SENATE—*Tuesday, October 8, 1991*

(Legislative day of Thursday, September 19, 1991)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable CHARLES S. ROBB, a Senator from the State of Virginia.

The PRESIDING OFFICER. The Senate will be led in prayer this morning by the Reverend Richard C. Halverson, Jr., Chesterbrook Presbyterian Church, Falls Church, VA.

PRAYER

The Reverend Richard C. Halverson, Jr., offered the following prayer:

Let us pray:

As we open in prayer, we recall an observation by the American poet, Carl Sandburg, that the Civil War was essentially fought over one English verb.

Before the war this country was identified in all treaties as, "The United States are." After the war, the new reference was, "The United States is."

We gratefully acknowledge, in God's providence, that this Chamber houses the Senate—not of a loose confederation of States but of the United States. We pray for the diversity and solidarity of our land. And we petition You, Lord, for the spiritual and material welfare of every State.

This brief prayer does not allow us to remember each individual State. This morning we pray for just one—the State of Maine.

As the health of each State is indispensable to the strength of the whole, we seek Your favor on this 23d State of the Union.

We raise its flag as a form of prayer. Let the pine tree, the water, and the moose in the center of the flag, be expressions of thanksgiving for the productive and beautiful land You have placed in our care.

May the people symbolized on the flag be our petition for the people of our land.

We pray especially for the leadership of Maine, requesting Your divine oversight for Senator GEORGE MITCHELL and his family and Senator WILLIAM COHEN and his family. Be with the leaders in the congressional districts, the mayors and councils in the cities, and the Governor.

And finally, may the flag's inscription, "Dirigo," meaning, "I Direct," be an unforgettable reminder of Your promise that in spite of whatever shall befall us, You direct and lead.

In conclusion, Lord, we would be remiss if we would not remember this morning to ask for Your direction in the proceedings of this important and long day. Be with every Senator and their staffs and their families. As they vote today and go through the responsibilities they face, give them unusual wisdom and strength. And then, as they return home, Lord, help them govern their families well.

We pray these things in Christ's name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 8, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CHARLES S. ROBB, a Senator from the State of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from New York [Mr. MOYNIHAN].

RESERVATION OF LEADER TIME

Mr. MOYNIHAN. Mr. President, I have been requested by the leadership to ask their time be reserved for their use at some other point in the day's procedure.

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

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise, as it has been this Senator's practice for several years now, to observe that this is the 2,397th day of the captivity of Terry Anderson in Beirut. He, as the distinguished Presiding Officer knows, appeared early yesterday in a video cassette from Beirut. He spoke of his captivity, and howsoever outrageous—and it is outrageous—it appears to have become endurable for the moment.

He is with Terry Waite and Tom Sutherland. They have two chess sets. They get U.S. News & World Report, Time, Newsweek, and the Economist, and they can listen to the BBC and the Voice of America. And Terry has learned French from his colleague, Tom Sutherland. He appeared to his sister Peggy to be in much better physical shape than the last time a photograph appeared. And he said yesterday that, and I quote him, "I've been told just a little while ago that we can expect some good news very soon."

Once again, Mr. President, I join the Senate in wishing that to be the case. Without in any way diminishing a sense of fury at what has been done. To think that they hold men hostage for nominally religious purposes makes it all the more sacrilegious.

And so for what I hope will be the last time on these remarks, I yield the floor.

Mr. LEAHY. Mr. President, I want to compliment the distinguished Senator from New York and my good friend and neighbor, I might say, for the statement he has just made. And perhaps in some ways I have been a bit remiss that I have not complimented him when he has made numerous statements similar to this one to remind the U.S. Senate and the American people of the plight of Terry Anderson and the other hostages.

I say I may have been remiss in not doing that because at times I am sure the distinguished Senator from New York has felt almost lonely on the floor. He has carried the vigil. He has really been the constant conscience on this issue.

I have stated many, many times in my almost 18 years in this body that the U.S. Senate should be the conscience of the Nation. Well, the distinguished Senator from New York [Mr. MOYNIHAN] on many, many issues—from Social Security to the hostage question—has jogged our conscience.

I hope that he does not have to do this ever again. I hope, as he does, that his next statement tomorrow, today, might be to say Terry Anderson has been released and that the others have been released. We all hope that.

It has been a cruel, cruel display on the part of the hostage holders. They dangle out photographs. They give hints that the hostages might be released, and then they yank them back. You wonder what that does to the hostages themselves. Someday we will know, when we hear from them. But all of us, as family members, must know what that does to their families, their loved ones, people like Senator MOY-

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

NIHAN, who has kept the flame lit here and who has made the comments he has. And I wonder—given the cruelty, the baseness, the vileness, the obscenity, the real obscenity of holding hostages—I wonder what the hostage holders think they could gain by it. Because our country, a great and powerful and good nation, is not going to be brought to its knees by this. Rather, we are going to ask what sort of people are these?

Mr. President, I was not going to speak on this issue today. I am planning to speak on another one.

But I just wish to express my appreciation and my admiration for the distinguished Senator from New York. If, indeed, we are to be the conscience of the Nation, he has stepped forward in times when that voice of conscience has not been heard and has been that voice for all of us. So I salute my good friend and good neighbor.

Mr. MOYNIHAN. I thank my gallant friend and neighbor.

Mr. LEAHY. Mr. President, I wish to speak on another matter.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The Chair reminds the Senator if he wishes to speak, the period for morning business under the previous order extends until 10 a.m., and Senators are permitted to speak therein. The Senator is recognized.

NOMINATION OF CLARENCE THOMAS

Mr. LEAHY. Mr. President, I wish to speak, again, on the matter of Judge Clarence Thomas' nomination to the Supreme Court. I have spoken on this issue on other occasions on the floor and before the Judiciary Committee.

Although I reached my decision to oppose Judge Thomas' nomination for other reasons, we all know Prof. Anita Hill has made some serious charges against him.

If the President, if Judge Thomas, if the Republican leadership wanted to clear up the issues raised by these charges, they would postpone the vote. There is a very easy way to postpone today's vote. All that has to be done is for Judge Thomas himself to say to the Republican leadership: "I do not object to a postponement. I want this matter cleared up. I want to appear under oath before the Judiciary Committee. I want Anita Hill to appear under oath before the Judiciary Committee," and let us hear this matter.

I think the Senate would be better if that happened. The American people would be better served if that happened. These are serious charges. Let us consider them not on the basis of press releases or other statements. Let us consider them on the basis of testimony from the two people who know the most about whether the charges are valid or not—Professor Hill and Judge Thomas. Let them appear before the Judiciary Committee under oath. And let this matter be settled.

But to do that, the Republican leadership must agree to a delay in the vote now scheduled for later today. I urge them, I urge the President, I urge Judge Thomas to ask for such a delay. As one Senator, I would eagerly and willingly agree to such a delay to let the matter be determined once and for all.

In fairness to Judge Thomas, in fairness to the Supreme Court, in fairness to the American people, the Republican leadership should allow the Senate to clear up this matter.

Our responsibility to advise and consent on Supreme Court nominations is a most solemn duty, and each Senator must approach it with reflection and care. Nominations to the Court bring together two branches of our Government to select the members of the third. If the Senate fails to take its advice and consent role seriously, it abdicates its duty to guarantee the independence of the courts and the rights of our citizens.

The Supreme Court is an institution that has dramatically shaped the course of our history. For more than two centuries, individual Americans have believed that the Supreme Court is the one place they could turn, the one place where their rights would be protected. Americans have looked upon the Court as the ultimate guarantor of their rights and liberties.

Members of that Court must possess, above all, a deep and unerring vision of the Constitution and the role that document plays in our society. A nominee must possess that vision and must bring it to bear on cases argued on the day he or she ascends to the highest court in the land.

Mr. President, after days of hearings, I cannot promise the people of Vermont that I am sure this nominee will protect their rights. Consequently, I cannot consent to Judge Thomas' nomination.

After reviewing his record and listening to Judge Thomas' testimony, I was left with too many unanswered questions. As I have discussed in detail in my previous statements, I was troubled by Judge Thomas' lack of expertise on constitutional issues, by his disturbing flight from his record, by his refusal to answer legitimate questions meaningfully, and by his unwillingness to clarify a troubling record on the fundamental right to privacy.

My first concern was that nothing in Judge Thomas' record or testimony suggests the level of professional distinction or constitutional grounding that a Supreme Court nominee ought to have. His legal, as distinguished from administrative, experience is limited, as is his judicial experience. It amounts to 1½ years on the court of appeals with scant consideration of constitutional issues. His speeches and writings have shown little in the way of analysis or scholarship.

My second concern was Judge Thomas' disturbing flight from his record. Instead of taking responsibility for the statements he made as Chairman of the Equal Employment Opportunity Commission, Judge Thomas asked the committee to weigh only his statements during the hearings in determining who the real Judge Thomas is.

My third concern was Judge Thomas' selective refusal to answer questions. I told him when the hearings began that I expected answers to fair questions. But he played it safe—whether on his own decision or the advice of others, I know not. But he declined to respond to many questions he should have answered. The decision not to tell us how he thinks was his and his alone. In choosing not to share his vision of the Constitution, Judge Thomas failed to provide the information that I need if I were to consent to his nomination.

But just as no one could compel Judge Thomas to answer the Judiciary Committee's questions, no one can compel me to vote for a nominee who has not satisfied his obligation to answer legitimate questions. He does not have to answer the questions if he does not want to. But I do not have to vote for him if he does not answer those questions, and I will not.

Nothing in his testimony before the committee alleviated my concerns about his record on privacy rights. I was particularly concerned by Judge Thomas' comments to me that he had never discussed Roe versus Wade. I do not know of a thoughtful lawyer in this country, not to mention a Federal judge or a nominee to the Supreme Court, who has not discussed that landmark decision. Some have raised questions about Judge Thomas' comments on this point, but the record speaks for itself. And I encourage all Senators to read that part of the record. The record speaks far more eloquently than I or any other Senator could on this floor.

The fundamental right to privacy is much more than the constitutional right of women to make very personal decisions about reproduction. It is the right of all of us to be free from Government intrusion into the most basic, private aspects of our lives. The public has a right to know where a nominee to the Supreme Court stands on the fundamental right to privacy, and I cannot consent to a nominee who refuses to explain his own record on this issue.

As I said before, Mr. President, I decided to vote against Judge Thomas for the reasons I have explained on the floor of the Senate (CONGRESSIONAL RECORD, September 24, 1991, S13479) for the reasons I have explained at the time of the vote in the Judiciary Com-

mittee (September 27, 1991) and for the reasons I have explained in the report of the Judiciary Committee, in which I added additional views (Senate Exec. Rept. 102-15).

Quite apart from any charges that have come out in the past few days, I feel strongly, as one U.S. Senator, that all of the reasons I have stated before are ample reasons to vote against Judge Thomas.

But, in the past few days, the public has heard allegations that previously were heard only by Senators who had either read an FBI report, or who had been briefed about the contents of the FBI report. These charges themselves are serious. They ought to be cleared up. For the good of our country, for the good of Judge Thomas, in fairness to the President who made the nomination, and especially for the good of the U.S. Supreme Court, let us clear them up.

That is why I call on the Republican leadership to ask for a delay, one that would be granted immediately if they did. Bring in Professor Hill, bring Judge Thomas back before the committee under oath, and ask them directly under oath: Are these charges true? Or are they false? Let 100 Senators listen to those answers, watch those answers, hear the content of those answers. Let every one of us make up our mind on that question prior to the time we vote.

The American people will be ill-served by rushing to judgment on a lifetime appointment to the Supreme Court. There are ample reasons for voting against Judge Thomas absent the issues raised by Professor Hill, but I do know that many, many Senators feel that these are issues that should be explored. If they wish to have further time, I, for one, am willing to give it to them. I am willing to stay all this week and all next week to do that. I am perfectly willing to agree to a delay. You know and I know and every Senator in this body knows that if Judge Thomas asked for such a delay to answer these charges, that delay would be granted by the U.S. Senate. If the Republican leadership of the U.S. Senate asked for such a delay, it also would be granted. It should be done. No one should have to vote for a lifetime appointment who is under this kind of a cloud. Let us hear these very serious charges discussed under oath and let us delay until we have had time to do so.

Mr. President, I yield to the Senator from New York.

The ACTING PRESIDENT pro tempore. The Senator from New York [Mr. MOYNIHAN] is recognized.

THE SUPREME COURT

Mr. MOYNIHAN. Mr. President, very much in the spirit in which the distinguished chairman of the Committee on Agriculture, Nutrition, and Forestry has spoken, I wish to speak this morning. I do not wish to delay him but simply to say that he spoke for the good of the Court and, I think, as he always will do, spoke for the good of the Senate as well, because the Court, that "least dangerous body," as the Framers put it, depends entirely on our wisdom and judgment in constituting the Court itself, just as the Nation depends on the Court's wisdom and judgment in making decisions about the Constitution. The Court is altogether passive as regards its membership. They only accept what we send, and the appointment is for life. I sometimes wish we were closer to them. I think when they served down the hall, one floor down and five doors away, we were a little closer. When they moved to that great temple across the park in 1935, we lost that touch with them and we do not realize how dependent they are on us. But there you are.

Mr. President, I would like to make some remarks which I had intended to make yesterday morning, in which I say a Supreme Court nomination brings out the fine qualities of the Senate, and for good reason. We are, above all things, a nation of laws. Law brought us into being, not some prehistoric mythic phenomenon like the babes of Rome, suckled by the wolf, whatever. Instead, this Nation arose from a declaration, as it was termed, the Declaration of Independence, as we call it. We stated that our independence followed from illegalities or improprieties on the part of the Government of Great Britain which had become for us insupportable and led us to invoke the right of separation to which "the laws of nature and nature's God" entitled us.

The Supreme Court, provided for in article III of the subsequent Constitution, is the embodiment of the authority of our laws. It is where we turn when their meaning is in dispute. More specifically, it is where lawyers turn, in consequence of which a Supreme Court nomination is a matter of the liveliest interest to lawyers generally and hugely animating in a body such as the Senate, which now, as ever, is made up, for the most part, of members of the bar. Hence, a certain diffidence arises on the part of a Senator such as I, not a lawyer, or at least a very certain diffidence on the part of this Senator.

Of the eight current members of the Court, four have been confirmed since I have come to the Senate, one nomination was rejected, and now, of course, we have the nomination of Judge Thomas before us. So I am no stranger to these debates, albeit at times they are strange to me. I am not feigning innocence here.

Consider the matter of the right of privacy, which my able and learned friend from Vermont was just addressing, or the alleged right of privacy, assumed right of privacy, implicit right of privacy, and so it seems to me a baffling range of assertions. The nonlawyer asks what on Earth are the third and fourth amendments about if not privacy? One is told it is more complicated, and I think of that well-worn observation, "The question's much too wide, and much too deep, and much too hollow. And learned men on either side use arguments I cannot follow."

Still, it may be useful that there are some Members of the Senate who are not lawyers. It may just be the least bit easier for the nonlawyer to keep in mind the argument of the idea central to our Constitution as most recently explicated by Harvey Mansfield, Jr., which is that the Constitution creates a government of limited powers. Not only because the powers of government ought to be limited, but also—and I think you can find this in Hamilton and in Madison—because in the nature of things that powers of government are limited. In the sense that, try as it will, there are limits to what governments can do. Witness Dr. Johnson on the subject—and I hope I am close to the original—that passage where he says: "How few of all the ills that human hearts endure that part which laws or kings can cause or cure."

The Court has sometimes brought on great turbulence, as in the Dred Scott decision. It has sometimes eased the transition of society from one era to another, as when Justice Stone casually suggested to Frances Perkins that a Social Security program premised on the taxing power would surely pass muster. It would take another generation to get Social Security. The Court can create consensus, as it did so wonderfully in Brown versus Board of Education. It can precipitate discord, as in Roe versus Wade. So still for what little it may be worth, I would judge that its prominence in political matters has, on the whole, diminished over the past generation. I stand ready to be corrected, of course—and equally this trend, if true, is subject to reversal without notice.

Mr. President, there is one thing the Court does do, a thing which the U.S. Constitution surely anticipates that it will, and that is to protect minorities against majorities. Of the three branches of Government, it is to the Court that we look for this all-important role.

PIPELINE SAFETY IMPROVEMENTS FOR MISSOURI AND THE NATION

Mr. DANFORTH. Mr. President, since September 1988, there have been several serious pipeline accidents in Missouri and Kansas.

Similarities between some of the accidents indicate that certain kinds of pipeline need more attention so potential dangers can be avoided. Specifically:

Natural gas distribution lines caused explosions in Oak Grove, MO, two people killed; Kansas City, MO, one killed, five injured; and Overland Park, KS, four injured.

Cast iron natural gas pipelines ruptured in Kansas City, MO, one injured, and Topeka, KS, one killed, one injured.

Older oil pipelines spilled 850,000 gallons of crude oil in Maries County into the Gasconade River, and 100,000 gallons into the Chariton River near Ethel, MO.

Earlier this year, Senator BOND and I introduced S. 1055, the Pipeline Safety Improvement Act of 1991 to prevent accidents like these. The provisions of S. 1055 are included in S. 1583, the pipeline safety bill that the Senate is considering today. Specifically, S. 1583 requires the following safety actions by DOT:

First, protection of the environment as well as lives and property from pipeline hazards;

Second, collection of specific information on the location and age of pipelines;

Third, regulations for detecting, locating, and shutting down pipeline ruptures in urban and environmentally sensitive areas;

Fourth, performance standards and regulations for the installation of excess flow valves on natural gas lines where feasible for improving safety; and

Fifth, distribution and monitoring of new industry guidelines for cast iron pipe replacement.

These initiatives would improve the safety of people, property, and the environment throughout the United States. I urge my colleagues to support S. 1583.

S. 1583, PIPELINE SAFETY REAUTHORIZATION

Mr. BOND. Mr. President, I urge my colleagues to support the important pipeline safety legislation we are considering today.

There are 354,000 miles of natural gas transmission pipelines and 155,000 miles of hazardous liquid pipelines crisscrossing the United States.

Although pipeline transportation statistically is the safest mode for shipping hazardous materials, there is room for improvement. A series of pipeline accidents in Missouri and Kansas has shown us that certain kinds of pipe need additional attention.

Earlier this year, Senators DOLE and DANFORTH and myself introduced S. 1055, the Pipeline Safety Improvement Act of 1991. The bill we are considering today, S. 1583, reauthorizes funding for Federal pipeline safety programs, and includes the provisions contained in S. 1055. Specifically, the bill deals with the following concerns:

First, authorization of funding for pipeline safety programs for fiscal year 1992 at levels recommended by DOT, and adjusted for inflation for fiscal years 1993 and 1994.

Second, protection of the environment in addition to life and property.

Third, expansion of DOT pipeline information to include the location of older pipelines, and pipelines located in urban and environmentally sensitive areas.

Fourth, DOT regulations for rapid detection and location of pipeline ruptures in order to minimize damages in urban and environmentally sensitive areas.

Fifth, excess flow valve [EFV] performance standards and regulations requiring the use of EFV's where technically feasible and beneficial to public safety.

Sixth, cast iron pipe replacement guidelines to be distributed to pipeline operators cooperatively by DOT and the natural gas pipeline industry.

Seventh, protection of residential and small commercial gas distribution lines through a DOT rulemaking requiring gas distribution to assume responsibility for the safety of such lines.

Eighth, Federal civil fines of up to $10,000 for anyone who damages a pipeline after knowingly failing to call a one-call notification system prior to excavating with power equipment other than for routine agricultural purposes.

Ninth, information on abandoned underwater pipeline facilities would be provided by pipeline operators and maintained by DOT.

Tenth, Hazardous Materials Transportation Uniform Safety Act technical corrections to eliminate contradictory requirements affecting mandatory registration of certain bulk and nonbulk shippers of highly hazardous materials.

Eleventh, exemption from hours of service limitations for farmers and retail farm suppliers who are delivering farm supplies within a 50-mile radius during crop planting season.

Mr. President, I urge my colleagues to support S. 1583.

TRIBUTE TO MARGARET SUE TURNER JOLLY

Mr. THURMOND. Mr. President, I rise today to pay tribute to the memory of an outstanding lady and good friend, Mrs. Margaret Sue Turner Jolly, who passed away on September 29.

Margaret Sue was an outstanding educator, businesswoman, and community leader; as well as the mother of three fine sons. The daughter of Mr. and Mrs. Wiley H. Turner, she was a native of Edgefield County, and graduated from Edgefield High School. She earned a bachelor of arts degree from Furman University in 1954 and a masters degree from the University of South Carolina.

Margaret Sue was a popular and effective teacher at Strom Thurmond High School, where she taught history, civics, and government from 1967 until 1984. One of the most eagerly anticipated activities at the school was her senior government class trip to Washington, which I had the pleasure of hosting on several occasions. She was very knowledgeable about government and dedicated herself to the task of inspiring good citizenship in her students.

A number of those same students are now political, business, and civic leaders in Edgefield and other communities. In addition, many of my pages, interns, and staff members from Edgefield developed an interest in politics and government because of Mrs. Jolly's teaching.

After Margaret Sue retired from education, she managed the daily operations of C.R. Jolly Couture, Inc., the company founded by her late husband, Clarence Rankin Jolly, Jr. Like her father and her husband, Margaret Sue had an aptitude for business, and she ably guided the growth of the company.

In addition to the long hours she put in as a teacher and businesswoman, Margaret Sue worked assiduously for the benefit of her community and fellow citizens. She participated in many charitable activities and was an active member of Trinity Episcopal Church, where she was on the altar guild.

Mrs. Jolly was an avid reader and gardener, and was renowned for her lovely flower arrangements. She was also a gracious and accomplished hostess, whose invitations were accepted with alacrity by her many guests.

Although Margaret Sue was an outstanding woman in every way, I believe her greatest contribution was as a role model for others. She was known throughout the community for her cheerful and generous nature, and she always had time to share a kind word and a smile. She was a vital, energetic woman, who devoted herself to the welfare of others, and her personality endeared her to everyone she met.

Mrs. Jolly was also a fighter. During her long illness, she never complained. She maintained an interest in government and current events, as well as community activities, serving as a source of inspiration and encouragement to her many visitors.

Mr. President, I join the residents of Edgefield County in mourning the passing of this lovely and talented woman. Margaret Sue Turner Jolly was a woman of character, courage and compassion; a devoted teacher, and a loving wife and mother.

I would like to take this opportunity to extend my deepest condolences to her sons, Daniel Pope Jolly; Joel Eugene Jolly; C. Rankin III, and their families, as well as her brother and his wife, Dr. and Mrs. W.H. Turner.

I ask that an editorial from the Edgefield Citizen-News be placed in the RECORD immediately following my remarks.

MARGARET SUE JOLLY

Perhaps the saddest events in our human experience are the premature deaths of those truly remarkable, multifaceted, vibrant, and good people who have contributed so richly to the fabric of our community but whose further contributions are cut short by the unkind hand of fate.

Thus, the passing on Sunday night of Margaret Sue Jolly has saddened the Edgefield community to its core. So good was every facet of her being; so strong was her character; so positive was her outlook; so warm was her love; so democratic was her kindness; so universal was her generosity; and so inspirational was her encouragement, that we do not think we are overstating the case to say that Sue Jolly was indeed one of God's saints.

Sue's premature death was even sadder by reason of the fact that it followed by a little more than five years the even more premature death of her beloved husband, Clarence. That these two highly-talented people were taken from our community in the prime of their lives is a blow from which we shall not soon recover.

Clarence was remarkable for the breadth of his vision, for his boundless energy, for his musical talent and his creativity, and for his passion for life. Sue was remarkable for her strength of character, for the inspiration which she gave to twenty years of students, and for her unending patience. Together, Clarence and Sue made a dynamic team, contributing enormously to life in Edgefield and in neighboring Aiken. Their magnetic personalities attracted a galaxy of friends to their lovely home, Cedarside, and gave a diversity and richness to life in Edgefield which can never be reproduced.

Our sympathy goes out to their sons, Daniel, Joel and Rankin, who are carrying on their parents' business and who represent the fifth generation of merchants in their family in the Town of Edgefield.

We thank God for the lives of Clarence and Sue Jolly. We shall cherish their memories always.

THE ISRAEL LOAN GUARANTEE AMENDMENT

Mr. WARNER. Mr. President, I rise today in support of the Israel loan guarantee amendment offered by the Senator from Wisconsin [Mr. KASTEN] and the Senator from Hawaii [Mr. INOUYE]. This amendment, which was introduced in the Senate on Wednesday, October 2, 1991, would help Israel with the enormous costs it is incurring through its absorption of thousands of Soviet and Ethiopian Jews. This legislation will allow Israel to borrow the necessary funds to resettle the arriving refugees.

The loan guarantees are not grants or loans from the U.S. Treasury, rather a guarantee to the private sector lenders that the U.S. Government will stand surety for the loans. It should be noted that Israel has never defaulted on a United States loan guarantee.

In accordance with the request made by President Bush, this legislation will not be addressed by the Senate until January or February of next year. At that time, I look forward to working with my colleagues in the Senate to come forth with a proposal that will be in the best interests of both the United States and Israel.

MILITARY CONSTRUCTION APPROPRIATIONS

Mr. SASSER. Mr. President, the Senate Budget Committee has examined H.R. 2426, the military construction appropriations bill and has found that the bill is under its 602(b) budget authority allocation by $1.4 million and under its 602(b) outlay allocation by $49 million.

I must compliment the distinguished ranking member of the Senate Military Construction Subcommittee, PHILL GRAMM, as well as the House managers of this bill, subcommittee chairman BILL HEFNER and ranking minority member BILL LOWERY for all of their hard work. Like all components of the Department of Defense's budget, the military construction budget must undergo a fundamental transformation as we attempt to adjust to changing world circumstances. I believe that this bill takes a useful step toward realigning defense programs with international realities.

Mr. President, I have a table prepared by the staff of the Budget Committee which shows the official scoring of the military construction appropriations bill and I ask unanimous consent that it be inserted in the RECORD at the appropriate point.

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

SENATE BUDGET COMMITTEE SCORING OF H.R. 2426

MILITARY CONSTRUCTION SUBCOMMITTEE—SPENDING TOTALS

[In billions of dollars]

Bill summary	Budget authority	Outlays
H.R. 2426:		
New BA and outlays	8.6	2.9
Enacted to date	0	5.5
Adjustment to conform mandatory programs to resolution assumptions	0	0
Scorekeeping adjustments	0	0
Bill total	8.6	8.4
Senate 602(b) allocation	8.6	8.5
Total difference		
Discretionary:		
Domestic	0	0
Senate 602(b)	0	0
Difference	0	0
International	0	0
Senate 602(b)	0	0
Difference	0	0
Defense	8.6	8.4
Senate 602(b)	8.6	8.5
Difference		
Total discretionary spending	8.6	8.4
Mandatory spending	0	0
Mandatory allocation	0	0
Difference	0	0
Discretionary total above (+) or below (−):		
President's request		
Senate-passed bill	.1	.1
House-passed bill	.1	

MILITARY CONSTRUCTION—1992 APPROPRIATIONS

[In thousands of dollars]

	President's request		House-passed		Senate-reported		Senate-passed		Conference	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
Discretionary spending:										
Domestic:										
New spending in bill	0	0	0	0	0	0	0	0	0	0
Outlays prior	0	0	0	0	0	0	0	0	0	0
Supplementals (Public Law 102–27)	0	0	0	0	0	0	0	0	0	0
Scorekeeping/mandatory adjustments	0	0	0	0	0	0	0	0	0	0
Subtotal	0	0	0	0	0	0	0	0	0	0
602(b) allocation	NA	NA	0	0	0	0	0	0	0	0
Bill above/below (+/−) allocation	NA	NA	0	0	0	0	0	0	0	0
International:										
New spending in bill	0	0	0	0	0	0	0	0	0	0
Outlays prior	0	0	0	0	0	0	0	0	0	0
Supplementals (Public Law 102–27)	0	0	0	0	0	0	0	0	0	0
Scorekeeping/mandatory adjustments	0	0	0	0	0	0	0	0	0	0
Subtotal	0	0	0	0	0	0	0	0	0	0
2(b) allocation	NA	NA	0	0	0	0	0	0	0	0
Bill above/below (+/−) allocation	NA	NA	0	0	0	0	0	0	0	0
Defense:										
New spending in bill	8,563,030	2,979,068	8,483,006	2,955,146	8,413,745	2,846,160	8,469,025	2,853,346	8,562,596	2,930,636
Outlays prior	0	5,502,377	0	5,502,377	0	5,502,377	0	5,502,377	0	5,502,377
Supplementals (Public Law 102–27)	0	0	0	0	0	0	0	0	0	0

MILITARY CONSTRUCTION—1992 APPROPRIATIONS—Continued

[In thousands of dollars]

	President's request		House-passed		Senate-reported		Senate-passed		Conference	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
Scorekeeping/mandatory adjustments	0	0	0	0	0	0	0	0	0	0
Subtotal	8,563,030	8,481,445	8,483,006	8,457,523	8,413,745	8,348,537	8,469,025	8,355,723	8,562,596	8,433,013
602(b) allocation	NA	NA	8,564,000	8,482,000	8,564,000	8,482,000	8,564,000	8,482,000	8,564,000	8,482,000
Bill above/below (+/−) allocation	NA	NA	−80,994	−24,477	−150,255	−133,463	−94,975	−126,277	−1,404	−48,987
Total Discretionary:										
New spending in bill	8,563,030	2,979,068	8,483,006	2,955,146	8,413,745	2,846,160	8,469,025	2,853,346	8,562,596	2,930,636
Outlays prior	0	5,502,377	0	5,502,377	0	5,502,377	0	5,502,377	0	5,502,377
Supplementals (Public Law 102–27)	0	0	0	0	0	0	0	0	0	0
Scorekeeping/mandatory adjustments	0	0	0	0	0	0	0	0	0	0
Subtotal	8,563,030	8,481,445	8,483,006	8,457,523	8,413,745	8,348,537	8,469,025	8,355,723	8,562,596	8,433,013
Mandatory spending:										
New spending in bill	0	0	0	0	0	0	0	0	0	0
Permanent appropriations	0	0	0	0	0	0	0	0	0	0
Outlays prior	0	0	0	0	0	0	0	0	0	0
Subtotal, mandatory	0	0	0	0	0	0	0	0	0	0
Resolution scoring adjustment	0	0	0	0	0	0	0	0	0	0
Adjusted mandatory total	0	0	0	0	0	0	0	0	0	0
Bill total:										
Discretionary	8,563,030	8,481,445	8,483,006	8,457,523	8,413,745	8,348,537	8,469,025	8,355,723	8,562,596	8,433,013
Adjusted mandatory	0	0	0	0	0	0	0	0	0	0
Subtotal	8,563,030	8,481,445	8,483,006	8,457,523	8,413,745	8,348,537	8,469,025	8,355,723	8,562,596	8,433,013
602(b) allocation	NA	NA	8,564,000	8,482,000	8,564,000	8,482,000	8,564,000	8,482,000	8,564,000	8,482,000
Bill above/below (+/−) allocation	NA	NA	−80,994	−24,477	−150,255	−133,463	−94,975	−126,277	−1,404	−48,987
Discretionary total compared to:										
President's request	NA	NA	−80,024	−23,922	−149,285	−132,908	−94,005	−125,722	−434	−48,432
House-passed	80,024	23,922	NA	NA	−69,261	−108,986	−13,981	−101,800	79,590	−24,510
Senate-passed	94,005	125,722	13,981	101,800	NA	NA	NA	NA	93,571	77,290
Conference	434	48,432	−79,590	24,510	−148,851	−84,476	−93,571	−77,290	NA	NA

URGENT LEAD PAINT HAZARD PREVENTION ACT

Mr. CRANSTON. Mr. President, I am pleased to announce today that I will soon introduce legislation to launch a national strategy to prevent childhood lead paint poisoning.

This legislation will put an end to continued delays and hand wringing. And it will direct the administration to take early, practical, commonsense steps to protect the health of millions of young Americans.

It is a national disgrace that little is being done to combat the No. 1 environmental problem facing America's children. Three quarters of all American housing—57 million homes—contain lead-based paint. Of these, 3.8 million are occupied by young children and have peeling paint, excessive amounts of lead dust or both.

Although Congress has pressed for action for years, this administration and the last have sat paralyzed before the lead paint problem like a mouse before a cobra. Meanwhile, small children have been paying a terrible price. Little kids can't "just say no" to lead in their homes. And so we must say "no more" to this continued inaction.

We now know enough about the probem to justify firm action.

We now know that very low levels of lead poisoning can damage the mental and physical development of a child. A victim can suffer irreversible learning and reading disabilities, reduced attention span, hyperactivity and hearing loss. And our whole society suffers the effects of low educational achievement, high dropout rates, and juvenile delinquency.

We now know that millions more American children are at risk than had been thought. Under previous standards, and estimated 3 million to 4 million children were considered lead poisoned. But as a result of important new research, the Centers for Disease Control are adopting much lower estimates of the lead in blood that are deemed acceptable and the number of American children who must be considered lead poisoned will jump dramatically.

Many have felt this was just a symptom of poverty—but now we know it is not. Children of middle class and wealthy families are affected as well as children of the poor.

We now know that lead poisoning is caused primarily not by children eating paint chips in dilapidated buildings, but by children breathing lead dust—generated through home renovation and through common wear and tear of household paint. Through a tragic lack of information, many parents across the country are inadvertently poisoning their children when they try to improve the family's home.

We now have the means to avoid that tragedy. Experts have learned much about how to reduce lead hazards and are learning more all the time. Technology can now accurately test the presence of lead. Improved techniques can remove or seal in household lead without harm to workers or future occupants. Protective measures can contain lead temporarily until full-scale abatement can be carried out. Good information can prevent the creation of active lead poisoning through improper home renovation.

What we do not now have is a practicable national strategy for getting the tragedy of childhood lead poisoning under control fast.

Congress has long pushed for action on this problem. In 1973 Congress required HUD to eliminate "as far as practicable" the hazards of lead paint poisoning with respect to existing housing. After years of delay and litigation, a frustrated Congress moved in the 1987 Housing Act, which I coauthored, to give HUD strict timetables to solve the problem in public housing and to provide guidance on solving the problem in other housing. Each year since, Appropriations bills have prodded HUD and other Federal agencies to comply with the public housing mandate and produce guidelines for remedies in all housing.

Administration studies, mandated by Congress in 1987, admit the danger of lead paint poisoning. But the administration has failed to follow through with real action. After 4 years of demonstrations and studies, the administration has not asked for any significant funding for effective solutions. And the administration gives no indication that it intends to do so.

For the past 3 years, serious concerns have repeatedly been raised about HUD mismanagement of the effort to abate lead paint hazards in public housing.

The administration has provided little more than token Federal support

for testing and abatement in private and other federally assisted housing.

In recent years, the Federal Government has even sold many unsuspecting families property that turned out to be lead traps and the families' children were subsequently poisoned.

The administration uses the budget agreement as a convenient excuse for inaction. They estimate that complete elimination of all lead hazards would cost $35 billion—and imply that such a huge price tag is a reason for not taking immediate actions that could have real effect.

But, certainly, only part of any total cost has to come from the Federal budget. And the Centers for Disease Control recently estimated that inaction will cost the Nation almost twice as much—$62 billion in additional medical and social costs.

If we cannot eliminate all lead paint hazards at once, there is still no excuse for delaying a broad effort to tackle the most urgent parts of the problem right away and to eliminate the most dangerous lead paint hazards without further delay.

Our children deserve a real national strategy to combat the threat of lead to their health and development. We should mobilize our vast health, environmental and housing sectors to achieve that as soon as possible.

The Urgent Lead Paint Hazard Prevention Act will launch such a strategy. The bill will have five primary components:

First, the bill would expand Federal support for testing, containment and abatement of lead hazards in federally assisted housing and private housing. It gets practical, common sense action under way quickly to remove the hazard where they are most dangerous—in homes with peeling paint or high levels of lead dust where young children are living.

In the first year, the bill would authorize $150 million for State and local governments to begin removing the threat of lead poisoning in privately owned single family and multifamily housing. This is triple the amount currently appropriated and six times the amount requested by the administration. Second year funding would rise to $200 million.

Additional Federal assistance to abate lead paint hazards would be provided through Community Development Block Grants, the HOME Investment Partnerships Program, and public housing modernization.

Second, the bill would build a network of contractors, workers, architects, environmental firms, laboratory technicians, public officials and others who are experts in the testing, containment and abatement of lead paint hazards. We must ensure that lead testing and abatement activities are carried out by certified, trained and responsible personnel and are monitored by competent public officials.

Third, the bill would launch an effective nationwide campaign to inform the public about the nature of lead paint hazards and the practical steps that a family can take to ensure that the dangers of lead exposure are removed from their home. A significant portion of childhood lead poisoning can be traced to the lack of public understanding about the causes of the problem and ways to prevent it. That information must at least be provided when a family buys or renovates a home.

Fourth, it would expand research and development of new testing, containment and abatement technologies. Although major advances have been made over the past decade, numerous questions remain about the costs and benefits associated with many currently available techniques.

Fifth, the bill would enhance congressional oversight of Federal lead paint hazard prevention. HUD would be required annually to provide Congress with a full report on its activities and would be held to a strict regimen of goals and timetables to assess its performance.

Mr. President, I will ask to have a summary description of the scope of the legislation printed in the RECORD at the conclusion of my remarks.

I intend to move this legislation as quickly as possible. On October 17, I will hold the first hearing on this legislation. Participants will include leading experts in the housing, health and environmental fields.

As chairman of the Senate Housing Subcommittee, I will refine the legislation on a bipartisan basis with other Senators, particularly with Senator AL D'AMATO, the subcommittee's ranking minority member. I will work closely with other Members of Congress who have shown leadership on this problem, including Congressman HENRY WAXMAN and Senators BARBARA MIKULSKI, HARRY REID, JOSEPH LIEBERMAN, and JOHN CHAFEE.

And I will develop the bill in close consultation with national public health leaders and private organizations that have shown great leadership on this problem through the Alliance to End Childhood Lead Poisoning.

I am convinced we must commit the Federal Government to an aggressive, comprehensive and cost-effective assault on this health threat to our Nation's children and our Nation's future.

Working together we can enact a bill that will speed real, practical action to put this danger behind us.

I ask that the summary to which I referred be printed in the RECORD.

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

URGENT LEAD PAINT HAZARD PREVENTION ACT

PROPOSED AMENDMENT TO SECTION 311 OF H.R. 2950

Section 12 is further added by adding at the end of Section 12 (1)(2)(A) the following:

A recipient may award a procurement contract under this subsection to other than the low bidder provided that: the procurement contract does not exceed the lowest bid by more than 10%; federal assistance provided to the recipient under this Act does not exceed the equivalent of the lowest bid for the contract; and the recipient has demonstrated to the Secretary the long term cost benefits of selecting other than the lowest bid that may be yielded by fleet standardization, or other factors that the Secretary deems appropriate.

ORIGINAL SENATE LANGUAGE

A recipient may award to other than the low bidder in connection with a procurement under this subsection, but the recipient may receive federal assistance under this Act for in an amount not to exceed the equivalent of the lowest bid for the project.

URGENT LEAD PAINT HAZARD PREVENTION ACT

SUMMARY

PURPOSE

The bill commits the federal government to prevent, as soon as practicable, lead paint hazards wherever they exist in American housing. It will:

Require HUD to carry out an aggressive, comprehensive and cost-effective strategy to clean up lead paint hazards in federally owned or assisted housing;

Make the federal government an active partner with cities, states and the private sector to remove lead paint hazards in privately owned housing;

Make concern for lead paint hazard an integral part of federal, state and local housing strategies and decisions;

Get the nation moving quickly on the most dangerous lead paint hazards—in homes with peeling paint or high levels of lead dust that are occupied by young children;

Build the capacity of private industry to test and abate lead paint hazards safely and effectively;

Provide the public with accurate information about the nature of lead paint hazards and technical assistance on how to prevent them; and

Maintain an ongoing national program of research and development in lead paint hazard prevention.

1. EXPAND TESTING, CONTAINMENT AND ABATEMENT ACTIVITY

a. Establish a federal/state/local partnership to remove lead paint hazards from private housing

General. Authorize $150 million to help state and local governments to test, contain and abate lead paint hazards in privately-owned single family and multifamily homes. That level of assistance is three times the amount appropriated and six times the amount requested by the President.

Eligible Activities. Funds could be used for (1) screening of private housing to identify units with "priority" lead paint hazards (i.e. units that are occupied by young children and have peeling paint or excessive amounts of dust containing lead); (2) interim containment of lead paint hazards; (3) abatement of lead paint hazards, including temporary relocation for families; (4) provision of information to the public on lead paint hazards; and (5) blood testing of children. No more than 10% of the funds could be used for administrative expense.

Flexible Financing/Subsidy. Permit states and localities to use the assistance for a variety of financing and subsidy programs, including grants, loans, revolving loan funds, loan guarantees and interest write-downs.

Eligibility of Applicants. Provide assistance to jurisdictions that are carrying out a comprehensive housing affordability strategy under the HOME Investment Partnerships program. Funds would be awarded on a competitive basis to eligible jurisdictions.

Income targeting. Target assistance to owner-occupied or rental housing serving families meeting the HOME income limits. Also require participating jurisdictions to give priority in testing and abatement activities to housing with "priority" lead paint hazards.

b. Mandate a HUD action plan for federally owned and assisted housing

Direct HUD to publish a regulatory action plan for the testing, containment and abatement of lead paint hazards in federally assisted housing (e.g. Section 8, Section 236, Section 221(d)(3)).

Give preference to assisted units with "priority" lead paint hazards. Owners would be permitted to use existing housing subsidies (Section 8 rental assistance, replacement reserves, other project accounts) for lead inspection, containment and abatement activities. HUD would be authorized to make exceptions to Section 8 fair market rents to support such activities.

Prevent federal agencies from selling housing contaminated with lead paint hazards to unsuspecting homebuyers. Require lead paint hazard inspection prior to sale of all housing owned by HUD, Farmers Home, VA or other federal agencies. Provide (1) notification of any such hazard; (2) appropriate information on how the hazards can be removed and (3) assistance in carrying out the remedies.

c. Integrate lead paint hazard prevention into state & local housing strategies

Require that a jurisdiction's comprehensive housing affordability strategy (CHAS): (1) estimate the number of units that pose "priority" lead paint hazards; (2) outline the actions being taken (or proposed) to address the problem; and (3) describe how lead paint hazard prevention and housing initiatives will be integrated.

Require that housing agencies, in preparing this portion of the CHAS, consult with health and child welfare agencies and examine existing data related to lead paint hazards and poisonings. Such data could include health department data on the location of poisoned children and information on lead paint hazards generated by ongoing inspections in public housing.

Make lead paint hazard abatement and reduction an explicitly eligible activity under Community Development Block Grants and under rehabilitation assisted under the HOME Investment Partnerships.

d. Provide for national consultation on lead paint hazard prevention

Require HUD, when developing and implementing provisions of this Act, to establish formal procedures for maintaining close, ongoing consultation with national organizations of private and public sector experts in lead paint hazards and their prevention.

2. BUILD A TESTING AND ABATEMENT INFRASTRUCTURE

a. Certify contractors, train workers

Require that all federally supported testing and abatement work be conducted by certified contractors and trained workers. EPA and OSHA would be given authority to certify contractors, train workers and ensure worker protection. HUD would be required to work closely with these agencies to identify significant regional shortages of skills or equipment.

b. Certify laboratories

Require EPA to certify laboratories to ensure that environmental lead testing is accurate and readily available throughout the country.

c. Expand monitoring activity

Require HUD to establish monitoring systems to oversee closely the testing and abatement work that is being supported by federal funds. Contractors found in violation of federal certification requirements (or otherwise found to have negligently performed work) would be subject to disbarment from all HUD activity.

d. Establish a federal information clearinghouse

Direct HUD, in cooperation with other federal agencies, to establish an information clearinghouse on childhood lead poisoning. The clearinghouse would assess and disseminate the most current information from research on testing, containment and abatement activity. The clearinghouse would maintain a rapid-alert system to keep key components of the lead testing and abatement industry abreast of the latest developments in research and development.

Authorize $10 million to establish and operate the clearinghouse.

3. INFORM THE PUBLIC AND PROVIDE TECHNICAL ASSISTANCE

a. Require public disclosure of lead paint hazards

Require sellers, landlords and realtors to notify potential buyers or lessees of any known lead paint hazard that has been identified on the subject property.

Require a general statement, prepared by HUD, to be distributed by lenders at the time of mortgage application and by sellers, landlords or relators at the time of sale or lease. The statement would include an explanation of the potential risks associated with lead paint in pre-1978 housing and provide sources of additional information.

b. Launch a nationwide public awareness campaign

Direct HUD, in cooperation with other federal agencies, to develop and undertake a major public awareness campaign on childhood lead poisoning. The campaign would inform the public about the seriousness of lead exposure, describe how to identify priority hazard conditions and provide helpful advice about preventative and protective measures to reduce the risk of exposure.

The campaign would especially target parents of young children as well as participants in the residential real estate industry. HUD would also work with large home improvement retailers to provide consumers with practical information on "do's and don'ts" associated with "self-help" renovation and remodeling.

Authorize $25 million to carry out this campaign.

c. Provide technical assistance to state and local governments

Direct HUD, in cooperation with other federal agencies, to provide technical assistance to state and local governments to help them inform residents about lead hazards and their prevention.

d. Provide warning labels on appropriate home improvement tools and supplies

Require warning labels to be placed on tools commonly used for "self-help" renovation and remodeling. The wording would be developed by EPA, but would at a minimum advise users to obtain information before carrying out activity that could cause lead poisoning. Information on the recommended use of such tools to reduce exposure to lead hazards, prepared by HUD, would be made available at the point of purchase. Research has demonstrated that the traditional methods of removing lead paint from chewable surfaces—scraping, sanding or burning—actually exposes children to a 100-fold increase in lead dust.

e. Establish a lead hazard hotline

Direct HUD, in cooperation with other federal agencies, to establish a "lead hazard hotline" to provide the public with quick, easy-to-understand answers to basic questions about lead poisoning.

Authorize $5 million to establish and maintain the hotline.

4. EXPAND RESEARCH AND DEVELOPMENT ACTIVITIES

a. Expand HUD research on effectiveness of testing, containment and abatement activities

Require private owners and PHAs to test blood levels of children both before and after abatement activities are undertaken, so that health effects of containment and abatement activities can be monitored and hazardous activities can be quickly identified and stopped.

Require HUD to conduct research, in cooperation with other federal agencies, on the cost-effectiveness of various containment and abatement strategies. Specific emphasis will be placed on assessing the long-term health benefits resulting from alternative containment and abatement strategies.

Require HUD, in cooperation with other federal agencies, to conduct research on containment and abatement strategies that can reduce the risk of lead exposure from exterior soil lead and interior dust lead in carpets, furniture, forced air ducts and similar sources.

Require HUD to conduct research, in cooperation with other federal agencies, on the accuracy, cost and availability of various testing technologies.

Congressionally mandated lead paint abatement in public housing provides a unique "laboratory" for research in the next three to five years. That invaluable information would be made useful.

The authorized budget for the Office of Policy, Development and Research would be increased by $5 million to take account of these increased research activities.

b. Mandate a GAO report on liability insurance

Require GAO to assess the availability of liability insurance for lead-related activities. GAO will analyze the insurance "precedent" for containment and abatement of other hazards (e.g. asbestos) and will provide an assessment of the recent insurance experience in the public housing program.

5. REQUIRE DETAILED ANNUAL REPORTS FOR HUD

Require HUD to submit an annual report to Congress that would (1) describe HUD's progress in implementing the various programmatic initiatives; (2) summarize the most current health and environmental studies on childhood lead poisoning, including studies that analyze the relationship between containment and abatement activities and reduction in lead exposure; (3) recommend legislative and administrative initiatives that can improve HUD performance and expand lead inspection, containment and abatement activities.

URGENT LEAD PAINT HAZARD PREVENTION ACT—SUMMARY OF AUTHORIZATIONS

[In millions of dollars and fiscal years]

	1992	1993
State and local abatement	150	200
Clearing house	10	10
Public awareness	25	30
Hotline	5	5
Research and development	5	10
Total authorization	195	255

HIS HIGHNESS PRINCE HANS ADAM OF LIECHTENSTEIN'S STATEMENT AT THE U.N. GENERAL ASSEMBLY

Mr. PELL. Mr. President, I would like to bring to the attention of my colleagues the statement that His Serene Highness Prince Hans Adam of Liechtenstein made before the U.N. General Assembly on September 26. Liechtenstein is the smallest, and one of the newest members of the United Nations, and as its Head of State, Prince Hans Adam is in a unique position to offer a fresh perspective on the subject of self-determination.

Prince Hans Adam suggests that while a majority of U.N. members support self-determination in theory, its practical application warrants further study. Prince Hans Adam points out that as a rule, discussion of self-determination "starts over a specific case when strong emotions are already involved." In my view, the current situation in Yugoslavia is a good example of this phenomenon. Accordingly, I believe that Prince Hans Adam's suggestion that U.N. member states try to develop a consensus on the implementation of self-determination is a good one. In this regard, I welcome Prince Hans Adam's plan to have a study prepared on this question, and to submit the results to the U.N. General Assembly.

I ask unanimous consent that an excerpt of Prince Hans Adam's speech be printed in the RECORD.

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

EXCERPT OF REMARKS OF PRINCE HANS ADAM OF LIECHTENSTEIN

Mr. President, in the recent past we have been able to witness rapid and almost revolutionary political changes in the world. Tensions between East and West are greatly reduced. Europe is not any more divided. Solutions to some regional conflicts are as close as never before. These developments form the background for the new challenges that the world community is facing.

The role of the United Nations has changed, the Organization has entered a new phase; profiting from the absence of great power confrontation, it acts more efficiently and concentrates on the cause of peace and security.

Small States have a special need for protection and security. The Principality of Liechtenstein, although it is fortunately a prosperous and secure country, surrounded by two permanently neutral neighbours, feels that this issue is of direct relevance. Respect for international law is our only protection. For these reasons we feel deeply committed to the principles of sovereign equality, political independence and territorial integrity of States. Although we were not a member country of this organization in 1989, we fully support resolution 44/21, urging Member States inter alia to settle disputes peacefully, adhere to the principles of equal rights and self-determination of peoples and to respect human rights and fundamental freedoms.

Unfortunately, we have seen again and again in the history of mankind brutal aggressions of one country against another. The aggression of Iraq against its small neighbour Kuwait was just the last example of a long list. The peace-loving countries of this world have to be grateful to the United Nations and to the Member States which took part in the military action against Iraq that finally resulted in ending the occupation and preventing the permanent annexation of Kuwait. International law served as the umbrella for the international response to the Gulf crisis and thus constitutes the most recent proof that the respect for international law is a small country's only protection. Let us all hope that this crisis was a turning point in human history. For as long as the United Nations reacts as it did during the Gulf crisis, such aggressions will cease to become attractive instruments for even the most power-hungry dictators.

Unfortunately, we all know that even if we succeed in preventing all aggressions, peace and happiness will not come easily to the world. Some of the most cruel wars in the past decades have been civil wars. Politicians and historians can give us many reasons why civil wars happen: different cultures, languages or religions having difficulties to coexist in a single State, oppressed minorities, or simply political differences which cannot be solved peacefully.

A solution for some of these problems can be found internally if a State respects human rights and fundamental freedoms and has democratic institutions that work. But history shows us that even then civil wars can break out. Human rights can also be violated in countries with a democratic tradition. Democratic institutions can break down. There are situations where peaceful coexistence between different groups inside a single State does not seem to be possible—whatever the reasons. Should we in those cases not endeavor to find other solutions in accordance with the principle of self-determination, rather than risking cruel and destructive civil wars?

I am aware that he United Nations has been good for reasons very prudent concerning the principle of self-determination. To encourage exercising the right to self-determination might lead to even more civil wars and to the disintegration of member States. Non-interference in the internal affairs of Member States has certainly been a wise policy to follow. Nevertheless, we have to accept the fact that the borders of nearly all Member States, including my own country, have not been drawn according to the principle of self-determination. They are usually the product of colonial expansion, international treaties or war, and very seldom have people been asked where they want to belong to. But even if they had been asked, a new generation might have another opinion; circumstances can change and expectations can remain unfilled.

A majority of Member States certain supports self-determination in theory. How this principle is to be applied in practice has however, in my opinion, not been studied enough. Usually the discussion starts over a specific case when strong emotions are already involved. Would it not be better to at least try to find a minimum consensus between Member States on some guiding principles, when efforts are being made to implement the principles of self-determination?

To be acceptable to a largest possible number of Member States, such guidelines or rules of conduct should foresee a careful evolution, which could start from a low level to higher levels of autonomy before complete independence can be attained. Independence is, however, not always the best solution: It can be a complicated and sometimes traumatic process.

Mr. President, Distinguished Delegates, I wish to inform you of my intention to instruct experts to prepare a preliminary study on this question, the outcome of which would be submitted in due course to the General Assembly if this is considered desirable. A convention modelled after the European Convention on Human Rights could eventually be the product of these efforts. I would like to raise a few points and draw a few lines in order to give you an overall idea of the possible outline of such an instrument.

A central question will be to define what entity can be the beneficiary of the right to self-determination. Several methods have been discussed in the past. It might be sufficient to establish a minimum size of the area and population involved. Setting this minimum size very low would have two important advantages:

1. Minorities who ask for self-determination would consequently have to grant the same rights to their own minorities. Experience shows that they are at times unwilling to do so which can be the cause for new problems.

2. A low minimum size would in my opinion lead to a decentralization rather than to a break-up of the present States, because for small groups and areas independence will not always be the best solution.

For a modern State decentralization has political and economical advantages. Decentralization is certainly one of the key elements for the prosperity and political stability of Switzerland, a country without natural resources and a population with four languages, different religions and many political parties.

A convention on self-determination could foresee several degrees of autonomy before independence were granted to a certain region, thus giving the central State and the region the time to adapt to the new situation with the likely outcome that the people will in most instances prefer autonomy to independence. Three degrees of autonomy could be envisaged:

The first degree could involve the election of representatives for the new autonomous region and consequently the administration by those elected representatives of the funds which are allocated by the central government. Some additional rights could be given in the fields of culture and education.

The next step could involve some autonomy in taxation. Direct taxes would probably better be raised by the regions whereas indirect taxation, import duties and the like could remain with the central government. A financial compensation plan would have to be worked out at this stage, taking into account the income and the administrative functions of the region that may for instance already include the police and the lower courts.

The third degree of autonomy could involve some legislative power. Examples can already be studied in some of the decentralized States. At this stage of autonomy most administrative functions of the central State could be turned over to the region with the exception of defence and foreign affairs. Even regional military units could be set up as long as they are integrated into the overall defence plan.

The next step of this process—in the case it is desired-would be full independence.

Those States which accept the general terms of a possible convention on self-determination could envisage setting up an international commission or court comparable to the European Commission and Court for Human Rights to which all parties concerned could appeal in case of conflicts. Such an approach would offer the possibility to observe how these general guidelines work in reality and to adjust them if necessary. Other States might then be willing to sign the convention too, and perhaps one day those guidelines on self-determination could become generally accepted international law, as other conventions have become.

If we look at human history it seems that humanity does not have many alternatives. In the past and in the future new States have been and will be born, they disappear or their borders change. If we look at longer periods of time we see that States have life cycles similar to the human beings who created them. The life cycle of a State might last for many generations but hardly any member State of the United Nations has existed in its present borders for longer than ten generations. It could be dangerous if one tried to put a hold on these cycles, which have been present throughout human history. To freeze human evolution has in the past often been a futile undertaking and has probably brought more violence than if such a process was controlled peacefully.

Considering the advances in the field of technology, civil wars will become more and more destructive, not only for those directly involved but also for neighbouring States and for our whole environment. The possible destruction of a large nuclear power plant in a civil war is a frightening example. Would it not be much safer to replace the power of weapons by the power of voting even if it means that new States may be born?

Mr. President, Distinguished Delegates, as the representative of the smallest and of one of the youngest member countries, I wish to thank you for having given me the opportunity to express my views on a controversial subject and to present ideas related thereto.

Liechtenstein is proud to be a member of the United Nations, an organization that gives full priority to the respect of international law and to the principles of its Charter. We shall continue to support all United Nations efforts aimed at realizing international peace and the respect for human rights and fundamental freedoms.

Thank you, Mr. President.

CONCLUSION OF MORNING BUSINESS

Mr. MOYNIHAN. Mr. President, has the time for morning business expired?

The ACTING PRESIDENT pro tempore. The Senator is correct. Under the previous order, the period for morning business has expired.

EXECUTIVE SESSION

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore. We will return to executive session for the consideration of the nomination of Clarence Thomas to be associate justice of the Supreme Court. The clerk will report the nomination.

The assistant legislative clerk read as follows:

The nomination of Clarence Thomas, of Georgia, to be an Associate Justice of the Supreme Court of the United States.

The Senate resumed consideration of the nomination.

Ms. MIKULSKI addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Maryland [Ms. MIKULSKI].

Ms. MIKULSKI. Thank you, Mr. President. I seek recognition to speak on the Thomas nomination.

Mr. President, I rise to ask my colleagues in the Senate to join me in a call asking for the delay of the vote on Judge Thomas until the Senate can conduct a full and fair hearing on the allegations currently directed to and about Judge Thomas alleging that he engaged in practices of sexual harassment with an employee.

Mr. President, I do that because I believe there should be no rush to judgment, to either prejudge the charges to be true or not to be true. This requires a full hearing by the U.S. Senate and its appropriate processes to get to the truth.

The consequences of not delaying this vote are far-reaching. They are far-reaching in terms of the actual vote that we are about to take, the lives of two people who are engaged in this situation, and the future of the Supreme Court and the credibility of the U.S. Senate.

Mr. President, where do we find ourselves? We find ourselves in the situation where Prof. Anita Hill has alleged that a nominee for the Supreme Court sexually harassed her.

Mr. President, I do not like the term "sexual harassment" because it does not give the full impact of what that means to the person who must endure this type of abuse. And make no mistake, it is abuse. It is an abusive as a physical blow. I prefer the term "sexual humiliation," because that is what occurs when someone is subjected to such treatment.

Professor Hill has stated that Judge Thomas engaged in obscene, vulgar behavior with her, creating a very hostile environment. We do not know if those allegations are true.

We have before us two distinguished African-Americans, one from Pin Point, GA, who has made the most of his life, both opportunity and adversity, and who is before the Senate as a nominee to the Supreme Court. On the other side, we have Prof. Anita Hill, who comes from a family of 13 children, out of the rural poverty of Oklahoma, who goes on to be a scholarship winner, a graduate of Yale Law School, and distinguished now in the legal community to the point that she is a professor at Oklahoma University.

Both people come to us with distinguished backgrounds and both people come to us with credibility. We owe it to both of them to resolve this, because only one can be telling the truth, and the consequences for both are far-reaching. That is why I encourage a delay—so that we could pursue a serious investigation of these charges.

But, Mr. President, what disturbs me as much as the allegations themselves is that the Senate appears not to take the charge of sexual harassment seriously. We have indicated that it was not serious enough to be raised as a question in the Judiciary Committee. We did not think it serious enough to apprise Senators themselves that there was this allegation.

I am a Member of the Senate, and I think I work hard and do my homework and so do many of my other colleagues. As I have called around the Senate, I find that my own colleagues knew nothing of this until it broke as a media story over the weekend. I am very disturbed about this. I am disturbed because the charges themselves have significant consequences for both Professor Hill and for Judge Thomas. By not taking it seriously, we will place a cloud over these two peoples' lives for the rest of their lives.

If Judge Thomas is confirmed without a full hearing, he will always be the person on the Supreme Court with this cloud of allegations over him. If we do not confirm him in the absence of a hearing, then we have voted without full evidence on his merit to be on the Supreme Court. Either way, by not delaying we do a disservice to Judge Thomas.

Then, we have Prof. Anita Hill, from a background of rural poverty not unlike Judge Thomas himself—one out of Oklahoma, one out of the clay hills of Georgia—who has made these allegations. She has said she has come forth with pain because reliving this situation has, indeed, been extremely painful to her.

If we do not give full airing to this situation, Professor Hill will always be the woman who made these allegations. And now we face the fact that even yesterday Professor Hill was attacked on the Senate floor with unprecedented venom. A woman was attacked on the Senate floor with unprecedented venom when she was herself talking about being a victim. We owe it to Professor Hill not to attack her on the Senate floor but to submit

her to a line of questioning about the events that she alleges, to see if in fact they are true.

When Professor Hill returns to her classroom and goes on with her life, she will forever be known as the woman who blew the whistle on Judge Thomas but that it never was resolved. There are very serious consequences for Professor Hill and none of them are very good.

If you talk to victims of abuse the way I have, they will tell you they are often doubly victimized by both the event in which they are abused, and then subsequently by the way the system treats them.

To say these charges could not be taken seriously enough to be brought to our attention has consequences, as I said, for both Professor Hill and for Judge Thomas. But let me tell you about the other consequences to the people of the United States of America. If we do not delay, we will never really be sure about our nominee to the Court, and in addition to that we are now sending a message to the American people that we do not take sexual harassment seriously enough to conduct a full and serious investigation or inquiry into it.

To anybody out there who wants to be a whistle blower, the message is, "Don't blow that whistle because you will be left out there by yourself." To any victim of sexual harassment or sexual abuse or sexual violence, either in the street or even in his or her own home, the message is, "Nobody is going to take you seriously, not in the U.S. Senate." To the private sector, which now has to enforce these laws on sexual harassment, whether we call it sexual humiliation or whether it is overt physical aggression, sexual terrorism, the message to the private sector is, "Cool it. Even the Senate takes a walk on this one."

Mr. President, that belies our laws and regulations. Then what does it say to the community?

Mr. President, I serve on the U.S. Naval Academy Board of Visitors. I love it. It enables me to interact with young people, and make sure that our military are fit for duty for the 21st century. I was charged with the responsibility of being on a board of inquiry where allegations of sexual harassments took place at the Naval Academy. I worked to investigate the individual case. But then we found that there was a pattern of harassment by the male mids to the female mids and looking the other way by top administrative officials at the academy. We have now straightened that mess out with full cooperation of the Secretary of Navy, the commanding officers at the Naval academy, the midshipmen themselves, and the faculty. We have worked very hard to say that sexual harassment is not tolerated by officers and gentlemen.

What does this say if the U.S. Senate cannot delay another few hours? What does it say to the admiral who commands the brigade at the Naval Academy and says an officer and a gentleman never has to look big by making someone look small? An officer and a gentleman of the U.S. Navy never has to prove what kind of guy he is by abusing gals.

