of our Nation's reservists have been activated since the attacks of September 11th. This includes about 3,000 Maryland area reservists, most of them federal employees. Their families sit and wait at home, with no guarantee when their loved ones will return, and little means to pay for their college funds, mortgages, car loans, and holiday gifts.

This is simply wrong. I fail to see why these dedicated Americans should be forced to leave their families financially vulnerable at a time when they have so many other things to worry about.

This legislation is the same as the measure my colleague, Robert Wexler of Florida, introduced in the House of Representatives this spring. But this is not the first time I've fought for the rights of our nation's reservists, or our nation's federal employees. In 1991, when so many of our brave reservists answered the call to fight for our country in the Persian Gulf, I sponsored similar legislation. During the Gulf War, Senator DURBIN, the other sponsor of this bill, who was then serving in House, introduced the exact same legislation.

Before and since then, I have been a part of many other efforts to make sure that those who work on behalf our country, both here and abroad, are not penalized simply for their service to our country. This legislation will help relieve the financial hardship being felt by so many of our dedicated citizens. It will allow those who stand ready to serve our country not to have to worry about how the bills at home will be paid while they fight to protect the way of life so many Americans enjoy.

We all hope that federally-employed military reservists achieve success in their military duty, and return safely to comfort at home. But our efforts abroad should not compromise the living standards of them or their families, and our efforts to relieve their plight cannot wait.

I strongly urge my colleagues to join me in standing up for our active duty citizens, the federal employees who serve our nation in peace and, as reservists, in war, by supporting this very important legislation.

HOLD TO S. 1805

Mr. GRASSLEY. Mr. President, I would like to inform my colleagues that I have lodged an objection to the Senate proceeding to S. 1805 or to any other legislation or amendment that converts temporary judgeships to permanent judgeships.

When there is a temporary judgeship on a court, when the temporary judgeship expires, the next permanent vacancy that occurs will not be filled and will be deemed not to be a vacancy, so that the total number of permanent judgeships allowed by law stays the same. On the other hand, the net effect of converting a temporary judgeship into a permanent judgeship is the creation of a new permanent judgeship for that court. The creation of new judgeships should not be taken lightly.

As you know, I firmly believe that the Federal judiciary should not be expanded prior to comprehensive congressional oversight. Congress has not held a single hearing in this Congress on whether additional judges are necessary for the Federal courts, and specifically has not evaluated whether there is a need to convert the temporary judgeships contained in S. 1805 into permanent judgeships. Arguments that the Judicial Conference has recommended these changes should be scrutinized with care, the formula that the Judicial Conference utilizes to create judgeships is flawed and can be substantially manipulated. There needs to be serious congressional oversight of the numbers, which is our responsibility. We need to ensure that the courts are employing all appropriate methods to take care of their caseloads and to make sure that they are utilizing all efficiencies and techniques. Moreover, we should be looking at filling appropriate existing judicial vacancies before we create new judgeships.

VA COMMENDED FOR PATIENT SAFETY INITIATIVE

Mr. ROCKEFELLER. Mr. President, today I am proud to highlight the recognition given to the Department of Veterans Affairs for the high level of attention they have paid to patient safety in recent years.

The Institute for Government Innovation at Harvard University has announced that VA's National Center for Patient Safety (NCPS) will be one of five winners of the annual Innovations in American Government awards. An article in yesterday's Washington Post brings this achievement to national attention and details why VA's Center was the only federal recipient of the award.

It's apparent that the NCPS has cultivated a culture within VA that promotes communication and therefore enables health care staff to feel more comfortable about reporting medical errors or even concerns that they have about patient safety. VA launched this initiative in 1998, but it received a major push in 1999 when the Institute of Medicine released a report estimating that 44,000 to 98,000 Americans die each year due to medical mistakes.

This award demonstrates how VA has pioneered the establishment of the type of culture which must exist. According to the article, many health care providers in the private sector have started to model their patient safety models around that of the NCPS. This was a driving force behind the Institute for Government Innovation's decision to recognize VA's efforts by giving them this honor.

For a long time now, I have pushed VA to pay closer attention to patient safety, as it has been an issue of concern in the past. This is why I am glad to finally see VA on the cutting edge of patient safety, and being acknowledged for it. Our veterans deserve nothing less than highest standards of health care.

I ask unanimous consent that an article from The Washington Post, detailing VA's patient safety program and the award, be printed in the RECORD.

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

[From the Washington Post, Dec. 13, 2001]

VA MEDICAL SYSTEM TO GET HARVARD INNOVATION AWARD

REPORTING, HANDLING OF HEALTH CARE ERRORS TO BE CITED

(By Ben White)

The Department of Veterans Affairs health care system, long derided as a bloated bureaucratic mess, will be singled out for praise today for its efforts to improve the way medical errors and close calls are reported by health care workers and handled by hospital administrators.

VA's National Center for Patient Safety (NCPS) will be the only federal program among five winners of the annual Innovations in American Government awards from the Institute for Government Innovation at Harvard University. The awards are to be announced today.

Gail Christopher, executive director of the institute, said the NCPS is helping foster a ''healthier culture of communication'' in which health care workers at VA's 173 medical centers are far more likely to report mistakes or close calls than in years past.

''It's sort of a breath of fresh air for workers who are used to being in an adversarial or litigious climate,'' Christopher said. ''It meets a basic set of human needs, to strive for excellence while at the same time acknowledging the potential for human error. Its genius is really its simplicity.''

VA officials say the program, begun in 1998, produced a 30-fold increase in the number of accident reports in just 16 months and a 900-fold increase in the number of reported close calls over the same period. These numbers reflect not an increase in mistakes, they say, but rather a big jump in the willingness of doctors, nurses and other workers to report problems.

The agency began to focus on the issue after a 1999 report by the Institute of Medicine estimated that 44,000 to 98,000 Americans die each year as a result of medical errors.

VA Secretary Anthony J. Principi said NCPS has created a centralized mistake-reporting system that helps staff analyze and address repeat problems while also establishing a new culture in which the emphasis is on addressing the root causes of errors rather than punishing those who make them.

''We look at entire systems now, not just, say, a nurse who [makes a mistake] because she is pressed for time,'' Principi said in an interview yesterday. He noted, however, that VA will still punish anyone who ''intentionally and criminally hurts a patient.''

In addition to the improved, confidential mistake-reporting system, NCPS has set up a voluntary external system, modeled after a NASA program, that allows any individual to report medical mistakes or close calls anonymously.

NCPS Director James P. Bagian said the anonymous system serves as a safety valve to make sure serious problems that VA health workers might feel uncomfortable reporting, even confidentially, do not slip unnoticed.

Bagian cited a flawed pacemaker and a potentially deadly ventilator as examples of problems the NCPS regime has helped identify and correct. But he said the biggest success has been the change in culture. VA health care workers now know they will be identified publicly and punished only if they deliberately cause harm to a patient, according to Bagian. If a worker simply makes a mistake, he can report it confidentially and a team will assess the case, addressing the cause of the error rather than the individual responsible.

''We no longer focus on whose fault it is,'' Bagian said, noting that the handbook explaining the new approach is written in plain

English, rather than in the legalese of the past. ''Instead we ask: What happened? How did it happen? And what can we do to prevent it in the future?''

The award carries a $100,000 grant to help VA further the program and let others know about it. Harvard's Christopher said VA earned the award in part because so many private health care and hospital companies are already seeking to emulate NCPS.

''Clearly, the problem this program addresses is of monumental significance,'' she said. ''and word has spread rapidly within the health care community.''

DEFENSE APPROPRIATIONS

Mr. HARKIN. Mr. President, I would like to highlight two provisions in the Defense appropriations bill we passed last Friday night that are of great importance to Iowans. I have spoken here before of the continued health and environmental legacy of the nuclear weapons work at the Iowa Army Ammunition Plant, of conventional munitions work at the same plant, and of the secrecy issues that make it difficult to help the workers there. In the last couple years the Department of Energy has made real, if slow, progress toward addressing these issues. Two provisions in this year's Defense appropriations bill promise similar progress in addressing concerns of workers on the Army side of the plant.

Last year an amendment I offered to the Defense authorization bill required the Pentagon to review its secrecy policies to ensure that they do not harm workers at defense nuclear facilities, to notify workers who may have been harmed by radioactive or toxic exposures at these plants of these exposures and of how they can discuss them with health care providers and other officials, and to report back to Congress. But six months after the bill passed the Secretary had not even designated an official to carry out the provision. There still has been no notification and no report to Congress.

My amendment to the Defense appropriations bill this year clarifies that provision by explicitly including employees of contractors and subcontractors of the Defense Department, a colloquy last year between Senators LEVIN and WARNER and myself had clarified this intent, and by limiting its scope to facilities that manufacture, assemble, and disassemble nuclear weapons. The amendment also applies similar provisions to the Army side of the Iowa Army Ammunition Plant. It requires the Department to determine the nature and extent of exposures of current and former workers there to radioactive and other hazardous substances. It requires the Department to notify the workers of such exposures and of how they can discuss them with health providers, cleanup officials, and others. These actions are to be taken, and the Secretary is to report back to Congress, within 90 days of passage of the Act. I am pleased that the Defense Department has supported this amendment, and I hope that this time the workers in Iowa will quickly receive the support they need.

Another provision in the bill provides $1 million for a health study for workers on the Army side of the plant. The University of Iowa is in the second year of a study funded by the Department of Energy of the health effects of exposures on workers at the nuclear weapons facility. The new funds will begin a similar look at the health of workers on the Army side of the plant, who were exposed to many of the same radioactive and toxic substances. The work is to be done in conjunction with the Department of Energy study. I believe that these two provisions will help the workers on the Army side of the plant to address the same questions that workers at the nuclear facility in Iowa and around the country have faced: what dangers have they encountered while serving our country, have they been harmed, and how can they get help?

I would like to thank the managers of the bill for their assistance in including these provisions, in passing another amendment I offered on the Iowa National Guard's CIVIC project, and in addressing other concerns of the people of Iowa in this bill.

FORMER VICE PRESIDENT WALTER F. MONDALE'S REMARKS AT WESTMINSTER PRESBYTERIAN CHURCH

Mr. DAYTON. Former Vice President Walter F. Mondale, one of Minnesota's greatest Senators and statesmen, recently spoke in Minneapolis at Westminster Presbyterian Church, of which I am a member. I found his insights into our country's present situation and our current deliberations to be most valuable. I ask unanimous consent to print the former Vice President's speech in the RECORD for the benefit of all my colleagues.

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

WESTMINSTER PRESBYTERIAN CHURCH FORUM
SPEECH BY WALTER MONDALE

Thanks, Pastor Hart-Anderson for that kind introduction and thanks for your gifted leadership of this wonderful congregation. Joan and I are glad to be members of Westminster.

I love this magnificent and historic sanctuary where we meet today. It was 1897—104 years ago—when Westminster congregants first gathered here.

Some of the men who came to worship here in those first days may well have been veterans of the Civil War; some may have fought at Gettysburg. Seventeen years after that first service, the first boat passed through the new Panama Canal and World War I broke out in Europe. And can you imagine how parishioners must have felt as they worshipped here that grim Sunday morning of December 7th, 1941?

Westminster has also lived through profound changes in our Minneapolis community. From its beginning at the center of the Presbyterian community living nearby, the church has lived through the hollowing-out of Minneapolis's central city, then, thankfully, its revitalization into a bustling and diverse downtown neighborhood.

Today, Westminster is on its feet, growing, adapting, serving its faith in a community that the congregation's first members could not have imagined. For more than a century, we have seen it all.

A foreign correspondent recently wrote that what struck him the most about America was that we all seemed to have a sense of ownership in our country. He's right—we do own our country.

That's why we all came together, in an instant, on September 11.

That unity is no coincidence * * * it flows from our American ideals of justice, openness and freedom. That unity is by choice, not by chance. Almost every American generation, when pressed by crisis, has had to renew that choice and defend our ideals—not only abroad, but here at home.

Abolitionists argued that slavery was immoral, and soldiers fought a war to end it . . . the suffragists struggled for women's right to vote . . . the civil rights movements persuaded us that all Americans must be free from discrimination . . . the women's movement profoundly enhanced opportunities for American women . . . and, at our best, we have reached out to make American life more open and accepting to everyone.

Roosevelt once said that America's great goal has been ''to include the excluded.'' I believe that's what we have done.

I was a part of the civil rights struggle and served in the Senate when many of the key civil rights law were passed. I worked under a president who was the first southerner elected to the office in 120 years . . . elected, in part, because a southerner could finally champion civil rights and bring our Nation closer together.

It all came together for more at the 1984 Los Angeles Olympics. Civil rights laws had knocked down the barriers to black and Hispanic participation in sports. And we had recently passed title nine, over huge objections, which required schools receiving public money to provide equal athletic opportunities for young women.

When I watched American athletes of all colors, men and women, winning one gold medal after another and astounding the world, I saw our Nation's long march toward openness and justice being justified right before our eyes. America was the best because we had tapped all of our talent.

The wonderful American historian, Stephen Ambrose, spoke in Minneapolis the other day about the long-term prospects for America versus Bin Laden and his fellow extremists.

America has a great advantage, Ambrose said. In today's world the trained mind is the most valuable of all assets. In America, we tap all of our talent, while the Taliban and other medievalists shut it off—by closing the door to women, by requiring you men to spend all of their time repeating extremists doctrines by rote, and by suppressing science and debate.

By wasting their good minds, they will fail, Ambrose said.

Just as we saw America prevail at the '84 Olympics by tapping all our talent, we will see our openness and freedom give us the edge in this newer, grimmer challenge.

And we have another advantage.

Roger Cohen, a senior New York times European correspondent, recently wrote that ''Hitler promised the 1,000 year Reich; Communism promised equality; Milosovich promised glory. All the West Offers is the rule of law, but that's enough.

Under our constitution, the rule of law has meant that our public officers must be accountable to the law: this idea runs throughout our system.

The House and the Senate account to each other; the Congress to the President, the President to the Congress, both to the courts, and to the American people; a prosecutor to the judge (appointed for life) and jury and all of it subject to appeal. It is one of the great paradoxes of that document: on the one hand, the constitution reveals our founders' abiding faith in democracy—in the people, while on the other hand, the framers were very suspicious of human nature when clothed with unaccountable power. This principle is not a detail; it is crucial to America's phenomenal success.

Our founders made this very clear in the remarkable federalist papers. In them, Madison, and Hamilton famously observed: ''What is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary, but in framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next lace oblige it to control itself . . . . . a dependence on the people, is no doubt, the primary control on government; but experience has taught mankind the necessity of auxiliary precautions.''

Maintaining the rule of law takes a lot of nerve. And over our history we have occasionally lost it during moments of great threat.

In 1798, Congress passed the notorious alien and sedition acts. David McCullough in his marvelous new history of John Adams, wrote that President Adams' signatures on the those bills were ''the most reprehensive acts of his presidency.'' During the Civil War, President Lincoln abolished the writ of habeas corpus. In World War I, Minnesota established the shameful public safety commission, which held public hearings all over the state to test the loyalty of German-American Minnesotans and remove the doubtful from office. At the beginning of World War II, Federal officials arrested thousands of Japanese-Americans and herded them into ''relocation'' camps without any credible evidence of disloyalty. during the worst of the Cold War, Joe McCarthy panicked our Nation and during the turbulent days of the civil rights struggle, F.B.I. Directors, Hoover, decided that Martin Luther King was a dangerous man who needed to be hounded daily and destroyed as a public leader—even though King's message of nonviolence may have saved our Nation.

In all of these cases, after we had regained our confidence, we could see that we had allowed our fear to get the better of us, and that we had hurt innocent people, compromised our ideals and shamed ourselves.

Today we again have much to fear.

These are tough times and they require decisive action. We must find and punish our attackers, and make clear that aggression against our country will not be tolerated. We must also try to prevent future terrorism, by learning much more about the threats around and among us. We must give our intelligence and law enforcement agencies the resources and authority they need to do these difficult jobs.

But we can be vigilant and deceive without giving in to fear. We can do everything we need to do to protect ourselves within our constitution, and we will be stronger if we do so. For history has taught us over and over again that the rule of law, openness and tolerance will prevail over injustice, oppression and hate.

It is our great advantage.

Thank you.

ADDITIONAL STATEMENTS

HONORING ROBERT STILLER AND GREEN MOUNTAIN COFFEE ROASTERS

• Mr. LEAHY. Mr. President, I rise today to congratulate Robert Stiller, Founder and Chief of Green Mountain Coffee Roasters, who has been awarded the ''Entrepreneur of the Year Award'' by Forbes Magazine.

Before establishing success on the national level, Bob owned several retail coffee stores in Vermont and Maine. Unable to afford advertising, he gave away free samples at wine and food festivals and to organizations like the Cub Scouts and Ronald McDonald House. Always in search of new customers, Bob began selling his coffee to high-end restaurants and to gas stations with a goal of serving the same high-quality of coffee at both. That strategy and innovation contributed to his company's growing success.

Stiller's success stems from his willingness to take risks within the business world and his knowledge of modern technological advantages. By investing in innovative packaging tools that extended the shelf-life of their coffee, Green Mountain Coffee Roasters has made significant breakthroughs in modern brewing. They pioneered efforts to do what few coffee vendors have been able to master: keeping convenience store coffee fresh.

Green Mountain Coffee Roasters ranks 16th on the ''Forbes 200 Best Small Companies'' list, and sales have continued to grow an average of 24 percent over the last five years. New roasters they recently purchased will allow them to package and sell over 40 million pounds of coffee a year, available at convenience stores, gas stations, supermarkets, offices, and restaurants nationwide. And their stock has more than doubled in the past 12 months, outperforming competitors like Starbucks, and Peet's Coffee & Tea.

Again, I congratulate Bob Stiller and all his employees at Green Mountain Coffee Roasters for receipt of the Forbes award. I ask that the Forbes Magazine article, ''Entrepreneur Of The Year: Java Man,'' and a Rutland Daily Herald article, ''Coffee Company, Founder Grab The Spotlight,'' be made a part of the RECORD.

The material follows:

[From Forbes Magazine, Oct. 29, 2001]

ENTREPRENEUR OF THE YEAR: JAVA MAN

(By Luisa Kroll)

Bob Stiller's long-shot bets have turned Green Mountain Coffee Roasters into one of the smartest small companies in America.

Don't let his look of blissful relaxation fool you. Robert Stiller's head is constantly boiling with new ideas, many of them at odds with those of almost everyone around him. Some of the ideas lose money. Every now and then one makes a bundle.

Stiller's first big hit was selling rolling paper on the drug-sodden campus of Columbia University in the early 1970s. His brand, E-Z Wider (a little jab at the cult film), had double the width of competing brands. The paper wouldn't feed into the machine properly, causing tearing. It was scientifically processed; Stiller discovered that storing a bobbin of paper for three weeks in a humidified room prevented the raw material from ripping. ''People expected to see potheads, but we were more efficient at paper conversion than any manufacturer at the time,'' he recalls. E-Z stoked its sales to $11 million before Stiller and a partner sold out in 1980, each pocketing $3.1 million.

Twenty years later he still has a knack for experimentation—in the humble business of selling coffee beans. Founder and chief executive of Green Mountain Coffee Roasters (nasdaq: GMCR—news—people), 58-year-old Stiller is constantly trying out new technologies, backing other entrepreneurs with untested ideas and taking risks with suppliers that, on the face of it, appear slightly crazy. ''Bob has that sense of not what is, but what could be,'' says Nick G. Lazaris, chief executive of Keurig, which makes coffee-brewing machines and is a partner of Green Mountain.

The road less traveled is strewn with riches. Green Mountain ranks 16th on the Forbes 200 Best Small Companies ranking, its second year on the list. Sales have grown an average 24% over the last five years to $84 million for the year ended Sept. 30, 2000; earnings per share have been growing at 43%. In the quarter ended July 7, net income rose 67%. Its stock has more than doubled in the past 12 months, outperforming those of both Starbucks and a closer rival, Peet's Coffee & Tea. Stiller's 48.5% stake is worth $89 million.

Green Mountain has put down deep roots near its headquarters in bucolic Waterbury, Vt. Three of every 10 pounds of roasted beans are sold in Maine, New Hampshire and Vermont. But this is a national company, deriving 95% of its revenue from 6,700 wholesale customers that include convenience stores, gas stations, supermarkets, offices and restaurants.

Lesson: Don't forsake marketing. if you cant afford it, try giving away your product.

A born tinkerer, Stiller spent weekends and holidays during his youth toiling at Stillman Manufacturing, his dad's Bronx, N.Y. company that made one of the first tubular heating coils for electric stoves. While still in high school, Stiller designed one machine that handled milling, cleaning and threading of a heating element. College was a chore; he couldn't maintain a C average—or what the college called a proper attitude—to remain at Syracuse University and ended up with a degree in business from Parsons College in Fairfield, Iowa in 1967. He landed at Columbia as a data-processing manager.

After cashing out of the rolling paper business, Stiller found himself at his ski condo in Sugarbush, Vt. wondering what to do next. One night, as he enjoyed a rare cup of coffee at a restaurant, he woke up and smelled the opportunity. A couple of days later he visited the small roaster in Waitsfield, Vt., where the restaurant bought its beans. For the next few months he roasted his own beans, using a hot-air popcorn popper at one point, a cookie sheet at another, brewing batches of coffee for friends. Stiller ended up buying the Waitsfield store with a partner and giving the store owner an equal one-third stake in Green Mountain. Within two years he became the sole proprietor, buying out both partners for $100,000.

The business seemed doomed from the start. Holed up in an office over a movie theater, Stiller lent the company $1 million, but still had to pay salaries with credit cards. His $30,000 line of credit was snatched from him after he went to the main branch of the bank in search of more money. What loan officer dared believe in this venture? This was

a decade before Starbucks reached the East Coast, and a cup of joe was just something to wash down the morning eggs and toast. Stiller added retail stores in Vermont and Maine, and insisted on roasting only arabica beans, grown at higher altitudes and pricier than the robusta variety. Unable to afford advertising, he gave away samples at wine and food festivals and to organizations like the Cub Scouts and Ronald McDonald House. The red ink flowed, $1.4 million cumulatively from 1981 to 1985.

