S. 2313. A bill to amend title II of the Social Security Act to provide for individual security accounts funded by employee and employer social security payroll deductions, to extend the solvency of the old-age, survivors, and disability insurance program, and for other purposes; to the Committee on Finance.

By Mr. LEAHY:

S. 2314. A bill to clarify that prosecutors and other public officials acting in the performance of their official duties may enter into cooperation agreements and make other commitments, assurances, and promises, as provided by law in consideration of truthful testimony; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself, Mr. D'AMATO, and Mr. FORD):

S. 2315. A bill to amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and titles XVIII and XIX of the Social Security Act to require that group and individual health insurance coverage and group health plans and managed care plans under the medicare and medicaid programs provide coverage for hospital lengths of stay as determined by the attending health care provider in consultation with the patient; to the Committee on Labor and Human Resources.

By Mr. MCCONNELL (for himself and Mr. DEWINE):

S. 2316. A bill to require the Secretary of Energy to submit to Congress a plan to ensure that all amounts accrued on the books of the United States Enrichment Corporation for the disposition of depleted uranium hexafluoride will be used to treat and recycle depleted uranium hexafluoride; read the first time.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAHAM (for himself, Mr. CHAFEE, Mr. JOHNSON, Mr. GRASSLEY, Mr. HARKIN, Mr. HOLLINGS, and Mr. INOUYE):

S. 2308. A bill to amend title XIX of the Social Security Act to prohibit transfers or discharges of residents of nursing facilities as a result of a voluntary withdrawal from participation in the Medicaid Program; to the Committee on Finance.

NURSING HOME PATIENT PROTECTION ACT

Mr. GRAHAM. Mr. President, I rise today, along with Senators CHAFEE, JOHNSON, GRASSLEY, HARKIN, HOLLINGS, and INOUYE to introduce the Nursing Home Patient Protection Act—legislation to protect our nation's seniors from indiscriminate patient dumping. This bill modifies the original legislation to include several simple changes to alleviate the concerns of the nursing home industry and senior citizen advocates. It is with their support that we encourage the Senate to take action on this important piece of legislation. I have also included the following letters of support from the American Home Care Association and the National Seniors Law Center.

A few months ago, it looked like 93-year old Adela Mongiovi might have to spend her 61st Mother's Day away from the assisted living facility that she has called home for the last four years.

At least that's what son Nelson and daughter-in-law Gina feared when officials at the Rehabilitation and Healthcare Center of Tampa told them that their Alzheimer's Disease-afflicted mother would have to be relocated so that the nursing home could complete ''renovations.''

As the Mongiovis told me when I met with them and visited their mother in Tampa last March, the real story far exceeded their worst fears. The supposedly temporary relocation was actually a permanent eviction of all 52 residents whose housing and care were paid for by the Medicaid program.

The nursing home chain which owns the Tampa facility and several others across the United States wanted to purge its nursing homes of Medicaid residents, ostensibly to take more private insurance payers and Medicare beneficiaries which pay more per resident.

This may have been a good financial decision in the short run, however, its effects on our nation's senior citizens, if practiced on a widespread basis, would be even more disastrous.

In an April 7, 1998 Wall Street Journal article, several nursing home executives argued that state governments and Congress are to blame for these evictions because they have set Medicaid reimbursement rates too low.

While Medicaid payments to nursing homes may need to be revised, playing Russian roulette with elderly patients' lives is hardly the way to send that message to Congress. And while I am willing to engage in a discussion as to the equity of nursing home reimbursement rates, I and my colleagues are not willing to allow nursing facilities to dump patients indiscriminately.

The fact that some nursing home companies are willing to sacrifice elderly Americans for the sake of their bottom-line is bad enough. What's even worse is their attempt to evade blame for Medicaid evictions.

The starkest evidence of this shirking of responsibility is found in the shell game many companies play to justify evictions. Current law allows nursing homes to discharge patients for inability to pay.

If a facility decreases its number of Medicaid beds, the state and federal governments are no longer allowed to pay the affected residents' bills. They can then be conveniently and unceremoniously dumped for—you guessed it—their inability to pay.

Evictions of nursing home residents have a devastating effect on the health and well-being of some of society's most vulnerable members.

A recent University of Southern California study indicated that those who are uprooted from their homes undergo a phenomenon known as ''transfer trauma.'' For these seniors, the consequences are stark. The death rate among these seniors is two to three times higher than that for individuals who receive continuous care.

Those of us who believe that our mothers, fathers, and grandparents are safe because Medicaid affects only low-income Americans, we need to think again.

A three-year stay in a nursing home can cost upwards of $125,000. As a result, nearly half of all nursing home residents who enter as privately-paying patients exhaust their personal savings and lose health insurance coverage during their stay. Medicaid becomes many retirees' last refuge of financial support.

On April 10, the Florida Medicaid Bureau responded to evidence of Medicaid dumping in Tampa by levying a steep, $260,000 fine against the Tampa nursing home. That was a strong and appropriate action, but it was only a partial solution. Medicaid funding is a shared responsibility of states and the federal government.

And while the most egregious incident occurred in Florida, Medicaid dumping is not just a Florida problem. While nursing homes were once locally-run and family-owned, they are increasingly administered by multi-state, multi-facility corporations that have the power to affect seniors across the United States.

Mr. President, let me also point out that the large majority of nursing homes in America treat their residents well and are responsible community citizens. Our bill is designed solely to prevent potential future abuses by bad actors.

And this new bill is better, simple and fair. It would prohibit current Medicaid beneficiaries or those who ''spend down'' to Medicaid from being evicted from their homes. And that is a crucial point, Mr. President.

Adela Mongiovi is not just a ''beneficiary.'' She is also a mother and grandmother. And to Adela Mongiovi, the Rehabilitation and Health Care Center of Tampa is not an ''assisted living facility.'' To Adela Mongiovi—this is home.

This is the place where she wants—and deserves—like all seniors—to live the rest of her life with the security of knowing that she will not be evicted. And through passage of this bill, Mr. President, we can provide that security to Adela Mongiovi and all of our nation's seniors.

Mr. President, I ask unanimous consent that letters in support of the legislation be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AMERICAN HEALTH CARE ASSOCIATION,
Washington, DC, June 11, 1998.

Hon. BOB GRAHAM,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: I am writing to lend the support of the American Health Care Association to your legislation which helps to ensure a secure environment for residents of nursing facilities which withdraw from the Medicaid program. Understand you will be filing this legislation in the next few days.

We know firsthand that a nursing facility is one's home, and we strive to make sure residents are healthy and secure in their home. We strongly support the clarifications your bill will provide to both current and future nursing facility residents, and do not

believe residents should be discharged because of inadequacies in the Medicaid program.

This bill addresses a troubling symptom of what could be a much larger problem. The desire to end participation in the Medicaid program is a result of the unwillingness of some states to adequately fund the quality of care that residents expect and deserve. Thus, some providers may opt out of the program to maintain a higher level of quality than is possible when relying on inadequate Medicaid rates. Nursing home residents should not be the victims of the inadequacies of their state's Medicaid program.

In 1996, the Congress voted to retain all standards for nursing facilities. We support those standards. In 1997, Congress voted separately to eliminate requirements that states pay for those standards. These two issues are inextricably linked, and must be considered together. Importantly, your legislation mandates the Department of Health and Human Services study the link between payment and the ability to provide quality care. We welcome the opportunity to have this debate as Congress moves forward on this issue.

Again, we appreciate the chance to work with you to provide our residents with quality care in a home-like setting that is safe and secure. We also feel that it would be most effective when considered in the context of the relationship between payment and quality and access to care.

Finally, we greatly appreciate the inclusive manner in which this legislation was crafted, and strengthened. When the views of consumers, providers, and regulators are considered together, the result, as with your bill, is intelligent public policy.

Sincerely yours,

Dr. PAUL R. WILLGING,
Executive Vice President.

NATIONAL SENIOR CITIZENS,
LAW CENTER,
Washington, DC, June 26, 1998.

Senator BOB GRAHAM,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GRAHAM: Earlier this year, the Vencor Corporation began to implement a policy of withdrawing its nursing facilities from participation in the Medicaid program. The abrupt, involuntary transfer of large numbers of Medicaid residents followed. Although Vencor reversed its policy, in light of Congressional concern, state agency action, and adverse publicity, the situation highlighted an issue in need of a federal legislative solution—what happens to Medicaid residents when a nursing facility voluntarily ceases to participate in the federal payment program.

I have read the draft bill that your staff has written to address this issue. The bill protects residents who were admitted at a time when their facility participated in Medicaid by prohibiting the facility from involuntarily transferring them later when it decides to discontinue its participation. As you know, many people in nursing facilities begin their residency paying privately for their care and choose the facility because of promises that they can stay when they exhaust their private funds and become eligible for Medicaid. In essence, the bill requires the facility to honor the promises it made to these residents at admission. It continues to allow facilities to withdraw from the Medicaid program, but any withdrawal is prospective only.

This bill gives peace of mind to older people and their families by affirming that their Medicaid-participating facility cannot abandon them if it later chooses to end its participation in Medicaid.

The National Senior Citizens Law Center supports this legislation. We look forward to working with your staff on this legislation and on other bills to protect the rights and interests of nursing facility residents and other older people.

Sincerely,

TOBY S. EDELMAN.

By Mr. SPECTER (for himself and Mr. SANTORUM):

S. 2309. A bill to authorize the Secretary of the Interior to enter into an agreement for the construction and operation of the Gateway Visitor Center at Independence National Historical Park; to the Committee on Energy and Natural Resources.

GATEWAY VISITOR CENTER AUTHORIZATION ACT OF 1998

● Mr. SPECTER. Mr. President, today I introduce legislation to authorize the Interior Department to enter into an agreement with the nonprofit Gateway Visitor Center Corporation for the construction and operation of the Gateway Visitor Center in Independence National Historical Park in Philadelphia, Pennsylvania.

This legislation is needed because the Visitor Center will provide some services which are beyond the scope of existing National Park Service statutory authority at the Park. As a result, I am advised that construction may not begin until this bill is enacted. I have worked with the National Park Service and the Gateway Visitor Center Corporation to develop this bill and note that similar legislation has been introduced in the House of Representatives by Congressmen JON FOX and ROBERT BORSKI. The bill also has the strong support of Philadelphia Mayor Edward Rendell.

The Gateway Visitor Center is part of the revitalization of Independence Mall and is critical to creating an outstanding visitor experience. It will serve as the gateway into the Park and will orient visitors as to the rich history of the National Historical Park, the city of Philadelphia, and the region as a whole. I was pleased to assist in obtaining funds in the TEA–21 Act for the road and infrastructure improvements necessary for the redevelopment of the Independence Mall and would note that the Senate FY99 Interior Appropriations bill also includes funding for this project.