We want to support that admiral, and we want to support the private sector. And I want to support the people who are the subject of this abuse.

I do not know who was telling the truth. I do not want to prejudge that. But regardless of who is telling the truth, I want to outline for my colleagues the serious consequences of us not taking it serious enough to delay the proceedings of this Senate to give a full and amplified hearing.

Mr. President, we have models for this. During the advice and consent hearings on John Tower we knew of allegations about personal practices of Senator Tower. They were such a subject of discussion. They were raised with him in a committee hearing so he could give his own defense, his own explanation. We could read the FBI report, but Senator NUNN and Senator WARNER said here are those allegations. We arrived at a judgment.

We are now conducting a hearing on who is going to be the head of the Central Intelligence Agency. There is a great deal of controversy surrounding Mr. Gates. We are talking about the intelligence community. We found a way to get at the facts in an executive session. Also, those who had issues that they wanted to raise with Mr. Gates did so in a public forum of the U.S. Senate. Then Mr. Gates gave a 20-point rebuttal, again subject to question and answer. Mr. President, that is the American way.

We have models for getting at those issues. I can understand why Professor Hill has perhaps wanted not to go public because of what she felt in the alleged victimization. But she could have done this in executive session and then the encouragement of Professor Hill to move to another level, and she is now ready to do that.

So what we have now is a nominee of the Supreme Court saying no, I did not do it. And then we hear nothing more from him.

We have Professor Hill who needs to conduct her side of the story through a press conference. We are now examining this issue through the media rather than doing it through the U.S. Senate.

The media cannot be a substitute for the honorable and traditional proceedings of the U.S. Senate. I salute the media for bringing it to this Senator's attention. It is the only way I would have known about it. I feel they have done their job.

Mr. President, it is now time we do our job, and our job as U.S. Senators gives us the constitutional responsibility to both advise the Senate and to advise the President when he sends us a nominee and consent to that. History, tradition, and the future of this Nation calls forth in us now a passion to see that justice is done.

I strongly encourage my colleagues to join with me in asking for a prudent timely delay in resolving these allegations.

Mr. EXON. Would the Senator yield for a question?

Ms. MIKULSKI. I yield to the Senator from New York.

Mr. MOYNIHAN. Mr. President, can I ask my distinguished friend and learned friend from Maryland to stay on the floor just one-half a minute?

Ms. MIKULSKI. I am delighted to stay.

Mr. MOYNIHAN. I want to agree with her completely. In fact, I agree with what my friend from Nebraska said last evening.

Mr. MOYNIHAN. Mr. President, I have the floor.

Ms. MIKULSKI. I have the floor.

Mr. MOYNIHAN. Would the Senator yield the floor?

Ms. MIKULSKI. After I yield for the question of the Senator from Nebraska, and then I will yield the floor.

Does the Senator from Nebraska have a question?

Mr. EXON. I have a question for my friend and colleague from Maryland. I listened with great interest to her talk today. I listened with great interest to the talks a lot of people have been making on this matter since the revelations of this weekend.

I simply want to say in asking the question that those who have traditionally opposed the nomination obviously are happy and pleased with the recent developments, the category into which this Senator does not fall because I announced my support for the nominee. Indeed, when the final vote is cast, if it is cast sometime other than 6 o'clock tonight, I may support Judge Thomas.

I must say, Mr. President, that what this Senator is trying to get across is some reason for not delaying the vote. May I ask my Senator friend from the great state of Maryland why the rush to judgment? Why is it that we have to vote tonight because it has been so decreed? Is there any reason that my friend from Maryland could think of as to why it would be bad, or cast the Senate in a bad light, if we simply delayed this so that we could find out more, hopefully call the two people before the Senate Judiciary Committee to ask them point blank?

I do not know who is telling the truth. But it is obvious, is not it, that either Judge Thomas is not telling the truth, or Professor Hill is not telling the truth.

Does the Senator see any reason? What possibly could be wrong with de-

laying the vote for a limited amount of time to give everybody a chance, including I think the chance for Judge Thomas to refute this publicly in front of the committee, which in my view, Mr. President, would be also helpful to eliminate any could over the nomination for someone who is about to serve 30 years on the Supreme Court.

Ms. MIKULSKI. Mr. President, reclaiming my time, I can think of no reason other than parliamentary rules that require unanimous consent. I hope that our leadership can help resolve this issue on both sides of the aisle.

But in responding to my colleague's question, let me say about those who were going to vote "no" on the Thomas nomination that there is no glee in this; I was going to vote "no," because I felt that Judge Thomas had been silent and evasive on many of the issues, and therefore we could not put him on the Court.

But as I come before the Senate, this is a melancholy situation in which we are letting Judge Thomas down, letting Professor Hill down, but most of all we are letting down the Supreme Court and the American people.

So having said that, I hope that the problem is only our own parliamentary rules, which we can always deal with.

Now I would like to yield to the Senator from New York, who I believe either had a question or wanted to speak in his own right.

Mr. MOYNIHAN addressed the Chair.

Ms. MIKULSKI. I yield the floor, Mr. President.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I thank the Chair and I thank my friend from Maryland for her great courtesy.

I would like to repeat a point which she made.

I have said earlier that I was reading a statement I had meant to give yesterday morning in support of Judge Thomas. But by the time I reached the Senate yesterday morning, I had learned, as all of us had, I suppose, of the statement of Professor Hill. As the day went by, I read the FBI report and the affidavit. I watched Professor Hill. Then, at the close of the day, I learned that this FBI report, the affidavit, was a matter which was known to at least 17 Members of this body before unanimous consent was requested in order to vote tonight at a time certain—6 o'clock. But it was not known to this Senator, who could have objected to an unanimous-consent request. It was not known to the Senator from Maryland, who nods in agreement, and who I doubt very much would have given consent, had she known. Again, I see a nod in agreement.

We cannot have a procedure where 17 Senators know something which, if 83 Senators knew, a proceeding of this consequence would not take place. Therefore, Mr. President, with the thought in mind that the Senator from Maryland has had and others have had, how can we work our way out of this?

There is a very simple proposal. Under rule XXII, on the precedence of motions, it states: One, when a question is pending, no motion shall be received but to adjourn.

Accordingly, Mr. President, I move that the Senate adjourn until Tuesday, October 15, at 10 o'clock. I believe I have the floor, and I await your ruling.

Mr. GRASSLEY addressed the Chair.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER (Mr. AKAKA). The Senator from New York has the floor.

The Senator loses the floor upon making the motion.

Mr. CONRAD. Mr. President, parliamentary inquiry.

Mr. MOYNIHAN. Will the Senator allow me to speak?

The motion to adjourn has been made.

May I ask you, Mr. President, will it not be disposed of by a vote?

Mr. GRASSLEY addressed the Chair.

Mr. CONRAD addressed the Chair.

Mr. MOYNIHAN. May I ask my colleagues to allow the Chair's ruling?

Mr. CONRAD. This Senator would like to make parliamentary inquiry.

My understanding is that the Senator loses his right to the floor after making the motion.

The PRESIDING OFFICER. That is correct. The Senator from New York, after making the motion, loses the floor.

Mr. CONRAD. Mr. President, I seek recognition.

Mr. MOYNIHAN. Mr. President, the motion surely has to be disposed of.

The PRESIDING OFFICER. Is there objection to consideration of the motion?

Mr. GRASSLEY. I object.

Mr. CONRAD. I object.

Mr. MOYNIHAN. I ask for the yeas and nays.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. Objection is heard.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. The Chair advises the majority leader that a quorum call is in progress.

The assistant legislative clerk continued with the call of the roll.

The PRESIDING OFFICER. Order in the Senate. The press gallery will remain quiet.

The clerk will continue calling the roll.

The assistant legislative clerk continued with the roll.

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

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

Mr. MITCHELL. Mr. President, I raise a parliamentary inquiry.

Is the motion to adjourn as made by the Senator from New York in order?

The PRESIDING OFFICER. It is not in order.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MITCHELL. Mr. President, I understand the quorum call has been requested.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. A quorum call is in progress.

Mr. MOYNIHAN addressed the Chair.

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

Mr. GRASSLEY. I object.

Mr. MITCHELL. I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued with the call of the roll.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

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

Mr. GRASSLEY. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The clerk will call the roll.

The bill clerk continued with the call of the roll.

Mr. MOYNIHAN. Mr. President, I request that further proceedings under the quorum call be dispensed with so that we may discuss the situation we are in, and why people do not want to discuss it.

Mr. GRASSLEY. Mr. President, I object.

The PRESIDING OFFICER. There is an objection.

Mr. MOYNIHAN. Mr. President, with great seriousness, in order to proceed with the debate on a matter of profound consequence——

Mr. GRASSLEY. Regular order.

Mr. MOYNIHAN. I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. I object.

Mr. MOYNIHAN. Mr. President, in order that discussion of a profoundly serious issue to American women and American men and the Supreme Court may proceed, I ask that further proceedings of the quorum call be dis-

pensed with so that debate might resume.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. I object.

The PRESIDING OFFICER. There is objection.

Mr. MOYNIHAN. Mr. President, in the prayerful thought that we have but a limited time on an issue of enormous consequence—this surely cannot disturb the Senator from Iowa that much—I ask that further proceedings of the quorum call be dispensed with.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. I object.

The PRESIDING OFFICER. There is an objection.

Mr. MOYNIHAN. Mr. President, there are Senators here, and the majority leader is on the floor listening to the debate. The Senators wish to continue debate, to make statements, to see how we can work our way out of this situation, and I would ask that, even though the Republican leader is not present, we might dispense with the quorum call.

I have no intention, Mr. President, of offering any other procedural motions, but simply proceeding to discuss the substance of this profoundly important issue.

Mr. MITCHELL. Will the Senator withhold his request?

Mr. MOYNIHAN. I am happy to do so.

Mr. MITCHELL. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

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

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be a period for morning business until the hour of 12:30 p.m., with Senators permitted to speak therein.

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

THE NOMINATION OF JUDGE THOMAS

Mr. MITCHELL. Mr. President, I wish to make clear that, first, I was not advised by the Senator from New York, prior to his making of the motion to adjourn, of his intention to do so. Second, it is not my desire or intention to prevent any Senator from expressing his or her view on the subject matter before the Senate, or indeed on any other subject at this time, either on the substance of the nomination or on the process being used to consider the nomination, or more specifically, the question of whether or not there should be delay of the vote by the Senate on the nomination.

As I stated last evening, on September 25, 2 weeks ago tomorrow, during the evening, Senator BIDEN, the chairman of the Judiciary Committee, and Senator THURMOND requested a meeting with the minority leader, Senator DOLE, and myself, the majority leader. In that meeting, they described to us the nature of the statement made by Prof. Anita Hill regarding the nominee and the nominee's, Judge Thomas', denial of the assertions of Professor Hill.

We were advised that Professor Hill had requested two things: First, that the information she gave in the form of a sworn statement be made available to members of the Senate Judiciary Committee; and second, that it not be made available to anyone else because of her concern for the protection of her identity.

Senator BIDEN indicated that he intended to comply fully with that request; that he would make the information available to the Democratic members of the committee and would not make it available beyond that, in accordance with Professor Hill's request.

Two days later, the committee voted and recommended that the matter be sent to the Senate, the vote in the committee having been 7 to 7.

Since, to my knowledge at the time, there had been full compliance with Professor Hill's request, both with respect to making the information available to members of the committee and not making it available beyond that, and the committee having acted, as the person responsible for managing the affairs of the Senate, and following extensive discussion with Senator DOLE and many others involved, I proposed to the Senate that there be 4 days for debate on the nomination, those 4 days being last Thursday and Friday, yesterday, and today, and that at 6 p.m. today, the Senate vote on the nomination. That was approved by unanimous consent. That means that each of the 100 Senators agreed to that procedure.

Obviously, the events which intervened over the weekend, specifically the public statements by Professor Hill, have created circumstances in which many Senators believe that there should be a delay in the vote, and many Senators have communicated that desire to me. There are also other Senators who have indicated an unwillingness to delay the vote.

As we all know, but it bears repeating, once the Senate has agreed to set a vote by unanimous consent—that is, with the approval of each of the 100 Senators—the only way that the Senate can agree to change that time is by the assent of all 100 Senators, and a number of Senators have indicated that they will not assent to such a delay.

Through late last evening and throughout this morning, I have been discussing the matter with a number of Senators on both sides of the aisle, and I will be meeting, prior to the respective party caucuses, with the distinguished Republican leader and the chairman of the Judiciary Committee in an effort to determine what the best way to proceed in this matter is.

The allegations made by Professor Hill are serious. I have never met Professor Hill, but I have watched part of her statement on television yesterday and my impression is that of a credible person. It is something which Senators have the perfect right to express themselves on, and it is my expectation now that a number of Senators are going to express themselves on the subject of whether or not there ought to be a delay and perhaps some other aspect of the nomination, and that is entirely appropriate, and I encourage any Senator who wishes to do so to express his or her view publicly or privately to me.

But the question on when the Senate adjourns or when it does not adjourn, the procedure to be used in managing the affairs of the Senate can and must only be a prerogative of the leadership. It is difficult enough, Mr. President, to conduct the affairs of the Senate given the rules that we have. It would be impossible, it would produce chaos in the Senate were each Senator to determine for himself or herself the manner in which the Senate will proceed on these matters. So I wish to make it clear that my response to the earlier motion for adjournment is not in any way an expression of view on the subject of whether or not this vote should be delayed. I am in the process of consulting with a number of my colleagues in that regard. I intend to meet and consult, as I always do, with the minority leader in that regard. And I will be expressing a view on that during the day. So, I do not want any impression left that I have acted as I have because I wish to prevent any Senator from expressing his or her view or because I have expressed a view with respect to the timing and circumstance of the vote.

We are going to try to work it out. We are in the process of consulting, trying to figure out the best way to do it. And there are appropriate ways in which to do that. Therefore, I have obtained consent for there to be a period for morning business for the express purpose of permitting any Senator to say anything he or she wants but to preclude the possibility of premature or other actions taken with respect to the manner in which this or any other of the Senate's affairs will be conducted.

Mr. President, I note the presence of the Republican leader on the floor, and I will be pleased to yield to him at this time if he wishes to make a comment.

Mr. DOLE. No. I have been in another meeting. I just wonder if the Senate majority leader would indicate—as I understand, we are not in morning business?

Mr. MITCHELL. Yes.

Mr. DOLE. Would that not preclude someone making a motion to adjourn while in morning business?

Mr. MITCHELL. My understanding is, and I have requested the opportunity here—I have asked the distinguished Senator from New York, and he has advised me he does not intend to make any such motion, nor, I believe, do any of the other Senators. I do not believe that will occur. I have been advised by the Parliamentarian that the motion to adjourn was not in order, and I obtained that ruling from the Chair prior to putting in a quorum call.

It is my expectation that there is now to be merely a period of discussion in which any Senator can express himself or herself on any aspect of the matter, but with respect to which no motion to adjourn will be made.

I now ask my colleagues that no such motion be made at this time, and that I be permitted the opportunity to discuss this matter further will my colleagues and the Republican leader.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

THE VOTE ON CLARENCE THOMAS

Mr. CONRAD. Mr. President, I have just finished reading the FBI reports that detail the allegations by Professor Hill and the response by Judge Thomas. Mr. President, Professor Hill has made serious allegations to the FBI. Judge Thomas has denied those allegations to the FBI. Clearly, someone is not telling the truth. I point out to my colleagues that it is a Federal crime to lie to a Federal law enforcement officer.

But here we are at this juncture, getting ready to vote tonight and we do not know the truth. In fact, neither of the parties have been put under oath to repeat their statements.

Mr. President, I believe it is dead wrong for the U.S. Senate to vote tonight, before we have taken the time to assess these charges. I believe we have a responsibility to Judge Thomas. We have a responsibility to Professor Hill. We have a responsibility to the U.S. Supreme Court. Most important of all, we have a responsibility to the American people. And I believe a rush to judgment tonight, before we have had an opportunity to assess these charges and determine whether or not they are valid would be a very serious mistake for this body.

I have also been disturbed by statements that I have heard from some of our colleagues, statements that Professor Hill does not have any credibility because she waited 10 years to make these charges. I simply say to my colleagues: Look at what has happened. Since Professor Hill came forward with these statements, she has become the object of an attack. All too often that is what happens to women in this society, and they know it. They know that coming forward with charges of sexual harassment in the workplace can put them in jeopardy.

Again, I want to make clear, I do not know if Professor Hill is telling the truth. I do not know if Judge Thomas is telling the truth. In fairness to Judge Thomas, we ought to have a chance to evaluate these charges and clear him or we ought to have a chance to demonstrate that there is some validity to the charges by Professor Hill. That is only fair to both parties, fair to the Supreme Court, fair to the American people.

Mr. President, I am very concerned. If the U.S. Senate votes tonight, without taking time to review these charges, it will appear that the U.S. Senate does not care about sexual harassment or charges of sexual harassment. That is exactly the message that we are going to send if we do not delay and have a chance to hear both parties. It is going to look, all across America, as though the U.S. Senate cannot be bothered with charges of sexual harassment, because it does not consider them important.

Mr. President, that is the wrong message to send to America. Sexual harassment is wrong, and the U.S. Senate ought to say it is wrong, and the U.S. Senate ought to stand up and say, when charges of this magnitude are leveled, we are going to listen and we are going to have a chance to hear both parties and establish their credibility.

In watching the events of the last 24 hours, I have asked myself the question: Is it any wonder that women do not come forward? Is it any wonder they do not come forward, when they become the object of an attack?

This morning, Mr. President, I received a communication from a woman who is a faculty member at the University of North Dakota law school. She knows Anita Hill, and she thinks her allegations have a great deal of credibility. And, I watched Ms. Hill the other day. She seemed to be a credible witness to me. Again, I have not formed any conclusion because I do not think it is fair to form a conclusion. It is not fair to form a conclusion until we have had a chance to hear both sides of this dispute. It is not fair until we have had a chance to hear both individuals under oath. That is what we ought to be doing, and for the U.S. Senate to go to a vote tonight is wrong. It is dead wrong, and it should not happen. We ought to have a chance to look at these charges and either clear Judge Thomas or make a decision that these charges are credible.

Mr. President, I think what is at stake here is now more than the question of the confirmation of Judge Thomas. It is a question of what kind of message the U.S. Senate sends to the people of America about charges of sexual harassment. And we ought to send a message that these charges are taken seriously; that the U.S. Senate listens and then makes a judgment.

Mr. President, I feel in the strongest terms that this vote must be delayed—must be delayed—and I hope as we move through this day that cooler heads will prevail and this vote will be delayed. I thank the Chair and yield the floor.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Chair recognizes the Senator from Vermont [Mr. JEFFORDS].

THE JUDGE THOMAS NOMINATION

Mr. JEFFORDS. Mr. President, I am not going to get into a debate of whether or not the vote ought to be delayed, but I do wish to take this time to express to the Senator my views on the nomination of Judge Thomas.

Mr. President, I do not think there are more than one or two duties performed by the Senate that are more important than the consideration and confirmation of nominees to the Supreme Court.

While much of what we do has an impact for a few months or years, the seating of Justice on our highest court will have an impact beyond our own service and even our own lifetimes.

Though the Supreme Court acts without the fanfare of politicians in the other two branches, it is every bit as important in the lives of Americans. It has an impact on every aspect of our lives, from the most intimate, personal decisions, to the most arcane and distant subjects.

Can a Vermont woman be barred from a job if she is of child-bearing age? What actions can Vermont take against an out-of-State polluter? How much can Vermont regulate nuclear energy in its own borders? What damages are allowable for a Vermont company injured by anticompetitive activities? The list goes on and on.

Mr. President, I am the son of a judge. My father was in the Vermont court system for over 20 years and served as a chief justice in his final years. For decades the Vermont Supreme Court was considered both moderate and progressive and was nationally respected. Vermont court decisions often appear in law school text books, a fact that made me quite proud during my law school years. During that period, justices were appointed exclusively from among lower court judges. However, in recent years appointments have been made outside the court system. In the minds of many, this has resulted in too liberal a court. This situation might well disturb me. However, in the areas of constitutional rights it has acted as a protector of Vermonters' rights against the recent overly conservative decisions of the U.S. Supreme Court.

The Founding Fathers recognized the limits of democracy. Though they had thrown off the yoke of a monarchy, they certainly were not sure of their experiment in democracy. They feared the character of elected representatives, who might well succumb to passion and the whims of public opinion.

Their fear was well-founded. All too often, I am afraid, Congress gets so caught up in the cause-of-the-week that it treads dangerously near and sometimes upon individual rights. In our zeal to stop crime or drugs or dissent, we forget about nuisances like due process, privacy, or free speech.

While the diversity in ideology of Congress can sometimes weed out the worst ideas before their adoption, no such check is exerted upon the executive branch, which the Founding Fathers may have feared even more than its legislative counterpart.

I do not believe there was one other part of the Constitution which gave greater concern to our Founding Fathers than who should be responsible for appointing the Supreme Court. The drafters were split between those who wanted the Senate to elect the members of the Supreme Court and those who thought the President should have sole authority in appointing the Justices. This debate went on for months. The result was a compromise which gives us the current system in which only the President nominates candidates for the Court, but the Senate has the duty to advise and consent on each nominee before that person can become a Justice of the Supreme Court.

It is illogical to presume that it was the intention of this compromise that the Senate's sole duty should be to pass on the nominee's legal qualifications, character, and judicial temperament. It is clear to me that it also gave the Senate the power and obligation to ensure that executive branch control of the appointing process did not become so absolute that the Court could no longer serve as a satisfactory arbiter between the executive and legislative branches. Further, the role of the Senate also should ensure that the Court does not become positioned to execute a philosophical agenda different from the statutory product of the legislative branch.

Their solution was an elegant one. Acting as brake on the excesses of either branch, and as an arbiter on disputes between the two, the Supreme Court, selected by both and tenured for life, would decide the inevitable knotty questions of statutory and constitutional construction. Finally, and most importantly, the Court would protect individual rights against the predictable incursions of the state.

Article II, section 2 of the Constitution merely provides that the President shall nominate, and "by and with the Advice and Consent of the Senate, shall appoint * * * Judges to the Supreme Court." The text of the constitution is clear that although the power to present a candidate for the Court is vested solely in the President, the power of appointment is exercised concurrently with the Senate, which must review the nomination and may reject the President's choice. However, the Constitution does not specify the criteria for the Senate's decision. Therefore, from a strictly technical standpoint, the Senate may reject a nominee for any reason. This "combination of brevity and ambiguity is so characteristic of the Constitution", Ross, "The Functions, Roles, and Duties of the Senate in the Supreme Court Appointment Process," 28 William and Mary Law Review 633, 635 (1987).

The question then is how do we make this tough decision? On what basis do we decide whether a given nominee should be allowed to ascend to the bench of the Supreme Court?

There is little disagreement on the basic qualifications of a justice—legal excellence, judicial temperament, and character. By and large, the nominees in this century have had outstanding legal qualifications. Thus, for example, the elite law schools of the land, Harvard, Yale, Stanford, and Chicago, are well represented among the current Justices. Further, after completing their schooling, most Justices have gone on to occupy particularly notable positions in the legal community. Again, for example, Brennan was a State supreme court justice; Marshall, Blackmun, Stevens, and Scalia were judges of the U.S. Courts of Appeals; Marshall had been the Solicitor General of the United States and, at the time of his appointment, had argued more Supreme Court cases than anyone; Scalia taught at several prestigious law schools; Rehnquist served as a deputy U.S. Attorney General; and Powell had been President of the American Bar Association. (See, Ross, supra at 646, n. 66).

Political philosophy is important as well. Some argue that such an inquiry has no place in the nomination or confirmation process—that Justices simply should be neutral, sage constructionists. I disagree. A President has many qualified candidates to choose from. The determining factor in his selection is likely to be the perceived philosophy of a nominee.

It would be naive to believe that the President would not ascertain the political philosophy of his nominee. There is no doubt that his advisers and staff would do a thorough examination of the political philosophy of the nominee as well as personal interviews. What about the Senate? Must we resign ourselves purely to an examination of written works of the potential Justice and face a nominee who refuses to give any indication on critical philosophies by claiming it would be inappropriate to do outside the context of the facts of a particular case? While this sounds fine on the surface, this approach gives an incredible advantage to the President in knowing a great deal more about the nominee than the Senate can ascertain through the confirmation process.

Given this reality, the Senate must look to the philosophy of the nominee as well and must insist on appropriate answers and discussions. Further, I also believe the Senate must look beyond the individual to examine the cumulative impact of our actions on the Court.

Although removed from the political fray, the Supreme Court is obviously not unaffected by politics. Where one party dominates over a period of years, nominations to the Court will obviously be strongly influenced by that party. Roosevelt's frustration with the Supreme Court's resistance to the New Deal caused him to make one of the biggest mistakes of his career when he tried to pack the Court. But despite his impatience, the Court obviously moved to the left during the next 30 years.

In our own time, Republican Presidents have made 13 consecutive nominations, and only one of the eight sitting Justices, Justice White, was a Democratic appointee. Lyndon Johnson was the last Democrat to nominate for the Court when in June of 1968 he raised the name of Homer Thornberry. However, no action was ever taken by the Senate on that nomination because of the fracas surrounding the attempted elevation of Abe Fortas to Chief Justice. Johnson's nomination of Thurgood Marshall in June of 1967 was the last by a Democrat to result in a sitting Justice. The Republican stamp on the current Court is undeniable.

But by no means does a President, even one of my own party, have the right to pick virtually anyone he wants who meets minimal qualifications with respect to character, legal ability, and judicial temperament. This is not a pass-fail test.

In my mind, such a process is entirely proper for appointees to the executive branch of Government. The President should be given wide latitude in selecting his Cabinet secretaries and key agency personnel. But under the Constitution, such deference is inappropriate in the confirmation of Supreme Court Justices. Their tenure is not limited to the 2 or 4 or 8 years of an executive agency appointment. They are in position to decide upon our collective future for as long as they live. And a lifetime is too long to be wrong.

Consider if you will, Mr. President, the prospects for the Court over the coming years. It seems to me that the ages of the sitting Justices and their years of service are relevant considerations.

Justice	Date of birth	Age	Years on Court	Appointment age
Rehnquist	Oct. 1, 1924	67	20	47
White	June 8, 1917	74	29	45
Blackmun	Nov. 12, 1908	83	21	62
Stevens	Apr. 20, 1920	71	16	55
O'Connor	Mar. 26, 1930	61	10	51
Scalia	Mar. 11, 1936	55	5	50
Kennedy	July 23, 1936	55	3	52
Souter	Sept. 17, 1939	52	1	51

The above listing clearly demonstrates that the political bent of the current members of the Court is decidedly conservative. The two more moderate members are likely to be replaced in the next 6 years. Justice Blackmun is 83 years old and Justice White is 74. In addition, two others will be well into their 70's. Thus, it is likely that two and perhaps four more appointments will occur within the next 6 years. If one presumes that we continue on the present course and strong conservative members are appointed, it could be well over 20 years before the makeup of the Court could even begin to become more moderate.

There is nothing in the recent history of the Presidency, a history which I should say that I have largely supported, to indicate that, absent congressional pressure for the balancing of the Court, any appointments will be made of Justices whose views are more centrist than the current Court.

The current Court is anything but centrist. It is hard to even term it conservative in the traditional sense. For not only does it seem unwilling to view the Constitution as a living document that can and should be interpreted to accommodate the evolution of our society, it seems unable to be faithful to the legislative intent of Congress. With seemingly increasing frequency, the current Court has gone out of its way to arrive at twisted constructions of congressional intent. In fact, it has become almost an unstated policy of the newly emboldened conservative majority on the Court to seek out precedents with which they disagree and reverse them.

Mr. President, the Members of the Senate should be very familiar with the cases which illustrate this growing trend on the Court. The Congress has spent considerable time and effort correcting and attempting to correct these excursions in judicial activism recently engaged in by the conservative alleged opponents of that philosophy on the Court. Consistently strained interpretations of statutory language and congressional intent have marked many recent and controversial and Supreme Court decisions. Below are but a few examples.

BETTS V. OHIO, 109 S.CT. 256 (1989)

In this case the slim conservative majority interpreted the Age Discrimination in Employment Act of 1967 [ADEA] as providing little or no protection for older workers from discrimination in employee benefit plans. The original intent of the Congress in passing and amending the ADEA was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations. The EEOC under the Reagan administration had vigorously litigated to defend this very interpretation of the act.

The Older Workers Benefit Protection Act—Public Law 101-433—was passed by the Congress and signed into law by President Bush to correct this misinterpretation by the Court.

RUST V. SULLIVAN, 111 S.CT. 1759 (1991)

In another 5-4 conservative majority opinion, the Court held that freedom of speech was not abridged by Federal regulations that prohibit federally funded family planning clinics from providing counseling or referrals regarding abortion. Congress has acted by passing legislation—Title X Pregnancy Counseling Act—which would prohibit the Secretary of HHS from acting in compliance with the Court's decision. Rather, the bill would guarantee that projects receiving title X funds can "offer pregnant women information and counseling concerning all legal and medical options regarding their pregnancies."

Both the House and the Senate have passed bills and the matter is currently in conference. Again, legislative action is necessary to correct a grievous misinterpretation by the Court.

WARDS COVE V. ATONIO, 109 S.CT. 2115 (1989)

The slim conservative majority was again at work in this case. There the Court ruled that in disparate impact cases under title VII, the burden is on the plaintiff to disprove, rather than on the employer to prove, the employer's business necessity defense for a practice with discriminatory effects. Further, the practice need not actually be essential or indispendable in order to pass muster, it only has to serve a legitimate employment goal. In so ruling, the Court reversed 20 years of judicial interpretation and generally accepted practice under title VII.

The efforts of the Congress to enact legislation correcting this and several other clearly wrong-headed 1989 decisions of the Court are well known. The Civil Rights Act of 1990 was vetoed by President Bush and the 1991 version is currently pending with another veto fight appearing likely.

I have cited only some of the cases in which the Court has drastically reversed fields. Similar examples exist in other areas of law. The point is that the Court is no longer reflecting a spectrum of views, but rather appears to be advancing the agenda of those on one end of the political spectrum. Given the extreme tilt existing on the Court as presently composed, the addition of a new Justice who mirrors the positions of the conservative majority will not serve the greater good.

President Bush and others have argued that diversity is an important element on the Court. Several of my Senate colleagues have stated their support for this nominee is based more upon the belief that his different roots will prevent him from becoming just one more predictably conservative vote on the Court. But diversity of backgrounds, in my opinion, is virtually irrelevant. If two Justices are likely to arrive at the same decision on a given case, it matters little that one was born to poverty and one to affluence.

Some may argue that this is a new and perhaps inappropriate standard; that the recent history has been that Presidents are free to appoint nominees reflecting their own view on the important issues of the day. I'm afraid there may be some truth to this. After the rejection of Judge Bork, we did seat Justices Kennedy and Souter without much protest or fanfare. It does concern me that I may be applying here a standard which I did not insist upon in connection with Justice Souter, the only nomination which occurred since I came to the Senate, and which the Senate as a whole has not applied to any recent candidate.

In terms of the direct comparison with Justice Souter, it did strike me that he had solid legal qualifications in his background that are not possessed by Judge Thomas. Further, Justice Souter did not have the extensive history of conflicting and troublesome public statements on the contentious issues of our times to trip up his nomination. Finally, through professional contacts that I had with Justice Souter prior to his nomination, I had come to the opinion that he was an independent sort not likely to be easily swayed in the formulation of his considered judgments.

Having said this, I still must insist that it is not a novel idea that a President should look first to the finest jurists in the land without regard to philosophical or political homogeneity. That is the standard which I think we should apply, here and always. The criticism that we may not have previously lived up to that goal does not constitute a binding commitment that we must continue the error of our ways.

Our process for determining the qualifications of a prospective justice is important and frustrating. A nominee has every incentive to tell the Senators what they want to hear. He or she can study the confirmation performance of his or her predecessors for clues on how to win the battle. Does anything in the confirmation experiences of Judge Bork, Justice Kennedy, or Justice Souter suggest that future candidates will adopt anything but extreme reticence as their confirmation strategy? I doubt it.

The real work of becoming a bona fide candidate for the Supreme Court

should be completed before a nominee's name is announced by the President, not at the confirmation table. And yet, if the hearings are of limited utility, where do we turn? Obviously we must look at the published record of a nominee, as well as past decisions and performance in other capacities. What were the public deeds and accomplishments of the nominee? How did he or she comport himself or herself in carrying out their public obligations? This is the customary type of yardstick used to measure the qualifications of candidates. Indeed, until recently this was the exclusive means by which nominees were measured.

Against this yardstick, Judge Thomas' record is troubling, and I cannot simply discount it. At the Department of Education's Office of Civil Rights, he was on the verge of being declared in contempt of court for substituting his own views of the law for those of the court. At the EEOC, where he served in a quasijudicial role, he made one statement after another that can only be characterized as extreme. From privacy to property he espoused views that represented remarkable departures from the legal mainstream—departures in one direction only—right.

To his credit, Judge Thomas has made a remarkable rise from poverty to the threshold of our highest court. He has shown that hard work and discipline pay off, and in doing so, has served as a great model. His rise has not been without missteps, but on the whole has been spectacular. In fact, his humble beginnings, poor and black in the segregated South, have been widely touted as the premier component of his qualifications for the Court.

I worked with Judge Thomas when he was the Chairman of the Equal Employment Opportunity Commission and I served as the ranking member of the House Education and Labor Committee. He inherited an agency with substantial problems and did much to rectify them. His harshest critics seem determined not to credit him with his accomplishments in this regard. He chose, I believe in keeping with the philosophy of the President that appointed him, to place great emphasis on individual case processing at the expense of broader, class-based remedial actions.

Judge Thomas' tenure on the court of appeals has been extremely brief. Further, the function of a lower court is fundamentally different from that of the Supreme Court simply because there is no route of appeal from the latter. The opinions of a Supreme Court Justice have a way of becoming etched-in-stone law more so than do the words of lower court jurists. This combination of facts makes it difficult to draw any conclusions relevant to the confirmation process from Judge Thomas' experience on the circuit court.

Judge Thomas' rise has been meteoric. But it has also been atypical. While all of us would love to hold out his route as the one path for those born to poverty, we know that most people will not or cannot take it. Some will be deserted by husbands, burdened by children, strapped to support family as well as self. We can applaud those that surmount the hurdles of poverty and prejudice, but we cannot forget those that fail to clear the bar.

This, I think, is the fundamental failing of Judge Thomas' judicial philosophy. His view of the role of Government, and particularly the role of Congress in society, is pinched and penurious. The alternative is not profligacy. Rather, it is a Government that is acting aggressively to secure a more just society.

Beyond his philosophy come the more traditional questions of qualifications. With respect to his legal qualifications, I don't think jurists should be held to a publish-or-perish standard any more than academics. I know when I was attorney general, my assistants had no time to muse upon the finer points of the law, and I am sure the same is true of Judge Thomas throughout his career in Government. Running an agency permits precious little time to engage in scholarly pursuits.

But there is little in Judge Thomas' record to suggest legal excellence. The bar association's recommendation was tempered, and there is little evidence of distinction. This is not surprising. In a few years, regardless of whether he wins confirmation or not, I am sure we will have a much more complete body of opinions on which to base our judgment. Right now, we simply do not.

Measuring legal qualifications is a relatively objective process compared to the subject of character or judicial temperament. These can only be subjective decisions. And while hearings are indeed of limited value, they did not provide great reassurance in these areas.

Judge Thomas' answers brushed aside one controversial statement after another. His willingness to discuss issues seemed dependent on the issue itself, not some standard of judicial rectitude. His statements on privacy and abortion were evasive at best, and verged on lacking in credibility.

As I have noted, there are incentives to tell your audience what it wants to hear, be it the Senate Judiciary Committee or the Heritage Foundation. But succumbing to such temptation does not seem the hallmark of the best candidate we can find for the Supreme Court.

Mr. President. Recent Supreme Court decisions and the nomination of Clarence Thomas to fill the vacancy on Justice Thurgood Marshall has caused me to reexamine the role of the Senate in the formation and composition of the Court. In other words, when it appears that the philosophical makeup of the Court has swung so far, one way or the other, that it is at odds with a clear majority of the Congress, can we legitimately, must we appropriately refuse to accept appointments that will further exacerbate that disparity?

I conclude it is not only legitimate and appropriate, but also our duty to do so. To say and do otherwise is to allow the executive branch to wrest control of the judiciary. That result—the veritable hostile takeover of the one branch of Government intended to be the arbiter between the other two—is simply not acceptable.

The outcome, in my mind, is not in doubt. And were my side to prevail, I know the ultimate outcome would be very much in doubt. But I can do nothing but cast my vote based on how I view this nominee, and this Court, at this time. Accordingly, when the Senate meets to consider the issue, I will vote against the confirmation of the nomination of Judge Clarence Thomas to the U.S. Supreme Court.

Mr. METZENBAUM. Mr. President, one of my colleagues, whom I considered a friend, on the other side of the aisle—with absolutely no evidence—is telling reporters that I am responsible for leaking Anita Hill's story to the press. That is wrong. That is untrue. Let me say emphatically again that nothing could be further from the truth. He owes me a public apology. Professor Hill struggled to make her story known to Senators, and expressed a desire to keep her confidentiality protected—I would not violate that request. I knew full well the impact these charges would have on the lives of both Judge Thomas and Professor Hill, and I would never have so callous a disregard for those consequences—I resent bitterly the suggestion that I would.

The proper forum for this issue was within the confines of the Senate's procedures, and I, too, regret that this has spilled out in public. But I demand a correction or an apology from any colleague who has accused me of violating the trust of Ms. Hill, or the trust of this institution.

Having heard Professor Hill for the first time yesterday, I think we should have done more to learn about her allegations. I will state that it was absolutely appropriate, and in fact my duty, to report her allegation to the full committee for investigation. I did that, but, in hindsight, it is my opinion that those of us on the committee should have insisted on hearing privately or publicly, from both Judge Thomas and Professor Hill.

Now Judge Thomas' supporters are trying to divert attention from the seriousness of the allegations against Judge Thomas by dwelling for hours on who might have leaked them. They have trivialized what is for thousands

of women a very serious, very difficult, and very intimidating situation.

The very people who are professing outrage over leaks and violation of the process are the very people who are, on this floor selectively leaking portions of the confidential FBI report that only Senators may read. I want to further point out that Judge Thomas' supporters are summoning the vast powers of the White House, the FBI, and the President's party to mount a case against one lone woman. Her two law school deans spoke glowingly of Ms. Hill to National Public Radio but yesterday, Judge Thomas' supporters produced a letter from one of them impugning her integrity. These Senators do not want a full hearing on this issue. They are selectively pulling in statements from whomever they can find to try Professor Hill on the floor of this senate without giving her a chance to speak for herself.

Professor Hill has said she is willing to be questioned by the Judiciary Committee. Judge Thomas should come forward and do the same. We could hold the hearing tomorrow and vote shortly thereafter.

I think that is the procedure that should be followed.

Mr. President, 37 years ago, in 1954, the Supreme Court decided that segregated school were violating the equal protection clause of the Constitution. Three years later, in 1957, the Court held that a criminal defendant, whose liberty is at stake, should not be denied a lawyer simply because he or she cannot afford to pay for one. In the early 1960's, the court rules that the Constitution required States to count each person's vote equally. In 1970, the court decided that poor people could not be cut off from welfare without a hearing. And in 1973, the Court rules that women should be allowed to decide for themselves whether or not to carry a pregnancy to term.

These decisions by the Court in the postwar era—and there are many others that I could mention—were bold, courageous, and even visionary. Not all of them were popular at the time in which they were decided. But history has shown that all of these decisions improved the moral climate of this country by making the principles of equal justice, fundamental fairness, and individual liberty a reality for minorities, woman, and the poor.

It is a sad truth that the current Supreme Court has none of the vision and courage that can be found in the decisions which I mentioned. The Court can no longer be looked upon as a force for equal rights, social justice, and individual liberty.

Unfortunately, Justice Marshall's resignation means that the Court will be even less responsive to the concerns of minorities, the poor, and the disadvantaged. Justice Marshall devoted his career, and even risked his life, in the service of equal rights and social justice. He improved the lives of millions of people in this country. Blacks, Hispanics, women, senior citizens, and poor people never had to wonder whether Thurgood Marshall was on their side. He was their champion—a dogged and tenacious defender of their rights.

Justice Marshall's resignation from the Supreme Court marks the fifth Supreme Court vacancy of the Reagan-Bush era. Once his seat is filled, Presidents Reagan and Bush will have filled a majority of seats on the Supreme Court.

A judicial nominee cannot become a member of the High Court simply because the President and his advisers are comfortable with that nominee's views and judicial philosophy. The Supreme Court is not an extension of the Presidency. The Constitution makes it clear that the Supreme Court is a separate and independent branch of Government.

That same Constitution assigned the Senate a role in the confirmation process to help preserve the independence of the judiciary.

The Senate's role has become more important in recent years because, quite frankly, Presidents Reagan and Bush have made no bones about using the Court to advance their political and social agenda.

A central part of the Reagan-Bush political program has been reversal of many landmark Supreme Court decisions. Court rulings protecting civil rights, constitutional liberties, and a woman's right to choose have been overturned or jeopardized because the Reagan and Bush administrations have made good on their campaign pledge to appoint judges who are hostile to those decisions. As Justice Marshall wrote in his dissent in Payne versus Tennessee—one of his final opinions for the Court—a majority of the Rehnquist court has sent "a clear signal that scores of established constitutional liberties are now ripe for reconsideration, thereby inviting—open defiance of our precedents."

Clarence Thomas' nomination must be viewed against the backdrop of this effort by the Reagan and Bush administrations to remake the Supreme Court in their own image.

In my view Judge Thomas' record at the EEOC is, by itself, sufficient grounds for opposing his nomination to the Supreme Court. While at the EEOC, Judge Thomas pursued policies which undermined legal protections for minorities, women, and the elderly—the very people who are most in need of protection by the Supreme Court. During his tenure as EEOC Chairman, thousands of older workers lost their right to bring age discrimination suits in Federal Court because of the negligence of his agency. Scores of working women who were being discriminated against because of so-called fetal protection policies received a cold shoulder from the EEOC. Blacks, Hispanics, and women were hurt by his unrelenting hostility toward effective civil rights enforcement tools such as class action suits and affirmative action.

Aside from his record at the EEOC, Judge Thomas' legal credentials are also a matter of concern. He has not, at this stage of his career, compiled the exceptional and distinguished legal credentials which one expects to find in a Supreme Court nominee. The NAACP Legal Defense Fund found that Judge Thomas' legal and judicial credentials fall short of virtually every other nominee placed on the Supreme Court in this century.

Judge Thomas' supporters recognize that his legal and judicial record are not strong reasons to vote in his favor. Instead, they stress his background and extol his capacity for growth. I do not believe that we should put justices on the Supreme Court who need to grow into the job. A Supreme Court seat is not the proper place for on-the-job training; nor is it a reward to be handed out for loyal service to the executive branch. If, as his supporters claim, Judge Thomas has the potential to be a great judge, we should let him remain on the appeals court for a few more years to see if he lives up to that potential.

But President Bush did not want to wait. He rushed to put Clarence Thomas on the Supreme Court. I believe that, contrary to his statements to the American people, President Bush wanted to replace Thurgood Marshall with a minority. But President Bush also wanted to replace Thurgood Marshall with a minority whose record would be acceptable to the right-wing of his party. Clarence Thomas filled the bill.

Judge Thomas has an extensive and controversial record on a wide range of important legal and policy issues. He discussed that record with the committee in a manner that was evasive, unresponsive, implausible and, at times, simply unbelievable. Stated bluntly, Judge Thomas ran from his record.

A number of other Senators already have pointed out the discrepancies between Judge Thomas' speeches and writings on natural law and economic rights, and his testimony before the committee on those subjects. I also have discussed those inconsistencies in the committee report. The bottom line is that his testimony before the committee on those subjects cannot be squared with the statements in his speeches and writings.

Judge Thomas' views regarding Congress should be of particular interest to Senators. Judge Thomas has stated that Congress "is out of control," that "there is not a great deal of principle in Congress," and that "there is little deliberation and even less wisdom in

the manner in which the legislative branch conducts its business." Judge Thomas has stated that through the exercise of its oversight authority, Congress has overstepped its constitutional bounds and improperly intruded upon the province of the executive.

At his confirmation hearing, Judge Thomas dismissed his repeated criticisms of Congress as simply remarks which sometimes surface during the everyday tension between the executive branch and Congress. I believe that Judge Thomas' repeated and vehement criticisms of Congress raise real questions about whether he would defer to congressional intent in statutes which he believes are wrong, or support the aggressive exercise of Congress' oversight power in a dispute between the legislative and the executive branch.

Judge Thomas' legal views regarding the separation of powers doctrine also are disturbing. In a 1988 speech, Judge Thomas severely criticized the Supreme Court's 7–1 decision in Morrison versus Olson, a case which held that the special prosecutor law passed by Congress did not violate the Constitution's separation of powers clause. The law was designed to prevent a recurrence of the 1973 "Saturday Night Massacre," in which President Nixon fired Special Prosecutor Archibald Cox because he was doing too good a job pursuing the Watergate defendants.

Judge Thomas stated that Justice Rehnquist's opinion upholding the special prosecutor law "failed not only conservatives, but all Americans." He called Morrison "the most important court case since Brown versus Board of Education." Judge Thomas went on to laud as "remarkable" Justice Scalia's dissent in the Morrison case, which took a very narrow view of congressional power under the separation of powers clause.

At the hearing, Judge Thomas again ran from his previous statements. When he was asked to give his views about the most important court cases in the last 20 years, he did not include Morrison on the list. Moreover, he indicated that he never actually believed that Morrison was the most important case since Brown, but said it was in order to persuade his audience that it was significant. In my view such an explanation only raises more questions than it answers. Unfortunately, it is not the only instance in which Judge Thomas has tried to explain away a controversial statement by asserting that he did not really mean what he was saying.

Finally, I questioned Judge Thomas about a number of statements in his speeches and writings. These statements raised questions about whether he will approach issues that come before the Court with an ideologically conservative mindset rather than with the even-tempered and balanced judiciousness required of a Supreme Court Justice.

For example, Judge Thomas has written that the ninth amendment of the Constitution—which has been used to support a woman's right to choose—could become a "weapon for the enemies of freedom." In an April 1987 speech to the Cato Institute, Judge Thomas stated that he "agreed wholeheartedly" with former Treasury Secretary William Simon's statement that "we are careening with frightening speed toward collectivism and away from free individual sovereignty, toward coercive centralized planning and away from free individual choices, toward a statist dictatorial system and away from a nation in which individual liberty is sacred." It is difficult to understand how Judge Thomas could assert that, in the seventh year of the Reagan administration, this country was "careening with frightening speed toward a statist dictatorial system."

In an April 1988 speech at Cal State University, Judge Thomas declared that "those who have been excluded from the American dream [increasingly are] being used by demagogs who hope to harness the anger of the so-called underclass for the purposes of [advancing] a political agenda that resembles the crude totalitarianism of contemporary socialist states much more than it does the democratic constitutionalism of the Founding Fathers."

There are a significant number of other statements made by Judge Thomas which undoubtedly delighted the far right, but which raise real questions about his evenhandedness. Senator KENNEDY placed many of these statements into the RECORD last week.

Judge Thomas' explanation of these statements provided little reassurance. Judge Thomas stated that when he made these remarks, he was only expressing concern about the size of Government and about the relationship between the individual and the Government. At no time did Judge Thomas explain why he employed such extremist and ideological rhetoric in order to make an elementary point about the growth of Government or the relationship between the individual and the state. Indeed, Judge Thomas' assertion that this extremist rhetoric was used only to make uncontroversial points was repeated too often to have any credibility.

Judge Thomas never really engaged in a dialog with the committee about the controversial speeches and articles which he wrote while Chairman of the EEOC. Instead, he simply tried to assert that those statements do not count. Judge Thomas' suggestion that we should give little weight to the speeches and articles which he wrote prior to becoming a judge was a sweeping—and remarkable—attempt to persuade the committee not to Judge him based on his record.

I start from the assumption that public officials mean what they say. Judge Thomas was going around the country and making statements about a number of legal and policy issues. If Judge Thomas was publicly expressing views that he did not believe, then that, in itself, raises doubts about his fitness for the Supreme Court.

I also do not believe that a nominee's views and beliefs magically disappear the moment he or she dons a judge's robe. It is naive and unrealistic to think otherwise. History tells us that, in most cases, a nominee's speeches and writing provide a good indication of the kind of judge that person will become.

The speeches and writings of Clarence Thomas strongly suggest that he is a nominee who would fit in all too well with the conservative activists on the Supreme Court. His refusal to discuss those speeches and writings in a straightforward manner, suggests that he either does not understand their significance, or that he did not want to engage in a meaningful dialog with the committee about these matters. In my view, either explanation raises doubts about his fitness for the Supreme Court.

Nowhere was Judge Thomas' effort to run from his record more transparent than in the area of abortion. Unlike either David Souter or Anthony Kennedy, Judge Thomas came before the committee with an extensive record on the subject of abortion. Every aspect of his record relating to abortion strongly suggests that he is opposed to a woman's rights to choose. He was repeatedly asked to explain or elaborate upon those elements of his record which touch on abortion. But Judge Thomas' explanation of his record on the abortion issue only exacerbated concerns about his views on this subject, and about his willingness to be candid with the committee.

Much has been said about Judge Thomas' endorsement of the Lewis Lehrman article entitled "The Declaration of Independence and the Meaning of the Right to Life." The Lehrman article argued that Roe versus Wade must be overruled, that fetuses have constitutionally enforceable rights, and that Congress and the States are barred from enacting laws that protect the right to choose.

In a 1987 speech, Judge Thomas called this article "a splendid example of applying natural law." But last month, Judge Thomas testified to the Judiciary Committee that he actually regarded the Lehrman piece as an inappropriate application of natural law. He stated that he praised the Lehrman article in order to persuade his conservative audience that they should not be fearful about using natural law. In essence, Judge Thomas told us to discount this statement because he didn't mean what he was saying. Such

an explanation only heightens concern about his nomination. If, in 1987, Judge Thomas was willing to misstate his views about the Lehrman article in order to win over his audience, how can we be certain that Judge Thomas was not disavowing the article in order to please the committee?

Judge Thomas also signed onto a 1986 White House working group report that criticized as fatally flawed a whole line of cases concerned with the right to choose. The report suggested that these decisions could ultimately be corrected through "the appointment of new judges and their confirmation by the Senate."

However, when Judge Thomas was questioned about the working group report he tried to disavow it by explaining that he had never read the section of the report which discussed the abortion decisions. Once again, Judge Thomas' explanation of an important and controversial element of his record only raises more questions than it answers.

In a 1988 Cato Institute publication Judge Thomas criticized another of the Supreme Court's decisions on privacy, Griswold versus Connecticut, deriding a key constitutional argument supporting the right to abortion.

But Judge Thomas testified to the committee that he views the Constitution as protecting a marital right to privacy. His testimony is troubling for two reasons. First, his testimony to the Judiciary Committee during his Supreme Court confirmation hearing was the first time in which Judge Thomas had ever suggested that he views the Constitution as protecting a right to privacy. Second, Judge Thomas refused to say whether he believes that the right to privacy encompasses a woman's right to terminate her pregnancy. Indeed, Judge Thomas' remarks sound eerily similar to statements made by other nominees who have paid lipservice to the right to privacy and then have gone onto the Court and undermined the abortion right.

Because of his extensive record on the abortion issue, committee members questioned him directly about his views regarding a woman's right to choose. Judge Thomas was not asked how he would rule in a particular case. But committee members hoped to get a sense of how he views the issues raised by abortion.

Despite the fact that Judge Thomas answered questions on a slew of constitutional issues that will most certainly come before the Court, he would not even give us an inkling about how he would approach the legal issues raised by the abortion question.

Indeed, when Judge Thomas was asked whether he had any views about the Roe decision, he made the remarkable statement that he had no opinion on the case and that he had never even had a discussion about Roe.

This statement is simply not credible. It is hard to believe that any thoughtful attorney or judge has never had a discussion or formulated an opinion about the Roe case. Moreover, Judge Thomas had written an article in which he stated that the Court case "provoking the most protest from conservatives is Roe." It is hard to believe that Judge Thomas would make a statement about Roe in an article he had written without ever having thought about or discussed the decision. In addition, Judge Thomas testified to the committee that he believed that the Constitution protects a right to privacy. It is difficult to believe that Judge Thomas could reach the conclusion that the Constitution protects a right to privacy without ever formulating an opinion regarding Roe versus Wade, the most significant of the privacy cases.

Judge Thomas' supporters defended his silence on the abortion question. They pointed to his statements in support of the right to privacy, even though these statements are quite similar to the statements of other nominees who have gone on to the Court and weakened the abortion right. They also noted that the issue of whether the Constitution protects a woman's right to abortion is unsettled, and is therefore not appropriate for discussion. But they failed to acknowledge that the major reason that a woman's right to abortion is unsettled is that the Reagan and Bush administrations have consistently made good on their campaign promise to appoint Justices who would weaken that right.

To the millions of American women wondering where Judge Thomas stands on this critical issue, his answer was: Trust me, my mind is open, I do not have a position or even an opinion on the issue of abortion.

Judge Thomas' statements regarding the abortion issue are simply not credible. He wants millions of American women to ignore everything he has ever said or done in relation to the issue of abortion. He wants them to dismiss the fact that he—like other nominees who have gone onto the Court and weakened the right to choose—singled out this particular subject for silence during his confirmation hearing. And he wants the women of this country to entrust their fundamental right to choose into the hands of a man who, by his own admission, does not even regard the issue as important enough to merit discussion.

Members of the Senate cannot ignore Judge Thomas' record on abortion. And Members of the Senate who support a woman's right to choose, should not take any solace from the judge's testimony before the committee. A woman's right to choose is too important to be placed into the hands of a man who will not discuss his record on the issue in a candid and straightforward manner.

In my last round of questioning to Judge Thomas, I told him that I would evaluate his nomination based upon his record, and based upon the manner in which he discussed that record with the committee. Judge Thomas' background and life story are impressive and inspiring. But in the end, the question of where Judge Thomas comes from is far less important than the question of where he would take the Court.

Everything in Judge Thomas' record suggests that he will be an active and eager participant in the Rehnquist Court's ongoing assault on established Court decisions protecting civil rights, individual liberties, and the right to choose. Judge Thomas' refusal to discuss that record in a candid, thorough and straightforward manner only confirms my concern that he will move the Court in the wrong direction.

I must vote against the nomination of Clarence Thomas.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. KOHL. Mr. President, 2 weeks ago, I announced my opposition to Judge Thomas on the Senate floor. Since that time, I explained my views in some detail, and I want to simply summarize them now. In stark and simple terms, I decided to vote against Judge Thomas because I was not satisfied with his responses to the questions he was asked by the committee. They did not demonstrate a mastery of legal issues. They failed to reveal a coherent and consistent approach to constitutional interpretation. And they were nonresponsive to legitimate questions about basic values as opposed to future rulings.

Mr. President, those objections and concerns, so carefully considered before I became aware of the allegations regarding sexual harassment, are still valid. They still form the core of my opposition to this nominee. These issues seem to have paled in the last few days, as legal arguments have been overwhelmed by Professor Hill's charges of sexual harassment. I want to comment on these. A cloud now hangs over this confirmation. Whether the nominee is confirmed or rejected, the decision will be tainted by unresolved claims and counterclaims. That is not acceptable. In fact, it ought not to be tolerated.

This whole process has been cheapened, soiled, and made ugly. If we vote today without attempting to find out more, we will have let the country down. I am not saying that Professor Hill's allegations are well-founded. I do not know if they are. But that is a tragedy; we should know. And now that this matter has become public, now that she has agreed to come forward, we should take steps to find out.

I wish, Mr. President, that we could delay this vote. Judge Thomas is not well served by being confirmed or defeated under these circumstances. While I will not vote for him, I do not wish to punish him by sending his nomination disposed of under this cloud of uncertainty. And, similarly, Professor Hill deserves better than an inquisition before the media. She deserves to have her case investigated carefully and objectively. And the Supreme Court—one of the institutions in which people have the most faith—has been trivialized and weakened.

Mr. President, we ought to delay this vote. Judge Thomas will not be able to do justice on the Supreme Court with this issue hanging over his head. Professor Hill will never get justice, if her claim is not taken seriously. And the American people will not have justice done on their behalf, if we rush to judgment without taking our responsibility to carefully investigate this matter.

I ask unanimous consent that a complete statement setting forth my concerns appear in the RECORD at the conclusion of these remarks.

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

Mr. President, over the past 43 years Judge Thomas has demonstrated many admirable qualities. He has demonstrated that he has the strength to triumph over adversity. He has demonstrated that he has retained his sense of humor, and that he has the respect and admiration of his many friends.

In my judgment, however, he has not shown why his professional qualifications—as opposed to his personal accomplishments—justify his elevation to the Supreme Court. Let me tell you why.

First, Judge Thomas lacked a clear judicial philosophy. Less than 2 years ago, when Judge Thomas was nominated to serve on the appeals court, he told us that he "[did] not have a fully developed constitutional philosophy." That did not disqualify him for a lower court. But it would for the Supreme Court, which interprets the Constitution in which we, as a people, place our faith and on which our freedoms, as a nation, rest.

So, it was my hope that at the hearing, Judge Thomas would articulate a clear vision of the Constitution. Unfortunately, after listening to Judge Thomas testify, we were unable to determine what views and values he would bring to the bench.

Second, Judge Thomas demonstrated selective recall. He emphasized his experiences as a young man, but asked us to discount many of the views he expressed as an adult. For example, we asked Judge Thomas about his past musings on natural law, his dismissal of almost all forms of affirmative action, and his extensive criticism of Congress—an important issue, given that the Court is supposed to be guided by congressional intent. But he dismissed all of his statements, claiming that they would have no impact on his decisions.

Simply put, I cannot accept this approach. It is totally unrealistic to expect that a Justice will not bring his values to the Court. Presidents nominate candidates based on their values and the Senate must consider them as well. As Chief Justice Rehnquist wrote:

Proof that a Justice's mind at the time he joined the Court was a complete [blank slate] in the area of Constitutional adjudication would be evidence of lack of qualification, not lack of bias.—*Laird v. Tatum*, 409 U.S. 824, 835 (1972) (Chambers opinion of Rehnquist, J.).

I agree with the Chief Justice: Either we judge Clarence Thomas on his complete record or we don't consider his record at all.

Third, Judge Thomas is an oratorical opportunist. Judge Thomas crafted policy statements apparently tailored to win the support of specific audiences—and then later repudiated these very same positions. In a 1987 speech to the Federalist Society, for instance, he said that Lew Lehrman's article arguing for constitutional protection for the fetus was a "splendid example of applying natural law." But at the hearings he indicated that he had made these comments to win the support of his conservative audience. In fact, Judge Thomas said he had only skimmed the Lehrman article, and that he had never actually approved of its content. Mr. President, to paraphrase Abraham Lincoln, "You can only fool some of the people some of the time."

Fourth, Judge Thomas' answers to questions on Roe versus Wade suggest an astonishing lack of legal curiosity. He told the committee that Roe versus Wade was one of the most important Supreme Court decisions of the last 20 years. Yet he also told the committee that he had never discussed that decision and had no views about it. By comparison, at his hearing Justice Souter told me that "everybody was arguing about" Roe when it came out, and that he "[could] remember not only I but others whom I knew, really switching back and forth, playing devil's advocate on Roe versus Wade."

Fifth, Judge Thomas demonstrated limited legal knowledge. When asked questions of law, many of his replies were disappointing. In contrast, Justice Souter displayed a wealth of constitutional understanding. Judge Thomas lacks this depth of knowledge, but that is not surprising. For, after all, he has been an appellate court judge for less than 2 years, and prior to that he was a policymaker.

In sum, Judge Thomas had a full and fair opportunity to demonstrate to the committee, the Senate, and the country why he should be confirmed. He failed to do that. He failed to discharge his burden of proof. He failed to demonstrate the level of judicial excellence which ought to be required on the Supreme Court. And, as a result, he failed to win my vote.

Mr. President, initially, I welcomed Judge Thomas' nomination because I believe that diversity on the Court is desirable. But diversity alone is not sufficient qualification. A high level of legal distinction is also required. In my judgment, though, Judge Thomas did not meet that requirement.

Finally, Mr. President, I still expect that Judge Thomas will win the approval of a majority of my colleagues in the full Senate. Their support for his nomination will, I suspect, be based on the hope that Judge Thomas will continue to grow as a jurist. Though I do not share their vote, I do share their hope—that Judge Thomas, if confirmed, will one day become an outstanding Justice.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GARN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GARN. Mr. President, I rise in support of Clarence Thomas to be an Associate Justice of the Supreme Court.

I concluded this some weeks ago, having had the opportunity to meet Clarence and question him quite at great length.

I asked him about the question of affirmative action, which has been brought up many, many times. As I have read the newspaper accounts about how he is opposed to affirmative action, and I have listened to some of the civil rights leaders constantly say that, I think the American people should know that that simply is not true.

When I asked him about this issue, he said very passionately and with great emotion:

Senator, I am a product of affirmative action. I would not have the education I have, I would not be where I am today, had I not had people help me. So I believe in affirmative action. I do not believe in quotas. I do not believe in lowering standards. I do not believe in preferential treatment. But affirmative action should be for disadvantaged people, not just minorities—whites, blacks, Hispanics—anyone who has not had equal opportunity, who has not had the educational opportunities. We need programs for them. We need to bring them up. We need to educate them. We need to create opportunities for them.

That certainly is this Senator's definition of affirmative action. I served with Hubert Humphrey. He was a great Senator, not of my political party or my political philosophy, and I had the opportunity on many occasions to discuss with him civil rights. I do not think his definition of affirmative was any different than Clarence Thomas'. As a matter of fact, the Civil Rights Act of 1964 was very clear in trying to create a colorblind society.

And Senator Humphrey certainly talked against quotas and preferential treatment. But he talked, as Clarence Thomas did, about creating opportunity for all. So Clarence Thomas is a product of affirmative action, and I am amazed that we continue to have this dissension over that particular issue.

So I rise in support of Clarence Thomas without any reservations at all. He is an incredibly decent, kind human being, well qualified to sit upon the Supreme Court of the United States.

But what I am more troubled with, after 17 years in the Senate, is what the Senate is becoming. I wonder how many people in this body could pass the test we are now placing upon nominees for both the executive and the judicial branches of Government, a test that I am afraid many of us would fail. As long as we can go out and give speeches, raise millions of dollars to convince our constituents that we should be elected, we can stand here and say, "But we are answerable to the people."