Always on the prowl for new customers, Stiller began selling to high-end restaurants and specialty stores. He bought a personal computer and hired a programmer to write software that traced customers' orders, deliveries and payments. Ever since, he has invested heavily in technology, becoming one of the first customers of Praxis, which developed a program to monitor and adjust heat levels in the roasters appropriate to each bag of beans. ''Some say there is an art to great coffee,'' says Stiller. ''I don't care how artistic you are, there are too many factors in play. You need the technology.''

Which is why the fellow with the tube-bending machine and the rolling-paper process has installed $2.5 million worth of software from PeopleSoft to track distribution, manufacturing, sales and personnel. At the time this software project got under way Green Mountain had only $33 million in sales and was PeopleSoft's smallest customer for the product. ''Green Mountain,'' says Michael Frandsen, PeopleSoft's general manager of supply chain management, ''is one of the most aggressive small companies I've come across.''

As when Stiller ignored the grumbling of some board members over selling his premium coffee to grungy gas stations. He thought it was a good way to spread the brand; the trick was to make sure the coffee at ExxonMobil was brewed as carefully as it was at New York's Harvard Club. So along with its beans, Green Mountain bundled services and tools, including coffee machines, cups, banners and training. Stiller created one- and two-day courses for customers with instruction about coffee farming, grinding and filtering. Now ExxonMobil is its biggest customer, representing 17% of sales last year. Last November Green Mountain signed a five-year agreement, beating out 11 rivals, to supply all 1,100 ExxonMobil company-owned stores and 500 franchise locations.

Another long-shot bet: backing three unknown entrepreneurs peddling a single-serve coffee system. At the time, they held the patent on filter-wrapped individual portions of ground coffee, but had no product ready for market. Stiller invested $150,000 for a 1% stake in Keurig. Green Mountain patiently worked with them on product quality and flavor. Finally, in 1998, the Keurig machine rolled into offices like PricewaterhouseCoopers. Green Mountain, which produces K-Cup individual packages of coffee at its factory, pays Keurig an undisclosed royalty based on the number of packages it sells. Last year K-Cups contributed 15.7% of Green Mountain's revenues.

DAILY GRIND

A grower of fancy coffee gets maybe a dollar a pound. How come you pay $9? Here's how the wholesale price adds up, even before the retail markup. Cost of 1.25 pounds of green beans* $1.25; shipping, 0.16; other costs of goods**, 3.22; overhead***, 2.46; profit****, 0.62; wholesale price*****, $7.71.

*20% weight loss in roasting. **Packaging, services, cups. ***Selling, sampling and administrative costs. ****Operating. *****Average yield to Green Mountain including supermarket coffee and brewed cups. Source: Forbes estimates, using Green Mountain's FY 2000 financials.

Leaning forward so often, Stiller has occasionally fallen off his perch. Anxious to expand, he took the company public in 1993, but couldn't meet Nasdaq listing guidelines and traded for four years on Nasdaq's minor league system (called the Nasdaq SmallCap Market). With the $11.5 million raised, he invested in mail-order catalogs, opened five retail stores and hired a bunch of seasoned outsiders. He also spent $500,000 on packaging equipment that flushes out the oxygen with puffs of nitrogen to improve shelf life.

Stiller wanted to invest now in anticipation of future growth. Such improvements had a cost. The company lost a combined $4.7 million in fiscal 1993 and 1994. For ten months Stiller stopped matching contributions to the 401(k) program, and imposed a hiring freeze. The bigger growth lay with the wholesale business. Green Mountain shuttered its 12 stores in 1998, at a cost of $1.3 million.

Lesson: Don't be afraid to increase capacity for a level of business that doesn't yet exist.

Vermont being Vermont, it goes without saying that Green Mountain strives for a do-gooder image, giving away 5% of pretax profits to ''socially responsible'' causes. ''I'm not doing it because I want to give money away to charities,'' he confesses. ''What we're doing makes the most business sense.''

Example: providing startup funding for 100 small-scale farmers who formed a cooperative in Sumatra, Indonesia. Since then, production has increased almost sixfold—18% of its arabica going to Green Mountain. Stiller was one of the early backers of ''fair trade'' coffee, which pays farmers what they need to break even and clear a small profit. All this draws customers like Columbia University and natural food stores.

Stiller has gradually backed away from the day-to-day business, acting more as teacher than taskmaster. He meditates 45 minutes every day and, despite enduring the occasional pair of rolling eyes, nudges his staff to study ''appreciative inquiry,'' a management technique developed at Case Western Reserve University that encourages people to learn from their successes—what produced a great batch of roasted beans, for instance, or the last deal that closed—instead of their mistakes.

Is this still a growth company? Probably not the one it used to be. The Delta Shuttle will be buying less, and Starbucks, with help from Kraft, is muscling into the grocery-store channel. Stiller predicts sales growth will be 15% to 20% next year, below its five-year average. But he's still a risk-taker. He is spending $2 million for a couple of roasters, which will boost capacity from 15 million pounds to 40 million pounds a year. It will be a long time before demand catches up. But Stiller is sure that day will come.

[From the Rutland Herald, Nov. 5, 2001]

COFFEE COMPANY, FOUNDER GRAB THE SPOTLIGHT

[By Bruce Edwards]

An interview with Robert Stiller, the founder and president of Green Mountain Coffee Roasters in Waterbury. Stiller was recently named Forbes' magazine first ''Entrepreneur of the Year.'' The magazine also ranked the company as one of the ''200 Best Small Companies in America.''

Question: When you started Green Mountain Coffee Roasters in 1981, did you have a vision for the company. And are you surprised at the success you've achieved?

Robert Stiller: I didn't envision the success the way it has come about. I felt we may have been further along in getting the coffee out there because I always felt there isn't great coffee out there. When people get used to drinking great coffee, they just don't go back to the commercial grades. So, I knew that was going to work. I really didn't envision the awards. I really didn't feel we would be as strong as we were with the social type of issues like the organic and the fair trade coffees.

Q: When you think of Vermont you think of maple syrup. Coffee, on the other hand, is hardly indigenous to the state. Where did you come up with the idea for a coffee company?

Stiller: Actually, a friend had started a small shop at the end of 1979 with a couple that had come up from Connecticut. Their brother had been in the coffee business and they opened a small shop here in Vermont. I got to know them and I wanted to expand that concept. I really wasn't much of a coffee drinker at the time. When I had great coffee, it was like this is terrific and we wanted to carry that concept further.

Q: What kind of competition do you face? There are obviously a lot of coffees out there and your coffee is a premium brand.

Stiller: We provide a better product that people are willing to pay more for. Sometimes they'll use less of our coffee than the commercial coffees and get a more satisfying cup of coffee. There are ways to get around the economics of it. People will also find it a little bit finer than some of the commercial grades and get better extraction in the brewing process. We compete by offering better solutions to customers, like a supermarket, to sell the product. We merchandise the coffee better. We work with the staff to educate them and support the product. A lot of the commercial companies don't want to get into (that). They just want to put it on the shelf and have it sell. We differentiate ourselves by offering the higher levels of service that in turn provide a value to the consumer.

Q: Where do you buy most of your coffee beans?

Stiller: Central and South America. Also Mexico. We have other coffees that come from Africa and Indonesia.

Q: What makes the quality of your coffee beans different?

Stiller: It would be the taste profile of that particular coffee being representative of the area that it comes from. You want the taste to sort of epitomize where that coffee comes from. And we are very selective in getting the taste of that coffee as good as it can be. You also look at the highest-grade coffees. Each of the countries has a grading system. And we would also select the highest grades available. A lot of companies are just interested in the cost aspect and don't look for the taste profile.

Q: How much coffee do you import each year and is it all processed in Waterbury?

Stiller: We're about 12 to 13 million pounds of green coffee a year. We roast all the coffee here and package it and ship from here.

Q: What's the size of the Vermont operation?

Stiller: In the Waterbury area, we employ about 300 people. There's a little over 500 in the organization. We have a 90,000–square-foot production, roasting, warehousing facility. We just purchased a couple of roasters that will substantially increase our roasting capacity. With the new roasters we'll be able to roast over 40 million pounds a year.

Q: Much of your business is wholesale as opposed to retail?

Stiller: We don't have any retail shops. The supermarkets in some industries define that as retail. The bulk of our coffee is sold 25 percent through the supermarkets, about 25 percent through the office distributors and then another 25 percent through convenience stores.

Q: How were you able to land these large contracts like the Exxon Mobil convenience stores, Amtrak and Delta airlines?

Stiller: Mobil came to us over 10 years ago and we got one convenience store that was right across from a Dunkin' Donuts. The owner said if you can do anything with this location I'll talk to you about the rest of the stores. And we increased the coffee sales of the store about five times. So we got the rest of that chain, which led to recognition in the area and we just kept getting more convenience stores. They tested us against all the other coffee companies and found that our products did indeed sell better. We offered better support. And then we signed a contract with Mobil for five years.

Q: Your company has also come up with some technological innovations.

Stiller: I think the whole convenience store area was initiated with our use of air pots or the vacuum pump, thermal server. Because historically the coffee wasn't able to be kept fresh at the convenience store level. And with those servers we were able to offer a variety of coffees with a much longer shelf life than coffee sitting on a burner.

We were one of the first to recognize the sustainable issue with coffee. We tried to work with the farms to improve the farms, the product and the workers. It makes sense from a business point of view that if the people are taken care of you're going to have a better product. Nobody that is treated poorly is going to put their heart and soul into developing a good coffee.

Q: It appears you followed Ben & Jerry's philosophy of social responsibility.

Stiller: It's been very important to us. I think it's been very motivational to people in the company knowing that they are achieving a greater good in the world through what we do. We've had sustainable coffees for quite a while. And that led the industry in organic and fair trade (coffees). We've also encouraged our customers like Exxon Mobil. It was the first convenience store on a national level to have an organic coffee as their coffee of the month. This year they've done a fair trade coffee.

Q: What do you mean by a fair trade coffee?

Stiller: A fair trade coffee is certified that the farm that it comes from is a co-op. It's owned by the farmers. They get a minimum wage. So that they can live off of that. It's a major factor right now in that coffee is the second largest commodity behind oil. But unlike oil, coffee is a product of the people. There are 25 million farmers involved in farming and developing coffee. And about 75 percent of them are small farms. So if a farmer can't earn a living and support a family with coffee, what do they do? They turn to the government for support or they can turn to other illegal crops. We're talking about a life and death situation for these people. The break-even point for coffee is about 85 or 90 cents (a pound). It doesn't pay for them to produce good coffee. Coffee prices are below 50 cents right now. So a lot of the work that goes into good coffee is not happening. Sometimes they will pick coffee four or five times during the harvest season. Now, they're picking it once because they can't afford the pickers. This whole fair trade initiative was really developed to guarantee economic stability for the farmers and with that almost guarantees more of a democracy in a lot of these Third World countries because it provides that economic stability.

Q: Has NAFTA, the North American Free Trade Agreement, had any effect on your business?

Stiller: It doesn't really come into play. I think it's more for manufactured goods as opposed to agriculture.

Q: You have a director of social responsibility to oversee that area of the company?

Stiller: I think consumers are looking for more of that from companies. A lot of the people here are really motivated to make a difference in the world. They feel it's the right thing to do.

Q: The economy is either in a recession or close to a recession. Have you seen any indication of that in your business? Or is coffee one of those products that consumers regard as a necessity?

Stiller: It is a necessity. People enjoy it. It's part of their life. It's an energizing experience. It's reflective in a sense. You sort of take a break for coffee. And lots of times ideas come to you with that reflection. In troubled times, people might drink more coffee. In the overall scheme of things, there might be a little bit of a downturn but it wouldn't be very significant.

Q: You've been doing business in Vermont since 1981. Has the state been a difficult place for your company to do business?

Stiller: I think it's been a great experience. The Vermont name has added a lot (of value). I think the people we have hired are wonderful. There is a real sense of integrity and a hard work ethic. We haven't had too many problems with the permitting process. We've always felt supported by state government and other agencies within the government. The only issue has been in the banking area where we have had trouble getting the credit lines from local banks. We went down to Boston years ago and have been banking out of the state.●

PAYING TRIBUTE TO RON CASS

● Mr. BURNS. Mr. President, I rise today to pay tribute to Ron Cass, a man who embraces the idea that one person can truly make a difference. Ron is retiring after 28 years with KXLF–TV as General Manager in Butte, MT. While his job required a keen sense of community, it was his dedication to his family and the city of Butte that I want to recall today.

Ron joined KXLF in 1974 and worked his way up the corporate ladder. He was named President of KXLF Communications, Inc. in 1986 and later added the management of KBZK in Bozeman, MT. Born in Harlowton, Ron started out as a disc jockey but soon chose television as his medium of choice. I believe he chose wisely.

During the past several years, Ron has been instrumental in helping me understand a variety of telecommunication issues. He has given me his ideas freely and helped me to understand not only the growing complexity of the industry but also the need to remember what is important for Montana TV viewers who rely on the medium for their information.

Meanwhile, Ron found himself complaining about the current state of affairs in his hometown of Butte. He realized rather quickly that talking about problems didn't produce results—actions certainly speak louder than words. Ron went into action. He now has a long list of accomplishments and I believe that Butte is a better place today because of his efforts.

Whether as President of the Butte Chamber of Commerce, a member of the United Way Board of Directors, part of the Butte-Silver Bow Law Enforcement Commission, or even a member of the county's Study Commission, Ron rolled up his sleeves and Butte reaped the benefits. He also made a commitment to the local Exchange Club and the Pachyderms. He even battled Butte's frigid temperatures to help the Salvation Army during their annual bell ringing fundraiser at Christmas time.

Those who know Ron Cass know that his personal participation is not for personal glory or a Butte parade on St. Patrick's Day. Ron's involvement comes from his desire to give back; give back to the very folks who helped him succeed in Montana when he first arrived and decided to raise a family in Butte.

Today, Ron cherishes his family and many friends as he begins his retirement. His children, Barbara, Lura, and Dan—and his grandchildren, Timothy, Sean, Alex, Andrew, and Jake—and of course, his fiance, Nancy all agree that ''Poppa'' is a true role model.

About the same time he decided to contribute his talent, energy, and strength to Butte, his grandson, Alex, was born with Down Syndrome. From that day on, Ron made it his mission to support and encourage Alex in all that he would choose to do. That has included his grandson's efforts in Special Olympics and the joys of mainstreamed education.

Ron Cass's unselfish actions throughout his CBS Television Network career transcend the airwaves. His actions are shown today in the quality of his family's lives and the many friends who will gather and honor him before or after his last ''working'' day.

I would like to take this opportunity to personally thank Ron for all he has done to benefit the City of Butte, and the State of Montana. I want to wish him well in his retirement. While I am certain he will be spending plenty of time within the community he holds so close to his heart, I'm also certain that he'll be enjoying the Treasure State on the back of his motorcycle with the wind in his hair.●

MEASURE REFERRED

The following bill, previously received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and referred as indicated:

H.R. 3282. An act to designate the Federal building and United States courthouse located at 400 North Main Street in Butte, Montana, as the ''Mike Mansfield Federal Building and United States Courthouse''; to the Committee on Environment and Public Works.

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, December 14, 2001, she had presented to the President of the United States the following enrolled bills:

S. 494. An act to provide for a transition to democracy and to promote economic recovery in Zimbabwe.

S. 1196. An act to amend the Small Business Investment Act of 1958, and for other purposes.

S.J. Res. 26. A joint resolution providing for the appoint of Patricia Q. Stonesifer as a citizen regent of the Board of Regents of the Smithsonian Institution.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on Foreign Relations, with an amendment:

S. 1779: A bill to authorize the establishment of ''Radio Free Afghanistan'', and for other purposes. (Rept. No. 107–125).

By Mr. BAUCUS, from the Committee on Finance, with an amendment in the nature of a substitute:

H.R. 3009: A bill to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes. (Rept. No. 107–126).

By Mr. BIDEN, from the Committee on Foreign Relations, with an amendment in the nature of a substitute and with an amendment preamble:

H. Con. Res. 211: A concurrent resolution commending Daw Aung San Suu Kyi on the 10th anniversary of her receiving the Nobel Peace Prize and expressing the sense of the Congress with respect to the Government of Burma.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. BIDEN, from the Committee on Foreign Relations:

Treaty Doc. 106–22—Treaty with Russia on Mutual Legal Assistance in Criminal Matters (Exec. Rept. No. 107–3)

TEXT OF THE COMMITTEE-RECOMMENDED RESOLUTION OF ADVICE AND CONSENT

SECTION 1. ADVICE AND CONSENT TO RATIFICATION OF THE TREATY WITH THE RUSSIAN FEDERATION ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS, SUBJECT TO CONDITIONS.

The Senate advises and consents to the ratification of the Treaty Between the United States of America and the Russian Federation on Mutual Legal Assistance in Criminal Matters, signed at Washington on June 17, 1999 (Treaty Doc. 106 22; in this resolution referred to as the ''Treaty''), subject to the conditions in section 2.

SEC. 2. CONDITIONS.

The advice and consent of the Senate under section 1 is subject to the following conditions:

(1) TREATY INTERPRETATION.—The Senate reaffirms condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (adopted at Vienna on May 31 1996), approved by the Senate on May 14, 1997 (relating to condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988).

(2) LIMITATION ON ASSISTANCE.—Pursuant to the right of the United States under the Treaty to deny legal assistance under the Treaty that would prejudice the essential public policy or interests of the United States, the United States shall deny any request for such assistance if the Central Authority of the United States (as designated in Article 3(2) of the Treaty), after consultation with all appropriate intelligence, antinarcotic, and foreign policy agencies, has specific information that a senior Government official of the requesting party who will have access to information to be provided as part of such assistance is engaged in a felony, including the facilitation of the production or distribution of illegal drugs.

(3) SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes the enactment of legislation or the taking of any other action by the United States that is prohibited by the Constitution of the United States as interpreted by the United States.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. FEINSTEIN (for herself, Mr. HOLLINGS, and Mrs. BOXER):

S. 1829. A bill to provide for transitional employment eligibility for qualified lawful permanent resident alien airport security screeners until their naturalization process is completed, and to expedite that process; to the Committee on the Judiciary.

By Mr. DEWINE:

S. 1830. A bill to amend sections 3, 4, and 5 of the National Child Protection Act of 1993, relating to national criminal history background checks of providers of care to children, elderly persons, and persons with disabilities, and for other purposes; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself and Mr. KERRY):

S. 1831. A bill to provide alternative minimum tax relief with respect to incentive stock options exercised during 2000; to the Committee on Finance.

By Mrs. LINCOLN (for herself, Mr. HAGEL, and Mr. BOND):

S. 1832. A bill to amend the Internal Revenue Code of 1986 to modify the credit for the production of electricity from renewable resources to include production of energy from agricultural and animal waste; to the Committee on Finance.

By Ms. COLLINS (for herself, Mr. DODD, and Mr. FRIST):

S. 1833. A bill to amend the Public Health Service Act with respect to qualified organ procurement organizations; read the first time.

By Mr. LEVIN:

S. 1834. A bill for the relief of retired Sergeant First Class James D. Benoit and Wan Sook Benoit; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. DASCHLE (for himself and Mr. LOTT):

S. Res. 192. A resolution to authorize representation by the Senate Legal Counsel in Judith Lewis v. Rick Perry, et al; considered and agreed to.

ADDITIONAL COSPONSORS

S. 718

At the request of Mr. MILLER, his name was added as a cosponsor of S. 718, a bill to direct the National Institute of Standards and Technology to establish a program to support research and training in methods of detecting the use of performance-enhancing drugs by athletes, and for other purposes.

S. 990

At the request of Mr. JEFFORDS, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 990, a bill to amend the Pittman-Robertson Wildlife Restoration Act to improve the provisions relating to wildlife conservation and restoration programs, and for other purposes.

S. 1008

At the request of Mr. BYRD, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 1008, a bill to amend the Energy Policy Act of 1992 to develop the United States Climate Change Response Strategy with the goal of stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system, while minimizing adverse short-term and long-term economic and social impacts, aligning the Strategy with United States energy policy, and promoting a sound national environmental policy, to establish a research and development program that focuses on bold technological breakthroughs that make significant progress toward the goal of stabilization of greenhouse gas concentrations, to establish the National Office of Climate Change Response within the Executive Office of the President, and for other purposes.

S. 1054

At the request of Mr. MILLER, his name was added as a cosponsor of S. 1054, a bill to amend titles XVIII and XIX of the Social Security Act to prevent abuse of recipients of long-term care services under the Medicare and Medicaid programs.

S. 1094

At the request of Mr. MILLER, his name was added as a cosponsor of S. 1094, a bill to amend the Public Health Service Act to provide for research, information, and education with respect to blood cancer.

S. 1306

At the request of Mr. MILLER, his name was added as a cosponsor of S. 1306, a bill to amend the Internal Revenue Code of 1986 to transfer all excise taxes imposed on alcohol fuels to the Highway Trust Fund, and for other purposes.

S. 1478

At the request of Mr. SANTORUM, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 1478, a bill to amend the Animal Welfare Act to improve the treatment of certain animals , and for other purposes.

S. 1489

At the request of Mr. MILLER, his name was added as a cosponsor of S.

1489, a bill to provide for the sharing of information between Federal departments, agencies, and other entities with respect to aliens seeking admission to the United States, and for other purposes.

S. 1490

At the request of Mr. MILLER, his name was added as a cosponsor of S. 1490, a bill to establish terrorist lookout committees in each United States Embassy.

S. 1491

At the request of Mr. MILLER, his name was added as a cosponsor of S. 1491, a bill to provide for the establishment and implementation of a fingerprint processing system to be used whenever a visa is issued to an alien.

S. 1572

At the request of Mr. MILLER, his name was added as a cosponsor of S. 1572, a bill to endorse the vision of further enlargement of the NATO Alliance articulated by President George W. Bush on June 15, 2001, and by former President William J. Clinton on October 22, 1996, and for other purposes.

S. 1614

At the request of Mr. MILLER, his name was added as a cosponsor of S. 1614, a bill to provide for the preservation and restoration of historic buildings at historically women's public colleges or universities.