The legislation is necessary because, in addition to its role as the Park's primary visitor center, the Gateway Visitor Center will be permitted to charge fees, conduct events, and sell merchandise, tickets, and food to visitors to the Center. These activities will allow the Gateway Visitor Center to meet its park-wide, city-wide and regional missions while defraying the operating and management expenses of the Center.

The Gateway Visitor Center holds enormous potential for Independence National Historical Park and the greater Philadelphia region as a whole, and I urge my colleague to support this legislation.●

By Mr. MOYNIHAN (for himself, and Mr. D'AMATO):

S. 2310. A bill to designate the United States Post Office located at 297 Larkfield Road in East Northport, New York, as the ''Jerome Anthony Ambro, Jr. Post Office Building''; to the Committee on Governmental Affairs.

JEROME ANTHONY AMBRO, JR. POST OFFICE BUILDING LEGISLATION

Mr. MOYNIHAN. Mr. President, I rise today with my friend and colleague, Senator D'AMATO, to introduce a bill to designate the East Northport, New York Post Office as the ''Jerome Anthony Ambro, Jr. Post Office Building.''

Jerry Ambro's life was one dedicated to serving the people of New York. A Brooklyn native, he was educated in the New York City public schools and was graduated from New York University. After a two-year stint in the United States Army, he began working for the Town of Huntington, New York. He went on to serve on the Suffolk County Board of Supervisors and was elected Town Supervisor of Huntington for four terms.

First elected to Congress in 1974, in the wake of President Nixon's resignation, Jerry Ambro was a leader among leaders. He served as the chairman of the 82-member New Members Caucus, a reform-minded group that instituted campaign finance reform and new procedures for selecting committee chairmen. The Caucus aided in deposing three committee and subcommittee chairmen.

As Chairman of the House Subcommittee on Natural Resources and the Environment, he fought to protect the environment. He prevented the Long Island Lighting Company from converting from oil to coal and he preserved wetlands in Massapequa. As Town Supervisor, he enacted one of the first municipal bans on DDT.

Following his years in Congress, he went on to serve ably as the Washington lobbyist for then-Governor Hugh L. Carey. He died in 1993 from complications from diabetes.

I am pleased to introduce this bill today to name a post office after such a distinguished New Yorker. Congressman GARY L. ACKERMAN has introduced a similar measure in the House. That it has the support of the entire New York delegation demonstrates how widely admired Jerry Ambro was. I urge the swift passage of this legislation.

Mr. President, I ask unanimous consent that the full text of the bill be placed in the RECORD.

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

S. 2310

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The United States Post Office located at 297 Larkfield Road in East Northport, New York, shall be known and designated as the ''Jerome Anthony Ambro, Jr. Post Office Building''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the

United States to the United States Post Office referred to in section 1 shall be deemed to be a reference to the ''Jerome Anthony Ambro, Jr. Post Office Building''.

Mr. D'AMATO. Mr. President, I rise to join my colleague, Senator MOYNIHAN, in introducing this bill that will designate that the U.S. Post Office located at 297 Larkfield Road in East Northport, New York, as the ''Jerome Anthony Ambro, Jr. Post Office Building.''

The designation will be a tribute to the life and legacy of a strong and able local and federal representative and I am proud to be a co-sponsor of this bill. In doing so, we join the entire New York delegation in supporting this bill.

The designation will be a tribute to the life and legacy of a strong and able local and federal representative and I am proud to be a co-sponsor of this bill. In doing so, we join the entire New York delegation in supporting this bill.

Anthony Ambro was a full fledge New Yorker. He had his own ideas and his own means of accomplishing his goals—and those goals greatly assisted his constituency. He was a great man from a different political persuasion. But one thing is certain, he put people ahead of politics.

Born in Brooklyn, he attended New York University where he received his Bachelor's degree. He served in the United States Army, Military Police before he began his career in public service. He was budget officer, purchasing and personnel director for the Town of Huntington, served on Suffolk County Board of Supervisors and was elected to four terms as Supervisor of the Town of Huntington. In addition, he was president of the freeholders of the Town of Huntington and co-founder of the New York State Coalition of Suburban Towns.

To reward him for the tremendous accomplishments for the people of Suffolk County, he was elected to the House of Representatives beginning in 1975, for three terms. Beginning in 1981, he operated a consulting business bringing his own brand of humor and sagacity to bear on behalf of hundreds of New Yorkers as they struggled to make sense of Washington's labyrinth.

During his tenure he served as Chairman of the House Subcommittee on Natural Resources and the Environment, working on environmental issues, including the prohibiting the dumping of dredged material in Long Island Sound. As a local official, he supported housing projects for the elderly. He was a free-thinking man whose primary purpose was to represent the needs of his constituency and whose tenacity was driven by his beliefs.

I counted him as a friend and advisor who made many a lunch-time meal at the Monocle a pleasure as well as an education.

Anthony Ambro passed away in March, 1993 from diabetes complications. I am sure he is missed terribly by his wife Antoinette Salatto Ambro, and his children, step children and grandchildren. His qualities endeared him to the people of New York and I hope these sentiments will be reflected in the passage of this measure. I thank the senior Senator from New York and urge its enactment.

By Mr. KOHL (for himself and Mr. SESSIONS):

S. 2311. A bill to amend section 201 of title 18, United States Code, to increase prosecutorial effectiveness and enhance public safety, and for other purposes; to the Committee on the Judiciary.

EFFECTIVE PROSECUTION AND PUBLIC SAFETY ACT OF 1998

● Mr. KOHL. Mr. President, Senator SESSIONS and I today are introducing a bill that guarantees prosecutors can exercise their full power to keep criminals off our streets. The ''Effective Prosecution and Public Safety Act of 1998'' makes clear that prosecutors can offer plea bargains to accomplices in exchange for their testimony—a long-standing, accepted and necessary practice—without tainting a conviction resulting from such testimony. This measure puts to rest any concerns raised by an overwhelmingly disputed decision issued recently by a panel of three appellate court judges. And it makes it less likely that courts could overturn convictions of dangerous criminals like Oklahoma City bomber Timothy McVeigh.

Until a court decision two weeks ago, there was no doubt that prosecutors could build criminal cases by offering leniency to accomplices in exchange for their testimony at trial. But in U.S. versus Singleton, a Tenth Circuit panel held that a federal anti-bribery statute, which had been on the books for over 35 years, barred these kinds of leniency deals. This unprecedented decision has been criticized virtually unanimously. Subsequently, the full Tenth Circuit put the decision on hold, pending a full court rehearing scheduled for November.

There is little doubt that the Tenth Circuit's decision is just plain wrong. Nothing in the legislative history suggests that Congress ever intended to take away a prosecutor's ability to make deals for testimony. And it is no surprise that in 35 years no court ever found the anti-bribery statute to apply to this reasonable exercise of prosecutorial discretion. This decision is simply a case of Scalia-ism taken to the extreme, beyond the bounds of common sense and in the face of established practices. I cannot believe that even Justice Scalia, the high priest of literalism, would agree with this result.

As wrong as this decision is, it still cannot be taken lightly. Prosecutors make deals with cooperating witnesses all the time. So this decision puts tens of thousands of convictions in jeopardy. For an example, we need look no further than the conviction of Timothy McVeigh, which was based in large part on the testimony of Michael Fortier, who was allowed to plea to lesser charges in exchange for his testimony. And McVeigh's conviction is on appeal in the same Tenth Circuit—could that be the next conviction it will try to overturn?

In my view, the risks posed by this decision are too great to leave this issue to the courts—even though I am confident that in the end they would do the right thing. Indeed, until this issue works its way to the Supreme Court, the potential dangers are serious. Prosecutors may feel the need to hold back on cutting deals with potential witnesses, making it tougher to convict dangerous criminals. And criminals behind bars will have a better chance than ever at overturning their convictions. Already, jailhouse lawyers are probably foaming at the mouth anticipating making this argument in courts all over the nation.

Congress can act now to put this issue behind us, to guarantee that prosecutors are not hampered in their efforts to put criminals behind bars, and to make sure that is where criminals stay. This bill is simple and effective. It amends the anti-bribery statute to exempt deals for leniency made by prosecutors in exchange for testimony. And it applies to past as well as future deals, so that no criminal—including the Oklahoma City bomber—can try to use this awful decision as a ''get out of jail card'' at the expense of the safety of the American people.

Mr. President, let me make clear what this proposal does and what it does not do. All it does is reinforce what Congress always intended—to allow plea bargains in exchange for testimony. It does not permit prosecutors to ''buy'' testimony with cash payoffs. That is still illegal. It does not allow prosecutors to knowingly elicit false testimony. That is obstruction of justice. And it does not prevent a defense attorney from raising a deal at trial to try to cast doubt on the credibility of a witness. That is what cross-examination is all about.

Mr. President, prosecutors will be most effective and the public will be safest if we set the Record straight now and correct the Tenth Circuit's outrageous decision. I urge my colleagues to join me in support of this bill. And I offer for the RECORD the following two articles—an editorial from the Washington Post criticizing the decision and a piece from Legal Times explaining its impact and recent developments, and ask unanimous consent that these articles be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[The Washington Post, Wed., July 8, 1998]

JUDICIAL TROUBLE

Every now and then, a federal appeals court issues a ruling that is, at once, so wrongheaded and so sweeping that it results in a brief period of uncertainty in the legal world before being reversed. The decision last week by the U.S. Court of Appeals for

the 10th Circuit in the case of *U.S.* v. *Singleton* is one such bombshell. A unanimous three-judge panel threw out the drug conspiracy and money laundering conviction of a woman named Sonya Singleton, finding that the government had violated a criminal anti-gratuity statute by promising leniency to a witness in exchange for his testimony.

On its face, the decision seems faintly reasonable. There is, after all, a federal law that holds criminally liable anyone who, ''directly or indirectly, gives, offers or promises anything of value to any person, for or because of the testimony under oath or affirmation given . . . by such person as a witness.'' This law contains no explicit exception for the government, and leniency in sentencing is certainly of value to a person who is facing jail. Hence, the court held, the government violated the law by using bought testimony, and Ms. Singleton's conviction must be thrown out.

Logical, perhaps, but dead wrong. What the government actually promised the witness was, in fact, a standard plea agreement of a sort prosecutors rely on every day. Oklahoma City bomber Timothy McVeigh was convicted based, in substantial part, on testimony by Michael Fortier—who was allowed to plead guilty to lesser charges. Many, if not most, significant investigations rely on witnesses who are ''flipped'' by prosecutors in exchange for some sort of special treatment, almost all of which could be considered ''of value.''

This practice can be—self-evidently—corrupting. A witness who knows that his cooperation will get him a cut sentence has a strong incentive to say what prosecutors want to hear. But the traditional remedy is the cross examination of the witness by defense lawyers, and no court has previously deemed a run-of-the-mill plea agreement to be a felony by a prosecutor.