As I look at some of the campaigns that are run, I wonder who the real candidates are. If we had to go through the FBI checks, if we had to sit before a panel asking us detailed questions about our personal lives, where in campaigns we can be articulate and we can run our 30-second spots and create images and presentations of what we are that may not be real, it is a very different process.

So in some cases, I think the kettle is calling the pot black. But having served for 17 years and having served under both Republican and Democratic Presidents, I am disturbed at the process that is going on, how we have set ourselves up as judges of all this minute detail. And I do not want to indicate in any way that we should not perform our responsibilities of advice and consent—that is under the Constitution—or the nominees should not be asked tough questions.

But when we start to savage people, when we have made up our minds on a nominee for any position, either for or against, before we have heard the evidence, that would be in our judicial system like a jury having already made up their minds before they heard any of the evidence. It seems to me that that is wrong, and that jury would be disqualified. And yet this body, on both sides, many people made up their minds for or against before any hearings and even been held. That is not fair. That is not right to judge somebody innocent or guilty before you have heard the evidence.

Then when we start creating evidence, we do everything we can to savage somebody, there is something so un-Christian, so intellectually dishonest about that. And we have seen it happen more and more. We saw it happen to our colleague, John Tower, with misinformation, actual lies, distortions of record, somebody who served for 24 years in this body in a distinguished manner, and we savaged him.

And we took Judge Bork, and undoubtedly no one talked about his lack of qualification to be an Associate Justice of the Supreme Court. But people did not like his philosophy. Well, fine; then vote against him. But you do not have to go around manufacturing things and running political campaigns out there. The Founding Fathers, I do not believe, in the advice and consent process, thought that we would run political campaigns for these jobs and groups would go out there and dig in every nook and cranny of the country and try to find something wrong with somebody: Do not care about your fellow human beings; savage them; take them apart if you do not like their philosophy.

So now we are doing the same thing to Clarence Thomas. These latest charges are obviously serious. But where was this woman in his other confirmation processes; where has she been the last 10 years with these charges? It looks to me like part of a plot to get Clarence, delay, and bring her out of the woodwork 10 years later to make some charges that the FBI has already created.

When does it stop? what do we do to this country? Who is going to want to serve? Who wants to be Secretary of Commerce, or a Judge, or Assistant Secretary, or a head of the regulatory agencies, if this is what they have to look forward to: arrogance from the Senate. We do not like their views, so we are going to take them apart. We will hire investigators to go out and find everything we can wrong with them, and then disclose it to the country and smear them.

I think what is more on trial here than Clarence Thomas is the Senate of the United States. It is time we got back to some civility in this body. It is time we got back to the comity I heard about when I got here—and I did not say comedy; I said comity—that we got back to that, when there was some decency and interaction between us.

This is supposed to be the greatest deliberative body on Earth. It certainly is not showing it over the last 2 or 3 years. And if we want to deteriorate the quality of Government, then let us just keep it up. When you scour this country for Republicans or Democrats for any high offices in this country, they are going to say: No; I am not going to subject myself to that kind of treatment. I am not going to have my family subjected to that kind of treatment.

I would suggest the press start looking at this aspect of it, start looking at the Senate of the United States and see if we are really performing our function as we should, with some honesty and some integrity.

I happen to start from the premise that, unless I can find something terribly wrong with a nominee, I think a President has his right to choose. I felt that way when President Carter was President of this country. He sent up judge nominations that I was not particularly happy with, and yet I did not vote against one of them a single time, because if they were qualified and were men and women of integrity, then I thought the benefit of the doubt should go with the President of the United States.

So I am not up here making a partisan statement in any way whatsoever. I am talking about a process that I think has been totally and completely distorted, and it is time the Senate started behaving like the greatest deliberative body on Earth, started behaving with a little kindness, rather than just this gut politics, that if we do not like someone, rather than just voting against and expressing displeasure and letting the will of the Senate take place, we are going to get them.

There are many days when this Senator is glad I only have a little more than a year left. I hope the Senate will come to its senses, and again I am speaking much more generally than just the issue of Clarence Thomas, to the issue of will we start behaving the way the American people think we should; when will we start behaving with the responsibility that our constituents gave to us when we were elected?

Well, I hope it does not continue. I hope we will come to some reason and stop this kind of behavior, and confirm good people of either party. I will enthusiastically vote this afternoon for Clarence Thomas, and I sincerely hope the games stop, and that we do vote this afternoon.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah [Mr. HATCH].

Mr. HATCH. Mr. President, I am happy to have this opportunity to make a few remarks and clarify the record. I know my distinguished friend from Ohio feels I named him as the person who leaked the information with regard to the FBI report, and that is not true.

I must have been interviewed 50 times on this. I have my suspicions who did, and I do not believe it was any Senator who leaked the report. I do believe it was staff. But I have to say I never said that the distinguished Senator from Ohio did leak the report.

Now, having said that——

Mr. METZENBAUM. Mr. President, will the Senator from Utah yield for 1 minute?

Mr. HATCH. Let me say one other thing. I apologize if that was the implication that the Senator took. It appears to me, in the New York Times today, in an article written by Mr. Wines, a journalist named Wines, that he accused me of saying that I had said that Senator METZENBAUM was the only person who could have done it.

Mr. METZENBAUM. I just want to know that I have not, nor has my staff—and I say that professionally—neither I nor my staff made this story available.

Mr. HATCH. I am happy to hear that. I take the Senator's word on it. But I have to say somebody on somebody's staff did that. I will take the Senator's word that it was not him or his staff.

Mr. METZENBAUM. I thank the Senator.

Mr. HATCH. The Senator is welcome.

Somebody did it because the only people who had access to these materials were U.S. Senators. Now, I am happy to take the word of the distinguished Senator from Ohio that it was not him. The only thing I ever said that I recall was that the Senator from Ohio and the Senator from Massachusetts [Mr. KENNEDY] their staffers from the Labor Committee were the ones who initially contacted Anita Hill and, of course, did the initial investigation on this matter before anybody from the Judiciary Committee staff, which is supposed to do the investigating.

That does not negate the fact that I am highly offended by this October surprise.

Now, let us just go back over the facts. All seven who voted against Judge Thomas on the committee knew about these allegations before the vote took place. None of them were in the dark. All of them knew about it. Any one of them could have asked for a week's delay automatically under the rules. Not one did. Any one of them could have raised the issued at that time. Not one did. And any one of them could have had this matter aired before that vote. Not one did.

One Senator in particular talked about filibustering this matter. I raised the issue during that markup, I said, "can you imagine liberals filibustering one of two nominees in the history of the Court who were African-Americans?" I could not imagine it myself. But then it really began. Every effort was made to invoke the rules and to delay the matter and to try to get it past last Friday, because I guess they presumed that there would be an interim 10-day recess and there would be a full 2 weeks where Judge Thomas could be smeared while all of us were out of town.

I am not going to point the finger at any particular Senator, but we know that it had to come from a Senator's staff or a Senator in this body, because nobody else knew about that report. And it is reprehensible.

Mr. President, I believe that if Senators put this October surprise allegation in context, they will not only want the vote to go forward, but they will not feel this recent allegation should bear on the nomination. I understand if sexual harassment occurs, it is a serious thing. I do not condone it in any way. It should not happen. I understand that elected officials need to take it seriously. I think perhaps in this sense the debate has been interesting and perhaps beneficial.

But now I would like to go back and just spend a few minutes talking about the allegations of Miss Hill. Now, what is the context of this recent allegation? Allegedly the harassment occurred while the accuser was working for Judge Thomas while he was Assistant Secretary for Civil Rights at the Department of Education. This was a position to which he was appointed in 1981.

The accuser did not file a complaint with the Department's Equal Opportunity Office. The accuser did not complain to the Inspector General or the general counsel or any one else at the Department. Not one person. The individual did not complain to the Equal Employment Opportunity Commission.

She did not come forward to disclose the alleged harassment when the judge was nominated to chair the EEOC, which, by the way, is the most important Government agency dealing with sex discrimination. And she is not some young high school secretary. She is a Yale law graduate interested in civil rights and these issues and an expert on them. Instead, what did she do? She left the Department of Education with Judge Thomas and went to the Equal Employment Opportunity Commission with Judge Thomas and worked with him for a period of time there.

Mr. KERRY. Will the Senator yield for a question?

Mr. HATCH. I am happy to yield.

Mr. KERRY. As I listened to the Senator going through the chronology here, it seems to underscore to me the fact that is why we are where we are. Indeed, that may be the chronology and that maybe in fact all the facts stack up on the side the Senator is articulating. But the question I ask the Senator is: Does he not sense that because we are where we are, because this has now become public, because Senators outside of the committee were not aware of this, because the full Senate must vote in order to confirm and advise and consent, that because the Nation as a whole and particularly the 50 percent or more of our country made up of women now have a doubt about the process, do we not have an obligation to air the very kinds of arguments the Senator is making in an appropriate way? Should we not act to provide people that sense that there is integrity and a process, so that the facts be put in place, and not simply by the Senator from Utah, who I know speaks with conviction and a sense of faith about it, that he not be the sole voice in this?

Mr. HATCH. I think it is a good question, but I have to point out to the Senator that everybody on the committee knew about that. Part of our job is to screen these things out, and all 14 members of the committee basically found them out. They have had full access to the FBI reports.

We have a disparity. We have Miss Hill alleging that there was sexual harassment and we have Judge Thomas denying it. Now, nothing is going to occur to change those two facts. It is nice to say that and it is nice to talk about that, but we are talking about a Supreme Court Justice nomination, and we are talking about proceeding because he has been smeared over the last 3 days, 4 days, while most of us were out of town and we do not want to see the smear continue. And in all honesty, I am pointing out here right now and I am going to continue to point out the discrepancies in her press conference and some of the other things that she has said.

Mr. KERRY. Well, I understand that.

Mr. HATCH. Let me finish my remarks and I think I will clarify for the Senator what I am saying because I am going to go into some newer things today if I can.

What I am saying is that even though she claims sexual harassment, she leaves the Department of Education and goes right along as one of his top staff people at the EEOC. There she justifies that on the basis that the harassment had stopped and that she did not want to lose her job.

First of all, let us understand something. As a graduate of Yale Law School, a woman graduate of Yale Law School, there is no question in my mind she would have had a job anywhere she wanted, especially in this town, almost anywhere she wanted. She knows it, and everybody else knows it. And she had a job when she wanted it. And she could have gotten a job almost any time she wanted it, not only here but elsewhere. But she goes to the EEOC with Judge Thomas.

Now I ask my colleagues, is that the behavior of someone who has been sexually harassed?

Then she claims that he talked to her again there, that he continued to press her for dates, she said.

Mr. KERRY. Will the Senator yield for a question?

Mr. HATCH. Let me finish my statement then I will be happy to answer any questions.

She says he continually pressed her for dates. And then she claims he talked about sexual matters with her. Well, she is at the Equal Employment Opportunity Commission. She is a Yale law graduate. If she was offended by it, if that is what happened, why did she not make a complaint right then and there? She was not going to lose her job. As a matter of fact, the law says she could not lose her job making that allegation. She knew the law, and she did not complain. And the Yale Law School graduate claims that she feared about getting her next job. Come on.

Now, as I understand it, the accuser says that she was also, as I have said, harassed at the EEOC. She never complained to a relevant official there. She then left the EEOC in 1983. Now, keep in mind, she lived through the second confirmation of Judge Thomas. She went with him after the first time he was confirmed to the EEOC. Then she lived through the second confirmation of Judge Thomas.

That is the third time he was confirmed because he was confirmed to the

Office of Civil Rights, as Assistant Secretary of Civil Rights in the Education Department.

So she had been around for two confirmations, which occurred after the alleged sexual harassment. The reason I mention these confirmations is because that is pretty important. These are important positions and he is now in his fourth confirmation period, with no one ever having raised the slightest criticism of his personal conduct, no one until this last weekend while we were all out of town.

Let me tell you, there is no one to my knowledge in the history of this country, who has been confirmed four times in 9 years—no one—confirmed by this very body, with all 100 of us looking at these matters. And I have presided over three of those confirmations and have participated in the other two, including the pending confirmation. Let me tell you, if anybody could have given him a rough time on those other confirmations, they would have; they tried. But not on these types of allegations.

So she never came forth at the Department of Education and made a complaint or said anything to anybody in authority. She did not come forth in the first confirmation to the EEOC, but came with him and worked at the EEOC. Does that sound like somebody who has been sexually harassed? And then, she did not come forth in, I believe it was 1986, when he was reconfirmed to the EEOC. Nor did she come forth when Judge Thomas was nominated for his position as a judge on the Circuit Court of Appeals for the District of Columbia. She never came forth with this accusation until around September 3, when Labor Committee staffers from Senator METZENBAUM and Senator KENNEDY contacted her.

She says they contacted her. Senator METZENBAUM, as I recall his testimony—I want to be honest about this and frank about it, I think he said she contacted them. I do not know which way it happened.

But she did not come forth when he was nominated to be an Associate Justice on the Supreme Court; not at first. It happened around September 3. And she was not contacted by regular investigators from the committee staff who are supposed to do this type of work. No, we heard testimony from 100 witnesses but none from this individual. This privately made accusation was investigated by the FBI. The FBI report was available to the Judiciary Committee before its vote and of course it has been, since then, available to everybody in the U.S. Senate.

No Senator on the committee or during the 2 full days of floor debate had even alluded to it, much less suggested that we should delay consideration of the vote. Indeed, no one asked for further investigation during the entire time.

That, naturally, has upset a lot of women out there and I thing rightly so. But I just want to get back to that time, because I am personally offended that some staff of our colleagues in this body, according to one press account would criticize the chairman of the Judiciary Committee who conducted this in the most upright, straightforward way I know and went personally to every one of the seven who voted against Judge Thomas, as though he should have done something more.

The fact is, it came down to an allegation by a woman which was rebutted by Judge Thomas and by Judge Thomas' whole life. Everybody sat there and watched him in one of the longest confirmation proceedings in the history of the Supreme Court.

There are a couple of other things I would like to just say, just to make this entire recent development understood by a lot more people. Something that bothers me is this woman is so upset at Judge Thomas, suddenly, after 10 years and after all these opportunities to tell her story, all of these positions being important positions, all confirmable positions.

I understand that there are phone logs of Judge Thomas from 1984 forward, reflecting quite a few telephone calls from none other than Anita Hill. Let me just give you a sample of telephone messages from her. On January 31, 1984—this is approximately 2 years after she left the EEOC. "Just called to say hello. Sorry she didn't get to see you last week."

That was the handwritten note by the person who took the call for Judge Thomas.

On August 29, 1984, "Needs your advice on getting research grants." From Anita Hill, from Professor Hill. Why is she calling Judge Thomas—then Chairman Thomas, Chairman of the Equal Employment Opportunity Commission—if she was so upset at him? If this really had happened, why would she call him, of all people?

On August 30, 1984, "Anita returned your call." So the judge presumably called her back to try to help her on the research grants, when she called on August 29, 1984.

March 4, 1985, "Please call re research project."

March 4, 1985, a call from Susan Cahall, of the Tulsa EEOC office: "Referred by Anita to see if you would come to Tulsa on 3/27 to speak at an EEO Conference."

October 8, 1986, almost 4 years later, "Please call."

August 4, 1987, "In town till 8/15, want to congratulate you on marriage."

What is going on here? Here is a woman who was so offended, on TV, that she is willing to accuse this person, who everybody else knows to be a reasonable, wonderful, upstanding person of integrity and honesty, and she is continually calling him. I could go through the rest. There are some 11 calls over this period of time. One of which was to call and ask him to come to the University of Oklahoma and speak to the law school.

Does this sound like a victim speaking to her harasser? It does not to me. What is really going on here? For 10 years, no public complaint at all. Even as a Yale Law School graduate, an attorney, working right in the agency that takes care of these problems.

The reason a lot of us feel it is time to go to a vote and decide what is going to be done here is, let us be fair to the judge and his family. I do not know about other Senators here but I have anguished, as I have seen these people just torn apart in the public media. I have anguished as I have seen their children suffer.

I happen to like both Clarence Thomas and his wife and I care a great deal for his son, who is a wonderful young man, and his mother. I will never forget right in the middle of the hearings I went down to console his mother after some pretty tough things were said by a couple of our friends on the committee. She is a very humble, wonderful woman. It is easy to see why he is a humble, wonderful man. I put my arm around her and said "Don't let it get to you." She said, "I did not doubt"—she mentioned one Senator—"would treat my son this way. But I really did not think this other one would."

That is what she said to me. This is tearing families apart. And I have to tell you, anybody looking at it would say his accuser acts like she is so offended right now, why did she not do it during the 10 years beforehand? And why the repeated contacts with Judge Thomas? Why keep asking him for his help, which he always seemed to give?

This man was nominated to chair the most important civil rights agency in government, renominated to that position, reconfirmed, nominated to the court of appeals, and at that time he was openly discussed as a potential Supreme Court nominee. Everybody knew he was on the fast track. And still this alleged set of incidents never surfaces. And, in the meantime she retains a friendly disposition to him.

For over 2 months after his nomination to the Supreme Court, and despite being interviewed by the Washington Post about the judge, still no allegation of harassment. It bothers me.

What happens next? Well, in early September, staff of not even the appropriate committee come to her, from two Senators.

In early September, I guess based on rumor or something—I think it is important to note that one of those staff members was her classmate at Yale Law School.

I think enough said.

Mr. KERRY. Will the Senator yield for a question?

Mr. HATCH. I will be glad to.

Mr. KERRY. I just want to clarify something. When the Senator quoted those telephone call messages, I take it that is new information; is that accurate?

Mr. HATCH. That was said by Senator SIMPSON last night on "Nightline." There were 11 messages since 1984, all of which were cordial, friendly, and asking for various things.

Mr. KERRY. My question simply is that was not before the committee? Those messages, I take it, are new information; is that accurate?

Mr. HATCH. I think that is accurate.

Mr. KERRY. What I am trying to suggest to the Senator respectfully is that just underscores exactly why one ought to have——

Mr. HATCH. I do not think it does.

Mr. KERRY. The Senator has the floor, and let me articulate why. I think the Senator from Utah raises very legitimate questions. I am not doubting the appropriateness of making those kind of judgments, but when the Senator talks about sort of expected actions of somebody who has been accused or has suffered from sexual harassment, I sort of stand here and I say to myself, how are 98 men in the U.S. Senate going to make a judgment about the expected actions of some woman who has suffered from sexual harassment in the workplace?

Frankly, I do not think 98 of us here know very much about that. That is exactly what people are feeling about this issue all across this country.

What is at stake here, I respectfully suggest to the Senator, is not the veracity of what the Senator has said, not the veracity in this movement of what Professor Hill has said, but the process. Are we going to be so rigidly glued to an expected vote that we just shunt this thing aside——

Mr. HATCH. I would like to interrupt—I would like to take back the floor.

Mr. KERRY. Let me sort of go through my comments and I will be glad to engage in the dialog.

The PRESIDING OFFICER. (Mr. LEAHY). The Chair advises the Senator from Utah does retain the floor.

Mr. KERRY. I apologize if the Senator has the floor.

Mr. HATCH. No apology is needed. I appreciate what you are saying.

But I just want to interject at this point because we all know that this is a game. We all know that if this is delayed that every leftwing group in the country is going to come out and do to Thomas what they have done to Judge Bork. Every group in the country. They have been doing it all this time.

We all know that the whole game by those who are against him is to delay this and continue to try to shoot at him with innuendo, stuff like this. We all know that we had one of the most extensive committee hearings in history. We all have the FBI report, and in that report you have her statement, you have his statement, or at least his interview with the FBI, you have the interview of Miss Horchner, I think her name is. If you read that carefully, you will find it does not quite match what she said yesterday in public. And we also have other statements that have come as a result of that investigation.

The fact of the matter is, there is a time and a place to put these matters to rest. And I am telling you there is an overwhelming case on the record as it currently exists that this is the time and place.

I have to say this: I understand those who have been against him from the beginning, some for a single litmus test issue, but they are presuming that he is against abortion, even though he said I have not made up my mind yet on that. Some are against him for that sole reason. Others are against him for that reason plus the fact that he has been very forthright in his comments about quotas and preferences in the law, and he is against them as an African-American believing that they hurt innocent people, which they do. And some do not want him because he is a moderate-to-conservative African-American that they do not want as a role model out there for others to listen to.

We have gone through this now for quite a period of time, and we have been through it on the committee. We have seen smear jobs before. I do not see how any fair person looking at it cannot be concerned about this. Only somebody on the committee or their staff, or someone else who must have gotten it from somebody on the committee or a staff person of a Senator on the committee, could have released this to the press over this weekend after knowing about it before the vote and waiting until the precise moment that everybody is out of town so that they can smear this man.

Once you go through that, and once you see people's lives turned upside down by this type of tactic, which is sleazy politics, like a sleazy political campaign, then you need to say there is a time to look at her comments. She has a four-page statement. Read it. What else is she going to add? And there is a time to look at his comments and make a decision and vote.

I want to add to it that maybe one reason why I am so vociferous about this is because I have been in all of his confirmations, and I have seen these tricks pulled against him in every confirmation. Not as bad as this. It does not get any worse than this.

Let me tell you, the law of sexual harassment is so broad that a person can accuse another at any time and ruin their reputation just by an unfounded allegation. I do not know why Professor Hill has done this. I thought she presented herself well yesterday. I do not know why she has done this. It bothers me greatly. But she has done it, and I do not think there is much basis for believing it if you look at the full record in this matter.

Again, I think it is important to look at a couple of the statements that were made. She denied she knew Phyllis Berry Myers. Phyllis Berry Myers says there is no way she can deny that. She met with her every Monday with other members of Clarence Thomas' small staff after joining the commission.

I thought the most interesting letter I had, at least to me, was from Armstrong Williams, who served with her and with Clarence Thomas, with Phyllis Berry Myers, and others. He says:

As someone who worked with Judge Clarence Thomas from 1983 to 1986 I also had the opportunity to work with Ms. Anita Hill.

I must tell you that during that time I was very uncomfortable with Ms. Hill. I often questioned her motives. This concern was something I expressed to Judge Thomas on more than one occasion.

Furthermore, I found her to be untrustworthy, selfish and extremely bitter following a colleague's appointment to head the Office of Legal Council at EEOC. A position that Hill made quite clear she coveted. After she was passed over for the promotion, she was adamant in her desire to leave the agency and discussed this with me privately.

I also question her motivation when it comes to her recent allegations. Especially since Ms. Hill discussed with me her admiration for Judge Thomas' commitment to fight for minorities and women, and his fair treatment of women at the agency. I know, personally, that these are the rantings of a disgruntled employee who has reduced herself to lying.

That is strong stuff. I am not prepared to say that. I do not know why she made these allegations. He goes on:

I ask you, if this was a man she should loath for sexual harassment, then why did she maintain contact and continue to communicate with him?

Eleven messages since 1984, all friendly. Why did she continue to do that? Does that sound like somebody harassed?

Why did she follow him from the Education Department to the EEOC? Why did she only have praise for him in her discussions with me? Furthermore, Judge Thomas believed this woman to be a friend and someone of great intellect and wanted only to assist her as she moved along in her career.

I am sure having had knowledge of the situation prior to this past weekend is evidence that you also question Ms. Hill's accusations and credibility. I urge the Senate Judiciary Committee to listen to these allegations with a grain of salt.

In closing, as I described her ten years ago to Judge Thomas, I do so now. She always had to have the final word and the last laugh. I see now that some people just never change.

I look forward to your confirming the Judge to our nation's highest court.

I think, to answer the Senator even more specifically, there comes a time to vote. There comes a time to stand up and vote one way or another.

We have another former colleague here also who talks in terms of what went on. It certainly does not confirm Anita Hill's allegations. I have statements that were put in the RECORD yesterday, including, I believe, the statement of the dean of the Coburn School of Law at Oral Roberts University.

Mr. President, this has been a long process. It has been a detailed process and it has been a hideous process. Frankly, there comes a time to put an end to it. Those who want to vote against Judge Thomas, so be it. Most of them have made up their minds anyway and this does not make one difference to them. Those who want to support him, so be it. I have to admit they have been very concerned about these allegations. On the other hand, if you look at the record and you look at the facts, it is pretty hard to see how these allegations stand up to scrutiny.

You have the issue joined. You have Professor Hill saying that he did these things. You have him saying that he did not. And the only reason some like to delay is a very important political reason. They want delay for delay's sake. This is what you call a liberal filibuster. They are unwilling to stand up and do it in a formal filibuster because they know that they would get criticized if they did that. So what they do is they bring up these types of things at the last minute knowing about them weeks before, bring them up at the last minute just to try to get more delay in hopes that all these outside groups will bring up their garbage and savage this man and his family even more. That is precisely what is going on here. It is a big game.

Frankly, I do not know why Miss Hill did this. I do not know why she waited 10 years if it was true. My conclusion is that I question its truthfulness. But I question it on the facts and from a personal knowledge of Judge Thomas. I know that what she said is not true because I know the man personally. I know his wife personally. I know his son personally. I can tell you he is a fine, upstanding person who, in my opinion, has always basically done what is right. Is he perfect? No. But neither is anybody else.

Mr. President, I am very concerned about this type of stuff because we have had far too much of it. I did not think it could get any lower than it got for Judge Bork when I pointed out 99 errors in a full page ad, 99 errors. I have to say the people who did it did not even try to rebut it. They knew that I was right in pointing them out. I pointed out well over 60 errors in two others. They did not care. They wanted to smear Judge Bork, and they did, and they succeeded. A lot of us do not want that to succeed here because we are sick of it. We are ashamed of it. We are ashamed of this kind of allegation being brought to the forefront right at the last minute. I have to tell you I do not think it is justified.

Now, we can ask for time and ask for further investigation all we want. There has been a lot of investigation on it, and we had it before we voted. Everybody knew about it and anybody could have put that over for 1 week, anybody could have asked for more investigation, and now I see Senate staffers of the same party as Senator BIDEN criticizing Senator BIDEN for the way he has handled these committee hearings.

Let me tell you, Senator BIDEN and I differ on whether or not to support Judge Thomas, but I have to say I know that JOE BIDEN did a very good job on these hearings. He was fair. He was straightforward. He gave them the information. He let them know. And he did everything that basically a chairman should have done. To be frank with you, he did a very good job.

I have been in those positions where those who snip at your heels are always trying to find fault. I do not think there is any fault here. I think Senator BIDEN did a great job. This is coming from a Republican who differs with him on the merits of this matter—not this procedural matter, but on the merits of whether or not to vote for or against Judge Thomas. To have him criticized I think is wholly inappropriate and highly unusual. And I am tired of that, too.

I think we are all going to reassess what goes on in these confirmations because these Supreme Court nominations are starting to be run like political campaigns. When you have an October surprise at the last minute, when people knew about it almost a month before—actually a month before—and have an October surprise like that, like a sleazy political campaign, I think it is time for all of us to stand up and say it is time to vote, and it is time to do what is right. I hope, when we do vote today, a good majority will vote for Judge Thomas. He deserves it. I think he deserves this kind of fair treatment.

I also think his family deserves not to be put through this any more. It is really miserable. When he talked to me yesterday, I mentioned it to him, and he just said—I said it yesterday—"This is really harming my family."

It is hard to take.

Mr. President, we can differ on a lot of things and I suppose we have our differences here, but I think there is a right thing to do and the wrong thing, and the wrong thing is to continue to perpetuate this matter in a way that is going to cause even more harm to everybody concerned without giving us any more answers than we have now. I think that is the feeling of a lot of people around here, although I worry about the feeling of some.

Mr. President, I yield the floor.

Mr. KERRY. Mr. President, I ask unanimous consent I be able to speak beyond the hour of 12:30.

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

The Senator is so recognized.

Mr. KERRY. Mr. President, I listened to the Senator from Utah suggest that we ought to look at the full record, and that is exactly what this Senator would like to do. But I do not think there is a full record. I think the Senator has even evidenced the fact that there is not a full record by citing telephone calls that are outside of the record that has been supplied by the committee.

Now, the Senator defends the committee and the Senator suggests that somehow what is happening here is an attack on the committee. I do not agree with that. I do not think this is an attack on the committee. We are where we are. This is burst on the scene because an individual, an American citizen, a law professor, a woman who alleges that she suffered this indignity has stood up publicly and said so. She has claimed that she did so out of frustration with her inability to get these facts in front of the committee.

Now, I am not on the committee. But as an individual Senator called on to vote on a lifetime appointment to the Court, I am having trouble understanding why we cannot find a few days to sort out the veracity of this situation and these charges.

Now, I heard the Senator from Utah use words like, "I don't know why this kind of stuff appears," or "whether this is a trick," and yesterday the word "garbage" was used.

Now, I have not been here this morning. I just arrived. I came in from the airport. I came to floor because I was reading the newspaper and I was listening to people talk about this and hearing reports. Frankly, I just had a personal reaction to what was going on.

Now, I understand there have been some exchanges in the course of the morning here, but it struck me as I looked at this not in Washington, from outside of the beltway, that the Senate is on trial in a sense. Like it or not, we are there. That is where we find ourselves. And the question is whether or not we are going to provide a full record, whether or not we are willing to be temperate and supposedly as deliberative as this body holds itself out to be and make a judgment about what has happened here.

I must say, Mr. President, that I suppose the Senate is going to go through some sort of lurching public agony over what it is going to do. I do not think we ought to struggle very hard with this. I do not think the decision is that complicated.

If indeed, as the Senator from Utah said, most Senators made up their minds, and they are not going to be swayed, what on Earth harm will there be to take a couple of days to make judgments about this issue, so people will feel there is a fair process and a fair hearing?

It seems to me that the simple, straightforward, proper, appropriate, right thing to do in the U.S. Senate is to suggest a few days' delay in order to gather a full record, and let those who come back, who have already made up their mind and do not want to look at the record, come down and cast their vote. They can always cast their vote. But you cannot always redress the harm that will be done by not maintaining a sufficient process here.

I just think not to delay would be an extraordinary affront to the average person's sense of right and wrong. Even for Judge Thomas, incidentally. I do not know what is true and what is not true here. It seems to me that Judge Thomas, having nothing to fear, having confidence in his own behavior, recognizing the importance of a position on the Supreme Court, and wanting to go to that Court with the full measure of the confidence of this country, ought to be willing to stand up himself and say: Let this be properly aired. I want to go to that court with the appropriate judgment of the U.S. Senate, not with a stain on my nomination.

Where is Judge Thomas in this process? Many people are answering for him, but he is not on the record answering for himself. It seems to me that one would expect no less from a judge, let alone a judge who expects to go to the Supreme Court of the United States. Let the facts be heard. That is what the jurisprudential process of this country is about.

If we are blocked from having these charges examined because of a lack of consent by some Member of the Senate to have them properly aired, then the entire Senate, I think, will carry responsibility for that, and we will ridicule ourselves; we will ridicule the process of this confirmation; we will put a stain on the Senate and the nominee, and we will add yet another in an increasing list of actions and inactions that make the Senate just a little less respected, and perhaps a little more irrelevant.

People across America are looking at the Congress of the United States today, and they really wonder about all this. They wonder if we are in touch and capable of making decisions that are so normal and in their interests and with common sense. Here is a chance to prove that we do listen, that we have that measure of common sense, that we do understand, that we do care, and that we have a capacity to be sensitive and not so caught up in our parliamentary ridiculousness that we cannot even act on the real needs and demands of people.

The Senator kept quoting, "How is someone supposed to behave who is sexually harassed?" I do not know fully what that standard is. I suspect that some of the same standards that we have applied in exonerating Judge Thomas' behavior on certain occasions, because of where he came from and how he rose up, ought to properly be applied to Professor Hill. And I think that one can well imagine what it is like for a woman in the workplace—in a male workplace, I might add, by and large—who feels that there is a need to get along and not necessarily cause ripples. It is tough to take on a superior. It is particularly tough to take on a judge. And it is very difficult, under any circumstances, for anyone to stand up and let themselves be exposed to that.

I do not know the veracity. I think the Senator from Utah has raised some very legitimate questions. But, incidentally, he has done so in a way some might consider a countersmear. If indeed there is a smear against Judge Thomas, then what is it about when you read a letter impugning the character of Professor Hill on the floor? She is not here to answer that. That is precisely the process that ought to be put in place.

I am not going to make any judgments about whether or nor this incident took place. I do not think any of us can. I think it is inappropriate for us to vote making that judgment on the basis of an incomplete record. I think it is precisely the absence of the full record that mandates that the Senate look at this. Who knows about the accuracy?

But I must say that it is not the accuracy of those accusations that is at issue there, I submit to the Senator. It is the relationship of 98 men in the U.S. Senate to the majority of the citizens of this Nation—women. And whether or not we are capable of saying that when one woman stands up and suggests this—not because she volunteered it—but because the Senate committee came to her, and she felt they were not listening, whether we are now going to listen. That is what it is about. Are we going to listen?

I do not think we can let the Senate be perceived as—let alone actually be doing it—running roughshod over this process. It seems to me even less so when it involves a nominee to the Supreme Court of the United States.

So I ask my colleagues whether a few days' delay are too much to ask for a lifetime's ability to sit, untarnished, on the Supreme Court of the United States; are a few days' delay too much to ask to guarantee or simply to fight for the reputation of the U.S. Senate?

In the end, what is at stake here is the integrity of the Senate, its sensitivity, its awareness, and its judgment, its self-respect, if you will.

Maybe, in the end, we should not be surprised that 98 men who presume to make judgments about what women can do with their own bodies, that we are going to have trouble making the correct judgment about what men are permitted to ask women to do with their bodies in the workplace. It might be too much to expect us to do that. But that is exactly the question that is on the table before the Senate right now.

It seems to me that none of this has to be. We do not have to have this contentiousness. We do not have to have this division. We do not have to have doubts about the Senate. We do not have to have accusations of liberal versus conservative plots. We do not have to have smears. We can elevate this thing to a quiet, judicious process, where the committee hears from those, makes a judgment, and submits it to the Senate, and Senators who are interested in finding out exactly what the facts are here can make an appropriate judgment.

Having said that, Mr. President, I hope that the Senate can find a way to do that. There are many reasons.

Incidentally, I did not even decide what I was going to do with respect to Judge Thomas until this weekend. I did that purposefully, because I wanted to read the record. I wanted to examine exactly what my colleagues on the committee had said about it. It is only after looking at that that I came to the conclusion I was going to vote against it—not for this reason, but for a lot of other reasons. And that is a separate speech, I suppose. I had originally come to the floor intending to make that right now.

But what bothers me the most about this nomination is the fact that I genuinely do not know where Judge Thomas stands on a host of fundamental issues—not abortion, but a host of issues of jurisprudence—let alone whether he represents a potentially poor, fair, good, or great Supreme Court Justice. I cannot reach that judgment. I simply cannot reach that judgment, because Judge Thomas has chosen a path that was purposefully designed to deny us essential information that is necessary to make that judgment.

Many of us have remarked in the past on how frustrating the hearing process is today. It is simply impossible to get a sense of who people are, what they really feel about the responsibilities of the position.

I will tell you something. All of us who have had the job interviews cannot imagine hiring somebody who would have answered questions the way Judge Thomas did in those hearings. If all somebody said in response to questions when they walked into our office for a job was, "Well, I do not, I do not recall, I have no idea, I do not have a thought about that," anybody who said that to us in an interview would have been offered the door as fast as one could find it.

But, increasingly, that is all we get from people who come before us for the Supreme Court of the United States. In area after area of the law, Judge Thomas chose not to answer questions from Senators on the Judiciary Committee

with responses that were almost devoid of content or meaning. In an obvious attempt to avoid controversy, he took the position that he could not comment on any issue that might come before the Supreme Court as a case during his tenure. But then he extrapolated and used that as a rationale for not even answering questions about how he felt about cases that are settled law, on matters where stare decisis has set in long ago.

It seems to me that we should not ratify, as Senators, an advice and consent process that submits itself to that kind of simplicity or avoidance. The judge suggested that it is important for judges not to have agendas, not to have strong ideology or ideological views, describing them as baggage that a nominee should not take to the Supreme Court.

But the trouble is dozens of previous statements by the judge on a host of critical issues provide exactly the very kind of baggage that he suggested you should not have, and regrettably his approach to the confirmation hearings left him saying practically nothing that would permit us to understand whether or not that baggage had truly been left behind.

Instead, Senators were answered by Judge Thomas with nonresponses. Let me just give a few. Abortion, obviously, is the famous one, and I do not expect him to tell me what he is going to do on Roe versus Wade; I understand that. But it seems to me there are some fundamentals beyond that which might have been discussed in terms of past cases.

On questions about meetings, positions, and discussions on South Africa and apartheid, Judge Thomas said:

I have no recollection. I simply don't remember.

On a question regarding his past statements that:

Congress was a coalition of elites which failed to be a deliberative body that legislates for the common good of the public interest.

He said:

I can't, Senator, remember the total context of that, but I think I said that and I think I said it in the context of saying that Congress was at its best when it was legislating on great moral issues. Now, I could be wrong.

On a question about the right of privacy and the 14th amendment, Judge Thomas said:

My answer to you is I cannot sit here and decide that. I don't know.

On a question as to whether English-only policies might constitute discrimination, Judge Thomas said:

I don't know the answer to that.

On interpreting antidiscrimination statutes, Judge Thomas said:

Let me answer in this way, Senator, without being evasive. I know that there is pending legislation before this body in that area, and I don't think I should get involved in that debate.

On whether the Korean conflict was in fact a war, Judge Thomas said::

The short answer to that is, from my standpoint, I don't know.

On a recent dissent of Judge Marshall in which Judge Marshall said that:

Power, not reason, is the new currency of this Court's decisionmaking.

Judge Thomas said.

I would refrain from agreeing or disagreeing with that.

He certainly found a lot of ways to say "I do not know" or "I disagree" or "I cannot agree" or "I can't say whether I agree."

The result of these and similar answers to a wide range of questions over 5 days of hearings is that I would like to refrain from agreeing or disagreeing to confirm Clarence Thomas to the Supreme Court, but I am not permitted to do that. I have to make a decision and to vote.

And Judge Thomas has not permitted me to judge his opinions, or what kind of Justice he will really be. I can only judge his performance before the Judiciary Committee and that which he has said previously.

I would like to quote the Chair, Senator LEAHY, who I think stated well the dilemma that has been placed before us. Senator LEAHY said:

As I said when the hearing began, no nominee should be asked to discuss cases pending before the Court. Neither should a nominee feel free to avoid questions about established constitutional doctrine on the ground that a case on that subject eventually will come before the Court. No one could compel Judge Thomas to answer questions. The decisions not to tell us how he thinks * * * was his and his alone. In choosing now to share his vision of the Constitution, Judge Thomas failed to provide what I need as a Senator for informed consent.

I concur with the Senator from Vermont.

I would turn also to a statement made by the distinguished Senator from Alabama, Judge HEFLIN, a conservative who voted for Chief Justice Rehnquist and Justices O'Connor, Scalia, Kenney, and Souter.

After listening to the testimony and trying in vain to obtain from Judge Thomas a further explanation of his positions, Judge HEFLIN said:

I came a way from the hearings with a feeling that no one knows what the real Clarence Thomas is like or what role he would play in the Supreme Court, if confirmed.

The Senate Judiciary Committee hearings have revealed to me many inconsistencies and contradictions between his previous speeches and published writings and the testimony he gave before the committee. * * * Our Nation deserves the best on the highest court in the land and an error in judgment could have long-lasting consequence to the American people. The doubts are many. The Court is too important. I must follow my conscience and the admonition: "When in doubt, don't."

Mr. President, this body is in deep doubt concerning this nomination. I regret there will be a rush to confirm, but I regret even more that I do not have sufficient confidence in the kind of Justice that Judge Thomas would be. I regret that because I really came to this process wanting to vote for him, hoping I could vote for him, looking for a way to vote for him, and held in silence my comments until the end.

But I will vote against confirming him not on the basis of any of his past statements expressing hostility to reproductive rights or antidiscrimination statutes or minimum wage or congressional oversight. I will vote against him because his unwillingness to answer basic questions has fundamentally stymied the ability of the U.S. Senate to properly give advice and consent.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. If the Senator from Utah could yield just for a moment, the Chair will recognize the distinguished Senator from Utah.

We note we are under an order to recess at 12:30 p.m. Of course, any Member can seek unanimous consent to continue that.

The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I do so seek that unanimous consent, that I be permitted to make a few remarks, and also the distinguished Senator from Michigan to follow me.

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

Mr. HATCH. Mr. President, I have listened with a great deal of interest to the remarks of the distinguished Senator from Massachusetts, and I have to say that the evidence is so slim and so late in the process that it would be a travesty to start now and start the fact-finding process all over again, which is what the Senator seems to be requesting.

If this is like it is at a trial, that shortly before the jury is going to vote, one party springs tainted evidence in an effort to inflame the jury, that would be trial by ambush. I have to say, we would not stand for that in court, and we should not stand for it in the U.S. Senate, especially since there was plenty of time to look into this before the vote was set.

I have to say that one of the questions I would have to ask the Senator from Massachusetts is, when he criticizes Judge Thomas' responses before the committee, how were they any different from those of Justice Kennedy and now Justice Souter? The only difference is, Judge Thomas was asked over 100 questions on abortion compared to then-Judge Souter's 36 questions on abortion. He was asked over and over about matters with respect to abortion. He said: "I do not know where I stand on abortion."

That is an answer. It is a fair answer; maybe one that ought to be followed and listened to.

When the Senator says that he does not have enough information to know

whether or not to vote for or against Judge Thomas because he did not answer enough questions, there is no way he could answer enough questions if we held the committee hearings for 2 years to answer all the questions about law that the distinguished Senator might have, or any other Senator might have.

The fact is, the process was a reasonable process. It was a decent process. It was a good process.

Mr. President, this process has been full; it has been an informative process. I would like to put into the RECORD at this time a chronology of the committee's contacts with Professor Hill. You will note it was extensive.

I ask unanimous consent that we print that in the RECORD at this particular time.

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

STATEMENT OF SENATOR JOSEPH R. BIDEN, JR., ON THE NOMINATION OF JUDGE CLARENCE THOMAS, OCTOBER 7, 1991

I am releasing today a chronology of the Committee's contacts with Professor Hill. The chronology provides the complete details of the Full Committee staff's contacts with Professor Hill from the time we were made aware of her charges to the day of the Committee vote.

I want to emphasize two points in conjunction with this matter.

First, throughout, our handling of the investigation was guided by Professor Hill's repeated requests for confidentiality.

Second, Professor Hill's wishes with respect to the disposition of this matter were honored. The Republican leadership and all Democratic members of the Committee were fully briefed of her allegations, and all were shown a copy of her statement prior to the Committee's vote on the Thomas nomination.

FULL JUDICIARY COMMITTEE STAFF CONTACT WITH ANITA HILL

What follows is a chronology of all conversations between Judiciary Committee staff and Professor Anita Hill. Several key points should be mentioned at the outset:

First, in conversations with the full committee staff, Professor Hill has never waived her confidentiality—except to the extent that, on September 19, she stated that she wanted all committee members to know her concerns even if her name were disclosed. Yet it was not until September 23, that she allowed the FBI to interview Judge Thomas about the allegation and to respond to her concerns.

Second, Professor Hill has never asked full committee staff to circulate her statement to anyone other than Judiciary Committee members; specifically, she has never requested committee staff to circulate her statement to all Senators or any non-committee member.

Third, the committee followed its standard policy and practice in investigating Professor Hill's concerns: Her desire for confidentiality was paramount and initially precluded the committee from conducting a complete investigation—until she chose to have her name released to the FBI for further and full investigation, which—as is customary—includes the nominee's response.

Professor Hill first contacted full committee staff on September 12, 1991. Any contacts Professor Hill had with Senate staff prior to that date were not with full committee staff members. At that time, she began to detail her allegations about Judge Thomas' conduct while she worked with him at the Department of Education and the EEOC. She, however, had to cut the conversation short to attend to her teaching duties. It was agreed that staff would contact her later that night.

In a second conversation, on September 12, full committee staff contacted Professor Hill and explained the committee process. Staff told her:

"If an individual seeks confidentiality, such a request for confidentiality will not be breached. Even the nominee, under those circumstances, will not be aware of the allegation.

"Of course, however, there is little the committee can do when such strict instructions for confidentiality are imposed on the investigative process: The full committee staff will have an allegation, but will have nowhere to go with it unless the nominee has an opportunity to respond.

"In the alternative, an individual can ask that an allegation be kept confidential, but can agree to allow the nominee an opportunity to respond—through a formal interview."

Professor Hill specifically stated that she wanted her allegation to be kept completely confidential; she did not want the nominee to know that she had stated her concerns to the committee. Rather, she said that she wanted to share her concerns only with the committee to "remove responsibility" and "take it out of [her] hands."

Professor Hill then did tell committee staff that she had told one friend about her concerns while she still worked at the Department of Education and then at the EEOC. Committee staff then explained that the next logical step in the process would be to have Professor Hill's friend contact the committee, if she so chose.

Between September 12 and September 19, full committee staff did not hear from Professor Hill, but received one phone call from Professor Hill's friend—on September 18—who explained that she had one conversation with Professor Hill—in the spring of 1981. During that conversation, Professor Hill provided little details to her friend, but explained that Thomas had acted inappropriately and that it caused Hill to doubt her own professional abilities.

On September 19, Professor Hill contacted full committee staff again. For the first time, she told full committee staff that:

She wanted all members of the committee to know about her concerns; and, if her name needed to be used to achieve that goal, she wanted to know.

She also wanted to be apprised of her "options," because she did not want to "abandon" her concerns.

The next day—September 20—full committee staff contacted Professor Hill to address her "options." Specifically, committee staff again explained that before committee members could be apprised of her concerns, the nominee must be afforded an opportunity to respond: That is both committee policy and practice. It was then proposed that if Professor Hill wanted to proceed, her name would be given to the FBI, the matter would be investigated and the nominee would be interviewed.

At the close of the conversation, Professor Hill stated that while she had "no problems" talking with the FBI, she wanted to think about its "utility." She told committee staff she would call later that day with her decision on whether to proceed.

Late that afternoon—September 20—Professor Hill again spoke with committee staff and explained that she was "not able to give an answer" about whether the matter should be turned over to the FBI. She asked that staff contact her on September 21.

On September 21, full committee staff spoke with Professor Hill for the sixth time. She stated that:

"She did not want to go through with the FBI investigation, because she was 'skeptical,' about its utility, but that if she could think of an alternate route, or another 'option,' she would contact staff."

On September 23, Professor Hill contacted committee staff, stating that she wanted to send a personal statement to the committee, outlining her concerns. Once that information was in committee hands, she felt comfortable proceeding with an FBI investigation. Later that day; she faxed her statement to the committee.

On September 24, Professor Hill contacted full committee staff to state that she had been interviewed by the FBI late on the 23d. Committee staff assured her that, as previously agreed, once the committee had the FBI report, her concerns—and the FBI investigative report—would be made available to committee members.

On September 25, Professor Hill again called committee staff and explained that she was sending a new copy of her statement to the committee: While this new statement did not alter the substance of her concerns, she wanted to correct inadvertent typographical errors contained in her initial statement.

For the first time, she then stated that she wanted the statement "distributed" to committee members. Committee staff explained that while the information would be brought to the attention of committee members, staff could not guarantee how that information would be disseminated—whether her statement would be "distributed" or communicated by oral briefing.

Once again, however, committee staff assured Professor Hill that her concerns would be shared with committee members. She concluded her conversation by stating that she wanted her statement "distributed," and that she would "take on faith that [staff] will do everything that [it] can to abide by [her] wishes."

Every Democratic member of the committee was orally briefed, had access to the FBI report and had a copy of Professor Hill's statement prior to the committee vote.

To continue to comply with her request for confidentiality, committee staff retrieved Professor Hill's written statement immediately after the vote.

Mr. HATCH. Mr. President, I again reiterate that every Senator on the committee had full access to the FBI report and full access to the statement of both Professor Hill and Judge Thomas. In all honesty, some of the information that has been brought out since leads to questions about the veracity of some of the statements that have been made by Professor Hill, and I think deserve to be brought out.

The process has become a nasty one. And we could continue it forever. We have been through it before. Every time we get into one of these nasty confrontations, no matter how far extended, somebody else comes up with

another unjust accusation and another unjust smear. Any maybe it is both ways; I do not think so.

The fact of the matter is a lot of us are quite offended by this process. A lot of us are quite offended by the way it has gone on.

A lot of us are quite offended by the breach of the Senate rules. A lot of us are quite offended by the fact that her statements just do not add up. Yet, at the last minute, in a last-ditch attempt to ruin this nomination, 10 years after the facts, 10 years after matters allegedly occurred, Professor Hill suddenly comes forward and says she wants everybody to know about it.

Well, I know Clarence Thomas, and I have to say I know him to be an honorable, upright, good, decent man. And his wife is a decent person, and so is his son. And I have to say they have been through enough. Further hearings, further consideration, further dialog is not going to solve the problem for anybody. All it is going to do is continue this process of nastiness that has been going on. And, frankly, I think you have enough questions that have been raised about the allegations that anybody who looks at it seriously has to say, "How could this have happened in this way and this relationship of friendship continue right on up through years after the so-called allegations took place?" It is pretty darn clear to me. The fact is that the allegations are not true.

Mr. President, I yield the floor.

(Mr. KERRY assumed the chair.)

Mr. LEVIN. Mr. President, for reasons that I will outline in a moment, I will vote against the confirmation of Judge Thomas, separate and apart from the allegations of Professor Hill.

On the question of delaying the vote, I would urge, for the sake of the Supreme Court and the Senate, that time be taken to satisfy the Senate and the country that the allegations of Professor Hill have been addressed by the whole Senate in a manner which reflects their seriousness. The decision on the timing of the final vote was agreed to with 86 Senators having no awareness of Professor Hill's allegations. That is a fact. It is not a criticism of either the committee or of the leadership.

I hope, though, that under those circumstances and because of the seriousness of the allegations and the direct conflict between the statements of the judge and Professor Hill in the FBI report, that Judge Thomas' supporters will realize that it is best to reschedule the vote and to allow the unanimous-consent agreement to be modified.

In the absence of that, the only practical way that I see to delay the vote will be for a number of Senators voting or planning on voting to confirm to insist on such a delay. It is in their power, and probably in their power alone, to obtain such a delay. If an appearance of haste turns enough "aye" votes into "no" votes or if enough "aye" votes are threatened to be withheld and vote "present," then Judge Thomas' confirmation would in fact depend on a delay and, faced with that prospect, I am confident that a reasonable delay would be forthcoming.

As I said, I have decided to vote against the confirmation of Clarence Thomas to be an Associate Justice of the Supreme Court. I have done so despite a number of personal characteristics that appeal to me, including his willingness to swim against the tide, to "stand up against the pack" in the words of Dean Calabresi of Yale University. That positive characteristic is one of a number of reasons that this matter has been so difficult for me to decide. His willingness to take an unpopular stand is, indeed, reflected in parts of the very same speeches which I will refer to in a moment, which speeches are otherwise marked by strident and dogmatic rhetoric.

I also believe that if confirmed, Judge Thomas, more than other recent nominees, would be an unpredictable Justice. That is a factor in his favor on my scorecard.

But on the other side is a decade of extreme and doctrinaire positions and rhetoric which went beyond merely reflecting administration policy.

In Judge Thomas' speech to the Heritage Foundation in 1987, he said that "I, for one, do not see how the Government can be compassionate. * * *"

In his ABA speech in August 1987, he said that the minimum wage is "an outright denial of economic liberty" and that "by objecting as vociferously as they have to Judge Bork's nomination, these special interest groups undermine their own claim to be protected by the Court."

In the Harvard Journal in 1989, he wrote that, "Higher law is the only alternative to the willfulness of both the run-amok majority and run-amok judges."

In his address to the Pacific Research Institute in 1988, he talked about the "spectacle of Senator BIDEN, following the defeat of the Bork nomination, crowing about his belief that his rights were inalienable and came from God, not from a piece of paper" and in the same speech quoted with approval the comment that "No man who ever sat on the Supreme Court was less inclined and so poorly equipped to be a statesman or to teach * * * what a people needs in order to govern itself well" than was Justice Holmes.

In a 1987 speech at the CATO Institute, he stated his wholehearted agreement with the statement that:

> We are careening with frightening speed * * * toward a statist, dictatorial system and away from a nation in which individual liberty is sacred."

In a 1988 speech at California State University he stated that:

> Those who have been disillusioned because they have not been allowed a part in the American dream, have been offered no place to go. Increasingly, they are being used by demagogues who hope to harness the anger of the so-called underclass for the purposes of utilizing it as a weapon in their political agenda. Not surprisingly, that agenda resembles the crude totalitarianism of contemporary socialist states much more than it does the democratic constitutionalism of our Founding Fathers.

The constitutional rights of our people and the division of congressional and executive powers require the most judicious hearing by Supreme Court Justices. Judge Thomas' extreme rhetoric for 10 years leaves me in genuine doubt as to whether he has the temperament necessary to weigh complicated constitutional rights of our people and to balance powers between the branches of Government.

Judge Thomas came across as more moderate on a host of questions at his confirmation hearing, and that was welcome. But I was left with the feeling that he was tailoring his answers to his audience. I was left with too much doubt as to whether a Justice Clarence Thomas will be the relatively moderate and judicious person we saw at the confirmation hearing or the immoderate ideology of the eighties.

Finally, I will vote "no" not because he refuses to tell us how he will vote on cases that may come before the Court or because of his views on affirmative action. The Nation is still bedeviled by questions of race and racial politics and Clarence Thomas himself presciently urged conservatives to quit beating the quota drum because of the divisive impact on the country—a message that President Bush might do well to consider. I will vote "no" because the burden of proof has not been carried that the nominee has had a distinguished legal, judicial, or public career and has a judicious temperament and a keen intellect so as to qualify him to sit in highest judgment. Ten years of dogmatic and extreme rhetoric have raised sufficient doubts of his ability to balance competing interests in our society and his confirmation hearing did not adequately put those doubts to rest.

If confirmed, Judge Thomas' burden is not over. No nominee has had an advocate of greater integrity and constancy than he has had in Senator DANFORTH. It is my greatest hope that, if confirmed, he will dispel the doubts and disprove the doubters and live up to the high expectations that so many have for him.

I thank the Chair and I yield the floor.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President I ask unanimous consent that morning business be extended 5 minutes.

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

Mr. BRADLEY. Mr. President, what is really the issue before the Senate today? The calendar says it is the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court. There are some who see the issue as whether a procedural agreement of the U.S. Senate can be overturned. There are those who see the issue as the veracity of Professor Hill, or Justice Thomas. There are even those who see the issue as who leaked which document.

But Mr. President, the real issue here for the Senate is the truth. And that is what the American people expect us to find out when serious allegations are made about a nominee to a lifetime appointment to the highest court in the land. To settle for less than the truth, instead of a sincere attempt to discover the truth, is to tell the American people that the process is seriously flawed.

There are people who have talked about the potential damage to Justice Thomas' reputation by waiting, as though it were some presumption of guilt, which it is not. I think there is a grave potential for damaged reputations in this process—but the reputation that will be damaged is that of the Senate if we do not wait.

I have heard some people say that this is a "he said she said" situation. Matters of this kind usually are, that's why they need investigation. And the legal rules governing what is impermissible behavior in the context of sexual harassment have changed over the years—as rape laws have changed—to reflect the fact that usually there are not a lot of witnesses to the events. Clarence Thomas, if confirmed, will sit on a court that judges these matters.

But when he says no, and she says yes, we do not know which one of them is closer to the truth. And I believe we have a responsibility to find that out before this vote.

Supporters of Judge Thomas who believe his version should have nothing to fear from waiting for a few days and letting these allegations have a full hearing. With all due respect to the Supreme Court, this country will not be plunged into crisis by waiting a few days to have a ninth justice voted upon. There really is no hurry.

Why does the Senate have to vote this evening? It is not mandated by the Constitution, or by some judicial deadline. Rather, it was an agreement reached by the Members so that we could plan our schedules.

Agreements can be made and agreements can be changed. It is in all of our interests—those who support Judge Thomas, those who oppose Judge Thomas, and those who live in a country where Judge Thomas might sit on our highest court—that we change this agreement, delay the vote, and try to find out what really happened.

RECESS

The PRESIDING OFFICER. The Senate will stand in recess until the hour of 2:16 p.m.

Thereupon, at 1:03 p.m., the Senate recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ADAMS].

MORNING BUSINESS

Mr. SARBANES. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business, with Senators permitted to speak therein.

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

The Senator from Maryland.

SUPREME COURT NOMINEE CLARENCE THOMAS

Mr. SARBANES. Mr. President, it is difficult, indeed almost impossible, to exaggerate the importance of a Supreme Court appointment. The Supreme Court, as we all well know, stands at the head of the judiciary, the third independent and coequal branch of our Government. Throughout the history of our Nation, the Supreme Court has played an especially significant role in defining the nature of American society and American democracy. It is the Supreme Court's responsibility to expound and interpret the Constitution, which is our basic charter and lies at the very heart of what our Nation stands for and what it represents. Indeed, the Supreme Court, by finding actions of the Congress or the Executive contrary to the Constitution, can overrule the judgments of the legislative and executive branches of our Government. To underscore the authority that rests with the Supreme Court, it can, by finding actions of the Congress or of the Executive contrary to the Constitution, overrule the judgments of the elected representatives of the people, both in the legislative and in the executive branch.

Mr. President, I think the Senate, as it considers judicial nominations submitted to it by the Executive, and particularly as it considers nominations to the Supreme Court, needs to review them from a more independent position than might be the case in considering nominees to the executive branch. Nominees to executive branch positions are there to assist the President in carrying out his responsibilities for that branch of the National Government, the branch for which he is directly responsible.

Even there, I must say, Mr. President, that it is my view that the standard for passing on nominees has deteriorated badly and it has almost reached the point that unless they are mentally certifiable or criminally indictable, people feel an obligation to support the President's nominees. That is not my view. I think nominees for high public office must make the case as to why they should be confirmed. There is not an entitlement to high public office.

With the judicial branch, I would assert that a different standard applies because it is an independent branch. A judicial nominee becomes a member, upon confirmation of the third independent branch of our National Government and becomes a member for life. In the case of the Supreme Court, he or she becomes one of only nine members.

Once confirmed, Justices of the Supreme Court can serve for life. In Judge Thomas' case it could be for 30 or even 40 years. I believe, therefore, we are called upon to make an independent judgment with respect to such nominees, an independent judgment which takes fully into account the Court's role as the arbiter of power in our society, the arbiter of the relationship among the branches of government, and the arbiter of the relationship with respect to the power of the State and the rights of the individual.

There can be no doubt that Judge Thomas has overcome poverty and disadvantage and has shown determination in his rise from a humble background. He graduated from Holy Cross and Yale Law School, was a high-level executive branch official in the 1980's before his appointment in 1990 as a judge on the U.S. Court of Appeals for the District of Columbia.

One of the difficulties with the nominee, however, is his performance in the executive branch positions he has held, first as Assistant Secretary for Civil Rights at the U.S. Department of Education and then as Chairman of the Equal Employment Opportunity Commission. In both instances, his service was marked by intense controversy as to how well he was carrying out his stewardship. Oversight reviews by congressional committees that took place of his activities were extremely critical of his performance.

In fact, the positions he took at the EEOC were seen by many as lessening the national effort against sex, race, and age discrimination. And he came under very sharp criticism for his performance in these fields during the course of holding the important position of Chairman of the Equal Employment Opportunity Commission.

His writings and speeches throughout this period of the 1980's reflected extreme and radical views which, if implemented in the Supreme Court's decisions, would in my view, markedly transform the nature of our society. Indeed, a review of Judge Thomas' writings and speeches during the 1980's is cause for very deep concern.

I want to point out that these are speeches and writings within the cur-

rent timeframe. Some have tried to make light of them but these are not speeches or writings 30 or 40 years ago in one's youth. These are the speeches and writings in the mid- and late-1980's when he was holding important official positions and laying out these views which are of such deep concern.

That concern is not allayed but in fact compounded by his testimony before the Judiciary Committee. He either avoided addressing the questions about these past statements as—one witness observed, he was giving responses, not answers—or he disavowed and disowned his previous statements. He was not forthcoming in his testimony to the Senate Judiciary Committee. Much of his testimony contradicted his earlier positions and in a number of important areas, he rejected his earlier expressed or written views and refused to answer committee questions which sought to elicit his current judicial philosophy.

Now, some supporters of the nomination find his fluctuating views on many important issues to be a sign that he would not bring a closed mind to the Court's deliberations. However, I am more concerned that the judicial philosophy that he would develop as a Justice, if he were to go on the Supreme Court, would embrace the extreme views he espoused as a high Government official in recent years, views that suggest a fundamental misunderstanding of the role of Government in our constitutional system, and a failure to appreciate and understand the meaning of individual rights and liberties and how to protect them under our constitutional system.

Just to give one example, Judge Thomas has praised the views of a legal writer who advocates a view of the sanctity of property rights that was abandoned by the Supreme Court over 50 years ago. If that antiquated view were the prevailing doctrine today, many of the advances of the last half century would be at risk. Laws that provide for minimum wages, safety and health protection for workers, laws which are aimed to reduce pollution, as well as laws that prevent discrimination and protect individual rights would be vulnerable to constitutional challenge if the views expressed in Judge Thomas' writings and speeches became constitutional doctrine.

This possibility is all the more likely in Judge Thomas' case because of references in his speeches to the concept of natural law. As Erwin Griswold, former dean of the Harvard Law School and a very distinguished Solicitor General of the United States, pointed out in his testimony to the committee:

> Judge Thomas' present lack of depth seems to me to be demonstrated by his contact with the concept of natural law. He has made several references to natural law in his speeches and writings, though it is quite impossible to find in these any consistent understanding of that concept. This is very disturbing to me because loose use of the idea of natural law can serve as support for almost any desired conclusion, thus making it fairly easy to brush aside any enacted law on the authority of a higher law what Justice Holmes called a "brooding omnipresence in the sky."

It is argued by some of the nominee's supporters that the Senate should ignore the radical views in his speeches and writings because Judge Thomas did not reflect those views during the past year when he was an appellate court judge. This argument fails to appreciate the role of an appellate court judge on a court of appeals within our Federal system because such a judge is obligated to decide cases within the constitutional framework of Supreme Court decisions and not expound his own judicial philosophy. His writings and speeches, on the other hand, were the result of his own thinking and analysis and, in my view, may well be a better indication of the approach he would bring to the Supreme Court.

Mr. President, as I indicated earlier, Justices of the Supreme Court hold positions of unparalleled authority in our constitutional system. Some say they are going to support Judge Thomas out of hope, but I submit to you that the position we are talking about, at the very pinnacle of the judicial system in this country, with the authority to negate actions by the Congress and the Executive—to be preeminent by interpreting the Constitution over any public action taken in this country—is too important a position to base it upon hope.