S. 1646

At the request of Mr. BINGAMAN, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 1646, a bill to identify certain routes in the States of Texas, Oklahoma, Colorado, and New Mexico as part of the Ports-to-Plains Corridor, a high priority corridor on the National Highway System.

S. 1707

At the request of Mr. JEFFORDS, the names of the Senator from Georgia (Mr. MILLER), the Senator from New York (Mrs. CLINTON) and the Senator from Nebraska (Mr. HAGEL) were added as cosponsors of S. 1707, a bill to amend title XVIII of the Social Security Act to specify the update for payments under the medicare physician fee schedule for 2002 and to direct the Medicare Payment Advisory Commission to conduct a study on replacing the use of the sustainable growth rate as a factor in determining such update in subsequent years.

S. 1738

At the request of Mr. KERRY, the name of the Senator from Tennessee (Mr. FRIST) was added as a cosponsor of S. 1738, a bill to amend title XVIII of the Social Security Act to provide regulatory relief, appeals process reforms, contracting flexibility, and education improvements under the medicare program, and for other purposes.

S. 1767

At the request of Mr. KENNEDY, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1767, a bill to amend title 38, United States Code, to provide that certain service in the American Field Service ambulance corps shall be considered active duty for the purposes of all laws administered by the Secretary of Veteran's Affairs, and for other purposes.

S. 1788

At the request of Mr. SCHUMER, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1788, a bill to give the Federal Bureau of Investigation access to NICS records in law enforcement investigations, and for other purposes.

S. RES. 171

At the request of Mr. MILLER, his name was added as a cosponsor of S.Res. 171, a resolution expressing the sense of the Senate concerning the provision of funding for bioterrorism preparedness and response.

S. CON. RES. 70

At the request of Mr. MILLER, his name was added as a cosponsor of S.Con.Res. 70, a concurrent resolution expressing the sense of the Congress in support of the ''National Wash America Campaign''.

S. CON. RES. 79

At the request of Mr. MILLER, his name was added as a cosponsor of S. Con. Res. 79, a concurrent resolution expressing the sense of Congress that public schools may display the words ''God Bless America'' as an expression of support for the Nation.

AMENDMENT NO. 2546

At the request of Mr. BROWNBACK, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of amendment No. 2546.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself, Mr. HOLLINGS, and Mrs. BOXER):

S. 1829. A bill to provide for transitional employment eligibility for qualified lawful permanent resident alien airport security screeners until their naturalization process is completed, and to expedite that process; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce the Airport Security Personnel Protection Act. This legislation would expedite the naturalization process and authorize transitional employment for the many deserving airport security screeners who are in danger of losing their jobs as a result of a provision in the recently enacted Aviation Transaction Security Act.

In providing this assistance to these worthy individuals, the bill also will provide relief for the airports in which they work and the many customers whom they serve.

On November 19, 2001, President Bush signed the Aviation Transportation Security Act, P.L. 107–71, into law. The measure was passed with overwhelming support in both chambers. Among its many essential provisions was one, found in section 111(a) of the bill, that requires all airport security screeners to be United States citizens.

Some expressed disagreement with the citizenship requirement while the bill was pending but voted for the bill, nonetheless, because of the many positive and essential provisions that the bill contained. Others supported the citizenship requirement as a necessary step to ensure the safety of our aviation system.

Regardless of how Senators and House Members feel about the merits of the provision, we cannot help but be touched by one of its unfortunate consequences. Because of the contentious manner in which differing provisions in the House and Senate bills were resolved, we were unable to provide adequate transition provisions for the many well-qualified, hard-working, loyal, and deserving lawful permanent residents who are on the verge of attaining U.S. citizenship but who will not be able to complete that process before they lose their jobs.

My legislation would resolve their situation in two ways: First, it would require the Attorney General to expedite the naturalization process for those applicants who were employed as airport security screeners at the time of enactment of the Aviation Transportation Security Act.

Second, it would carve out a transition period during which qualified lawful permanent residents could continue their employment as security screeners while their naturalization applications are being adjudicated.

The ''Airport Security Personnel Protection Act'' would provide for a smoother transition for qualified lawful permanent resident airport security screeners who are on the verge of completing the naturalization process. In so doing, it also would preserve both the integrity of the naturalization process and the strong requirements for security screeners that are contained in the Aviation Transportation Security Act.

Section 4(c) of the legislation specifically precludes the weakening of standards for naturalization for these screeners. It makes it clear that the legislation merely requires the Attorney General to expedite the processing of the naturalization applications of qualified airport security screeners.

Under current law, these standards include such requirements as five years of lawful permanent residence for most of those naturalizing, a demonstration of good moral character, an understanding of the English language, and an understanding of the history, principles, and form of government of the United States.

The legislation also makes it clear that the Standards for continuing in employment during this transition period are to be the same, strong standards that are included in the recently enacted Aviation Transportation Security Act.

Under this bill, in order to continue in employment during the transition

period, an affected security screener would have to: be a lawful permanent resident alien; have been employed as a security screener on the date of enactment of the Act; meet the employment eligibility requirements under the Airport Security Screeners Act; have undergone and successfully completed an employment investigation (including a criminal history record check); have had a naturalization application pending on the date of enactment of the Act or, in the alternative, have to be within one year of being eligible to file an application for naturalization; and be approved by the U.S. Department of Transportation for hiring or continued employment.

Just as importantly, in order to remain employed during this transition period, an alien would have to meet the new, enhanced requirements of security screeners that were enacted as part of the Aviation Transportation Security Act. These new, enhanced requirements provide that the alien would have to: have a satisfactory or better score on a Federal security screening personnel selection examination; demonstrate daily a fitness for duty without any impairment due to illegal drugs, sleep deprivation, medication, or alcohol; undergo an employment investigation, including a criminal history record check; not present a threat to national security; possess a high school diploma, a general equivalency diploma, or experience that the Under Secretary has determined to be sufficient for the individual to perform the duties of the position; possess the ability to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subject to security processing; be able to read, speak, and write English well enough to carry out written and oral instructions regarding the proper performance of screening duties; be able to read English language identification media, credentials, airline tickets, and labels on items normally encountered in the screening process; provide direction to and understand and answer questions from English-speaking individuals undergoing screening; and write incident reports and statements and log entries into security records in the English language; have satisfactorily completed all initial, recurrent, and appropriate specialized training required by the security program; among other requirements.

This simple but important bill would help the many deserving lawful permanent residents who are well qualified, have been performing their jobs admirably, and whose lives are in danger of being disrupted. But it also would help the traveling public.

It is estimated that at least 25 percent of the current 28,000 airport security screeners in the Nation's 419 commercial airports are noncitizens. I have heard from the mayor and airport director of the San Francisco International Airport. They came to me out of concern that, as a result of the new citizenship requirements under the Aviation and Transportation Security Act, the airport stands to lose 70 to 80 percent of its screening personnel. In Los Angeles, about 40 percent of the baggage screeners are noncitizens.

Certainly, not all of these noncitizens will be able to meet the stringent requirements of this legislation. But to the extent that those who are well-qualified are permitted to continue their employment while their naturalization applications are being adjudicated, it will be a great help to the many airports in which they are employed.

I urge my colleagues to move expeditiously to enact this bill into law. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1829

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 ''Airport Security Personnel Protection Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) AIRPORT SECURITY SCREENER.—The term ''airport security screener'' means an individual who is employed to perform security screening services at an airport in the United States.

(2) LAWFUL PERMANENT RESIDENT ALIEN.—The term ''lawful permanent resident alien'' means an alien lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

(3) QUALIFIED LAWFUL PERMANENT RESIDENT ALIEN DEFINED.—The term ''qualified lawful permanent resident alien'' means an alien with respect to whom a certification has been made by the Under Secretary of Transportation for Security under section 111(e)(1)(B) of the Aviation and Transportation Security Act (Public Law 107–71), as added by section 3 of this Act.

SEC. 3. TRANSITIONAL EMPLOYMENT ELIGIBILITY FOR QUALIFIED LAWFUL PERMANENT RESIDENT AIRPORT SECURITY SCREENERS.

(a) IN GENERAL.—Section 111 of the Aviation and Transportation Security Act (Public Law 107–71) is amended by adding at the end the following:

''(e) SPECIAL TRANSITION RULE FOR QUALIFIED LAWFUL PERMANENT RESIDENT ALIENS.—

''(1) IN GENERAL.—Notwithstanding any rule or regulation promulgated to implement the citizenship requirement in section 44935(e)(2)(A)(ii) of title 49, United States Code, as amended by subsection (a), or any other provision of law prohibiting the employment of aliens by the Federal Government, an alien shall be eligible for hiring or continued employment as an airport security screener until the naturalization process for such alien is completed, if—

''(A) the Attorney General makes the certification described in paragraph (2) to the Under Secretary of Transportation for Security with respect to the alien; and

''(B) the Under Secretary of Transportation for Security makes the certification described in paragraph (3) to the Attorney General with respect to such alien.

''(2) CERTIFICATION BY THE ATTORNEY GENERAL.—A certification under this paragraph is a certification by the Attorney General, upon the request of the Under Secretary of Transportation for Security, with respect to an alien described in paragraph (1) that—

''(A) the alien is a lawful permanent resident alien (as defined in section 2 of the ''Airport Security Personnel Protection Act); and

''(B)(i) an application for naturalization has been approved, and the alien is awaiting the holding of a ceremony for the administration of the oath of renunciation and allegiance, as required by section 337 of the Immigration and Nationality Act (8 U.S.C. 1448);

''(ii) an application for naturalization filed by the alien prior to the date of enactment of this Act is pending before the Immigration and Naturalization Service but has not been finally adjudicated; or

''(iii) the alien—

''(I) satisfies, or will satisfy within one year of the date of certification if the alien remains in the United States, the residence requirements applicable to the alien in the Immigration and Nationality Act, or any other Act that are necessary for eligibility for naturalization; and

''(II) not more than 180 days after the date of enactment of the Airport Security Personnel Protection Act, filed under section 334(f) of the Immigration and Nationality Act an application for a declaration of intention to become a United States citizen.

''(3) CERTIFICATION BY THE UNDER SECRETARY OF TRANSPORTATION.—A certification under this paragraph is a certification by the Under Secretary of Transportation for Security with respect to an alien described in paragraph (1) that—

''(A) the Under Secretary has decided to hire or continue the employment of such alien; and

''(B) the alien—

''(i) meets the qualifications to be a security screener under section 44935(f);

''(ii) was employed as an airport security screener as of the date of enactment of this Act, as determined by the Under Secretary of Transportation for Security; and

''(iii) has undergone and successfully completed an employment investigation (including a criminal history record check) required by section 44935(e)(2)(B) of such title, as amended by subsection (a).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be deemed effective as if included in the enactment of the Aviation and Transportation Security Act.

SEC. 4. EXPEDITED NATURALIZATION FOR QUALIFIED LAWFUL PERMANENT RESIDENT AIRPORT SECURITY SCREENERS.

(a) REQUIREMENT.—

(1) IN GENERAL.—For the purpose of enabling qualified lawful permanent resident aliens to satisfy in a timely manner the citizenship requirement in section 44935(e)(2)(A)(ii) of title 49, United States Code, the Attorney General shall expedite—

(A) the processing and adjudication of an application for naturalization filed by any qualified lawful permanent resident alien who was employed as an airport security screener as of the date of enactment of the Aviation and Transportation Security Act (Public Law 107–71); and

(B) if such application for naturalization is approved, the holding of a ceremony for administration of the oath of renunciation and allegiance to such qualified lawful permanent resident alien, as required by section 337 of the Immigration and Nationality Act (8 U.S.C. 1448).

(b) DEADLINES FOR COMPLETED ACTION.—The Attorney General shall complete the actions described in subsection (a)—

(1) not later than 30 days after the date of enactment of this Act, in the case of a qualified lawful permanent resident alien with respect to whom an application for naturalization is approved but such alien is awaiting the holding of a ceremony for the administration of the oath of renunciation and allegiance, as required by section 337 of the Immigration and Nationality Act (8 U.S.C. 1448);

(2) not later than 180 days after the date of enactment of this Act, in the case of a qualified lawful permanent resident alien with respect to whom an application for naturalization was pending on the date of enactment of this Act; and

(3) not later than 180 days after the date on which an application for naturalization is received by the Attorney General, in the case of a qualified lawful permanent resident alien with respect to whom an application for naturalization is filed after the date of enactment of this Act.

(c) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to lower the standards of qualification set forth in title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) that applicants for naturalization must meet in order to become naturalized citizens of the United States.

By Mr. DEWINE:

S. 1830. A bill to amend sections 3, 4, and 5 of the National Child Protection Act of 1993, relating to national criminal history background checks of providers of care to children, elderly persons, and persons with disabilities, and for other purposes; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1830

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Child Protection Amendments Act of 2001''.

SEC. 2. FACILITATION OF BACKGROUND CHECKS.

(a) IN GENERAL.—Section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a) is amended to read as follows:

''SEC. 3. FACILITATION OF BACKGROUND CHECKS.

''(a) IN GENERAL.—

''(1) BACKGROUND CHECKS.—

''(A) IN GENERAL.—A qualified entity designated by a State may contact an authorized agency of the State to obtain a fingerprint-based national criminal history background check (referred to in this section as a 'background check') of a provider who provides care to children, the elderly, or individuals with disabilities (referred to in this section as a 'provider').

''(B) DEFINITION.—In this paragraph, the term 'fingerprint-based' means based upon fingerprints or other biometric identification characteristics approved under rules applicable to the Interstate Identification Index System as defined in Article I (13) of the National Crime Prevention and Privacy Compact.

''(2) PROCEDURES.—

''(A) SUBMISSION.—A request for background check pursuant to this section shall be submitted through a State criminal history record repository.

''(B) DUTIES OF REPOSITORY.—After receipt of a request under subparagraph (A), the State criminal history record repository shall—

''(i) conduct a search of the State criminal history record system and, if necessary, forward the request, together with the fingerprints of the provider, to the Federal Bureau of Investigation; and

''(ii) make a reasonable effort to respond to the qualified entity within 15 business days after the date on which the request is received.

''(C) DUTIES OF THE FBI.—Upon receiving a request from a State repository under this section, the FBI shall—

''(i) conduct a search of its criminal history record system; and

''(ii) make a reasonable effort to respond to the State repository or the qualified entity within 5 business days after the date on which the request is received.

''(3) NATIONAL CRIME PREVENTION AND PRIVACY COMPACT.—Each background check pursuant to this section shall be conducted pursuant to the National Crime Prevention and Privacy Compact.

''(b) GUIDELINES.—

''(1) IN GENERAL.—In order to conduct background checks pursuant to this section, a State shall—

''(A) establish or designate one or more authorized agencies to perform the duties required by this section, including the designation of qualified entities; and

''(B) establish procedures requiring that—

''(i) a qualified entity that requests a background check pursuant to this section shall forward to the authorized agency the fingerprints of the provider and shall obtain a statement completed and signed by the provider that—

''(I) sets out the name, address, and date of birth of the provider appearing on a valid identification document (as defined in section 1028 of title 18, United States Code);

''(II) states whether the provider has a criminal history record and, if so, sets out the particulars of such record;

''(III) notifies the provider that the qualified entity may request a background check and that the signature of the provider to the statement constitutes an acknowledgement that such a background check may be conducted and explains the uses and disclosures that may be made of the results of the background check;

''(IV) notifies the provider that pending the completion of the background check the provider may be denied unsupervised access to children, the elderly, or disabled persons with respect to which the provider intends to provide care; and

''(V) notifies the provider of the rights of the provider under subparagraph (B);

''(ii) each provider who is the subject of an adverse fitness determination based on a background check pursuant to this section shall be provided with an opportunity to contact the authorized agency and initiate a process to—

''(I) obtain a copy of the criminal history record upon which the determination was based; and

''(II) file a challenge with the State repository or, if appropriate, the FBI, concerning the accuracy and completeness of the criminal history record information in the report, and obtain a prompt determination of the challenge before a final adverse fitness determination is made on the basis of the criminal history record information in the report;

''(iii) an authorized agency that receives a criminal history record report that lacks disposition information shall make appropriate inquiries to available State and local record-keeping systems to obtain complete information, to the extent possible considering available personnel and resources;

''(iv) an authorized agency that receives the results of a background check conducted under this section shall either—

''(I) make a determination regarding whether the criminal history record information received in response to the background check indicates that the provider has a criminal history record that renders the provider unfit to provide care to children, the elderly, or individuals with disabilities and convey that determination to the qualified entity; or

''(II) provide some or all of such criminal history record information to the qualified entity for use by the qualified entity in making a fitness determination concerning the provider; and

''(v) a qualified entity that receives criminal history record information concerning a provider in response to a background check pursuant to this section—

''(I) shall adhere to a standard of reasonable care concerning the security and confidentiality of the information and the privacy rights of the provider;

''(II) shall make a copy of the criminal history record available, upon request, to the provider; and

''(III) shall not retain the criminal history record information for any period longer than necessary for a final fitness determination concerning the subject of the information.

''(2) RETENTION OF INFORMATION.—The statement required under paragraph (1)(B)(i)—

''(A) may be forwarded by the qualified entity to the authorized agency or retained by the qualified entity; and

''(B) shall be retained by such agency or entity, as appropriate, for not less than 1 year.

''(c) GUIDANCE BY THE ATTORNEY GENERAL.—The Attorney General shall to the maximum extent practicable, encourage the use of the best technology available in conducting background checks pursuant to this section.

''(d) GUIDANCE BY THE NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL.—

''(1) IN GENERAL.—The Compact Council shall provide guidance to States to ensure that national background checks conducted under this section comply with the National Crime Prevention and Privacy Compact and shall provide guidance to authorized agencies to assist them in performing their duties under this section.

''(2) MODEL FITNESS STANDARDS.—The guidance under paragraph (1) shall include model fitness standards for particular types of providers, which may be adopted voluntarily by States for use by authorized agencies in making fitness determinations.

''(3) NCPA CARE PROVIDER COMMITTEE.—In providing the guidance under paragraph (1), the Compact Council shall create a permanent NCPA Care Provider Committee which shall include, but not be limited to, representatives of national organizations representing private nonprofit qualified entities using volunteers to provide care to children, the elderly, or individuals with disabilities.

''(4) REPORTS.—At least annually, the Compact Council shall report to the President and Congress with regard to national background checks of providers conducted pursuant to the NCPA.

''(e) PENALTY.—Any officer, employee, or authorized representative of a qualified entity who knowingly and willfully—

''(1) requests or obtains any criminal history record information pursuant to this section under false pretenses; or

''(2) uses criminal history record information for a purpose not authorized by this section, shall be guilty of a misdemeanor and fined not more than $5,000.

''(f) LIMITATIONS ON LIABILITY.—

''(1) LIABILITY OF QUALIFIED ENTITIES.—

''(A) FAILURE TO REQUEST BACKGROUND CHECK.—A qualified entity shall not be liable in an action for damages solely for the failure of such entity to request a background check on a provider.

''(B) WILLFUL VIOLATIONS.—A qualified entity shall not be liable in an action for damages for violating any provision of this section, unless such violation is knowing and willful.

''(C) REASONABLE CARE STANDARD.—A qualified entity that exercises reasonable care for the security, confidentiality, and privacy of criminal history record information received in response to a background check pursuant to this section shall not be liable in an action for damages.

''(2) LIABILITY OF GOVERNMENTAL ENTITIES.—A State or political subdivision thereof, or any agency, officer, or employee thereof, shall not be liable in an action for damages for the failure of a qualified entity (other than itself) to take adverse action with respect to a provider who was the subject of a background check.

''(3) RELIANCE ON INFORMATION.—An authorized agency or a qualified entity that reasonably relies on criminal history record information received in response to a background check pursuant to this section shall not be liable in an action for damages based upon the inaccuracy or incompleteness of the information.

''(g) FEES.—

''(1) LIMITATION.—In the case of a background check pursuant to a State requirement adopted after December 20, 1993, conducted with fingerprints on a person who volunteers with a qualified entity, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed $18, respectively, or the actual cost, whichever is less, of the background check conducted with fingerprints.

''(2) STATE FEE SYSTEMS.—The States shall establish fee systems that ensure that fees to nonprofit entities for background checks do not discourage volunteers from participating in child care programs.

''(3) AUTHORITY OF FEDERAL BUREAU OF INVESTIGATION.—This subsection shall not effect the authority of the Federal Bureau of Investigation or the States to collect fees for conducting background checks of persons who are employed as or apply for positions as paid care providers.''.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS; CONFORMING AMENDMENTS.

(a) FUNDING FOR IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.—Section 4 of the National Child Protection Act of 1993 (42 U.S.C. 5119b) is amended—

(1) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively; and

(2) in subsection (a), as redesignated—

(A) in paragraph (1)—

(i) in each of subparagraphs (C) and (D), by striking ''national criminal history background check system'' and inserting ''criminal history record repository''; and

(ii) by striking subparagraph (E) and inserting the following:

''(E) to assist the State in offsetting the costs to qualified entities of background checks under section 3 on volunteer providers.''; and

(B) by striking paragraph (2) and inserting the following:

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under paragraph (1)—

''(A) $80,000,000 for fiscal year 2001; and

''(B) such sums as may be necessary for each of fiscal years 2002 through 2005.''.

(b) FUNDING FOR COMPACT COUNCIL.—There are authorized to be appropriated to the Federal Bureau of Investigation to support the activities of the National Crime Prevention and Privacy Compact Council—

(1) $1,000,000 for fiscal year 2001; and

(2) such sums as may be necessary for fiscal years 2002 through 2005.

SEC. 4. DEFINITIONS.

Section 5 of the National Child Protection Act of 1993 (42 U.S.C. 5119c) is amended—

(1) by striking paragraph (8);

(2) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively;

(3) by inserting after paragraph (5) the following:

''(6) the term 'criminal history record repository' means the State agency designated by the Governor or other executive official of a State, or by the legislature of a State, to perform centralized recordkeeping functions for criminal history records and services in the State;''; and

(4) in paragraph (9)—

(A) in subparagraph (A)(iii)—

(i) by inserting ''or to an elderly person or person with a disability'' after ''to a child''; and

(ii) by striking ''child care'' and inserting ''care''; and

(B) in subparagraph (B)(iii)—

(i) by inserting ''or to an elderly person or person with a disability'' after ''to a child''; and

(ii) by striking ''child care'' and inserting ''care''.