Though the law does not explicitly exempt the government, this appears to reflect only the fact that members of Congress never considered the possibility that they were criminalizing normal prosecutorial practice. In fact, Congress has adjusted the law in question without balking at the behavior of prosecutors. And the Supreme Court, in *Giglio* v. *U.S.,* held that when the government makes a deal with a witness, that a deal must be disclosed to the defense as exculpatory evidence—a holding that seems to concede that the deal-making itself is legitimate. The 10th Circuit's decision is at odds both with assumed prosecutorial practice and—by the judges' own admission—with the other judicial authorities in the books.

[From the Legal Times, Week of July 13, 1998]

FEDERAL COURT WATCH—APPEALS PANEL RETRACTS SNITCH RULING

(By Robert Schmidt)

It was a revolutionary federal appeals court decision—a unanimous ruling by three judges that the time-honored prosecutorial tactic of offering witnesses leniency in exchange for their testimony is illegal—and it sent prosecutors and defense lawyers into a frenzy.

The ruling's sweeping implications also apparently caught the very judges who issued it off guard.

In a highly unusual move late last week, the U.S. Court of Appeals for the 10th Circuit, acting on its own motion, vacated the July 1 opinion in *United States* v. *Singleton* so it could address the issue en banc.

The decision stunned defense lawyers across the nation, some of whom had already filed motions in other federal courts based on the precedent. The 10th Circuit's reversal, however, pleased prosecutors—especially officials at Main Justice, who have been scrambling to develop for U.S. attorneys' offices legal guidelines that take Singleton into account.

On July 9, Justice announced it was planning on asking the 10th Circuit to hear the case en banc, but it had not yet filed the motion when the court acted on its own.

''This does not seem like the kind of case where they would grant en banc sua sponte because they felt that [the decision] was right,'' says a Justice official working on the matters. ''This is a hopeful sign.''

John ''Val'' Wachtel, the Wichita, Kan., lawyer who initially triumphed before the three-judge panel, says he is disappointed but eager to argue before the entire court.

''We plan to write our brief and go out and argue and win this case,'' says Wachtel, a partner of Wichita's Klenda, Mitchell, Austerman & Zuercher. ''The decision of the panel is right.''

The court's unusual move followed a firestorm in federal courts across the six Western states that make up the 10th Circuit. Although the panel noted that its ruling would not ''drastically alter'' prosecutors' tactics, no one else seemed to agree.

Trial lawyers of all stripes predicted that if the opinion's holding stood, it would dramatically change the way prosecutors investigate and try many types of criminal cases, including major conspiracies involving drug trafficking, money laundering, and fraud.

And last week, those predictions were already coming true in the 10th Circuit.

According to press accounts and lawyers who practice in the circuit, ongoing federal criminal cases there were virtually paralyzed as lawyers and even judges tried to decide what to do.

Stephen Saltzburg, a former Justice official who now teaches at George Washington University Law School, says that this type of paralysis plus the widespread media attention likely prompted the 10th Circuit to issue its order late last week.

''They may not have paid careful attention to this when it was lurking,'' posits Saltzburg. ''Once they had the uproar, and focused on it, they realized that every criminal case that went to trial is now at risk.''

Indeed, the court did see that as a potential problem. In its July 10 order, signed by 11 of the 12 judges, the court asked attorneys for both sides to file briefs that ''address whether any opinion reversing the district court would have prospective or retrospective application.''

The Circuit ordered that the briefs be submitted in August and said it would hear oral argument in November.

While criminal law experts like Saltzburg almost all predict that the entire court will reverse Singleton, defense lawyers say they are confident the opinion will be affirmed.

The underlying case involved Sonya Singleton, who was convicted of one count of conspiracy to distribute cocaine and seven counts of money-laundering. The main evidence against Singleton was the testimony of Napoleon Douglas, a fellow alleged conspirator who cut a plea deal with the government.

Singleton's lawyer, Wachtel, argued that Douglas' testimony should be suppressed, claiming that 18 U.S.C. §201(c)(2)—the law governing bribery of public officials and witnesses—applies to prosecutors just as it applies to everyone else.

The section reads: ''Whoever . . . directly or indirectly, gives, offers or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing or other proceeding, before any court . . . shall be fined under this title, or imprisoned for not more than two years, or both.''

The panel did not suggest that prosecutors should go to jail or be fined for violating the law. But it did determine that the statute was broad enough to include federal prosecutors.

The court then noted that Douglas' plea agreement, which incorporated standard boilerplate language used by U.S. attorneys' offices nationwide, made three specific promises to Douglas in exchange for his testimony.

Those promises—not to prosecute him for any other crimes stemming from the investigation and to tell both the sentencing court and his parole board about the extent of his cooperation—constituted ''something of value,'' the court reasoned. Thus, they amounted to an illegal gratuity.

''The obvious purpose of the government's promised actions was to reduce his jail time,'' wrote U.S. Circuit Judge Paul Kelly Jr., ''and it is difficult to imagine anything more valuable than personal physical freedom.''

Despite the 10th Circuit's decision last week, local defense lawyers say they are eager to raise the issue in Washington's federal court.

''I guess, given the attention it received, [the 10th Circuit's action] is not all that surprising, but it is definitely disappointing,'' says L. Barrett Boss, an assistant federal public defender in Washington. ''The argument that is made, that testimony in exchange for leniency violated the bribery statute, is rock solid, so we're definitely going to be pursuing that issue at every opportunity.''●

By Mr. GREGG (for himself, Mr. BREAUX, Mr. THOMPSON, Mr. ROBB, Mr. THOMAS, and Mr. COATS):

S. 2313. A bill to amend title II of the Social Security Act to provide for individual security accounts funded by employee and employer Social Security payroll deductions, to extend the solvency of the old-age, survivors, and disability insurance program, and for other purposes; to the Committee on Finance.

TWENTY-FIRST CENTURY RETIREMENT ACT

● Mr. GREGG. Mr. President, today I introduce—I believe I can say without exaggeration—a landmark piece of legislation, the Twenty-First Century Retirement Act.

Joining me as principal co-sponsor of this legislation is Senator JOHN BREAUX, with whom I served as co-chair of the National Commission on Retirement Policy during the last year. Also this week, the same legislation will be introduced by our House colleagues, Congressmen JIM KOLBE and CHARLES STENHOLM.

With many pieces of legislation, naming the cosponsors upon introduction is merely a perfunctory exercise. With this one, it is significant. Also as original cosponsors of this legislation, we have Senators FRED THOMPSON, CHUCK ROBB, CRAIG THOMAS, and DAN COATS. Several cosponsors from both sides of the aisle are also joining on the House bill.

This in and of itself is almost an unprecedented accomplishment. This simply does not happen with Social Security, long considered the ''third rail'' of American politics. We are turning this

''third rail'' into a passenger train—a bipartisan, bicameral process for reform.

Two months ago, the National Commission on Retirement Policy voted 24–0 to approve the recommendations that this legislation would implement. Today we are introducing it with several cosponsors from both sides of the aisle. Given the difficulty that most experts see with restoring the Social Security system to balance, our proposal has set a modern record for the most support attracted to any proposal to place Social Security on sound long-term footing.

For several years, we have seen numerous Commissions divide among themselves, breaking into factions, issuing separate minority opinions instead of coming to agreement. We have seen various—many of them visionary and constructive—individual legislators introduce reform proposals that could attract little support beyond the original co-sponsors. But today we stand here with a proposal that has received endorsements that have not been given to other Social Security proposals in recent years.

What have we done that has enabled us to build such support?

The first thing we did was to take careful note of what Social Security has meant to Americans, and what they insist that it mean in the future. Social Security has long been the principal government program lifting senior citizens out of poverty. In addition to providing a basic level of protection against poverty, the program has also been sold to Americans as not a welfare program, but rather a program under which benefits paid will bear a reasonable relationship to the contributions that people have put in.

So we set about to ensure that this remained the case. We wanted to have a system that, in the end, would do an even better job of lifting Americans out of poverty—and would, at the same time, ensure that people received a fair deal for the investment that they made in the program.

Let me step back a bit, Mr. President, and review why action is necessary to achieve this purpose. This requires me to review the projections for Social Security under current law.

It is often said that Social Security faces an actuarial problem. It is said that the program is solvent only through the year 2032. That is true. But it does not begin to describe all of the problems with the program.

Even an actuarially sound Social Security program would face enormous financing problems under its current structure. It is a ''pay as you go'' system. Any surplus assets it holds are invested in the federal government—which then has to pay it back at some date in the future. So, even if the books were balanced—and they are trillions of dollars out of balance—the general taxpayer would still face the problem of paying off more than $4 trillion in Trust Fund assets. This would be needed above and beyond payroll taxes (!) in order to pay the benefits that have been promised to the baby boom generation of retirees.

So what would that mean? It would mean raising taxes on future generations of Americans. The payroll tax would ultimately have to go up by almost 50%! That is because the net cost of the system would ultimately top 18% of payroll, as opposed to today's 12.4% tax rate.

Raising the FICA tax today, immediately, by 2.2% of payroll, would not solve this problem. It would just mean that future taxpayers would have a larger Trust Fund to pay off later on, and that the 50% payroll tax increase would be borne indirectly, through general taxation.

But there would be another dire effect of such a change. Under current law, rates of return under Social Security are dropping. If you are a single male, the chances are very good that you will never get back the value of the contributions that you put in. The situation is comparably grim for single females—and for two-earner couples.

If we were to raise taxes to restore the system to solvency—or, for that matter, if we simply and mindlessly cut benefits—that situation would grow far worse. More and more Americans would be losing money through the program. Ultimately, its political support would be imperiled. The basic societal consensus in favor of Social Security—based on the premise that it treats everyone fairly—would be undermined.

So we must find another way to restore Social Security to health—and to enable it to provide the kind of retirement income that Americans have a right to expect from the program.

I believe that it is imperative that we begin to ''pre-fund'' the future liabilities of Social Security. A ''pay as you go'' system is not built for a demographic shift on the order of the baby boom generation. A ''pay as you go'' system assumes that there is always a demographic pyramid—that each generation coming through at the bottom is more numerous than the generation that they are supporting above them.

But with the baby boomers coming through in such great numbers—and having comparatively fewer kids—the pyramid looks more like a rectangle. And the individuals at the bottom will bear a crushing burden unless we reduce some of it by putting additional funding aside now.

Fortunately, we have an opportunity to do this. We have projections of near-term budget surpluses—and we already have short-term Social Security surpluses. We are collecting money that the government does not need to meet current operations, and we are collecting it through the Social Security system.

The very first thing we should do is to give this extra money directly back to taxpayers, allow them to own it once again, and to fund a portion of their future retirement benefits through those personally-owned retirement accounts.

Our legislation would do that. It would refund 2% of the current payroll tax back to individual Americans, to be used to directly finance some of their future Social Security benefits. We will move that portion of the benefit—and of future unfunded liabilities—off of the federal ledger.