There are too many unanswered questions, too many serious doubts. These questions and doubts, the implications of Judge Thomas' statements and writings, the shortcomings of his own career in the executive branch of the National Government, lead me to the conclusion to vote against his confirmation to the Supreme Court.

Finally, Mr. President, I want to say that I reached this decision to vote against Judge Thomas' confirmation before the recent allegations against Judge Thomas by Prof. Anita Hill. These allegations are very serious charges, and I believe the vote should be delayed so that there will be an opportunity to fully investigate these charges, and for the committee to hear from Professor Hill, Judge Thomas, and others, with information about these allegations.

As my colleague, Senator MIKULSKI, said this morning in a very powerful statement to the Senate it is imperative that these allegations be fully examined. We have a responsibility, now that Professor Hill has come forward, to find out what the truth of the matter is. It is a responsibility to Professor Hill, to Judge Thomas, to this institution and, more importantly, to the American people.

I yield the floor.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. SASSER. Mr. President, I rise today to urge my colleagues to allow the majority leader to set aside the time certain for a vote on the Thomas nomination this evening. I am advised that at some time later today, efforts will be made to postpone the Thomas vote to allow the full Senate to consider the allegations—very serious allegations, but I must emphasize, just allegations—that have been made against this nominee for the highest Court in the land.

Mr. President, make no mistake about it, we are engaged here today in a test of the integrity of the U.S. Senate. A substantial number of Americans now suspect that we are rushing to judgment on perhaps the most profound responsibility we have as U.S. Senators.

Millions of Americans are just like myself. We learned of this allegation by way of the news media and by watching the press conference of Professor Hill on the television networks just yesterday. And we should take seriously our responsibility to advise and consent on nominations to the highest Court in this land. And I believe my colleagues do take that very seriously.

The question before us now is not even the competence of Judge Thomas to serve on the Supreme Court. The issue now before us is whether or not the Senate will discharge its responsibility to the people of this country to advise and consent in an informed way, in such a way that the citizens of this Nation will have confidence in the action that we take.

No one has made a credible argument to support the notion that we cannot wait a few days to undertake an investigation to determine where the truth lies in this situation. No one has made a credible case that we should not have time to allow Senators to examine the record fully, to give the nominee himself an opportunity to deny or explain these charges, and to give Professor Hill the opportunity to appear before the Senate and lay out her allegations in detail and be subject to cross-examination by the Senators.

Only in that way can we cast votes based on a full knowledge of the facts. The allegations made here at this late hour—and indeed, it is a late hour—against this nominee are very serious. He is charged—and I emphasize charged—with engaging in conduct while holding an office where he was responsible for enforcing the law to prevent such conduct. That is a very, very serious charge indeed. It goes to the moral character of this nominee himself.

The simple truth is that a grave charge is hanging over this nominee and, frankly, I say to my colleagues, over the Members of this body. How we got to this point, I believe, now be-

comes irrelevant. What might or might not have been done during the confirmation process is not now the issue.

And I can understand how all Senators involved in the confirmation process were proceeding with due diligence, operating in the way that they thought best. I question no one, either in the operations of those on the minority side of the committee or those on the majority side and, certainly, not the chairman or the ranking member.

But what I am saying now is this: To those 86 of us who are not on that committee, nothing prohibits us now from taking the time necessary to examine these accusations. And these accusations have been made in the clear light of day with tens of millions of our fellow countrymen watching.

I say to my colleagues that if we do anything else, the American people are going to believe that Judge Thomas was railroaded through confirmation, that he passed through this Senate with a wink and a nod, and that he goes to the highest Court in this land for the rest of his natural life, if he chooses to serve there, with a taint that neither we nor he nor the passage of time can wipe away.

I submit, Mr. President, that if we do that, we will have called into question, in one stroke, the judgment of the executive branch in proposing Judge Thomas to the Supreme Court; the fairness of the legislative branch and our examination in fulfilling our responsibility to advise and consent; and lastly, we will cast in doubt the character of the judicial branch.

Mr. President, I submit that at this juncture, the country simply cannot afford that.

I yield the floor.

Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee [Mr. GORE] is recognized.

Mr. GORE. Mr. President, few decisions we make in this Chamber flow so far into the future as a decision to elevate an American citizen to the Supreme Court. The Constitution places a great responsibility on the Senate to review the President's nominees to the Court to assure the independence and balance of this branch of Government dedicated to preserving the principles of the Constitution and the liberties enshrined in its Bill of Rights.

The Framers of the Constitution created a paradox in the Supreme Court. They endowed nine individuals with powers equal to that of the elected Congress and the President, then required them to rise above their personal and political prejudices to protect the principle that our democracy is governed by laws and not individuals.

It is an imperfect system. The history of constitutional law shows that each generation has had its blind spots. Yet, over time, there is progress, as the Court's vision of the Constitution sharpens and the democratic principles envisioned by the Framers are applied to societies they could not in their day even imagine.

The expansion of rights for individuals and minorities and the increased protection afforded political expression of the past 50 years is not the result so much of a revised Constitution as principally the product of later generations transcending the prejudices and blindness of previous ones.

The Senate now stands on the verge of a decision that will shape history for this generation and certainly for our entire lives. It is a decision that must be thoroughly considered and carefully made.

Allegations brought by Prof. Anita Hill publicized over the weekend that Judge Thomas' behavior as her supervisor at both the Equal Employment Opportunity Commission and the Department of Education represented sexual harassment deserve our most serious attention. Too many Senators have not had the opportunity to see and review these charges until the last 24 hours. I saw them less than 3 hours ago. None of us has had the chance to hear Professor Hill in person to discuss her charges before a committee of the Senate or to hear Clarence Thomas respond to those charges. I cannot judge those charges on the basis of a press conference on one side and speeches by the supporters of Judge Thomas on the other side. We are rushing to judgment.

I will say this, as others have said: The demeanor of Professor Hill and her presence as she presented the facts during her press conference lend even more credibility to what she had to say because she is obviously someone who is very capable to expressing herself, carefully thinking through what she expresses, and giving some considered judgment to the effects of what she says.

What we are confronted with here today is not a need to dispose of this matter on the merits. What I hear from some of the supporters of Judge Thomas is what sounds like a tendency to equate any delay in the procedure as a slap at Judge Thomas. Any effort to hear the facts of this matter is being interpreted by some of Judge Thomas' supporters as conveying the clear implication that he will be turned down as the President's nominee.

I wish to challenge the notion that a decision by this body to take enough time to hear these charges in a proper way and allow them to be responded to in a proper way is somehow an insult to Judge Thomas.

I do understand the point of view that says Judge Thomas and his family have been subjected to a great deal of pain because of the protracted nature of the confirmation process and because of the airing of the charges that were made over the weekend. I understand that. But that has to be balanced, Mr. President, against the pain that would be caused by cavalierly dismissing these charges without even hearing them in a proper fashion. What pain would that decision cause to every woman in this country who has ever had a complaint of sexual harassment and seen it dismissed cavalierly? What pain would it cause to watch as the U.S. Senate is presented with evidence by a law professor who is clearly articulate, forceful, self-possessed, and then to have the charge just cavalierly brushed aside because we do not have time to deal with it?

Mr. President, I hope that all my colleagues, both Democrats and Republicans who have announced their decisions to vote in favor of Judge Thomas, will take the opportunity to perform a service for this country, for Professor Hill, and all of the women who have ever been subjected to sexual harassment, leaving aside the question of whether Professor Hill actually has been subjected to it or not—I do not know—and they will take this opportunity to do a service to Judge Thomas by saying to the Republican leader and to the majority leader that, notwithstanding their decisions to vote in favor of Judge Thomas, if they are forced by this mechanical procedure—which is pushing us like lemmings off the edge of a cliff—to vote this day at 6 o'clock, they will cast a vote in the negative. They should vote for a delay, not with any prejudice to the nominee, but to provide an opportunity to have a hearing on these charges.

After the Senate has had an opportunity to understand the allegations that have been put before us and understand his responses to them, this nominee could be brought before this Chamber for confirmation on a second vote.

In other words, if only 5 or 6 Senators who have announced in favor of Judge Thomas are willing to come forward and say they do not support the principle that blind obeisance to a mechanical process should take precedence over justice and fairness, then they can continue to support Judge Thomas while allowing the Senate to proceed responsibly.

I ask my colleagues who have that power at their disposal to exercise it. Tell this Nation that we are not hamstrung by our well-known procedures that sometimes tie us up in knots so that we are no longer in command of our own destiny here.

We are Americans. We represent Americans. To be an American is to make your own future, and nowhere does this country make its future so permanently as in its decisions on who will serve in lifetime appointments on the Supreme Court.

Under these circumstances, how can the Senate, traditionally referred to as the greatest deliberative body in the world, justify a deadline of 6 o'clock

today to decide whether Judge Thomas should be on the Supreme Court for the rest of his life and ours? Surely this body of 98 men and 2 women ought to have just a little self-doubt about our ability to cavalierly dismiss a charge to which the average woman obviously reacts in a very different fashion than the average man.

We all understand, all of us as Americans understand, that one of the great transitions in our way of thinking about each other in this Nation has been under way for some time now where the relationship between men and women is concerned. Some of the decisions Judge Thomas, if confirmed to the Supreme Court, will participate in address that revolution in thought. Slowly, painfully, men in the United States of America are coming to understand a little bit more about why women view a charge like sexual harassment so differently from men.

Let us indulge in just a little of that self-doubt in this body of 98 men to suppose for just a moment that the initial impulse of the Senate as a whole not to take this charge quite as seriously as a body of 98 women and 2 men might have taken it was a mistake.

After we learn the facts, maybe we will discover that that initial impulse was right. But let us engage in enough self-doubt to at least pause to hear the facts. Why the rush to judgment? Why the fear, that even pausing long enough to listen, and understand what is being said, will automatically be equated with the defeat of Judge Thomas?

We cannot dismiss Professor Hill so cavalierly as that. Doing so would be to dismiss every women we represent, every women who has ever struggled to be heard over a society that too often ignores even their most painful calls for justice. We cannot simply take for granted that when charges are exchanged—in anger or in confidence—that the victim, or the woman, is always wrong is misguided.

This is not about politics, it is about people and their rights. It is about Professor Hill's right to be heard, her right to respect here in this Chamber. It is about every woman's right to be heard. And it is about Judge Thomas' right to present his views directly to the Senate, and about basic human rights that are so vital to our understanding of this Constitution under which we live.

Without a delay to consider and review these charges properly, the Senate places both Judge Thomas and the Nation at risk. If Judge Thomas is innocent of these charges, he should have the chance to refute them before the Senate and the Nation to remove the cloud over his name, the cloud over his career, and the cloud which would lie over the Court.

In my opinion, if the charges were to be proven, then the Senate would owe it to the Nation to reject his nomination for our highest court.

It is certainly premature to reach any judgment whatsoever about whether they are true or not. But it is not premature to reach a judgment that they are worthy of our hearing.

If we do not delay the vote to consider these charges, I simply do not understand how the Senate could possibly claim to have sufficient information to confirm his nomination.

The effort by some to denigrate Professor Hill in absentia cannot substitute for a full airing of these charges before the Senate in a proper fashion. A discussion among 98 men, about how Professor Hill should or should not have responded to the alleged harassment—and how difficult it is for 98 men to understand her position—cannot substitute for giving her a chance to explain her actions and the events about which we she eloquently speaks, herself, in her own words.

I urge my colleagues to choose deliberation over expediency. I cannot believe that this body will rush pellmell to obey the procedural mandate of the unanimous-consent request, as honored as those consent requests always are. I cannot believe that it will take precedence over justice.

Mr. President, there is a saying that goes "if you don't have time to do it right the first time, how are you going to find time to do it over? If we do not make the time to do our job right this time, the Constitution does not allow us to do it over.

There is plenty of information already before the Senate on Judge Thomas' record, his qualifications, his views, and his experience. While I believe strongly that the allegations raised in recent days justify a postponement of the Senate vote on this nomination, I must today make clear that when that vote does take place, I will oppose this nomination. Not because of the questions raised by Professor Hill, but because of the record already so closely examined by the Judiciary Committee; more specifically, I make that decision based on the evidence before the entire Senate, on his record and his judicial philosophy.

The following principles guided my consideration of this nomination. First, I believe that a Justice of the Supreme Court should have a well-considered, well-reasoned, and fair judicial philosophy. The history of the drafting of the Constitution and the history of the Senate, in exercising its advise-and-consent role, support my belief that the Senate should and must consider the nominee's general philosophy and its impact on our constitutional freedoms and rights.

Second, a nominee must be competent in the analytical skills essential to his task. Third, he or she should have the highest personal and professional integrity. He or she should complement and enhance the balance of the Court rather than send it careening in one direction or the other. The Court is a living organism whose viability depends on maintaining balance between competing forces.

In judging whether Clarence Thomas possesses the qualities I have listed, I believe I must consider only the facts as they appear now rather than any artful predictions about what the future might hold. None of us can afford to play roulette in choosing the members of the Court that protects our dearest liberties.

Clarence Thomas is an impressive man with an astounding background. Even before his nomination to the Supreme Court, he was an inspiration to those who struggled against poverty and racism. He has won the highest praise from his mentor and friend, Senator DANFORTH, for whom I have the highest regard, and the same will be said and has been said many times by every other Member of this body.

Judge Thomas' friends speak of him in a chorus of enthusiasm and respect seldom heard in this political community. His life shows that adversity need not lead to a life of quiet desperation, but can produce a strength of character that is a beacon for all who will follow.

And on this point I would like to add the following. One of my closest friends, from high school days, was a law school classmate of Judge Thomas and has known him for more than 20 years. I respect this friend's judgment greatly. He tells me the same thing about Clarence Thomas as an individual and, incidentally, as a lawyer and jurist. And this is persuasive with me as well on this particular point.

Also, I believe there is no question of Judge Thomas' competence to be a judge. He possesses a quick and incisive intellect. He speaks and writes with precision, power, and persuasiveness. The term "hard-working" cannot begin to describe the habits that have taken him so far in so short a time.

In reviewing Judge Thomas' judicial philosophy, I have not considered whether he is a conservative or a liberal. In the history of the Supreme Court, choices made on such a basis have had a way of backfiring. Instead, I have reviewed Judge Thomas' judicial philosophy to determine whether it will be the servant or the master of the Constitution. I have questioned whether his philosophy will stifle the expression of constitutional rights or amplify them. And I have considered whether his views will strengthen or weaken the checks and balances upon which our democracy depends.

My evaluation of Judge Thomas' philosophy is based on his own speeches and writing which cover a broad array of subjects. Several themes run through this body of work. First, Judge Thomas has expressed often and passionately his belief that natural law should be the guiding principle of constitutional adjudication. There is no

easy way to define what natural law is. I find it best to cite Judge Thomas' own view of it through his comments on legal decisions and principles.

In a speech to the Heritage Foundation, Judge Thomas praised an essay by Lewis Lehrman that took the position that a fetus enjoys constitutional protection from the moment of conception. Thomas stated that he considered the essay "a splendid example of applying natural law."

When the Supreme Court held in a 7–1 opinion that Congress could constitutionally appoint an independent counsel to investigate wrongdoing by high-ranking Federal officials, Thomas embraced Justice Scalia's lone dissent. Scalia used natural law principles to argue that the Congress had no authority to appoint special prosecutors, no matter how serious the criminal allegations against the executive official. Judge Thomas felt so strongly that natural law principles should govern the case, that he criticized Chief Justice Rehnquist for failing all Americans in the most important case since Brown verses Board of Education.

Judge Thomas has embraced the extreme in other areas as well. Rather than engage in accepted norms of political discourse and criticisms, he has referred to Members of Congress as "petty despots." He has ignored Congress, and showed his disdain for thousands of senior citizens, by twice failing to honor statutory deadlines for processing age discrimination claims at the EEOC. And twice Congress was forced to extend statutes so that Thomas' failures would not deprive thousands of senior citizens of their rights under the law.

In regard to gender discrimination, Judge Thomas has chosen to embrace discredited and disgraceful theories of why women have fewer educational and career opportunities. Specifically, he commended a treatise that argued that women earn less because they choose their occupations with an eye to marriage and motherhood. Nowhere in these statements and endorsements did he recognize the reality of gender discrimination, and in fact, he has opposed even voluntary affirmative action programs in areas where discrimination against women was a proven practice. Does Judge Thomas have a blind spot that led him to break the law in an area of great importance to all Americans, but especially to women?

I do not believe such extreme approaches to the questions before the Supreme Court serve either the Constitution or the Nation well.

While I am alarmed by Thomas' speeches and writings, I have tried to consider them in light of his background, and experience, and in the context of his testimony before the Senate Judiciary Committee.

I looked forward to his appearance before the Senate to see if his strong character could allay my concerns about his strong, and in my opinion, narrow views.

There are those who criticize the confirmation hearings on the grounds that a nominee is damned if he answers forthrightly and damned if he is silent. I do not believe the Senate can fulfill its constitutional obligations without candor from the nominee. A candidate for the Supreme Court who hides his views from the Senate undermines the Constitution.

I agree that a nominee should not have to comment on cases that are, or could be, pending before the Court. I agree also that no one position should be a litmus test for confirmation. However, I cannot agree that the less we know about a nominee the better.

The hearings afforded Judge Thomas the chance to explain his views. Unfortunately, I feel that he took the opportunity to explain them away instead. Rather than defend his statements as a part of a complete philosophy, he apologized for them by saying that he was a part-time political theorist, or that he was catering to his audience's interests, or in some cases admitting that he had in fact not even read the very work he had so effusively praised.

He recanted his belief in natural law as the only basis for constitutional adjudication. He reversed completely his harsh criticisms of the legacy of Justice Oliver Wendell Holmes. Whereas in a speech he argued that economic rights should enjoy the same high standard of protection as personal rights, in the hearings he argued that he was merely reminding people of the importance of economic right.

Judge Thomas used the occasion of the hearings to tone down his criticisms of Congress and underscore his support for Congress' role in balancing the power of the Executive. But the context of his concessions lead me to question whether his commitment to the Constitution's separation of powers will last longer than the Senate's consideration of his nomination.

The most troubling aspect of Judge Thomas' testimony was his response to inquiries about Roe versus Wade and the reproductive rights of women. When asked about a White House report he signed that harshy criticized Roe versus Wade, Thomas denied he had read that part of the report. He then stretched the imagination of the Senate, if not the Nation, by saying that he neither had an opinion about nor had even discussed with anyone the most controversial case of his generation.

I do not anticipate that President Bush will ever nominate anyone to the Supreme Court who supports Roe versus Wade. However, I believe the Senate has a right to know—and Judge Thomas had the obligation to reveal—the reasoning and depth of conviction behind his public statements on this subject.

Finally, I found Judge Thomas willfully inconsistent in applying his principle of not discussing controversial issues that may come before the Court. Surely the death penalty, the separation of church and state, and the use in court of victim impact statements are controversial issues that will be before the Court.

I have tried to reconcile Judge Thomas' testimony with his previous statements and writings because of my respect for him as an individual, for his intelligence and his character. I do not expect, nor require, philosophical purity in a person or a Supreme Court Justice. I understand the pressures of having to defend our record under harsh questioning by those who disagree with you. It is something each of us in the Senate does on a daily basis. I also understand that it is possible to have strong feelings on a subject yet still give those who disagree with you a fair hearing and fair consideration.

One way or the other, Judge Thomas has to take responsibility for the contradiction between his professional actions and philosophy and his testimony at the Senate hearings. His harshest critics say that he is running from himself; because of my respect for him, I choose to believe that he has not yet found himself, that he, in fact does not have a well-settled judicial philosophy that will guide his work on the Court should he be confirmed.

I am not troubled that Judge Thomas is still forming his judicial philosophy. I am troubled that he has not shown any caution in the conduct of his public life while he explores his beliefs. He has harshly and vociferously attacked those with whom he disagrees with the passion of a true believer. Yet, when tested, he denies that he is a true believer.

It is difficult for me to express my disappointment that a man as dedicated to public service as Clarence Thomas is, has been thrust toward the Supreme Court before, in my opinion, he has demonstrated he is ready for the job.

I find it instructive to consider for a moment who Thurgood Marshall was when he was nominated to the Court. He had served as a Federal appellate judge and the Solicitor General of the United States. He had argued 32 cases before the Supreme Court and won 29 of them. At great risk to his life, he had traveled the country defending the constitutional rights of minorities. He persuaded the Supreme Court to end the practice of segregated schools in America in Brown versus Board of Education. I am not proposing that Thomas should be rejected because he has not achieved at his age what Marshall had: few ever did or ever will. I am proposing that Thomas has not yet tested his own beliefs either in his brief judicial career or in his own mind. I believe the passion of his public philosophy,

coupled with the doubts and moderations expressed before the Senate, demonstrate that he is searching. For that reason, I feel I know even less about him now than I did before the hearings began.

I stated earlier that I believe a Supreme Court Justice should have a well-considered, well-reasoned and fair judicial philosophy. I also said that I must consider this nomination according to the facts as they stand today. Judge Thomas has the intelligence and dedication to be where he is today on the U.S. Court of Appeals. I do not believe that he has shown the kind of balance and judicial maturity to earn, at this point in his career, a seat on the Supreme Court. While I believe that he may grow into the position if he is confirmed, I cannot honor my responsibility in this matter based on hopes for the future. There is too much at stake.

I will vote against Clarence Thomas' nomination to the Supreme Court. And, I again urge my colleagues to support a postponement of that vote so we may more carefully consider the charges that now so dramatically divide this Chamber.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BUMPERS. Mr. President, every time I have been deeply troubled about the qualifications of a Presidential nominee, I have voted "no." My own rule is that unless a nominee has acquitted himself or herself in a fairly convincing way, the nominee should be rejected. Senators should feel comfortably certain that a nominee is well qualified, and that they would have no hesitancy in defending an aye vote to their constituents. I do not believe this nomination can be defended.

The advise and consent role is an extremely important one for Senators. It is not, or at least should not be, based on the popularity of a nominee, his or her political affiliation, or his or her social philosophy, though it is impossible not to give some consideration to those things. A President has a right to pick, and most do pick, members of their party and philosophical persuasion.

Ronald Reagan didn't much believe in conservation and preservation of our natural resources, and he chose James Watt, of like mind, to be his Secretary of the Interior. I led the fight against James Watt's confirmation, and got 11 votes for my effort. I felt sure, and it was later confirmed, that James Watt had no reverence for our land and water, our environment, or for preserving our natural heritage. But there was a herd instinct sweeping through the Senate in those days to give the President his man, and that mentality proved to be a disaster for the Nation.

I voted for Justices Scalia and Kennedy, though their political and social philosophies were different from mine. But both Scalia and Kennedy had long, distinguished careers as legal scholars, practicing attorneys, and jurists.

Judge Bork was a recognized legal scholar, but he was a cynical view of the law and a crabbed view of the Constitution; so perverse in fact that I felt compelled to vote against him.

No more than 3–4 percent of Presidential nominees are ever contested, but those contested nominations are almost always the most important ones. And Supreme Court nominations are extremely important because the Court is the third branch of government. Its members are all Presidential appointees, and since the President is the executive branch and nominates all the members of the Judiciary, he wields a tremendous power. President Roosevelt attempted to pack the Supreme Court by increasing its membership to 15 in order to get his legislation declared constitutional. His policies, even in hindsight were imminently correct, but his means were grossly wrong and Congress correctly repudiated the attempt.

This brings me to a few thoughts about Judge Thomas, his experience as a lawyer, as a jurist, and his answers to questions by Judiciary Committee members.

Judge Thomas graduated from law school in 1974, 17 years ago. Since that time, Judge Thomas has spent a total of 6 years dealing with the law, and 5 of those years were narrowly focused: 3 years in the attorney general's office in Missouri, 2 years on the corporate legal staff of Monsanto Co. and 1 year as a judge on the court of appeals. He never tried a case in Federal court, and was apparently never in court as an advocate in the rough and tumble world of the legal profession. I could not find in the record that he had actually ever tried a case at all. There is no evidence that he excelled as a student, and lacking any extensive practical experience, I am puzzled by how he came to be chosen.

Then there are the unbelievable contradictions between Judge Thomas' writings and his repudiation of those writings before the committee. He seemed, at least until his confirmation hearing, to be captivated by some arcane theory of the natural law or higher law. The natural law is a legitimate and useful method of interpreting the Constitution, especially in the field of individual rights, but Judge Thomas seems to envision a much more comprehensive use of a higher law, though it is entirely unclear as to just what he has in mind. He praised an essay by Lewis Lehrman, a former candidate for Governor of New York, for his—Lehrman's—application of natural law to the legality of abortion.

Lehrman had concluded not only that the Constitution did not permit abortion but that abortion was absolutely prohibited under any circumstances. Not prohibited by words in the Constitution but by natural law or a higher law. This would mean that if Roe versus Wade should be reversed, the Congress and the 50 States would all be prohibited from permitting an abortion to save the mother's life or for any other reason.

Mr. President, I feel certain Roe versus Wade is going to be reversed, and the President has the right to appoint persons who agree with his stated position to do that, but surely that decision should be dealt with in the context of the Constitution, and not some arcane principle of natural law, presumably outside the Constitution and understood by a very few persons who believe that natural law transcends the Constitution. Mr. President, this could lead to abrogations and aberrations totally outside the Constitution and depending on the case and the persuasion of a narrow majority of Justices. Such a possibility is absolutely eerie. It opens up the possibility that a particular partisan or philosophical goal could be reached with decisions based not on the Constitution, but on five persons' arcane philosophy of natural law.

Then, Mr. President, there is the credibility question. Judge Thomas told the committee that Roe versus Wade was the most important case to be considered by the Court, yet insisted he had never discussed the case with anyone. It this is true, he is probably the only lawyer in America who could make such a claim. But it would demonstrate a remarkable lack of curiosity that in and of itself be disqualifying.

Senator SIMON carefully cataloged a host of other contradictions yesterday between what Judge Thomas had previously written and said, and what he testified to before the committee regarding Justice Holmes, the natural law, the Lehrman essay, and many other issues. He seemed to repudiate virtually every position he had ever taken in all his writings.

What is one to make of all this?

The studied and obviously rehearsed strategy of stonewalling the committee, even on settled cases and policies was disquieting. It has become common for nominees to say as little as possible, and agree to nothing. These carefully rehearsed appearances at confirmation hearings have effectively altered two centuries of precedents that always placed the burden on the nominee to prove his fitness for the position for which he was nominated. The burden has now been shifted to the Senate to prove the unfitness of a nominee, a burden it cannot sustain in the absence of extrinsic proof, when the nominee says he neither agrees nor disagrees with anything, and wouldn't tell you if he did.

My conclusion that Judge Thomas should not be confirmed is based on his theory of natural law, his contradic-

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tory statements, perhaps most important his lack of experience. Perhaps 10 years hence, Judge Thomas, if he stays on the Court of Appeals bench, would demonstrate the kind of knowledge and understanding of the Constitution that people have a right to expect of a nominee to the Supreme Court.

I don't understand why President Bush felt compelled to say that Judge Thomas was the best-qualified person in America for this position. All Americans assumed that the nominee would be African-American, and that is entirely proper, but not one person in America believed that statement. There are thousands of learned and scholarly lawyers and jurists in America, black and white, male and female, extremely well qualified for this position. Judge Thomas is not one of them. I tried to find reasons to support Judge Thomas but then I read Federal Paper 76, Alexander Hamilton wrote regarding the advise and consent role of the Senate:

> The person ultimately appointed must be the object of his (the President's) preference, though perhaps not in the first degree. It is also not very probable that his nomination would often be overruled. The Senate could not be tempted by the preference they might feel to another to reject the one proposed; because they could not assure themselves that the person they might wish would be brought forward by a second or by any subsequent nomination. They could not even be certain that a future nomination would present a candidate in any degree more acceptable to them; and as their dissent might cast a kind of stigma upon the individual rejected and might have the appearance of a reflection upon the judgment of the Chief Magistrate, it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal.

Because I found Judge Thomas to be likable, and because I was very much impressed by his upbringing, and the fact that he came from abject poverty to positions of authority and power, and because I think it imperative that an African-American be appointed to replace Justice Marshall, I wanted very much to support his nomination. I even rationalized that I should support him because the next nominee might be even more unacceptable. But a vote to confirm for such reasons in the face of compelling reasons to the contrary would be a gross abdication of my duty in the advise and consent process.

My vote obviously is for probably for naught, because Judge Thomas apparently has the required 51 votes necessary. Again, I have a duty to vote against Judge Thomas because of my overwhelming belief that he is unqualified.

Finally, Mr. President, my decision not to support Judge Thomas was made before the rather sensational allegations were made regarding his conduct toward a former female employee. But because I determined to vote no for other reasons, I do not judge the truth or falsity of these late allegations, serious though they are. Obviously, these allegations should be investigated further, and I will vote for such a delay.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa [Mr. GRASSLEY] is recognized.

Mr. GRASSLEY. Mr. President, I had a chance to listen to everything the Senator from Arkansas had to say.

I guess there is only one thing that I would take some exception to, and that is the extent to which he would say the record does not say that Judge Thomas has enough legal experience.

I think to discount Judge Thomas' tenure as chairman of the EEOC—that is a law enforcement agency—is simply wrong. As head of the EEOC, Judge Thomas helped decide what discrimination cases to bring to the courts. He obviously had to review the regulations interpreting and applying the antidiscriminatory laws. I think to discount 8 years, or 7 or 8 years of legal work of that type as head of an important Federal agency is not legal experience is really a ludicrous assertion.

I think we ought to make that point to correct the record, that we are talking about a person here who has had tremendous legal experience. As I pointed out 2 or 3 days ago there have only been four members of the Supreme Court in this century who have had an opportunity of having served in the executive branch, the legislative branch, and the judicial branch of the Federal Government, having also served in both State government and Federal Government—only four members of the Supreme Court this century. This puts Judge Thomas, as far as his experience is concerned, way above the experience and background that most people bring to the Supreme Court of the United States.

But my main purpose, Mr. President, is to address what most Members of this body are addressing, recent developments in the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court. And they involve all the issues that have been discussed around Professor Hill's accusations.

The events of the past few days have constituted the worst treatment of a nominee that I have seen in my 11 years in the Senate. Mr. President, I think we were observing over the weekend, on Monday, and Tuesday this week what we were told we were going to see way back in July when one of the spokespersons for one of the major groups in opposition to Judge Thomas, when asked how were they going to defeat Judge Thomas, said, we will "Bork him." We will "Bork him." In other words, the same tactics that were used against Judge Bork in 1987 would be the very same ones used against Judge Thomas.

Until last weekend I could not say that would be the case. But we are in a position now where the emotion of the day is stampeding Members of the Senate, stampeding in a fashion not to use judgment that the constitutional process calls for us to use, because this is not a political campaign for the position of Associate Justice of the Supreme Court.

Judge Thomas is not a political candidate for the Supreme Court. He has been selected by the President of the United States for a lifetime position on the Court.

Are we going to let a political campaign through the media accomplish the same goal that was accomplished in 1987 against Judge Bork?

I did not think that I would see the "Borking" of Judge Thomas, the tactics that were used then, be successful in this instance. And I hope they are not. But I think we should be concerned about it, not because of what it does to Judge Thomas, but what it does to the constitutional process of advice and consent.

It has been since mid-September that the Judiciary Committee has been aware of these allegations against Judge Thomas. These were allegations that were first brought to the committee's attention by Professor Hill only after she was contacted by Senate staff.

Let me repeat, and let me repeat by her own statement. Professor Hill came forward with her charges after Senate staff talked to her and encouraged her. When the chairman of the Judiciary Committee and when the ranking member of the Judiciary Committee learned of these allegations, the FBI was immediately ordered to conduct an investigation. That investigation was completed before the Senate Judiciary Committee voted on Friday, September 27, 1991.

At that point the chairman of the Judiciary Committee, Senator BIDEN, informed the committee Democrats, most of whom opposed Judge Thomas' confirmation, of the investigation results. Yet, none asked for a delay in the vote. Not one asked for further investigation. And none raised these latest allegations as a reason for their vote to oppose Judge Thomas. Why now?

Well, Judge Thomas' opponents have been successful in delaying the vote on the Senate floor until today, and for all I know right at this very hour there could be discussions about whether or not it even ought to be conducted today.

The time of last Thursday, Friday, the weekend, plus Monday and Tuesday, today, gave opponents more time to publicly smear Judge Thomas. The FBI report was leaked to the media. That in turn caused Professor Hill, who had requested confidentiality, to defend her allegations publicly.

I do not know whether this just happened, because considering how sophis-

ticated the operation is, this process that we call Borking him—and it is very sophisticated—I would like to have people on my side in a campaign, in a political campaign that is that sophisticated.

But their goal was to get these allegations out very publicly, to inflame the emotions and sensibilities, and most importantly do what was so successful 4 years ago against Bork—except there has not been a lot of paid TV time, but there has been a lot of free news time on this—their desire to bypass the constitutional process of advice and consent of the full Senate and the Judiciary Committee.

We had 2 weeks of hearings, including some 100 witnesses testifying for and against Judge Thomas. Not one raised a charge like this one. A charge like this was taken right to the public by those who oppose this nominee, short circuiting the committee procedures.

This is a strategy based upon desperation. It is a last-ditch effort to defeat Judge Thomas because they cannot destroy him on his qualifications and on the merits.

After all, we had 5 days of testimony. In these 5 days of testimony, Judge Thomas showed himself to be thoughtful, to be intelligent, and to be articulate, as an individual, and even in his present position as a judge.

But he also showed himself to be one who espoused a philosophy at odds with the special interest groups who are out here opposing Judge Thomas. These groups know that they need to stop this nomination. They have to do this to validate their social agenda, an agenda which they seek to impose through the courts since the American people, through the Congress and through the President, will not accept it.

I hope that this approach will not work. Their delay, and now this mud slinging, are coming to a merciful end, I hope. When we vote today, I hope that they will lose. I believe that they will. Despite the best efforts of the professional liberals who have thrown everything that they could find at this nominee, he still stands tall, and their cause is a losing cause.

In the meantime, there are some excuses that Senators have raised in opposing Judge Thomas that I think should be addressed. Some claim that they cannot vote for Judge Thomas, because he did not reveal his basic views of constitutional interpretation, that he is, consequently, somehow an empty vessel, that his views have vanished. The truth is that Judge Thomas, openly and very candidly, revealed his basic philosophy, and that is a philosophy of judicial restraint; that is what he told us at the confirmation hearings for the D.C. Circuit, and that is what he has practiced as a judge on that circuit court of appeals.

Some have charged that Judge Thomas refused to answer questions forthrightly. This is utter nonsense. He answered literally hundreds of questions.

It is true that he did not answer the dozens and dozens of questions about abortion, but that is an issue that he is going to be voting on and debating. It is highly controversial and will definitely come before him as a Justice of the Supreme Court. It seems to me that instead of challenging him and finding fault, we should praise him for the open mind regarding that issue. We should expect nothing less than an open mind on these controversial issues that are still going to be decided in the near term before this Court. Nominees for the Supreme Court should not make campaign promises to Senators.

Then there are those Senators who demand that nominees tell us in advance how they will vote, and who would oppose Judge Thomas, claiming he has no respect for the separation of powers and will favor the President over Congress. But under the separation of powers, we must respect the independence of the judiciary. We cannot ask judicial nominees how they will vote on unsettled issues that they will decide. We owe the litigants to those cases the open-mindness on the part of the judges. We owe the nominee the right to decide cases as a judge, after hearing legal arguments and the evidence, and not in the vacuum of the confirmation hearings.

Then, of course, Senators have brought up questions about his prior statements, when he was a member of the administrative branch of Government in a policymaking position, using these statements as excuses for voting against Judge Thomas. They have examined every speech he made, every article he wrote, as an executive branch policymaker.

They say that he is deceptive when he says that he will put his views aside as a Supreme Court Justice. The actual fact is that Judge Thomas has not allowed prior political statements to affect his role as a member of the circuit court of appeals.

Perhaps his opponents, particularly those liberal special-interest groups, are puzzled because they cannot imagine that judges have any function other than to read their political views into their decisions. But those who, like Judge Thomas, believe in judicial restraint can and do separate their political opinions from their work as a judge.

Finally, in the ultimate of irony, several Senators have adopted Judge Bork's theory of original intent when it comes to the confirmation process. During the 20th century, up until the 1987 Bork nomination, the President and the Senate followed a consistent pattern of confirming the Supreme Court nominations based on their competence and integrity. Now that seems to have changed.

Make no mistake, though, despite and pretext, the opposition to Judge Thomas is based solely on ideology. And in relying upon ideology, Judge Thomas' opponents are trying to return to original intent by claiming the nominee must prove himself worthy of confirmation. It was under those standards that George Washington's nominee for Chief Justice was turned down because he opposed the Jay Treaty, and that five nominees of President Tyler were rejected for ideological reasons.

Mr. President, I hope to see the confirmation of Judge Thomas for many reasons, not the least of which is that it will mean the end of the ironies and hypocrisy that I have discussed. It is not everyone who could keep his composure during unfairness, mean spiritedness, and outright personal attacks deriving from opportunism, particularly the opportunisms and political agendas of the special interest groups. Judge Thomas has survived this ordeal. In doing so, his early comments that Congress shows little deliberation, and even less wisdom, that it engages in political posturing above anything else, and is beholden to special interest groups, were not only accurate, but unfortunately prophetic.

Mr. President, I look forward to the day when those statements are relics of an era long past, and the confirmation process returns to the purpose that was intended when Alexander Hamilton spoke to that in the Federalist Papers, when he said that it was to see that political hacks were not appointed to the Court, and that it did not become a process by which the President could put his political friends on the Court strictly for political payoff.

I yield the floor.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER (Mr. SARBANES). The Senator from Nevada.

Mr. BRYAN. Mr. President. on September 24 of this year, I announced my support for Judge Clarence Thomas' nomination to the Supreme Court. I do not serve on the Judiciary Committee, and the charges leveled by Professor Hill over this past weekend were matters of first impression for this Senator.

The charges are serious, and I took the opportunity to carefully review the statement which Professor Hill submitted to the committee. If true—and I emphasize "if true"—they clearly cross the line and constitute, by any reasonable and fair standard, sexual harassment and the type of verbal abuse that no woman in the work force should be subjected to, and the kind of conduct that all of us rightfully ought to deplore.

Only two people really know what happened—Professor Hill and Judge Thomas. To the best of my knowledge, no other witness is available to offer direct evidence on this matter.

There is, however, circumstantial evidence available, evidence as to the conduct of Judge Thomas with respect to other female coworkers, and more recently, this morning, this Senator has been made aware that there is a telephone log which purports to document a conversational trail between Judge Thomas and Professor Hill which extended over a substantial period of time.

I have read the FBI report and I have read it thoroughly. At best, and with the utmost of charity, it can only be said about that report that it is incomplete.

The question is how then shall we proceed to discharge the obligation that we have to this institution, which we are a part of, the obligation to Professor Hill, the obligation to Judge Thomas, and most importantly, the obligation that we have to the American people?

Judge Thomas has a cloud hanging over his head. In my view, the only responsible course for us as Members of this body to discharge the constitutional obligation which is incumbent upon us is to the best of our ability conduct a thorough examination of these allegations and ascertain as best we can the truth or falsity of those allegations.

I have in the past been critical of the committee process, but I must say, Mr. President, I know of no better vehicle to ascertain the truth or falsity of those charges than for the committee itself to inquire into this evidence and to give Judge Thomas an opportunity to publicly and before the committee under oath to offer testimony in contradiction and in refutation of the allegations made by Professor Hill.

We, in this body, and the American people have a right to see Judge Thomas, to evaluate his demeanor, and to consider his response.

I believe the most efficacious method to do that is through a continuation of the hearing process for a limited time. I do not favor an open-ended or unlimited extension of time, but I do believe that in fairness to Judge Thomas, in fairness to Professor Hill, and in fairness to the American people that we have a right and, indeed, the responsibility to ascertain this information.

It would be my hope that the Senate can agree upon a short delay for a finite or fixed period of time. But I must say that if I am compelled because I know of no other vehicle other than unanimous-consent agreement to vitiate the time certain and to establish it as I would prefer a fixed time, giving the proper opportunity to fully explore this matter, if I do not have the opportunity to do that, then this Senator would regrettably be in a position that he would vote against the nomination of Judge Clarence Thomas because it is the only vehicle available to this Senator to ensure the purpose of the continuation to ascertain these facts.

As I said, Mr. President, I hope that does not become necessary. I believe it is is in the best interest to Judge Thomas, and I hope his sponsors would concur, that he have this opportunity to rebut in a public forum the allegations that have been made against him and those of us in this body who ultimately must make the determination as to whether to vote for or against Judge Thomas have the opportunity to consider his response, his demeanor when he is specifically confronted with these allegations.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, first of all, let me thank Senator BRYAN from Nevada. I have a real appreciation not only for the substance of his remarks but really the way in which he delivered those words which I think are very important at this particular moment on the floor of the U.S. Senate.

Mr. President, the Senator from Iowa [Mr. GRASSLEY], mentioned empty vessel, and since Monday a week ago when I announced my opposition, I talked about empty vessel. I want to once more talk about the basis of my decision.

Friday I was a part of this debate, but it really was Monday a week ago that I had decided—and I decided after a lot of consideration—to vote against Judge Thomas, and the basic point I made then was that when I went back to the Constitutional Convention and the decisions that were made about the judicial branch of Government and how appointments would be made, it is very clear to me that there was a clear understanding historically, and I think it applies today, that the judicial branch of Government has just tremendously important power, the power of judicial review, the power to enforce the first amendment rights, the power to guard against usurpation of power by the executive branch or the legislative branch. It is the branch of Government in which each and every individual has equal standing.

And what I found so disappointing about Clarence Thomas' testimony before this Judiciary Committee was that the judge essentially said that his past writings and statements were really no longer to be considered, that he had no view on the basic constitutional and philosophical questions that face us as a society and a country.

And, therefore, my argument was in representing himself as an empty vessel I did not believe that I could give my advice and consent to anyone who would come in and so represent himself or herself. I feel very confident about that decision.

But now, in the last couple of days, we have had some other developments and first and foremost have been the allegations by Professor Hill, and I think it puts everyone, the people in Minnesota that I spent time with today before I came back, those of us in the Senate, and Clarence Thomas as well, in a very difficult position.

I want to say on the floor of the U.S. Senate that I think every Senator has to be very careful not to in any way, shape, or form discount what Professor Hill has had to say. All too often when women raise questions of sexual harassment, women are ignored. We do not want to let that happen. That cannot and that should not happen any place, any time, anywhere in our country. But, by the same token, we have to remember that Judge Thomas is entitled to a fair hearing. He is not guilty—I mean we have not had a full hearing. He has not really had an opportunity to fully represent himself.

So, what I want to say, Mr. President, in the spirit of, I think, fairness and some balance is that it is very important that we do not decide tonight. I think it is a question of being fair to Professor Hill. I think it is a question of treating Judge Thomas with utmost respect. And I also think, Mr. President, it is a question of institutional integrity. I do not believe that the U.S. Senate can vote tonight on confirmation under such cloudy circumstances.

Mr. President, I guess what I would say in what is not a good moment for any of us is that there is no reason to rush to judgment. There is no reason to rush to judgment. When I came back from Minnesota today, I hoped and I still hope that perhaps Clarence Thomas himself would request that we put off this decision. I think it would be best for him. I think it would be best for the U.S. Senate, and most importantly, I think it would be best for all of us as a people in this Nation.

So I do not believe we should rush to judgment. I hope we will not make such a momentous decision tonight, and I hope that all parties concerned will be treated with respect and fairness, and we will move forward and try and make a decision and made a decision at another time under other circumstances when in fact we have the full information before us and we can be fair to Judge Thomas, to Professor hill, and we can make a decision as the U.S. Senate that will be good for our country.

I yield my time.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. Mr. President, I yield to the Senator from Missouri.

The PRESIDING OFFICER (Mr. LAUTENBERG). The Senator from Missouri.

Mr. DANFORTH. Mr. President, the situation before us is as follows: Sometime earlier this month, prompted by apparently repeated inquiries from Senate staff, Miss Anita Hill made a written statement making certain alle-

gations about Judge Clarence Thomas. Those allegations were subsequently investigated by the Federal Bureau of Investigation.

The investigative report was then delivered to the chairman and to the ranking member of the Judiciary Committee. They, in turn, briefed the majority leader and the minority leader of the Senate. Senator BIDEN tells me that he then briefed each of the Democratic Members of the Senate on the content of that report.

As a result of those briefings—and I am told that during the briefings a copy of the FBI report was present, and that if members did not actually look at it, they had a right to look at it—as a result of those briefings, it was determined by each of the member of the Judiciary Committee that the FBI report did not contain any basis for further action; that no further investigation was necessary; and that no delay was necessary. That was the stated position of the members of the Judiciary Committee.

Having failed to win any response from the Judiciary Committee, having failed to have the vote put off—and incidentally, I am told that it is a matter of right, that any member of the committee could have put off the committee vote for one week—having failed that, someone violated the rules of the Senate. Someone released into the public domain an FBI report, or the contents, selected contents, it would appear, of an FBI report. That was done the weekend before today's scheduled vote on the Thomas nomination.

It became, as many might have predicted, the lead item on each of the network news programs on Sunday. It became the front-page headline of the newspapers on Monday. It has generated a tremendous rush of activity by various organizations opposed to the Thomas nomination.

I am told, two different times, that various people who work at EEOC have been flooded with phone calls from people who have identified themselves as being with the organization, People for the American Way, asking for the dirt on Clarence Thomas.

This whole conformation process has been turned into the worst kind of sleazy political campaign, with no effort spared to assassinate the character of Clarence Thomas: staff members, interest group representatives fanning out over the country, trying to drum up whatever they can to attack this person's character.

The allegations, of course, have been called into question. Today, Clarence Thomas issued a sworn statement categorically denying the charges that have been made against him. Today, I released, upstairs in the Press Gallery, excerpts from the telephone logs of Clarence Thomas. Those excerpts from the telephone logs of Clarence Thomas indicate that on 11 separate occasions since Miss Hill left the employ of the EEOC, she took the initiative of telephoning Clarence Thomas. The first entry on the telephone logs, January 31, 1984, written in the handwriting of Clarence Thomas' Secretary at EEOC says:

Anita Hill, 11:50. Just called to say hello. Sorry she didn't get to see you last week.

Another one of the entries. This one, August 4, 1987, Anita Hill. And then there is a phone number. Time, 4 o'clock. Message: "In town till 8-14"—presumably, August 15—"wanted to congratulate you on marriage."

Now, these are the phone messages of the person who has accused Clarence Thomas of harassing her on the job.

Then we have the statement of a lawyer and former coworker at EEOC who reported that he had seen Miss Hill at the American Bar Association convention in August, and that she said:

Isn't it great that Clarence has been nominated for the Supreme Court?

And this same person has come forward, and she has made certain statements, and those statements were investigated by the FBI. And that investigation was turned over to the Judiciary Committee, and the Judiciary Committee said: "No basis for action."

And then someone went public.

Now, Mr. President, what is the reason for the secrecy of the FBI reports? What is the reason for Senate rules providing that FBI reports are not supposed to be released to the public? What is the reason why a Senator who releases an FBI report can be expelled from the U.S. Senate?

The reason is that it is manifestly unfair to an individual to release an FBI report. And that is what happened here. And you talk about unfairness. What is more unfair than to have a person's character called into question as the lead item on the network news?

What is more unfair to an individual than to have Senator after Senator go on the floor and say, "Oh, we don't know enough." Why it satisfied the Judiciary Committee—yes, they read the reports and said, "No further action." Let us keep this ball in play; we need to delay. We need more time for the People for the American Way to make their phone calls digging up the dirt. We need the interest groups to have more time to gin up their opposition. There is blood in the water. We need more time for the sharks to gather around the body of Clarence Thomas. Oh, we need a delay. The Judiciary Committee, when they said it does not warrant further action, blew it, it is said. I do not think so at all.

One hundred days ago today Clarence Thomas was nominated for the Supreme Court of the United States. For 100 days the interest groups and their lawyers and various staff members of the Senate have combed over the record of Clarence Thomas. For 100 days they have examined footnotes in Law Review articles to question him about; sentences in articles taken out of context; speeches made in a political context which are then analyzed and criticized before the Judiciary Committee. One hundred days this has gone on and people will say, "Oh, no, wait. We need more time."

That is a tactic, Mr. President. I have been asked by the press today, why not delay? Why not delay? One hundred days is not enough. The Judiciary Committee's word for it is not enough. Why not delay? Why not keep this "circus"—and I use that word in the Roman context—why not keep this circus going? The lions are not satisfied yet. Why not just have a delay?

And my answer throughout the day has been, I do not think there should be a delay because all of the relevant evidence is before us now: the charge of Ms. Hill; the response to the charge by Clarence Thomas denying the allegation of Ms. Hill. It is not as though at some future time after some appropriate hearing the skies will miraculously open, the clouds will dissipate, and will know "the answer" to these charges. I am quite sure that if we have a delay, no matter how long that delay would be, people would say, "We need another delay." Or, "We still have doubts." Or, "She proved her point." Or, "He proved his point." The questions will still exist. People say, "Clear the clouds away. There is a cloud of doubt. We cannot do anything while the cloud of doubt exists."

Mr. President, the cloud of doubt was created by a violation of the rules of U.S. Senate. Think about voting down the nomination of Clarence Thomas solely on the basis of a violation of Senate rules. Think about voting down the nomination of Clarence Thomas solely because an FBI report was distributed to the media illegally. Talk about scandal—that is scandal.

So, Mr. President, I have said to the press and I have said to some of my dear friends in the Senate today, I do not think there should be a delay. This poor guy has been tortured enough. And at the end of the delay they are going to continue at it. And at the end of the delay they are going to say "Wait, there is somebody else. There is something else. Let us have another delay."

I have said in my opinion a delay would serve no purpose whatever. And that is how I feel about it. But, Mr. President, it is not my call. At least in my mind it is not my call. Because a person whom I respect so greatly and a person I love dearly said to me on the phone: "They have taken from me what I have worked 43 years to create. They have taken from me what I have taken 43 years to build—my reputation." And he said, "I want to clear my name."

I do not know that it is possible. I doubt it because I think, as I have said,

that it will just be another delay for the sharks and at the end they will say, "Oh, we need more." Or, "We need a lot of time, a lot of witnesses, a lot of lions."

But Clarence Thomas said to me on the phone, "I have to clear my name. I have to restore what they have taken from me. I have to appear before the appropriate forum and clear my name."

So, for 100 days I have been the spokesman for this person, Clarence Thomas, and on this 100th day I act as a spokesman again, with great pain and great anger at an injustice which is being perpetrated on him. And I ask for a delay. And, Mr. President, not a delay to torture him, a delay I would say of 1 day—some would say you cannot do it in 1 day—2 days, to bring her here, to bring him here, to do whatever else they want to do, and then to have a vote at a time certain, 6 p.m., next Thursday, this coming Thursday, 2 days from now. That is reasonable. I think it is unfair, but it is certainly reasonable from the standpoint of any reasonable person. That is the proposition that I asked to put to the U.S. Senate: 48 hours and a proper forum for Clarence Thomas to try to clear his name.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader.

NOMINATION OF CLARENCE THOMAS

Mr. DOLE. Mr. President, first I wish to thank my colleague from Missouri, Senator DANFORTH. Second, I would like to state, if my arithmetic is accurate, if there is a vote at 6 o'clock, and that has not been determined yet, notwithstanding the request from Judge Thomas, as I look at it, there are about 41 for Clarence Thomas and 41 against, maybe 18 undecided, maybe 17, maybe 16, depending on who you count.

If all those undecided voted present, we would have one result. If some voted for Clarence Thomas and some voted no, because I want to delay, we would have another result. As we speak on the floor, most of those who favor Clarence Thomas, some who say delay and some who say let us vote tonight are meeting with the distinguished majority leader, Senator MITCHELL.

I would add that Clarence Thomas has agreed to meet with any of these people or anybody else who was still undecided. There is no need to meet with the Senator from Ohio [Mr. METZENBAUM] or some of those. But anybody who might be undecided, anybody who thinks he may have been treated unfairly—somebody will say, oh, we have to open this case because we want to be fair. Fair to whom? The Senator from Missouri said we waited 100 days. I think sooner or later the American people have to understand that even Clarence Thomas has some rights and he has some sensibilities and he has some feelings and he has his limits.

So I ask, what do we mean by delay? Oh, a couple of weeks, next week. Sure, why not. We have gone through that before on this floor where one allegation is made, one FBI report, some close associate releases it to the press, as happened in this case. When that checks out, somebody else throws something else over the transom, you check that out, you leak that and you start again.

What do we mean by delay? How many witnesses? Closed or open session? What do we want to find out from this man that we do not already know? Let us face it, this nomination is very important to a lot of people. Some would do anything to stop it, and some might do anything to get it over the hill. But I believe those 16, 17, or 18 Democrats in this case who have indicated a favorable response to Clarence Thomas are fair-minded people. It was our hope that by having Clarence Thomas sign an affidavit, not a statement, but an affidavit categorically denying any of the allegations, it should satisfy most of those 16, 17, or 18 Senators who have indicated they might support or would support Clarence Thomas. In many cases, some are undecided, but most have said yes.

Then we also thought by releasing the phone logs, it clearly indicates there was a friendly, cordial relationship even after Ms. Hill left EEOC.

I am reminded when Secretary Donovan was acquitted, he said, "Where do I go to get my reputation back?" He took a lot of beatings on this floor, and he took a lot of beatings in the media, but he was acquitted. That was the American way. Not the one that Senator DANFORTH is talking about; that was American justice.

I do not know of any group who gets more criticism than the group of 100 in this body, more allegations, more accusations, more unfounded charges. So I just suggest, there is no doubt about it, on this side of the aisle we have 41 votes. Should we make a judgment to vote at 6 o'clock if we only end up with 47 votes or 48 votes or even 49 votes? Or, should we gamble for another 24 hours or 48 hours and say, well, maybe justice will finally be done and maybe even some of those people who are against Clarence Thomas, on either side of the aisle, might understand that this man has been through the wringer enough, he has told the truth, he deserves my support.

I think it is fair to say the jury is right next door. The jury has gathered in Senator MITCHELL's office and they are going to determine the fate of Clarence Thomas. I heard almost every Senator regardless of his final position on the nomination, say that Clarence Thomas is a man of integrity and honesty. But when it is called into question, I hope they will keep that in mind.

Senator DANFORTH, as he indicated, has been the leader on this side of the aisle. He has known Clarence Thomas for 17 years on an intimate basis. He just talked to Clarence Thomas on the telephone. I was in the room, or the adjoining room. I think Clarence Thomas believes those Democrats in this case that have indicated their support, or probable support, are going to stick with him in the final analysis, some will stick with him today, and there is no reason for delay if he had the votes.

The bottom line in our business on both sides of the aisle is how many votes do you have. In the final analysis, how many votes do you have, and should we close the career of Clarence Thomas knowing we are short of votes? That would make some very happy. They would be dancing in the streets on the left side of the street, all over America.

I appeal to my colleagues who have indicated, my colleagues on the other side of the aisle, that they intend to support Clarence Thomas—and two or three are leaning in that direction—to suggest what else this man can do? What else can he do other than give us an affidavit? What else can he say? What does it take to satisfy, not the 41 who have already announced for Clarence Thomas or indicated their opposition, not the 41 who are for Clarence Thomas, but the 16, 17, or 18 who hold the power, who hold the key, who hold the balance and are going to make this decision, what do you want from Clarence Thomas?

Senator DANFORTH was telling us earlier, and I am certain members of the Judiciary Committee can recall all the allegations they made against Clarence Thomas now—oh, it is important, another serious allegation—he shot them down one at a time.

So I will just say, we have not decided whether there is going to be a delay. I am still hopeful, as one Senator, those who are meeting with Senator MITCHELL are going to suggest we have had enough.

We have read the affidavit. We have looked at the phone logs. He has made a public statement. That was a question by some: Where is his public statement? He has not said anything. He said it through his supporters.

Well, here is his public statement. He has offered to meet with anybody this afternoon. He can be here in 10 minutes. He will meet with anybody who has any question about the affidavit, or any other question about these charges.

Now, somebody has already hinted there are some new allegations out there. There will probably be a lot of new allegations. There will be a lot of allegations.

So I am still hopeful—it is only 4:40—that when those who are undecided,

those who have indicated their support for Clarence Thomas, those who have made statements earlier today, well, based on what I now know I am going to have to vote "no" unless there is a delay—that was prior to the release of the affidavit. That was prior to the release of the telephone logs. And again I invite any of those people to call Clarence Thomas up. Come to my office. We will bring him up to talk to you. We would like to finish this today.

And I know what some on the other side, oh, they would like to have another weekend. I have been around here awhile. I knew last weekend when we did not vote on Friday what was going to happen on Saturday and Sunday, and it did. There is always somebody out there willing to collaborate and to print classified, or go on the radio with classified information, and they did.

So again I would just say to my colleagues, particularly those who had some—I will not say second thoughts but some late reservations, maybe Senator DANFORTH is right. Maybe we ought to wait 24 hours. But who is the FBI going to check in 24 hours or 48 hours? What is going to happen? Who are you going to check? How many allegations? How many new allegations?

I remember John Tower. We had the whole FBI working on John Tower; allegations were coming so fast and leaking so fast. The press really helped on that one. So sooner or later we have to come to a conclusion. And I would guess within the hour, between now and 5, we will be able to make that announcement.

So, Mr. President, again I urge my colleagues to take a look at the affidavit, take a look at some of the information Senator THURMOND has, a letter from the dean of the law school, information other Senators on the Judiciary Committee have, affidavits from someone who saw this young lady in August saying, "Isn't it great Clarence was nominated to the Supreme Court."

I have not said one word about the credibility of Anita Hill, but I am suggesting that it is answered in the affidavit by Clarence Thomas. And we ought to get on with this. We ought to have the vote at 6 o'clock. But I can count, and if the votes are not there at 6 o'clock, then we may have another suggestion.

Mr. President, I yield the floor.

Mr. MOYNIHAN addressed the Chair.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER.

Mr. President, I begin by complimenting my colleague, Senator DANFORTH, for an outstanding statement. And I compliment Judge Thomas for his suggestion of the delay for purposes of clearing his name. I think that the delay is worthwhile, Mr. President, for additional reasons.

I think the series of events have in a sense put the Senate on trial, and in a sense would send to the Supreme Court a cloud, and that it is in the public interest to have these questions resolved in, as Senator DANFORTH has suggested, an additional hearing.

In coming to that conclusion myself, I want to make it plain that I do not credit the demands of Judge Thomas' opponents on the Senate Judiciary Committee. And earlier today on the early morning shows I had a substantial disagreement with Senator SIMON on the question of whether this material was appropriately before the Judiciary Committee, whether there was not an adequate opportunity for an inquiry at an earlier date.

This information was made available by Professor Hill on September 23 when she agreed to submit a statement and submit to questioning by the FBI. She had been contacted earlier in the month by some staff members of Senators. And she had come forward to the Judiciary Committee on September 12 and was unwilling at that time to submit to questioning or to make the accusations and to identify Judge Thomas and give him a chance to reply.

But that changed on September 23, and on September 23 Professor Hill made the statement, was questioned by the FBI. Judge Thomas made a denial. And and FBI report was filed on September 25.

I learned of it for the first time on September 26, and I took the matter seriously. I sought a meeting with Judge Thomas, and met with him, and confronted him on the charges and listened to his very forceful denial.

Now, it was at that time that Senator SIMON and others had access to the same information, and if there was a question at that time it seems to me that that would have been a timely matter to take up. But I do not believe that whatever the source and whatever the timing with Professor Hill having made the charges and with the question of appropriate diligence by the Senate, they ought to be aired—with the question of a possible cloud on the Supreme Court on a nominee or on a Justice, if he is confirmed, that they ought to be aired.

After listening to Judge Thomas' forceful denial, and after studying the FBI report, I was prepared to vote, and I did vote, at the Judiciary Committee meeting on Friday, September 27. And all of the other Senators on the committee were prepared to vote at that time as well.

I took into account my own analysis the fact that Professor Hill moved from the Department of Education to EEOC with Judge Thomas. It is my understanding that she had a position at the Department of Education where she could have stayed.

I took into account the fact that Professor Hill went with Judge Thomas to Oral Roberts where he made a speech, and that she later had invited him to the University of Oklahoma to make a speech. And I heard her explanation that she did not really want him to come there but had asked him to do so at the request of somebody else.

But when I read those facts in the FBI report, it appeared to me that there was some association. I do not know, Mr. President, what happened between Judge Thomas and Professor Hill, if anything. Now we have the telephone logs as a suggestion of further association.

But I do think that a question has been raised in the minds of the American people by what Professor Hill has said, and I think by 20–20 hindsight, which is always so much preferable, it may well have been better to have pursued the matter back on September 23, or September 24, or September 25 or September 26.

But I do think that it is useful to pursue the issue at this time and have an opportunity for Professor Hill to say whatever she has in mind, to have an opportunity for Judge Thomas to come forward with his statement. Professor Hill wants a resolution of the issue. She says her reputation is at stake; that Thomas wants a resolution of the issue; his reputation is obviously at stake. But it would be my hope that we could proceed with some dispatch.

We have an issue which is framed. We have two witnesses, possibly a third corroborating witness, where Professor Hill is said to have told one of her friends nothing, nothing in detail, but to have told about the comments allegedly made by Judge Thomas.

But it would be my hope that we could proceed very promptly on this matter before the Judiciary Committee, and we could hear the witnesses.

We have a unanimous-consent request which calls for a vote at 6 o'clock. Our votes in this body are curious things. Nobody is ever really quite sure how they are going to come out until the vote is actually cast. There may be some people who are in doubt. There may be some people who still might stand by what they have said as to Judge Thomas. But if we do vitiate that unanimous-consent agreement, it would be my hope that we would move promptly on Thursday of this week—6 o'clock is a good time or any time. Conceivably, it could even be by the end of the week, so far as I am concerned. But I do not believe that the matter ought to be put over.

But where questions have arisen as to the procedures of the U.S. Senate, I think institutionally this body ought to act so that the public has full confidence in any inquiry or the scope of inquiry or the detail of inquiry which we ought to make.

I think it is very appropriate that we not vote to confirm at a time when the cloud hangs over a nominee—and would for a long period of time—because of the tremendous importance of the deci-

sions to be made by the Supreme Court of the United States, and judgments by that nominee if as and when confirmed.