SEC. 5. AMENDMENT TO NATIONAL CRIMINAL HISTORY ACCESS AND CHILD PROTECTION ACT.

Section 215 of the National Criminal History Access and Child Protection Act is amended by—

(1) striking subsection (b) and inserting the following:

''(b) DIRECT ACCESS TO CERTAIN RECORDS NOT AFFECTED.—Nothing in the Compact shall affect any direct terminal access to the III System provided prior to the effective date of the Compact under the following:

''(1) Section 9101 of title 5, United States Code.

''(2) The Brady Handgun Violence Prevention Act (Public Law 103–159; 107 Stat. 1536).

''(3) The Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 2074) or any amendments made by that Act.

''(4) The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.).

''(5) The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.).

''(6) Any direct terminal access to Federal criminal history records authorized by law.''; and

(2) in subsection (c) by inserting after the period at the end thereof the following: ''Criminal history records disseminated by the FBI pursuant to such Act by means of the III System shall be subject to the Compact.''.

By Mr. GRASSLEY (for himself and Mr. KERRY):

S. 1831. A bill to provide alternative minimum tax relief with respect to incentive stock options exercised during 2000; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, today Senator KERRY and I introduced bipartisan legislation that will provide some relief to those workers who are facing a massive tax bill on the phantom income they have from incentive stock options.

Because it is important that my colleagues understand the unfairness of this matter, let me provide a very brief background.

Incentive stock options ISO, are an option given by an employer to an employee to purchase stock at a certain price. An individual does not recognize any income on the grant of the option or exercise thereof if the individual holds the shares for more than 2 years after grant and 1 year after exercise. If the holding period requirements are satisfied, the employee is taxed on the excess of the sale price over the exercise price on his disposition of the shares.

The reason these employees have such a significant tax bill is due to the workings of the Tax Code's answer to Rube Goldberg, the Alternative Minimum Tax, AMT. The employee's nonrecognition of income discussed above does not apply for AMT purposes. For AMT purposes, the code requires the recognition of the excess for the stock's fair market value on the date of exercise over the option price when the stock is substantially vested. Thus, while an employee does not have a tax liability of ordinary income for exercising his ISO the employee may be subject to AMT when he exercises his ISO.

While in years past, this may not have been too great a problem in a time when share prices are increasing and individuals have the money to pay the AMT. It is a very different story when shares are declining. The individual is then facing the AMT charges based on the exercise value but often has no funds to pay the AMT since the stock that was the source of the AMT has declined in value since it was exercised.

It is true that if the individual had sold the stock in the same year he exercised his ISO he would have potentially reduced his AMT liability significantly. However, the code sends a mixed signal to the individual telling him that he must hold the stock for one year after exercise if he wants to avoid taxation at ordinary income on the value at the point of exercise.

The above are the facts of the tax code, but they do not reflect the very real disaster this has done to many people across the country. The story of one company in Cedar Rapids, IA, McLeod USA, puts a real face on how this tax has destroyed families. I have received letters from dozens of honest hard-working people of this company telling me how they are making a good salary in Iowa, say $50,000 or $70,000, and were also given these ISOs as an additional incentive to work for McLeod. Now, because of the AMT rules and the declining market, these families are facing tax bills of tens of thousands, if not over a hundred thousand dollars. It is wiping out a lifetime of savings and hardwork, all to pay a tax bill on phantom income, income they never received, never enjoyed and never had. It is outrageous and it is just plain wrong.

The bill that Senator KERRY and I have introduced will provide significant relief from the AMT tax bill for workers. It allows employees to determine the value of their stock options on April 15, 2001, (as opposed to the exercise date), which will reflect the downturn of the market. This will go far in minimizing the AMT hit that employees face. In addition, the relief is targeted to assist low-income and middle-income families.

I hope my colleagues will join myself and Senator KERRY to put an end to this tax disaster.

I ask unanimous consent the text of the bill be printed in the RECORD.

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

S. 1831

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

SECTION 1. ALTERNATIVE MINIMUM TAX RELIEF WITH RESPECT TO INCENTIVE STOCK OPTIONS EXERCISED DURING 2000.

(a) IN GENERAL.—In the case of an incentive stock option (as defined in section 422 of the Internal Revenue Code of 1986) exercised during calendar year 2000, the amount taken into account under section 56(b)(3) of such Code by reason of such exercise shall not exceed the amount that would have been taken into account if, on the date of such exercise, the fair market value of the stock acquired pursuant to such option had been its fair market value as of April 15, 2001 (or, if such stock is sold or exchanged on or before such date, the amount realized on such sale or exchange).

(b) LIMITATION.—

(1) IN GENERAL.—If the adjusted gross income of a taxpayer for the taxable year in which an exercise described in paragraph (1) occurs exceeds the threshold amount, the amount otherwise not taken into account under paragraph (1) shall be reduced by the amount which bears the same ratio to such amount as the taxpayer's adjusted gross income in excess of the threshold amount bears to the phaseout amount.

(2) THRESHOLD AMOUNT.—For purposes of this subsection, the threshold amount is equal to—

(A) $106,000 in the case of a taxpayer described in section 1(a) of such Code,

(B) $84,270 in the case of a taxpayer described in section 1(b) of such Code, and

(C) $53,000 in the case of a taxpayer described in section 1(c) or 1(d) of such Code.

(3) PHASEOUT AMOUNT.—For purposes of this subsection, the phaseout amount is equal to—

(A) $230,000 in the case of a taxpayer described in section 1(a) of such Code,

(B) $172,500 in the case of a taxpayer described in section 1(b) of such Code, and

(C) $115,000 in the case of a taxpayer described in section 1(c) or 1(d) of such Code.

By Mr. LEVIN:

S. 1834. A bill for the relief of retired Sergeant First Class James D. Benoit and Wan Sook Benoit; to the Committee on the Judiciary.

Mr. LEVIN. Mr. President, I rise today to introduce a bill that I hope will assist a family in my home State of Michigan who suffered the death of their child while living on a U.S. Army base in the Republic of Korea. Nearly 18 years ago, Mr. James Benoit and his wife Mrs. Wan Sook Benoit lost their three year old son, David Benoit, in a tragic mishap.

Some years ago, Mr. and Mrs. Benoit approached my office with a request for assistance. The Benoit family felt that they did not receive the relief that they were entitled to receive. To assist the family, I introduced two private relief bills that sought to give the Benoit family a hearing before the U.S. Court of Federal Claims.

This case was referred to U.S. Court of Federal Claims as the result of private relief legislation I introduced. The legislation, S. 1168, gave the Court of Federal Claims ''jurisdiction to hear, determine and render judgement on a claim by Retired Sergeant First Class James D. Benoit, Wan Sook Benoit, or the estate of David Benoit concerning the death of David Benoit on June 28th 1983. On March 14, 2000, oral arguments were heard by the hearing officer assigned to the case and the hearing officer recommended to the Court of Federal Claims on July 28, 2000, ''that Sergeant and Mrs.. Benoit be awarded $415,000 for the wrongful death of David Benoit.'' Subsequently on May 23, 2001, the Court of Federal Claims Review Panel upheld the conclusion of the hearing officer, and found that the plaintiffs ''have a valid and equitable claim against the United States.'' It went on to state that ''the Review Panel recommends that plaintiffs be awarded $415,000.''

As a result of these findings, I am introducing special legislation to provide relief consistent with the court's recommendation. This legislation can in no way compensate the Benoit's for the horrible loss that they have suffered. No amount of money can do that. However, as the court has stated, the Benoit family does indeed ''have a valid and equitable claim.'' It is my hope that Congress will act expeditiously to resolve this claim.

STATMENTS OF SUBMITTED RESOLUTIONS

SENATE RESOLUTION 192—TO AUTHORIZE REPRESENTATION BY THE SENATE LEGAL COUNSEL IN JUDITH LEWIS V. RICK PERRY, ET AL

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following resolution; which was considered and agreed to:

S. RES. 192

Whereas, Senator Kay Bailey Hutchison has been named as a defendant in the case of Judith Lewis v. Rick Perry, et al., Case No. 01–10098–D, now pending in the District Court for Dallas County, Texas; and

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to represent Members of the Senate in civil actions with respect to their official responsibilities: Now, therefore, be it

Resolved That the Senate Legal Counsel is authorized to represent Senator Hutchison in the case of Judith Lewis V. Rick Perry, et al.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2602. Mr. WELLSTONE proposed an amendment to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) to strengthen the safety net for agricultural producers, to enhance resource conservation and rural development, to provide for farm credit, agricultural research, nutrition, and related programs, to ensure consumers abundant food and fiber, and for other purposes.

SA 2603. Mr. LUGAR (for Mr. MCCAIN (for himself, Mr. GRAMM, Mr. KERRY, and Mrs. MURRAY)) proposed an amendment to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) supra.

SA 2604. Mr. HARKIN (for himself, Mr. GRASSLEY, Mr. FEINGOLD, Mr. WELLSTONE, and Mr. ENZI) proposed an amendment to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) supra.

SA 2605. Mr. THURMOND (for himself and Mr. HELMS) submitted an amendment intended to be proposed to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) supra; which was ordered to lie on the table.

SA 2606. Mr. HUTCHINSON submitted an amendment intended to be proposed to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) supra; which was ordered to lie on the table.

SA 2607. Mr. BURNS proposed an amendment to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) supra.

SA 2608. Mr. BURNS proposed an amendment to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) supra.

SA 2609. Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) supra; which was ordered to lie on the table.

SA 2610. Mr. DASCHLE (for Mr. LIEBERMAN (for himself and Mr . THOMPSON)) proposed an amendment to the bill H.R. 2657, to amend title 11, District of Columbia Code, to redesignate the Family Division of the Superior Court of the District of Columbia as the Family Court of the Superior Court, to recruit and retain trained and experienced judges to serve in the Family Court, to promote consistency and efficiency in the assignment of judges to the Family Court and in the consideration of actions and proceedings in the Family Court, and for other purposes.

TEXT OF AMENDMENTS

SA 2602. Mr. WELLSTONE proposed an amendment to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) to strengthen the safety net for agricultural producers, to enhance resource conservation and rural development, to provide for farm credit, agricultural research, nutrition, and related programs, to ensure consumrs abundant food and fiber, and for other purposes; as follows:

Beginning on page 226, strike line 1 and all that follows through page 235, line 6, and insert the following:

''(4) LARGE CONFINED LIVESTOCK FEEDING OPERATIONS.—

''(A) DEFINITION OF LARGE CONFINED LIVESTOCK FEEDING OPERATION.—In this paragraph:

''(i) IN GENERAL.—The term 'large confined livestock feeding operation' means a confined livestock feeding operation designed to confine 1,000 or more animal equivalent units (as defined by the Secretary).

''(ii) MULTIPLE LOCATIONS.—In determining the number of animal unit equivalents of operation of a producer under clause (i), the animals confined by the producer in confinement facilities at all locations (including the producer's proportionate share in any jointly owned facility) shall be counted.

''(B) NEW OR EXPANDED OPERATIONS.—A producer shall not be eligible for cost-share payments for any portion of a storage or treatment facility, or associated waste transport or transfer device, to manage manure, process wastewater, or other animal waste generated by a large confined livestock feeding operation, if the operation is a confined livestock operation that—

''(i) is established after the date of enactment of this paragraph; or

''(ii) is expanded after the date of enactment of this paragraph so as to become a large confined livestock operation.

''(C) MULTIPLE OPERATIONS.—A producer that has an interest in more than 1 large confined livestock operation shall not be eligible for more than 1 contract under this section for cost-share payments for a storage or treatment facility, or associated waste transport or transfer device, to manage manure, process wastewater, or other animal waste generated by the large confined livestock feeding operation.

''(D) FLOOD PLAIN SITING.—Cost-share payments shall not be available for structural practices for a storage or treatment facility, or associated waste transport device, to manage manure, process wastewater, or other animal waste generated by a large confined livestock operation if—

''(i) the structural practices are located in a 100-year flood plain; and

''(ii) the confined livestock operation is a confined livestock operation that—

(I) is established after the date of enactment of this paragraph or;

(II) is expanded after the date of enactment of this paragraph.

''(e) INCENTIVE PAYMENTS.—The Secretary shall make incentive payments in an amount and at a rate determined by the Secretary to be necessary to encourage a producer to perform 1 or more practices.

''(f) TECHNICAL ASSISTANCE.—

''(1) IN GENERAL.—The Secretary shall allocate funding under the program for the provision of technical assistance according to the purpose and projected cost for which the technical assistance is provided for a fiscal year.

''(2) AMOUNT.—The allocated amount may vary according to—

''(A) the type of expertise required;

''(B) the quantity of time involved; and

''(C) other factors as determined appropriate by the Secretary.

''(3) LIMITATION.—Funding for technical assistance under the program shall not exceed the projected cost to the Secretary of the technical assistance provided for a fiscal year.

''(4) OTHER AUTHORITIES.—The receipt of technical assistance under the program shall not affect the eligibility of the producer to receive technical assistance under other authorities of law available to the Secretary.

''(5) INCENTIVE PAYMENTS FOR TECHNICAL ASSISTANCE.—

''(A) IN GENERAL.—A producer that is eligible to receive technical assistance for a practice involving the development of a comprehensive nutrient management plan may obtain an incentive payment that can be used to obtain technical assistance associated with the development of any component of the comprehensive nutrient management plan.

''(B) PURPOSE.—The purpose of the payment shall be to provide a producer the option of obtaining technical assistance for developing any component of a comprehensive nutrient management plan from a certified provider.

''(C) PAYMENT.—The incentive payment shall be—

''(i) in addition to cost-share or incentive payments that a producer would otherwise receive for structural practices and land management practices;

''(ii) used only to procure technical assistance from a certified provider that is necessary to develop any component of a comprehensive nutrient management plan; and

''(iii) in an amount determined appropriate by the Secretary, taking into account—

''(I) the extent and complexity of the technical assistance provided;

''(II) the costs that the Secretary would have incurred in providing the technical assistance; and

''(III) the costs incurred by the private provider in providing the technical assistance.

''(D) ELIGIBLE PRACTICES.—The Secretary may determine, on a case by case basis, whether the development of a comprehensive nutrient management plan is eligible for an incentive payment under this paragraph.

''(E) CERTIFICATION BY SECRETARY.—

''(i) IN GENERAL.—Only persons that have been certified by the Secretary under section 1244(f)(3) shall be eligible to provide technical assistance under this subsection.

''(ii) QUALITY ASSURANCE.—The Secretary shall ensure that certified providers are capable of providing technical assistance regarding comprehensive nutrient management in a manner that meets the specifications and guidelines of the Secretary and that meets the needs of producers under the program.

''(F) ADVANCE PAYMENT.—On the determination of the Secretary that the proposed comprehensive nutrient management of a producer is eligible for an incentive payment, the producer may receive a partial advance of the incentive payment in order to procure the services of a certified provider.

''(G) FINAL PAYMENT.—The final installment of the incentive payment shall be payable to a producer on presentation to the Secretary of documentation that is satisfactory to the Secretary and that demonstrates—

''(i) completion of the technical assistance; and

''(ii) the actual cost of the technical assistance.

''(g) MODIFICATION OR TERMINATION OF CONTRACTS.—

''(1) VOLUNTARY MODIFICATION OR TERMINATION.—The Secretary may modify or terminate a contract entered into with a producer under this chapter if—

''(A) the producer agrees to the modification or termination; and

''(B) the Secretary determines that the modification or termination is in the public interest.

''(2) INVOLUNTARY TERMINATION.—The Secretary may terminate a contract under this chapter if the Secretary determines that the producer violated the contract.

''SEC. 1240C. EVALUATION OF OFFERS AND PAYMENTS.

''(a) IN GENERAL.—In evaluating applications for technical assistance, cost-share payments, and incentive payments, the Secretary shall accord a higher priority to assistance and payments that—

''(1) maximize environmental benefits per dollar expended; and

''(2)(A) address national conservation priorities, including—

''(i) meeting Federal, State, and local environmental purposes focused on protecting air and water quality;

''(ii) comprehensive nutrient management;

''(iii) water quality, particularly in impaired watersheds;

''(iv) soil erosion;

''(v) air quality; or

''(vi) pesticide and herbicide management or reduction;

''(B) are provided in conservation priority areas established under section 1230(c);

''(C) are provided in special projects under section 1243(f)(4) with respect to which State or local governments have provided, or will provide, financial or technical assistance to producers for the same conservation or environmental purposes; or

''(D) an innovative technology in connection with a structural practice or land management practice.

''(b) ADDITIONAL PRIORITIES FOR LIVESTOCK PRODUCERS.—In evaluating applications for technical assistance, cost-share payments, and incentive payments for livestock producers, the Secretary shall accord priority to—

''(1) applications for assistance and payments for systems and practices that avoid subjecting the livestock production operation to Federal, State, tribal, and local environmental regulatory systems while also assisting the operation to meet environmental quality criteria established by Federal, State, tribal, and local agencies; and

''(2) applications from livestock producers using managed grazing systems and other pasture- and forage-based systems.

''SEC. 1240D. DUTIES OF PRODUCERS.

''To receive technical assistance, cost-share payments, or incentive payments under the program, a producer shall agree—

''(1) to implement an environmental quality incentives program plan that describes conservation and environmental purposes to be achieved through 1 or more practices that are approved by the Secretary;

''(2) not to conduct any practices on the farm or ranch that would tend to defeat the purposes of the program;

''(3) on the violation of a term or condition of the contract at any time the producer has control of the land—

''(A) if the Secretary determines that the violation warrants termination of the contract—

''(i) to forfeit all rights to receive payments under the contract; and

''(ii) to refund to the Secretary all or a portion of the payments received by the owner or operator under the contract, including any interest on the payments, as determined by the Secretary; or

''(B) if the Secretary determines that the violation does not warrant termination of the contract, to refund to the Secretary, or accept adjustments to, the payments provided to the owner or operator, as the Secretary determines to be appropriate;

''(4) on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees with the Secretary to assume all obligations of the contract, to refund all cost-share payments and incentive payments received under the program, as determined by the Secretary;

''(5) to supply information as required by the Secretary to determine compliance with the program plan and requirements of the program; and

''(6) to comply with such additional provisions as the Secretary determines are necessary to carry out the program plan.

''SEC. 1240E. ENVIRONMENTAL QUALITY INCENTIVES PROGRAM PLAN.

''(a) IN GENERAL.—To be eligible to receive technical assistance, cost-share payments, or incentive payments under the program, a producer of a livestock or agricultural operation shall submit to the Secretary for approval a plan of operations that specifies practices covered under the program, and is based on such terms and conditions, as the Secretary considers necessary to carry out the program, including a description of the practices to be implemented and the purposes to be met by the implementation of the plan.

''(b) CONFINED ANIMAL FEEDING OPERATIONS.—

''(1) IN GENERAL.—To be eligible to receive cost-share payments or incentive payments for a storage or treatment facility, or associated waste transport or transfer device, to manage manure, process wastewater, or other animal waste generated by a confined animal feeding operation, the producer or owner of the operation shall submit a comprehensive nutrient management plan for the confined animal feeding operation as part of the plan of operations submitted under subsection (a).

''(2) CONTRACT CONDITION.—Implementation of the comprehensive nutrient management plan submitted under paragraph (1) shall be a condition of the environmental quality incentives program contract.

''(c) AVOIDANCE OF DUPLICATION.—The Secretary shall, to the maximum extent practicable, eliminate duplication of planning activities under the program and comparable conservation programs.

''SEC. 1240F. DUTIES OF THE SECRETARY.

''To the extent appropriate, the Secretary shall assist a producer in achieving the conservation and environmental goals of a program plan by—

''(1) providing technical assistance in developing and implementing the plan;

''(2) providing technical assistance, cost-share payments, or incentive payments for developing and implementing 1 or more practices, as appropriate;

''(3) providing the producer with information, education, and training to aid in implementation of the plan; and

''(4) encouraging the producer to obtain technical assistance, cost-share payments, or grants from other Federal, State, local, or private sources.

''SEC. 1240G. LIMITATION ON PAYMENTS.

''(a) IN GENERAL.—Subject to subsection (b), the total amount of cost-share and incentive payments paid to a producer under this chapter shall not exceed—

''(1) $20,000 for any fiscal year, regardless of whether the producer has more than 1 contract under this chapter for the fiscal year;

''(2) $60,000 for a contract with a term of 3 years;

''(3) $80,000 for a contract with a term of 4 years; or

''(4) $100,000 for a contract with a term of more than 4 years.

''(b) ATTRIBUTION.—An individual or entity shall not receive, directly or indirectly, total payments from a single or multiple contracts this chapter that exceed $20,000 for any fiscal year.

''(c) EXCEPTION TO ANNUAL LIMIT.—The Secretary may exceed the limitation on the annual amount of a payment to a producer under subsection (a)(1) if the Secretary determines that a larger payment is—

''(1) essential to accomplish the land management practice or structural practice for which the payment is made to the producer; and

''(2) consistent with the maximization of environmental benefits per dollar expended and the purposes of this chapter.

''(d) VERIFICATION.—The Secretary shall identify individuals and entities that are eligible for a payment under the program using social security numbers and taxpayer identification numbers, respectively.

SA 2603. Mr. LUGAR (for Mr. MCCAIN (for himself, Mr. GRAMM, Mr. KERRY, and Mrs. MURRAY)) proposed an amendment to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) to strengthen the safety net for agricultural producers, to enhance resource conservation and rural development, to provide for farm credit, agricultural research, nutrition, and related programs, to ensure consumers abundant food and fiber, and for other purposes; as follows:

At the appropriate place in the substitute, insert the following:

SEC. . MARKET NAME FOR CATFISH.

The term ''catfish'' shall be considered to be a common or usual name (or part thereof) for any fish in keeping with Food and Drug Administration procedures that follow scientific standards and market practices for establishing such names for the purposes of section 403 of the Federal Food, Drug, and Cosmetic Act, including with respect to the importation of such fish pursuant to section 801 of such Act.

SEC. . LABELING OF FISH AS CATFISH.

Section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002, is repealed.