We would set up these personal accounts on the model of the Thrift Savings Plan currently provided to federal employees. We do this because it is an obvious way to reduce administrative costs. We also do it to avoid new mandates on employers. Employers would continue to pay the payroll tax just as they do now, and individuals would decide in which fund they want 2% of the current 12.4% payroll tax to be invested.

The Thrift Savings Plan is a tested, workable way of generating investment wealth for beneficiaries. It strikes a reasonable balance between providing good investment opportunities and limiting individual risk. Perhaps most importantly, all Americans would have the opportunity to save for retirement on a payroll deduction basis—not just those who have pension plans, or who have gone through the trouble of setting up IRAs. This will do a tremendous amount to provide investment wealth to the millions of Americans who have not thus far had the opportunity to share in that wealth.

Our legislation would also permit individuals to make $2,000 in extra voluntary contributions—above the 2% automatically redirected for them—to these personal savings accounts. This means that we have created a vehicle through which net national savings should increase. The more that individuals contribute to their personal accounts—the more retirement income they will have—and the greater the chances that they will be able to retire early, just as is the case with other retirement saving.

This proposal is the most comprehensive one developed to date. It has been scored by the Social Security actuaries as achieving solvency through the next century. Perhaps even more importantly, it eliminates the enormous financing gap under current law. If we enact this legislation, we will remove the need for taxpayers to pony up hundreds of billions of dollars, above payroll taxes, in order to pay current benefits. Each year, the cash flow for the system will be smooth and manageable, and there will be a much closer balance between payroll tax revenue and the benefits that must be paid from it.

Moreover, we have compared the results of our plan with a plan that would simply balance the current system within the existing 12.4% tax rate. In general, beneficiaries will receive much more income from our plan than they would from a plan that simply balanced the old system without personal accounts.

We have also compared the benefits that our plan would provide to beneficiaries relative to current law, presuming that current benefits were made whole with tax increases. A 2.2% payroll tax hike to make the current system actuarially sound was compared with the income that individuals would receive if they made 2.2% voluntary contributions to our personal accounts. Virtually across the board, individuals would do much, much better under our plan.

These are among the reasons why a personal account system is so vital for Social Security reform. Not only will they remove some of the unfunded liabilities of the federal government, but they will provide greater income to individual beneficiaries.

We have also carefully thought through the relationship between personal account income and income through the traditional Social Security system. I would like to comment about some of what our legislation would accomplish in this regard.

Personal accounts, by their nature, are not progressive. There is a direct relationship between money put in and benefits received. It is not redistributed from wealthy beneficiaries to needier ones.

Accordingly, if we move towards a system that includes personal accounts, benefits on the traditional side must be made more progressive if we are ultimately to have a system that is just as progressive, as a whole, as is our current one. We have done this with our plan.

Our plan includes a new ''minimum benefit'' poverty protection that would strengthen the safety net for low-income beneficiaries. If an individual works for a full 40 years, we would guarantee that they will not retire in poverty. An individual becomes eligible for some of the protection after 20 years of work, and receives increased protection for every quarter of work after that.

Thus, for low-income beneficiaries, our plan would provide additional income security, even without the personal accounts. The personal account income would be a pure bonus for them. Even if they invest badly, their basic protections will be secure—not only secure, but strengthened.

In the short term, because of these protections, the Social Security system would become more progressive than it is now. Ultimately, when the personal accounts have built up to be much larger, in the year 2050 or 2060, the progressivity of the system would be essentially what is now—the main difference being that individuals would have much more income.

We also did much to correct the flawed incentives of the current system. We eliminate the earnings test above the normal retirement age—a disincentive for continued work.

We would also increase the delayed retirement credit, and restore the proper relationship between normal retirement and early retirement benefits. Under current law, an individual has little incentive to wait until normal retirement age, because the extra payroll taxes he pays during those years will never fully be received back in benefits. We would change this, so that for each year an individual works, benefits would increase more sharply, and work would be rewarded.

We also would credit an individual for every year of earnings in the benefit formula. Right now, the Social Security system only calculates a benefit based on the average of the highest 35 years of earnings. Many reform proposals would increase this number of years, effectively reducing benefits. Our proposal also recognizes the necessity of increasing the number of computation years in the denominator of this formula—but on the other hand, we would credit an individual in the numerator for every year of earnings, no matter how small.

I am certain that my colleagues have received letters from senior citizens who say, ''I am working part-time at the age of 64, but it is not among my highest years of lifetime earnings. I won't get any credit for this in my Social Security benefits. Why not?'' We believe that we should reward all work, and this proposal would. We even would have the minimum benefit guarantee also depend on the total number of years worked. If we enact this proposal, rewards for continued work would be greatly strengthened, and our country will benefit as a result.

At this point, I feel compelled to point out that there is no ''free lunch'' in Social Security reform. It is essential that we enact personal accounts, but we must enact them in the right way.

Our proposal would explicitly replace unfunded benefits with funded benefits. We move part of the current payroll tax into personal accounts, to fund future benefits. This only makes policy sense if we use such a change to reduce federal liabilities. If we set up personal accounts—but leave all of the old, traditional liabilities in place—we have not achieved anything. Indeed, we could make the financing problem worse.

So we gradually replace unfunded benefits with funded ones. Every responsible proposal to move towards pre-funded benefits will be vulnerable to the attack that it is ''cutting'' benefits, even though in sum, total benefits would be higher than under a ''traditional fix.'' It is imperative that Congress and the public not buy into such misrepresentations as we undertake Social Security reform. If we leave in place all of the unfunded liabilities, and all of the old unfunded benefit promises, then we will leave in place all of the projected tax increases as well.

For example. Our proposal would, in order to prevent the traditional system from posing an ever-increasing burden on taxpayers, gradually raise the age of eligibility for full benefits to 70 in the year 2037 (for individuals turning 62 in the year 2029.) No one over the age of 31 would be affected by the full phase-in of this change.

At the same time, it must be noted—we do not set an age for access to the personal retirement accounts. Our proposal would allow people to retire on these accounts once they are capable of providing a poverty-level annual benefit—even if this earlier than early retirement age. This is an incentive for individuals to put more money into these accounts, and it provides them with flexibility on their age of retirement that they do not have under current law.

We would also require additional reforms to the Consumer Price Index, and adjust the bend points in the Social Security benefit formula in a progressive manner, to gradually phase down the liabilities on the traditional side as we move those benefits over into funded accounts.

I would repeat: Personal accounts are an indispensable component of a Social Security reform program that delivers more retirement income than merely balancing an unreformed system can possibly provide. But they will not solve our long-term financing problems unless we use them to phase down the unfunded liabilities of the old system. This means directly addressing the growth of the unfunded benefits we are promising to pay out, at the same time that we are replacing them with funded benefits.

As a result, we believe our plan is the most fiscally responsible proposal yet devised. The net liabilities upon the federal government in any year during the baby boom retirement period—whether you pick 2020, 2025, 2030, or beyond—would be significantly less than under almost any other proposal. We have avoided any and all tax increases—while at the same time avoided unseen financing costs above and beyond the explicit tax rates.

We have also produced a proposal that will give beneficiaries the opportunity to generate more retirement income through self-directed investments, provide a Social Security system that the economy can sustain, and at the same time enhance protections against the risk of poverty.

I want to thank my co-sponsors—especially Senator JOHN BREAUX, Congressman KOLBE, and Congressman STENHOLM—and their staffs, who have worked so closely with me and with my staff throughout a long and difficult process.

I also want to thank all others who are constructively participating in the Social Security reform debate. We have made it this far without turning this critical issue into a partisan shooting match. I am pleased that the President has remained open to various proposals for reform, and we have been reaching out to him to explain our ideas. I am also appreciative that Senators MOYNIHAN and KERREY have also produced

an actuarially sound proposal, and that discussions of the differences between our proposals have been made on a constructive basis. I would extend a similar appreciation for a number of other Senators who are exploring this issue seriously—everyone from Congressmen MARK SANFORD and NICK SMITH, to Senators ROTH, SANTORUM and PHIL GRAMM in our own chamber.●

● Mr. THOMPSON. Mr. President, I am delighted to join my colleagues today as an original cosponsor of an exciting new proposal to reform Social Security.

We all know that the Social Security program gets in serious financial trouble when the Baby Boomers start retiring early in the next century. The Social Security actuaries tell us that, just 15 years from now, in 2013, Social Security will begin paying out more in benefits than it receives in taxes and will have to begin redeeming the treasury bonds issued to the Trust Funds. By 2032, the Trust Funds will be exhausted, and the program will be running annual cash deficits of hundreds of billions of dollars.

As more and more people become aware of these financial realities, Social Security has quickly ceased to be the untouchable third rail of politics. In my view, it should soon become the brass ring of politics. Entitlement reform is one of the greatest challenges our nation faces, and we should all be reaching for the solution that will enable Social Security to provide for our grandchildren like it did for our grandparents.

Fortunately, right now we have a tremendous window of opportunity for real reform. Our economy is strong; the federal budget is balanced for the first time in 30 years; and the Congressional Budget Office is actually projecting budget surpluses each year for the next decade. Just as important, the 76 million Baby Boomers are still in the workforce paying taxes into the Social Security system. If we wait until this enormous group stops paying taxes and instead begins drawing benefits, the fixes will have to be much more severe.

Over the past 15 months, Senators JUDD GREGG and JOHN BREAUX, along with Congressmen JIM KOLBE and CHARLES STENHOLM, have served as congressional co-chairmen for the National Commission on Retirement Policy, sponsored by the Center for Strategic and International Studies. This 24-member group of politicians, businessmen, and policy experts developed and unanimously approved a broad proposal for reforming Social Security. The Senators and Congressmen then crafted bipartisan legislation based on the commission's recommendations.

The outline of the Gregg-Breaux plan is simple. It would reduce the Social Security payroll tax by 2 percentage points and divert the money into a mandatory savings account for every worker under age 55. The accounts would supplement—not replace—benefits guaranteed through the traditional system. Workers could pick from a limited number of investment funds dealing in stocks, government bonds, or a combination of the two, much like the Thrift Savings Plan available to members of Congress and federal employees. The benefits of current retirees and workers age 55 or older would not be affected by the private accounts, and benefits to survivors of deceased workers and the disabled would also be protected.

Meanwhile, Gregg-Breaux would make changes to the remaining pay-as-you-go system to bring it into actuarial balance. It would accelerate the scheduled increase in the retirement age, raising the age for full benefits to 70 and the age for early retirement benefits to 65 by 2029. It would reduce the Consumer Price Index by half a percentage point so that it more accurately reflects the rate of inflation, and it would scale back benefits to wealthier retirees, who are likely to fare better with their individual accounts. Unlike several of the proposals that are on the table, however, the Gregg-Breaux plan does not raise taxes, period. In fact, the payroll tax is reduced from 12.4 to 10.4 percent and never rises above 10.4 percent again.