So my hope is that in the spirit of accommodation, in the spirit of fairness, that we move ahead. Those who were prepared to vote for Judge Thomas but are now in doubt would say, all right, let us have the hearing, let us hear Professor Hill, let us hear Judge Thomas, perhaps the corroborating witness, but let us do it with dispatch, and let us set a time for a unanimous-consent agreement on Thursday at 6 o'clock or at least before this week is ended.

I thank the Chair. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. KOHL). The Senator from New York.

Mr. MOYNIHAN. Mr. President, Judge Thomas has asked for the opportunity to clear his name before the Judiciary Committee and the Senate and the public of the United States. Professor Hill has indicated that she feels that her statements have been challenged, and either explicitly or implicitly—the same. I am very much moved by the anguished eloquence, with which Senator DANFORTH sets forth this proposition, a thought to be allowed. Senator SPECTER, the Senator from Pennsylvania, has done the same.

In that spirit, Mr. President, I ask unanimous consent that I might be allowed to withdraw the motion to adjourn which I offered earlier today.

The PRESIDING OFFICER. Is there objection?

Hearing none, without objection, it is so ordered.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, my fellow Senators, a week ago today I announced my intention to support the nomination of Judge Clarence Thomas to a position on the Supreme Court. I did so, Mr. President, based upon his record as I knew it then, subsequent to the full hearing of the Judiciary Committee, subsequent to the vote of the Judiciary Committee, and subsequent to the examination of that record by this Senator with his staff. And I did so because based on that record, the record that I saw at that time. I believed him to be qualified for elevation to the U.S. Supreme Court.

Having said that, however, I must also say that I strongly believe the Senate must fully examine the sexual harassment charges made against Judge Thomas before voting on his nomination. We owe that to Judge Thomas, and we owe that, Mr. President, to the country. Sexual harassment is a serious matter. It deserves to be handled in a serious and fair way. To do otherwise is to do an injustice to both the country and to Judge Thomas.

Let me emphasize that I have not at this point decided to change my view and oppose the Thomas nomination. I have not decided at this point to change my vote. What I have decided is that it would be a major mistake for the Senate to go forward on this nomination tonight at 6 o'clock.

If the Senate votes tonight, I say the Senate is avoiding its responsibilities. If the Senate votes tonight, the Senate would be saying that a charge of sexual harassment is not important enough to fully investigate, fully investigate before acting on this nomination, and if the Senate votes tonight, it would be saying that it does not care if this charge has merit or not.

In the view of this Senator, Mr. President, this is an extremely important charge. It should not be dismissed without hearings. In the view of this Senator, this charge must be fully investigated before acting on this nomination. In the view of this Senator, Mr. President, not investigating fully this charge before we act would be an absolute abdications of our responsibilities.

Investigating a matter of this seriousness before voting is not something that we should be debating at all. It ought to be the unanimous view of the Senate, Mr. President, that we must do this.

I think some Senators are confusing delay and confusing procedural fairness with opposition to this nomination. Not so. That is a mistake. At this very moment I still believe on the basis of what I know, on the basis of what I now know, even though there is confusion, as a consequence of the charge, that the Justice is qualified, the Senate ought not to compound this mistake by voting on this nomination tonight, Mr. President.

Instead, to repeat, the charges should be fully explored. Professor Hill should have a full opportunity to be heard under oath and to be examined under oath. Judge Thomas should have a full opportunity to respond under oath. Any other persons who know anything about this should have that opportunity.

Senators should have an opportunity to be able to consider these charges based on every bit of evidence available in the country, not simply on what may be available at this time.

As everyone knows, an allegation is not the same as a truth. And sexual harassment by its very nature is a very sensitive matter. I understand that. We should therefore neither dismiss the allegations without further review nor should we oppose Judge Thomas' nomination today simply on the grounds of those charges. That is the view of this Senator.

What the Senate should do, what this Senator believes has to be done and must be done, is to put aside today's vote for procedural reasons in order to provide the time necessary to investigate this critical matter absolutely fully. That is what is required, Mr. President. That is what I believe we absolutely must insist upon.

The Senate has to be released from the procedural straitjacket it is under; that has to be the Senate's full priority.

I have been home all weekend. I have been trying to explain to the people that this vote set on a unanimous-consent request that 100 Senators agreed—as you know, Mr. President, we did—to have the vote at 6 o'clock. And that as a consequence of that, it takes unanimous consent to set it aside.

People are understanding people, but they cannot accept that. They say you mean to tell me that there is no method by which the Senate can at least see what the Senate thinks the truth is before every Senator casts his or her honest vote predicated upon his or her honest judgment?

Why, the people reject that out of hand, Mr. President. They have a right to do so. I tell you, as I stand here now, that the probabilities are high, may I say to the minority leader and those on that side, that justice will still prevail in his quest for this seat. But the truth must be known. Mr. President, this is America, and the people have the right to know.

I find this matter a grievous one, as do my colleagues on both sides. There is not one Senator here who does not. One hundred Senators of different political persuasions and all kinds of philosophical attitudes surely agree that the country has a right to know the truth. What a cloud this man would be under were we to vote tonight.

I conclude, Mr. President, by saying that we owe it to the Justice who is before us for confirmation, and we owe it to the country, and we owe it to our individual conscience to know, as best we can know, the truth—before we vote.

I plead for that as a man who remains, at this moment, announced in support of Justice Thomas.

I yield the floor.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I came to this Chamber last Friday morning to announce my support of the nomination of Clarence Thomas as an Associate Justice of the Supreme Court of the United States. I return to the Chamber this afternoon not to withdraw that support, but to join in the call for a reasonable delay to allow us to fully investigate the serious charges that have been made in this case, and to do justice to Judge Thomas, to the woman who has made the charges, to the Court, and to the Senate of the United States itself.

Mr. President, when I spoke last Friday, I expressed my concern that, as we in the Senate agitate over Judge Thomas' nomination and the impact it would have on our general system of

justice, we ought to be careful to treat this individual, this man, this nominee, justly. Recent events, I fear, make that aim all the more difficult to fulfill.

Judge Thomas, fairly or unfairly, stands accused of a very serious charge, and I share the regret of many of my colleagues about the manner and the timing by which this charge was brought to our attention. But that does not diminish the importance of the charge itself, and it does not absolve us in this Chamber of the responsibility we have under the advice and consent clause, as representatives of the people of this country, to inquire into the validity of the charge.

Sexual harassment is a serious offense, and it goes directly to the question of personal character, which is, for me, a vital consideration in making a decision about a Supreme Court nominee.

We cannot dismiss this charge itself out of hand, no matter how late it comes. That is not fair to the judge; that is not fair to the professor who has made the charge; and that is not right for the U.S. Senate, because we would, I fear, unintentionally be sending a message that we disparage, we diminish the significance of a sexual harassment case. As a U.S. Senator, as a father of two daughters, I do not want that message to go out from this Chamber.

Mr. President, we owe it to the American people, to the Supreme Court, to the Senate, and to the nominee, to deal with the charge, to assess its validity, and to make a final, informed judgment about the charge, the person making the charge, and the judge who today stands accused.

I simply do not believe we can do that in the short time that remains before the scheduled vote.

Mr. President, I had an opportunity to review the FBI file, and I think there are more questions to be asked before I, for one, can make a calm and reasonable judgment about this matter. I have contacted associates, women who worked with Judge Thomas during his time at the Department of Education and EEOC. And in the calls that I and my staff made, there has been a universal support for Judge Thomas, and a clear indication by all of the women we spoke to that there was never, certainly not, a case of sexual harassment, and not even a hint of impropriety.

I have spoken to a number of my colleagues about the issue today. Additional facts, including the phone logs of Judge Thomas, have come to light during the day. For all of those reasons, I believe it is important for us to have an opportunity to examine all these facts in an atmosphere of calm deliberation, and not rush to a vote that was scheduled before most of us in this Chamber knew of the allegations that have been made against Judge Thomas.

Mr. President, let me repeat: Last Friday I expressed my support for Clarence Thomas. By asking today for a delay, I do not withdraw my support. I want this process to be deliberative; I want it to be reasonable; I want it to be thorough; I want it to be fair; and I want it to be just to all concerned.

I appreciate very much the statement of our colleague, the Senator from Missouri [Mr. DANFORTH] suggesting and asking for a delay for Judge Thomas to clear his name. I support that request.

I hope that means that, ultimately, all we will discuss in the time remaining between now and 6 p.m., when the vote has been scheduled, is how long the delay will be; that we can join, on a bipartisan basis, those of us who have supported Judge Thomas, and continue to, and those who oppose him in the interest of justice, and the credibility and respect of this Chamber, in asking for the delay that will allow us to reach a reasoned judgment.

That, Mr. President, is in the interest of the honor of the Supreme Court, the credibility of the U.S. Senate, and the personal reputation of Judge Clarence Thomas.

I thank the Chair, and I yield the floor.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, for the past several weeks, I have been reviewing the hearing record and other material on Judge Thomas in preparation for my duty to advise and consent to the President's nominee to the Supreme Court. In my view, this is one of the most solemn responsibilities of any Senator.

Yet, during the past 2 days, the Senate's deliberation on this important matter has been interrupted by new accusations against Judge Thomas. Like many of my colleagues, I was unaware of these charges when a unanimous-consent agreement was reached last week to vote on the nomination this afternoon at 6 p.m.

While the appearance of these charges at this later date is regrettable, they seem to this Senator to be sufficiently serious and credible to warrant further investigation. In order for the Senate to fulfill its constitutional responsibilities, I believe that we must delay the vote until the issue has been resolved.

To vote now, without knowing the facts, is not fair to anyone—certainly not to Judge Thomas or Professor Hill. Furthermore, the issues involved are too serious for the Senate not to proceed deliberately and thoughtfully. We should not be rushed to a premature judgment on so serious a matter.

I do not know what such an investigation will reveal. But I do know that the Senate's credibility is at stake. And I cannot fulfill my responsibilities as a Senator unless I know more about these allegations. So I would urge the leadership, and my colleagues, that a delay in today's vote, and further investigation, are in the best interests of the Senate, the nominee, and the Nation.

A nomination to the Supreme Court imposes on all of us an enormous responsibility. Unlike a nomination to an executive branch post, in which the person generally serves at the pleasure of the President and is part of his policy team, a seat on the Supreme Court is an appointment with lifetime tenure. The nominee, especially if he or she is young, will have an opportunity to influence the protection of our most basic individual rights and liberties for a long time.

More importantly, a nomination to the Supreme Court is a nomination to the third branch of our Government, one that is coequal with the President and the Congress. The Founding Fathers deliberately fashioned this balance of power, in part, to protect the individual against the abuse of the Government. We need Justices who will respect this vital role.

Furthermore, the Supreme Court is the only branch in which the people do not directly participate in the selection of its members. The President nominates an individual. But it is the responsibility of the Senate to see to it that the nominee is one in whom the people can have confidence.

During my service in the Senate, I have developed three basic criteria by which I judge a nominee's suitability to sit on the highest Court in the land. These are: professional competence, personal integrity, and a view of important issues that is within the mainstream of contemporary judicial thought. A nominee must meet each of these criteria before I can consider him or her qualified to become a Justice.

Before I go further, let me make a personal observation about the nominee. Judge Thomas has an impressive record of personal achievement. In my conversation with him just yesterday, it is clear that his grandfather's determination to rise above adversity had a very positive and lasting influence on him.

Judge Thomas himself has encountered, and overcome, adversities that would have stopped a lesser man. His struggles, and successes, should inspire young people to reach for their highest potential. For this alone, he is deserving of our respect and admiration.

But is he deserving of a seat on the Supreme Court? After all, we are not bestowing an Horatio Alger award for a self-made man. We are being asked to consent to his elevation to a position of power and influence over our most cherished rights that few men or women will ever attain.

Is Judge Thomas a worthy custodian of our fundamental rights? Will he be a

stalwart defender of our personal liberties? Will his decisions inspire confidence and command respect? Does he have a solid vision of America and where we need to go?

I must confess that after a review of the Judiciary Committee's report and the testimony of Judge Thomas, and an hour-long personal meeting with him yesterday, I am unconvinced.

Some of his supporters say that since Judge Thomas has been confirmed by this body in the past, he should pass muster this time as well. This reasoning is flawed.

The requirements for his previous posts, and his current position, are exceedingly different from those of a Supreme Court Justice. If confirmed, Judge Thomas will be one of nine individuals who have the last say about the interpretation and application of the Constitution to our must fundamental rights and liberties.

His previous experience as a political appointee gives me little guidance on this matter. Unfortunately, neither does his brief 17-month tenure as a member of the U.S. Court of Appeals for the District of Columbia.

I am further troubled by the fact that while a majority of the American Bar Association review panel rated him as "qualified," two members rated him as "unqualified." And no one on that panel believed that he was "well qualified," its highest rating.

A Supreme Court Justice should be a pillar of his profession. He should be one to whom others can look for inspiration and guidance. This is an important quality, not just for itself, but because it is vital to the credibility of the Court's decisions.

During the hearings last month, Judge Thomas was questioned about specific issues, from his stewardship of the Equal Employment Opportunity Commission, to his views on natural law, the right to privacy, and the separation of powers. These are very important issues. Yet in many cases, I found his previous writings and positions to be bizarre and even extreme.

But more disturbing to me was that in many of his answers, he essentially retracted or disavowed many of his past beliefs. Now we all have the right to change our mind. And in some cases, his change of heart brings him closer to the mainstream view on these issues. But the number and degree of Judge Thomas' reversals have left me wondering where his true beliefs really lie.

Furthermore, the explanations he gave to the Judiciary Committee often demonstrated a lack of scholarship and intellectual curiosity that will ill-serve the Court and the Nation.

The Supreme Court should not be a testing ground for development of one's basic values. Nor should a Justice be seen to require further training. The stakes are too high.

This is not to say that a nominee must mirror my own views of the Constitution to gain my support. He need not. In fact, Judge Thomas seems to believe, as I do, that the proper role of the Supreme Court is to interpret the Constitution, not to engage in legislating from the Bench, be it activist conservatism or doctrinaire liberalism.

But he must demonstrate to me that he has the basic qualifications that entitle him to a seat on the Supreme Court. After a careful review of the evidence, I find that Judge Thomas does not yet exhibit the caliber of judicial competence, wisdom, and experience that I believe must be the hallmark of a Supreme Court Justice.

Appointment to the U.S. Supreme Court should be reserved for only our Nation's best. Judge Thomas, at this time, does not meet that high standard.

I am also troubled by the recent allegations of sexual harassment. If true, and we do not yet know if they are, it would be further evidence of his unsuitability to sit on the Court.

Let me finally say that if Judge Thomas is ultimately confirmed, then I hope that he will grow quickly in his new position and that his decisions will reflect both an intellectual honesty and an unwavering support for our basic freedoms.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, in light of the events of the last 3 days, I urge the Senate to defer its vote on Judge Thomas' confirmation. We have a constitutional duty to the Nation, to the Supreme Court, and to the Senate to review Professor Hill's very serious allegations before casting our votes.

If confirmed by the Senate, Judge Thomas will receive a lifetime appointment to the Supreme Court. He may well serve on the Court for the next 30 or 40 years. There is no justification for an unseemly rush to judgment in a few hours, when a delay of a few days can make such an important difference. Serious questions have been raised. A great deal more information can easily be obtained to enable us to make the wise decision we owe the country, the Court, and the Constitution.

I recognize that the Senate entered into a unanimous-consent agreement to vote today. But the Senate will be abdicating its responsibility if we permit this all-important vote to take place without making the additional investigation that cries out to be made.

When the unanimous-consent agreement was reached, many of us were under the impression, correct or incorrect, that Professor Hill wished her name and her allegation to be kept confidential. Now, however, the circumstances are dramatically different. It would be absurd to hide behind the unanimous-consent agreement as an excuse not to consider this new information as fully and fairly as possible. If Members of the Senate ignore Professor Hill's serious charges, if the Senate votes on this nomination without making a serious attempt to resolve this issue, the Senate will bring dishonor on this great body, and our unwise haste will tarnish the Senate for years to come. Any vote on the merits of this nomination today would be painfully premature. It is not a question of having the Senate train run on time, but whether we can stop the Senate train from running off the track.

No person who fails to respect fundamental individual rights should be confirmed to a lifetime seat on the Nation's highest Court. If Professor Hill's allegations are true, Judge Thomas denied Professor Hill her right to work, free from sexual harassment. This right is protected by the law, and it must be protected if women are ever to achieve the equal opportunity they deserve in the workplace. This issue is of profound importance to us all. The Senate cannot sweep it under the rug, or pretend that it is not staring us in the face.

Nobody who saw Professor Hill speak yesterday can dismiss her allegations out of hand. Anyone who paid attention to Judge Thomas' prior stereotyped statements on women and work can see at a glance that his record raises serious questions about his sensitivity to discrimination against women in the workplace.

According to reports, Judge Thomas' supporters have offered to make him available today to selected Senators to respond in closed, private sessions to Professor Hill's allegations. Senators are offering bits of evidence which they believe are relevant to assessing Professor Hill's charges and her credibility. This is not how the Senate should decide a question of such profound importance. We owe it to Professor Hill, to Judge Thomas, and to all Americans to air the facts in a Senate hearing, and to resolve this issue in a way that fairly answers the question now being asked by millions of citizens across this country—Is the U.S. Senate capable of meeting its responsibility and doing what we ought to do?

I urge the Senate to defer the vote on Judge Thomas' nomination.

Mr. President, I yield the floor.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Wyoming.

Mr. SIMPSON. Mr. President, obviously we have had a very spirited debate on a very serious issue that confronts the Senate, a very troublesome issue to all of us. There have been words uttered in passion and words uttered in anger and words uttered in sarcasm and words uttered in pain. And

I have been involved in that, both here on this floor and elsewhere.

That is the kind of emotion that is generated by this type of thing because there is so much latent discussion about sexism and racism and guilt, and "if you do this, are you sensitive enough?" It is most appalling to me to see any charge that the Senate or the Judiciary Committee does not take seriously a charge of sexual harassment. That is a very unfortunate statement, wholly without foundation.

Prof. Anita Hill came forward in recent days to charge that Clarence Thomas, at the time he was her supervisor at the Department of Education and at the EEOC, "asked her for a date on several occasions," and also spoke to her about x-rated movies he had seen. Professor Hill says that she believed her refusal to accept his request for a date put pressure on her in the workplace, and she feared if she quit her job she would not be able to find another.

That is a rather extraordinary statement for a remarkable woman, a fine, able graduate of Yale Law School.

However, Ms. Hill continued to work for Judge Thomas. He highly recommended her for a job at Oral Roberts University. There had been numerous, positive social exchanges between them since—many of those exchanges initiated by her. And I think there is really not much more to say about that.

The record now is clear. The person who maintained Judge Thomas' phone log will be speaking in later days. She will be speaking with clarity about the phone calls he received from Ms. Hill.

On the evening of her last day of work at the EEOC, Professor Hill and Judge Thomas had dinner together. A few months ago she called Judge Thomas at the request of her dean to invite him to come to the Oklahoma School of Law to speak to her students. I can assure you that that was not initiated under pressure, because the phone log will disclose that she made that call many days before the letter went forward. That is part of the record.

The FBI then investigated Ms. Hill's charges, and that came about because she came to the committee at the request of staff persons. All of this is a bit repetitive, but I think it is so critically important. She came before the Senate Judiciary Committee because of pressure from a staff member of a member of the Judiciary Committee—but not a member of the Judiciary Committee staff.

Then, after somebody here leaked this information—and that is exactly what occurred, a leak and a violation of Senate rule 29.5, adopted in 1884—a violation of that rule took place and this material then ended up in the hands of the media. And one member of that group, perhaps two, decided that they would go public with it.

You have to remember that the chairman had said to Ms. Hill, "I cannot meet your request." Her request was that her name not be used; what she was saying about Judge Thomas was confidential. And our chairman said what any fine lawyer would say. He said, "We can't do that." So he did not do that.

VISIT TO THE SENATE BY DISTINGUISHED GUESTS

Mr. SIMPSON. Let me interrupt, if I may, for a moment. I know that there are certain liberties, and I do not want to take one that the Senate would not concur with, but I would just say that I would personally welcome the King of Spain who is in the Gallery at this moment, Juan Carlos, and Her Majesty the Queen, Sophia. These are special people.

I am forbidden by the rules of the Senate to recognize where they are and I will observe that, but just let them know that we are deeply proud to have them here.

Welcome to you, sir, and to you, Your Majesty.

I have been very fortunate. I met these fine people in 1980. To have world leaders of this caliber who truly are representing one of our greatest allies is an inspiration to those of us who are of the other branch of Government. Thank you so much.

I thank the Chair for that courtesy.

THE NOMINATION OF CLARENCE THOMAS

Mr. SIMPSON. I realize that others may wish to speak, and so I wanted to get to this issue and conclude it.

We went forward and the FBI responded, because Ms. Hill said she would finally allow that to occur. We have had people who have talked to Ms. Hill, and she has related a great deal herself since this has occurred about the pressure that was put on her by these staff members. In fact, in her own press conference, she said that the release of the information was out of her control—I believe that was her phrase. And in a visit with one of our colleagues, she said that the pressure was continual.

I often think of what responsibility that person will take after Ms. Hill has had her reputation sullied and wrung out. Because, sadly enough, that is exactly what is happening, and what will happen, when you go for the jugular and the beast comes out.

That is what will happen. The Judiciary Committee voted to send the nomination to the floor, having the FBI report before them. Some of my colleagues now come, and some report that the U.S. Senate—especially the Judiciary Committee, consisting of 14 white men—does not have a sensitivity toward women. I think that is a crude and absurd observation when all of us have spouses and daughters and mothers, and try to be exceedingly sensitive to these issues. This is the year 1991. And to say that the chairman, somehow, is not responsive to that is wrong; or the members—that is just plain wrong. We take it very seriously.

The Judiciary Committee took those charges against a Supreme Court nominee extremely seriously. The committee took the most serious and effective course it could possibly take under the circumstances. It turned those charges over to the FBI for investigation. And the FBI investigation included interviewing Professor Hill, Judge Thomas, and all of the possible corroborating witnesses suggested by Professor Hill. These were her suggestions as to who the FBI interviewed. I just think it is very important to bring that into perspective.

Does delaying the vote on this nomination show we take sexual discrimination charges seriously? Is that what the delay will mean?

I can assure you that is not what it will mean. Indeed, a delay will show only that we allow the opponents to this nomination to continue a smear campaign against Clarence Thomas that has been very effective. That we take sexual harassment charges seriously in this body, very seriously, was demonstrated by our request, the chairman's request of a FBI investigation as soon as Professor Hill gave her permission for us to do so, and not one second before or one second after.

Then, finally, some of my colleagues claim that Prof. Anita Hill has been attacked—I heard somebody refer to that—attacked on the Senate floor for alleging sexual harassment by Judge Thomas. Professor Hill is not naive. Professor Hill is obviously an articulate and intelligent woman, a graduate of Yale Law School, and a tenured law professor. She has worked for years in Washington, DC, and she knows better than most how this city works. I have no doubt that Professor Hill, along with most of America, watched the 2 weeks of hearings on the Clarence Thomas nomination.

Professor Hill is well aware as a lawyer and a Washington insider, for her years here—she knew the game—that the time to present evidence on the nominees' suitability was at the hearing. In fact, there were four hearings of Judge Thomas at various points in his public life—four of them since this alleged incident occurred.

So, finally we had the hearing of hearings, 2 weeks and more than 90 witnesses. She knew that her allegations could have been fully explored at those hearings, as are all allegations relating to a nominee's credibility, integrity, and character. And witness after witness testified to Clarence Thomas' character. The chairman's statement is the best one. He said, I challenge not one bit with regard to that issue.

So, Professor Hill wanted the members of the committee to know of her allegations about Judge Thomas, his

conduct. But she insisted, as I say, that those allegations stay completely confidential. It was explained to her by the chairman, and I assume the staff, that to investigate her charges the nominee must be afforded an opportunity to respond. We still do that in the United States of America—a silly little old rule, but one that has saved the bacon of a lot of citizens for lots of years. But she was not willing to go through the FBI investigation, and it was not until a week after the hearings ended that she agreed to a full investigation of her charges. But it was not until 2 days before the committee voted on the Thomas nomination that Professor Hill furnished the committee with her written statement.

Now please hear this. This lady, this woman, is a lawyer, yet she did not furnish an affidavit. An affidavit is something sworn to and then is sealed. She chose to give a statement, a four-page statement. I do not know why that is but I can tell you that is not a sworn document, and I have seen it reported in every single outlet as an affidavit, which it is not; and as a sworn statement, which it is not. Now the time and the great wheel will come around. This remarkable woman will appear before the Judiciary Committee in sworn testimony, and we will sort out the discrepancies between the statement and sworn testimony. That is our duty.

So I would ask, why? Why did this very able and knowledgeable person—who knows Washington well, who is a lawyer with a special interest in this nomination and a special interest in this person as evidenced by her continual unilateral approachment of him during the years when she was no longer connected with him in any way and could not have been harassed or injured in any way—why would she agree to delay an FBI investigation and delay providing a full written statement? And I think Senator BIDEN'S chronological record of that is quite startling, and I ask unanimous consent it be printed and included in the RECORD.

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

STATEMENT OF SENATOR JOSEPH R. BIDEN, JR., ON THE NOMINATION OF JUDGE CLARENCE THOMAS, OCTOBER 7, 1991

I am releasing today a chronology of the Committee's contacts with Professor Hill. The chronology provides the complete details of the Full Committee staff's contacts with Professor Hill from the time we were made aware of her charges to the day of the Committee vote.

I want to emphasize two points in conjunction with this matter.

First, throughout, out handling of the investigation was guided by Professor Hill's repeated request for confidentiality.

Second, Professor Hill's wishes with respect to the disposition of this matter were honored. The Republican leadership and all Democratic members of the Committee were fully briefed of her allegations, and all were shown a copy of her statement prior to the Committee's vote on the Thomas nomination.

FULL JUDICIARY COMMITTEE STAFF CONTACT WITH ANITA HILL

What follows is a chronology of all conversations between Judiciary Committee staff and Professor Anita Hill. Several key points should be mentioned at the outset:

First, in conversations with full committee staff, Professor Hill has never waivered her confidentiality—except to the extent that, on September 19, she stated that she wanted all committee members to know her concerns even if her name were disclosed. Yet it was not until September 23, that she allowed the FBI to interview Judge Thomas about the allegation and to respond to her concerns.

Second, Professor Hill has never asked full committee staff to circulate her statement to anyone other than Judiciary Committee members; specifically, she has never requested committee staff to circulate her statement to all Senators or any non-committee member.

Third, the committee followed its standard policy and practice in investigating Professor Hill's concerns: Her desire for confidentiality was paramount and initially precluded the committee from conducting a complete investigation—until she chose to have her name released to the FBI for further and full investigation, which (as is customary) includes the nominee's response.

Professor Hill first contacted full committee staff on September 12, 1991. Any contracts Professor Hill had with Senate staff prior to that date were not with full committee staff members. At that time, she began to detail her allegations about Judge Thomas's conduct while she worked with him at the Department of Education and the EEOC. She, however, had to cut the conversation short to attend to her teaching duties. It was agreed that staff would contact her later that night.

In a second conversation, on September 12, full committee staff contacted Professor Hill and explained the committee process. Staff told her:

(1) If an individual seeks confidentiality, such a request for confidentiality will not be breached. Even the nominee, under those circumstances, will not be aware of the allegation.

Of course, however, there is little the committee can do when such strict instructions for confidentiality are imposed on the investigative process: The full committee staff will have an allegation, but will have nowhere to go with it unless the nominee has an opportunity to respond.

(2) In the alternative, an individual can ask that an allegation be kept confidential, but can agree to allow the nominee an opportunity to respond—through a formal interview.

Professor Hill specifically stated that she wanted her allegation to be kept completely confidential; she did not want the nominee to know that she had stated her concerns to the committee. Rather, she said that she wanted to share her concerns only with the committee to "remove responsibility" and "take it out of [her] hands."

Professor Hill then did tell committee staff that she had told one friend about her concerns while she still worked at the Department of Education and then at the EEOC. Committee staff then explained that the next logical step in the process would be to have Professor Hill's friend contact the committee, if she so chose.

Between September 12 and September 19, full committee staff did not hear from Professor Hill, but received one phone call from Professor Hill's friend—on September 18—who explained that she had one conversation with Professor Hill (in the spring of 1981). During that conversation, Professor Hill provided little details to her friend, but explained that Thomas had acted inappropriately and that it caused Hill to doubt her own professional abilities.

On September 19, Professor Hill contacted full committee staff again. For the first time, she told full committee staff that:

She wanted all members of the committee to know about her concerns; and, if her name needed to be used to achieve that goal, she wanted to know.

She also wanted to be apprised of her "options," because she did not want to "abandon" her concerns.

The next day—September 20—full committee staff contacted Professor Hill to address her "options." Specifically, committee staff again explained that before committee members could be apprised of her concerns, the nominee must be afforded an opportunity to respond: That is both committee policy and practice. It was then proposed that if Professor Hill wanted to proceed, her name would be given to the FBI, the matter would be investigated and the nominee would be interviewed.

At the close of the conversation, Professor Hill stated that while she had "no problems" talking with the FBI, she wanted to think about its "utility." She told committee staff she would call later that day with her decision on whether to proceed.

Late that afternoon—September 20—Professor Hill again spoke with committee staff and explained that she was "not able to give an answer" about whether the matter should be turned over to the FBI. She asked that staff contact her on September 21.

On September 21, full committee staff spoke with Professor Hill for the sixth time. She stated that:

She did not want to go through with the FBI investigation, because she was "skeptical," about its utility, but that if she could think of an alternate route, or another "option," she would contact staff.

On September 23, Professor Hill contacted committee staff, stating that she wanted to send a personal statement to the committee, outlining her concerns. Once that information was in committee hands, she felt comfortable proceeding with an FBI investigation. Later that day, she faxed her statement to the committee.

On September 24, Professor Hill contacted full committee staff to state that she had been interviewed by the FBI late on the 23d. Committee staff assured her that, as previously agreed, once the committee had the FBI report, her concerns—and the FBI investigative report—would be made available to committee members.

On September 25, Professor Hill again called committee staff and explained that she was sending a new copy of her statement to the committee: While this new statement did not alter the substance of her concerns, she wanted to correct inadvertent typographical errors contained in her initial statement.

For the first time, she then stated that she wanted the statement "distributed" to committee members. Committee staff explained that while the information would be brought to the attention of committee members, staff could not guarantee how that information would be disseminated—whether her

statement would be "distributed" or communicated by oral briefing.

Once again, however, committee staff assured Professor Hill that her concerns would be shared with committee members. She concluded her conversation by stating that she wanted her statement "distributed," and that she would "take on faith that [staff] will do everything that [it] can to abide by [her] wishes."

Every Democratic member of the committee was orally briefed, had access to the FBI report and had a copy of Professor Hill's statement prior to the committee vote.

To continue to comply with her request for confidentiality, committee staff retrieved Professor Hill's written statement immediately after the vote.

Mr. SIMPSON. So, she did not provide a full written statement to the committee until after the hearings ended and only 2 days before the committee vote.

To call the pointing out of these facts "an attack on the victim" is what I do not think we have to settle for. Because that is what has happened here. Any comment, any reference, is immediately channeled into the ugliest possible type of commentary: Sexist, racist—whatever it may be. That is a tiresome, tiresome use of debate. Because debate is won by facts, not by simply emotion. Unfortunately emotion will always triumph over reason, but reason will always persist. And so it will here.

There are some huge inconsistencies in her story. And that is not an attack on the victim. That these allegations have now become public after advertisements have appeared around the country requesting people to come forward with information about Judge Thomas with a number to call should cause any thoughtful, realistic, commonsense person to wonder what is going on here and what kind of a sick game is being promoted by those who use those advertisements. These allegations are being used in the most cynical manner by those groups opposed to the nomination.

So we are at the point, in a half hour of a very difficult decision. And I think my leader stated it well. We will see, now, where we go. We will have to now call Judge Thomas and Professor Hill before the committee and question them rather thoroughly under oath. It will not be a pleasant experience—one that I am sure Ms. Hill wished she could have avoided, and she vividly tried to do so.

Ms. Hill went forward because of the urging of unnamed staff—in violation of the rule—together with a very curious type of inducement by one of the media: "We have your statement,"—"affidavit" they called it—and there is a lot of rumor going around the city, and I think you better come forth, and if you do not, it is going to be very hard on you, it is going to be very difficult, it will be uncomfortable for you." That is what Ms. Hill was told, as the persons with the information leaked in their hands said, "maybe you will want to say something and follow it up, because if you do not have anything to say, we are going to come out with it anyway," which is a marvelous thing to do in a society and by a profession—journalism—that is sworn in their code of ethics to protect the dignity and privacy of people whenever that can be done.

I will be glad to debate that at some future time. But what good will it all do? Both have been questioned by the FBI. The FBI followed up on all the leads Professor Hill provided. All they asked for she gave and nothing was found to corroborate her allegations other than a friend who she apparently told some years ago that Judge Thomas had asked her for dates.

So I think it is a cruel thing we are witnessing. It is a harsh thing, a very sad and harsh thing, and Anita Hill will be sucked right into the maw, the very thing she wanted to avoid most. She will be injured and destroyed and belittled and hounded and harassed—real harassment, different from the sexual kind, just plain old Washington-variety harassment, which is pretty demeaning in itself.

I heard the phrase, "the grid iron singes but does not burn," and I never believed that one. Maybe we can ruin them both, leave them both wounded and their families wounded. Maybe in cynical array, they can bring the curtain down on them both and maybe we can get them both to cry. That will be something that people will be trying to do.

It is a tragic situation and very sad to observe.

INTERNATIONAL COOPERATION ACT OF 1991—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now consider the conference report on H.R. 2508. The clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2508) to amend the Foreign Assistance Act of 1961 to rewrite the authorities of that Act in order to establish more effective assistance programs and eliminate obsolete and inconsistent provisions, to amend the Arms Export Control Act and to redesignate that Act as the Defense Trade and Export Control Act, to authorize appropriations for foreign assistance programs for fiscal years 1992 and 1993, and for other purposes, having met, after full and free conference, have agreed to recommended and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 27, 1991.)

The PRESIDING OFFICER. Debate under the order is limited to 2 minutes, equally divided, followed by a rollcall vote.

Who yields time?

The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Mr. President, despite repeated warnings from the administration, the House-Senate conference failed to drop the controversial provisions that will cause this legislation to be vetoed. I did my best to make it clear to the Foreign Relations Committee when it marked up this legislation that it would be vetoed and that the committee was wasting its time as long as the Mexico City and the cargo preference provisions were included. I emphasized on the Senate floor that this bill would be vetoed because of these provisions, but Senators proceeded to add a third item that was repugnant to the administration and to the President: Funding the U.N. Populations Fund.

I tried to make clear to the conferees that these three provisions, in any form, would result in the President's vetoing this bill, but Senators decided it was more important to placate the special interest groups. I say to them, mark my words, this bill will be vetoed.

One of the ironies of this process, Mr. President, is that conferees actually agreed to drop the provision that reversed the President's population planning policy—or better known as the Mexico City policy—but somehow it made its way back into the conference report. I only learned of this slight of hand the day the conference report was filed. I understand other conferees were also unaware of this action until after the fact.

Restrictions on foreign military financing [FMF] are objectionable to the administration. The administration claims that the new language would unacceptably hinder the President's flexibility to make FMF allocation decisions. The effect of the new provision would be to eliminate a great number of small FMF country programs. As I understand it, the new provisions move FMF much closer to being an all grant program. Evidently, Senate Democrats believe that the United States is rich enough to give away $4½ billion in military equipment.

The provision that requires funding to be made available to the UNFPA—the United Nations agency whose crown jewel is the Chinese program to force women to have abortions—was only slightly modified, but not modified enough to escape a veto.

The cargo preference requirements were also slightly modified, but AID officials tell me they are going to recommend a veto because the greatly expanded requirements are just not workable.

Senators may be told that most of the controversial provisions have been

substantially changed. Mr. President, this is far from the truth. On October 2, Chairman PELL received a letter from Deputy Secretary of State Lawrence Eagleburger in which he expressed the administration's views on this bill. The letter clearly indicated that the changes fall short of avoiding a veto. Mr. President, I ask unanimous consent the the letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit No. 1.)

Mr. HELMS. Mr. President, an example is the new restrictions on funding for UNFPA. These restrictions are nothing more than recycled language that has been rejected time and again by the President. The original Senate amendment to fence off the money given to the UNFPA by limiting the use to contraceptives, by prohibiting any of the funds going to China, and by requiring the UNFPA to refund to the United States the full amount if the UNFPA exceeds the $57 million it currently provides to China.

The language agreed to in conference only adds one new element: That the funds given to the UNFPA can be disbursed only with the approval of our Permanent Representative to the United Nations. The additional provisions duplicate the original language and add stronger language prohibiting funds from being used for abortion. Actually, it is just a restatement of current law.

The fundamental problem is that this approach uses as a vehicle the UNFPA, which is an advocate of coercion at all stages of family planning—including abortion. The UNFPA actually comanages the China program of forced abortion. The China program not only utilizes forced abortions, but also forced contraception with no choice of method.

The UNFPA is tainted in its concept. The U.S. Congress should not fund good deeds done by a criminal, even if the money provided is not used for the criminal acts. Unless the UNFPA clearly rejects coercion in any aspect of family planning, and acts accordingly, the United States should not participate in financing the agency in any of its operations.

As I noted previously, the cargo preference provision has been altered slightly, but the changes do not go far enough. The starting date has been moved forward to 1993. Governments receiving a cash transfer from the United States must spend at least 75 percent of that transfer on U.S. goods and services instead of the original 100 percent. The new provision phases in the new requirements over a period of 5 years. Moreover, the conferees accepted an unworkable section of the House version requiring the President to ensure that the purchase of U.S. goods, and ports of departure be equitably distributed throughout the United States.

Secretary Eagleburger's most recent letter—the fourth such letter from the administration—listed cargo preference as the first item that would result in the President's senior advisers recommending a veto of the bill. In addition to establishing drastic new restrictions on furnishing assistance from the ESF account, the language adopted in the conference will impede the conduct of U.S. foreign policy. Finally, it will adversely affect U.S. exports that must travel by sea.

Mr. President, these items represent only the tip of an iceberg of problems. There are many other provisions that are important to Members of the House and Senate, but were either made meaningless or dropped altogether. What happened to the sensible conditions and restrictions on using United States taxpayers' dollars to bail out the Soviet Union?

The Kyl-Pressler amendment asks no more of the Soviet Union than should be asked of any nation requesting economic assistance from United States taxpayers. It would require that the Soviets: Respect human rights; reduce its bloated military; cease its support of international terrorism and to the remaining Communist countries of the world; let the United States have access to the data necessary to determine the creditworthiness of the Soviet Union; adopt specific, free market economic reforms; make commitments to environmental restoration and rehabilitation and; that it not deny any Republic its right to freedom and independence.

Regardless of who is in charge in the Soviet Union and no matter how far in the right direction they move, it will not be far enough until these conditions are met. The American people understand this. A Wall Street Journal-NBC News poll published on August 30 showed that Americans disapprove aiding the Soviet Union with Defense Department funds by a margin of 63 percent to 31 percent. A Washington Post poll published on September 4 showed that 82 percent of all Americans believe that the situation in the Soviet Union is far too confusing to tell where it will all end up.

It is unwise to send any economic assistance to the Soviet Union. But in the event that the administration does decide to send aid, the Soviet Union must, at the very minimum, meet these conditions. Mr. President, this fine amendment received 374 votes in the House and was accepted with no opposition in the Senate. But it is not included in the conference report.

The Helms amendment regarding aid to the Soviet Union would have simply required the Soviets to cease all military and economic aid to Cuba before the United States could provide any economic assistance to the Soviet Union. It is being reported that Fidel Castro is running out of time in Cuba because of economic collapse—precisely because the Soviets have begun to cut back on economic assistance to Cuba. This provision would have encouraged the Soviets to cut off all further aid.

Requiring the Soviets to stop aiding that thug in Cuba is consistent with United States national security interests. Furthermore, it is eminently reasonable in light of the fact that the Soviet Union is requesting urgent humanitarian assistance to feed its people this winter.

I remind Senators of Boris Yeltsin's remarks to a large group of us during his last U.S. visit. He said that Cuba should not be receiving Russian money and that if he has anything to do with it, the assistance will stop. Now would have been a perfect time to remind the President of the Russian Republic of his remarks. The amendment would have strengthened his hand against the central government.

Representative MCCOLLUM'S version of this amendment received 386 votes in the House. The Senate version received 98 votes. But despite this overwhelming support, it is not included in the conference report.

The Kyl-Pressler and McCollum-Helms amendments are only two of many important provisions that have broad, bipartisan support in both bodies and should have been included in this conference report.

Mr. President, there is another component of this legislation that was not even mentioned during the conference meetings: That is foreign aid reform. Secretary Eagleburger told the conference in a letter of September 13 that neither the House nor Senate bills provided for the major reform of foreign assistance previously requested by the administration. I assure Senators that the compromise language of the conference report provides for even less reform than either of the original bills.

For years, Congress has been calling for comprehensive reform of the way foreign assistance programs are administered as well as management reform of the Agency for International Development. It was not surprising to see the lead editorial in the September 26 edition of the Washington Post titled "Getting Aid to A.I.D." The article describes how criminal and ethical problems are affecting employee morale and creating terrible image and credibility problems at the agency.

Reports from earlier this year by the General Accounting Office outline widespread mismanagement at AID. A report of February 11, 1991, states that GAO investigators uncovered inadequate management controls of overseas contracts in 45 percent of those cases in which officials of the Agency for International Development argued

that satisfactory controls were in place. Frankly, if AID were a business it would likely be bankrupt.

Mr. President, so far, I have explained why some Senators and the administration oppose this bill. But more importantly, here is why the American people oppose foreign aid: Because this year's budget deficit is estimated to be $348 billion. The total debt of the U.S. Government, as of October 1, is $3,647,410,000,000.

All 50 States are suffering. During the summer, the Associated Press reported that many States had, and still have, huge budget gaps. Pennsylvania's was $467 million and growing. California's deficit was $14.3 billion and growing. The National Conference of State Legislatures estimate that 29 States, Puerto Rico, and the District of Columbia face potential deficits totaling $15.3 billion. They also estimate the 1992 shortfall to be about $35 billion.

While the Federal Government is slashing assistance and rolling back programs to the 50 States, Congress proposes to authorize an increase of almost $60 million more for this bill than last year's appropriation. In good conscience, how can Congress justify the authorization of billions more dollars for overseas projects?

Foreign aid is unpopular because it is a waste of money. The American taxpayers are fed up with Congress squandering their tax dollars overseas—especially when the funds are so badly needed at home. Mr. President, the Washington Times reported on Thursday, October 3, that the State of Maryland cannot even afford to pay its State troopers. I hear complaints about foreign aid from constituents in every corner of North Carolina. Every newspaper and television poll consistently documents the unpopularity of foreign aid. When will Congress listen?

The American taxpayers instinctively recognize that the economic and security problems confronting most countries do not stem from a lack of foreign assistance. They stem from flawed policies—communism, socialism, statism, and corruption. Ask the people of the former Soviet Union. No amount of foreign assistance can overcome these mistaken policies.

AID is hopelessly mismanaged. Its programs are proven failures. And foreign aid is a policy that has next to no support among the American people. Yet with this authorization, Congress adds $28 billion to the more than $262.2 billion in direct economic and military grant assistance that has been given away from 1945 to 1990. In addition to these grants, the American taxpayer has financed more than $96 billion in economic aid and military loans since World War II. And since the United States had to borrow the money to give it away, this total does not include the interest paid by the taxpayers.

Some Senators who do not generally support sending U.S. taxpayers' dollars overseas voted for this bill in July to keep the process moving. There was a fair amount of support because there has been no authorization since 1985. But there is a reason there has been no authorization since 1985. The administration's concerns are not addressed. Many concerns of Members are not taken into consideration. And reform of foreign assistance is not taken seriously.

Mr. President, this legislation does not deserve the support of Congress. It does not have the support of the American people. This is the last opportunity Congress will have to vote on this legislation before it is sent to the President. I urge my colleagues to vote against the foreign aid conference report.

EXHIBIT 1

THE DEPUTY SECRETARY OF STATE,
Washington, October 2, 1991.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: As the Conference Report on H.R. 2508, the International Cooperation Act of 1991, comes to the floor, I would like to express the administration's strong opposition to its passage. In its current form, the President's senior advisors will recommend a veto.

In response to the dramatic changes in the world and congressional interest in foreign aid reform, the Administration submitted to Congress a major rewrite of the nation's outdated foreign assistance legislation. The importance of this legislation was underscored by the President in his April 12th letter to Congress.

Since submitting the legislation, the failed coup in the Soviet Union has provided an urgent example of the importance of reform. We need, now more than ever, new legislation that provides the flexibility to respond to rapidly changing events and a cooperative consultative process that enables us to face the challenges ahead.

The Conference Report does contain a number of provisions that attempt to restore some of the elements of administrative simplicity, flexibility, accountability and clarity of purpose that the Foreign Assistance Act originally possessed, and that the President asked the Congress to restore. The bill also contains several provisions needed to address particular problems that we have encountered in administering our foreign aid programs, and the authorization of the IMF quota increase is also a very important authority.

However, the Conference Report does not provide for a major reform of foreign assistance. The current bill still retains unnecessary earmarks, functional accounts, micromanagement, and country-specific provisions which would seriously restrict our ability to conduct foreign policy and pursue the national interest, and which more reflect the business-as-usual approach of the past decade than the new direction sought by the President.

I must emphasize the Administration's strong opposition to provisions on Mexico City Policy and the earmarking of funds for the UNFPA that contradict the Administration's anti-abortion policy. The President has made it clear that such provisions will trigger a veto.

Other provisions would also result in our recommending a veto of the bill. These Include:

The cargo preference provision. This provision would greatly expand current cargo preference requirements and would establish unacceptable new restrictions on furnishing assistance from the Economic Support Funds account. This would sharply reduce the usefulness of such assistance for achieving important foreign policy objectives and is fundamentally inconsistent with the President's objective of making foreign aid a more useful tool of foreign policy. It would intrude government controls into U.S. commercial exports, and it would adversely affect U.S. exports that must be transported by sea.

The restrictions on Foreign Military Financing. These provisions would unacceptably hinder the President's flexibility to make FMF allocation decisions. Given budgetary restraints, the practical effect of this provision would be to eliminate a great number of small FMF country programs by effectively limiting FMF to just a few large country programs.

Further, the Administration strongly objects to the provision on exports to Cuba. As the President recently made clear, we are committed to placing the strongest appropriate pressure on Cuba to embrace reform. However, this provision would place U.S.-owned, foreign-based corporate subsidiaries in the untenable position of choosing to violate U.S. law or a host country's law. These firms should not be punished because of the "catch 22" in this provision.

A number of other provisions are equally troubling and objectionable to the Administration. In several cases, the bill would, in fact, impose brand new restrictions—for instance, the requirement to terminate assistance to countries that provide military equipment to counties supporting terrorism (section 412, enacting what would become new section 691(a)(7) of the Foreign Assistance Act), the provisions on projects in China and Tibet (section 941, *et seq.*), and expanded restrictive language on contacts with the PLO (section 612)—that though they may appear benign, could vastly exacerbate difficulties in administering our foreign aid programs and conducting foreign policy.

Additionally, I am particularly disappointed with several of the provisions applicable to our anti-narcotics programs. Nowhere was the need to eliminate micromanagement more important than with respect to the exceedingly cumbersome certification and reporting requirements under these programs. The new bill, however, would make these requirements even more difficult to administer, and would fail to establish procedures on recertification adequate to respond quickly and decisively in the event of unanticipated events.

The Administration continues to be opposed to provisions that would micromanage our efforts to negotiate a regime on Middle East arms sales, and that purport to direct the President how to proceed in diplomatic negotiations. The President has taken the initiative in calling for discussions among major conventional arms suppliers to the Middle East, and progress is being made. While the senior advisors would not recommend a veto over the current language, any significant negative change to the provision would change the senior advisors' position.

In conclusion, the President made clear his strong interest in foreign aid reform in his letter of April 12, 1991, on the International Cooperation Act of 1991 in April. However,

the Conference Report, in its current form, is unacceptably flawed. If modifications were made to address the concerns described in this letter, I believe that this legislation would represent a positive step towards foreign assistance legislation that will meet the challenges of the 1990's and beyond. If not, for the reasons outlined above, the President's senior advisors will recommend a veto.

Sincerely,

LAWRENCE S. EAGLEBURGER.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER (Mr. LEAHY). Who yields time?

Mr. SARBANES. I yield 30 seconds to the Senator.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, very briefly, Senator HELMS stated correctly the administration is going to veto this bill. Having worked with my friend and colleague from Maryland for 6 months to try to produce the first foreign aid authorization bill since 1985, I must regretfully inform those on my side of the aisle that we still are not there. I intend to vote for the conference report, but I share the same concerns about this report that Senator HELMS, my friend from North Carolina, has indicated. It is my hope in voting for the conference report that at some point we will get the objectionable features out and will have a bill that the President can sign.

Mr. President, I view it as no small victory that the Foreign Relations Committees of the House and Senate have managed to produce a conference report for the consideration of both Chambers. It has not been an easy or, for that matter, a quick process, but the bill we have produced is at a very minimum responsive to our times and both the administration and our many concerns.

A great deal of the credit for this accomplishment should go to the able Senator from Maryland [Mr. SARBANES]. Over the past several months, I have had the unique privilege of working with him and observing the considerable skill and intellect he brings to bear on every issue, large and small. His talent and the commitment have been matched stride for stride by his staff, Marcia Verville. I think the staff may have had moments of overwhelming frustration as they were sent back to the drawing board one more time, but our collective effort has produced a bill we can all take pride in.

Since we last brought the bill to the Senate floor in July, the Soviet Union has experienced remarkable change. In the space of a very short week, a failed coup yielded freedom for the Baltics, and the very real prospect of democracy and independence for many of the republics. Yeltsin and Gorbachev, along with many others, are engaged in a significant process of both reconciliation and redefinition of the interests of both the republics and the nation. As a direct result of these dramatic developments, the conference committee made the decision to leave open the question of the amount and type of assistance the United States might wish to provide in the near future.

The Soviet Union offers a clear illustration of how rapidly and dramatically the world has changed in the past few years. I think it is our responsibility to assure that the authorization of foreign assistance offers our Nation and the President both the funding and the flexibility to meet those challenges. With a few exceptions which I will take note of later, I firmly believe that the conference report before the Senate meets both of these requirements.

In addition to removing or relaxing the extensive regulatory and legal restrictions on aid to the Soviet Union and the republics, there are a number of other important provisions which I would like to bring to my colleagues attention. Over the past decade, in an emergency, the President has had to resort to use of a waiver which required him to prove that it was in the national security interest of the United States to transfer funds. This has resulted in misrepresentations by the administration and Congress buying into the falsehood, because there were no alternative means to provide clearly needed aid. We have modified the waiver so that economic emergencies can be met with a national interest waiver and transfer of military equipment has a security standard applied. Flexibility has also been greatly enhanced by the creation of a Presidential contingency fund, a $75 million Democracy Contingency Fund and the substantial expansion of emergency military drawdown authority.

Flexibility was complemented by funding for some significant items requested by the administration. The two which come immediately to mind are the $12 billion quota increase for the IMF, requiring authorization although no outlay, and the new Enterprise for the Americas Initiative.

Mr. President, when all was said and done, earmarks were deleted, the number of line item authorizations reduced to a handful, and the number of functional accounts with their attendant restrictions cut from eight down to two. This is not to say there has been total consensus on this bill either within the conference or with the administration. Several problems remain which may prompt a veto. From my perspective the two most troublesome matters are cargo preference restrictions and a reversal of the Mexico City policy. As the representative of both farming and coal interests I viewed the application of new and expanded cargo preference requirements to all cash transfers as unbearably costly to my constituents. I had hoped that a compromise acceptable to both the maritime industry and the agricultural and commodities communities could be worked out, but the President has made clear that the proposal in our bill is simply not acceptable.

I would also note that the provision reversing the Mexico City policy which was stripped out in conference had to be restored in order to bring the bill to the House floor. I did not think we should deliberately provoke a veto with the inclusion of this language. Although I have been a strong supporter of voluntary, informed family planning programs, I agree with the President's objection to providing our tax dollars to foreign agencies or organizations supporting abortion.

Finally, I would like to comment on the hard work and tough negotiations which I expect to continue on the question of grant versus loan security assistance. While a few Members may express their opposition to this bill based on the fact that the conferees decided to restrict the provision of credits, I want to point out that the Senate's position has not changed as we moved through subcommittee, committee, and then passage on the Senate floor. Eventually, our position was modified somewhat by concern raised in conference regarding the President's overall flexibility. I think Senator SARBANES has engaged in good faith efforts with Secretary Eagleburger to come to a compromise which addresses the Senator's serious concern that loans have historically been extended in a highly discriminatory manner while meeting the President's global funding requirements for pressing security needs. I will continue to work to reach an agreement to satisfy all parties.

Mr. President, we have worked hard with the full recognition that not everyone would leave the table completely happy, but that most would realize a responsible, timely solution had been crafted. The process and the product are not perfect—in fact I should say that there were some last minute oversights which resulted in the statute and the conference report not being wholly consistent. For example, an important amendment by Senator MACK on trade with Cuba was correct in law but the House staff inadvertently left out crucial conference report language. I expect this will be corrected when the bill is returned for further consideration.

In spite of minor drafting problems, and a very short list of items which may cause the President to veto this bill, I urge my colleagues to consider the entire product and weigh the important contributions it will make as we forge our foreign policy agenda in a very new political, economic, and military environment. I strongly believe that we have afforded the President both the maximum in flexibility and

funding to meet the challenges we face as we turn the century.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I urge Members to vote for the conference report. We tried in conference to modify some of these provisions to make them more acceptable. The provisions which the Senator made reference to were in both bills, so the flexibility the conference committee had was limited because of that. In spite of that situation in which we found ourselves, we still tried to see if some accommodation could be reached. I am hopeful that this step of passing it on will provide a basis subsequently at some point for making an accommodation.

I urge Members to vote for the conference report.

Mr. PELL. Mr. President, I am very pleased that after 6 years, the Senate and the full Congress are on the verge of passing a foreign assistance authorization bill. Foreign assistance is never a popular topic, but I firmly believe that the conference report before us serves U.S. interests, both in terms of our foreign policy and our economic interests around the world.

Let me summarize the major provisions of the conference report. As my colleagues know, this legislation, the International Cooperation Act of 1991, authorizes U.S. bilateral and multilateral foreign assistance for fiscal years 1992 and 1993. The authorization for the bilateral component of the program is $12.491 billion, $23 million less than the amount requested by the administration. With respect to the multilateral assistance programs, the conference agreement authorizes $1.13 billion for U.S. contributions to the Asian Development Fund, the African Development Fund, the International Finance Corporation, and the global environmental facility of the World Bank.

The conference agreement generally reflects the approach of the Senate-passed bill in that it amends the current Foreign Assistance Act and the Arms Export Control Act. It revises and streamlines the authority for the various components of the development assistance program, creating three separate authorizations as follows: $466 million for each of fiscal years 1992 and 1993 for activities to promote a sustainable economic base—agriculture, rural development, and nutrition activities authorized in section 103 of the Foreign Assistance Act, and private sector, environment, energy, and other development assistance authorized in section 106 of the Foreign Assistance Act—and $766 million for each of fiscal years 1992 and 1993 for activities to promote sustainable human resource development, of which amount $300 million in each of the fiscal years is specifically authorized for population activities.

The total amount authorized for these bilateral development assistance programs is $1.38 billion, an increase of $103 million over the administration's request.

The conference report also includes: First, a new authorization for a program of microenterprise development; second, new authority under which AID may provide assistance to governments and nongovernmental organizations to promote democracy and respect for human rights; third, an authorization of $310.4 million for U.S. voluntary contributions to international organizations and programs; fourth, new authority for assistance to meet the needs of the disabled within the human resource development account; fifth, a requirement that governments receiving cash transfer assistance enter into agreements to spend an amount equal to 75 percent of that cash transfer assistance on U.S. goods and services and that 50 percent of such goods be shipped on U.S.-flag commercial vessels; sixth, an expanded and upgraded authority for the Trade and Development Agency; and seventh, a requirement that AID establish a new capital projects office whose function is to create and implement a strategy for developmentally sound capital projects.

The total amount authorized for the full range of bilateral economic assistance programs is $4.7 billion, an increase of $430 million over the amount requested by the administration.

With respect to security assistance, the conference report authorizes $3.2 billion for the Economic Support Fund, and $4.46 billion for the Foreign Military Financing Program. The conference agreement places the authority for the Foreign Military Financing Program under the Foreign Assistance Act, while retaining authority for military sales under the Arms Export Control Act.

As the committee embarked on this authorization process, the administration made repeated requests for increased flexibility in the administration of foreign assistance programs. Certainly, recent world events demonstrate the need to have the capacity to respond quickly to changes in the world. In recognition of this need, the conference report authorizes two new contingency funds to allow the President and the State Department to meet unanticipated circumstances. In addition, the conference agreement revises the existing authority allowing the President to waive provisions in foreign assistance legislation by changing the standard for providing economic assistance to one of importance to U.S. national interests and raising from $50 million to $75 million the amount of assistance that can be provided under this authority to any one country in a given year.

Let me conclude by giving special thanks to my distinguished colleague from Maryland, Senator SARBANES, who as chairman of the Foreign Assistance Subcommittee, had demonstrated superb legislative skill in shepherding this bill through the Senate, and in large measure, through conference with the House.

Finally, Mr. President, a section of the conference report dealing with the Export-Import Bank debt reduction and participation of the Inter-American Development Bank under the Enterprise for the Americas Initiative was inadvertently not omitted from the conference report. I ask unanimous consent that the omitted material be printed in the RECORD.

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

EXPORT-IMPORT BANK DEBT REDUCTION

The Senate amendment (sec. 771) authorizes the President to sell to any eligible purchaser any loan or portion of a loan of an eligible country that was made pursuant to the Export-Import Bank Act of 1945. After the payment for the loan has been received, the President may sell, reduce or cancel the Export-Import Bank debt involved in the transaction. The President is authorized to establish the terms and conditions of the transaction. Instructions regarding the notification of the Export-Import Bank of the transaction are specified.

The Senate amendment (sec. 772) directs that proceeds from the transaction authorized in section 771 be deposited in an account created for the repayment of such loans. Section 773 of the Senate amendment defines an eligible purchaser as an entity who presents plans to the Agency for International Development for using the loan only for purposes of a debt-for-child development swap, a debt-for-development swap, debt-for-education swap, debt-for-environment swap or debt-for-nature swap. Section 774 of the Senate amendment instructs that the Administrator of the Agency for International Development, in consultation with interested nongovernmental organizations, shall identify activities that use natural resources on a sustainable basis and promulgate environmental standards in review of proposed activities. The standards must identify and prohibit the sale of credits in support of activities which involve substantial threats to the environment.

Section 775 of the Senate amendment instructs that prior to a Export-Import Bank debt reduction transaction, the Agency for International Development shall consult with debtor countries which will receive the benefit of the debt reduction regarding, among other things, the amount of the loan to be reduced.

The House bill has no comparable provisions.

The conference substitute (sec. 821) contains provisions substantially similar to the Senate amendment. However, references to the Agency for International Development were not included in the substitute. In addition, the requirement to identify eligible activities for Export-Import Bank debt reduction has not been included in the substitute. In addition, the conference substitute combines the terms "debt-for-development" into a single term—"debt-for development." This was done because the term "debt-for-development" was earlier defined to include debt-for-child development" and "debt-for-education."

Finally, the conference substitute contains a set of eligibility criteria for nations to attain before they can qualify for Export-Import Bank debt reduction benefits under the Enterprise for the Americas Initiative. These criteria are to be applied separately from the criteria nations must meet in order to qualify for benefits under the Multilateral Investment Fund.

The committee of conference believes the reduction of Export-Import Bank debt reduction can be of substantial benefit for qualifying nations of the Western Hemisphere mired in official debt payments. In an effort to provide relief for qualifying nations, the reduction of Export-Import Bank debt should be undertaken as quickly as possible. In addition, to provide further relief for qualifying nations, the committee of conferees urges the Administration to urge other creditor nations to reduce the amount of their official debt held by Latin American and Caribbean nations.

The committee of conferees is concerned about potential adverse environmental impacts resulting from equity investments funded by Export-Import Bank credits used in debt-for-equity swaps. To ensure the environmental integrity of such projects, the process by which the Treasury Department consults with interested non-governmental organizations to formulate standards for review of proposed World Bank projects that may have adverse impacts on wetlands, tropical moist forests and savannah regions should serve as a model for the development of guidelines for review of projects to be funded by debt-for-equity swaps of Export-Import Bank debt.

PARTICIPATION OF THE INTER-AMERICAN DEVELOPMENT BANK

The Senate amendment (sec. 722) mandates that the Secretary of Treasury, in consultation with other U.S. agencies, work closely with the Inter-American Development Bank (IDB) in the implementation of the IDB's investment sector reform programs and to coordinate U.S. bilateral assistance programs with IDB investment reform programs. The Senate amendment also requires that the Secretary of Treasury prepare and transmit a report to the Speaker of the House and the Chairman of the Committee on Foreign relations, within six months of the date of enactment, providing details of the specific investment sector reform programs undertaken by the IDB and of ways in which U.S. bilateral programs have complemented those reform efforts.

The House bill contains no comparable provision.

The conference substitute (sec. 831) is similar to the Senate amendment, except that it drops references to consultation with other agencies and provides for the report to be transmitted to the Chairman of the House Banking, Finance and Urban Affairs Committee.

ENTERPRISE FOR THE AMERICAS INVESTMENT FUND

The Senate Amendment (sec. 723) amends Chapter 4 of part II of the Foreign Assistance Act of 1961 to add a new section to that Act (sec. 539) establishing the Enterprise for the Americas Investment Fund.

This amendment (sec 539(a)) authorizes $100 million annually in appropriations for fiscal years 1992-96 as the U.S. contributions to the new fund.

It (sec. 539(b)) also authorizes the Secretary of Treasury to contribute $500 million to the Enterprise for the Americas Fund subject to the following conditions: that an agreement has been negotiated establishing the terms and conditions under which the Fund will operate, that two additional donors have agreed to contribute at least $500 million to the Fund, that the agreement has been transmitted to the Congress under procedures established pursuant to sec. 634A of the Foreign Assistance Act of 1961, and that a biannual report of the activities of the Fund be prepared and submitted to the Congress by the IDB.