SA 2604. Mr. HARKIN (for himself, Mr. GRASSLEY, Mr. FEINGOLD, Mr. WELLSTONE, and Mr. ENZI) proposed an amendment to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) to strengthen the safety net for agricultural producers, to enhance resource conservation and rural development, to provide for farm credit, agricultural research, nutrition, and related programs, to ensure consumers abundant food and fiber, and for other purposes; as follows:

On page 941, strike line 5 and insert the following:

Subtitle C—General Provisions

SEC. 1021. PACKERS AND STOCKYARDS.

(a) DEFINITIONS.—Section 2(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(a)), is amended by adding at the end the following:

''(12) LIVESTOCK CONTRACTOR.—The term 'livestock contractor' means any person engaged in the business of obtaining livestock under a livestock production contract for the purpose of slaughtering the livestock or selling the livestock for slaughter, if—

''(A) the livestock is obtained by the person in commerce; or

''(B) the livestock (including livestock products from the livestock) obtained by the person is sold or shipped in commerce.

''(13) LIVESTOCK PRODUCTION CONTRACT.—The term 'livestock production contract' means any growout contract or other arrangement under which a livestock production contract grower raises and cares for the livestock in accordance with the instructions of another person.

''(14) LIVESTOCK PRODUCTION CONTRACT GROWER.—The term 'livestock production contract grower' means any person engaged in the business of raising and caring for livestock in accordance with the instructions of another person.''.

(b) CONTRACTORS.—

(1) IN GENERAL.—The Packers and Stockyards Act, 1921, is amended by striking ''packer'' each place it appears in sections 202, 203, 204, and 205 (7 U.S.C. 192, 193, 194, 195) (other than section 202(c)) and inserting ''packer or livestock contractor''.

(2) CONFORMING AMENDMENTS.—

(A) Section 202(c) of the Packers and Stockyards Act, 1921 (7 U.S.C. 192(c)), is amended by inserting '', livestock contractor,'' after ''other packer'' each place it appears.

(B) Section 308(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 209(a)), is amended by inserting ''or livestock production contract'' after ''poultry growing arrangement''.

(C) Sections 401 and 403 of the Packers and Stockyards Act, 1921 (7 U.S.C. 221, 223), are amended by inserting ''any livestock contractor, and'' after ''packer,'' each place it appears.

(c) RIGHT TO DISCUSS TERMS OF CONTRACT.—The Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), is amended by adding at the end the following:

''SEC. 417. RIGHT TO DISCUSS TERMS OF CONTRACT.

''(a) IN GENERAL.—Notwithstanding a provision in any contract for the sale or production of livestock or poultry that provides that information contained in the contract is confidential, a party to the contract shall not be prohibited from discussing any terms or details of any contract with—

''(1) a legal adviser;

''(2) a lender;

''(3) an accountant;

''(4) an executive or manager;

''(5) a landlord;

''(6) a family member; or

''(7) a Federal or State agency with responsibility for—

''(A) enforcing a statute designed to protect a party to the contract; or

''(B) administering this Act.

''(b) EFFECT ON STATE LAWS.—Subsection (a) does not affect State laws that address confidentiality provisions in contracts for the sale or production of livestock or poultry.''.

SA 2605. Mr. THURMOND (for himself and Mr. HELMS) submitted an amendment intended to be proposed to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) to strengthen the safety net for agricultural producers, to enhance resource conservation and rural development, to provide for farm credit, agricultural research, nutrition, and related programs, to ensure consumers abundant food and fiber, and for other purposes; which was ordered to lie on the table; as follows:

On page 40, line 8, strike the period at the end and insert the following:

SEC. 1___. LEASE AND TRANSFER OF CERTAIN ALLOTMENTS AND QUOTAS.

(a) IN GENERAL.—Section 316(a)(1)(A)(ii) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(a)(1)(A)(ii)) is amended in the last sentence by inserting ''(other than the 2002 crop)'' after ''crops''.

(b) STUDY.—

(1) IN GENERAL.—The Secretary of Agriculture shall conduct a study of the effects of the prohibition provided under the last sentence of section 316(a)(1)(A)(ii) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(a)(1)(A)(ii)).

(2) REPORT.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the results of the study.

SA 2606. Mr. HUTCHINSON submitted an amendment intended to be proposed to amendment SA 2471 submitted by Mr. Daschle and intended to be proposed to the bill (S. 1731) to strengthen the safety net for agricultural producers, to enhance resource conservation and rural development, to provide for farm credit, agricultural research, nutrition, and related programs, to ensure consumers abundant food and fiber, and for other purposes; which was ordered to lie on the table; as follows:

On page 984, line 2, strike the period at the end and insert a period and the following:

SEC. 10___. NATIONAL UNIFORMITY FOR FOOD.

(a) NATIONAL UNIFORMITY.—Section 403A(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343–1(a)) is amended—

(1) by striking ''or'' at the end of paragraph (4);

(2) in paragraph (5), by striking the period and inserting a comma; and

(3) by adding at the end the following:

''(6) any requirement for the labeling of food described in section 403(j), or 403(s), that is not identical to the requirement of such section, or

''(7) any requirement for a food described in section 402(a)(1), 402(a)(2), 402(a)(6), 402(a)(7), 402(c), 402(f), 402(g), 404, 406, 408, 409, 512, or 721(a), that is not identical to the requirement of such section.''.

(b) UNIFORMITY IN FOOD SAFETY WARNING NOTIFICATION REQUIREMENTS.—Chapter IV of such Act (21 U.S.C. 341 et seq.) is amended—

(1) by redesignating sections 403B and 403C as sections 403C and 403D, respectively; and

(2) by inserting after section 403A the following new section:

''SEC. 403B. UNIFORMITY IN FOOD SAFETY WARNING NOTIFICATION REQUIREMENTS.

''(a) UNIFORMITY REQUIREMENT.—

''(1) IN GENERAL.—Except as provided in subsections (c) and (d), no State or political subdivision of a State may, directly or indirectly, establish or continue in effect under any authority any notification requirement for a food that provides for a warning concerning the safety of the food, or any component or package of the food, unless such a notification requirement has been prescribed under the authority of this Act and the State or political subdivision notification requirement is identical to the notification requirement prescribed under the authority of this Act.

''(2) DEFINITIONS.—For purposes of paragraph (1)—

''(A) the term 'notification requirement' includes any mandatory disclosure requirement relating to the dissemination of information about a food by a manufacturer or distributor of a food in any manner, such as through a label, labeling, poster, public notice, advertising, or any other means of communication, except as provided in paragraph (3);

''(B) the term 'warning', used with respect to a food, means any statement, vignette, or other representation that indicates, directly or by implication, that the food presents or may present a hazard to health or safety; and

''(C) a reference to a notification requirement that provides for a warning shall not be construed to refer to any requirement or prohibition relating to food safety that does not involve a notification requirement.

''(3) CONSTRUCTION.—Nothing in this section shall be construed to prohibit a State from conducting the State's notification, disclosure, or other dissemination of information, or to prohibit any action taken relating to a mandatory recall or court injunction involving food adulteration under a State statutory requirement identical to a food adulteration requirement under this Act.

''(b) REVIEW OF EXISTING STATE REQUIREMENTS.—

''(1) EXISTING STATE REQUIREMENTS; DEFERRAL.—Any requirement that—

''(A)(i) is a State notification requirement for a food that provides for a warning described in subsection (a) that does not meet the uniformity requirement specified in subsection (a); or

''(ii) is a State food safety requirement described in paragraph (6) or (7) of section 403A that does not meet the uniformity requirement specified in that paragraph; and

''(B) is in effect on the date of enactment of the National Uniformity for Food Act of 2000,

shall remain in effect for 180 days after that date of enactment.

''(2) STATE PETITIONS.—With respect to a State notification or food safety requirement that is described in paragraph (1), the State may petition the Secretary for an exemption or a national standard under subsection (c). If a State submits such a petition within 180 days after the date of enactment of the National Uniformity for Food Act of 2000, the notification or food safety requirement shall remain in effect until the Secretary takes all administrative action on the petition pursuant to paragraph (3), and the time periods and provisions specified in paragraph (3) shall apply in lieu of the time periods and provisions specified in subsection (c)(3) (but not the time periods and provisions specified in subsection (d)(2)).

''(3) ACTION ON PETITIONS.—

''(A) PUBLICATION.—Not later than 270 days after the date of enactment of the National Uniformity for Food Act of 2000, the Secretary shall publish a notice in the Federal Register concerning any petition submitted under paragraph (2) and shall provide 180 days for public comment on the petition.

''(B) TIME PERIODS.—Not later than 360 days after the end of the period for public comment, the Secretary shall take final agency action on the petition.

''(C) JUDICIAL REVIEW.—The failure of the Secretary to comply with any requirement of this paragraph shall constitute final agency action for purposes of judicial review. If the court conducting the review determines that the Secretary has failed to comply with the requirement, the court shall order the Secretary to comply within a period determined to be appropriate by the court.

''(c) EXEMPTIONS AND NATIONAL STANDARDS.—

''(1) EXEMPTIONS.—Any State may petition the Secretary to provide by regulation an exemption from paragraph (6) or (7) of section 403A(a) or subsection (a), for a requirement of the State or a political subdivision of the State. The Secretary may provide such an exemption, under such conditions as the Secretary may impose, for such a requirement that—

''(A) protects an important public interest that would otherwise be unprotected, in the absence of the exemption;

''(B) would not cause any food to be in violation of any applicable requirement or prohibition under Federal law; and

''(C) would not unduly burden interstate commerce, balancing the importance of the public interest of the State or political subdivision against the impact on interstate commerce.

''(2) NATIONAL STANDARDS.—Any State may petition the Secretary to establish by regulation a national standard respecting any requirement under this Act or the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) relating to the regulation of a food.

''(3) ACTION ON PETITIONS.—

''(A) PUBLICATION.—Not later than 30 days after receipt of any petition under paragraph (1) or (2), the Secretary shall publish such petition in the Federal Register for public comment during a period specified by the Secretary.

''(B) TIME PERIODS FOR ACTION.—Not later than 60 days after the end of the period for public comment, the Secretary shall take final agency action on the petition. If the Secretary is unable to take final agency action on the petition during the 60-day period, the Secretary shall inform the petitioner, in writing, the reasons that taking the final agency action is not possible, the date by which the final agency action will be taken, and the final agency action that will be taken or is likely to be taken. In every case, the Secretary shall take final agency action on the petition not later than 120 days after the end of the period for public comment.

''(4) JUDICIAL REVIEW.—The failure of the Secretary to comply with any requirement of this subsection shall constitute final agency action for purposes of judicial review. If the court conducting the review determines that the Secretary has failed to comply with the requirement, the court shall order the Secretary to comply within a period determined to be appropriate by the court.

''(d) IMMINENT HAZARD AUTHORITY.—

''(1) IN GENERAL.—A State may establish a requirement that would otherwise violate paragraph (6) or (7) of section 403A(a) or subsection (a), if—

''(A) the requirement is needed to address an imminent hazard to health that is likely to result in serious adverse health consequences or death;

''(B) the State has notified the Secretary about the matter involved and the Secretary has not initiated enforcement action with respect to the matter;

''(C) a petition is submitted by the State under subsection (c) for an exemption or national standard relating to the requirement not later than 30 days after the date that the State establishes the requirement under this subsection; and

''(D) the State institutes enforcement action with respect to the matter in compliance with State law within 30 days after the date that the State establishes the requirement under this subsection.

''(2) ACTION ON PETITION.—

''(A) IN GENERAL.—The Secretary shall take final agency action on any petition submitted under paragraph (1)(C) not later than 7 days after the petition is received, and the provisions of subsection (c) shall not apply to the petition.

''(B) JUDICIAL REVIEW.—The failure of the Secretary to comply with the requirement described in subparagraph (A) shall constitute final agency action for purposes of judicial review. If the court conducting the review determines that the Secretary has failed to comply with the requirement, the court shall order the Secretary to comply within a period determined to be appropriate by the court.

''(3) DURATION.—If a State establishes a requirement in accordance with paragraph (1), the requirement may remain in effect until the Secretary takes final agency action on a petition submitted under paragraph (1)(C).

''(e) NO EFFECT ON PRODUCT LIABILITY LAW.—Nothing in this section shall be construed to modify or otherwise affect the product liability law of any State.

''(f) NO EFFECT ON IDENTICAL LAW.—Nothing in this section or section 403A relating to a food shall be construed to prevent a State or political subdivision of a State from establishing, enforcing, or continuing in effect a requirement that is identical to a requirement of this Act, whether or not the Secretary has promulgated a regulation or issued a policy statement relating to the requirement.

''(g) NO EFFECT ON CERTAIN STATE LAW.—Nothing in this section or section 403A relating to a food shall be construed to prevent a State or political subdivision of a State from establishing, enforcing, or continuing in effect a requirement relating to—

''(1) freshness dating, open date labeling, grade labeling, a State inspection stamp, religious dietary labeling, organic or natural designation, returnable bottle labeling, unit pricing, or a statement of geographic origin; or

''(2) a consumer advisory relating to food sanitation that is imposed on a food establishment, or that is recommended by the Secretary, under part 3–6 of the Food Code issued by the Food and Drug Administration and referred to in the notice published at 64 Fed. Reg. 8576 (1999) (or any corresponding similar provision of such a Code).

''(h) DEFINITION.—In section 403A and this section, the term 'requirement', used with respect to a Federal action or prohibition, means a mandatory action or prohibition established under this Act or the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.), as appropriate, or by a regulation issued under or by a court order relating to, this Act or the Fair Packaging and Labeling Act, as appropriate.''.

(c) CONFORMING AMENDMENT.—Section 403A(b) of such Act (21 U.S.C. 343–1(b)) is amended by adding at the end the following: ''The requirements of paragraphs (3) and (4) of section 403B(c) shall apply to any such petition, in the same manner and to the same extent as the requirements apply to a petition described in section 403B(c).''.

SA 2607. Mr. BURNS proposed an amendment to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) to strengthen the safety net for agricultural producers, to enhance resource conservation and rural development, to provide for farm credit, agricultural research, nutrition, and related programs, to ensure consumers abundant food and fiber, and for other purposes; as follows:

On page 205, strike lines 8 through 11 and insert the following:

(c) MAXIMUM ENROLLMENT.—Section 1231(d) of the Food Security Act of 1985 (16 U.S.C. 3831(d)) is amended—

(1) by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—The Secretary'';

(2) by striking ''36,400,000'' and inserting ''41,100,000''; and

(3) by adding at the end the following:

''(2) PER-FARM LIMITATION.—In the case a contract entered into on or after the date of enactment of this paragraph or the expiration of a contract entered into before that date, an owner or operator may enroll not more than 50 percent of the eligible land (as described in subsection (b)) of an agricultural operation of the owner or operator in the program under this subchapter.''.

SA 2608. Mr. BURNS proposed an amendment to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) to strengthen the safety net for agricultural producers, to enhance resource conservation and rural development, to provide for farm credit, agricultural research, nutrition, and related programs, to ensure consumers abundant food and fiber, and for other purposes; as follows:

On page 212, strike lines 13 through 15 and insert the following:

reduce the amount of payments made by the Secretary for other practices under the conservation reserve program.

''(j) PER-ACRE PAYMENT LEVELS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall conduct a study to determine, and promulgate regulations that establish in accordance with paragraph (2), per-acre values for payments for different categories of land enrolled in the conservation reserve program.

''(2) VALUES.—In carrying out paragraph (1), the Secretary shall ensure that—

''(A) the per-acre value for highly erodible land or other sensitive land (as identified by the Secretary) that is not suitable for agricultural production; is greater than

''(B) the per-acre value for land that is suitable for agricultural production (as determined by the Secretary).''.

SA 2609. Mr. ROBERTS submitted an amendment to be proposed to amendment SA 2471 submitted by Mr. DASCHLE and intended to be proposed to the bill (S. 1731) to strengthen the safety net for agricultural producers, to enhance resource conservation and rural development, to provide for farm credit, agricultural research, nutrition, and related programs, to ensure consumers abundant food and fiber, and for other purposes; as follows:

On page 797, line 4, strike the period at the end and insert a period and the following:

SEC. 787. CARBON CYCLE RESEARCH.

Section 221 of the Agricultural Risk Protection Act of 2000 (114 Stat. 407) is amended—

(1) in subsection (a), by striking ''Of the amount'' and all that follows through ''to provide'' and inserting ''To the extent that funds are made available for the purpose, the Secretary shall provide'';

(2) in subsection (d), by striking ''under subsection (a)'' and inserting ''to carry out this section''; and

(3) by adding at the end the following:

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal years 2002 through 2011 such sums as are necessary to carry out this section.''.

SA 2610. Mr. DASCHLE (for Mr. LIEBERMAN (for himself and Mr. THOMPSON)) proposed an amendment to the bill H.R. 2657, to amend title 11, District of Columbia Code, to redesignate the Family Division of the Superior Court of the District of Columbia as the Family Court of the Superior Court, to recruit and retain trained and experienced judges to serve in the Family Court, to promote consistency and efficiency in the assignment of judges to the Family Court and in consideration of actions and proceedings in the Family Court, and for other purposes; as follows:

On page 41, line 4, strike ''EXCEPTION'', and insert ''EMERGENCY REASSIGNMENT''.

On page 41, line 6, strike ''this Act'' and insert ''the District of Columbia Family Court Act of 2001''.

On page 41, line 8, strike all after ''15'' through line 13 and insert a dash and the following:

''(A) the chief judge may temporarily reassign judges from other divisions of the Superior Court to serve on the Family Court who meet the requirements of paragraphs (1) and (3) of subsection (b) or senior judges who meet the requirements of those paragraphs, except such reassigned judges shall not be subject to the term of service requirements set forth in subsection (c); and

''(B) the chief judge shall, within 30 days of emergency temporary reassignment pursuant to subparagraph (A), submit a report to the President and Congress describing—

''(i) the nature of the emergency;

''(ii) how the emergency was addressed, including which judges were reassigned; and

''(iii) whether and why an increase in the number of Family Court judges authorized in subsection (a)(1) may be necessary to serve the needs of families and children in the District of Columbia.

On page 42, line 20, after ''Court'' insert ''who is reassigned on an emergency temporary basis pursuant to subsection (a)(2)''.

On page 43, beginning with line 4, strike all through line 21 and insert the following:

''(1) IN GENERAL.—Except as provided in paragraph (2), an individual assigned to serve as a judge of the Family Court of the Superior Court shall serve for a term of 5 years.

''(2) SPECIAL RULE FOR JUDGES SERVING ON SUPERIOR COURT ON DATE OF ENACTMENT OF FAMILY COURT ACT OF 2001.—

''(A) IN GENERAL.—An individual assigned to serve as a judge of the Family Court of the Superior Court who is serving as a judge of the Superior Court on the date of the enactment of the District of Columbia Family Court Act of 2001 shall serve for a term of not fewer than 3 years.

''(B) REDUCTION OF PERIOD FOR JUDGES SERVING IN FAMILY DIVISION.—In the case of a judge of the Superior Court who is serving as a judge in the Family Division of the Court on the date of the enactment of the District of Columbia Family Court Act of 2001, the 3-year term applicable under subparagraph (A) shall be reduced by the length of any period of consecutive service as a judge in such Division immediately preceding the date of the enactment of such Act.

On page 43, line 22, strike ''(2)'' and insert ''(3)''.

On page 44, line 6, strike ''(3)'' and insert ''(4)''.

On page 45, line 19, after ''Court'' insert '', including a description of how the Superior Court will handle the one family, one judge requirement pursuant to section 11–1104(a) for all cases and proceedings assigned to the Family Court.''.

On page 47, line 1, strike ''PROPOSAL'' and insert ''PLAN''.

On page 47, beginning with line 15, strike all beginning with ''The requirement'' through line 19.

On page 48, line 5, after the dash, insert ''The chief judge of the Superior Court should make every effort to provide for the earliest practicable disposition of actions.''.

On page 48, line 13, after ''judges'' insert '', including senior judges as defined in section 11–1504, District of Columbia Code''.

On page 48, line 15, after ''judges'' insert '', including senior judges''.

On page 48, line 18, strike ''section 103(a)(3) of''.

On page 48, line 19, strike ''(42 U.S.C. 675(5)(E))'' and insert '', if applicable''.

On page 48, line 19, strike ''and''.

On page 48, strike lines 20 through 24 and insert the following:

(ii) the chief judge determines, in consultation with the presiding judge of the Family Court, based on the record in the case and any unique expertise, training, or knowledge of the case that the judge might have, that permitting the judge to retain the case would lead to permanent placement of the child more quickly than reassignment to a judge in the Family Court.

(D) PRIORITY FOR CERTAIN ACTIONS AND PROCEEDINGS.—The chief judge of the Superior Court, in consultation with the presiding judge of the Family Court, shall give priority consideration to the disposition or transfer of the following actions and proceedings:

(i) The action or proceeding involves an allegation of abuse or neglect.

(ii) The action or proceeding was initiated in the family division prior to the 2-year period which ends on the date of enactment of this Act.

(iii) The judge to whom the action or proceeding is assigned as of the date of enactment of this Act is not assigned to the Family Division.

On page 49, line 1, strike ''(D)'' and insert ''(E)''.

On page 49, line 2, strike ''report'' and insert ''submit reports to the President,''.

On page 49, lines 7 and 8, strike ''enactment of this Act'' and insert ''submission of the transition plan required under paragraph (1)''.

On page 49, line 9, strike ''(D)'' and insert ''(E)''.

On page 49, after line 10, insert the following:

(F) RULE OF CONSTRUCTION.—Nothing in this subsection shall preclude the chief judge, in consultation with the presiding judge of the Family Court, from transferring actions or proceedings pending before judges outside the Family Court at the enactment of this Act which do not involve allegations of abuse and neglect but which would otherwise fall under the jurisdiction of the Family Court to judges in the Family Court prior to the deadline as defined in subparagraph 2(B), particularly if such transfer would result in more efficient resolution of such actions or proceedings.

On page 51, line 18, after ''including the'' insert ''implementation of the''.

On page 52, after line 14 insert the following:

(D) An analysis of the timeliness of the resolution and disposition of pending actions and proceedings required under the transition plan (as described in paragraphs (1)(I) and (2) of subsection (b)), including an analysis of the effect of the availability of magistrate judges on the time required to resolve and dispose of such actions and proceedings.