Some groups continue to insist that only minor adjustments are needed to put Social Security back on sound financial footing. What they often won't tell you is that all of these adjustments would either raise taxes or cut benefits. For me, it's clear that ''reforming'' Social Security in this way will no longer suffice. These kinds of traditional reforms were last used by the 1983 Greenspan Commission to ''fix'' Social Security for 75 years. Today, we know the program will be in trouble again in 2013, when tax revenues are no longer sufficient to pay promised benefits.

Instead of taxing Americans at ever-higher rates while scaling back their retirement benefits, our goal should be to enable all workers to accumulate a level of wealth that will allow them to retire with a basic level of economic security. That's why private accounts are a central part of the plan I support.

Private accounts would give working-class Americans the same access to the power of compound interest that the rich enjoy today. This notion terrifies those who want to keep workers as dependent on government as possible, but more and more people acknowledge that private accounts are the best way to simultaneously solve the two crises facing Social Security—the impending insolvency of the program due to enormous demographic shifts, and the lower and lower rates of return for each new generation of workers. First, private accounts would allow younger workers to take advantage of the higher returns available to private investment. Second, because these workers would be giving up some of their future claims on traditional Social Security benefits, the unfunded liability of the program would be reduced.

As the American people learn more about the issue of Social Security reform, public opinion on the issue of private accounts has clearly shifted. Depending on how the question is phrased, between 60 and 80 percent of Americans now say they favor letting workers invest some portion of their Social Security tax payments. Most of the current reform plans have an element of private investment, and I am pleased that several of our Democratic colleagues in the Senate have openly endorsed them.

In my view, reforming Social Security is the most significant political issue on the horizon for the foreseeable future, and I am encouraged that the American people and elected officials on both sides of the aisle recognize its importance to our nation's continued prosperity. History has shown us that an issue of this magnitude can only be addressed successfully through a bipartisan process. The Gregg-Breaux plan is a thoughtful approach to reform, and I expect it to wield considerable influence in shaping the important debate that lies ahead.●

● Mr. COATS. Mr. President, I rise today as a cosponsor of the sweeping Social Security Legislation introduced by my colleagues—Senators GREGG and BREAUX. The ''21st Century Retirement Security Plan of 1998'' is designed to strengthen Social Security now, encourage personal savings, and expand the availability of private pension plans.

Senators GREGG and BREAUX recently co-chaired the National Commission on Retirement Policy. This bipartisan commission of lawmakers, economists, pension experts, and businessmen released a report calling for legislation including, among other things, personal savings accounts and a gradual increase in the retirement age. The ''21st Century Retirement Plan'' implements both these provisions and aims to serve a two-fold purpose: It strengthens the Social Security system—ensuring payment to all of the hard-working Americans that have paid into it. And it expands opportunities for private retirement savings—which will provide Americans with more options to save and invest in their future.

As we approach the dawn of the 21st century, it is common knowledge that the aging baby boom will create huge financial problems for future generations. Without changes, the Social Security trust funds will be unable to pay full benefits beginning around the year 2030. Therefore, a thirty-eight year old individual, making an average wage, will have to live until the age of 91 to get back what he paid into the system. This is not the time to propose patchwork solutions to this problem, but rather to seize this unique opportunity to restructure the entire system. I believe that this legislation is a logical first step toward achieving that goal.

President Clinton has also jumped on the save Social Security bandwagon,

although his plan is to sit back and wait until we have three or four ''national town meetings'' to discuss the ramifications of changing the system. Coincidentally, those meetings conclude at the end of this year—which just happens to be an election year. This epitomizes the lack of courage of the part of most of our elected officials.

This legislation will save the Social Security system through the next century without raising taxes. In fact, under this plan, taxpayers would be able to invest 2 percent of their current payroll tax in private savings accounts modeled after the Government's thrift savings plan. This change would not affect current retirees, but would rather assist current tax-paying Americans preparing for their retirement. As a tax-paying American, I trust myself to manage my money much more than I trust the Federal Government to provide for my future.

This allocation of part of the payroll tax would be offset by our current budget surplus and a gradual rise of the retirement age from 67 to 70 by 2029. Further, these accounts would provide a higher rate of return for recipients. This would, as provided by the bill, lower guaranteed Social Security payments and ease the burden on the system.

This plan improves retirement security and protects future generations by strengthening the safety-net aspect of the Social Security system and providing Americans more options for savings and investment. The ''21st Century Retirement Security Plan of 1998'' contains the courage and common sense necessary to save our children and our children's children from the economic strife that is bound to arise if we do not address this impending problem.●

By Mr. LEAHY:

S. 2314. A bill to clarify that prosecutors and other public officials acting in the performance of their official duties may enter into cooperation agreements and make other commitments, assurances, and promises, as provided by law in consideration of truthful testimony; to the Committee on the Judiciary.

PROSECUTORS' COOPERATION AGREEMENTS CLARIFICATION LEGISLATION

Mr. LEAHY. Mr. President, earlier this month, a three-judge panel of the Tenth Circuit decided United States v. Singleton, in which it found that the prosecutor had violated the federal gratuity statute and a state ethics rule by entering a plea agreement with a cooperating defendant that made certain promises in exchange for the cooperator's truthful testimony at trial. The promises in question were the sort of plain vanilla promises that appear in virtually every cooperation agreement, and are the lifeblood of bringing successful prosecutions.

As a former prosecutor, I found this decision bizarre and dangerous. In effect, it makes it illegal—a federal felony—for prosecutors to offer leniency in return for testimony on the theory that leniency is a form of bribery. Defense attorneys across the country have already begun to jump on the Singleton bandwagon. In my state, Vermont, the decision has already triggered new motions in a major drug smuggling case involving a billion dollars worth of hashish. The defendant, Martin Scott, is scheduled to go to trial in September, and the government's evidence includes testimony by cooperating codefendants. Scott has now moved to exclude this testimony on the ground that it was obtained unlawfully in return for government promises of leniency, citing Singleton.

If this controversial decision stands, prosecutors would be exposed to the threat of felony liability and disciplinary action just for doing their jobs. In addition, this decision could result in a tidal wave of reversals and suppression rulings in cases involving cooperator testimony.

I was relieved to see that the Tenth Circuit acted swiftly to vacate the panel decision and set the case down for en banc rehearing in November, and I am confident that the ruling will eventually be thrown out—but not before the issue has been raised and relitigated at every turn in every district and circuit court in the land. At a minimum, this will delay trials, squander scarce judicial resources, and generally waste everyone's time.

We need to insure that prosecutors have the tools they need to do their jobs effectively, and being able to enter into cooperation agreements is critical. That's why I am introducing legislation today to make crystal clear that prosecutors and other public officials acting in the performance of their official duties may enter cooperation agreements and make other such commitments, assurances and promises in return for truthful testimony.

I look forward to working with my colleagues on this matter, and ask unanimous consent that the bill be printed in the RECORD.

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

S. 2314

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF PROSECUTORIAL AUTHORITY.

Section 201 of title 18, United States Code, is amended—

(1) in subsection (c)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by striking ''Whoever'' and all that follows through ''otherwise than'' and inserting ''Whoever, otherwise than'';

(C) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively, and indenting appropriately; and

(D) in paragraph (1), as so designated, by striking ''or'' at the end; and

(2) in subsection (d), by striking ''paragraphs (2) and (3)'' and inserting ''paragraphs (3) and (4)''.

By Mrs. FEINSTEIN (for herself, Mr. D'AMATO, and Mr. FORD):

S. 2315. A bill to amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and titles XVIII and XIX of the Social Security Act to require that group and individual health insurance coverage and group health plans and managed care plans under the medicare and medicaid programs provide coverage for hospital lengths of stay as determined by the attending health care provider in consultation with the patient; to the Committee on Labor and Human Resources.

HOSPITAL LENGTH OF STAY ACT OF 1998

Mr. FEINSTEIN. Mr. President, today Senator D'AMATO, Senator FORD and I are introducing a bill to require health insurance plans to cover the length of hospital stay for any procedure or illness as determined by the attending physician, in consultation with the patient, to be medically appropriate.

This bill will return medical decision-making to medical professionals because it is time to stop insurance plans' interference into this important area of physician decision-making.

It is endorsed by the American Medical Association, the American College of Surgeons, the American College of Obstetricians and Gynecologists, the American Academy of Neurology and the American Psychological Association. Only a physician, taking care of the patient who understands the patient's history, medical condition and needs, can make a decision on how much hospital care a person needs. Physicians are trained to evaluate all the unique needs and problems of each individual patient. Every patient is different and the course of illness has great variation.

Lengths of stay should not be determined by insurance company clerks, actuaries or non-medical personnel. It is the attending physician, not a physician or other representative of an insurance company, that should decide when to admit and discharge someone.

Professional physician organizations develop practice guidelines that guide them in determining medical necessity. These are intended as guidance and are medical judgments made by qualified medical people. Physicians know what medical necessity and generally accepted medical practice are.

We are introducing this bill because we have had a virtual parade of doctors come to us and in essence say, ''We are fed up. We spend too much of our time trying to justify our decisions on medical necessity to insurance companies. Insurance company rules have supplanted doctor decision making.''

Donna Damico, a nurse in a Maryland psychiatric unit of a hospital, told National Public Radio on October 1, 1997:

I spend my days watching the care on my unit be directed by faceless people from insurance companies on the other end of the phone. My hospital employs a full-time nurse whose entire job is to talk to insurance reviewers. . . . The reviewer's background can

range anywhere from high school graduate to nurse, social worker or even actual physicians.

A number of examples have come to my attention:

In 1996, we addressed the problem of ''drive-through'' baby deliveries, insurance plans covering minimal hospital stays for newborns and their mothers because of examples like this: One California new mother was readmitted after a Caesarean section because of severe anemia from excessive blood loss. She didn't know how much blood loss was normal after a delivery. Two California women were readmitted after vaginal deliveries with endometritis, an infection of the uterus.

We've had examples of ''drive-through'' mastectomies, insurance plans shoving women out the door to deal on their own with drainage tubes, pain and disfigurement. S. 249, which I introduced with Senator D'AMATO last year, addresses that abuse and we are trying to get it passed.

A California pediatrician told us of a child with very bad asthma. The insurance plan authorized 3 days in the hospital; the doctor wanted 4–5 days. He told us about a baby with infant botulism (poisoning), a baby with a toxin that had spread from the intestine to the nervous system so that the child could not breathe. The doctor thought a 10–14 day hospital stay was medically necessary for the baby; the insurance plan insisted on one week.

A California neurologist told us about a seven-year-old girl with an ear infection who went to the doctor feverish. When her illness developed into pneumonia, she was admitted to the hospital. After two days she was sent home, but she then returned to the hospital three times because her insurance plan only covered a certain number of days. The third time she returned she had meningitis which can be life threatening. The doctor said that if this girl had stayed in the hospital the first time for five to seven days, the antibiotics would have killed the infection and the meningitis would never have developed.