Further, it (sec. 539(c)) sets forth the principal purposes for which U.S. assistance will be provided to the Fund for disbursement to eligible countries. Assistance from the Fund is to be provided for technical assistance in connection with domestic constraints to investment, for human capital development, and for private enterprise development.

In addition, the Senate amendment (sec. 539(d)) gives the Secretary of the Treasury one year to meet the conditions set forth in this section.

The House bill contains no comparable provision.

The conference substitute (sec. 832) deletes reference to the Foreign Assistance Act and instead amends the Inter-American Development Bank Act to add a new section (sec. 37) to that Act establishing the Enterprise for the Americas Investment Fund.

Sec. 37(a) of the conference substitute is identical to the Senate amendment (sec. 539(a)).

Sec. 37(b) of the conference substitute is similar to sec. 539(b) of the Senate amendment but deletes reference to Sec. 634A of the Foreign Assistance Act of 1961 as it pertains to the submission of the agreement establishing the IDB Fund to the Congress for review. It provides for the agreement to be transmitted to the Chairman of the House Banking, Finance and Urban Affairs Committee rather than the Speaker of the House. It also provides for the IDB to prepare and make public an annual report on the operations of the IDB Fund.

Sec. 37(c) of the conference substitute is similar to sec. 539(c) of the Senate amendment. In addition, the conference substitute adds a fourth purpose for the IDB Fund: to support the development and strengthening of host country capabilities for ensuring the environmental soundness of investment activities. It also requires that no more than 40 percent of the annual disbursements from the Multilateral Investment Fund can be used for any single use authorized in subsection (d).

While recognizing the need to use disbursements from the Enterprise for the Americas Investment Fund to allow nations to reform their investment regimes, the committee of conference also believes that substantial disbursements from the Fund should be used to address social problems generated in the context of such investment reforms. In particular, the committee of conference wishes to state clearly its belief that, in addition to re-training assistance, substantial disbursements from the Fund should be for the purpose of designing social safety nets, including assistance for food, housing and other social needs which may occur with the implementation of investment reforms.

Sec. 37(d) of the conference substitute is similar to sec. 539(d) of the Senate amendment, with a change in the time period within which the Secretary of the Treasury must meet the conditions set forth in the section from one to two years.

The conference substitutes (sec. 37(e) mandates that the Secretary of the Treasury instruct the U.S. representatives to the Fund to vote against any activities of the Fund that may have a significant adverse impact upon the environment.

The conference substitute (sec. 37(f)) sets forth the eligibility criteria which must be met for a country to receive U.S. monies from the IDB Fund: It must be a Latin American or Caribbean country; have concluded various agreements with the IMF, World Bank, IDB and private creditors, as indicators that appropriate economic policies are being pursued; have a democratically elected government; not have a government which harbors or sponsors international terrorists; be cooperating on narcotics matters; and have a government (including its military and security forces) which respects human rights.

The conference substitute (sec. 37(g)) provides for the President to make eligibility determinations subject to the criteria specified in sec. 37(f).

The committee of conference has agreed to eligibility criteria that determine which countries may receive disbursements of United States assistance from the Enterprise for the Americas Investment Fund. However, concern was voiced by some members of the conference that some of these criteria could adversely affect on-going efforts to obtain contributions and finalize negotiations to establish the Fund on a multilateral basis. If the eligibility criteria agreed to during the conference prove to be an obstacle to the successful completion of such negotiations, the committee of conference has agreed to seek to alter expeditiously these criteria, through legislative action by the Senate Committee on Foreign Relations and the House Committee on Banking, Finance and Urban Affairs.

The committee of conference believes, as a general proposition, that nations seeking to use the resources of the Enterprise for the Americas Investment Fund should have reached agreement with their commercial creditors concerning any outstanding issues related to the repayment of commercial debt. However, the committee of conference expects that this requirement be applied in a balanced manner. In particular, the committee of conference believes that, if this requirement is used unfairly as bargaining leverage by commercial creditors against a debtor country, the President should not deny such country access to the Fund solely because an agreement between such country and its commercial creditors has not been concluded.

Mr. CRANSTON. Mr. President, the International Cooperation Act of 1991, so ably managed by my dear friends and colleagues the distinguished chairman of the Foreign Relations Committee, Mr. PELL, and the senior Senator from Maryland, Mr. SARBANES, contains many important and groundbreaking provisions.

Today, as we prepare to mark the 499th anniversary of the arrival of Europeans to our hemisphere, I take particular pride that the foreign aid bill—soon to be sent to the President—contains an important provision designed to strengthen the rights and well-being of the some 40 million people whose ancestors were already here when Christopher Columbus came to the Americas.

Section 755 of the bill, entitled "Indigenous Peoples in Latin America and

the Caribbean," grows out of a larger proposal I made earlier this year when I introduced the "Pan-American Cultural Survival Act of 1991." That bill was designed to help, on the eve of the 500th-year anniversary of Columbus' arrival, ameliorate the centuries-long history of neglect and violence visited upon this hemisphere's earliest inhabitants.

Section 755 calls on the Secretary of State to prepare, in cooperation with the Agency of International Development, a report on the status and treatment of indigenous peoples in Latin America, to be submitted to Congress on February 28 of each year. Significantly, this date is also the day which the State Department is to issue its annual human rights report.

Section 755, according to the bill language approved in conference between the House and the Senate, should contain all available information about the promotion and protection of civil, political, social, cultural, and economic rights and traditions of indigenous peoples in the hemisphere.

The bill also requires the report to delineate the extent to which indigenous peoples are able to participate in decisions affecting the protection of their lands, cultures, and traditions, and the allocation of natural resources. And it says that it must also detail the steps the United States has taken to ensure that U.S. development assistance programs promote the well-being of indigenous peoples.

The importance of this section in setting the agenda for this vital human rights and democratization issue cannot be overestimated. Currently, indigenous peoples in the Americas sit at the lowest rung of their countries' social, political and economic ladder. Hundreds of tribes and scores of indigenous languages border on extinction.

As ideological conflict and political violence appear to be receding from many regions in our hemisphere, the issue of the rights of native peoples becomes the new frontier for those concerned with human rights, the environment, and issues of democratic consolidation.

Mr. President, in 1976, the late Senator Hubert Humphrey and I worked together to make mandatory the provisions for section 502B of the Foreign Assistance Act of 1961.

The enactment of this legislation, a group effort to which many contributed, helped provide for a revolution in human rights in U.S. foreign policy and, therefore, the world. One of its provisions, of course, was the State Department's annual human rights report. Section 755 is a clear descendant of that legislation.

Mr. President, if I may, I would like to ask my friend, the senior Senator from Rhode Island, a few questions about the section, and to thank him for his help and support in this effort.

Mr. PELL. Mr. President, let me just thank my friend and colleague on the Foreign Relations Committee, Mr. CRANSTON, for his remarks. I think this effort, section 755, does represent—as he stated—an important continuity to the work initiated with the 502B legislation.

I am certain we will be hearing a lot more about this issue as we approach Columbus Day 1992. Section 755 is a very constructive and positive way to begin some hard thinking on what might be done for and with the native peoples of this hemisphere.

Mr. CRANSTON. I thank the Senator for his remarks. I would like to ask him if my understanding—that the report required in section 755 will deal on a country-by-country basis with the status and condition of native peoples in Latin America and the Caribbean—is correct.

Mr. PELL. That is correct.

Mr. CRANSTON. It is my understanding that the date of submission of the report, February 28, was chosen so that the date for compliance with section 755 is the same as the release of the annual State Department human rights report. The simultaneous release of the two reports, I would hope, will give additional standing and emphasis to the plight of millions of native peoples.

Mr. PELL. The Senator makes a good point, and that was certainly my understanding of why the February 28th date was chosen. Let me just say that section 502B has been one of the most important tools we have to work with in ensuring the promotion of American concepts and values around the world. Section 755 is worth continuation of that effort.

Mr. CRANSTON. Mr. President, I would like to point out that the language of section 755 also requires reporting on the economic rights and traditions of indigenous peoples.

Recently Richard Schultes, a noted ethnobiologist from Harvard University, gave a cogent sample of one aspect of these rights and traditions, which is the promotion and protection of indigenous knowledge. According to Schultes:

> The accomplishments of indigenous peoples in learning plant properties is a result of a long and intimate association with, and utter dependence on, their ambient vegetation. This native knowledge warrants careful and critical attention on the part of modern scientific efforts. If phytochemists must randomly investigate the constituents of biological effects of 80,000 species of Amazonian plants, the task may never be finished. Concentrating first on those species that people have lived and experimented with for millennia offers a short cut to the discovery of new medically or industrially useful compounds.

Mr. President, as a recent cover story on indigenous peoples in Time magazine suggested, these issues—the promotion and protection of indigenous knowledge—is one of the cutting edge issues of scientific progress and human advancement in our time.

For example, information on 119 known useful plant-derived drugs were analyzed to determine how many were discovered because of traditional knowledge on the plants from which they were isolated.

Analysis of plant-based products on today's market shows that 74 percent have the same or related use in Western medicines as originally used by indigenous curers. Yet, if selected randomly, estimates are that only one in 10,000 to 35,000 plant samples will yield a medically useful activity.

As many as 25 percent of prescriptions in the United States contain natural products extracted from plants. Including medicines sold over the counter and herbals, the estimated value of plant-based drugs sold in the United States was $11 billion in 1985.

Yet, today there exists no consistent or conclusive international program to monitor ownership of, or protection for, traditional knowledge. Consequently, the invaluable contribution of indigenous peoples in use of their plant and animal resources remains left uncompensated.

By failing to acknowledge and place value on this knowledge, the United States is overlooking a critical opportunity for sustainable development.

It could promote the conservation of biological resources in situ by ecosystems, sustain the livelihoods and lifestyles of indigenous cultures, and equitably distribute the benefits of development to the technicians who have discovered, maintained and developed this knowledge within their cultures for generations.

I, therefore, would hope that the language, "economic rights and traditions of indigenous peoples," would take these vital issues into account.

This might be done, if, perhaps, not in an exhaustive way, at least in a way that delineates their importance for indigenous peoples in each of Latin America's republics and those of the Caribbean of the promotion and protection of indigenous knowledge.

I also believe that in outlining the issues involved, and how they play out in each country, the report could provide an important reference for what has been done, and what needs to be done, both nationally and internationally, so everyone benefits from this vast, but quickly depleting, natural reservoir of knowledge.

Mr. President, I would like to ask the Senator from Rhode Island if it is his understanding as well that the phrase "economic rights and traditions" encompasses the concerns I have just mentioned.

Mr. PELL. That is my understanding, too.

Mr. CRANSTON. I thank the Senator for his patience and help in establishing congressional intent concerning this legislation. I look forward to his insight and guidance as we move to-

ward the next step in dealing with this issue.

Mr. President, the report requirement contained in section 755 comes on the heels of the release by the Congressional Research Service of an excellent work, "Latin American Indigenous Peoples and Considerations for U.S. Assistance," prepared at my request.

The CRS study focuses on three countries in Latin America where indigenous peoples form large, and largely underrepresented, populations in recently-emerging democracies—Bolivia, Ecuador and Guatamala. I recommend this path-breaking work to both my colleagues and to those at State and AID who will be responsible for preparing the hemisphere-wide report mandated by section 755.

I would also like to take this opportunity to thank the CRS staff who worked on the report for their important contribution. They are: Nine M. Serafino, Mark P. Sullivan, Maureen Taft-Morales, Curt Tarnoff, Roger Walke, and Sherry B. Shapiro. Their unique perspectives inform and enliven the debate on this issue, and I am sure that the report will be used as an important tool for study for some time to come.

Mr. President, I recently shared copies of the CRS report with top officials of AID, the National Endowment for Democracy, and the National Democratic Institute for International Affairs [NDI]. I ask unanimous consent that their reactions to the report be printed in the RECORD, as well as an excellent article by foreign service officer Thomas A. Shannon, which appeared in the September issue of the Foreign Service Journal.

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

AGENCY FOR
INTERNATIONAL DEVELOPMENT,
Washington, DC, August 6, 1991.

Hon. ALAN CRANSTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR CRANSTON: Thank you for your letter of July 15, 1991, concerning the Congressional Research Service (CRS) report, Latin American Indigenous Peoples and Consideration for U.S. Assistance. Dr. Roskens has asked me to reply on his behalf.

CRS has prepared a thoughtful analysis of historic and present, social and political difficulties faced by the indigenous peoples of Latin America. The Agency for International Development (A.I.D.) shares your concern for these peoples, their survival, culture and future.

As noted in the study, native peoples of Latin America and the Caribbean (LAC) have suffered serious offenses to human, civil and political rights. It is an important U.S. policy objective to support these rights for all individuals. Experience shows that countries governed through a democratic system maintain a responsiveness to the needs of its people. A.I.D. works throughout the LAC region to strengthen elements contributing to strong democracies. Many efforts, including the strengthening of educational, judicial, and electoral systems, are identified in the report.

A.I.D.'s family health and training programs also emphasize meeting needs of indigenous poor in both rural and urban areas. Rural development, agricultural training, technical services, and environmental conservation programs, in cooperation with the host government, provide direct benefits to many indigenous groups in the LAC region.

In addition to focusing on specific needs, A.I.D. directs assistance designed to support broad-based sustainable economic growth which will lead to more jobs and greater opportunities for indigenous peoples in the LAC region.

We appreciate your forwarding a copy of the CRS report for our review. As the 500th anniversary of Columbus' arrival approaches, it is imporant that we continue to focus on the needs of the indigenous peoples in the Western Hemisphere.

Sincerely,

R. RAY RANDLETT,
Assistant Administrator
for Legislative Affairs.

NATIONAL ENDOWMENT FOR DEMOCRACY,
Washington, DC, July 31, 1991.

HON. ALAN CRANSTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR CRANSTON: Thank you for your letter of July 23, in which you urge increased Endowment support for the political development of indigenous groups in Central and South America. I found the accompanying Congressional Research Service study to be highly informative, and have passed it on to our Latin American program staff for their review.

In its worldwide grant program, the Endowment takes into account national and cultural diversity which exists within sovereign states as well as among them. In Latin America, the Endowment seeks to be as responsive as possible to requests for local groups and to assist in their efforts to further democratic development through the peaceful mobilization of forces for genuine political participation and national self-expression. While we are sensitive to the need for greater support for programs that promote the well-being of Latin America's native people's, our program plans are largely dependent on the quality and quantity of proposals received. To date, very few proposals from Latin American movements representing the concerns and aspirations of nationality groups or ethnic minorities have come to our attention. However, as noted in the CRS report, such groups are often the beneficiaries of a number of NED-funded democratic civic education programs in the region. We would certainly welcome proposals directly from democratic indigenous organizations for promising initiatives in this area.

I appreciate your continued support and interest in the Endowment, and I hope that the future will provide us with new opportunities for enhancing the role of ethnic cultures in the Latin American democratic process.

Sincerely,

CARL GERSHMAN.

NATIONAL DEMOCRATIC INSTITUTE
FOR INTERNATIONAL AFFAIRS,
Washington, DC, August 8, 1991.

HON. ALAN CRANSTON,
U.S. Senate,
Washington, DC.

DEAR ALAN: Thank you for a copy of your CRS study analyzing the impact of U.S. foreign assistance on native Americans living in Central and South America.

As you know, NDI has been working in Guatemala and has noted with concern the political and economic marginalization of the indigenous population. The enclosed report on the 1990 elections in Guatemala notes as one of its summary conclusions the lack of incentives for indigenous groups to participate in national political life. Unhappily, the CRS report concludes that such opportunities are limited throughout Central and South America.

NDI is very interested in continuing its program in Guatemala and it is our hope that a portion of this work can focus on the serious problems facing the indigenous population. Democracy in Guatemala (or Bolivia or Ecuador) will not be completely realized until this portion of the population is included in the political process on equal terms.

Best personal regards.

Sincerely,

J. BRIAN ATWOOD.

[From the Service Journal, September 1991]

DIPLOMACY'S ORPHANS: NEW ISSUES IN HUMAN RIGHTS

(By Thomas A. Shannon)

We are living through a period of quiet but profound change in the international human rights agenda, which will pose new diplomatic challenges to the United States. While the principal human rights issue of the 1980s—political repression—will remain our primary human rights concern through this decade, several new issues have emerged that do not easily fit into our traditional understanding of human rights. Nevertheless, the United States must come to terms with these "new" issues, or lose what influence it has over the human rights agenda.

CHILDREN OF POVERTY

First on the list are the rights and welfare of children. Vigilante killings of street children in several Latin American countries have highlighted an explosive Third World social problem that has been declared a human rights issue by such groups as Amnesty International and Americas Watch. Rapid urbanization and the breakdown of family structure under grinding poverty have turned millions of children out onto the streets of Latin America, Asia, and Africa. Deprived of normal care, feeding, and education, many of these children take to petty thievery, prostitution and drugs. Lack of social services and creaky judicial systems have provided few institutional means to deal with this problem. Consequently, off-duty policemen and businessmen in some cities have taken matters into their own hands, forming extrajudicial groups that harass, intimidate, and kill street children.

The reemergence of death squads in some Latin American cities, but this time without the political overtones of the past decade, underscores the precarious existence of many of the world's children, who neither have a voice in government nor wield economic or political clout. The recognition that many nations are failing their children prompted the 1990 UN-sponsored World Summit for Children, the largest-ever gathering of heads of state. The World Convention on the Rights of the Child, adopted unanimously by the UN General Assembly in 1990, set benchmarks by which nations' treatment of children can be judged.

CULTURAL SURVIVAL

Second is the right of indigenous people to retain their cultures and ways of life. His-

torically, this issue has been treated as an anthropological problem. It achieved human rights status only recently, when Indian cultures were violently and systematically repressed by central governments, as in the cases of the Guatemalan Maya and Nicaraguan Miskito during the 1980s.

This understanding is changing. Responsibility for protecting primitive Indian groups has devolved upon governments, as publics acknowledge that some groups face cultural and physical extinction unless their contact with the modern world is better controlled. Although some governments are reluctant to accept this responsibility, international human rights organizations are not reluctant to assert it. Amnesty International's interest in the fate of Brazil's Yanomami Indians—a tribe decimated by disease and the depredations of their homeland by timber poachers, ranchers, and miners—is evidence that the issue has entered the mainstream of the human rights community.

Environmental organizations, too, have expressed interest in the fate of indigenous peoples, adding political urgency to the issue. Environmentalists know that most indigenous groups depend for their survival on their habitat; the economic development of their traditional lands is a direct and immediate threat to them. The melding of human rights and environmental concerns is a new and politically powerful development which will ensure that the plight of many indigenous peoples is well publicized throughout Europe and North America.

STRUGGLE AND FLIGHT

The last item on the emerging human rights agenda is the rights of refugees and other displaced persons. Again, the problem is not a new one; what has changed is our understanding of it. In the past, refugee rights have been viewed largely as a humanitarian issue, acquiring a human dimension only when the displaced persons were political exiles. However, the suffering inflicted on refugee groups in the Middle East, Southeast Asia, Central America, and Africa—either through political manipulation, denial of relief supplies, or outright attack—has highlighted the central human rights aspect of this problem. America's own strapped resources and public "compassion fatigue" make uncertain the U.S. ability to continue to respond to these man-made disasters. The result is a growing consensus that the international community must hold to account governments that provoke, countenance, and manipulate the mass displacement of human beings.

The emerging human rights agenda poses a tough diplomatic challenge. The issues on the agenda reflect deep-rooted economic, social, and political problems that admit of no quick fixes. Unlike political violence, these issues also are not amenable to the customary finger-pointing and condemnation. This is not to diminish responsibility for human suffering, but to recognize that in most cases, harsh rhetoric gives reluctant governments an excuse to resist international pressure.

Unless handled adroitly and in good faith, human rights issues will drive a wedge between the developed and developing worlds. Third World nations are already nervous about what they perceive as the erosion of the traditional concept of state sovereignty, which provided them some measure of protection from outside interference. While international interest in human rights protection is legitimate, it must keep governments focused on human rights and not permit them to slide off the point by claiming that national independence is at stake.

WAYS AND MEANS

How to accomplish this? A modest beginning would include the following: first, a reexamination of the structure of the State Department's annual human rights report (see page 33). The format needs to be revised and expanded to include these new issues. Since much of the human rights report's structure is legislatively mandated, such a review would probably require consultation with the Congress.

Second, redouble U.S. efforts in multilateral human rights fora. Such fora are a useful means to engage countries that would otherwise resist bilateral approaches on human rights. For such fora to be effective, however, they must focus on real human rights issues. Efforts by some Third World nations to introduce extraneous issues, such as national economic development as a human right, or to include as fora members known human rights abusers, such as Cuba, must be resisted. Finally, we must look for creative ways to express our willingness to help countries struggling to improve their human rights records—for instance, Administration of Justice programs that help train police and courts in juvenile justice. Although such programs would have only a limited impact, they would identify us diplomatically as part of the solution and not part of the problem.

While efforts to provide protection to politically marginalized and vulnerable groups is a marked expansion of our traditional human rights policy, it is in keeping with its overall purpose. The history of the 1980s should be evidence enough that human rights issues can be ignored only at our own risk.

(Thomas A. Shannon is special assistant to the ambassador at Embassy Brasilia.)

Mr. CHAFEE. Mr. President, I am voting in favor of the legislation before us today, the International Security Cooperation Act of 1991. I am supporting this bill because it contains two important provisions: It overturns the Mexico City policy and restores funding for the U.N. Fund for Population Assistance [UNFPA]. These two issues are crucial in our efforts to make quality family planning services available to women all over the world.

Mr. President, I have been involved for many months now in the fight to overturn HHS regulations which prohibit federally funded family planning clinics from providing any information about abortion to pregnant women, even when a woman asks for that information. These regulations have been dubbed the gag rule because they put a gag on the mouths of health professionals and prohibit them from talking about certain subjects, namely, abortion.

The Mexico City policy is the international gag rule. This policy began in 1984 and it prohibits U.S. population assistance funds from going to indigenous private family planning agencies overseas that provide information about abortion with private and non-U.S. funds. In many countries all over the world, abortion is a legal option, yet family planning clinics which receive U.S. funds must either deny patients information or forego their critical U.S. dollars.

This policy undermines the purpose of our international family planning program. The program is designed to increase access to quality family planning services, yet the Mexico City policy does just the opposite. It harms the very people we are attempting to help through our international population assistance program. Much of this assistance goes to underdeveloped, Third World countries to help the poorest of the poor. I am pleased that the measure before us today overturns this cruel and discriminatory policy.

I am also pleased, Mr. President, that this bill restores funding for the U.N. Fund for Population Assistance [UNFPA]. UNFPA is the largest multilateral organization providing family planning and population assistance in the world. More than 141 developing countries receive family planning assistance from the UNFPA.

The United States has withheld its contribution to the fund for the past 6 years because China allegedly has a policy of coerced abortion and involuntary sterilization. But the fact is there is no evidence that UNFPA provides support for the programs in China. In 1985, the same year we stopped giving money to the fund, the Agency for International Development [AID] conducted a study on this issue and determined that UNFPA "neither funds abortions nor supports coercive family planning practices through its programs."

Mr. President, I do not support any so-called family planning policy which would coerce women to have abortions, nor would I support a policy which forces women to bear children against their will. The provision included in the bill before us today contains many safeguards to ensure that the money we contribute to the UNFPA will not go toward supporting such policies as heinous as forced abortion and sterilization. It states explicitly that the funds will not be made available for programs in the People's Republic of China and that the United States funds will be kept separately and monitored by the United States Ambassador to the United Nations.

Our contribution to the UNFPA is critical, and I am pleased that this bill restores funding for this worthwhile program.

There are provisions in this bill, however, that cause me serious concern—so much so that were it not for the UNFPA section, I would vote against this measure. One such provision is section 124, which deals with the purchase of U.S. goods and services and cargo preference. The bill, approved by the Senate, required those countries receiving more than $10 million in U.S. cash assistance to buy an equivalent amount of U.S. goods and services, and

to ship at least half of those goods to their countries on U.S.-flag carriers with a cap on U.S. shipping rates of no more than 30 percent above average international rates.

This new requirement is bad news. If we place such restrictions on our cash assistance, not only will we hurt the very Third World countries to whom we are trying to extend some help, but we also will hurt the effectiveness of our cash transfers as a policy tool. The countries that would be affected by this provision already import a higher value of U.S. goods than the amount of the cash assistance we give them. As a result, this provision would simply force those countries to use U.S.-flag vessels. That would have two negative results—a double-whammy.

First, according to the Agency for International Development [AID], the shipping rate for U.S.-flag carriers is significantly more than the competitive international shipping rate. That means the recipient countries will be forced to pay out more money to ship our goods than they would have paid in the competitive market. And second, that in turn means that the recipient countries will end up taking a large share of the very cash assistance we have given them to pay for our higher shipping rates. That is money that might have gone to our farmers for more commodity purchases, but will end up going toward U.S. shipping costs.

It does not take a rocket scientist to realize why this provision will reduce the effectiveness of our tool of foreign assistance—why would any country want to take assistance with so many strings attached? It is not a good deal for them.

I had hoped that the conferees would drop this cargo preference provision. Instead, the conference changed the terms of the new requirement. Now, the recipient country need only spend an amount equal to 75 percent—by fiscal year 1996—of our cash aid on U.S. goods. Now, the requirement does not apply to countries receiving less than $25 million, rather than $10 million. And finally, instead of the 30-percent cap on U.S. shipping rates, the conference report requires 50 percent of all U.S. goods to be shipped on U.S.-flag vessels "to the extent such vessels are available at fair and reasonable rates."

Mr. President, those are not much in the way of changes. They do not address the problems caused by this new requirement; some details are changed, but the essence is the same.

Also of concern is the bill language which changes the manner in which the Foreign Military Financing [FMF] Program is administered. As presently crafted, the bill would require that aid to Greece, which heretofor has consisted primarily of loans, be converted to 40 percent grants in fiscal year 1992 and 70 percent grants in fiscal year 1993. This poses a problem for two important reasons—first, it ties the hands of the administration by earmarking a substantial portion of the program. Second, because of overall limits on the program, drastically increasing the earmarked aid for one country, of necessity, means that aid for numerous other countries will have to be reduced.

As it stands now, four countries—Israel, Egypt, Turkey, and Greece—receive the lion's share of FMF funds. When two other priority nations—Pakistan and the Philippines—are added, there is only a small amount left over for all the rest of the world. In 1992 the administration would have to cut $75 million elsewhere and in 1993 $180 million. Since several countries receive only a small grant now, many of these nations would have to be eliminated from the program entirely to make up this shortfall. I believe the administration needs to have the power to make the determination of where this money will best advance American interests. As such, I am opposed to passage of this portion of the bill.

In closing, Mr. President, I would say that I am distressed about certain major provisions of this bill. At the same time, I believe very strongly that the Mexico City policy and the UNFPA should be resolved; indeed, were it not for these provisions, I would be inclined to vote against this bill. So, for the sake of these family planning issues, I will vote for this measure today.

Should the President veto this bill, I am prepared to reconsider my views and again weigh the good and the bad features of this measure.

Mr. DURENBERGER. Mr. President, I rise to oppose final passage of the foreign assistance authorization conference report. I do so for the very same reasons I voted against the authorization bill when it came before the Senate in July.

I strongly object to those provisions that overturn the crucially important United States-Mexico City policy on foreign assistance for family planning programs. I also oppose the provisions that provide funding for the U.N. Family Planning Agency, which is also involved in abortion services.

Additionally, the provisions expanding cargo preference regulations are completely unacceptable. The Senate-passed provisions were bad enough, but the conference committee inserted House language that only made matters worse.

President Bush has indicated that he will veto this bill because of these various provisions, and I support him in that decision.

As many of my colleagues and constituents know, the 1972 Foreign Assistance Act forbids the use of U.S. public funding for abortions in foreign countries. The Mexico City policy of 1984 expanded this restriction, forbidding United States funding of any foreign organization that performs or provides counseling services for abortion.

I am strongly opposed to the use of taxpayers' money, directly or indirectly, to promote abortion in any way.

Mr. President, I must also object to the cargo preference provisions of the bill, which by any reasonable definition, are anti-farmer and anti-American jobs. During the Senate debate on the original authorization bill, I cosponsored an amendment, which did not prevail, that would have struck the provisions that require 50 percent of U.S. goods purchased through the foreign aid program be shipped on U.S.-flag vessels.

Current cargo preference provisions are bad enough, but the measure passed by the Senate and made worse by the conference expands those provisions, compounding an already unsatisfactory system.

According to AID, it costs almost $30 more per ton to ship on U.S.-flag vessels than it does to ship on foreign-flag vessels. AID indicates that in 1990, that translates into $21.6 million worth of goods that were not purchased from suppliers in each and every one of our States.

To put it as succinctly as possible, Mr. President, each dollar spent for the more expensive U.S.-flag carriers is one less dollar spent to purchase U.S.-made products, especially agriculture products.

Mr. President, this is an important piece of legislation, and I want to congratulate my colleagues on the Foreign Relations Committee for bringing the foreign assistance authorization bill this far. It makes a valuable contribution to the foreign assistance process in this country.

It had been my hope that the conference committee would address and correct the problematic sections so that President Bush could sign the bill into law. But there are simply too many objectionable provisions. I will vote against final passage of this conference report and urge my colleagues to do so as well.

Thank you, Mr. President. I yield the floor.

Mr. GRASSLEY. Mr. President, It is regrettable that the House-Senate conferees ignored the explicit warnings of the administration when it issued its veto threats over various provisions of H.R. 2508, the International Security Cooperation Act of 1991. It is no wonder that it has been over 5 years since a foreign aid authorization bill has been enacted.

I share the President's concern about several of these provisions, and had thought that the conferees would strike them. One provision left in the conference report which drew the President's attention in his veto message is that which expands cargo preference, the backdoor, hidden maritime

subsidy which like a parasite, latches onto the lifeblood of other programs—such as those included in this bill, which are aimed at feeding the world's starving. The maritime industry and unions of this country realize they can not withstand the scrutiny of having to come forth publicly to argue for the amount of subsidy they now receive, so they rely upon this backdoor approach provided by cargo preference. Cargo preference is virtually an open checkbook into Uncle Sam's bank account.

The cargo preference provision in this conference report is even worse than the earlier Senate passed provision which I, along with 41 of my Senate colleagues, strongly opposed. The Senate version allowed for the reimbursement of no more than 30 percent above what the competitive world rates would bear.

This conference report allows cargo preference to "the extent such vessels are available at fair and reasonable rates."

This standard defined as "fair and reasonable rates" is nothing new, and it has been proven time and time again to be a hollow, meaningless farce. Let me share an example of what our maritime industry views as fair and reasonable which was reported in the September 10, 1990, edition of U.S. News & World Report. The article, entitled "Unpatriotic Profits" follows: "The Pentagon is miffed at what it feels is profiteering by operators of two U.S. cargo ships. Because the Navy is required to use American bottoms before contracting with foreign-owned ships, it paid the two U.S. carriers $70,000 to send war materials to the gulf. The comparable foreign bid: $6,000."

Mr. President, our maritime industry believes that forcing American taxpayers to pay nearly 12 times above the world competitive rate is "fair and reasonable." I think not, and I believe that my Senate colleagues concerned about fraud and waste should be in agreement with me.

Mr. President, this conference report should be vetoed. It expands cargo preference beyond what was covered by the 1985 farm bill compromise, it reduces the amount of food and assistance we can direct to needy countries, it damages our competitiveness of our commercial exports, and it disadvantages U.S. ports not served by ocean-going U.S. ships.

Congress needs to go back to the drawing board on this foreign aid package, and for this reason, I oppose the conference report.

In addition, the conference report is a serious attack on the administration's international family planning programs that reverse reasonable and effective policies that have been in place for years. I support the President's strong opposition to these items.

On the other hand, there are a number of provisions in the bill that I strongly support including our firm support for Israel and other important allies around the world. I look forward to Congress modifying the bill to exclude the unacceptable provisions so that we can finally, after 5 years, get a foreign aid authorization bill signed into law.

Mr. McCAIN. Mr. President, after much consideration I must reluctantly vote against H.R. 2508, the International Cooperation Act of 1991. This past summer I voted for the Senate's foreign aid authorization bill. While I had serious reservations about the bill there were a number of provisions in it which I strongly support, and I voted for it in the hope that those provisions which I opposed would not be contained in the conference report we are now considering. My support for the bill was also partly premised on its inclusion of my amendment establishing an emergency border environmental fund with Mexico.

Unfortunately, Mr. President, although some of the provisions which I opposed were removed during conference, some others which gravely concern me remain in H.R. 2508. Of most concern, are the provisions in the conference report on the Mexico City policy and the earmarking of funds for the U.N. Fund for Population Assistance that clearly contradict the administration's antiabortion policy.

I might also add, Mr. President, that my amendment concerning the United States/Mexico emergency border environmental fund was dropped in conference thereby removing one strong incentive for my support of this bill. There are a number of other concerns raised in the administration's veto message which I share with the administration, and which I believe provide sufficient reason to reject the conference report.

Having said all this, Mr. President, I cannot help but admit to my lingering reluctance to oppose the report. As I have said, there are a great many provisions in this bill which deserve our strong support. There are provisions for aid to countries which I think strengthen many of our most important relationships with other countries, and which would substantially promote our shared vision of a new world order.

Moreover, I think the Senate Foreign Relations Committee and the managers of the bill deserve the commendation of the Senate for the hard labor and good faith which have characterized their success in bringing the bill this far. It is my sincere hope that if this conference report passes and is subsequently vetoed by the President that Congress will send the President a modified conference report absent the provisions which the President and I and other Senators oppose. I would welcome the opportunity to lend my strong support to such a measure.

Mr. DOMENICI. Mr. President, the time for discussion of this foreign aid conference report is very limited, but I want the record to show why I must vote against its adoption.

Since the last major foreign aid authorization was enacted in 1985, the world we live in has changed in ways no one could have foreseen. The most dramatic examples are the end of the cold war and the disintegration of the Soviet Union.

This country, too, has changed. We are much more aware now than in 1985 that domestic challenges should be our main focus. We are much more aware that we can ill afford the billions we borrowed to send abroad. There is much more skepticism about the usefulness of foreign aid today.

The managers of this bill worked hard. They gave the President some of the flexibility he requested. They deleted some obsolete provisions. Unfortunately, the conferees were unable to give any direction to our foreign aid programs. They didn't consolidate any old programs. This foreign aid bill continues to attempt to be something for everyone. In no way does it reflect the changes I just mentioned. It's old aid in a new package.

This 262-page bill lacks direction. It piles more new agencies, centers, and other institutions onto the bureaucratic mess we call foreign aid. It does nothing to convince the American people that foreign aid will benefit them, or, for that matter, substantially assist the new democracies that desperately need help. The new democracies, in fact, get very little attention here.

This bill evades decisions on help for the Republics of the former Soviet Union. It exempts an indefinite amount of Israeli loan guarantees from the dollar limits imposed on every other country, but it doesn't provide one penny of guarantees. Yet, some are being asked to vote for this measure because it supports the guarantees.

The main beneficiaries of this conference report are those who administer these programs: The contractors, the international agencies, the lobbyists, and the special interest groups. Some of these groups would actually receive tax dollars to educate the public on the benefits of their programs.

For these reasons, Mr. President, I must oppose this foreign aid conference report.

Mr. LIEBERMAN. Mr. President, I rise to support the conference report on H.R. 2508, the Foreign Aid Authorization Act. The conferees have done a fine job in forging a compromise.

I am particularly grateful for the efforts made by Senators SARBANES and McCONNELL and their fine staffs to ensure that my amendment, and the companion amendment of Senators BOREN, BENTSEN, BAUCUS, and BYRD, on trade and aid was included in the conference report. While the amendments were

changed somewhat, the basic purpose remained intact. This is a good first step toward getting AID more involved with developmentally sound capital projects.

Through capital projects, AID can help U.S. exporters with their efforts to capture markets in the more advanced developing nations and Eastern Europe. Exports remain crucial to our Nation's economic growth. Throughout the present recession, the one bright spot in the economy has been trade. Our exporters have kept the economy afloat. This is particularly true in my home State of Connecticut. In 1990 alone, State exports grew by nearly 18 percent. Exports provided 84,000 manufacturing jobs in the State and another 63,000 jobs in firms dependent on exporting. Close to 20 percent of the State's 6,700 manufacturers export compared to the national average of 12 percent. In short, Connecticut's economic future is tied to exports.

But the problem for Connecticut exporters, as well as exporters across the country, is how to remain competitive against increasing foreign competition. This competition used to be primarily from Germany and Japan, but that is no longer the case. The other dynamic Asian economies of Korea, Taiwan, Hong Kong, and Singapore are competing for global markets. And as Europe approaches 1992 and the final stages of European economic unity, the European Community [EC] is rapidly becoming a more potent economic force.

While it is not the role of the Federal Government to try to solve all the problems confronting our exporters, the Federal Government must work with the American exporting community to help them capture new markets and hold old ones. The lack of Government support for U.S. exporters has caused them to lose out to their competitors in valuable overseas markets, for sales of a wide range of products including computers and telecommunications equipment and projects. This means less jobs at home.

According to Ambassador Ernie Preeg, a former chief economist at AID and one of the foremost experts on this issue:

> Current market for capital goods transaction * * * which is inaccessible to U.S. exporters because of other governments, is $10 to $12 billion per year, resulting in an estimated $2.4 to $4.8 billion annual loss to U.S. exports. Future U.S. export loss in high-growth developing country markets could be far greater.

Capital projects are those projects that are integral to building a nation's infrastructure: Projects relating to telecommunications, transportation, environmental management, and the building of power systems. Infrastructure development is crucial to the building of an economy. Without a sophisticated infrastructure, a market cannot develop, and a nation cannot prosper.

My amendment and the one introduced by Senators BOREN, BENTSEN, and BYRD, was really about one thing: Using foreign aid to help not only the aid recipient, but also the U.S. economy by emphasizing capital projects in our foreign aid programs. When AID funds a capital project in our foreign aid programs. When AID funds a capital project in a developing nation, then that means that American products will be used in the building of the project.

For instance, if AID funds a road in Indonesia, American manufacturers of heavy machinery will sell their equipment to the Government of Indonesia to aid in the building of that road. Our engineers can help to design it. Our AID dollars will, therefore, be used to help create jobs back home. Traditional development projects are not often capital intensive, which means that there is less of an opportunity for our exporters to sell their products—capital products such as heavy equipment—than there would be if we focussed on infrastructure development programs.

In order to achieve the goal of jobs at home and development overseas, my amendment put special emphasis on AID as a source of funding for capital projects by establishing a Capital Projects Office within the Private Enterprise Bureau at AID to work with other AID bureaus in putting together capital projects that are developmentally sound but also beneficial to our exporters.

My amendment was merely seeking to build on work already being done by AID. In testimony before the House Foreign Operations Subcommittee earlier this year, Henrietta Holsman Fore, an assistant administrator at AID, made a strong case for the usefulness of AID involvement in capital projects. She said:

> The development rationale for capital projects is compelling. Capital projects help build strong economies by providing the basic infrastructure needed for commerce and industry. * * * They also address specific developmental needs. * * * Capital projects provide employment.

We do not emphasize capital projects as part of our foreign assistance programs nearly as much as the other G–7. We tend to stress basic development assistance. For example, over 60 percent of bilateral aid from Japan and Italy involves capital projects, as compared to 14 percent for the United States. This is not to say that we should not continue to emphasize humanitarian assistance, but if as Ms. Fore indicates, capital projects are good for development and American exporters, then there is no reason for us not to be doing more of these projects.

AID has been working hard to get more involved with capital projects. Average AID spending on capital projects for the last few years has been between $500 and $600 million. Unfortunately, projections for this year fell below $500 million to about $420 million. We need to offer more support for capital projects, and the Capital Projects Office will help to guarantee a long-term commitment toward pursuing these projects.

If we do not institutionalize support for capital projects through the creation of a special office, and if we do not put in place a tied program with real financial support behind it, then our exporters will continue to lose markets, and we will lose jobs here at home. We need to create a Capital Projects Office so that our exporters will know that we are with them not merely this year and next but for the long haul. The Federal Government often complains about the short-term focus of the business community, but we are too often guilty of the same shortcoming. We need to develop a long-term strategy in helping our exporters.

There was a time in our Nation's recent history when trade was considered to be a foreign aid program for our friends and allies. After World War II, we developed a world trading system that was designed to give foreign nations access to our market while allowing them to protect their own. Well, this system worked—too well. Now we run trade deficits that are out of control.

In a recent study on aid to the Philippines, Ambassador Preeg summarizes the related problem of how we view our foreign aid programs,

> The central issue for U.S. foreign economic assistance * * * is how to reconcile short-term foreign policy objectives with longer-term support for development and strengthened economic relations with developing countries. A case is made—in his study—to separate the two more clearly and to place greater emphasis on the economic dimension.

This complements Ambassador Preeg's thesis from an earlier study on tied aid where he makes a strong case argument against the Federal Government's policy of using scarce financial resources to support noneconomic objectives that have little commercial value.

We should listen to these arguments and refocus our foreign assistance programs so that they are more reflective of the changing global economy and the need to help American companies keep their ground against powerful foreign competitors.

We have to take control of our economic destiny, and one way of achieving this is by eliminating our trade deficit. There are things we need to do at home to achieve that end, but there are things that we must do abroad as well. One of those is to get the Government behind our exporters. A good place to start is by supporting export financing programs. The Lieberman amendment and the companion amendment intro-

duced by Senators BOREN, BENTSEN, BAUCUS, and BYRD contained in this conference report sends a positive signal to our exporters that we are serious about helping them.

Mr. COATS. Mr. President, I plan to vote against the foreign aid conference report and want to make my reasons for this clear. There has not been a foreign aid authorization bill since 1985. I support the efforts of my colleagues to pass a bill which is enacted into law this year, but the bill, as it is, is unacceptable.

Several provisions included in the legislation make the bill unacceptable. I oppose the cargo preference provision contained in the bill. This language would make U.S. exports more expensive and less competitive, and give an unfair disadvantage to States like Indiana because ocean-going flag ships are not serving the ports in the Great Lakes region. The language added to the bill under foreign military financing is unduly restrictive as well. I believe that the President should be given utmost flexibility in making these decisions.

I also oppose the language which would provide funding to the United Nations Fund for Population Assistance, a program which has been involved in China's coercive abortion policy. In addition, the bill overturns the longstanding Mexico City policy, and thus would allow United States funding to go to nongovernmental organizations which promote or perform abortions as a method of family planning. I am strongly opposed to these provisions which are contrary to President Bush's antiabortion policy.

There are some good things in this bill, Mr. President, most notably, the continued assistance to Israel. I strongly support the bill's language, providing $1.2 billion in economic support and $1.8 billion in foreign military financing assistance. Israel is an important ally of the United States and the assistance provided in this bill indicates our continued strong support for Israel.

President Bush has indicated that he will veto the bill for the reasons I have described. I urge him to veto it and send it back to the conferees quickly, that they strip these irresponsible provisions and send it back to the Senate, so that we can get a foreign aid bill passed this year.

Mr. METZENBAUM. Mr. President, today the Senate considers the first foreign aid authorization bill since 1985 that may have a chance of becoming law. For 6 years, foreign aid bills have been stonewalled under threat of veto, or vetoed after passage. For 6 years Congress has been denied its role in the foreign aid authorization process. Most of the time, the bill was vetoed on rightwing ideological grounds:

Sometimes the problem was military aid to Central America.

Sometimes the problem was covert aid to insurgencies.

Sometimes the problem was human rights.

But most often, the problem was family planning. No other issue has driven foreign policy ideologues more over the past decade than family planning.

Mr. President, it appears that this bill too will fall victim to the "family planning veto".

I'm not talking about abortion: I'm talking about family planning—contraception; counseling; or ob-gyn services.

Responsible international organizations have promoted family planning in less-developed countries for many years. The United States used to be a key player in these efforts. For example, the United States was the largest donor to the U.N. fund for population activities from its creation in 1969, until 1985. Then—zero: A cutoff. The United States went from supporter to spoiler. No foreign aid authorization bill that included family planning funds could pass the Congress without a two-thirds majority. Under this foreign aid "new math," a simple majority wasn't good enough: We needed a super-majority. Congress' role in foreign aid policy was held hostage by administration ideologues and their rightwing antiabortion allies.

Mr. President, the population explosion is literally the single greatest threat to the world's future.

The menace of global nuclear war has taken second place to the threat of overpopulation. It is tragic that U.S. action on this crisis has taken second place to politics.

President Bush came into office appearing less ideological about foreign policy: Who wouldn't be?

The Reagan policy on Contra aid was bankrupt;

Gorbachev and Yeltsin had remade Reagan's "evil empire." It's tougher today to play the ideological game in foreign relations than it has been in years past.

And, of course, President Bush is a foreign policy expert.

Mr. President, one would think that a foreign policy expert would not let his world outlook be held hostage to partisan ideology.

One would think that a foreign policy expert would not let political zealotry take precedence over action on the population crisis.

One would think that such a President would stand up to the high priests of conservative ideology.

But Mr. President, it appears, once again, that family planning may be the downfall of the foreign aid authorization bill.

Mr. President, the Committee on Foreign Relations has produced a good bill. It addresses the new world order. It provides congressional input to the foreign policy process. It is in keeping with the Congress' constitutional mandate in foreign policy.

The bill also provides funds for international family planning: Some $300 million out of a $12.5 billion bill.

Primarily for this reason, the entire bill must fall. The State Department has strongly recommended that the bill be vetoed.

Mr. President, George Bush has used the veto 22 times in the 102d Congress. He used it 39 times during the 101st Congress. Most often, the target of Bush's veto pen was a piece of domestic legislation—family leave, child care, extended unemployment benefits. We're accustomed to President Bush's domestic agenda: Veto, veto, and more veto.

But now the veto has spread to even the President's cherished foreign policy agenda.

Mr. President, it has been wrong for President Bush to pursue his domestic agenda through the veto: It will be wrong for President Bush to pursue his foreign policy agenda through the veto. Let this country be a leader once again in the fight against overpopulation. Let this foreign aid authorization bill become law.

Mr. MACK. Mr. President, I intend to vote against the conference report on the International Cooperation Act, despite my strong support for certain provisions it contains.

I am strongly opposed to the provision that would reverse the Mexico City policy concerning abortion, and another earmarking funds for the UNFPA. While I understand that the President will veto this bill and the proabortion provisions in it will be stripped out, I cannot in good conscience vote for this conference report while it contains provisions reversing the policies prohibiting the use of America's tax dollars for abortions abroad.

Once the abortion related provisions are stripped from the bill, I will be voting for the bill because it contains a number of important provisions, including three offered by this Senator.

The conference report includes a provision that this Senator has worked on for almost 2 years that would close a major loophole in the United States economic embargo of Cuba. The Mack Cuba embargo amendment prohibits foreign subsidiaries owned or controlled by United States companies from trading with Cuba.

At a time when the Soviet Union and Eastern Europe have cut back on their trade with Cuba, the value of licenses for trade with Cuba by subsidiaries of United States companies have more than doubled, from $332 million in 1989 to $705 million in 1990, according to the United States Department of the Treasury. It is high time that the Congress close this loophole and I am pleased and proud that we are doing so now.

In this regard, I would like to publicly thank the managers of this bill for their support and cooperation on the Mack amendment, particularly the Senator from Kentucky [Mr. MCCONNELL], the Senator from Maryland [Mr. SARBANES] and the chairman of the House Foreign Affairs Committee, Congressman DANTE FASCELL.

I am also pleased that the conference report contains an important provision conditioning United States support for Soviet membership in the International Monetary Fund on democratic and free market reforms and all but ending aid to dictatorial regimes like Cuba. This provision would also apply to any successor states or republics seeking IMF membership, except the Baltic States.

While the provision was drafted before the recent failed coup in the Soviet Union, I believe the conference was correct to conclude that it not only remains relevant, but is important to retain in the bill. Congress believes that there should be no rush to aid the Soviet Union's Central Government unless democratic and free market reforms have begun in earnest, defense spending is drastically cut, and aid to failing dictatorships is essentially terminated.

In this regard, I would urge the administration not to exercise the waiver included in this bill of the Byrd and Stevenson limits on lending to the Soviet Union by the Export-Import Bank, until the Soviet Union adheres to the conditions in the Mack amendment concerning Soviet membership in the IMF.

The American people would not understand it if the United States were to lend their tax dollars to the Soviet Union before that Government has ended aid to Cuba. They are right, and the Congress is right to demand that minimal conditions be met before aid goes forward.

The best thing we can do to help reformers in what was the Soviet Union is to hold their leaders to conditions they are seeking to implement—democracy, free markets, cutting defense spending, and ending aid to foreign dictatorships. By holding to these conditions we are not only being true to our own interests and values, but doing the best we can for the cause of democracy and reform in the Soviet Union.

I am also pleased that the conference report includes elements of the Mack Index of Economic Freedom. The idea behind the Index is that the progress of nations toward economic freedom can and should be measured, because that progress is the key to sustainable economic growth and to alleviating poverty.

The conference report requires an annual report by the Agency for International Development describing the progress being made by countries that receive U.S. assistance "in adopting economic policies that foster and enhance the freedom and opportunity of individuals to participate in and promote economic growth in that country. * * *"

The bill also requires AID to develop "a series of factors that provide a common standard by which such progress can be evaluated and compared between countries and over time." In other words, the conference report requires AID to come up with its own Index of Economic Freedom that I hope will be a tremendous tool for the United States to promote and encourage progrowth policies in developing countries.

I thank the managers again for their support and cooperation in including these important provisions. Again, I hope and understand that the abortion related provisions opposed by the administration will be stripped from the bill and that the bill will be sent back to and signed by the President.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the conference report.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SIMPSON. I announce that the Senator from Wyoming [Mr. WALLOP] is necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "nay."

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

The result was announced—yeas 61, nays 38, as follows:

[Rollcall Vote No. 219 Leg.]

YEAS—61

Adams	Gore	Nunn
Akaka	Graham	Packwood
Baucus	Harkin	Pell
Bentsen	Hatfield	Pryor
Biden	Heflin	Reid
Bingaman	Inouye	Riegle
Bradley	Jeffords	Robb
Breaux	Johnston	Rockefeller
Brown	Kassebaum	Rudman
Bryan	Kennedy	Sanford
Bumpers	Kerrey	Sarbanes
Burdick	Kerry	Sasser
Chafee	Lautenberg	Seymour
Cohen	Leahy	Shelby
Cranston	Levin	Simon
Daschle	Lieberman	Specter
Dixon	McConnell	Wellstone
Dodd	Metzenbaum	Wirth
Exon	Mikulski	Wofford
Fowler	Mitchell	
Glenn	Moynihan	

NAYS—38

Bond	Durenberger	Mack
Boren	Ford	McCain
Burns	Garn	Murkowski
Byrd	Gorton	Nickles
Coats	Gramm	Pressler
Cochran	Grassley	Roth
Conrad	Hatch	Simpson
Craig	Helms	Smith
D'Amato	Hollings	Stevens
Danforth	Kasten	Symms
DeConcini	Kohl	Thurmond
Dole	Lott	Warner
Domenici	Lugar	

NOT VOTING—1

Wallop

So the conference report was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote on the conference report.

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

The motion to lay on the table was agreed to.

NOMINATION OF CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination.

The PRESIDING OFFICER. The Senator from Maine is recognized.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, Members of the Senate, as I indicated earlier in the day, I have had a number of meetings with the distinguished Republican leader, the chairman and ranking member of the Judiciary Committee, and several other Senators who are involved in the proceedings with respect to the pending Supreme Court nomination.

The discussions are continuing now, and it is my intention shortly, following any brief comments the distinguished Republican leader wishes to make, to suggest the absence of a quorum for the purpose of permitting the chairman and ranking member of the committee, and others involved, to conclude their discussions on the best way to proceed with respect to this matter.

I am pleased to yield to the distinguished Republican leader.

Mr. DOLE. Mr. President, let me reaffirm what the majority leader said. We have not made a judgment whether there will be a vote tonight, whether there will be a delay, or how long the delay might be. That is under discussion. It seems to me that the most exciting thing we could do now is have a quorum call.

Mr. MITCHELL. Mr. President, I regret the inconvenience of Senators who may have other commitments and anticipated the vote would commence precisely at 6. But we will attempt to resolve it as soon as possible one way or the other and make the announcement at the earliest opportunity.

Accordingly, Mr. President, I now suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. MITCHELL. Mr. President, while the discussions are continuing, to which I earlier replied, a number of Senators have requested the opportunity to speak on other matters. I, therefore, following consultation with the Republican leader, now ask unanimous consent that there be a period for morning business not to extend beyond the hour of 6:30 p.m., during which Senators be permitted to speak for up to 5 minutes each, during which time no other business be in order, and that at 6:30 I be recognized.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, the events of the past 3 days have been both depressing and disturbing.

A NEW LOW IN THE CONFIRMATION PROCESS

Mr. BOND. Mr. President, it is bad enough that one of the most solemn duties of the Senate—the power to confirm lifetime appointees to the Supreme Court—has, in recent years, deteriorated into a circus in which nominees are hauled before the Senate, and forced to defend everything they have said or done, every statement they have ever made, every word they have ever written, whether taken in context or not. And it is bad enough that nominees must endure the personal indignity of having their personal lives thrown open to public scrutiny, their families harassed, and their trash rooted through.

That is bad enough. But now we have reached a new low. Now it has become clear that a nominee must not only subject himself or herself to the ordeal already described, but the nominee must also be prepared to weather last-minute, orchestrated smear campaigns designed to manipulate public opinion.

It is clear that the publication of the charges that have been raised by Ms. Hill was made for the purpose of scuttling Judge Thomas' nomination. The timing and handling of the publication is too much like the October surprise too often seen in political campaigns to be otherwise. It seems clear to me that his opponents saw that they had lost in their effort to defeat Judge Thomas on the issues, on his qualifications, or on his philosophical beliefs, so they decided to make one last-minute attempt to sling mud at him personally.

Certainly, the charges raised are serious—the kind that deserve thorough investigation. However, they have been considered, and they have been rejected. The Judiciary Committee investigators were aware of Ms. Hill's charges, and they gave them thorough consideration; and FBI investigators were called in, as well.

Committee members of both parties have said they were aware of the charges when they voted on the nomination. Not one of them, including those who are now calling for a delay in the vote, made any effort to delay the nomination in order to further investigate the charges. None even raised an objection. I have no doubt that they would have done so, had they believed it would have helped to scuttle the nomination.

What has changed?

I will tell you what has changed, Mr. President. One simple fact: Someone, in a clear violation of the rules of this body, leaked to the media the information contained in a confidential report. Once that happened, Judge Thomas' opponents saw one last opportunity to scuttle his nomination, and they jumped on it like a pack of wolves. It is a sickening spectacle.

I pause to ask a question of those leading the effort to delay the vote: If the vote is delayed, and if Judge Thomas is successful in defending himself against these charges, will this change your vote? I feel confident that the answer, for the most part, would be a resounding no.

Clarence Thomas has dedicated his life to public service. The people who know him, and I consider myself among them, will testify to his ability, his integrity, and his character. Through no apparent fault of his own, that integrity has now been stained with a blotch that he will never be able to erase, regardless of how hard he may try to prove his innocence. That, of course, is bad enough, but it does not even begin to address the burden his family has had to bear. That seems like an unfair payback for the almost 20 years of service he has given this Nation.

I wonder, Mr. President, what will be the ultimate impact of this sorry affair. Regardless of whether Judge Thomas is today confirmed as an Associate Justice of the U.S. Supreme Court, as I believe he should be, how many capable young men and women have been deterred from planned careers in public service because they are now convinced it is not worth the personal sacrifice, not worth the burden on the families? Hundreds? Thousands? If it is even one, it is a tragedy indeed.

Mr. President, Clarence Thomas has said that he is innocent of the charges against him. He has even signed a sworn affidavit to that effect. And now he has called for a delay in the vote in order to clear his name.

The charges were investigated by the Senate Judiciary Committee and the Federal Bureau of Investigation and neither saw fit to pursue them. If we now let this smear campaign go forward, we will be doing a great disservice to this Nation and to this man.

My senior colleague, on behalf of Judge Thomas, has called for a 48-hour delay in this vote. I do not think I need to reiterate the respect I have for JACK DANFORTH and for his intense feelings on this matter; and I compliment Judge Thomas for his desire to wait and to attempt to clear his name. It is just one more illustration of the depth of his character. But it is my view that this vote has been delayed long enough. I fail to see what we will learn from a 1- or 2-day delay. I fail to see what we can do beyond the investigations that have already taken place. I think we need to move to a vote.

In closing, I would just return to a point that the senior Senator from Missouri raised just a few moments ago on this floor. That is that the allegations that are before us today were raised through someone breaking the rules of this body—through someone releasing confidential information. I hope that the same people who are calling for an investigation of the charges raised by Ms. Hill will be just as vocal in calling for an investigation of who broke those rules so that proper action can be taken.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I ask unanimous consent to proceed for 5 minutes.

The PRESIDING OFFICER. Without objection, the Senator has the right to proceed for 5 minutes and the Senator is recognized for that amount of time.

NOMINATION OF JUDGE CLARENCE THOMAS

Mr. CRAIG. Mr. President, yesterday morning as I was preparing to come to this floor to offer remarks in behalf of Judge Clarence Thomas, I paused because of a news story that had been leaked over the weekend that was on the front page of every newspaper and on every morning talk show. I paused because I wanted to read the statement of Professor Hill. I paused because I felt it was necessary that I know as much as possible and knew as much as possible before I would come to the floor to delivery any kind of statment in behalf of Clarence Thomas and his candicacy.

So I began to request of the appropriate committee and its staff that I be made available all of the necessary documentation, and I was.

I spent the bulk of this morning reading the statement of Professor Hill and all of the chronological information that has been provided by the chairman of the committee and the ranking member of the committee to this entire body at this time.

After having read all of it, after having tried to understand it as best I could, feeling that as a freshman in this body who for the first time was in-

volved in the most important and legitimate constitutional responsibility of this body and that is to advise and consent that I had done what was fair and responsible and necessary, what were my findings?

My findings are that the information that the committee looked at and reviewed, that was ultimately leaked in a prohibition—against the committee rules—to the press has no smoking gun. It is of the kind that I can understand why the committee basically glanced at and reviewed in great extent and referred to it as not within the need of the committee to review any further.

It, therefore, is with no reservation that tonight I stand in support of Judge Thomas and his nomination. Why? Because I think like everyone else in this body in taking this responsibility seriously we recognize how important it is to weight all of the facts at hand, but I think it is also important that we understand the proper role and the kind of thing that has transpired here in the last good number of days, to try to put a dark cloud over this nomination and by some for all purposes to attempt to destroy the name and the character of the individual involved.

Alexander Hamilton in his remarks concerning the role of advice and consent of the Senate I think made a statement that fits this body so appropriately today, that it was as if he were in the gallery and in the body politic of this country watching us today and making this kind of a determination.

Let me quote:

> In every exercise of the power of appointing to offices by an assembly of men, we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. The choice which may at any time happen to be made under such circumstances will of course be the result either of a victory gained by one party over the other, or of a compromise between the parties. In either case, the intrinsic merit of the candidate will be too often out of sight.

Let me repeat, Mr. President: "the intrinsic merit of the candidate will be too often out of sight."

Mr. President, I am not sure there could be anything further from the truth today. The values of the man are forgotten for the moment. The values of the hours of testimony and all that were assembled to judge the character of Clarence Thomas are forgotten for the moment. They are forgotten because of the spin of illegal information that has been leaked to the press in direct violation of the rules of this Senate.

I read it. We have all read it. Now we are debating and discussing the opportunity of those who were in the first instance and clearly in the second instance the enemies of this candidate as to whether he can survive and his nomination can survive, and we will offer on this floor a legitimate consideration.

Alexander Hamilton, you were profound in what you said. The candidate has been forgotten for the cause.

Mr. President, we have certainly seen the truth of Hamilton's observation in recent days—and the reason our Founders wisely chose to divide the responsibility for appointments, resting on the President the primary duty of nomination, and on the Senate the role of consenting to the nomination. Although the difference of opinion regarding this particular nomination does not fall along party lines, it certainly seems to reflect a desire by some in this body to force their personal ideological viewpoints onto the Court.

In an effort to return to the real subject before us, I am here to discuss my views on the "intrinsic merit of the candidate."

My own deliberations began with a presumption in favor of the President's nominee—which I think is appropriate in view of the Senate's constitutional role. I have carefully reviewed the accumulated evidence concerning Judge Thomas' competence, character and philosophy. I have not found anything to overcome my original presumption.

On the contrary, as I reviewed the record, I was struck by the fact that there is no real controversy as to the first two elements: competence and character. I am not a lawyer, but the vast majority of views collected from members of the bench and bar confirm that Judge Thomas is amply qualified to serve on the Supreme Court. I find it significant that his performance as a sitting judge has been described as distinguished, fairminded, independent, and intelligent.

As to his character, even those who oppose his confirmation agreed that Judge Thomas has demonstrated a high degree of integrity both personally and professionally. I have spoken with him myself and came away impressed. It's also worth noting that his demeanor throughout these proceedings was consistently dignified, discreet, and courteous—not an easy accomplishment for one pinned beneath the microscope of Senate and media scrutiny.

In short, there is no question this extraordinary man has the qualifications and the temperament we expect in those who serve on the highest court in the land.

That brings us to the question of philosophy. Mr. President, this has certainly been the question dominating the confirmation hearings. It is over this issue that we have seen the most intense display of the prejudices, ideologies and sentiments of individual Senators. It also seems to me this is the point where many in this body have, as Hamilton predicted, lost sight of the "intrinsic merits of the candiate"—and instead of focusing on Judge Thomas himself, have attempted to turn him into an instrument for enacting their social agenda.

Let me be frank about my own bias. I do not have a list of opinions for Judge Thomas to endorse. He doesn't have to recite a particular political catechism to satisfy me. Quite the contrary. What's most important to me is that a judge keeps his or her personal agenda out of the courtroom. I do not believe the bench is the proper platform for political activism. I do believe judges should adhere to the law and to the Constitution. Judge Thomas' record and his testimony convince me that he understands these fundamental principles.

For these reasons, I intend to support the nomination of Judge Clarence Thomas as an Associate Justice of the U.S. Supreme Court.

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

Who seeks recognition?

Under the previous order does the Senator desire to be recognized?

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DODD. Are the Members speaking as if in morning business?

The PRESIDING OFFICER. The Senate is conducting morning business and the vote on the Thomas nomination has been thus delayed for 30 minutes.

Mr. DODD. Is it appropriate to discuss any matter?

The PRESIDING OFFICER. The Senator is correct. He may discuss any matter as in morning business.