On page 54, line 23, strike ''chapter 11'' and insert ''chapter 13''.

On page 54, line 23, strike ''title 21'' and insert ''title 7''.

On page 54, line 24, strike ''substantially'' and insert ''at least moderately mentally''.

On page 56, line 18, strike ''2(C)'' and insert ''2(D)''.

On page 56, line 22, after ''magistrate judge'' insert ''in the Family Court''.

On page 56, line 25, after ''lawful'' insert '', subject to subparagraph (C)''.

On page 57, line 22, strike ''18 months'' and insert ''6 months or, in extraordinary circumstances, for not more than 12 months''.

On page 57, line 25, strike ''section 103(a)(3) of''.

On page 58, line 1, strike ''(42 U.S.C. 675(E))''.

On page 58, beginning with line 2, strike all through line 10 and insert the following:

applicable; and

''(ii) if Public Law 105–89 is applicable, the chief judge determines, in consultation with the presiding judge of the Family Court, based on the record in the case and any unique expertise, training or knowledge of the case that the judge might have, that permitting the judge to retain the case would lead to permanent placement of the child more quickly than reassignment to a judge in the Family Court.

On page 69, line 12, after ''appointed'' insert ''or assigned''.

On page 69, line 14, strike ''assigned to handle Family Court cases'' and insert ''as a magistrate judge for the Domestic Violence Unit handling actions or proceedings which would otherwise be under the jurisdiction of the Family Court''.

On page 71, line 2, insert ''appropriate'' before ''presiding judge''.

On page 71, line 16, insert ''appropriate'' before ''presiding judge''.

On page 71, line 16, strike ''of the Family Court''.

On page 73, line 24, strike ''not more than 5''.

On page 74, line 5, after ''subsection (a))'' insert '', for the purpose of assisting with the implementation of the transition plan under section 3(b) of this Act, and in particular with the transition or disposal of actions or proceedings pursuant to section 3(b)(2) of this Act''.

On page 74, after line 25, insert the following:

(C) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to preclude magistrate judges appointed pursuant to this subsection from performing upon appointment any or all of the functions of magistrate judges of the Family Court or Domestic Violence Unit as set forth in subsection 11–1732A(d).

On page 75, line 22, after ''construction'' insert '', lease, or acquisition''.

On page 76, line 12, beginning after ''upon'' strike all through line 14 and insert ''enactment of this Act.''.

HIGHER EDUCATION ACT OF 1965 AMENDMENTS

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 277, S. 1762.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1762) to amend the Higher Education Act of 1965 to establish fixed interest rates for student and parent borrowers, to extend current law with respect to special allowances for lenders, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements related thereto be printed in the RECORD.

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

The bill (S. 1762) was read the third time and passed as follows:

S. 1762

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

SECTION 1. INTEREST RATE PROVISIONS.

(a) FFEL FIXED INTEREST RATES.—

(1) AMENDMENT.—Section 427A of the Higher Education Act of 1965 (20 U.S.C. 1077a) is amended—

(A) by redesignating subsections (*l*) and (m) as subsections (m) and (n), respectively; and

(B) by inserting after subsection (k) the following new subsection:

''(*l*) INTEREST RATES FOR NEW LOANS ON OR AFTER JULY 1, 2006.—

''(1) IN GENERAL.—Notwithstanding subsection (h), with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to section 428B or 428C) for which the first disbursement is made on or after July 1, 2006, the applicable rate of interest shall be 6.8 percent on the unpaid principal balance of the loan.

''(2) PLUS LOANS.—Notwithstanding subsection (h), with respect to any loan under section 428B for which the first disbursement is made on or after July 1, 2006, the applicable rate of interest shall be 7.9 percent on the unpaid principal balance of the loan.

''(3) CONSOLIDATION LOANS.—With respect to any consolidation loan under section 428C for which the application is received by an eligible lender on or after July 1, 2006, the applicable rate of interest shall be at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

''(A) the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of 1 percent; or

''(B) 8.25 percent.''.

(2) CONFORMING AMENDMENT.—Section 428C(c)(1)(A) of such Act (20 U.S.C. 1078–3(c)(1)(A)) is amended to read as follows:

''(1) INTEREST RATE.—(A) Notwithstanding subparagraphs (B) and (C), with respect to any loan made under this section for which the application is received by an eligible lender—

''(i) on or after October 1, 1998, and before July 1, 2006, the applicable interest rate shall be determined under section 427A(k)(4); or

''(ii) on or after July 1, 2006, the applicable interest rate shall be determined under section 427A(*l*)(3).''.

(b) DIRECT LOANS FIXED INTEREST RATES.—

(1) TECHNICAL CORRECTION.—Paragraph (6) of section 455(b) of the Higher Education Act of 1965 (20 U.S.C. 1087e(b)), as redesignated by section 8301(c)(1) of the Transportation Equity Act for the 21st Century (Public Law 105–178; 112 Stat. 498) is redesignated as paragraph (9) and is transferred to follow paragraph (7) of section 455(b) of the Higher Education Act of 1965.

(2) AMENDMENTS.—Section 455(b) of the Higher Education Act of 1965 (20 U.S.C. 1087e(b)) is amended—

(A) by redesignating paragraph (7) as paragraph (8); and

(B) by inserting after paragraph (6) the following new paragraph:

''(7) INTEREST RATE PROVISION FOR NEW LOANS ON OR AFTER JULY 1, 2006.—

''(A) RATES FOR FDSL AND FDUSL.—Notwithstanding the preceding paragraphs of this subsection, for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after July 1, 2006, the applicable rate of interest shall be 6.8 percent on the unpaid principal balance of the loan.

''(B) PLUS LOANS.—Notwithstanding the preceding paragraphs of this subsection, with respect to any Federal Direct PLUS loan for which the first disbursement is made on or after July 1, 2006, the applicable rate of interest shall be 7.9 percent on the unpaid principal balance of the loan.

''(C) CONSOLIDATION LOANS.—Notwithstanding the preceding paragraphs of this subsection, any Federal Direct Consolidation loan for which the application is received on or after July 1, 2006, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the lesser of—

''(i) the weighted average of the interest rates on the loans consolidated, rounded to

the nearest higher one-eighth of one percent; or

''(ii) 8.25 percent.''.

(c) EXTENSION OF CURRENT INTEREST RATE PROVISIONS FOR THREE YEARS.—Sections 427A(k) and 455(b)(6) of the Higher Education Act of 1965 (20 U.S.C. 1077a(k), 1087e(b)(6)) are each amended—

(1) by striking ''2003'' in the heading and inserting ''2006''; and

(2) by striking ''July 1, 2003,'' each place it appears and inserting ''July 1, 2006,''.

SEC. 2. EXTENSION OF SPECIAL ALLOWANCE PROVISION.

Section 438(b)(2)(I) of the Higher Education Act of 1965 (20 U.S.C. 1087–1(b)(2)(I)) is amended—

(1) by striking '', AND BEFORE JULY 1, 2003'' in the heading;

(2) by striking ''and before July 1, 2003,'' each place it appears, other than in clauses (ii) and (v);

(3) by striking clause (ii) and inserting the following:

''(ii) IN SCHOOL AND GRACE PERIOD.—In the case of any loan—

''(I) for which the first disbursement is made on or after January 1, 2000, and before July 1, 2006, and for which the applicable rate of interest is described in section 427A(k)(2); or

''(II) for which the first disbursement is made on or after July 1, 2006, and for which the applicable rate of interest is described in section 427A(*l*)(1), but only with respect to (aa) periods prior to the beginning of the repayment period of the loan; or (bb) during the periods in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 427(a)(2)(C) or 428(b)(1)(M);

clause (i)(III) of this subparagraph shall be applied by substituting '1.74 percent' for '2.34 percent'.'';

(4) in clause (iii), by inserting ''or (*l*)(2)'' after ''427A(k)(3)'';

(5) in clause (iv), by inserting ''or (*l*)(3)'' after ''427A(k)(4)'';

(6) in clause (v)—

(A) in the heading, by inserting ''BEFORE JULY 1, 2006'' after ''PLUS LOANS''; and

(B) by striking ''July 1, 2003,'' and inserting ''July 1, 2006,'';

(7) in clause (vi)—

(A) by inserting ''or (*l*)(3)'' after ''427A(k)(4)'' the first place it appears; and

(B) by inserting ''or (*l*)(3), whichever is applicable'' after ''427A(k)(4)'' the second place it appears; and

(8) by adding at the end the following new clause:

''(vii) LIMITATION ON SPECIAL ALLOWANCES FOR PLUS LOANS ON OR AFTER JULY 1, 2006.—In the case of PLUS loans made under section 428B and first disbursed on or after July 1, 2006, for which the interest rate is determined under section 427A(*l*)(2), a special allowance shall not be paid for such loan during any 12-month period beginning on July 1 and ending on June 30 unless—

''(I) the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial), as published by the Board of Governors of the Federal Reserve System in Publication H–15 (or its successor), for the last calendar week ending on or before such July 1; plus

''(II) 2.64 percent,

exceeds 9.0 percent.''.

Mr. JOHNSON. Mr. President, today the Senate passed S. 1762, a bill I introduced to improve the formula for student loan interest rates and to ensure the long-term viability of the student loan program. I am pleased the Senate unanimously agreed to this important legislation and I am proud to have worked with both students and lenders and my colleagues on the Health, Education, Labor, and Pensions Committee, especially Chairman KENNEDY and Ranking Member GREGG, as well as Majority Leader DASCHLE, in passing this monumental legislation.

All across America, millions of young people are preparing to apply to college. These teenagers are dreaming not only of the college experience they are about to embark upon, but also of graduating to become teachers, doctors, engineers, and even public servants. Thanks to the national education loan program, the educational and career aspirations of students and their families can become reality.

We know that the future of our Nation lies in educating the next generation of young people so that each of them can realize the promise of America. For 35 years, we have invested in our future by opening the doors of colleges and universities to the broadest cross-section of our citizens at the lowest possible cost. That is why passing this legislation was crucial to ensure that education loans are available to help future generations of students, workers, and their families climb the ladder of economic opportunity.

Since 1965, a partnership of students, workers, their families, educational institutions, lenders, and the Federal Government has opened the doors of educational opportunity for more than 50 million Americans. By any measure, the education loan program is a winning investment for our Nation.

Education loans are good investments in our economy and in our citizens. As I travel across South Dakota, educators, employers, and students tell me how valuable a college degree is in today's economy. Indeed, we know that graduates with college degrees earn an average of 80 percent more than individuals with only a high school diploma. Over a lifetime, the earnings difference between individuals with high school and college degrees can be more than $1 million. At a time when many workers are losing their jobs through no fault of their own, education loans are critical tools that can empower these workers to upgrade their skills. As we search for ways to expand our economic prosperity, we must preserve this important investment in the future of our Nation.

Congress has now taken the initiative to ensure that future generations have access to the college or university of their choice by enacting a permanent solution to the interest rate issue. Again, I thank my colleagues on both sides of the aisle for their support in passing this critically important legislation of which we can all be proud.

HIGHER EDUCATION RELIEF OPPORTUNITIES FOR STUDENTS ACT OF 2001

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 278, S. 1793.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1793) to provide the Secretary of Education with the specific waiver authority to respond to conditions in national emergency declared by the President on September 14, 2001.

There being no objection, the Senate proceeded to consider the bill.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

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

The bill (S. 1793) was read the third time and passed as follows:

S. 1793

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 ''Higher Education Relief Opportunities for Students Act of 2001''.

SEC. 2. WAIVER AUTHORITY FOR RESPONSE TO NATIONAL EMERGENCY.

(a) WAIVERS AND MODIFICATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, unless enacted with specific reference to this section, the Secretary of Education (referred to in this Act as the ''Secretary'') may waive or modify any statutory or regulatory provision applicable to the student financial aid programs under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) as the Secretary deems necessary in connection with the national emergency to provide the waivers or modifications authorized by paragraph (2).

(2) ACTIONS AUTHORIZED.—The Secretary is authorized to waive or modify any provision described in paragraph (1) as may be necessary to ensure that—

(A) borrowers of Federal student loans who are affected individuals are not placed in a worse position financially in relation to those loans because of their status as affected individuals;

(B) administrative requirements placed on affected individuals who are borrowers of Federal student loans are minimized, to the extent possible without impairing the integrity of the student loan programs, to ease the burden on such borrowers and avoid inadvertent, technical violations or defaults;

(C) the calculation of ''annual adjusted family income'' and ''available income'', as used in the determination of need for student financial assistance under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) for any such affected individual (and the determination of such need for his or her spouse and dependents, if applicable), may be modified to mean the sums received in the first calendar year of the award year for which such determination is made, in order to reflect more accurately the financial condition of such affected individual and his or her family; and

(D) institutions of higher education, eligible lenders, guaranty agencies, and other entities participating in the student assistance programs under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) that are located in, or whose operations are directly affected by, areas that are declared disaster areas by any Federal, State, or local official in connection with the national

emergency may be granted temporary relief from requirements that are rendered infeasible or unreasonable by the national emergency, including due diligence requirements and reporting deadlines.

(b) NOTICE OF WAIVERS OR MODIFICATIONS.—

(1) IN GENERAL.—Notwithstanding section 437 of the General Education Provisions Act (20 U.S.C. 1232) and section 553 of title 5, United States Code, the Secretary shall, by notice in the Federal Register, publish the waivers or modifications of statutory and regulatory provisions the Secretary deems necessary to achieve the purposes of this section.

(2) TERMS AND CONDITIONS.—The notice under paragraph (1) shall include the terms and conditions to be applied in lieu of such statutory and regulatory provisions.

(3) CASE-BY-CASE BASIS.—The Secretary is not required to exercise the waiver or modification authority under this section on a case-by-case basis.

(c) IMPACT REPORT.—The Secretary shall, not later than 15 months after first exercising any authority to issue a waiver or modification under subsection (a), report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate on the impact of any waivers or modifications issued pursuant to subsection (a) on affected individuals and the programs under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), and the basis for such determination, and include in such report the Secretary's recommendations for changes to the statutory or regulatory provisions that were the subject of such waiver or modification.

(d) NO DELAY IN WAIVERS AND MODIFICATIONS.—Sections 482(c) and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the waivers and modifications authorized or required by this Act.

SEC. 3. TUITION REFUNDS OR CREDITS FOR MEMBERS OF ARMED FORCES.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) all institutions offering postsecondary education should provide a full refund to students who are members of the Armed Forces serving on active duty during the national emergency, for that portion of a period of instruction such student was unable to complete, or for which such individual did not receive academic credit, because he or she was called up for such service; and

(2) if affected individuals withdraw from a course of study as a result of such service, such institutions should make every effort to minimize deferral of enrollment or reapplication requirements and should provide the greatest flexibility possible with administrative deadlines related to those applications.

(b) DEFINITION OF FULL REFUND.—For purposes of this section, a full refund includes a refund of required tuition and fees, or a credit in a comparable amount against future tuition and fees.

SEC. 4. USE OF PROFESSIONAL JUDGMENT.

At the time of publishing any waivers or modifications pursuant to section 2(b), the Secretary shall publish examples of measures that institutions may take in the appropriate exercise of discretion under section 479A of the Higher Education Act of 1965 (20 U.S.C. 1087tt) to adjust financial need and aid eligibility determinations for affected individuals.

SEC. 5. DEFINITIONS.

In this Act:

(1) ACTIVE DUTY.—The term ''active duty'' has the meaning given such term in section 101(d)(1) of title 10, United States Code, except that such term does not include active duty for training or attendance at a service school.

(2) AFFECTED INDIVIDUAL.—The term ''affected individual'' means an individual who—

(A) is serving on active duty during the national emergency;

(B) is serving on National Guard duty during the national emergency;

(C) resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with the national emergency; or

(D) suffered direct economic hardship as a direct result of the national emergency, as determined under a waiver or modification issued under this Act.

(3) FEDERAL STUDENT LOAN.—The term ''Federal student loan'' means a loan made, insured, or guaranteed under part B, D, or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq., 20 U.S.C. 1087a et seq., and 20 U.S.C. 1087aa et seq.).

(4) NATIONAL EMERGENCY.—The term ''national emergency'' means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(5) SERVING ON ACTIVE DUTY DURING THE NATIONAL EMERGENCY.—The term ''serving on active duty during the national emergency'' shall include service by an individual who is—

(A) a Reserve of an Armed Force ordered to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10, United States Code, or any retired member of an Armed Force ordered to active duty under section 688 of such title, for service in connection with such emergency or subsequent actions or conditions, regardless of the location at which such active duty service is performed; and

(B) any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

(6) SERVING ON NATIONAL GUARD DUTY DURING THE NATIONAL EMERGENCY.—The term ''serving on National Guard duty during the national emergency'' shall include performing training or other duty authorized by section 502(f) of title 32, United States Code, as a member of the National Guard, at the request of the President, for or in support of an operation during the national emergency.

SEC. 6. TERMINATION OF AUTHORITY.

The provisions of this Act shall cease to be effective on September 30, 2003.

DISTRICT OF COLUMBIA FAMILY COURT ACT OF 2001

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 258, H.R. 2657.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2657) to amend title XI of the District of Columbia Code to redesignate the Family Division of the Superior Court of the District of Columbia as the Family Court of the Superior Court, to recruit and retain trained and experienced judges to serve in the Family Court, to promote consistency and efficiency in the assignment of judges to the Family Court and in the consideration of actions and proceedings in the Family Court, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''District of Columbia Family Court Act of 2001''.

SEC. 2. REDESIGNATION OF FAMILY DIVISION AS FAMILY COURT OF THE SUPERIOR COURT.

(a) IN GENERAL.—Section 11–902, District of Columbia Code, is amended to read as follows:

''§ 11–902. Organization of the court

''(a) IN GENERAL.—The Superior Court shall consist of the following:

''(1) The Civil Division.

''(2) The Criminal Division.

''(3) The Family Court.

''(4) The Probate Division.

''(5) The Tax Division.

''(b) BRANCHES.—The divisions of the Superior Court may be divided into such branches as the Superior Court may by rule prescribe.

''(c) DESIGNATION OF PRESIDING JUDGE OF FAMILY COURT.—The chief judge of the Superior Court shall designate one of the judges assigned to the Family Court of the Superior Court to serve as the presiding judge of the Family Court of the Superior Court.

''(d) JURISDICTION DESCRIBED.—The Family Court shall have original jurisdiction over the actions, applications, determinations, adjudications, and proceedings described in section 11–1101. Actions, applications, determinations, adjudications, and proceedings being assigned to cross-jurisdictional units established by the Superior Court, including the Domestic Violence Unit, on the date of enactment of this section may continue to be so assigned after the date of enactment of this section.''.

(b) CONFORMING AMENDMENT TO CHAPTER 9.—Section 11–906(b), District of Columbia Code, is amended by inserting ''the Family Court and'' before ''the various divisions''.

(c) CONFORMING AMENDMENTS TO CHAPTER 11.—(1) The heading for chapter 11 of title 11, District of Columbia, is amended by striking ''FAMILY DIVISION'' and inserting ''FAMILY COURT''.

(2) The item relating to chapter 11 in the table of chapters for title 11, District of Columbia, is amended by striking ''FAMILY DIVISION'' and inserting ''FAMILY COURT''.

(d) CONFORMING AMENDMENTS TO TITLE 16.—

(1) CALCULATION OF CHILD SUPPORT.—Section 16–916.1(o)(6), District of Columbia Code, is amended by striking ''Family Division'' and inserting ''Family Court of the Superior Court''.

(2) EXPEDITED JUDICIAL HEARING OF CASES BROUGHT BEFORE HEARING COMMISSIONERS.—Section 16–924, District of Columbia Code, is amended by striking ''Family Division'' each place it appears in subsections (a) and (f) and inserting ''Family Court''.

(3) GENERAL REFERENCES TO PROCEEDINGS.—Chapter 23 of title 16, District of Columbia Code, is amended by inserting after section 16–2301 the following new section:

''§ 16–2301.1. References deemed to refer to Family Court of the Superior Court

''Any reference in this chapter or any other Federal or District of Columbia law, Executive order, rule, regulation, delegation of authority, or any document of or pertaining to the Family Division of the Superior Court of the District of Columbia shall be deemed to refer to the Family Court of the Superior Court of the District of Columbia.''.

(4) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 23 of title 16, District of Columbia, is amended by inserting after the item relating to section 16–2301 the following new item:

''16–2301.1. References deemed to refer to Family Court of the Superior Court.''.

SEC. 3. APPOINTMENT AND ASSIGNMENT OF JUDGES; NUMBER AND QUALIFICATIONS.

(a) NUMBER OF JUDGES FOR FAMILY COURT; QUALIFICATIONS AND TERMS OF SERVICE.—Chapter 9 of title 11, District of Columbia Code, is amended by inserting after section 11–908 the following new section:

''§ 11–908A. Special rules regarding assignment and service of judges of Family Court

''(a) NUMBER OF JUDGES.—

''(1) IN GENERAL.—The number of judges serving on the Family Court of the Superior Court shall be not more than 15.

''(2) EXCEPTION.—If the chief judge determines that, in order to carry out the intent and purposes of this Act, an emergency exists such that the number of judges needed on the Family Court of the Superior Court at any time is more than 15, the chief judge may temporarily reassign qualified judges from other divisions of the Superior Court or qualified senior judges to serve on the Family Court. Such reassigned judges shall not be subject to the term of service requirements of this Act.

''(3) COMPOSITION.—The total number of judges on the Superior Court may exceed the limit on such judges specified in section 11–903 to the extent necessary to maintain the requirements of this subsection if—

''(A) the number of judges serving on the Family Court is less than 15; and

''(B) the Chief Judge of the Superior Court—

''(i) is unable to secure a volunteer judge who is sitting on the Superior Court outside of the Family Court for reassignment to the Family Court;

''(ii) obtains approval of the Joint Committee on Judicial Administration; and

''(iii) reports to Congress regarding the circumstances that gave rise to the necessity to exceed the cap.