A 27-year-old man from central California had a heart transplant and was forced out of the hospital after 4 days because his HMO would not pay for more days. He died.

Nurses in St. Luke's Hospital, San Francisco, say that women are being sent home after only two nights after a hysterectomy and two nights for a Caesarean section delivery, both of which are major abdominal surgeries, even though physicians think the women are not ready to go home..

Just last week Lisa Breakey, a San Jose speech pathologist, came to my office and told us that she is providing home healthcare for stroke patients she used to see in the hospital. She sees patients in their homes who have G tubes in their stomachs for feeding and trach tubes in their throats for breathing. The trach tubes have an inflated balloon or cuff which a family members must deflate and inflate by using a needle. Family members are supposed to suction the patient's mouth and throat before they deflate the cuff. Families, she stressed, are providing intensive care, for which they are unprepared and untrained. Bedrooms have become hospital rooms.

Another California physician told us about a patient who needed total hip replacement because her hip had failed. The doctor believed a seven-day stay was warranted; the plan authorized five.

Rep. GREG GANSKE, a physician serving in the House, told the story of a six-year-old child who nearly drowned. The child was put on a ventilator and it appeared that he would not live. The hospital got a call from the insurance company, asking if the doctor had considered sending the boy home because home ventilation is cheaper.

These cases can be summarized in the comments of a Chico, California, maternity ward nurse: ''People's treatment depends on the type of insurance they have rather than what's best for them.''

As these cases illustrate, premature discharges can increase readmissions and medical complications. During the ''drive-through delivery'' debate, we heard about babies who were jaundiced and dehydrated and had to come back to the hospital.

Similarly, as reported in American Medical News on March 23, 1998, according to Dr. David Phillips, ''a shift toward outpatient treatment actually has come at quite a high price . . . an increased loss of lives.'' This University of California study found that medication errors are 3 times higher among outpatients than inpatients; that medications side effects provides limited oversight by medical personnel and that the patient-physician relationships is compromised.

Ms. Damico said, ''Patients return to us in acute states because their insurance will no longer pay the same amount for their outpatient treatment . . . [They] deteriorate to the point of suicidal thoughts or attempts and need to return to the hospital.'' She cited the example of a suicidal woman whose plan denied a hospital admission requested by her physician. After the doctor told her of the denial, she took twenty 50-milligram tabs of Benadryl, was then admitted, and the plan then had to pay for hospital care, an ambulance and emergency room fees.

So not only do premature discharges compromise health, they ultimately cost the insurer more.

Physicians say they battle daily with insurance companies to give patients the hospital care they need and to justify their decisions on medical necessity.

An American Medical Association review of a managed care contract (Aetna US Healthcare) found that the contract gives ''the company the unilateral authority to change material terms of the contract and to make determinations of medical necessity . . . without regard to physician determinations or scientific or clinical protocols . . . .,'' according to the January 19, 1998 American Medical News.

A study by the American College of Surgeons found that guidelines published by Milliman and Robertson and used by many insurers represent a minimum length of stay, compared with surgeons' estimates.

A study by the American Academy of Neurology found that the Milliman and Robertson guidelines on length of stay are ''extraordinarily short in comparison to a large National Library of Medicine database . .. And that [the guidelines] do not relate to anything resembling the average hospital patient or attending physician . . . .'' The neurologists found that these guidelines were ''statistically developed,'' not scientifically sound or clinically relevant.

A study in the April 1997 Bulletin of the American College of Surgeons found that surgeons stated that the appropriate length of stay for an appendectomy is zero to five days, while insurance industry guidelines set a specific coverage limit of one day.

According to 134 interviews reported in the March 15, 1998 Washington Post, 7 in 10 physicians said, in dealing with managed care plans, they have exaggerated the severity of an patient's condition to ''prevent him or her from being sent home from a hospital prematurely.'' Dr. David Schriger, at UCLA Medical Center in Los Angeles, said that he routinely has patients, such as a frail, elderly woman with the flu, who is not in imminent danger, but could encounter serious problems if she is sent home during the night. He told the Post, ''At this point I have to figure out a way to put her in the hospital. . . And typically, I'll come up with a reason acceptable to the insurer,'' and orders a blood test and chest x-ray, to justify admission.

The Post article also cited Kaiser Permanente's Texas division which ''warned doctors in urgent care centers not to tell patients they required hospitalization, as one Kaiser administrator recalled. ''We basically said [to] the UCC doctors, 'If you value your job, you won't say anything about hospitalization. All you'll say is, I think you need further evaluation . . . .'''

Ms. Damico, the psychiatric nurse interviewed on NPR said, ''Our utilization review nurse gives all of us, including the doctors, good advice on how to chart so that our patients' care will be covered . . . We all conspire quietly to make certain the charts look and sound bad enough.''

The American College of Surgeons wrote: ''We believe very strongly that any health care system or plan that removes the surgeon and the patient from the medical decision-making process only undermines the quality of that patient's care and his or her health and well being . . . . specific, single numbers [of days] cannot and should not be used to represent a

length of stay for a given procedure.'' (April 24, 1997) ACS on March 5 wrote, ''We believe very strongly that any health care system or plan that removes the surgeon and the patient from the medical decision making process only undermines the quality of that patient's care and his or her health and well being.''

The American Medical Association wrote on May 20, 1998, ''We are gratified that this bill would promote the fundamental concept, which the AMA has always endorsed that medical decisions should be made by patients and their physicians, rather than by insurers or legislators . . . We appreciate your initiative and ongoing efforts to protect patients by ensuring that physicians may identify medically appropriate lengths of stay, unfettered by third party payers.''

The American Psychological Association, on March 4, 1998 wrote me, ''We are pleased to support this legislation, which will require all health plans to follow the best judgment of the patient and attending provider when determining length of stay for inpatient treatment.''

Americans' faith in their medical system has plummeted as almost daily we hear of more horror stories of care denied and HMO hassles. Arbitrary insurance company rules cannot address the subtleties of medical care. A March 1998 U.S. News and Kaiser Family Foundation survey found that three in four Americans are worried about their health care coverage and half say they are worried that doctors are basing treatment decisions strictly on what insurance plans will pay for.

The bill we introduce today begins to address some of these problems. I am also a cosponsor of the Patient Bills of Rights (S. 1890) and the Patient Access to Responsible Care Act (S. 644), bills proposing comprehensive reforms.

I hope these initiatives will send a strong message to the health insurance industry and return medical decision-making to those medical professionals trained to make those decisions.

Mr. President, I ask unanimous consent that a summary of the bill and letters in support be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

SUMMARY OF THE HOSPITAL LENGTH OF STAY ACT OF 1998

Requires plans to cover hospital lengths of stay for all illnesses and conditions as determined by the physician, in consultation with the patient, to be medically appropriate.

Prohibits plans from requiring providers (physicians) to obtain a plan's prior authorization for a hospital length of stay.

Prohibits plans from denying eligibility or renewal for the purpose of avoiding these requirements.

Prohibits plans from penalizing or otherwise reducing or limiting reimbursement of the attending physician because the physician provided care in accordance with the requirements of the bill.

Prohibits plans from providing monetary or other incentives to induce a physician to provide care inconsistent with these requirements.

Includes language clarifying that—nothing in the bill requires individuals to stay in the hospital for a fixed period of time for any procedure; plans may require copayments but copayments for a hospital stay determined by the physician cannot exceed copayments for any preceding portion of the stay.

Does not pre-empt state laws that provide greater protection.

Applies to private insurance plans, Medicare, Medicaid and Medigap.

AMERICAN MEDICAL ASSOCIATION,
May 20, 1998.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the American Medical Association (AMA), we would like to express our support for your draft legislation the ''Hospital Length of Stay Act of 1998''. We hope you introduce this legislation that would require coverage of an inpatient's hospital stay to the extent determined medically appropriate by the attending physician in consultation with the patient.

We are gratified that this bill would promote the fundamental concept, which the AMA has always endorsed, that medical decisions should be made by patients and their physicians rather than by insurers or legislators. As you may know, on several occasions the AMA has supported legislative initiatives that would require coverage on a diagnosis by diagnosis basis for medically appropriate minimum lengths of stay. While those bills have moved us in the right direction, this legislation would take us where we want to be.

We appreciate your initiative and ongoing efforts to protect patients by ensuring that physicians may identify medically appropriate lengths of stay, unfettered by third party payors. We offer you our assistance in helping to enact this legislation.

Sincerely,

LYNN E. JENSEN,
Interim Executive Vice President.

AMERICAN COLLEGE OF SURGEONS,
July 15, 1998.

STATEMENT: POSTOPERATIVE LENGTHS OF HOSPITAL STAY

EDWARD R. LAWS, Jr., MD, FACS,
Member of the Board of Regents,
American College of Surgeons.

On behalf of the American College of Surgeons, I would like to commend Senator Feinstein for her continuing concern for high-quality patient care. In particular, I want to praise her and her cosponsor, Senator D'Amato, for their most recent effort to protect patients by introducing legislation to ban the practice of imposing arbitrary coverage limits on hospital length of stay—a practice that is currently being used by some third-party payers.

The issue of ''drive-through'' maternity care, followed more recently by the issue of outpatient mastectomy operations, clearly illustrate the patient care problems that are created when third-party payers set a specific number of days as the appropriate length of stay for a given procedure. For some maternity and breast cancer patients, the outpatient setting may well be medically appropriate and personally preferred, but for many others this certainly is not the case. As many state and federal legislators have come to realize, each of these patients has her own set of unique medical problems and related issues, and it is inappropriate to expect them to conform to cost containment goals that were designed with the ''optimum'' patient in mind.

What few people seem to recognize, however, is that these problems are not limited to new mothers and breast cancer patients. Indeed, thousands of patients whose illnesses do not occupy a high profile on the nation's health care agenda face the same dilemma. A variety of factors—such coexisting illnesses, the optimum treatment method selected, complications arising during the operation, and differences in response to the treatment—can vary significantly among individual patients, making it impossible to accurately or precisely predict the appropriate length of stay for a given procedure. Such factors may also determine the appropriate site for performing a particular operation or procedure. Despite these important considerations, efforts to restrain growth in spending for health care services, although a legitimate concern, are coming into conflict with individual patient needs.

We need to view the issue of length-of-stay coverage limits from a broader perspective than we have in the past. Congress, state legislatures, and the managed care industry have acted on a procedure-specific basis in response to concerns raised about coverage limits placed on maternity care and mastectomy operations. But, it is time to take the next step.

Senator Feinstein's legislation, the ''Hospital Length of Stay Act'' would take this step by proposing to protect medical decisionmaking on behalf of all patients. The legislation specifies that decisions about the medical appropriateness of a hospital length of stay should be determined by the attending physician, in consultation with the patient. Further, the legislation would prohibit health plans from penalizing patients, physicians, or hospitals for following through on these medical decisions.