NOMINATION OF JUDGE CLARENCE THOMAS

Mr. DODD. Mr. President, first let me speak on the issue involving the debate here ongoing regarding Judge Thomas. I have been one of those Members who had not declared his views on whether to vote for or against Judge Thomas. I planned to over the early part of the week, yesterday and today.

In light of events over the weekend I join with those who feel that a few days delay here is probably in the interest of everyone, including and most specifically Judge Thomas. I know that disappoints many of our colleagues, not the least of whom is the distinguished Senator from Missouri, who

has worked so diligently and so hard on this particular effort.

Mr. President, I must say that in light of the allegations, and I certainly do not want to disagree at least in part with those who have suggested that how we got here is disastrous. I am terribly disappointed by what appears to be and may, in fact, be a violation of rules of law. The fact is we are here. How we got here is certainly going to be the subject of some examination and discussion by appropriate authorities. But nonetheless, we are here whether we like it or not and the allegations are serious and need to be examined and explored.

I think one of the worse things we can do for Judge Thomas, even those like myself who are inclined quite frankly to be supportive of him, would be to have him leave here with confirmation and yet a cloud over his head hang with him the rest of his life. I do not think he deserves that.

My hope would be we would be able to achieve a couple days' delay on this and give the FBI and other appropriate authorities time to examine this issue, give our colleagues on the Judiciary Committee a chance to examine these questions, and, of course, the crucible of examination and cross-examination are the best places to determine truth or falsity.

We are not going to end up with a Perry Mason decision, in my view, probably, here at all, where the truth is going to leap out at us. I suspect that it is going to be still somewhat cloudy by the time this process is completed over the next several days. But, nonetheless, I think we will all be better off having gone through it.

I hope this does not become a precedent. Some have worried that it will become standard operating procedure. I have been here, Mr. President, for the consideration now of five nominations to the U.S. Supreme Court. This is the only such case I can recall where we have had last minute information coming to our attention that has caused some here to at least raise questions about whether or not we are able to move forward procedurally to be able to vote. I know to some there is a concern that this may end up in a flood of allegations in years to come. I hope that will not be the case. Certainly, nothing would be more harmful to this process if that were the case.

So, Mr. President, for what it is worth, this Member, while not having stated his absolute intention regarding this particular nomination, I do not want to play games with anyone. My intention was to be supportive of this nomination. And I will take the time at the appropriate time to explain why.

But in light of these allegations that have come forward, given the credibility of the sources, at least at this point it seems to me in the interests of all of us—in the interest of the nominee, in the interest of the person making the charges, in the interest of this body, but most importantly in the interest of the American public—that we do our jobs and spend a few more days examining these questions and then reach a decision to vote for or against this nominee once we have completed that process.

So I hope that would be the case this evening as my colleagues consider this matter. I hope they take these remarks in the spirit in which they are offered.

I realize there may be some who are enjoying this and see this as some wonderful opportunity to undermine this nominee. I think most of my colleagues know me well enough to know that I would not be a party to that. Nor would I want to be a party to something that I would look back on and say, "but for a few more days, we might have satisfied ourselves and others regarding these questions that have been raised."

THE LOW-LEVEL RADIOACTIVE WASTE POLICY ACT AND AMENDMENTS OF 1980 AND 1985

Mr. DODD. Mr. President, I rise today to address an issue that not only impacts upon my State but on all of the States in this country. As you all know, the Low-Level Radioactive Waste Policy Act of 1980, as amended in 1985, required States, either separately or in compacts of two or more, to dispose of commercial and some Federal low-level radioactive waste generated within their borders.

The States had three options upon enactment of this requirement. They could build a low-level radioactive waste facility; compact with other States for waste disposal—which also involves building a waste disposal facility in at least one of the compacting States—or contract to dispose of the waste outside of their State.

The above requirement was enacted in the face of the decisions made by the States of Washington, Nevada, and South Carolina to close their facilities to the Nation's waste. The amendments were also a response to the need to dispose of the 3.8 million cubic feet of low-level radioactive waste that was being produced each year.

Mr. President, I believe that the disposal of low-level radioactive waste is a national problem. Many questions have arisen concerning the cost effectiveness and wisdom of the acts' requirements, given the decline in the total amount of waste produced nationally.

First, many have suggested that since that time, Congress' concerns have largely been obviated by technological advancements that have resulted in a two-thirds reduction, to about 1.1 million cubic feet, in the amount of low-level radioactive waste produced per year, as compared to 1981. As a result of this decline in the amount of low-level radioactive waste produced nationally, the economic and environmental need for 15 proposed new sites appears to be in question.

Second, there has been a great amount of debate in my State concerning the need for and the economic viability of building and operating new low-level radioactive waste facilities. These concerns have been supported by the fact that there has also been some evidence that the sites in Connecticut and, indeed, several places nationwise were selected without regard to the environmental safety and soundness of the region, the effect on the people living in the affected towns, the geology of the region, including the proximity to water sources, or any meaningful citizen input.

Third, if the current site proposals move forward to construction and current estimates are correct, it will cost somewhere between $40 million and $100 million to build each site and an additional $20 million each year to operate them. In all cases, revenue to pay these costs will come directly from the tipping fees of waste disposed at the facilities. Those fees, which are currently about $40 per cubic foot, are estimated to rise to between $400 and $700 per cubic foot, and you can believe that these additional costs will be borne by the taxpayer. I ask, of course, as many would, can the taxpayer afford this additional burden?

Finally, the States of Texas, Massachusetts, North Carolina, Michigan, New York, Maine, New Jersey, and Connecticut are all behind the January 1, 1996, deadline for the disposal of low-level radioactive waste. Additionally, the State of Michigan had been selected as the host State for the Midwest Compact. However, Michigan failed to find a suitable site for that facility. Ohio has taken over the responsibility of being the host State for the Midwest Compact.

This change has retarded the siting process for, and the actual disposal of, waste in the seven-State Midwest Compact, which accounts for 11 percent of the national total. This, in effect, means that at least 18 States accounting for more than 31 percent of the national total have found the congressionally imposed deadlines impossible to meet and will therefore be required to find alternatives, possibly environmentally hazardous ones, to their own disposal problems.

In the light of these concerns, I feel that a comprehensive GAO Study examining the economic and environmental costs of building the proposed facilities is needed.

I have, therefore, asked the GAO to address these considerations and others in a report which will analyze the cost/feasibility and environmental concerns with regard to proposed low-level ra-

dioactive waste facilities, both on a national level and in my State.

It is my hope that this report will shed some light on this troubling issue.

Mr. President, I hope that our colleagues on the appropriate committees that deal with this matter would be willing to take a look at this issue. It is one that is particularly important to several communities in the State of Connecticut. But I believe as we look across the States, there are a number of other States facing this problem. We should look at this rather than rush forward and demand environmentally unsound policies here. I think that would be a tragic mistake.

NOMINATION OF JUDGE CLARENCE THOMAS

Mr. KERREY. Mr. President, I rise to explain my decision to vote against the nomination of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

First, Mr. President, I believe it is a serious mistake not to delay a few days to allow Senators to review the recently disclosed allegation of sexual harassment against Judge Thomas. Although the details of this incident have been available to the Judiciary Committee for some time, for the majority of the body, the alleged incident is new information.

Sexual harassment is a serious and pernicious workplace menace. As a body composed of 98 men we cannot afford to project to Americans any hint that we regard it as a frivolous matter. Refusing to delay this vote—particularly given our sluggishness on other matters of the day—sends just such a signal.

In particular, I regret that the White House has chosen to use language that implies political motivation in bring these charges to light shortly before the vote on the nomination. This defensiveness does not add to the public's sense of confidence that we have given full consideration to the facts. Failure to review these allegations thoroughly could permanently taint Judge Thomas' reputation by giving the appearance of trivializing any charge of sexual harrassment.

On the overall question of Judge Thomas' nomination, my reason for voting against Judge Thomas is simple: I do not have confidence that he will be a good Justice. I began with a desire and a preference to vote to confirm. However, as the hearings proceeded, my confidence deteriorated.

I lost confidence in his capacity to make the serious, society-changing judgments of the U.S. Supreme Court when I heard him say he did not remember ever having an argument or a discussion of the 1973 Supreme Court decision in Roe versus Wade. I lost confidence when I heard him reverse himself on a number of previously articulated positions. I lost confidence when I heard his struggle to articulate a clear and convincing judicial philosophy and when he appeared confused about the meaning of important constitutional cases.

Although I have faced this decision on only one previous occasion in the U.S. Senate, I have interviewed and appointed many judges while serving as Governor of Nebraska. In every case the question I tried to answer was: Did I believe the individual had the capacity to formulate and declare judgments that were clear, independent, consistent, and fair. In the case of Judge Thomas, I reluctantly conclude that the answer is no.

A U.S. Supreme Court Justice must be strong. As H.L. Mencken once observed, justice is more difficult to bear than injustice. An Associate Justice must be conscious of the tension between our individual passion to secure the blessings of liberty and the collective need for domestic tranquility. We have made great progress in America toward both of these goals and cannot afford to retreat. In the end, I do not have the confidence that Judge Thomas can do the job according to the standards I believe we should have for the U.S. Supreme Court. I am concerned that he would not maintain the necessary independence of judgment. I am concerned he would consider overturning established judicial precedent that would be detrimental to the rights of the individual.

I conclude, after most thoughtful study, that Judge Thomas has not demonstrated the capacity to adjudicate competently and fairly the profound constitutional issues which place an awesome responsibility on the Supreme Court.

NOMINATION OF JUDGE CLARENCE THOMAS

Mr. LAUTENBERG. Mr. President, I rise to join in calling for a delay in the vote on the nomination of Judge Clarence Thomas, to allow for a full examination of the charge made that Judge Thomas engaged in unlawful sexual harassment at the Department of Education and at the EEOC.

I have already stated my intention to vote against the nomination—on the basis of the judge's record and views on constitutional rights.

Yet, for those Members who have yet to decide how they will vote, and for those Members who may change their mind in light of this new evidence—there should be an opportunity to review these most serious allegations of sexual harassment by Judge Thomas.

But, Mr. President, even if not one vote were changed, even if the ultimate result to confirm Judge Thomas were unchanged, the Senate should still review these charges.

It should review these charges for the sake of the Senate. For the sake of the Court. And for the sake of the public.

What message do we send about the Senate, if we rush headlong into a vote, brushing aside charges of this magnitude? We send a message that the Senate is unconcerned about possible violations of law by those who hold high office. We send a message specific to the nature of the allegations—the Senate does not take seriously a charge of sexual harassment.

It is our duty to advise and consent. It is our duty to carefully consider a nominee's fitness.

Mr. President, if we fail to fully air these charges, we would bring harm not only to the Senate. We would bring harm to the Supreme Court itself.

We are about to vote on the nomination of an individual to hold a lifetime appointment to the highest court in the land. The Supreme Court is the ultimate arbiter of Americans' rights. Its decisions have profound impact on our lives. Many of the issues before the Court are hotly debated. Its decisions are controversial.

Yet, the Court commands public respect for its rulings in part by drawing from a reservoir of public respect for the integrity and impartiality of its members and the fairness of its process.

Mr. President, we should not allow that reservoir to be siphoned off by unending questions and doubts about the integrity of one of its members. These charges raise serious questions about not only Judge Thomas' personal qualifications, but his impartiality to rule on cases involving sexual discrimination and harassment.

Mr. President, we do not know the facts of the matter.

Before the Senate votes, we should satisfy ourselves and the public that we have done our utmost to find the facts.

For these reasons, I believe the vote on the nomination of Judge Thomas should be delayed.

IN OPPOSITION TO THE NOMINATION OF JUDGE CLARENCE THOMAS TO THE SUPREME COURT

Mr. AKAKA. Mr. President, the Senate is expected to vote soon on Judge Thomas' confirmation. However, with the weekend revelation that a former aid to Judge Thomas has alleged sexual harassment against this Supreme Court nominee, I strongly believe it would be imprudent to proceed with the scheduled vote.

The charges levied against Clarence Thomas are serious and demand a full review if the Senate is to properly discharge its responsibility under the Constitution. I saw the FBI report on Professor Hill and Judge Thomas' statements only this morning and do

not believe that all of my colleagues have had the opportunity to assess this matter fully.

Last week I announced my opposition to this nomination based on my concerns that Judge Thomas would not adequately protect basic constitutional guarantees that previous Supreme Courts have affirmed. Despite my earlier position, my request to delay this vote is not an action that I take lightly.

Some Members have inferred that Professor Hill's allegations are wrongly motivated. I don't believe this is the case. I closely watched her news conference yesterday and witnessed her pain as she defended herself—which is exactly why women are so reluctant to talk about sexual harassment.

The American people should be concerned if the Senate fails to fully review this matter. Sexual harassment is an extremely serious issue, governed by Federal and State laws which the Supreme Court is called on from time to time to interpret. It would be wrong to vote today without a thorough review of these allegations.

Mr. President, the best interests of the American people will not be served if the Senate votes on this confirmation today. The most responsible course would be to postpone today's vote so that Judge Thomas and Professor Hill can appear before the Judiciary Committee to respond under oath to these allegations so that this matter can be dealt with in a fair and open manner. I would also urge that questions be limited to these allegations.

I urge my colleagues to join me in seeking a postponement of this vote.

CHARGES OF SEXUAL HARASSMENT BY JUDGE CLARENCE THOMAS

Mr. HARKIN. Mr. President, I urge my colleagues to delay today's scheduled vote on the nomination of Judge Clarence Thomas to the Supreme Court.

Over the last few days, questions have been raised about allegations of sexual harassment by Clarence Thomas against Prof. Anita Hill, who was his assistant at the time of the incidents. Judge Thomas has denied these allegations. I am not prepared to judge the truth of these allegations, and I submit that no Senator can make a judgment on these issues based on the information we have before us. That is precisely why the Senate must put off this vote, to allow time for these allegations to be fully investigated.

I have said before that the responsibility placed on the Senate to advise and consent on nominations to the Supreme Court is something I take very seriously. I believe all Senators do. And I do not think it is unreasonable to take a few more days to carefully consider this issue before voting to put a man on the Supreme Court who will likely serve for the next 40 years.

My position on this nomination is quite clear. I decided to oppose this nomination before these allegations became public, based on Judge Thomas' record and statements before the Judiciary Committee. But others have indicated that this question will play an important part in their decision process, and I believe that we must give each Senator the time to make his or her decision.

Finally, the charged partisan atmosphere in the Senate of the last two days is hardly conducive to such an important vote. Nothing about this nomination demands immediate action. The Senate should not be rushed to judgment on so significant a decision as the nomination of a Justice to the Supreme Court, just to satisfy a more procedural deadline. I urge a delay in this vote.

THOMAS NOMINATION

Mr. RIEGLE. Mr. President, when Clarence Thomas' nomination to the Supreme Court was first announced, I publicly expressed deep concern at that time with reference to his very troubled tenure at the Equal Employment Opportunity Commission.

In the months since, my concerns have deepened—and I do not believe Mr. Thomas should receive lifetime appointment to the Supreme Court.

As the American Bar Association has formally indicated after a full evaluation of Mr. Thomas's legal career, he would bring only the minimum legal qualification to the highest court in our land. I cannot find a single highly distinguishing aspect in Mr. Thomas' modest legal career that would warrant his serious consideration for the Supreme Court.

In a Nation of some 250 million citizens, the 9 lifetime appointments on the Supreme Court ought to go to persons with truly exceptional legal talent and accomplishments. They are starkly absent in this case.

Assisted as he was by affirmative action efforts in his impressive climb from poverty—he has, to his credit, fully used those opportunities to advance himself to his present situation. In light of these facts, one wonders at his reluctance to see similar opportunities afforded to others, when they were so important to his own personal advancement.

Also very troubling to me was the way he flatly disavowed his own strongly stated and recent positions on various important issue when he testified before the Judiciary Committee. His sudden changes in opinion on these matters in the committee hearings were not convincing and did not provide a coherent body of well articulated legal reasoning one would expect of a Supreme Court Justice.

I reached the judgment to oppose Judge Thomas prior to learning of the statement made by Prof. Anita Hill. In light of this matter, I feel that more time must properly be taken to assess her assertions and Mr. Thomas' response. Many Michigan citizens have expressed this view to me today, including Mrs. Helen W. Milliken.

If he were to be confirmed, and if Judge Thomas were to serve until the same age as Thurgood Marshall, he would serve on the Supreme Court until the year 2031. We must take whatever time is necessary to resolve all outstanding issues—before making a decision that may well bind the country for the 40 years.

THE NOMINATION OF JUDGE CLARENCE THOMAS

Mr. SYMMS. Mr. President, I am sad that we are here at this hour and that we have not already confirmed Judge Clarence Thomas to be an Associate Justice of the Supreme Court. It saddens me.

Mr. President, I have to say that you have to hand it to Clarence Thomas' Democratic opponents for pulling the last gasp effort out over the weekend to try to in some way discredit him or set this vote off or delay it or whatever happens, no matter who gets hurt in the crossfire—his son, himself, his wife, his former wife, his mother, his sister, whoever gets hurt in the crossfire—with absolute utter disregard for the people, the human beings, and the tragedy that goes with this kind of an incident. But I am reminded of a quote which was made by one of the greatest philosophers to have lived in the 20th century, and I want to give the quote first before I attribute who made the statement.

The first point was that "In any conflict"—and this will just take a minute or so, Mr. President, and I hope my colleagues will think this through and those others that are interested. But "In any conflict between two people—or two groups—who hold the same basic principles, it is the more consistent one who wins" in the long run, in the discussion, in the war of ideals, or whatever the conflict.

In any collaboration between two men—or two groups—who hold different basic principles, it is the more evil or irrational one who wins.

The third point is, "When opposite basic principles are clearly and openly defined, it works to the advantage of the rational side; when they are not clearly defined but are hidden or evaded, it works to the advantage of the irrational side."

I was moved by the comments of my colleague from Idaho, Senator CRAIG, about what Alexander Hamilton said about this 200 years ago. And it reminds me, it is the same point that Ayn Rand made in the quotes that I

just gave to my colleagues in the Senate.

When opposite basic principles are clearly and openly defined, it works to the advantage of the rational side: when they are not clearly defined but are hidden or evaded, it works to the advantage of the irrational side.

Now here, in the world's most deliberative body, we have gone through the entire process, Mr. President, with the Judiciary Committee; we have had 100 days; this man has been dissected, literally every part of his life, by the Senate Judiciary Committee. And now at the last hour, the vote is being delayed because of a scurrilous attempt to discredit this fine man.

I know Clarence Thomas. I have known him for 10 years. I commend my colleague from Missouri, Senator DANFORTH, for the job he has done. And I am sorry that every Senator did not hear the eloquent remarks of the Senator from Missouri.

I am sorry that every Senator did not hear the eloquent remarks of the Senator from Missouri. I agree with the Senator from Missouri, Mr. President. I think it is sad if we have to set this vote off. It is not a credit to this institution. It saddens me. It is not a credit to any Member of the Senate to see this vote set off. We have been through the process.

Of course, that call is not mine to make as to whether or not we should put off the vote. And if people can easily say I was for him but now I will vote against him because of these new allegations, it is a sad day—that a violation of Senate rules is what seems to be driving the operation here, driving the Senate to set aside this vote, because of fear.

Senator DOLE has made it very clear. We only have 41 votes that we can assure we have from this side of the aisle. We have to have some help from the other side of the aisle.

The PRESIDING OFFICER. The time for morning business has expired.

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

Several Senators addressed the Chair.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the current status as described in the previous unanimous-consent agreement continue until 7 p.m., at which time I be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered. The vote on the Thomas nomination is thus postponed. At 7 p.m. the majority leader will be recognized.

The Senator from California.

THE SEXUAL HARASSMENT CHARGES

Mr. CRANSTON. Mr. President, I have been appalled at the prospect that the Senate would proceed to vote on the nomination of Clarence Thomas without reconvening the Judiciary Committee to hear the very serious allegations which have been made by Professor Hill. I am appalled at statements being made that these are not serious charges because they involve verbal, not physical abuse. I am appalled at these stunning admissions of a lack of sensitivity to the problem of sexual harassment. I am appalled by the vicious attacks upon Professor Hill which have been made on and off the Senate floor.

What has the majority of this body been saying to all the women who are subjected to sexual harassment; who have been, are now, or will be subjected to sexual harassment?

The Senator from North Dakota [Mr. CONRAD] so eloquently stated on this floor this morning:

Is it any wonder that women are hesitant to come forward when they are harassed, when they know that they can be subjected to this kind of abuse?

Both Professor Hill and Judge Thomas deserve the opportunity to respond under oath to the charges and countercharges that are being made. Judge Thomas and his supporters and the entire country ought to welcome the opportunity to have this matter thoroughly investigated.

But more important, the women of this Nation need to know that a majority of the 98 men who serve in the United States Senate are not trying to sweep this issue under the rug. What kind of a deliberative body is this institution if a majority is not willing to take the time necessary to resolve this issue in an appropriate way? How could American women help but read a refusal to investigate this matter as a statement that this issue is not important? How can any woman who has been subjected to sexual harassment in the workplace feel any confidence in elected officials who do not think these charges are important enough to delay a vote, by whatever time is necessary, until the facts can be ascertained?

Negotiations, as we all know, are now underway to decide when to vote. Those who were unwilling to put off the vote when they through they would win and put Judge Thomas on the Supreme Court were willing to put off the vote when it became, suddenly, apparent that they would lose if they forced the 6 p.m. vote. They had the power to force that vote at that time, since to do otherwise required the consent of every single Member of this body.

I want to pay tribute to those who intended to vote for Judge Thomas, for deciding to indicate they would vote otherwise if a vote was held now, at 6 p.m., before the matter was resolved.

Let me say that I hope we will not decide, as some of us have suggested, to vote on Friday. That does not give time to explore the whole issue. It does not guarantee we will get to the bottom of it before, once again, we would face a deadline.

I hope and I urge that the decision be postponed a bit longer than that, into the following week, to ensure that there is time to understand what we are doing before we do it. This is too important a matter to rush to judgment.

Judge Thomas, if confirmed, might well serve on the Supreme Court for 40 years or more. We should know what we are doing in regard to this nomination before we do it.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Maine.

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

The PRESIDING OFFICER (Mr. REID). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MITCHELL. Mr. President, I ask unanimous consent that the current status continue until 7:15 p.m. at which time I be recognized.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MITCHELL. Mr. President, I am going to yield momentarily to the distinguished Republican leader who will make a unanimous-consent request, following which I will make a unanimous-consent request, following which there will be statements of explanation by myself, the Republican leader, the chairman of the Senate Judiciary Committee, and the ranking member, Senator DANFORTH, and others who may wish to address the subject.

Mr. President, I yield to the distinguished Republican leader.

UNANIMOUS-CONSENT REQUEST

Mr. DOLE. Mr. President, I thank the majority leader.

Mr. President, I am going to make a unanimous-consent request. I ask as if in morning business that the vote on the Thomas nomination occur at 6 p.m. on this Friday, October 11.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. MITCHELL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard to the unanimous-consent request.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I now ask unanimous consent as in executive session that the vote on the Thomas nomination previously set for 6 p.m. this evening occur at 6 p.m. on Tuesday, October 15, and that the cloture vote on the motion to proceed to S. 1745, the civil rights bill, be vitiated.

Mr. DOLE addressed the chair.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. DOLE. Reserving the right to object.

Mr. BROWN. Reserving the right to object.

Mr. DOLE. Mr. President, I reserve the right to object.

Mr. President, I think it is fair to state at this time we have had nearly 4 hours of discussion—the majority leader, myself, other members of the Judiciary Committee, and Senator DANFORTH. And after all this discussion, after all the detailed discussion we have had, it seems to me that notwithstanding my preference of voting on Friday, it is not going to happen. Tuesday would be the earliest time and, therefore, I withdraw my reservation.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

SPECIAL COUNSEL

Mr. BROWN. Reserving the right to object, Mr. President, I will not object, but I do feel it is appropriate at this point to point out that there clearly has been a violation of Senate rules in the procedures involving this nomination.

I have drafted a prepared resolution that calls for a special counsel to investigate those violations. I have discussed it with the majority leader, and he has appropriately requested time to review the matter before he makes a decision on that.

I ask unanimous consent to enter this resolution in the RECORD, and serve notice that it is my intention to pursue this matter at the appropriate time.

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

S. RES.—

Whereas Article II, section 2 of the Constitution requires the President to nominate, with the advice and consent of the Senate, Justices of the Supreme Court;

Whereas in carrying out its constitutional responsibility to advise the President, the Senate wishes to encourage appointment of the most competent individuals to serve as Supreme Court Justices;

Whereas the Senate of the United States wishes to advise the President and to confirm or not confirm Presidential nominees to the Supreme Court based on their merits;

Whereas an unbiased evaluation by the Senate of a nominee's competence to serve on the Supreme Court requires the compilation of complete information about the qualifications of the nominee;

Whereas this may include personal or potentially sensitive information about the nominee;

Whereas it is appropriate that the confidentiality of certain information be maintained to preserve the integrity of the senate confirmation process;

Whereas allegations have been made of the unauthorized disclosure of a confidential Senate committee report during the consideration of the nomination of the Clarence Thomas to be an Associate Justice of the Supreme Court;

Whereas the unauthorized release of confidential information has potentially compromised the confirmation process; and

Whereas the unauthorized release of such confidential information is a violation of the Standing Rules of the Senate that provide that any Senator or officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a Senator, to suffer expulsion from the body, and if an officer, to dismissal from the service of the Senate, and to punishment for contempt: Now, therefore, be it

Resolved, That (a) the Majority Leader, in consultation with the Minority Leader, shall appoint a special counsel to investigate the unauthorized disclosure of a confidential Senate committee report during the consideration of the Clarence Thomas nomination to be an Associate Justice of the Supreme Court. The special counsel shall consider whether any Member, officer, or employee of the Senate committed any of the activities prohibited in paragraph 5 of rule XXIX of the Standing Rules of the Senate, or any other rules, regulations, or laws of the United States.

(b) The special counsel shall report the findings and conclusions of the investigation to the Senate not later than 30 days after the date of adoption of this resolution.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the majority leader? Hearing none, it is so ordered.

Mr. MITCHELL. Mr. President, I believe that the delay just agreed upon with respect to the vote on this nomination is important and appropriate. The events of the past weekend have created a circumstance in which many Senators believe and have stated that there should be a delay in the vote so that the issues now publicly raised can be publicly and fairly resolved. I share that view. I believe there should be a delay.

I believe that it is necessary, in fairness to all concerned. It is important that Senators and the American people understand how we have come to this situation.

On the evening of September 25, 2 weeks ago tomorrow, Senator BIDEN, the chairman of the Judiciary Committee, and Senator THURMOND, the ranking Republican member of the committee, requested a meeting with the minority leader, Senator DOLE, and myself, the majority leader. In that meeting, they described to us the nature of the statement made by Prof. Anita Hill and Judge Thomas' denial of those assertions.

Professor Hill had requested two things:

First, that the information she provided in the form of a sworn statement be made available to Members of the Senate Judiciary Committee.

Second, that it not be made available to anyone else because of her concern for the protection of her identity.

Senator BIDEN indicated to me that he intended to comply with that request; that he would make the information available to the Democratic members of the committee, and would not make it available beyond that, in accordance with Professor Hill's request.

Two days later, the committee voted and recommended that the matter be sent to the Senate. The vote in the committee was 7 to 7. To my knowledge, at that time, there had been compliance with Professor Hill's request, both with respect to making the information available to members of the committee prior to their vote, and not making it available beyond that. Following that, the committee acted.

I then discussed the matter with Senator DOLE and with many other involved Senators. As a result of those discussions, I then proposed to the Senate that there be 4 days for debate on the nomination; those 4 days being last Thursday and Friday, yesterday and today, and that at 6 p.m. today, following 4 days of debate, the Senate vote on the nomination. That was approved by unanimous consent. Each of the 100 Senators agreed to that procedure. No one objected.

As we all know—but it bears repeating because there has been some misunderstanding among the American people—once the Senate has agreed to set a vote by unanimous consent, that is, with the approval of each and every one of the 100 Senators, the only way the Senate can change that time is with the agreement of each of the 100 Senators.

Last evening, and throughout the day today until just now, I have been discussing this matter with a number of Senators—Democrats and Republicans—in an effort to obtain an agreement on the best way to proceed in this matter. The contradictions between the statements of Professor Hill and Judge Thomas have not been resolved. Indeed, with the information now available to us, those conflicts cannot be resolved this evening, the time for which the vote was set under the unanimous-consent agreement.

The situation that confronted us, therefore, was that unless the Senate now agreed otherwise, we face the vote this evening on a nomination with serious and highly controversial and unresolved charges, and denials having been made publicly, simply because the Sen-

ate had previously agreed to set a vote at this time.

As I indicated earlier, in the Senate, when 100 Senators agreed to a time to vote, the only way in which that time can be changed is by the similar agreement of all 100 Senators. That has now occurred, and I believe it to have been an appropriate action. I believe the delay now approved is important to the integrity of the Senate, the integrity of the confirmation process, the integrity of the Supreme Court, and not least, the intregrity of those who find themselves deeply involved in this matter.

It is most unfortunate that we have been placed in this situation. But events which are unpredictable, unplanned, and unfortunate can and frequently do intervene and cause a change in the plans of human beings. That has now occurred in this matter, in my judgment.

For that reason, I believe the action we have taken to change the time of the scheduled vote until next Tuesday, and to give time for further inquiry into this matter by the Judiciary Committee, is an appropriate action.

I thank my colleagues for their cooperation in this matter. I thank all of those who have been involved in the discussions, including, of course, the distinguished Republican leader, the chairman, and ranking member of the Judiciary Committee, and all others.

Mr. President, if I might state that, in view of the agreement having been reached, there will be no further rollcall votes this evening.

I yield the floor, Mr. President.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, I certainly do not quarrel with anything the majority leader said. I think it is accurate and factual and indicates what has happened today.

I think there are some who would have rolled the dice at 6 p.m. There were some who felt—some on my side of the aisle—that when the chips were down, there would be enough votes for confirmation this evening. But none of those who were making those statements were the nominee. So it seemed to me that it was a gamble that should not be taken.

In addition, there was a serious allegation, and notwithstanding our best efforts through affidavits, phone logs, and other things to take care of that allegation, still some questions remain.

I would certainly hope that people will not misinterpret or misjudge what we have just agreed to. I have heard some comment that this means the nomination is in trouble. Some have already predicted its demise, but some are hopeful. I have enough faith in many of my colleagues—in this case, on the other side of the aisle, I have talked to personally in the past several hours to Senators who are prepared to vote for Judge Thomas' confirmation, but who told me personally that they thought the matter should be further investigated. I am not certain that I disagree with them.

This is a very important vote. I have enough confidence in the judgment of the 16 to 18 Senators who have indicated they may support Judge Thomas on the Democratic side that, in my view, by agreeing to the extension—longer than we wanted—we have strengthened the case and the chance of this nomination.

Over the years, I have been a fairly good vote counter, and I could not put together 50 votes at 6 o'clock. As I said earlier, the bottom line in our business is how many votes do you have. If you do not have a majority, you do not have enough, and you are out of business.

I know the Senator from Delaware, Senator BIDEN, and the Senator from South Carolina, Senator THURMOND. and other members of the Judiciary Committee, and Senator DANFORTH, have been talking about the scope, when the hearings will start, how many witnesses may be called, the order of witnesses and all of those things that I think should be determined by the distinguished Senator from South Carolina and the distinguished Senator from Delaware, rather than the leadership. It is a Judiciary Committee determination.

Somebody asked, "What about next Tuesday at 6 o'clock?"

I think it is fair to say leaders hope that is it. This is it. If the investigation goes as everybody believes it will go, it probably will be it. We cannot be totally certain.

Finally, I would say that this is a test for Clarence Thomas, It is a test of his character. I believe he is up to the test. He has indicated as much to Senator DANFORTH who will be speaking in a moment or two.

But I would say to those, even those who are violently opposed to his nomination, that Clarence Thomas is a human being, too, and he has certain rights that should be protected, just as Miss Hill has certain rights that should be protected. As Clarence Thomas indicated earlier today, he wanted to clear his name. It is important to him. It is important to his mother. It is important to his sister. It is important to his family. It is important to people who came to testify on his behalf. It is important to us as an institution not to overreach but to make certain—as I have great confidence in the Senator from Delaware, the chairman of the committee—that he will be treated fairly, because he is the one who has been accused. He is the one who is on trial, in effect, between now and next Tuesday. Mind you, he has been on trial by some for 100 days.

So I just ask my colleagues, particularly those who have indicated they are favorably disposed to the nomination, to continue that open mind and that impression of Clarence Thomas.

As a Republican leader I have a couple of responsibilities. One is to make certain there is a fair disposition of this matter. When I say "a fair disposition," I mean fair to everyone, including the nominee. Sometimes the nominee is forgotten. I happen to think he is a decent person.

I guess from the standpoint of politics, to try to make certain that Clarence Thomas is confirmed. He is President Bush's nominee. We believe he deserves to be confirmed. We believe there should be bipartisan support, and I believe there will be bipartisan support. Without it, it is over.

So I thank the majority leader and I thank my colleagues on this side of the aisle who have been involved in the negotiations throughout the day. I think the best disposition of this matter is to have a vote on Friday. That is not going to happen. I think this is the next best way to dispose of this matter, and I am willing to stand here and predict, unless there is some bombshell out there that I have not heard about, that on next Tuesday Clarence Thomas will be confirmed by a good margin and by a bipartisan margin.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I would like to make a couple points if I may, and I will be brief.

For the last 2 days it has been a difficult time to get us to a point where we are tonight, with a unanimous-consent agreement, and that is that this vote be delayed so that we could further investigate this matter.

I want to make two points. It was not until Monday, September 23, after the hearing was over, which ended on Friday, September 20, that I was able to get permission from Professor Hill even to have the FBI look at this matter. We have honored and continued to honor every request Professor Hill made to me as chairman of the committee.

Understandably, this is an incredibly difficult thing for her to do. September 12, which was the third day of the hearing, was the first time Professor Hill's concerns were made known to the committee and made known to me. From that point on it is understandable how difficult it was for Professor Hill to reach the point where she agreed to allow me to have the FBI investigate and the nominee be made aware of the charges.

At that point what happened was that, having honored her request, we continued to honor her request which was that no one in the U.S. Senate be made aware of her allegations beyond the members of the committee unless we were able to guarantee that her

name would never be mentioned, that no one would ever know, a guarantee that could not and I would add should not have been made. So, consequently, the committee was unable to move on any further with the investigation beyond what the FBI had done.

But that all changed on Monday when Professor Hill went public, authorizing, directly and indirectly, the committee and the Senate to look further into her allegations.

It is a difficult thing for Professor Hill and a difficult thing for the nominee and a difficult dilemma in balancing each of their rights. But the one point I want to make is the first balance that took place was the balance between the right of the institution to know and the right of Professor Hill to determine whether or not the institution should know. I took her charges seriously, as we did on the committee, but we also took her request not to have anyone outside the committee be aware of this seriously.

One of the reasons we spent so much time in conference these last 2 days is after she had gone public we continued to take the matter seriously and continued to work toward undoing the unanimous-consent request.

So, Mr. President, once we were given clearance, and now have been given clearance as of Monday, by Professor Hill to proceed, the Senate is going to do just that.

In consultation for many hours with the ranking Republican Member, with the leadership on the Republican side, as well as Senator DANFORTH, who has a keen interest in all of this, we have agreed upon a procedure that would allow the committee to begin possibly as early as Friday holding public hearings.

I want to make it clear to everyone involved in this: This will be public; all of it will be public, first. Second, people who say they have something to offer, and even those who do not say they have anything to offer but have spoken to this issue of the alleged harassment, will be subpoenaed by the committee because we are going to ventilate this subject to give both Professor Hill the opportunity to make her case in full and give the nominee his opportunity to state his defense in full.

It is my hope and expectation that a continued investigation and hearing can be completed and that we will—not my expectation—we will vote on Tuesday night at 6 o'clock.

Let me conclude by suggesting once again the nominee has the right to be confronted by his accusers. So any accusation against any nominee before any committee which I chair that is not able to be made public to the nominee will not be made known to the Senate unless the individuals wish to do it all by themselves. Then it is known to the nominee. It is not a star chamber. But, on the other hand, it is incredibly difficult, assuming for the moment that Professor Hill is telling the truth, in cases relating to harassment, in cases relating to sexual violence, in cases where women have been victimized—I have spent too many hours, had too many hearings, spent too much of my professional career dealing with that subject as chairman of the Judiciary Committee not to know that it is incredibly difficult for an alleged victim to come forward without worrying about whether they will be victimized by the system.

So it is explainable, in my view—it is not dispositive—that Professor Hill was unwilling to let me use her name or make the allegations known even to the nominee in the beginning, and to the Senate later. But it is not dispositive, absent the ability of the nominee to be able to come before the committee under oath and present his denial and any rebuttal that he wishes to present.

This is not going to be an easy hearing. This is not going to be easy to conduct. This is not going to be easy for the members of the committee, nor Professor Hill, nor the nominee. It is uncomfortable for everyone. But it must be done because we cannot fail to take seriously such a charge. But we cannot conclude the charge is correct without the evidence being presented and the nominee having an opportunity to rebut it.

So, Mr. President, I thank my colleagues for this time. I have deliberately remained silent on this subject for the last 2 days in an attempt to resolve our ability to conclude in public, in a hearing, this issue. We now have that agreement. I expect that the members of the committee, Democrat and Republican alike, will operate in good faith in an attempt to be able to give the nominee every opportunity to make his case on the issue and put forward a rebuttal.

But we are entitled to know. The allegation is serious. Harassment is serious, and it warrants us looking further into it.

I thank the Chair, and I thank my colleagues.

Mr. THURMOND. Mr. President, I hold in my hands an affidavit made today by Clarence Thomas in which he says:

> I totally and unequivocally deny Anita Hill's allegations of my misconduct of any kind toward her, sexual or otherwise. These allegations are untrue.

Mr. President, in spite of this affidavit, also today Judge Clarence Thomas said that he would welcome an opportunity to go before the Judiciary Committee and explain any matter that is brought before the committee. That is one reason that this agreement has been reached.

Another reason is, some of the prominent Senators on the other side of the aisle feel that it would be helpful, those who are supporting Judge Thomas, if this delay is made. So for those two reasons this delay has been reached.

I am confident when the facts come out that Judge Thomas will be vindicated and will be confirmed on next Tuesday when we vote.

Mr. DANFORTH. Mr. President, I have some observations to make but before I make them I would like the attention of the chairman of the Judiciary Committee for a minute, if I could.

It is my understanding that the scope of the hearings will be limited; that it is not to be an open-ended review of everything anybody wants to say about Clarence Thomas. A specific charge has been made. The specific charge relates to harassment, and it is my understanding that harassment is to be the scope—and the only scope—of the hearing of the Judiciary Committee.

Mr. BIDEN. Mr. President, that is correct, to this extent: Any questions about Clarence Thomas' philosophy, any questions about Clarence Thomas' former rulings, any questions about Clarence Thomas' administrative capability are all irrelevant and off base. Any questions about his conduct in terms of whether or not he harassed this individual, Professor Hill, or any other individual, are relevant. They are relevant, as we discussed.

But it is the intention of the Chair to limit this scope to the conduct of the nominee, in particular as it relates to Professor Hill. But if—and I have no evidence of this, to make the point clear—in the scope of the investigation, the FBI and/or committee staff, or out of the blue, some credible person comes forward and says, "By the way, I was harassed," that is within bounds, assuming the person is credible. The majority and minority staff will interview that person.

There are none; there are none that I am aware of. But to make the point, if they did come forward, that would be relevant to the scope of the inquiry.

One of the issues—I will hit it right on point—one of the issues that is still out there that people are complaining about in the Senate and are wanting more information on is whether or not he withheld an opinion or did not withhold an opinion as a circuit court judge. That is not relevant to this hearing.

There are general parameters of what is relevant and not relevant. It relates to conduct and harassment and his behavior toward women, and harassing or not harassing.

Mr. DANFORTH. That is also my understanding. Sexual harassment, conduct toward employees, is the scope of this hearing.

Mr. BIDEN. The Senator asked me that in private, Mr. President, before. That is correct.

But just as we are not going to have testimony from outside witnesses what

constitutes or does not constitute harassment, whether for or against him, the issue of whether or not Clarence Thomas harassed as an employer or not as an employer, if such an allegation were made, would be relevant. It is not limited to whether or not there was an employee, because it goes to the issue.

There is no evidence of any of this, none that I am aware of. No one has come forward. But I do not want to mislead anybody.

As I said to the Senator in our meeting, if someone were to come forward, Miss X came forward, did not work for the nominee, and said, "By the way, I once was out with the nominee and the nominee did A, B, C, D to me, and harassed me, and did this and did that"—I do not even want to make up hypotheticals—and she were a credible witness, that would be credible testimony.

Mr. DANFORTH. Mr. President, it would be the view of this Senator, if the matter did not pertain to the charge or the category of charges made by Miss Hill, that it would not be.

Mr. BIDEN. I understand that, Mr. President. But the Senator understands, I knew his view, he knows my view.

Mr. DANFORTH. Mr. President, because I think there otherwise is going to be a fishing expedition all over the country, which is going to be going on now for the next week. I can see it coming: advertising, virtually, for people to come forward with whatever they want to dump on Clarence Thomas.

I think that there are going to be more and more demands on the chairman and the committee and on individual Senators to open this up so that anything anybody wants to bring about Clarence Thomas comes up again. If this is not limited to matters relating to this charge, when we have set aside a unanimous agreement for a vote at 6 o'clock tonight, then I think that is not what this Senator understands.

Mr. BIDEN. Mr. President, let me respond if I may. The Senator will recall, the Senator asked me this very same question in the presence of four or five of this Republican colleagues, as we were deciding whether or not we could reach agreement. The Senator from Delaware gave him the same answer I just gave him now. And, if the Senator wishes me to give the hypotheticals I gave then—I would rather not because people will say, "Why is he raising that hypothetical? Maybe that happened."

But the Senator knows what I just told him, and what I can continue to tell him, if he wishes, if he wants me to raise it——

Mr. DANFORTH. No, I think we understand each other.

Mr. BIDEN. All right.

Mr. DANFORTH. The chairman does not have to come up with a variety of titillating hypotheticals that never occurred.

But I think that we have an understanding. I simply wanted to point out that the chairman of the committee is going to exercise the power of the chairman in order to try to contain this particular inquiry that what is reasonably relevant to what is now before us.

Mr. BIDEN. That is correct.

Mr. DANFORTH. All right, I thank the chairman.

Mr. President, I do have some additional comments I would like to make.

First of all, I think that my leader, Senator DOLE, at one point in his comments said that the fair thing to do would be to extend this matter for some period of time. I want the Senate to know that in the view of this Senator, what is happening now is grossly unfair—grossly unfair to Clarence Thomas. What is fair, Mr. President, is the normal process of the U.S. Senate. What is fair is what each one of us has experienced when we reviewed FBI files of a whole variety of nominees that come before the Senate. We review those files and many of them contain various allegations against nominees. Many files have various statements, some of which related to sexual activity. When that happens we usually share it with other members of our committee quietly, secretly, discretely, try our best to reach a conclusion, and then have a vote in the committee and that is the end of it. That is the normal process of U.S. Senate, and it is fair.

Mr. President, that is not what has happened in this case. What happened in this case is that those of us who support the nomination of Clarence Thomas won the fight. We had the votes. Last Friday, last Saturday, we won committed votes of U.S. Senators and were heading to a vote on Tuesday. And we won.

And I can remember the great sense of relief that I had on Friday and Saturday. I knew about this particular charge. I knew that the FBI investigated this charge, that the investigation was made available to the majority leader, to the minority leader, to the members of the Judiciary Committee; that they were briefed on the FBI report, and that on the basis of that briefing they concluded that nothing more was to be done. They concluded on reading the FBI report, on reading the statement of Ms. Hill, they believed that nothing further had to be done. The time had come to vote.

So, they had the vote in the committee, and I am told by the chairman of the Judiciary Committee any member of the committee, as a matter of right, could have set that vote aside for a week. Nobody did it. They read the report and they agreed to a time certain, today at 6 p.m. for a vote on the floor of the Senate, knowing what was in that report.

Now, that is the normal process of the Senate. And had the normal process been followed, we would have voted 3 hours ago and Clarence Thomas would have been confirmed as an Associate Justice of the U.S. Supreme Court. That is how the Senate operates. And that is fair.

And what has happened, Mr. President, is not fair. What has happened is a violation of Senate rules because, failing to get the committee to take any further action on the basis of their review of the report, the FBI report was then leaked to the media. That is the factor left out by the presentation of the Senator from Delaware. It was leaked.

And, Mr. President, leaking an FBI file is a violation of Senate rules subjecting a Member of the Senate to expulsion from this body and subjecting a staff member to dismissal from the staff of the U.S. Senate. That is how serious leaking an FBI file is. It subjects a Member to dismissal, expulsion; it subjects a staff member to dismissal from the staff of the U.S. Senate.

This was leaked. And had it not been leaked we would have had the vote. But it was leaked and the furor erupted; it was the lead item on the evening news and it was the headline item in the newspapers. It was not Ms. Hill who did this. It was not Ms. Hill who was attempting to do in Clarence Thomas. It was not Ms. Hill who wanted to come forward, according to her own statements. It was somebody who had access to a file of the Federal Bureau of Investigation and who leaked that file. The normal process of the Senate was not followed and Clarence Thomas is being crucified.

Now, the majority leader says unplanned events have occurred. Mr. President, with all due respect to the majority leader—and I have great respect for him—that simply is not the case.

Oh, no, it is not the case. There is not anything unplanned about this. There is not anything unplanned about the campaign against Clarence Thomas. It is the most highly planned and orchestrated effort I have ever seen. It has involved who knows how many people.

The People for the American Way are even now calling up employees of the EEOC to get the dirt on Clarence Thomas. The leaking of an FBI file—that is not unplanned. It is planned. It is intentional. And it is wrong. And anybody who says it is fair to hold this over for another week—no, it is not fair. It would have been fair to have the vote at 6 tonight. That was what was fair. But leaking an FBI file, having been reviewed by the Democratic members of the Judiciary Committee and found by them not to warrant further action? That would have been fair. And it is not fair, not fair then to go peddling an FBI file to the media. And, Mr. President, lamentably, this is not the first time this has happened.

Remember Mr. Ryan? What was he? RTC? RTC chairman. Here was a man

who was a husband and a father and he made the mistake of saying in his FBI file that at one time he had used dope. That was leaked to the media. What did it do to him and his family?

But I guess that is the way we do things around here. Oh, I guess if we want to defeat somebody, we destroy them. No holds barred. What are rules of the Senate? Rules are made to be broken. Whoever disciplined the people who leaked Mr. Ryan's file? Whatever happened? Nothing. And what will happen in this case? Nothing. And the next time and the next time and the next time. It is not fair.

Mr. President, I want to make a few predictions. The first prediction is this: That the next week is going to accomplish nothing good and much that is bad. The majority leader says that the conflicts between the nominee and the complaining party will be resolved. They are not going to be resolved. They are not going to be resolved.

Oh, we will have a hearing. Both parties will testify under oath. One will say one thing, and one will say another thing. It is not going to be resolved. At the end of the hearing, people will either believe Judge Thomas or they will believe Ms. Hill or they will not believe either.

I bet nobody's mind is going to be changed because it is a question of credibility. So it is going to remain murky. It will not be resolved. It is going to be a field day for the interest groups, for the so-called leadership conference on civil rights, People for the American Way. Their American way is the way of lynching.

It is going to be a field day for all the groups ginning up all the phone calls and all the pressure on Senators. It is going to be field day for the scurrilous little rumors. It is going to be a field day for people who slip the unmarked envelope over the transom or under the door. Oh, it is going to be a field day. Read all about it. Tune in tomorrow and every day for the next 7 days to get everything and anything that anybody wants to say about Clarence Thomas. Do you want to get your names in the paper? If you want to use your name or just slip it under the door.

I will predict something absolutely. I predict as a matter of certainty that 1 week from today there is going to be massive push to put off the vote. New charges have been made. New witnesses have been found, more people to be interviewed by the FBI. We have seen this before in this body. John Tower. There is not going to be any end to this. This is not going to be an effort that will dissipate the clouds. The clouds are going to be there. The attacks are going to be there. That will be in the next week.

Mr. President, I know what we are doing to Clarence Thomas because he is my friend. I will tell you, it does not take a great doctor of the soul to know how a human being is hurting. And at the end of this whole things, he is never going to be able to recover the reputation that he had before he went into this because it is not possible, because charges like this stick. They stick. It is impossible to make the stain go away.

I know what we have done to Clarence Thomas. Not we, all of us. I know what we are doing by putting off the vote a week. I know what those who have leaked the FBI report have done to Clarence Thomas. And I guess if you are fighting a crusade, just like the crusaders of old, anything goes.

But, Mr. President, what are we doing to the country? What are we doing to this wonderful country? This is not advise and consent. This is slash and burn. What are we saying to future nominees? I spoke 2 nights ago to a person who now serves on the Supreme Court and this person said, "I wouldn't do it again."

So all of our nominees are going to be people who come from the mountains of New Hampshire or someplace or suckers. I yield the floor.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, since the Senator from Missouri referred to me several times during his remarks, I feel it appropriate to respond with respect to those aspects in which he referred to me.

First, if there is any intention to create any implication that I participated in the plan involving the release of this document——

Mr. DANFORTH. No, none, absolutely none. I do not want to interrupt the majority leader. I want that understood, absolutely none. It has never crossed my mind.

Mr. MITCHELL. I thank my colleague for that clarification because I think that was the clear implication of his remarks.

Second, I did not say that this matter will be resolved next week. My exact words were, after saying that it has not been resolved were, and they are written down so I will repeat them, I believe our best option is to change the time of the schedule a vote and proceed as best we can to determine the truth and then make our judgments. The Senator misstated what I said with respect to the resolution of the vote.

Third, I think it should be stated, because it is not obvious from these remarks, that the agreement to delay the vote for 1 week was unanimous. Any Senator could have objected, including the Senator from Missouri. No Senator did object. Not the Senator from Missouri or others.

Fourth, with respect to the predictions of what may or may not occur next week, the same situation will exist.

This vote will occur at 6 p.m. next Tuesday night unless there is a unanimous-consent agreement by every Senator to the contrary, so there should be no implication that somehow this is going to be delayed through some force with which we cannot contend.

The decision tonight was a decision by every single Member of the Senate. We are all happy with it? Clearly not. The Senator from Missouri is very deeply and personally involved with this matter, and I respect that. But the reality is that he agreed to this delay, as did each of the other 99 Senators. Any delay beyond next Tuesday would also require the consent of each and every Senator.

Third, I want to say that I have great respect for the Senator from Missouri, but I think there is a point of view which was not included in his remarks, and that point of view is that whatever the circumstances leading up to the situation—and I referred to them earlier—we are now confronted with a situation in which a serious allegation was made and with respect to which public discussion, public hearing, was not possible prior to this week.

That was not something—certainly I will speak for myself—that I anticipated or could have anticipated. I speak for no one else. Being confronted with this situation it seemed to me that the reasonable, prudent, responsible, commonsense thing to do was to permit a brief period of delay within which there could be a public hearing on the matter and then to schedule a vote.

As the Senator from Missouri well knows, much of the time in disagreement over the past several hours has been over how long would be the delay. He proposed earlier today a 48-hour delay, suggesting that the matter could be investigated, hearings held, and a vote occur on Thursday evening of this week. Many others felt that that time period did not permit the kind of fair and thorough inquiry that would be possible and that a somewhat longer period should occur. And the result is a compromise, as is almost everything we do here.

Some thought it should be longer than a week, some thought it should be less than a week, and the product of 4, or 5, or 6 hours of negotiation among a lot of people is that it will be a week.

I have great respect for the Senator from Missouri, but I think there are competing considerations here, and I think in the circumstance in which we found ourselves the result was a reasonable, fair and common sense one, and I do not believe that it does represent—I do not share the characterization of that which has been presented by the Senator from Missouri.

Mr. President, I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I will not speak long. Clearly, I do not even feel comfortable trying to compete with the likes of my good friend from Missouri. And I want to say to him there are few times that I have been very pleased I was on the floor of the Senate in my 19 years in this body, and I want to tell the Senator that the last 30-or-so minutes was one of those rare occasions, not only because of the issues the Senator addressed but because of the depth of understanding the Senator has of what we are doing, and what we are not doing, and what we might be doing to this place, the Senate.

So I want to make a few remarks. And I am pleased that while there are not many Senators here, there are two leaders here, the Democratic leader and the Republican leader. And I say to both of them, as one Senator who has been here a while, and a Senator who is seeing Senator after Senator dismayed at what is happening to this place—no aspersion on the majority leader, no aspersion on the minority leader, just concern about what is happening to the Senate—I submit to the two Senators, if they do not proceed to make whoever it was who took an FBI file—and let us review in a moment what was in that file and under what conditions it was taken—if you do not proceed to see to it that that person, that staff member or that Senator, is determined and punished, you might as well forget about having any serious rules in this place.

There is no doubt in my mind that as I listened to the facts for the first time tonight by the chairman of the committee, because it was not told to the public, that as late as Monday he had a file, and the file was an FBI file, and the instructions from the witness were I do not want anybody to know my name, and I do not want to be called as a person; I just want the committee to know about it.

Now, let me tell you, that is serious business. What if that person was divulging something about a nominee and at the same time was saying that the witness has a very serious problem herself or himself? Think of that. Think of that. What if there would have been an admission by a witness that they had stolen money and committed a felony for which they were not charged, but I want to tell you that I am worried about this nominee.

Would not that just be wonderful? We would send that out to the press, and here would be a witness who wanted to help us and begged us not to reveal it, and what would happen? They would publish that the witness was a felon, and that the nominee was not to be nominated because he also was a thief, and here we would be.

That is why it is serious. And here we sit today investigating all kinds of things that Congress has done, and perhaps it is right. We are investigating bad checks, I understand, and we should. But I believe the day after this nomination is completed by this committee, an investigation of who did that and the appropriate punishment ought to be forthcoming.

In fact, as I read the statute, I say to the Senator from Missouri, it would even be worse than he suggested. It seems to me there is one section of the statute that may make it a crime to release to the public an FBI secret file. But, indeed, the Senate has contempt authority over the person who does it, meaning we can do whatever it is that our authority in contempt gives us. That makes it serious.

Now, why do I say this? I say this because, frankly, we are confronted—and on this I think the majority leader did the best he could. You are confronted with a witness now who after the story was leaked got on television and told everybody about it, and what are you going to do about it?

It is not that our leaders did not want a vote tonight. It is that a number of Senators who were going to vote a certain way were saying we want some more time. Let us only hope when that is all finished they will vote the way they did before and we will be finished and it will be something that comes up positive, Mr. President, rather than with the gloom and concern the Senator had in his voice and words tonight.

Frankly, looking at all of this, none of us can do much more than say well, let us go; let us do it; let us get the evidence. But let me tell you there are a lot of Senators who talked to me today who are absolutely close to being outraged at the way this case has evolved, not at Professor Hill, not at Clarence Thomas, not at JOE BIDEN, but at the way it evolved.

I say to the distinguished majority leader, whom I have known and got to respect greatly, I think he has to agree that something is wrong with this kind of process.

Now, another week is there, as the Senator from Missouri said, for everybody to have all kinds of new ideas about this person. He was literally confirmed for all intents and purposes. The Senate would have ratified him no doubt, somewhere between 56 and 59, maybe 60 votes, and now that is all out the window because somebody decided that the rules of the Senate for whom they worked or for whom they served did not amount to anything, and we just ought to let it go and get this thing started so we can get that Clarence Thomas. That is what it really amounts to.

So we have a witness who did not want any of this known who is now forced to make herself known. We have to think of that. We are all thinking about Clarence, but look at this professor. She did not want this. How did this happen to her? For the very same reason that I have just described it is happening to him—because somebody in this body does not care about what governs the Senate.

Mr. President, there may be people around, maybe even sitting up there, who think we should not have these kinds of rules.

In fact, I think they probably, some of them, would think it is good that everything will be known. But let me suggest if that is the case, then we had better change our rules because if we ask witnesses to testify before FBI agents with a set of rules, and it goes this time—and nobody does anything about it, and here we are asking them to do it, then we submit them to whatever happens—I submit it is going to get more and more difficult to get people to testify that way; more and more difficult to get decent Americans to accept nominations to very high and controversial posts.

We are getting very contentious as a people; very controversial. That is fine. How are you going to get people to do it under this kind of fact or these kinds of rules when actually it is dog eat dog? And if you can get something out there, it does not matter what rules we violate. Let us just go get them.

I want to say tonight to Clarence Thomas, we never expected you to have to go through this. I do not think the committee did. But, frankly, it will be over with soon. For those of us who thought very highly of you and knew you, we still feel the same way.

To Senator DANFORTH, from Missouri, let me say never has a Senator done a better job of helping and representing a friend of his, and for that, we can all be proud. We need a few more people like that around.

I yield the floor.

Mr. MITCHELL. Mr. President, I can appreciate the sense of outrage which we have seen here on the Senate floor tonight over the leak of this document as expressed by the Senator from New Mexico and the Senator from Missouri because I had much the same feeling myself a few months ago when day after day after day confidential documents before the Ethics Committee were leaked. I did not express it with quite the emotion that has been exhibited here this evening.

I do not think one can equate confidential documents submitted to the Ethics Committee with the FBI report in a legal sense but I am sure the Senator from New Mexico will agree the principle is the same. It is the Senate rule. The rule is violated. In the case of the Ethics Committee, it was not violated once; it was not violated twice; it was violated time after time after time, day after day after day. I wished then I had gotten up and expressed the outrage that the Senator from New Mexico had, and perhaps he would have joined me then.

Mr. DOMENICI. I can say right now I would have.

Mr. MITCHELL. I am sorry the Senator from Missouri has left the floor. They did not express that outrage on that occasion. But I am sure they had the same feeling about that.

So it is unfortunate. It is something I deeply regret and I strongly deplore. But in fairness, let us deplore it and regret it whenever it occurs, not just when it occurs in a circumstance in which an individual Senator is involved, or when it is adverse to the case that that Senator is pursuing. A leak which helps one Senator's cause is just as bad as a leak which hurts one Senator's cause.

So I join the Senator in his expression of condemnation. I hope the next time that it happens we will all join together, all of us, not only deplore it, but to do something about it, and I intend to try to do something about it. I intend to try to do something about it in every case in which it occurred.

Mr. DOMENICI. The majority leader can count on it. I do not think we can run the place too much longer with these kinds of rules, to tell the truth. I think there is going to be all kinds of actions on the part of the people who are going to be pressured and pushed by their emotions and sentiments, and they are going to say there is not anything holding us back.

So I think we ought to have rules. If they are broken, those who break them ought to be held accountable, whatever the rule, and to the extent that the rule is a significant one, or lesser, they would have to take the kind of punishment that is due.

Mr. MITCHELL. I agree with that.

Mr. DOLE. Mr. President, let me indicate to the majority leader that I do not disagree. If, in fact, you go back to a few cases of leaks, I do think the Senator from New Mexico had a good point. If some Member had written a bad check, this is big news. But leaking an FBI file does not seem to be very important to most people in the media. But if you have written a $5 check bounced in a House bank, that is a lead story on the evening news.

Somehow we have gotten values all out of whack. We have been talking about somebody leaked something. I think we ought to go back and take a look at the Ethics Committee, and this or whatever may be coming up.

I just say that I am prepared to cooperate with the majority leader because we do have rules. They should be followed. There are certain punishments proscribed. But I do think we have a little tilt in the media too. That may take care of some of the leaks but others may be a one line, one page story.

Mr. BINGAMAN. Mr. President, I am pleased that the Members of the Senate have decided to postpone voting on the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court of the United States. As I said last week when I announced my opposition to this nomination, the advice and consent function is one of the most important duties entrusted to us by the people of this Nation. It is a duty we must not take lightly, for the very foundation of our democracy—the Constitution and the Bill of Rights—is at stake. And it is a duty we can perform only when we are fully informed, with full access to all relevant information.

Today, because of serious allegations made public just this weekend, I do not believe that we are fully informed. I do not believe that we have full access to critically important information, and I know we have not had the time to fully examine the information we do have. Mr. President, we have all heard the serious, troubling allegations regarding sexual harassment. We have heard Judge Thomas' denial of the allegations. But, again, we have not heard all the facts, and in my view, the allegations have not been given a thorough examination.

Mr. President, I have already announced my decision to oppose Judge Thomas' nomination. I simply do not believe he is qualified to serve on the Supreme Court. But I believe my colleagues—and the American people—deserve a full, public review of these serious allegations before being asked to support or reject this nominee. If confirmed, Judge Thomas could serve on the Supreme Court well into the next century. His actions over the next 40 or so years will impact our lives and the lives of our children, grandchildren, and great-grandchildren. Surely the vote can wait a few more days.

TECHNICAL AMENDMENTS TO VARIOUS INDIAN LAWS ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the previous Senate action on the message from the House on S. 1193, the bill to make technical amendments to the various Indian laws, be vitiated, and that the Chair lay the message before the Senate.

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

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1193) entitled "An Act to make technical amendments to various Indian laws", do pass with the following amendment:

Page 3, strike out lines 5 through 13 inclusive, and insert:

(b) REAUTHORIZATION OF APPROPRIATIONS FOR THE NATIONAL INDIAN GAMING COMMISSION.—Section 19(b) of the Indian Gaming Regulatory Act (25 U.S.C. 2718(b)) is amended to read as follows:

"(b) Notwithstanding the provisions of section 18, there is authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for the fiscal year beginning October 1, 1991.".

AMENDMENT NO. 1253

Mr. MITCHELL. Mr. President, on behalf of Senator INOUYE, I move that the Senate concur in the House amendment with the following amendment which I send to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. INOUYE, proposes an amendment numbered 1253.

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

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

The amendment is as follows:

In lieu of the language inserted by the House amendment, insert the following:

(b) REAUTHORIZATION OF APPROPRIATIONS FOR THE NATIONAL INDIAN GAMING COMMISSION.—Section 19(b) of the Indian Gaming Regulatory Act (25 U.S.C. 2718(b)) is amended by adding at the end thereof the following new sentence: "Notwithstanding the provisions of section 18, there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992.".

At the end of the bill, add the following new sections:

SEC. 5. AMENDMENT TO THE CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT TO PROVIDE AUTHORITY FOR THE PROVISION OF ASSISTANCE UNDER TITLE IX OF THE ACT TO PROGRAMS ADMINISTERED BY THE STATE OF HAWAII UNDER THE ACT OF JULY 9, 1921.