''(b) QUALIFICATIONS.—The chief judge may not assign an individual to serve on the Family Court of the Superior Court or handle a Family Court case unless—

''(1) the individual has training or expertise in family law;

''(2) the individual certifies to the chief judge that the individual intends to serve the full term of service, except that this paragraph shall not apply with respect to individuals serving as senior judges under section 11–1504, individuals serving as temporary judges under section 11–908, and any other judge serving in another division of the Superior Court;

''(3) the individual certifies to the chief judge that the individual will participate in the ongoing training programs carried out for judges of the Family Court under section 11–1104(c); and

''(4) the individual meets the requirements of section 11–1501(b).

''(c) TERM OF SERVICE.—

''(1) IN GENERAL.—

''(A) SITTING JUDGES.—An individual assigned to serve as a judge of the Family Court of the Superior Court who is serving as a judge in the Superior Court on the date of enactment of the District of Columbia Family Court Act of 2001 shall serve in the Family Court for a term of not fewer than 3 years as determined by the chief judge of the Superior Court (including any period of service on the Family Division of the Superior Court immediately preceding the date of enactment of such Act).

''(B) NEW JUDGES.—An individual assigned to serve as a judge of the Family Court of the Superior Court who is not serving as a judge in the Superior Court on the date of enactment of the District of Columbia Family Court Act of 2001 shall serve for a term of 5 years.

''(2) ASSIGNMENT FOR ADDITIONAL SERVICE.—After the term of service of a judge of the Family Court (as described in paragraph (1)) expires, at the judge's request and with the approval of the chief judge, the judge may be assigned for additional service on the Family Court for a period of such duration (consistent with section 431(c) of the District of Columbia Home Rule Act) as the chief judge may provide.

''(3) PERMITTING SERVICE ON FAMILY COURT FOR ENTIRE TERM.—At the request of the judge and with the approval of the chief judge, a judge may serve as a judge of the Family Court for the judge's entire term of service as a judge of the Superior Court under section 431(c) of the District of Columbia Home Rule Act.

''(d) REASSIGNMENT TO OTHER DIVISIONS.—The chief judge may reassign a judge of the Family Court to any division of the Superior Court if the chief judge determines that in the interest of justice the judge is unable to continue serving in the Family Court.''.

(b) PLAN FOR FAMILY COURT TRANSITION.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the chief judge of the Superior Court of the District of Columbia shall prepare and submit to the President and Congress a transition plan for the Family Court of the Superior Court, and shall include in the plan the following:

(A) The chief judge's determination of the role and function of the presiding judge of the Family Court.

(B) The chief judge's determination of the number of judges needed to serve on the Family Court.

(C) The chief judge's determination of the number of magistrate judges of the Family Court needed for appointment under section 11–1732, District of Columbia Code.

(D) The chief judge's determination of the appropriate functions of such magistrate judges, together with the compensation of and other personnel matters pertaining to such magistrate judges.

(E) A plan for case flow, case management, and staffing needs (including the needs for both judicial and nonjudicial personnel) for the Family Court.

(F) A plan for space, equipment, and other physical plant needs and requirements during the transition, as determined in consultation with the Administrator of General Services.

(G) An analysis of the number of magistrate judges needed under the expedited appointment procedures established under section 6(d) in reducing the number of pending actions and proceedings within the jurisdiction of the Family Court (as described in section 11–902(d), District of Columbia, as amended by subsection (a)).

(H) Consistent with the requirements of paragraph (2), a proposal for the disposition or transfer to the Family Court of child abuse and neglect actions pending as of the date of enactment of this Act (which were initiated in the Family Division but remain pending before judges serving in other Divisions of the Superior Court as of such date) in a manner consistent with applicable Federal and District of Columbia law and best practices, including best practices developed by the American Bar Association and the National Council of Juvenile and Family Court Judges.

(I) An estimate of the number of cases for which the deadline for disposition or transfer to the Family Court, specified in paragraph (2)(B), cannot be met and the reasons why such deadline cannot be met.

(2) IMPLEMENTATION OF THE PROPOSAL FOR TRANSFER OR DISPOSITION OF ACTIONS AND PROCEEDINGS TO FAMILY COURT.—

(A) IN GENERAL.—Except as provided in subparagraph (C), the chief judge of the Superior Court and the presiding judge of the Family Court shall take such steps as may be required as provided in the proposal for disposition of actions and proceedings under paragraph (1)(H) to ensure that each child abuse and neglect action of the Superior Court (as described in section 11–902(d), District of Columbia Code, as amended by subsection (a)) is transferred to the Family Court or otherwise disposed of as provided in subparagraph (B). The requirement of this subparagraph shall not apply to a child abuse or neglect action pending before a senior judge as defined in section 11–1504, District of Columbia Code.

(B) DEADLINE.—

(i) IN GENERAL.—Notwithstanding any other provision of this Act or any amendment made by this Act and except as provided in subparagraph (C), no child abuse or neglect action shall remain pending with a judge not serving on the Family Court upon the expiration of 18 months after the filing of the transition plan required under paragraph (1).

(ii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall preclude the immediate transfer of cases to the Family Court, particularly cases which have been filed with the court for less than 6 months prior to the date of enactment of this Act.

(C) RETAINED CASES.—Child abuse and neglect cases that were initiated in the Family Division but remain pending before judges in other Divisions of the Superior Court as of the date of enactment of this Act may remain before judges in such other Divisions when—

(i) the case remains at all times in full compliance with section 103(a)(3) of Public Law 105–89 (42 U.S.C. 675(5)(E)); and

(ii) the case has been assigned continuously to the judge for 18 months or more and the judge has a special knowledge of the child's needs, such that reassignment would be harmful to the child.

(D) PROGRESS REPORTS.—The chief judge of the Superior Court shall report to the Committee on Appropriations of each House, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives at 6-month intervals for a period of 2 years after the date of enactment of this Act on the progress made towards disposing of actions or proceedings described in subparagraph (B).

(3) EFFECTIVE DATE OF IMPLEMENTATION OF PLAN.—The chief judge of the Superior Court may not take any action to implement the transition plan under this subsection until the expiration of the 30-day period which begins on the date the chief judge submits the plan to the President and Congress under paragraph (1).

(c) TRANSITION TO REQUIRED NUMBER OF JUDGES.—

(1) ANALYSIS BY CHIEF JUDGE OF SUPERIOR COURT.—The chief judge of the Superior Court of the District of Columbia shall include in the transition plan prepared under subsection (b)—

(A) the chief judge's determination of the number of individuals serving as judges of the Superior Court who—

(i) meet the qualifications for judges of the Family Court of the Superior Court under section 11–908A, District of Columbia Code (as added by subsection (a)); and

(ii) are willing and able to serve on the Family Court; and

(B) if the chief judge determines that the number of individuals described in subparagraph (A) is less than 15, a request that the Judicial Nomination Commission recruit and the President nominate (in accordance with section 433 of the District of Columbia Home Rule Act) such additional number of individuals to serve on the Superior Court who meet the qualifications for judges of the Family Court under section 11–908A, District of Columbia Code, as may be required to enable the chief judge to make the required number of assignments.

(2) ROLE OF DISTRICT OF COLUMBIA JUDICIAL NOMINATION COMMISSION.—For purposes of section 434(d)(1) of the District of Columbia Home Rule Act, the submission of a request from the chief judge of the Superior Court of the District of Columbia under paragraph (1)(B) shall be deemed to create a number of vacancies in the position of judge of the Superior Court equal to

the number of additional appointments so requested by the chief judge, except that the deadline for the submission by the District of Columbia Judicial Nomination Commission of nominees to fill such vacancies shall be 90 days after the creation of such vacancies. In carrying out this paragraph, the District of Columbia Judicial Nomination Commission shall recruit individuals for possible nomination and appointment to the Superior Court who meet the qualifications for judges of the Family Court of the Superior Court.

(d) REPORT BY COMPTROLLER GENERAL.—

(1) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall prepare and submit to Congress and the chief judge of the Superior Court of the District of Columbia a report on the implementation of this Act (including the transition plan under subsection (b)), and shall include in the report the following:

(A) An analysis of the procedures used to make the initial appointments of judges of the Family Court under this Act and the amendments made by this Act, including an analysis of the time required to make such appointments and the effect of the qualification requirements for judges of the Court (including requirements relating to the length of service on the Court) on the time required to make such appointments.

(B) An analysis of the impact of magistrate judges for the Family Court (including the expedited initial appointment of magistrate judges for the Court under section 6(d)) on the workload of judges and other personnel of the Court.

(C) An analysis of the number of judges needed for the Family Court, including an analysis of how the number may be affected by the qualification requirements for judges, the availability of magistrate judges, and other provisions of this Act or the amendments made by this Act.

(2) SUBMISSION TO CHIEF JUDGE OF SUPERIOR COURT.—Prior to submitting the report under paragraph (1) to Congress, the Comptroller General shall provide a preliminary version of the report to the chief judge of the Superior Court and shall take any comments and recommendations of the chief judge into consideration in preparing the final version of the report.

(e) CONFORMING AMENDMENT.—The first sentence of section 11–908(a), District of Columbia Code, is amended by striking ''The chief judge'' and inserting ''Subject to section 11–908A, the chief judge''.

(f) CLERICAL AMENDMENT.—The table of sections for chapter 9 of title 11, District of Columbia Code, is amended by inserting after the item relating to section 11–908 the following new item:

''11–908A. Special rules regarding assignment and service of judges of Family Court.''.

SEC. 4. IMPROVING ADMINISTRATION OF CASES AND PROCEEDINGS IN FAMILY COURT.

(a) IN GENERAL.—Chapter 11 of title 11, District of Columbia, is amended by striking section 1101 and inserting the following:

''§ 11–1101. Jurisdiction of the Family Court

''(a) IN GENERAL.—The Family Court of the District of Columbia shall be assigned and have original jurisdiction over—

''(1) actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, pendente lite and permanent, and for support and custody of minor children;

''(2) applications for revocation of divorce from bed and board;

''(3) actions to enforce support of any person as required by law;

''(4) actions seeking custody of minor children, including petitions for writs of habeas corpus;

''(5) actions to declare marriages void;

''(6) actions to declare marriages valid;

''(7) actions for annulments of marriage;

''(8) determinations and adjudications of property rights, both real and personal, in any action referred to in this section, irrespective of any jurisdictional limitation imposed on the Superior Court;

''(9) proceedings in adoption;

''(10) proceedings under the Act of July 10, 1957 (D.C. Code, secs. 30–301 to 30–324);

''(11) proceedings to determine paternity of any child born out of wedlock;

''(12) civil proceedings for protection involving intrafamily offenses, instituted pursuant to chapter 10 of title 16;

''(13) proceedings in which a child, as defined in section 16–2301, is alleged to be delinquent, neglected, or in need of supervision;

''(14) proceedings under chapter 5 of title 21 relating to the commitment of the mentally ill;

''(15) proceedings under chapter 11 of title 21 relating to the commitment of the substantially retarded; and

''(16) proceedings under Interstate Compact on Juveniles (described in title IV of the District of Columbia Court Reform and Criminal Procedure Act of 1970).

''(b) DEFINITION.—

''(1) IN GENERAL.—In this chapter, the term 'action or proceeding' with respect to the Family Court refers to cause of action described in paragraphs (1) through (16) of subsection (a).

''(2) EXCEPTION.—An action or proceeding may be assigned to or retained by cross-jurisdictional units established by the Superior Court, including the Domestic Violence Unit.

''§ 11–1102. Use of alternative dispute resolution

''To the greatest extent practicable and safe, cases and proceedings in the Family Court of the Superior Court shall be resolved through alternative dispute resolution procedures, in accordance with such rules as the Superior Court may promulgate.

''§ 11–1103. Standards of practice for appointed counsel

''The Superior Court shall establish standards of practice for attorneys appointed as counsel in the Family Court of the Superior Court.

''§ 11–1104. Administration

''(a) 'ONE FAMILY, ONE JUDGE' REQUIREMENT FOR CASES AND PROCEEDINGS.—To the greatest extent practicable, feasible, and lawful, if an individual who is a party to an action or proceeding assigned to the Family Court has an immediate family or household member who is a party to another action or proceeding assigned to the Family Court, the individual's action or proceeding shall be assigned to the same judge or magistrate judge to whom the immediate family member's action or proceeding is assigned.

''(b) RETENTION OF JURISDICTION OVER CASES.—

''(1) IN GENERAL.—In addition to the requirement of subsection (a), any action or proceeding assigned to the Family Court of the Superior Court shall remain under the jurisdiction of the Family Court until the action or proceeding is finally disposed, except as provided in paragraph (2)(C).

''(2) ONE FAMILY, ONE JUDGE.—

''(A) FOR THE DURATION.—An action or proceeding assigned pursuant to this subsection shall remain with the judge or magistrate judge to whom the action or proceeding is assigned for the duration of the action or proceeding to the greatest extent practicable, feasible, and lawful.

''(B) ALL CASES INVOLVING AN INDIVIDUAL.—If an individual who is a party to an action or proceeding assigned to the Family Court becomes a party to another action or proceeding assigned to the Family Court, the individual's subsequent action or proceeding shall be assigned to the same judge or magistrate judge to whom the individual's initial action or proceeding is assigned to the greatest extent practicable and feasible.

''(C) FAMILY COURT CASE RETENTION.—If the full term of a Family Court judge to whom the action or proceeding is assigned is completed prior to the final disposition of the action or proceeding, the presiding judge of the Family Court shall ensure that the matter or proceeding is reassigned to a judge serving on the Family Court.

''(D) EXCEPTION.—A judge whose full term on the Family Court is completed but who remains in Superior Court may retain the case or proceeding for not more than 18 months after ceasing to serve if—

''(i) the case remains at all times in full compliance with section 103(a)(3) of Public Law 105–89 (42 U.S.C. 675(E)), if applicable, and the case has been assigned continuously to the judge for 18 months or more and the judge has a special knowledge of the child's needs, such that reassignment would be harmful to the child; and

''(ii) the chief judge, in consultation with the presiding judge of the Family Court determines that such retention is in the best interests of the parties.

''(3) STANDARDS OF JUDICIAL ETHICS.—The actions of a judge or magistrate judge in retaining an action or proceeding under this paragraph shall be subject to applicable standards of judicial ethics.

''(c) TRAINING PROGRAM.—

''(1) IN GENERAL.—The chief judge, in consultation with the presiding judge of the Family Court, shall carry out an ongoing program to provide training in family law and related matters for judges of the Family Court and other judges of the Superior Court who are assigned Family Court cases, including magistrate judges, attorneys who practice in the Family Court, and appropriate nonjudicial personnel, and shall include in the program information and instruction regarding the following:

''(A) Child development.

''(B) Family dynamics, including domestic violence.

''(C) Relevant Federal and District of Columbia laws.

''(D) Permanency planning principles and practices.

''(E) Recognizing the risk factors for child abuse.

''(F) Any other matters the presiding judge considers appropriate.

''(2) USE OF CROSS-TRAINING.—The program carried out under this section shall use the resources of lawyers and legal professionals, social workers, and experts in the field of child development and other related fields.

''(d) ACCESSIBILITY OF MATERIALS, SERVICES, AND PROCEEDINGS; PROMOTION OF 'FAMILY-FRIENDLY' ENVIRONMENT.—

''(1) IN GENERAL.—To the greatest extent practicable, the chief judge and the presiding judge of the Family Court shall ensure that the materials and services provided by the Family Court are understandable and accessible to the individuals and families served by the Family Court, and that the Family Court carries out its duties in a manner which reflects the special needs of families with children.

''(2) LOCATION OF PROCEEDINGS.—To the maximum extent feasible, safe, and practicable, cases and proceedings in the Family Court shall be conducted at locations readily accessible to the parties involved.

''(e) INTEGRATED COMPUTERIZED CASE TRACKING AND MANAGEMENT SYSTEM.—The Executive Officer of the District of Columbia courts under section 11–1703 shall work with the chief judge of the Superior Court—

''(1) to ensure that all records and materials of cases and proceedings in the Family Court are stored and maintained in electronic format accessible by computers for the use of judges, magistrate judges, and nonjudicial personnel of the Family Court, and for the use of other appropriate offices of the District government in accordance with the plan for integrating computer systems prepared by the Mayor of the District of Columbia under section 4(b) of the District of Columbia Family Court Act of 2001;

''(2) to establish and operate an electronic tracking and management system for cases and proceedings in the Family Court for the use of judges and nonjudicial personnel of the Family Court, using the records and materials stored and maintained pursuant to paragraph (1); and

''(3) to expand such system to cover all divisions of the Superior Court as soon as practicable.

"§ 11–1105. Social services and other related services

''(a) ONSITE COORDINATION OF SERVICES AND INFORMATION.—

''(1) IN GENERAL.—The Mayor of the District of Columbia, in consultation with the chief judge of the Superior Court, shall ensure that representatives of the appropriate offices of the District government which provide social services and other related services to individuals and families served by the Family Court (including the District of Columbia Public Schools, the District of Columbia Housing Authority, the Child and Family Services Agency, the Office of the Corporation Counsel, the Metropolitan Police Department, the Department of Health, and other offices determined by the Mayor) are available on-site at the Family Court to coordinate the provision of such services and information regarding such services to such individuals and families.

''(2) DUTIES OF HEADS OF OFFICES.—The head of each office described in paragraph (1), including the Superintendent of the District of Columbia Public Schools and the Director of the District of Columbia Housing Authority, shall provide the Mayor with such information, assistance, and services as the Mayor may require to carry out such paragraph.

''(b) APPOINTMENT OF SOCIAL SERVICES LIAISON WITH FAMILY COURT.—The Mayor of the District of Columbia shall appoint an individual to serve as a liaison between the Family Court and the District government for purposes of subsection (a) and for coordinating the delivery of services provided by the District government with the activities of the Family Court and for providing information to the judges, magistrate judges, and nonjudicial personnel of the Family Court regarding the services available from the District government to the individuals and families served by the Family Court. The Mayor shall provide on an ongoing basis information to the chief judge of the Superior Court and the presiding judge of the Family Court regarding the services of the District government which are available for the individuals and families served by the Family Court.

"§ 11–1106. Reports to Congress

''Not later than 90 days after the end of each calendar year, the chief judge of the Superior Court shall submit a report to Congress on the activities of the Family Court during the year, and shall include in the report the following:

''(1) The chief judge's assessment of the productivity and success of the use of alternative dispute resolution pursuant to section 11–1102.

''(2) Goals and timetables as required by the Adoption and Safe Families Act of 1997 to improve the Family Court's performance in the following year.

''(3) Information on the extent to which the Family Court met deadlines and standards applicable under Federal and District of Columbia law to the review and disposition of actions and proceedings under the Family Court's jurisdiction during the year.

''(4) Information on the progress made in establishing locations and appropriate space for the Family Court that are consistent with the mission of the Family Court until such time as the locations and space are established.

''(5) Information on any factors which are not under the control of the Family Court which interfere with or prevent the Family Court from carrying out its responsibilities in the most effective manner possible.

''(6) Information on—

''(A) the number of judges serving on the Family Court as of the end of the year;

''(B) how long each such judge has served on the Family Court;

''(C) the number of cases retained outside the Family Court;

''(D) the number of reassignments to and from the Family Court; and

''(E) the ability to recruit qualified sitting judges to serve on the Family Court.

''(7) Based on outcome measures derived through the use of the information stored in electronic format under section 11–1104(d), an analysis of the Family Court's efficiency and effectiveness in managing its case load during the year, including an analysis of the time required to dispose of actions and proceedings among the various categories of the Family Court's jurisdiction, as prescribed by applicable law and best practices, including (but not limited to) best practices developed by the American Bar Association and the National Council of Juvenile and Family Court Judges.

''(8) If the Family Court failed to meet the deadlines, standards, and outcome measures described in the previous paragraphs, a proposed remedial action plan to address the failure.''.

(b) EXPEDITED APPEALS FOR CERTAIN FAMILY COURT ACTIONS AND PROCEEDINGS.—Section 11–721, District of Columbia Code, is amended by adding at the end the following new subsection:

''(g) Any appeal from an order of the Family Court of the District of Columbia terminating parental rights or granting or denying a petition to adopt shall receive expedited review by the District of Columbia Court of Appeals.''.

(c) PLAN FOR INTEGRATING COMPUTER SYSTEMS.—

(1) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Mayor of the District of Columbia shall submit to the President and Congress a plan for integrating the computer systems of the District government with the computer systems of the Superior Court of the District of Columbia so that the Family Court of the Superior Court and the appropriate offices of the District government which provide social services and other related services to individuals and families served by the Family Court of the Superior Court (including the District of Columbia Public Schools, the District of Columbia Housing Authority, the Child and Family Services Agency, the Office of the Corporation Counsel, the Metropolitan Police Department, the Department of Health, and other offices determined by the Mayor) will be able to access and share information on the individuals and families served by the Family Court.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Mayor of the District of Columbia such sums as may be necessary to carry out paragraph (1).

(d) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, District of Columbia Code, is amended by adding at the end the following new items:

''11–1102. Use of alternative dispute resolution.
''11–1103. Standards of practice for appointed counsel.
''11–1104. Administration.
''11–1105. Social services and other related services.
''11–1106. Reports to Congress.''.

SEC. 5. TREATMENT OF HEARING COMMISSIONERS AS MAGISTRATE JUDGES.

(a) IN GENERAL.—

(1) REDESIGNATION OF TITLE.—Section 11–1732, District of Columbia Code, is amended—

(A) by striking ''hearing commissioners'' each place it appears in subsection (a), subsection (b), subsection (d), subsection (i), subsection (l), and subsection (n) and inserting ''magistrate judges'';

(B) by striking ''hearing commissioner'' each place it appears in subsection (b), subsection (c), subsection (e), subsection (f), subsection (g), subsection (h), and subsection (j) and inserting ''magistrate judge'';

(C) by striking ''hearing commissioner's'' each place it appears in subsection (e) and subsection (k) and inserting ''magistrate judge's'';

(D) by striking ''Hearing commissioners'' each place it appears in subsections (b), (d), and (i) and inserting ''Magistrate judges''; and

(E) in the heading, by striking ''**Hearing commissioners**'' and inserting ''**Magistrate judges**''.

(2) CONFORMING AMENDMENTS.—Section 16–924, District of Columbia Code, is amended—

(A) by striking ''hearing commissioner'' each place it appears and inserting ''magistrate judge''; and

(B) in subsection (f), by striking ''hearing commissioner's'' and inserting ''magistrate judge's''.