The American College of Surgeons believes strongly that, for all surgical patients, the responsibility for making the decisions to operate, what type of operation the patient should have, and how long the patient stays in the hospital following the operation must rest with the surgeon and the patient. The College has always encouraged its members to keep their patients' length of stay as short as possible. However, we do believe very strongly that any health care system or plan that removes the surgeon and the patient from the medical decision-making process only undermines the quality of that patient's care and his or her health and well-being.

Once again, we congratulate Senator Feinstein and Senator D'Amato for their courageous efforts on behalf of quality patient care. The College looks forward to working closely with them and their colleagues in the House of Representatives, including Congressman Tom Coburn and Congresswoman Rosa DeLauro, to ensure swift passage of this important legislation.

The American College of Surgeons is a scientific and educational organization of surgeons that was founded in 1913 to raise the standards of surgical practice and to improve the care of the surgical patient. The College is dedicated to the ethical and competent practice of surgery. Its achievements have significantly influenced the course of scientific surgery in America, and have established it as an important advocate for all surgical patients. The College has more than 62,000 members and is the largest organization of surgeons in the world.

AMERICAN COLLEGE OF SURGEONS,
March 5, 1998.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the 62,000 Fellows of the American College of

Surgeons, I want to commend you for introducing the ''Hospital Length of Stay Act of 1998.'' Your legislation will contribute significantly to the effort to educate Congress and the public about the practice of imposing arbitrary coverage limits on hospital length of stay that do not take into account an individual patient's unique health care needs.

For all surgical patients, the responsibility for making the decision to operate, the type of operation, and how long the patient stays in the hospital following the operation must rest with the surgeon and the patient. The College has always encouraged its members to keep their patients' length of stay as short as possible. However, we believe very strongly that any health care system or plan that removes the surgeon and the patient from the medical decisionmaking process only undermines the quality of that patient's care and his or health and well being.

Once again, we appreciate your continuing concern, and congratulate you on introducing legislation that acknowledges the importance of preserving the surgeon-patient relationship and ensuring that they are able to exercise their responsibility for making medical treatment decisions.

Sincerely,

PAUL A. EBERT,
Director.

AMERICAN ACADEMY OF NEUROLOGY®,
April 22, 1998.

Hon. DIANNE FEINSTEIN,
Attn: Glenda Booth and Ann Garcia, Washington, DC.

DEAR SENATOR FEINSTEIN: The American Academy of Neurology, an association of over 15,000 neurologists, has been in the forefront of discussions and debate concerning the necessary protections that should be afforded our patients in a health care environment increasingly dominated by corporate and managed care structures. We believe that it is imperative that patients, who often feel powerless in today's health care environment, be protected through the implementation of basic health care standards including such protections as appropriate health plan disclosure, adequate choice of plans and providers, and appropriate grievance processes.

Your bill, the Hospital Length of Stay Act of 1998, contains many of the elements that we deem important, especially its fundamental premise to protect and preserve the patient and provider relationship. Physicians need to be allowed to exercise their decisionmaking without obstruction when they consult with their patients concerning the appropriate treatment or care for their health care condition.

A survey by the National Coalition on Health Care found that 80% of Americans believe that their quality of care is often compromised to save money. Many Americans feel insecure about their health care plan and question whether or not the plan will take care of them when they really need it such as when they become hospitalized. It is out of this demonstrated national concern that the President of the United States as well as several leading medical societies, such as the Academy, are now calling on members of Congress to implement national health care standards or more commonly known as consumer ''bill of rights''.

The Academy applauds and endorses your bill as a bill of rights component and we hope that this is one of many steps that will be taken by you and your colleagues in helping us to be able to confidently tell our patients that their health care plan will take care of them when they are sick or are in need of health care.

I have included a copy of the Academy's patient protection statement that I hope you will review and consider as the debate on this important issue continues throughout this legislative session.

Sincerely,

STEVEN P. RINGEL,
President.

AMERICAN PSYCHOLOGICAL ASSOCIATION,
March 4, 1998.

Senator DIANNE FEINSTEIN,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the American Psychological Association, I am writing to thank you for your sponsorship of the Hospital Length of Stay Act of 1998. We are pleased to support this legislation, which will require all health plans to follow the best judgment of the patient and attending provider when determining length of stay for inpatient treatment.

We appreciate your sensitivity to our concerns over the reality that psychologists in many states are attending providers under their state license and scope of practice. Accordingly, your bill extends this quality of care protection to the patients of psychologists as well as ''physicians'', as did the Coburn-Strickland amendment to the House Commerce Committee version of the Balanced Budget Act last year.

There is obviously enormous public interest in having Congress act this year to pass enforceable federal standards of consumer protection in managed care. Our members are also supportive of a bill that you have cosponsored, the Patient Access to Responsible Care Act (S. 644), and we are very appreciative of your visible involvement in this issue. The Hospital Length to Stay Act addresses another important issue that should be addressed in this debate and we commend you for taking it on.

Sincerely,

MARILYN S. RICHMOND,
Assistant Executive Director for Government Relations.

By Mr. MCCONNELL (for himself and Mr. DEWINE):

S. 2316. A bill to require the Secretary of Energy to submit to Congress a plan to ensure that all amounts accrued on the books of the United States Enrichment Corporation for the disposition of depleted uranium hexafluoride will be used to treat and recycle depleted uranium hexafluoride; read the first time.

UNITED STATES ENRICHMENT CORPORATION PRIVATIZATION

Mr. MCCONNELL. Mr. President, I rise today to introduce a must-pass piece of legislation to ensure that the Department of Energy is not stuck with a massive unfunded mandate as a result of privatizing the United States Enrichment Corporation. I am pleased to be joined by Senator DEWINE who is an original cosponsor of this legislation.

Last month, the administration, the Department of Energy, and the USEC Board came to a decision on how they intend to privatize the USEC. This deal, which was struck in secret, is a complicated and confusing matter that I am only just beginning to understand. The facts, I have discovered, are not welcome news to the communities of Paducah, Kentucky, and Portsmouth, Ohio, where the two USEC gaseous diffusion plants are located. These facilities employ approximately 4,000 people, making them the largest employers in those regions.

The most discouraging aspect of this privatization proposal is the impact this deal will have on jobs. The administration has tried to put a positive spin on things by claiming that only 600 jobs would be lost over the next 2 years. Unfortunately, this may be the tip of the iceberg, because after the first 2 years, the administration has made no guarantees on the number of jobs that might be lost. In fact, after reading the fine print of this agreement, union and community leaders feel that closure of one of the two plants is a very real possibility. This could result in the loss of nearly 2,000 jobs. Without some efforts to mitigate the job losses, these communities will be economically devastated.

The second item of concern is that the Department of Energy—and taxpayers—will be stuck with an unfunded environmental liability. As you may know, under the terms of the USEC Privatization Act of 1996, the responsibility for the treatment and disposal of the uranium waste will be transferred from USEC to the Department of Energy. To prepare for this reality, USEC has collected nearly $385 million from its customers for the specific purpose of cleaning up their environmental liability. Unfortunately, the administration's proposal only provides $50 million of that total to be used to address this problem, while the remaining $335 million is due to be deposited into the General Treasury.

Mr. President, there are two problems with this scenario. First, I fail to see the logic behind the decision to use only one-eighth of the money which has been collected for the purpose of addressing the nuclear waste at the USEC plants. Second, the administration's plan calls for the $50 million to be given to USEC, Inc.—the private corporation. Why should we, as legislators, allow the government to give a $50 million handout to a private corporation to clean up a Federal entity's mess when $385 million is already available for environmental clean up? What is worse, the administration's plan will add to the tens of thousands of canisters of depleted uranium hexafluoride already stored at the plants, further expanding the environmental problems of the plants and the cost to clean up this site for the Department of Energy.

Mr. President, I am not one to look a gift horse in the mouth, but this deal is not good for Kentucky and is an abrogation of the Federal Government's responsibility to clean up this nuclear mess. We need to ensure that the taxpayers and the workers at these facilities get a better deal than what is being offered. That is why I have introduced this legislation to ensure that all the funds raised and earmarked for the clean up of USEC's environmental legacy will remain available for that purpsoe—and that purpose only. This bill mandates that the administration hold these earmarked funds until the Secretary of Energy submits a plan and

legislation to implement and operate a facility to cleanup the nuclear waste at Paducah and Portsmouth. Once this plan is submitted, then the funding can flow to clean up this environmental nightmare.

This bill will ensure that taxpayers aren't stuck with an unfunded mandate and makes a commitment to the communities that this toxic hazard will be disposed of in a timely manner. Unlike the administration's plan to simply store additional uranium waste, my bill will create many more jobs to construct and operate this facility. The new facility will convert the depleted uranium from an unstable and toxic hexaflouride form to a stable and non-threatening oxide. During this process many useful commercial by-products can also be recovered and sold.

Mr. President, I have here a letter from the Governors of Kentucky, Ohio, and Tennessee urging Secretary Peña to take immediate steps to convert the toxic uranium hexafluoride into a more stable, non-threatening oxide form. The Governors urge the Secretary to seek the necessary funding to begin this process and they specifically identified the funding I have identified in my amendment. I ask unanimous consent that the letter signed by Governors Patton, Sunquist, and Voinovich be printed in the RECORD.

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

APRIL 27, 1998.

Hon. FEDERICO PEÑA,
Secretary, Department of Energy, Washington, DC.

Re ''Draft PEIS for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride,'' DOE/EIS–0269 dated December 1997.

DEAR SECRETARY PEÑA: More than forty years ago the U.S. Department of Energy began the uranium enhancement initiative that created a common link between Ohio, Kentucky, and Tennessee. This commonality includes the U.S. Department of Energy's legacy of waste, a significant portion of which is made up of depleted uranium hexafluoride. Today, our three states are working together in order to recommend the selection of an appropriate and lawful alternative for the long-term management and use of depleted uranium hexafluoride. We believe that such an alternative must minimize impacts on human health and the environment, as well as benefit the overall mission of our states and the U.S. Department of Energy (''DOE'').

Ohio, Kentucky, and Tennessee have the following significant concerns regarding the above-referenced document:

DOE should consider the immediate conversion of all depleted uranium hexafluoride (DUF6) to the less hazardous uranium oxide (U308) and provide above ground storage of the U308. We do not believe that waiting for possible market demands for the DUF6 is justification for delaying this project. It is incumbent upon DOE to immediately begin seeking funds from Congress for this conversion. We urge DOE to complete conversion by the year 2018 or earlier and reduce the mortgage of maintaining the cylinders.

A long-term strategy for DUF6 must include DOE's entire cylinder inventory, including heel and small cylinders. The 10,000+ cylinders of DUF6 generated by the United States Enrichment Corporation (USEC), which will revert to DOE ownership upon privatization of USEC, must also be considered in any plans.

An estimated $480 million has been accrued by USEC since 1993 in order to offset the cost of the future conversion of DUF6 generated by USEC. DOE should work with Congress now to ensure this fund is not diverted into the federal treasury for an unrelated use. In addition, DOE might consider partnering with the future owner of USEC in a long-term strategy for managing and converting DUF6, in order to avoid redundancy of efforts. Any partnering effort, however, must not slow progress toward conversion.

Natural phenomena events or accidents may not have been adequately considered in the PEIS. DOE must identify the ''worse-case'' cylinder conditions and explicitly use this information in the hazard modeling descriptions.

In order for states to effectively evaluate the potential impact of the preferred alternative DOE must provide information on the location of the sites where conversion would occur and how wastes generated from this process will be managed. In order to avoid the undue risk of transporting deteriorating cylinders, we recommend that DOE evaluate the feasibility of on-site conversion plants.

DOE must ensure that funding for safe storage and maintenance of DUF6 cylinders and storage yards is at an adequate level to protect human health and the environment.

The States welcome the opportunity to work closely with the Department of Energy in addressing these complex issues and moving rapidly toward an alternative that will well serve the public and the environment. In addition we urge DOE to carefully consider the more detailed comments being submitted by each of our states environmental regulatory agencies.

Sincerely,

GOVERNOR PAUL E. PATTON,
GOVERNOR GEORGE V. VOINOVICH,
GOVERNOR DON SUNDQUIS.

Mr. MCCONNELL. Mr. President, I also have a letter from the Oil, Chemical and Atomic Workers Union, which represents 2,200 hourly workers at the Paducah and Portsmouth uranium enrichment facilities. They have also advocated for the use of those funds to begin the clean up of this toxic material. I ask unanimous consent that this letter also be printed in the RECORD.

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

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL, UNION, AFL–CIO,

Lakewood, CO,
JULY 14, 1998.

Senator MITCH MCCONNELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCONNELL: On June 29, 1998 the Administration announced that it will soon privatize the United States Enrichment Corporation (USEC), which operates the two uranium enrichment plants owned by the Department of Energy in Portsmouth, Ohio and Paducah, Kentucky. Coinciding with this announcement, USEC declared that:

(1) ''to the extent commercially practicable'' it will eliminate no more than 600 jobs during over the next two years, consistent with an undisclosed USEC ''Strategic Plan'', and

(2) it will transfer thousands of canisters of its depleted uranium hexaflouride waste to the Department of Energy who will inherit the disposition responsibility for wastes that were created by USEC between July 1, 1993 and the date of privatization. USEC has accrued approximately $400 million on its balance sheet to cover the disposition costs of this waste.

Approximately $1.2 billion is presently in a revolving fund account in USEC's name at the Treasury Department—a fund which was created pursuant to Section 1308 of the Energy Policy Act of 1992. Of that amount, $400 million represents the funds collected from utility customers for enrichment services to cover the costs for disposition of these wastes. The Administration has advised us that, absent legislation, these funds will be swept out of this revolving fund immediately after privatization.

To date, Treasury Department officials have been unwilling to secure these funds for the purpose of which they were reserved; to threat the massive quantities of waste left by USEC for the government to clean up. If the funds accrued on USEC's pre-privatization balance sheet were transferred into a dedicated fund at the Department of Energy, these extremely corrosive radioactive wastes would not sit untreated and approximately 240 displaced workers could be re-employed preforming waste treatment activity at Paducah and Portsmouth.

We understand that you are planning legislation which will secure the $400 million in USEC's account at Treasury for the purpose for which it was reserved: to treat waste generated by USEC. Your legislation will fence these funds until the Administration submits a waste treatment plan to Congress with its FY 2000 budget request. The plan will include the construction of two treatment plants—one in Ohio and one in Kentucky. This approach will reduce the hazards associated with the transport of radioactive wastes.

In April of this year the Governors from Kentucky, Ohio and Tennessee wrote to Secretary of Energy Federico Pena endorsing the concept of using the funds from USEC's balance sheet for the treatment and disposition of the depleted uranium hexaflouride tails.

The Oil, Chemical & Atomic Workers Union (OCAW), which represents 2,200 hourly workers at the two gaseous diffusion plants in Paducah and Portsmouth, applauds your efforts to pass legislation which will fence these funds prior to the privatization of USEC.

As you deliberate this legislation, we urge you to ensure that the Department of Energy will require the cleanup contractor(s) to provide a right of first refusal to displaced workers from the gaseous diffusion plants, and to require the contractor(s) to minimize the social and economic impacts by bridging health and pension benefits. Such an arrangement is consistent with the amendment you proposed to offer as part of the FY 99 Energy and Water Development Appropriations Act.

We look forward to working with you and other members to ensure swift passage of this legislation in the House and Senate prior to the privatization date.

Sincerely,

RICHARD MILLER,
Policy Analyst.

Mr. MCCONNELL. Mr. President, I have also cleared this bill with Chairman MURKOWSKI of the Energy Committee and Senator DOMENICI, who is the chairman of the relevant subcommittee on the Appropriations Committee. Neither Senator has any objection to the immediate passage of this

legislation. Finally, I have cleared this proposal with the Congressional Budget Office and they have scored this bill as having zero budget impact.

Mr. President, we need to ensure that the people, economies and environment of Western Kentucky and Southeastern Ohio are not sacrificed to make a quick buck off the sale of the uranium enrichment facilities, especially when funding is available. I urge my colleagues to approve this legislation and protect taxpayers from paying an additional cost for clean up.

Mr. DEWINE. Mr. President, I rise in strong support of the legislation offered by our distinguished friend from Kentucky, Senator MCCONNELL, to ensure that the Energy Department has the resources to address an important public health issue and is not saddled with a massive unfunded mandate in the wake of the privatization of the United States Enrichment Corporation (USEC).

This privatization will entail the purchase of nuclear material from the Russians—material which it is clearly in our national security interest to have removed from the international market. There is currently a fund within USEC which deals with the ''disposition of depleted uranium hexafluoride''—and this fund contains an estimated $400 million. If no changes are made, this money will go to the U.S. Treasury when the Initial Public Offering occurs, possibly as soon as next week.

This fund was created explicitly to handle the disposition of this kind of material. But if the law isn't changed, the Department of Energy (DOE) would have to find new funding sources in order to treat the material—and it may not be able to come up with the money.

This would be a vary undesirable result. The material under discussion is highly toxic—and disposing of it is and should remain an important national security priority. That $400 million is needed to stabilize this material, and to process it so that parts of it can be recycled and other parts can be safely secured.

This bill would provide that, ''the Secretary of Energy shall prepare, and the President shall include in the budget request for fiscal 2000, a plan and proposed legislation to ensure that all amounts accrued on the books of the United States Enrichment Corporation for the disposition of depleted uranium hexafluoride will be used to commence construction of, not later than January 31, 2004, and to operate, an onsite facility at each of the gaseous diffusion plants at Paducah, Kentucky, and Portsmouth, Ohio, to treat and recycle depleted uranium hexafluoride.''

The bill will address this key challenge. And it will also prevent a major economic dislocation in two communities—Portsmouth, OH (whose USEC plant has 2,400 employees) and Paducah, KY (whose USEC plant has 2,000 employees). This bill will support new decontamination and decommissioning jobs at these plants, which may experience limited job loss through the privatization.

It is an important investment in these two communities—and in a sensible toxic-materials disposal policy for America. I thank Senator MCCONNELL for his leadership on this legislation, and I am proud to be an original cosponsor of this effort.

ADDITIONAL COSPONSORS

S. 263

At the request of Mr. MCCONNELL, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 263, a bill to prohibit the import, export, sale, purchase, possession, transportation, acquisition, and receipt of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

S. 361

At the request of Mr. JEFFORDS, the name of the Senator from Georgia [Mr. CLELAND] was added as a cosponsor of S. 361, a bill to amend the Endangered Species Act of 1973 to prohibit the sale, import, and export of products labeled as containing endangered species, and for other purposes.

S. 1251

At the request of Mr. D'AMATO, the name of the Senator from Ohio [Mr. DEWINE] was added as a cosponsor of S. 1251, a bill to amend the Internal Revenue Code of 1986 to increase the amount of private activity bonds which may be issued in each State, and to index such amount for inflation.

S. 1413

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 1413, a bill to provide a framework for consideration by the legislative and executive branches of unilateral economic sanctions.

S. 1459

At the request of Mr. GRASSLEY, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 1459, a bill to amend the Internal Revenue Code of 1986 to provide a 5-year extension of the credit for producing electricity from wind and closed-loop biomass.

S. 1647

At the request of Mr. BAUCUS, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1647, a bill to reauthorize and make reforms to programs authorized by the Public Works and Economic Development Act of 1965.

S. 1734

At the request of Mrs. HUTCHISON, the name of the Senator from Illinois [Mr. DURBIN] was added as a cosponsor of S. 1734, a bill to amend the Internal Revenue Code of 1986 to waive the income inclusion on a distribution from an individual retirement account to the extent that the distribution is contributed for charitable purposes.

S. 1759

At the request of Mr. HATCH, the name of the Senator from Nebraska [Mr. KERREY] was added as a cosponsor of S. 1759, a bill to grant a Federal charter to the American GI Forum of the United States.

S. 1890

At the request of Mr. DASCHLE, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 1890, a bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

S. 1891

At the request of Mr. DASCHLE, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 1891, a bill to amend the Internal Revenue Code of 1986 to protect consumers in managed care plans and other health coverage.

S. 2001

At the request of Mr. MURKOWSKI, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 2001, a bill to amend the Indian Health Care Improvement Act to make permanent the demonstration program that allows for direct billing of medicare, medicaid, and other third party payors, and to expand the eligibility under such program to other tribes and tribal organizations.

S. 2078

At the request of Mr. GRASSLEY, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 2078, a bill to amend the Internal Revenue Code of 1986 to provide for Farm and Ranch Risk Management Accounts, and for other purposes.

S. 2128

At the request of Mr. STEVENS, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 2128, a bill to clarify the authority of the Director of the Federal Bureau of Investigation regarding the collection of fees to process certain identification records and name checks, and for other purposes.

S. 2151

At the request of Mr. NICKLES, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 2151, a bill to clarify Federal law to prohibit the dispensing or distribution of a controlled substance for the purpose of causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual.

S. 2208

At the request of Mr. FRIST, the names of the Senator from Vermont [Mr. JEFFORDS] and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 2208, a bill to amend title IX of the Public Health Service Act to revise and extend the Agency for Healthcare Policy and Research.

S. 2213

At the request of Mr. FRIST, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of S. 2213, a bill to allow all States to participate in activities under the Education Flexibility Partnership Demonstration Act.