(3) CLERICAL AMENDMENT.—The item relating to section 11–1732 of the table of sections of chapter 17 of title 11, D.C. Code, is amended to read as follows:

''11–1732. Magistrate judges.''.

(b) TRANSITION PROVISION REGARDING HEARING COMMISSIONERS.—Any individual serving as a hearing commissioner under section 11–1732 of the District of Columbia Code as of the date of the enactment of this Act shall serve the remainder of such individual's term as a magistrate judge, and may be reappointed as a magistrate judge in accordance with section 11–1732(d), District of Columbia Code, except that any individual serving as a hearing commissioner as of the date of the enactment of this Act who was appointed as a hearing commissioner prior to the effective date of section 11–1732 of the District of Columbia Code shall not be required to be a resident of the District of Columbia to be eligible to be reappointed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 6. SPECIAL RULES FOR MAGISTRATE JUDGES OF FAMILY COURT.

(a) IN GENERAL.—Chapter 17 of title 11, District of Columbia Code, is amended by inserting after section 11–1732 the following new section:

"§ 11–1732A. Special rules for magistrate judges of the Family Court of the Superior Court and the Domestic Violence Unit

''(a) USE OF SOCIAL WORKERS IN ADVISORY MERIT SELECTION PANEL.—The advisory selection merit panel used in the selection of magistrate judges for the Family Court of the Superior Court under section 11–1732(b) shall include certified social workers specializing in child welfare matters who are residents of the District and who are not employees of the District of Columbia Courts.

''(b) SPECIAL QUALIFICATIONS.—Notwithstanding section 11–1732(c), no individual shall be appointed as a magistrate judge for the Family Court of the Superior Court or assigned to handle Family Court cases unless that individual—

''(1) is a citizen of the United States;

''(2) is an active member of the unified District of Columbia Bar;

''(3) for the 5 years immediately preceding the appointment has been engaged in the active practice of law in the District, has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or District government, or any combination thereof;

''(4) has not fewer than 3 years of training or experience in the practice of family law as a lawyer or judicial officer; and

''(5)(A) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least 90 days immediately prior to appointment, and retains such residency during service as a magistrate judge; or

''(B) is a bona fide resident of the areas consisting of Montgomery and Prince George's

Counties in Maryland, Arlington and Fairfax Counties, and the City of Alexandria in Virginia, has maintained an actual place of abode in such area, areas, or the District of Columbia for at least 5 years prior to appointment, and certifies that the individual will become a bona fide resident of the District of Columbia not later than 90 days after appointment.

''(c) SERVICE OF CURRENT HEARING COMMISSIONERS.—Those individuals serving as hearing commissioners under section 11–1732 on the effective date of this section who meet the qualifications described in subsection (b)(4) may request to be appointed as magistrate judges for the Family Court of the Superior Court under such section.

''(d) FUNCTIONS OF FAMILY COURT AND DOMESTIC VIOLENCE UNIT MAGISTRATES.—A magistrate judge, when specifically designated by the chief judge in consultation with the presiding judge to serve in the Family Court or in the Domestic Violence Unit and subject to the rules of the Superior Court and the right of review under section 11–1732(k), may perform the following functions:

''(1) Administer oaths and affirmations and take acknowledgements.

''(2) Subject to the rules of the Superior Court and applicable Federal and District of Columbia law, conduct hearings, make findings and enter interim and final orders or judgments in uncontested or contested proceedings within the jurisdiction of the Family Court and the Domestic Violence Unit of the Superior Court (as described in section 11–1101), excluding jury trials and trials of felony cases, as assigned by the presiding judge of the Family Court.

''(3) Subject to the rules of the Superior Court, enter an order punishing an individual for contempt, except that no individual may be detained pursuant to the authority of this paragraph for longer than 180 days.

''(e) LOCATION OF PROCEEDINGS.—To the maximum extent feasible, safe, and practicable, magistrate judges of the Family Court of the Superior Court shall conduct proceedings at locations readily accessible to the parties involved.

''(f) TRAINING.—The chief judge, in consultation with the presiding judge of the Family Court of the Superior Court, shall ensure that all magistrate judges of the Family Court receive training to enable them to fulfill their responsibilities, including specialized training in family law and related matters.''.

(b) CONFORMING AMENDMENTS.—(1) Section 11–1732(a), District of Columbia Code, is amended by inserting after ''the duties enumerated in subsection (j) of this section'' the following: ''(or, in the case of magistrate judges for the Family Court or the Domestic Violence Unit of the Superior Court, the duties enumerated in section 11–1732A(d))''.

(2) Section 11–1732(c), District of Columbia Code, is amended by striking ''No individual'' and inserting ''Except as provided in section 11–1732A(b), no individual''.

(3) Section 11–1732(k), District of Columbia Code, is amended—

(A) by striking ''subsection (j),'' and inserting the following: ''subsection (j) (or proceedings and hearings under section 11–1732A(d), in the case of magistrate judges for the Family Court or the Domestic Violence Unit of the Superior Court),''; and

(B) by inserting after ''appropriate division'' the following: ''(or, in the case of an order or judgment of a magistrate judge of the Family Court or the Domestic Violence Unit of the Superior Court, by a judge of the Family Court or the Domestic Violence Unit)''.

(4) Section 11–1732(l), District of Columbia Code, is amended by inserting after ''responsibilities'' the following: ''(subject to the requirements of section 11–1732A(f) in the case of magistrate judges of the Family Court of the Superior Court or the Domestic Violence Unit)''.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 17 of title 11, District of Columbia, is amended by inserting after the item relating to section 11–1732 the following new item:

''11–1732A. Special rules for magistrate judges of the Family Court of the Superior Court and the Domestic Violence Unit.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of enactment of this Act.

(2) EXPEDITED INITIAL APPOINTMENTS.—

(A) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the chief judge of the Superior Court of the District of Columbia shall appoint not more than 5 individuals to serve as magistrate judges for the Family Division of the Superior Court in accordance with the requirements of sections 11–1732 and 11–1732A, District of Columbia Code (as added by subsection (a)).

(B) TRANSITION RESPONSIBILITIES OF INITIALLY APPOINTED FAMILY COURT MAGISTRATES.—The chief judge of the Superior Court and the presiding judge of the Family Division of the Superior Court (acting jointly) shall first assign the magistrate judges of Family Court appointed under this paragraph to work with judges to whom the cases are currently assigned in making case disposition or transfer decisions as follows:

(i) The action or proceeding involves an allegation of abuse or neglect.

(ii) The judge to whom the action or proceeding is assigned as of the date of enactment of this Act is not assigned to the Family Division.

(iii) The action or proceeding was initiated in the Family Division prior to the 2-year period which ends on the date of enactment of this Act.

SEC. 7. SENSE OF CONGRESS REGARDING BORDER AGREEMENT WITH MARYLAND AND VIRGINIA.

It is the sense of Congress that the State of Maryland, the Commonwealth of Virginia, and the District of Columbia should promptly enter into a border agreement to facilitate the timely and safe placement of children in the District of Columbia's welfare system in foster and kinship homes and other facilities in Maryland and Virginia.

SEC. 8. SENSE OF THE SENATE REGARDING THE USE OF COURT APPOINTED SPECIAL ADVOCATES.

It is the sense of the Senate that the chief judge of the Superior Court and the presiding judge of the Family Division should take all steps necessary to encourage, support, and improve the use of Court Appointed Special Advocates (CASA) in family court actions or proceedings.

SEC. 9. INTERIM REPORTS.

Not later than 12 months after the date of enactment of this Act, the chief judge of the Superior Court and the presiding judge of the Family Court—

(1) in consultation with the General Services Administration, shall submit to Congress a feasibility study for the construction of appropriate permanent courts and facilities for the Family Court; and

(2) shall submit to Congress an analysis of the success of the use of magistrate judges under the expedited appointment procedures established under section 6(d) in reducing the number of pending actions and proceedings within the jurisdiction of the Family Court (as described in section 11–902(d), District of Columbia).

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Courts of the District of Columbia and the District of Columbia such sums as may be necessary to carry out the amendments made by this Act.

SEC. 11. EFFECTIVE DATE.

The amendments made by this Act shall take effect upon the initial appropriation of funds specifically designated by Federal law for purposes of carrying out this Act.

AMENDMENT NO. 2610

Mr. DASCHLE. Mr. President, Senators LIEBERMAN and THOMPSON have an amendment at the desk, and I ask for its consideration; that the amendment be agreed to, the motion to reconsider be laid upon the table, that the committee substitute, as amended, be agreed to, the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table, with no further intervening action or debate, and that any statements relating thereto be printed in the RECORD.

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

The amendment (No. 2610) was agreed to.

(The amendment is printed in today's RECORD under ''Amendments Submitted and Proposed.'')

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (H.R. 2657), as amended, was passed.

Mr. DEWINE. Mr. President, I rise today to thank my colleagues for supporting and passing the ''District of Columbia Family Court Act of 2001,'' which my friend and colleague, Senator LANDRIEU, and I introduced earlier this summer. Our bill is aimed at guiding the District, as the Superior Court strives to reform its role in the child welfare system through its creation of a Family Court. This is a good bill, an important bill. It will have a significant impact on children and families throughout the District of Columbia.

Just last week, by passing the fiscal year 2002 District of Columbia Appropriations bill, the Senate took a major step toward fundamentally changing the direction of what we are doing in the District regarding its child welfare system. Passage of that bill, while significant, was just the beginning of our work, not the end. As Chair and Ranking Member of the District of Columbia Appropriations Subcommittee, Senator LANDRIEU and I made sure that the appropriations bill made a sizeable and sound investment in the District's court system. However, the bill we are passing today, through the creation of a new family court structure, actually outlines the essential, institutional changes necessary to achieve long-term reform and improvement in the District's ability to protect its children.

We need fundamental reforms, because, quite frankly, the District's child welfare system is a mess. This is nothing new. We have seen articles repeatedly in the Washington Post, that paint a very disturbing picture of the kinds of atrocities that children in the District of Columbia court system have faced. For example, a recent Post series outlined multiple mistakes made by the District of Columbia Government by placing children in unsafe homes or institutions. Unfortunately, these same mistakes occur in the child welfare system throughout our country. Here in Washington, though, these

mistakes resulted in over 180 deaths of children in foster care since 1993, 40 of whom died as a direct result of government workers' failure to take key preventative actions or because they placed children in unsafe homes or institutions.

Again just last week, the Post ran a story about deficiencies in District's child services. According to this story, ''nearly 80 percent of the District's child abuse complaints were not investigated within 30 days and close to two-thirds of foster homes housing city children were unlicensed this year,'' a study reported. The article continues: ''Among the reports' findings, 30 percent of the children under District care were not visited by social workers during their first 8 weeks in foster care. Thirty-seven percent of child neglect complaints were not investigated within 30 days after they came into the city's hotline. Abuse and neglect cases are required to be investigated within a 30-day period.''

Stories like this, have been running for years in the District of Columbia. What is happening here in America's capital, is a national tragedy. I realize that no child welfare system is perfect. Each one of us representing our respective States has seen problems in our home States, but what we see in the District of Columbia is an absolute outright scandal.

Since being appointed to the District of Columbia Appropriations Committee, I have made it my personal mission to find financial solutions for the problems facing District of Columbia's foster children. In March, we laid the groundwork for a District of Columbia Family Court Bill that would be bipartisan and effective. In drafting this bill, we have held numerous hearings, met with child welfare advocates from across the District, and had countless meetings with the District of Columbia Superior Court Judges.

The bill we are now passing today includes a number of important reforms that would ensure that the judicial system protects the children of the District. First, it increases the length of judicial terms for judges from 1 year for judges already presiding over the Superior Court to 3 years. New judges appointed to the Superior Court and then assigned to the Family Court will have 5-year terms. This change enables judges to develop an expertise in Family Law.

Second, our bill creates magistrates so that the current backlog of 4,500 permanency cases can be properly and adequately addressed. These magistrates will be distributed among the judges according to a transition plan, which must be submitted to Congress within 90 days of passage of this bill. We want to make sure the court has the flexibility to deal with these important child welfare issues.

Third, the bill provides the resources for an Integrated Judicial Information System, IJIS. This will enable the court to track and properly monitor family cases and will allow all judges and magistrates to have access to the information necessary to make the best decisions about placement and child safety.

Fourth, a reform in the bill that I find extremely important is the One-Judge/One Family provision. This policy will ensure that the same judge, a judge who knows the history of a family and the child, will be making the important permanency decisions. This provision is essential for those hard cases involving abuse and neglect. It ensures consistency. It ensures safety. And, it just makes sense.

Ultimately, our bill will help provide consistency through the One-Judge/One-Family provision. It will help increase safety and security, and it will help instill stability for the children of the District. We need to give the children in the District's welfare system all of these things. It is the right thing to do.

We must never, ever lose sight of our responsibility to the children involved. Their needs and their best interests must always come first. And today, I believe we are putting children first and taking a huge step forward on their behalf.

AUTHORIZING REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of a resolution submitted earlier today by the majority and Republican leaders.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 192) to authorize representation by the Senate Legal Counsel in Judith Lewis v. Rick Perry, et al.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DASCHLE. Mr. President, this resolution concerns a civil action commenced in the District Court for Dallas County, Texas. The lawsuit, filed by a pro se plaintiff, names Texas Governor Rick Perry and Senator KAY BAILEY HUTCHISON as defendants. While the allegations in the complaint are not clear, the plaintiff appears to call for the impeachment of the defendants by the Texas state courts because of some unspecified, official action. This resolution authorizes the Senate Legal Counsel to represent Senator HUTCHISON in this suit.

Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 192) was agreed to.

The preamble was agreed to.

(The text of the resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

MAKING FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 2002

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.J. Res. 78, the continuing resolution, just received from the House.

The PRESIDING OFFICER. The clerk will report the joint resolution by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 78) making further continuing appropriations for the fiscal year 2002, and for other purposes.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the joint resolution be read a third time, passed, and the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

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

The joint resolution (H.J. Res. 78) was read the third time and passed.

MEASURE READ THE FIRST TIME—S. 1833

Mr. DASCHLE. Mr. President, I understand that a bill introduced earlier today by Senator COLLINS is at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The legislative clerk read as follows:

A bill (S. 1833) to amend the Public Health Service Act with respect to qualified organ procurement organizations.

Mr. DASCHLE. Mr. President, I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. The bill will remain at the desk.

ORDER FOR RECORD TO REMAIN OPEN

Mr. DASCHLE. Mr. President, I ask unanimous consent that the RECORD remain open today until 4 p.m. for the introduction of legislation and the submission of statements.

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

ORDERS FOR MONDAY, DECEMBER 17, 2001

Mr. DASCHLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 12:30 p.m., Monday, December 17; that on Monday, immediately following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and that there then be a period for

morning business until 1 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees.

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

PROGRAM

Mr. DASCHLE. For the information of the Senate, as previously announced, no rollcall votes will occur on Monday. The next vote will occur on Tuesday, December 18, at 11 a.m.

ORDER FOR ADJOURNMENT

Mr. DASCHLE. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand adjourned as under the previous order, following the remarks of Senator SESSIONS.

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

Mr. DASCHLE. I thank the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

MONEY SPENT UNWISELY

Mr. SESSIONS. Mr. President, one thing we need to do a better job of in this Congress—and we do have oversight and appropriations authority for all moneys that are expended—is to make sure that those moneys have been spent wisely, efficiently, and that the taxpayers' interests are protected with the same degree of fidelity that homeowners and families protect theirs, as small business people protect theirs. We don't always do that. We spend such big sums of money that sometimes we think small matters are not that significant.

I had the responsibility a few years ago as Attorney General of Alabama to take over an office that was financially out of control. We had a huge debt facing the office the year I took office. We had to reduce personnel, substantially cut back on all kinds of things, and to reorganize the office. When it was over, even though we had lost some good people—no career people, thank goodness, but almost a third of the office, those who were political appointees; that office has never gotten close to the same number of people that it had—what we found was that working together we actually improved productivity. We did a great job. The people worked hard. They reorganized. They had a new vision.

We have a false impression that money is the only thing that answers a problem around here. Always the answer is, just give it more money. And we in Congress say: We did what we could; that is somebody else's problem.

I have initiated a program I call ''Integrity Watch.'' It is a program in which I take time periodically to analyze bad fiscal management expenditure practices in our Government and to highlight those. The one today I take no real pleasure in. It was a sad, confusing story, but it is appropriate for the taxpayers to know the final outcome, to see what has happened, to be aware of how much it has cost us in expenditures.

Many people remember the decision by General Shinseki, Chief of Staff of the Army, to change the berets to give everybody a black beret. He set a deadline of this year, only a few months away from that date, and he had to find a whole lot of berets in a hurry. Under the Berry amendment, the Federal law requires that all clothing items be manufactured within the United States except in times of armed conflict.

What happened with the deadline that was given was, the Defense Logistics Agency, that had been delegated the authority way down the line to grant waivers of the Berry amendment, found itself in a position where they did not have sufficient American manufacturers to meet that deadline. And so based on this artificial goal by the Chief of Staff of the Army, General Shinseki, they set about to get the berets wherever they could. They issued waivers and started getting berets from all over.

They got 925,000 of them made from China, by the Communist government. Other countries were called on and agreed to manufacture in this rushed process. When that all became public and there were complaints about the beret decision to begin with and all these factors came up, there was quite an uproar. The result was that the military admitted that they had not complied at least with the spirit of the Berry amendment, that they should not utilize the Chinese-made black berets, worth $6.5 million, and so they stored them. They paid for them. They stored them. So we now have 925,000 black berets valued at $6.5 million not being utilized. Hopefully, some other army in the world might buy them from us, but we are certainly going to take a big hit on that.

Another thing that we learned: Some of this information came about as a result of my request to the General Accounting Office that does audits for the Congress and other agencies to determine how moneys are being spent. We just got this audit back earlier this week. The General Accounting Office report indicates a number of other things that happened.

GAO declared that the military, in order to meet its deadline, chose to shortcut normal contracting procedures. They found, for example, that the defense logistics agency awarded the first set of contracts without competition.

According to the contract documents, all the contract actions were not completed because of ''an unusual and compelling urgency.'' The real urgency was the self-imposed deadline they set.

It also goes on to point out that these rushed up contracts hadn't worked very well. Not only were they being done substantially outside the United States by foreign suppliers in violation of congressional acts, but they weren't being performed well and had to be canceled.

The Denmark military equipment supplier which manufactured black berets in Romania agreed to supply 480,000 berets. Only 90,000 have been supplied, and the military canceled the order for 350,000.

Another one was a Bernard Cap Company, which is manufacturing the berets in South Africa but with Chinese content. They contracted to supply 750,000 berets. The cancellation has now taken place, and 442,000 were canceled.

A third contract was with Northwest Woolen Mills to have the berets manufactured in India. The number purchased was 342,000; the number delivered was 56,000; the quantity canceled was 235,000.

Every time the military has to go through a cancellation of a contract, it costs us money. We all know that. That was bad management. A lot of things happened that I think were not good. I am, however, quick to say that the Assistant Deputy Secretary of Defense, Paul Wolfowitz, early on had a study and review done of the compliance with the Berry amendment. And what they concluded was that he would direct an order, throughout the Defense Department, requiring compliance with the Berry amendment, directing that any waiver authority could not be delegated below the Under Secretary of Defense for Acquisition. That is what the problem was in this case.

It required that no waivers be granted without a full analysis of the alternative because it is easy to say there is no supplier in the United States. But had the Defense Department really searched it out to make sure that is true? Had they considered other possibilities? He directed that it be done. He achieved revisions throughout the acquisition regulations which govern our military forces as they make acquisitions. There are complex regulations and he revised them to make sure there would be no further violations of the Berry amendment. In the course of all this, he uncovered at least three cases in which the Berry amendment had apparently been violated. No one had even raised it, and no analysis or waiver had been done. They just went on and purchased military apparel outside the U.S. without any kind of waiver authority.

Now, the Chief of Staff of the Army came under a lot of criticism, and I think he told the truth. He was frank when he discussed why he did what he did and why he believed it was important. I think he made a mistake. He did not argue with people about it. He explained why he did what he did, and he believe he was justified. So I hope that is a learning experience there.

It is not enough that we just complain about waste, fraud, and abuse. My little program, called Integrity Watch, is designed to ask in some detail how can we make it better. Do we need legislation to be passed? Do we need regulations to be changed? Do we need to cut off funding? What do we need to do to improve a situation? In this case, I would say the Berry amendment is adequate. It does the task. What the problem was a cavalier attitude about how it should be administered. I also think there was an unnecessary rush to produce the berets, and it cost us a considerable amount of money, a $26 million total contract price. So I believe the actions of the Defense Department in reinvigorating and highlighting the need to enforce the Berry amendment, to raise up the level of the personnel of the Defense Logistics Agency before anybody can grant a waiver, will probably solve that.

So I don't think legislation is needed. I am certainly not of the view that we need to pass legislation to direct how the Chief of Staff of the Army decides emergency matters. I hope through this experience, however, that he will have learned a lesson, and those who work with him will have learned a lesson, that sometimes it is better to go slow, not to set deadlines and goals that are too fast because the costs can be paid by the taxpayer and you can end up with problems such as we had in this case. You can end up with a situation where a nation is supplying berets that we don't intend to use. You can end up with a situation where contracts, because they were rushed, got canceled and where it cost more money and ended up delaying distribution of the berets.

I think this is worth highlighting. I appreciate the GAO for doing an objective and fair analysis of the situation. It was not a bright day for the Department of Defense. In fact, it was a clear error—a kind of problem that should not have occurred. But it did occur. I believe we have all learned from it and, hopefully, in the future, this will be avoided as we go forward with the additional procurement we will be facing to make sure the men and women in uniform have the equipment, clothing, and resources they need to do the important jobs with which they are challenged.

I thank the Chair and yield the floor.

ADJOURNMENT UNTIL 12:30 P.M., MONDAY, DECEMBER 17, 2001

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 12:30 p.m. on Monday, December 17.

Thereupon, the Senate, at 3:14 p.m., adjourned until Monday, December 17, 2001, at 12:30 p.m.