(a) Title IX of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625) is amended by adding at the end of subtitle D the following:

"SEC. 982. AUTHORIZATION FOR THE PROVISION OF ASSISTANCE TO PROGRAMS ADMINISTERED BY THE STATE OF HAWAII UNDER THE ACT OF JULY 9, 1921.

"(a) ASSISTANCE AUTHORIZED.—The Secretary of Housing and Urban Development is authorized to provide assistance, under any housing assistance program administered by the Secretary, to the State of Hawaii, for use by the State in meeting the responsibilities with which it has been charged under the provisions of the Act of July 9, 1921 (42 Stat. 108).

"(b) MORTGAGE INSURANCE.—

"(1) IN GENERAL.—Notwithstanding any other provision or limitation of this Act, or the National Housing Act, including those relating to marketability of title, the Secretary of Housing and Urban Development may provide mortgage insurance covering any property on lands set aside under the provisions of the Act of July 9, 1921 (42 Stat. 108), upon which there is or will be located a multifamily residence, for which the Department of the Hawaiian Home Lands of the State of Hawaii—

"(A) is the mortgagor or co-mortgagor;

"(B) guarantees in writing to reimburse the Secretary for any mortgage insurance claim paid in connection with such property; or

"(C) offers other security that is acceptable to the Secretary, subject to appropriate conditions prescribed by the Secretary.

"(2) SALE ON DEFAULT.—In the event of a default on a mortgage insured pursuant to paragraph (1), the Department of Hawaiian Home Lands of the State of Hawaii may sell the insured property or housing unit to an eligible beneficiary as defined in the Act of July 9, 1921 (42 Stat. 108).".

(b) Section 958 of the Cranston-Gonzales National Affordable Housing Act (Public Law 101-625) is repealed.

SEC. 6. AVAILABILITY OF FUNDS.

(a) FISCAL YEARS 1989 AND 1990.—(1) Moneys appropriated under the heading "Community Planning and Development" and the subheading "Community Development Grants" in the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989, and under the same heading and subheading in title II of the Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors Act of 1989, for infrastructure development on Hawaiian Home Lands are hereby made available for the purposes for which appropriated without regard to any fiscal year limitation, Public Law 88-352, Public Law 90-284, or any other law.

(2) Moneys appropriated under the heading "Community Planning and Development" and the subheading "Community Development Grants" in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990, for infrastructure development on Hawaiian Home Lands are hereby made available for the purposes for which appropriated without regard to any fiscal year limitation, Public Law 88-352, Public Law 90-284, or any other law.

(b) FISCAL YEARS 1991 AND 1992.—(1) Moneys appropriated for special purpose grants under the heading "Annual Contributions For Assisted Housing" and the subheading "(Including Rescission And Transfer Of Funds)" in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991, for infrastructure development on Hawaiian Home Lands are hereby made available for the purposes for which appropriated without regard to any fiscal year limitation, Public Law 88-352, Public Law 90-284, or any other law.

(2) Moneys appropriated for special purpose grants under the heading "Annual Contributions For Assisted Housing" and the subheading "(Including Rescission and Transfer of Funds)" in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, for infrastructure development on Hawaiian Home Lands are hereby made available for the purposes for which appropriated without regard to any fiscal year limitation, Public Law 88-352, Public Law 90-284, or any other law.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

DESIGNATING OCTOBER 16, 1991 AND OCTOBER 16, 1992 AS "WORLD FOOD DAY"

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 230, designating "World Food Day," just received from the House; that the resolution be deemed read three times and passed; that the motion to reconsider be laid upon the table; and that the preamble be agreed to.

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

The joint resolution (H.J. Res. 230) was deemed read the third time and passed.

The preamble was agreed to.

NATIONAL LAW ENFORCEMENT MEMORIAL DEDICATION DAY—SENATE JOINT RESOLUTION 107 AND WORLD POPULATION AWARENESS WEEK—SENATE JOINT RESOLUTION 160

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from and the Senate proceed to the immediate consideration, en bloc, of Senate Joint Resolutions 107 and 160; that the joint resolutions be deemed read a third time and passed; that the preambles be agreed to; that the motion to reconsider the passage of the joint resolutions, en bloc, be laid upon the table; that the consideration of these items appear individually in the RECORD, and that any statements appear at the appropriate place as though read.

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

The joint resolutions (S.J. Res. 107 and S.J. Res. 160) were deemed read a third time and passed.

The preambles were agreed to.

The joint resolutions, with their preambles, are as follows:

S.J. RES. 107

Whereas each day over 500,000 law enforcement officers place their lives at risk in order to maintain law and order in society and apprehend people who violate Federal, State, and local laws;

Whereas over the last 10 years over 1,500 law enforcement officers have been killed in the line of duty;

Whereas in 1989, 148 law enforcement officers were killed in the line of duty and preliminary figures for 1990 indicate that 119 law enforcement officers were killed;

Whereas over 60,000 law enforcement officers are assaulted in line of duty each year, resulting in over 20,000 injuries; and

Whereas the National Law Enforcement Officers Memorial was established by an Act of Congress in 1984, and the memorial is scheduled for completion at Judiciary Square in Washington, District of Columbia in October 1991: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 15, 1991, is designated as "National Law Enforcement Memorial Dedication Day" and President is authorized and requested to issue a proclamation designating October 15, 1991, as "National Law Enforcement Memorial Dedication Day".

S.J. RES. 160

Whereas the population of the world today exceeds 5,000,000,000 and is growing at an unprecedented rate of approximately 90,000,000 per year;

Whereas virtually all of this growth is occurring in the poorest countries, those countries least able to provide even basic services for their current citizens;

Whereas the demands of growing populations have contributed substantially to enormous environmental devastation and pose threats of even greater harm to the world;

Whereas one-half of the 10,000,000 infant deaths and one-quarter of the 500,000 maternal deaths that occur each year in the developing world could be prevented if voluntary child spacing and maternal health programs could be substantially expanded;

Whereas research reveals that one-half of the women of reproductive age in the developing world want to limit the size of their families but lack the means or ability to gain access to family planning;

Whereas the global community has for more than 20 years recognized that it is a fundamental human right for people to voluntarily and responsibly determine the number and spacing of their children and the United States has been a leading advocate of this right;

Whereas the demands of growing populations force many countries to borrow heavily and sell their natural resources to cover the interest on their debt;

Whereas selling off natural resources in such circumstances often causes irretrievable losses, such as the destruction of the tropical rain forests at a rate of 50,000 acres per day;

Whereas the reliance of a rapidly growing world population on burning fuels is a critical factor in the emission of carbon dioxide into the atmosphere, which many scientists believe has already catalyzed a warming of the Earth's climate;

Whereas pollution is damaging the ozone layer to such an extent that within 40 years the amount of ultraviolet light reaching our planet is expected to increase by as much as 20 percent; and

Whereas in 1990, the President proclaimed "World Population Awareness Week" nationally, and 38 State Governors proclaimed "World Population Awareness Week" in their respective States, to call attention to the consequences of rapid population growth, and the Congress also passed a resolution to that effect: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the week beginning October 20, 1991, is designated as "World Population Awareness Week". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate programs, ceremonies, and activities.

NATIONAL MEMORIAL CEMETERY OF ARIZONA

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1823, regarding the operation and maintenance of the National Memorial Cemetery of Arizona, introduced earlier today by Senators DECONCINI and MCCAIN.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1823) to amend the Veterans' Benefit and Services Act of 1988 to authorize the

Department of Veterans Affairs to use for the operation and maintenance of the National Memorial Cemetery of Arizona funds appropriated during fiscal year 1992 for the National Cemetery System.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DECONCINI. Mr. President, I am introducing, along with my distinguished colleague, Senator MCCAIN, an important bill which will authorize the Department of Veterans Affairs [DVA] to use funds appropriated during fiscal year 1992 for the operation and maintenance of the National Memorial Cemetery of Arizona. In 1988, as part of the Veterans' Benefit and Services Act, the then Arizona Veterans Memorial Cemetery became part of the National Cemetery System. This marked a long effort on the part of Arizona veterans, their families, and the Arizona congressional delegation to secure a national cemetery in their home State for the burial of their veterans and loved ones.

Mr. President, part of the conditions of transfer of the cemetery from the State to the Department of Veterans Affairs [DVA] was a requirement that the maintenance of the cemetery be funded by a combination of Federal reimbursements for burial services and State of Arizona resources for the first 3 years. Since then, all operating and maintenance costs have been met with these resources. However, the DVA now finds that these resources have become inadequate to meet the National Cemetery System standards. Since the Federal funding restriction expires in March 1992, now seems an appropriate time to provide sufficient funding for the future to ensure that the National Memorial Cemetery of Arizona can meet a standard befitting a national cemetery. I am glad to say that my view as well as that of my distinguished colleague, Senator MCCAIN, is shared by the distinguished chairman and the ranking members of the Senate Committee on Veterans' Affairs, Senators CRANSTON and SPECTER.

It had been hoped that this bill could have been included as part of the Department of Veterans Affairs, Housing and Urban Development and independent agencies appropriations bill for fiscal year 1992, H.R. 2519. While it was part of the Senate bill, the House Committee on Veterans' Affairs, although supporting this particular provision, asked that all authorization provisions be removed from the bill. The Senate conferees on H.R. 2519 were able to salvage a short-term authorization of funding through November 30, 1991, but this compromise will only provide a temporary cure for the cemetery's funding woes. It is therefore necessary to introduce this bill to authorize expenditures for operation and maintenance beyond that date.

Mr. President, the National Memorial Cemetery of Arizona was established in order to provide a fitting burial ground for Arizona veterans which is close to their families. As such, it is our duty to enact this legislation to ensure that this cemetery is properly maintained.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD following my remarks.

Last, Mr. President, I would like to take this opportunity to thank the Senate leaders, Senator MITCHELL and Senator DOLE, for their assistance. I would like to also express my appreciation to the chairman and ranking member of the Senate Committee on Veterans' Affairs, Senators CRANSTON and SPECTER, for their extraordinary attention to this very important issue for Arizona veterans and their families. And finally, I would like to extend my sincere gratitude to Secretary Derwinski, Assistant Secretary Principi, and Jo Sherman for their help in this matter and, most importantly, their continuing commitment to the restoration of equity and accountability in the delivery of services to Americas' veterans.

Mr. MCCAIN. Mr. President, I would like to offer a few comments about the legislation that Senator DECONCINI and I are introducing today. This bill will assure the continued maintenance and operation of the National Memorial Cemetery of Arizona through March 1992.

This legislation is of considerable importance to many veterans and their families in Arizona. Veterans in my State had long strived for a national veterans cemetery in Arizona, in order to afford them a respectful resting place that properly recognizes their sacrifice and service to our Nation.

In 1988, I was pleased to author a provision of Public Law 100-332, which transferred the Arizona Veterans Memorial Cemetery from State jurisdiction to status as a national veterans cemetery. The law provided for cost sharing between Arizona and the Federal Government during the 3-year transfer period. Under this law, the VA will assume total responsibility for funding and operating the cemetery as of April 1, 1992.

Although language authorizing such expenditures was passed by the Senate as part of H.R. 2519, the 1992 VA/HUD appropriations bill, the conference agreement reached with the House of Representatives limits this authorization to November 30 of this year.

Mr. President, it is vital that the Senate promptly pass this measure in order to prevent any problems from arising in the operation of the National Memorial Cemetery of Arizona. If enacted into law, this bill will allow VA and State officials to meet the maintenance and operational requirements of the cemetery until the transfer to full Federal responsibility.

I urge my colleagues to support the adoption of this legislation. The passage of this bill will be an important step in bolstering the only national veterans cemetery in Arizona, and securing a hallowed resting ground for veterans and their families in my State.

I am hopeful that the House of Representatives will now also act swiftly to pass this legislation, and remove any concerns veterans and cemetery officials may have about a smooth final transfer to Federal jurisdiction.

I want to express my appreciation to the chairman and ranking member of the Veterans' Affairs Committee, Senators CRANSTON and SPECTER, for their support of this legislation. I also want to thank majority leader MITCHELL, and minority leader DOLE, for their assistance in bringing this bill before the Senate in an expeditious manner.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1823

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraph (1) of section 346(f) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 542) is amended in the matter preceding clause (A)—

(1) by striking out "appropriated funds"; and

(2) by inserting "funds appropriated to the Department of Veterans Affairs' Compensation and Pension account" after "Cemetery".

(b) The amendments made by subsection (a) shall take effect with respect to expenses incurred on or after October 1, 1991.

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

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

The motion to lay on the table was agreed to.

SAN CARLOS WATER RIGHTS CLAIMS SETTLEMENT ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 199, S. 291, regarding water rights of the San Carlos Apache tribe.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 291) to settle certain water rights claims of the San Carlos Apache Tribe.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which

had been reported from the Select Committee on Indian Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:*ERR08*

SECTION 1. SHORT TITLE.

This Act may be cited as the "San Carlos Apache Tribe Water Rights Settlement Act of 1991".

SEC. 2. CONGRESSIONAL FINDINGS.

(a) SPECIFIC FINDINGS.—The Congress finds and declares that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency depend on the development of viable Indian reservation economies;

(3) qualification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on November 9, 1871, and by actions subsequent thereto, the United States Government established a reservation for the San Carlos Apache Tribe in Arizona;

(5) the United States, as trustee for the San Carlos Apache Tribe, obtained water entitlements for the Tribe pursuant to the Globe Equity Decree of 1935; however, continued uncertainty as to the full extent of the Tribe's entitlement to water has severely limited the Tribe's access to water and financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and self-sufficiency;

(6) proceedings to determine the full extent and nature of the Tribe's water rights are currently pending before the United States District Court in Arizona and in the Superior Court of the State of Arizona in and for Maricopa County, as part of the General Adjudication of the Gila River System and Source;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Tribe's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Tribe and its neighboring non-Indian communities have sought to settle their dispute to water and reduce the burdens of litigation;

(8) after lengthy negotiations, which included participation by representatives of the United States Government, the Tribe, and neighboring non-Indian communities of the Salt River and Gila River Valleys, who are all party to the General Adjudication of the Gila River System and Source, the parties are prepared to enter into an Agreement to resolve all water rights claims between and among themselves, to quantify the Tribe's entitlement to water, and to provide for the orderly development of the Tribe's lands;

(9) pursuant to the Agreement, the neighboring non-Indian communities will relinquish claims to approximately 58,735 acre-feet of surface water to the Tribe, provide the means of storing water supplies of the Tribe behind Coolidge Dam on the Gila River in Arizona to enhance fishing, recreation, and other environmental benefits, and make substantial additional contributions to carry out the Agreement's provisions; and

(10) to advance the goal of Federal Indian policy and to fulfill the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Tribe to utilize fully its water resources in developing a diverse, efficient reservation economy.

(b) PURPOSES OF ACT.—It is the purpose of this Act—

(1) to approve, ratify, and confirm the Agreement to be entered into by the Tribe and its neighboring non-Indian communities,

(2) to authorize and direct the Secretary of the Interior to execute and perform such Agreement, and

(3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Tribe as provided in the Agreement and this Act.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) "Active conservation capacity" means that storage space, exclusive of bank storage, available to store water which can be released through existing reservoir outlet works.

(2) "Agreement" means that agreement among the San Carlos Apache Tribe; the United States of America; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Arizona cities of Chandler, Glendale, Globe, Mesa, Safford, Scottsdale and Tempe, the town of Gilbert; Buckeye Water Conservation and Drainage District, Buckeye Irrigation Company, the Phelps Dodge Corporation and the Central Arizona Water Conservation District, together with all exhibits thereto, as the same is executed by the Secretary of the Interior pursuant to sections 10(c) and 11(a)(7) of this Act.

(3) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(4) "CAWCD" means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(5) "Globe Equity Decree" means the decree dated June 29, 1935, entered in the United States of America v. Gila Valley Irrigation District, et al., Globe Equity 59, in the District Court of the United States in and for the District of Arizona, and all decrees and decisions supplemental thereto.

(6) "Reservation" means the reservation authorized by the Treaty with the Apache Nation dated July 1, 1852 (10 Stat. 979), established by the Executive orders of November 9, 1871 and December 14, 1872, as modified by subsequent Executive orders and Acts of Congress including the Executive order of August 5, 1873.

(7) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(8) "Secretary" means the Secretary of the Interior.

(9) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona Corporation.

(10) "SCIP" means the San Carlos Irrigation Project authorized pursuant to the Act of June 7, 1924 (42 Stat. 475), expanded pursuant to the Act of March 7, 1928 (45 Stat. 200, 210), and administered by the Bureau of Indian Affairs.

(11) "Tribe" means the San Carlos Apache Tribe, a tribe of Apache Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476), and duly recognized by the Secretary.

SEC. 4. WATER.

(a) REALLOCATION OF WATER.—The Secretary shall reallocate, for the exclusive use of the Tribe, all of the water referred to in subsection (f)(2) of section 2 of the Act of October 19, 1984 (98 Stat. 2698), which is not required for delivery to the Ak-Chin Indian Reservation under that Act. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be nonreimbursable.

(b) PARTIAL SATISFACTION OF CLAIMS.—Notwithstanding any other provision of this Act, in the event the authorizations contained in section 8(b) do not become effective, the water referred to in subsection 4(a) of this Act shall constitute partial satisfaction of the Tribe's claims for water in the proceeding entitled "In Re the General Adjudication of All Rights To Use Water in the Gila River System and Source, Maricopa County Superior Court Nos. W-1, W-2, W-3, and W-4 (consolidated), as against the parties identified in section 3(2) of this Act.

(c) ADDITIONAL ALLOCATIONS.—The Secretary shall reallocate to the Tribe an annual entitlement to 14,655 acre-feet of water from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to Phelps Dodge Corporation in the Notice of Final Water Allocations to Indian and non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 F.R. 12446 et seq.). The Tribe shall pay the United States or, if directed by the Secretary, CAWCD, all operation, maintenance and replacement costs associated with such CAP water. Water service capital charges, or any other charges or payments for such CAP water other than operation, maintenance and replacement costs shall be nonreimbursable. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be nonreimbursable.

(d) ADDITIONAL ALLOCATIONS.—The Secretary shall reallocate to the Tribe and annual entitlement to 3,480 acre-feet of water from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to the city of Globe, Arizona in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 F.R. 12466 et seq.). The Tribe shall pay the United States or, if directed by the Secretary CAWCD, all operation, maintenance and replacement costs associated with such CAP water. Water service capital charges, or any other charges or payments of such CAP water other than operation, maintenance and replacement costs shall be nonreimbursable. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of contract No. 14-06-W-245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be reimbursable.

(e) WATER STORAGE POOL.—Notwithstanding the Act of June 7, 1924 (43 Stat. 475), as amend-

ed by the Act of March 7, 1928 (45 Stat. 200, 210), in order to permit the Tribe to maintain permanently a pool of stored water for fish, wildlife, recreation and other purposes, the Secretary shall designate for the benefit of the Tribe such active conservation capacity behind Coolidge Dam on the Gila River in Arizona as is not being used by the Secretary to meet the obligations of SCIP for irrigation storage, except that any water stored by the Tribe shall be the first water to spill ("spill water") from Coolidge Dam. The water stored by the Tribe shall be, at the Tribe's designation, the water provided to the Tribe pursuant to subsections (a), (c) and (d) of this section, its entitlement of 12,700 acrefeet of water under its Tribal CAP Delivery Contract dated December 11, 1981; the water referred to in section 10(f), or any combination thereof. A pro rata share of evaporation and seepage losses shall be deducted daily from the Tribe's stored water balance as provided in the Agreement. The Tribe shall pay an equitable share of the operation and maintenance costs for the water stored for the benefit of the Tribe, subject to the Act of July 1, 1932 (47 Stat. 564, 25 U.S.C. 386 et seq.) The water stored by the Tribe pursuant to this subsection shall not be subject to apportionments pursuant to Article VIII (2) of the Globe Equity Decree. Not later than January 31 of each year, the Secretary shall notify the United States District Court for the District of Arizona of the Tribe's stored water balance as of January 1 of that year. The Secretary shall notify said Court of the Tribe's stored water balance at least once per calendar month and at such more frequent intervals as conditions, in the Secretary's judgment, may require.

(f) EXECUTION OF AGREEMENT.—The Secretary shall execute the Agreement which establishes, as between and among the parties to Agreement, the Tribe's permanent right, except as provided in paragraphs 13.0, 14.0 and 15.0 of the Agreement, to the on-reservation diversion and use of all ground water beneath the Tribe's Reservation, subject to the management plan referred to in section 10(D) of this Act, and all surface water in all tributaries within the Tribe's Reservation to the mainstreams of: The Black River, the Salt River below its confluence with the Black River, the San Pedro River and the Gila River, including the right, except as provided in paragraphs 14.0 and 15.0 of the Agreement, to fully regulate and store such water on the tributaries. The Tribe's rights to the mainstream of Black River, San Pedro River and the Gila River shall be as provided in the Agreement and the Globe Equity Decree. With respect to parties not subject to the waiver authorized by subsection 8(b) of this Act, the claims of the Tribe and the United States, as trustee for the Tribe, are preserved.

(g) GILA RIVER EXCHANGES.—Any exchange pursuant to this legislation of Gila River water for water supplied by the CAP shall not amend, alter or conflict with the exchanges authorized by section 304(f) of the Colorado River Basin Project Act (43 U.S.C. 1524(f)).

SEC. 5. RATIFICATION AND CONFIRMATION OF CONTRACTS.

(a) RATIFICATION OF CONTRACT.—Except as provided in section 10(i), the contract between the SRP and the RWCD District dated October 24, 1924, together with all amendments thereto and any extension thereto entered into pursuant to the Agreement, is ratified, confirmed, and declared to be valid.

(b) SUBCONTRACT.—The Secretary shall revise the subcontract of the Roosevelt Water Conservation District for agricultural water service from the CAP to include an addendum substantially in the form of Exhibit "A" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time or times as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(c) RESTRICTIONS.—The lands within RWCD and SRP shall be free from the ownership and full cost pricing limitations of Federal reclamation law and from all full cost pricing provisions of Federal law.

(d) DISCLAIMER.—No person, entity or lands shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) or any full cost pricing provision of Federal law by virtue of their participation in the settlement or their execution and performance of the Agreement, or the use, storage to delivery of CAP water pursuant to a lease, sublease or exchange of water to which the Tribe is entitled under this Act.

(e) FULL COST PRICING PROVISIONS.—The lands within the Tribe's Reservation shall be free from all full cost pricing provisions of Federal law.

(f) CERTAIN EXTENSIONS AUTHORIZED.—Notwithstanding any other provision of law or any other provision of this Act, the Secretary, subject to tribal approval, is authorized and directed to: extend the term of that right-of-way permit granted to Phelps Dodge Corporation on March 8, 1950, and all amendments thereto, for the construction, operation and maintenance of an electrical transmission line and existing road for access to those facilities over the lands of the Tribe; extend the term of that right-of-way permit numbered 2000089 granted on July 25, 1944, to Phelps Dodge Corporation, and all amendments thereto, for the construction, use, operation and maintenance of a water plant, pipeline, canal, water flowage easement through Willow Creek and existing road for access to those facilities over the lands of the Tribe; and grant a water flowage easement through the portions of Eagle Creek flowing through the Tribe's Reservation. Notwithstanding any other provision of law, each such right-of-way and flowage easement shall be for a term expiring on March 8, 2090, and shall be subject to the right of Phelps Dodge to renew the rights-of-way and flowage easements for an additional term of up to 100 years, subject to payment of rental at a rate based upon fair market retail value.

SEC. 6. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE, WATER WITHDRAWAL.

(a) AMENDMENT OF CONTRACT.—The Secretary shall amend the CAP water delivery contract between the United States and the Ak-Chin Indian Community dated December 11, 1980, and the contract between the United States and the Ak-Chin Indian Community dated October 2, 1985, as is necessary to satisfy the requirements of section 4(a) of this Act.

(b) CONTRACT AMENDMENT.—The Secretary shall amend the CAP water delivery contract between the United States and the Tribe dated December 11, 1980 (hereinafter referred to as the "Tribal CAP Delivery Contract"), as follows:

(1) To include the obligation by the United States to deliver water to the Tribe upon the same terms and conditions set forth in the Tribal CAP Delivery Contract as follows: water from those sources described in subsections (a), (c), and (d) of section 4 of this Act; except that the water reallocated pursuant to such subsections shall retain the priority such water had prior to its reallocation. The cost to the United States to meet the Secretary's obligation to design and construct new facilities to delivery CAP water shall not exceed the cost of construction of the delivery and distribution system for the 12,700 acrefeet of CAP water originally allocated to the Tribe.

(2) To extend the term of such contract to December 31, 2100, and to provide for its subsequent renewal upon the same terms and conditions as the Tribal CAP Delivery Contract, as amended.

(3) To authorize the Tribe to lease or to enter into an option or options to lease the water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, within Maricopa, Pinal and Pima Counties for terms not exceeding one hundred years and to renew such leases.

(4) To authorize the Tribe to lease water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, to the city of Scottsdale under the terms and conditions of the Water Lease set forth in Exhibit "B" to the Agreement.

(5) To authorize the Tribe to lease water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, including, but not limited to, the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe and the town of Gilbert.

(c) APPROVAL OF AMENDMENTS.—Notwithstanding any other provision of law, the amendments to the Tribal CAP Delivery Contract set forth in Exhibit "C" to the Agreement are hereby authorized, approved and confirmed.

(d) CHARGES NOT TO BE IMPOSED.—The United States shall not impose upon the Tribe the operation, maintenance and replacement charges described and set forth in section 6 of the Tribal CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to the lessee or lessees of the options to lease or leases herein authorized.

(e) WATER LEASE.—Any Water Lease entered into by the Tribe as authorized by section 6 shall specifically provide that—

(1) the lessee shall pay all operation, maintenance and replacement costs of such water to the United States, or if directed by the Secretary, to CAWCD; and

(2) the lessee shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance and replacement costs and lease payments.

(f) ALLOCATION AND REPAYMENT OF COSTS.—For the purpose of determining allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245, Amendment No. 1, between the United States of America and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with the delivery of water to which the Tribe is entitled under the Tribal Delivery Contract, as amended, to the lessee or lessees of the options to lease or leases herein authorized shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(g) AGREEMENTS.—The Secretary shall, in consultation with the Tribe, enter into agreements necessary to permit the Tribe to exchange, within the State of Arizona, all or part of the water available to it under its Tribal CAP Delivery Contract, as amended.

(h) RATIFICATION.—As among the parties to the Agreement, the right of the city of Globe to withdraw and use water from under the Cutter subarea under the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed.

(i) USE OF WATER.—As among the parties to the Agreement, the right of the city of Safford to withdraw and use water from the Bonita Creek watershed as provided in the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed.

(j) WITHDRAWAL AND USE OF WATER.—As between the Tribe and Phelps Dodge, the right of Phelps Dodge to divert, withdraw and use water as provided in the Agreement, as limited and

conditioned thereunder, is hereby ratified and confirmed.

(k) PROHIBITIONS.—Except as authorized by this section, no water made available to the Tribe pursuant to the Agreement, the Globe Equity Decree, or this Act may be sold, leased, transferred or in any way used off the Tribe's Reservation.

SEC. 7. CONSTRUCTION AND REHABILITATION; TRUST FUND.

(a) DUTIES.—The Secretary is directed—

(1) pursuant to the existing authority of the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.) to design and construct new facilities for the delivery of 12,700 acre-feet of CAP water originally allocated to the Tribe to tribal reservation lands at a cost which shall not exceed the cost for such design and construction which would have been incurred by the Secretary in the absence of the Agreement and this Act; and

(2) to amend the contract between the United States Economic Development Administration and the Tribe relating to the construction of Elgo Dam on the San Carlos Apache Indian Reservation, Project No. 07–81–000210, to provide that all remaining repayment obligations owing to the United States on the date of the enactment of this Act are discharged.

(b) FUND.—There is established in the Treasury of the United States a fund to be known as the "San Carlos Apache Tribe Development Trust Fund" (hereinafter called the "Fund") for the exclusive use and benefit of the Tribe. The Secretary shall deposit into the Fund the funds authorized to be appropriated in subsection (c) and the $3,000,000 provided by the State of Arizona pursuant to the Agreement. There shall be deposited into the Fund any monies paid to the Tribe or to the Secretary on behalf of the Tribe from leases or options to lease water authorized by section 6 of this Act.

(c) AUTHORIZATION.—There are authorized to be appropriated $18,800,000 in fiscal year 1993, and $19,600,000 in fiscal year 1994, together with interest accruing thereon beginning one year from the date of enactment of this Act at rates determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Federal obligations of comparable maturity, to carry out the provisions of subsection (b).

(d) USE OF FUND.—When the authorizations contained in section 8(b) of this Act are effective, the principal of the Fund and any interest or income accruing thereon may be used by the Tribe to put to beneficial use the Tribe's water entitlement, to defray the cost to the Tribe of CAP operation, maintenance and replacement charges as appropriate, and for other economic and community development purposes. The income from the Fund shall be distributed by the Secretary to the San Carlos Apache Tribe only upon presentation to the Secretary of a certified copy of a duly enacted Resolution of the Tribal Council requesting distribution and a written budget approved by the Tribal Council. Such income may thereafter be expended only in accordance with such budget. Income not distributed shall be added to principal. The principal from the Fund may be distributed by the Secretary to the San Carlos Apache Tribe only upon presentation to the Secretary of a certified copy of a duly enacted Resolution of the Tribal Council requesting distribution and a written budget approved by the Tribal Council and the Secretary. Such principal may thereafter be expended only in accordance with such budget: Provided, however, That the principal may only be utilized for long-term economic development projects. In approving a budget for the distribution of income or principal, the Secretary shall, in accordance with regulations promulgated pursuant to subsection (e) of this section, be assured that methods exist and will be employed to ensure the use of the funds shall be in accordance with the approved budget.

(e) REGULATIONS.—The Secretary shall, no later than 30 days after the date the authorizations contained in section 8(b) are effective, promulgate regulations necessary to carry out the purposes of subsection (d).

(f) DISCLAIMER.—The United States shall not be liable for any claim or cause of action arising from the Tribe's use or expenditure of monies distributed from the Fund.

SEC. 8. SATISFACTION OF CLAIMS.

(a) FULL SATISFACTION OF CLAIMS.—Except as provided in subsection (e) of this section, the benefits realized by the Tribe and its members under this Act shall constitute full and complete satisfaction of all members' claims for water rights or injuries to water rights under Federal, State and other laws (including claims for water rights in ground water, surface water, and effluent) from time immemorial to the effective date of this Act. Notwithstanding the foregoing, nothing in this Act shall be deemed to recognize or establish any right of a member of the Tribe to water on the Tribe's Reservation.

(b) RELEASE.—The Tribe, on behalf of itself and its members, and the Secretary on behalf of the United States, are authorized, as part of the performance of the obligations under the Agreement, to execute a waiver and release, except as provided in the Agreement, of all claims of water rights or injuries to water rights (including water rights in ground water, surface water and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in ground water, surface water and effluent), from and after the effective date of this Act, which the Tribe and its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States, the State of Arizona or otherwise.

(c) ADDITIONAL RELEASES.—Except as provided in the Agreement, the United States shall not assert any claim against the State of Arizona or any political subdivision thereof, or any person, corporation or municipal corporation, arising under the laws of the United States, the State of Arizona or otherwise in its own right or on behalf of the Tribe based upon—

(1) water rights or injuries to water rights (including water rights in ground water, surface water and effluent) of the Tribe and its members, or

(2) water rights or injuries to water rights (including water rights in ground water, surface water and effluent) held by the United States on behalf of the Tribe and its members.

(d) SAVINGS PROVISION.—In the event the authorizations contained in subsection (b) of this section do not become effective pursuant to section 11(a), the Tribe and the United States shall retain the right to assert past and future water rights claims as to all Reservation lands.

(e) DISCLAIMER.—Nothing in this Act shall affect the water right or claims related to the San Carlos Apache Allotments outside the exterior boundaries of the Reservation.

(f) AK-CHIN WATER CLAIMS; WAIVER AND RELEASE.—Lands receiving CAP water shall be free from the ownership and full cost pricing limitations of Federal reclamation law and from all full cost pricing provisions of Federal law: Provided, That, as to each non-Indian agricultural contractor of such water, such exemptions shall be contingent upon the execution by such contractor of a waiver and release of any and all claims resulting from the reallocation of water to the Tribe pursuant to section 4(a) of this Act.

SEC. 9. ENVIRONMENTAL COMPLIANCE.

(a) NO MAJOR FEDERAL ACTION.—Execution of the settlement agreement by the Secretary as provided for in section 10(c) shall not constitute major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary shall carry out all necessary environmental compliance during the implementation phase of this settlement.

(b) AUTHORIZATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out all necessary environmental compliance associated with the settlement under this Act, including mitigation measures adopted by the Secretary.

(c) LEAD AGENCY.—With respect to such settlement, the Bureau of Reclamation shall be designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable Federal environmental laws.

(d) ENVIRONMENTAL ACTS.—The Secretary shall comply with all aspect of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and the Endangered Species Act (16 U.S.C. 1531 et seq.), and other applicable Federal environmental Acts and regulations in proceeding through the implementation phase of such settlement.

SEC. 10. MISCELLANEOUS PROVISIONS.

(a) WAIVER OF SOVEREIGN IMMUNITY—In the event any party to the Agreement files a lawsuit in any United States district court relating only and directly to the interpretation or enforcement of this Act or the Agreement, naming the United States of America or the Tribe as parties, authorization is hereby granted to joining the United States of America or the Tribe, or both, in any such litigation, and any claim by the United States of America or the Tribe to sovereign immunity from such suit is hereby waived.

(b) CERTAIN CLAIMS PROHIBITED.—The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this Act or the Agreement against any lands within the San Carlos Apache Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

(c) APPROVAL OF AGREEMENT.—Except to the extent that the Agreement conflicts with the provisions of this Act, such Agreement is hereby approved, ratified and confirmed. The Secretary shall execute and perform such Agreement as approved, ratified and confirmed. The Secretary is authorized to execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(d) GROUND WATER MANAGEMENT PLAN.—The Secretary shall establish a ground water management plan for the San Carlos Apache Reservation which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as a management plan developed under Arizona law.

(e) AMENDMENT TO THE ACT OF APRIL 4, 1938.—The Act of April 4, 1938 (52 Stat. 193; 25 U.S.C. 390) is amended by inserting immediately before the period at the end thereof a colon and the following: "Provided further, That concessions for recreation and fish and wildlife purposes on San Carlos Lake may be granted only by the governing body of the San Carlos Apache Tribe upon such conditions and subject to such limitations as may be set forth in the constitution and bylaws of such Tribe".

(f) SAN CARLOS RESERVOIR.—There is hereby transferred to the Tribe the Secretary's entitlement of 30,000 acre-feet of water, less any evaporation and seepage losses from the date of acquisition by the Secretary to the date of transfer, which the Secretary may have acquired through substituting CAP water for water to which the Gila River Indian Community and the San Carlos Irrigation and Drainage District had

a right to be released from San Carlos Reservoir and delivered to them in 1990.

(g) LIMITATION.—No part of the Fund established by section 7(b) of this Act, including principal and income, or income from options to lease water or water leases authorized by section 6, may be used to make per capita payments to members of the Tribe.

(h) DISCLAIMER.—Nothing in this Act shall be construed to repeal, modify, amend, change or affect the Secretary's obligations to the Ak-Chin Indian Community pursuant to the Act of October 19, 1984 (98 Stat. 2698).

(i) WATER RIGHTS.—Nothing in this Act shall be construed to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona tribe, band or community, other than the San Carlos Apache Tribe.

(j) PLANET RANCH.—The Secretary is authorized and directed to acquire, with the consent of and upon terms mutually acceptable to the city of Scottsdale ("city") and the Secretary, all of the city's right, title and interest in Planet Ranch located on the Bill Williams River in Arizona, including all water rights appurtenant to that property, and the city's January 1988 application filed with the Arizona Department of Water Resources to appropriate water from the Bill Williams River through a land exchange based on fair market value. If an exchange is made with land purchased by the Bureau of Reclamation for the construction and operation of the Central Arizona Project, then, upon commencement of repayment by CAWCD of the reimbursable costs of the Central Arizona Project, the fair market value of those lands so exchanged shall be credited in full against the annual payments due from CAWCD under Article 9.4(a) of Contract No. 14-06-W-245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, until exhausted: Provided, however, That the authorized appropriation ceiling of the Central Arizona Project shall not be affected in any manner by the provisions of this subsection.

(k) REPEAL.—Section 304(c)(3) of the Colorado River Basin Project Act (43 U.S.C. 1524(c)(3)) is hereby repealed. This subsection does not authorize transportation of water pumped within the exterior boundary of a Federal reclamation project established prior to September 30, 1968, pursuant to the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 391), as amended and supplemented, across project boundaries.

(l) WATER RIGHTS.—Nothing in this Act shall be construed to affect the water rights or the water rights claims of any Federal agency other than the Bureau of Indian Affairs on behalf of the San Carlos Apache Tribe, nor shall anything in this Act be construed to prohibit the United States from confirming in the Agreement, except on behalf of Indian tribes other than the San Carlos Apache Tribe, the Gila River and Little Colorado River watershed water rights of other parties to the Agreement by making express provisions for the same in the Agreement.

SEC. 11. EFFECTIVE DATE.

(a) EFFECTIVE DATE OF AUTHORIZATION.—The authorization contained in section 8(b) of this Act shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that—

(1) the Secretary has fulfilled the requirements of sections 4 and 6;

(2) the Roosevelt Water Conservation District subcontract for agricultural water service from CAP has been revised and executed as provided in section 5(b);

(3) the funds authorized by section 7(c) have been appropriated and deposited into the Fund;

(4) the contract referred to in section 7(a)(2) has been amended;

(5) the State of Arizona has appropriated and deposited into the Fund $3,000,000 as required by the Agreement;

(6) the stipulations attached to the Agreement as Exhibits "D" and "E" have been approved; and

(7) the Agreement has been modified, to the extent it is in conflict with this Act, and has been executed by the Secretary.

(b) CONDITIONS.—If the actions described in paragraphs (1), (2), (3), (4), (5), (6), and (7) of subsection (a) of this Act have not occurred by December 31, 1994, subsections (c) and (d) of section 4, subsections (a) and (b), of section 5, section 6, subsection (a)(2), (c), (d), and (f) of section 7, subsections (b) and (c) of section 8, and subsections (a), (b), (c), (d), (e), (g), (h), (j), and (l) of section 10 of this Act, together with any contracts entered into pursuant to any such section or subsection, shall not be effective on and after the date of enactment of this Act, and any funds appropriated pursuant to section 7(c), and remaining unobligated and unexpended on the date of the enactment of this Act, shall immediately revert to the Treasury, as general revenues, and any funds appropriated by the State of Arizona pursuant to the Agreement, and remaining unobligated and unexpended on the date of the enactment of this Act, shall immediately revert to the State of Arizona.

*(2) Notwithstanding the provision of paragraph (1), if the provisions of subsections (a) and (b) of section 5 of this Act have been otherwise accomplished pursuant to provisions of the Act of October 20, 1988, prior to the date of the enactment of this Act, the provisions of paragraph (1) shall not be construed as affecting such subsections.*ERR08**

AMENDMENT NO. 1254

(Purpose: To make certain technical amendments)

Mr. SIMPSON. Mr. President, I send a technical amendment to the desk on behalf of the Senator MCCAIN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Senator MCCAIN, proposes an amendment numbered 1254.

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

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

The amendment is as follows:

On page 36, line 1, strike out "Water service" and insert in lieu thereof "Except as provided in subsection (e)(3) of section 6, water service".

On page 36, line 22, strike out "Water service" and insert in lieu "Except as provided in subsection (e)(3) of section 6, water service".

On page 40, line 15, strike out "to" and insert in lieu thereof "or".

On page 44, line 4, strike out "Any" and insert in lieu thereof "Except as provided in paragraph (3) of this subsection, any".

On page 44, line 11, strike out "the" and insert in lieu therof "Except as provided in paragraph (3) of this subsection, the".

On page 44, between lines 15 and 16, insert the following:

(3) With respect to the water reallocated to the Tribe pursuant to subsections (c) and (d) of section 4, the Tribe or lessee shall pay any water service capital charges or municipal and industrial subcontract charges for any water use or lease from the effective date of this Act through September 30, 1995.

On page 57, line 11, strike out "If" and insert in lieu thereof "(1) If".

On page 58, line 3, strike out "provision of paragraph (1)" and insert in lieu thereof "provisions of paragraph (1) of this subsection".

On page 58, line 6, beginning with the second comma, strike out all through "Act" on line 7.

On page 58, line 8, immediately after "(1)", insert "of this subsection".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1254) was agreed to.

Mr. MCCAIN. Mr. President, I am very pleased to rise in support of S. 291, the San Carlos Apache Tribe Water Rights Settlement Act of 1991.

In Arizona, as elsewhere in the arid West, no resource is more valuable than water. No resource is subject to more disagreement, dispute and litigation.

Accordingly, it is with great pride and pleasure that I urge the Senate to approve this legislation, which provides for settling water-related disputes and eliminating or greatly reducing the scope of litigation. S. 291 will ratify a series of agreements, reached after more than 2 years' of tough negotiations involving representatives of the Secretary of the Interior, the San Carlos Apache Tribe, the State of Arizona, and an array of municipal, agricultural, and mining entities.

The United States has filed in State court, on behalf of the San Carlos Apache Tribe, claims to more than 290,000 acre-feet of water for the tribe's 1.8 million-acre reservation. These claims, and related water disputes between and among the parties, are the subject of the settlement agreement and S. 291.

For the United States and the tribe, the settlement will secure for the tribe rights to a total of 153,000 acre-feet of water annually. 33,300 acre-feet of this amount is central Arizona project [CAP] Indian water excess to the Secretary's needs under the 1984 AK-CHIN settlement; 18,135 acre-feet is previously allocated CAP municipal-industrial water; 6,000 acre-feet was allocated to the tribe by the GILA decree of 1935, 7,300 acre-feet is Black River water from the Salt River project and the Roosevelt Water Conservation District; and 12,700 acre-feet is the tribe's existing CAP allocation. The tribe would be entitled to an estimated 50,000 acre-feet of on-reservation tributary flows and 25,000 acre-feet of ground water annually. Agreements with the cities of Safford and Globe and the Phelps Dodge Corp. will secure and place certain limits on use of surface and ground water supplies that have been in dispute.

The settlement also enables the tribe to maintain a pool of water in San Carlos Lake behind Coolidge Dam on the Gila River. This pool and revised proce-

dures for managing the water behind the dam will serve to prevent any recurrence of the disastrous fish kills that occurred behind the dam in the 1970's and which almost occurred in each of the last 2 drought years.

Mr. President, my friend and former House colleague, the recently retired Interior Committee Chairman Morris K. Udall, will be particularly pleased about this provision of S. 291. After the last fish kill, Mo Udall promised to try and find a permanent solution to prevent another one. During the past 2 very dry years, when events threatened to destroy the fishery resource again, his intervention was crucial in finding interim solutions that averted another kill. Mo Udall saw eventual enactment of a San Carlos water settlement as the key to a permanent solution that would fulfill his promise. I am delighted that we are so close to achieving it.

The United States' claims to water on behalf of the San Carlos Apache Tribe can be conservatively estimated to be worth more than $1½ billion. If one discounts this amount to account for normal risks of litigation, and considers the record of the United States' performance as trustee for the tribe—a record that can be charitably characterized as less than diligent—the Federal share of this settlement package can only be considered fair and reasonable.

Overall, Federal contributions to the settlement are valued at approximately $55 million, including $38,400,000 in direct appropriations to a tribal development fund. Local contributions—in water and in revenues to the tribe—are valued at no less than $55 million. This amount includes $3 million from the State of Arizona in lieu of litigation costs and revenues to the tribe from leases of portions of its CAP M&I and indian water to municipalities. The overall value of the contributions of the local parties fairly reflects their respective interests and liabilities.

If all of the requirements of the settlement agreement and the legislation, including approval of necessary stipulations to ligitation by the appropriate courts, are met no later than December 31, 1993, then the settlement will become effective.

As introduced, S. 291 was essentially the same as legislation pased by the House late in the last Congress and not acted on by the Senate. As reported by the select committee, the bill includes a compromise on the one critical issue left unsettled in last year's House bill. This compromise resolves a dispute over the use of so-called excess AK-CHIN water under the terms of 1984 Senate amendments to the 1978 AK-CHIN Indian Water Rights Settlement Act.

The history of this dispute is detailed in the committee report on S. 291. The compromise that has been worked out is satisfactory to the delegation, the tribe, the State, the Central Arizona Water Conservation District, and the other parties in Arizona, and to the best of my knowledge is acceptable to the administration. Achieving compromise on this issue has been very difficult, and I believe it is fair to say that without it, we would not be able to move this settlement through the Congress.

What the compromise does is allow the tribe to obtain and profit from the excess AK-CHIN water by leasing it to municipalities. It will allow agricultural users, who will be effectively precluded from using the excess AK-CHIN water, to make more economical use of their other CAP and groundwater supplies consistent with the purposes of the central Arizona project authorizing legislation and Arizona's Groundwater Management Act.

S. 291 also includes a provision, requested by the Interior Department and the city of Scottsdale, authorizing the Secretary of the Interior to negotiate with the city to obtain Planet Ranch through a fair market value exchange of Federal lands elsewhere in Arizona. Federal acquisition of the water rights associated with the ranch, which is located on the Bill Williams River in western Arizona, will secure water supplies critical to the continued health and well-being of species and riparian habitat along the river as it flows into the Bill Williams unit of the Havasu National Wildlife Refuge.

Federal acquisition of the planet ranch is strongly supported by the Interior Department and by all parties concerned in Arizona. Its aquisition would be a big plus for the environment that would have the virtue of also eliminating the need for a great deal of litigation that would have to be funded by State, Federal, and local taxpayers.

Accordingly, I am very pleased to have the Planet Ranch provision included in this legislation.

Mr. President, the Congressional Budget Office Report on S. 291 found a problem with the Budget Enforcement Act, specifically, a potential loss of $1.1 million in revenue to the United States in fiscal years 1994 and 1995 as a result of approximately 18,000 acre-feet of CAP municipal and industrial water being reallocated to the San Carlos Tribe. The lost revenue would be in the form of water service capital charges that would otherwise be paid by municipal and industrial water contractors. As a result of negotiations with tribal representatives, I have included in the block of technical amendments to S. 291 is an amendment providing that any such water service capital charges shall be paid to the United States during the fiscal years 1994 and 1995 by the tribe or its lessee. I have been advised by CBO that this amendment effectively eliminates S. 291's budget act problem.

I want to congratulate all who have contributed to the San Carlos settlement effort, in particular the representatives of the San Carlos Apache Tribe, the cities of Chandler, Glendale, Globe, Mesa, Stafford, and Scottsdale, and the town of Gilbert, the Salt River project, the Central Arizona Water Conservation District, the Phelps Dodge Corp., the Buckeye Water Conservation and Drainage District, and the Buckeye Irrigation Co., and the State of Arizona.

Although they are not signatories to the settlement agreement, I would also like to recognize the Gila River Indian Community, the San Carlos Irrigation and Drainage District, and the Gila Valley and Franklin Irrigation Districts for their cooperation.

I want to express special thanks to my colleague, Senator DECONCINI, and his staff, in particular for their role in developing the compromise on the excess AK-CHIN water. Senator DECONCINI's commitment to the settlement process has been a key to the San Carlos settlement as well as to the other successful settlements of Arizona Indian water rights claims.

I thank Senator DOMENICI for his efforts to ensure that appropriate language was included in S. 291 to meet the concerns of New Mexico citizens along the Upper Gila River regarding future water exchanges.

Finally, let me express my deep appreciation to the distinguished chairman of the Select Committee on Indian Affairs, Senator INOUYE. His leadership and commitment to providing fair and just resolution of Indian water rights claims has been crucial to the success of the settlement process. I thank him for his attention to and support for the effort to achieve the San Carlos Apache water rights settlement.

Mr. President, this legislation is eloquent testimony to the wisdom of a policy of supporting negotiation, rather than litigation, in seeking to resolve disputes involving highly complex and emotional issues. I strongly urge its passage.

Mr. WALLOP. Mr. President, S. 291 as reported by the Select Committee on Indian Affairs includes several provisions involving matters that fall within the jurisdiction of the Committee on Energy and Natural Resources. Since the select committee's report was filed on July 31, I have had an opportunity to review these provisions and the explanations of them in the select committee's report and am persuaded that a further, formal review by the Energy Committee is not necessary. However, for the record, I would ask the junior Senator from Arizona, the vice chairman of the select committee, if he would respond to three questions about the legislation.

Mr. MCCAIN. I will be happy to respond.

Mr. WALLOP. Mr. President, section 10(j) of the bill authorizes the Secretary of the Interior to acquire from the city of Scottsdale, AZ, Planet Ranch on the Bill Williams River, including all appurtenant water rights and the city's pending application with the State Department of Water Resources to appropriate additional water from the river, through a land exchange based on fair market value. If the lands the Secretary exchanges for Planet Ranch are lands previously purchased by the Bureau of Reclamation for the construction and use of the Central Arizona Project (CAP), how will this affect the repayment obligations of the Central Arizona Water Conservation District (CAWCD)?

Mr. McCAIN. There will be no change in the district's repayment obligation. Under the terms of CAWCD's repayment contract and reclamation law, once repayment of the CAP begins, if the Bureau of Reclamation sells lands it purchased for CAP use, the CAWCD is entitled to receive credit against the annual payments due on its repayment obligation. Section 10(j) ensures that in the event these same lands are exchanged for Planet Ranch, the CAWCD will receive the same fair market value credit against its annual payments as it would if the lands were sold. The effect is to ensure that the CAWCD, as a third party, neither receives a windfall nor suffers a penalty as a result of a Planet Ranch exchange.

Mr. WALLOP. I thank the Senator for his answer. Section 10(k) of S. 291 repeals section 304(c)(3) of the Colorado River Basin Project Act of 1968. Will the Senator from Arizona please explain why this provision is in the bill?

Mr. McCAIN. I will be happy to explain. First let me say that section 304(c)(3) requires the Secretary of the Interior to find that a surplus of ground water exists and that drainage is or was required as a precondition for permitting ground water to be pumped from within the exterior boundaries of a CAP contractor's service area for any use outside that contractor's service area. This provision, which was enacted 12 years before Arizona enacted a comprehensive ground water management law and 23 years before Arizona enacted statewide comprehensive legislation governing the transportation of ground water, has provided the only Federal requirement with respect to the transfer of ground water within the State of Arizona and applies to no other State.

Although the Secretary to date has not invoked the provision, municipalities in Maricopa County, including the city of Phoenix, are concerned that section 304(c)(3) might be interpreted as a bar to a variety of water management activities either under way or contemplated pursuant to the State's Groundwater Management Act or pursuant to Indian water rights settlements. Consequently, they sought its repeal as part of the Fort McDowell Indian water rights settlement in the 101st Congress. However, rural Arizona counties and municipalities opposed repeal until the Arizona legislature enacted statewide comprehensive legislation on ground water transportation. The Arizona delegation agreed that, upon enactment of such legislation by the State, we would seek repeal of 304(c)(3).

In May of this year Arizona enacted comprehensive ground water transportation legislation that included a declaration of the State's support for legislation in Congress to armed section 304(c)(3). Accordingly, section 10(k) was added to S. 291.

I would observe that this affirmative response to the State's request is entirely consistent with longstanding Federal policy to defer to State law on matters concerning the management and use of a State's water within its boundaries.

Mr. WALLOP. I thank the Senator for his explanation. My third question concerns section 8(f) of S. 291, which provides for a waiver of ownership and full cost pricing limitations of reclamation law to CAP contractors who waive any claims to the so-called excess Ak-Chin water. Would the Senator explain the basis for this provision?

Mr. McCAIN. I am glad to explain. Mr. President, the waivers authorized by section 8(f) constitute a compromise that eliminates opposition to a key provision of the San Carlos settlement that allocates to the San Carlos Apache Tribe 33,300 acre-feet of Colorado River water which is excess to the Secretary's requirements under the 1984 Ak-Chin Indian water settlement. S. 291 provides for the tribe to lease this water to various Arizona municipalities and thereby obtain a significant, long term source of revenue—estimated at more than $40,000,000 over the next 100 years—with which to develop its water and other resources.

However, reallocation of the excess AK-Chin water to the San Carlos Tribe for lease to municipal users will effectively preclude CAP non-Indian agricultural contractors from having any access to that water. Because these contractors were intended to have such access pursuant to the 1984 Senate amendments to the AK-Chin settlement, they, as well as the State and the Central Arizona Water Conservation District, strongly opposed the reallocation and the settlement without some offsetting consideration. The select committee adopted the view of the State, the CAWCD and the contractors that a waiver of the ownership and full cost pricing limitations of reclamation law would be appropriate consideration primarily because these limitations operate to frustrate efficient and economical use of water in central Arizona, which is directly contrary to the purposes of the 1968 Colorado River Basin Project Act and Arizona's Groundwater Management Act.

Mr. President, because section 8(f) is such an important provision of the San Carlos settlement, I think it is appropriate to include at this point in the RECORD those portions of the report of the Select Committee on Indian Affairs on S. 291 (S. Rept. 102–133), which detail the history of the 1984 AK-Chin amendments and further explain the basis for the Reclamation waiver.

I ask unanimous consent that it be printed in the RECORD at this point.

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

EXCERPT FROM SENATE REPORT 102–133

In 1983 the Secretary and the AK-Chin Indian Community renegotiated the terms of the 1978 AK-Chin settlement after it had become clear that problems associated with acquiring the water sources identified in that settlement made those sources not viable. As introduced and passed by the House in September, 1984, the settlement amendments required the Secretary to provide 75,000 AF annually to AK-Chin, with the first 50,000 AF to be Colorado River water acquired from the Yuma-Mesa Division of the Gila Project, and the balance to come from AK-Chin's 58,300 AF CAP Indian allocation.

Arizona's governor and Department of Water Resources (DWR) objected to the allocation of the unused Yuma-Mesa water for AK-Chin. DWR, which had included the allocated but unused Yuma-Mesa water in its calculation of Central Arizona Project supplies available for ultimate allocation to non-Indian agricultural and municipal users, saw the allocation to AK-Chin as causing shortages for other allottees in future dry years. After the House passed the renegotiated settlement on September 17, 1984, the governor and DWR director sought changes in the legislation in the Senate.

Arizona Senators Goldwater and DeConcini declined to change the terms of the renegotiated settlement, but did agree to two amendments that addressed the State's concerns. One modified Section 2(k) of the House bill, which provided that:

"Whenever the aggregate water supply * * * exceeds the quantity necessary to meet the obligations of the Secretary under this Act, the Secretary shall have the authority to contract, on an interim basis, for the allocation of any of the water * * * which is not required for delivery to the AK-Chin Indian Reservation under this Act." The House Report (98–1026) was ambiguous as to the meaning of this provision. On page 5 it stated that "any water from these combined sources of water that is in excess of the Community's entitlement will be available for allocation to other water users in central Arizona", although the actual language in 2(k) did not specify central Arizona. On page 13, in the section-by-section analysis of section 2(K), the report states that "It is the intent of the Committee that any such excess water be allocated for use in Arizona."

The State wanted to eliminate any doubt that the access AK-Chin water would be used in central Arizona. Accordingly, Arizona's Senators agreed to amend subsection 2(K) to read "the Secretary shall allocate on an interim basis TO THE CENTRAL ARIZONA PROJECT any of the water * * * which is not required for delivery to the AK-Chin Indian Reservation under this Act."

Relevant portions of both Senators' statements made during Senate consideration of H.R. 6206, as well as subsequent statements made in the House by Interior Committee Chairman Udall and representative McCain concurring in the Senate amendments, describe the intent of requiring the Secretary to allocate the excess AK-Chin water to the Central Arizona Project so as to ensure that the water would be available to the Central Arizona Water Conservation District, the eventual operator of the CAP, for use by its non-Indian contractors.

At the March 28, 1991 joint hearing on S. 291, Senator DeConcini and witnesses from the State of Arizona, the CAWCD, CAP agricultural contractors and Pinal County municipalities expressed support for the San Carlos settlement but strongly opposed S. 291's provisions allocating the excess AK-Chin water to the San Carlos Apache Tribe and authorizing its lease to municipal entitles. The common base for their opposition is that these provisions, by effectively denying CAP agricultural contractors, who are not otherwise parties to the settlement, any opportunity to use the AK-Chin excess water, would frustrate the purpose and intent of the 1984 Senate amendments to the AK-Chin settlement. Only if the non-Indian CAP agricultural contractors received some consideration to offset their loss of all future access to the excess AK-Chin water would these parties support the settlement and S. 291.

The Tribe and the Interior Department testified that the settlement would be unacceptable to them without the reallocated excess Ak-Chin water and its lease revenues going to the Tribe. The Department has asserted that because the actual language of the 1984 amendments to the Ak-Chin settlement arguably did not vest any legally enforceable right to the excess Ak-Chin water in the State, CAWCD or its contractors, the purpose and intent of the Senate amendments in effect should be ignored and the water reallocated to San Carlos by the settlement legislation notwithstanding the understandings of the parties to those amendments.

The Committee agrees with the Tribe and the Department that the use of the excess Ak-Chin water as provided in S. 291 is essential if the Tribe's claims are to be fairly settled. However, the Committee also recognizes and gives great weight to the understandings of Arizona's Senators and the other parties supporting those amendments as to the purpose and intent of the amendments. The Committee also notes that the contributions of the State of Arizona and the cooperation of the CAWCD are essential to the implementation of the San Carlos settlement.

Extensive discussions among the parties subsequent to the March hearing produced agreement that appropriate and acceptable consideration to the Central Arizona Project agricultural contractors for their loss of access to the excess Ak-Chin water would be a waiver of the ownership limitations and full cost pricing provisions of Federal Reclamation law and the full cost pricing provisions of Federal Reclamation law and the full cost pricing provisions of other Federal law. Accordingly, Section 8(f) of the Committee substitute provides for such a waiver in exchange for the contractors' waiver and release of any and all claims to the use of the excess Ak-Chin water.

The appropriateness of the waiver is supported by information provided to the Committee by the State and the Central Arizona Water Conservation District that indicates that the ownership limitation and full cost pricing provisions of Federal reclamation law, fully applied to Central Arizona Project non-Indian agricultural contractors, operate to produce results contrary to the purposes for which the Central Arizona Project was authorized and to the purposes of Arizona's 1980 Groundwater Management Act.

As described in a 1967 Senate report on the Central Arizona Project (S. Rept. 90-408, p. 27), the project was "needed to (1) Reduce a dangerous overdraft upon ground water reserves (2) Maintain as much as possible of the area's 1,250,000 acres of irrigated farm land. (3) Provide a source of additional water for municipal and industrial use that will be required during the next 30 years." To this end, the 1968 authorizing legislation barred the use of Central Arizona Project water directly or indirectly for irrigation of lands not having a recent history of irrigation (Indian lands and state and Federal Wildlife refuges were excepted from this bar).

Arizona's 1980 Groundwater Management Act (GMA) was enacted in part as a condition for receiving the Federal funding necessary to complete the Central Arizona Project. The GMA's primary goals include controlling the severe overdraft occurring in many parts of the state and providing a means to allocate the state's limited groundwater resources. Among its provisions, the GMA required integration of water conservation programs with the Central Arizona Project.

The GMA established four Active Management Areas (AMA), which include 80 percent of Arizona's population and 70 percent of the state's groundwater overdraft, to provide comprehensive groundwater management. In the Prescott, Phoenix and Tucson AMAs, which include the large urban areas of the state, the primary management goal is to achieve safe-yield, defined as a long-term balance between the annual amount of groundwater withdrawn in the AMA and the annual amount of natural and artificial recharge, by the year 2025. In the Pinal AMA, where a predominantly agricultural economy exists, the management goal is to preserve that economy for as long as feasible, while considering the need to preserve groundwater for future non-irrigation uses.

Under conservation and management plans for Arizona's agricultural sector, which accounts for about 75 percent of total water use in the AMA's, each farm's water use is to be reduced by increasing irrigation efficiency. In addition, CAP agricultural contractors are required to reduce groundwater pumping by one acre-foot for each acre-foot of CAP water they receive. The combination of more efficient irrigation systems with new surface supplies from the Colorado River via the CAP, which reduces the need to pump groundwater, is therefore crucial to the success of the state's efforts to met its goal of safe-yield in the AMA's by 2025.

The GMA assumes that CAP agricultural contractors will be able to take deliveries of large amounts of Colorado River water in the early years of the project, which would slow the rate of groundwater depletion, and, as municipal and industrial uses increase and agricultural areas convert to urban uses, further reduce depletion. Consistent with this assumption, agricultural users took deliveries of 594,000 acre-feet of water in calendar year 1990 and municipal and industrial users took deliveries of 151,000 acre-feet of Colorado River water.

Arizona's Department of Water Resources, the CAWCD and representatives of CAP agricultural contractors testified that a waiver of the ownership limitations of federal law would enable the contractors to achieve more economical and efficient use of their water supplies, and to take delivery of increased amounts of CAP water, with corresponding reductions of groundwater pumping, as envisioned by the 1968 CAP authorizing legislation and the GMA. Doing so would not result in increases in lands subject to irrigation, as such increases are restricted under both the 1968 CAP authorizing legislation and the GMA.

Similarly, these witnesses testified that the application of full-cost pricing provisions of Reclamation law and of federal law to CAP agricultural contractors is contrary to the goals of the CAP and the GMA. When the CAP is declared complete (anticipated some time in 1993), the contract rate for CAP agricultural water, including operation, maintenance and repair charges, will be about $57 per acre-foot. The cost of pumping an acre-foot of groundwater will remain less than that amount, while the full cost of CAP water is estimated to be about $250 per acre-foot.

The CAP's economics and the requirements of Reclamation law attendant to contracting for CAP water were major factors that caused 13 of the 23 Arizona agricultural entities that were offered contracts for CAP water to decline those contracts. Relying on the calculations of water delivery and construction costs provided by the Bureau of Reclamation, the ten agriculture districts that did sign long term water service contracts obligated themselves to repay the United States over $250,000,000 for the cost of constructing their distribution systems. Six of the ten incurred more than $70,000,000 in additional bonded indebtedness to private lenders in order to meet a federal requirement that they pay twenty percent of the cost of their distribution system up-front.

Given their reliance on the information provided by the United States and notwithstanding the rates that they would pay for CAP water would be less than full cost, as provided in their water service contracts, CAP agricultural contractors remain concerned that full-cost provisions of Reclamation law might be applied to their operations or that federal law might be amended to require payment of full cost for project water as a condition of their eligibility for participation in various federal programs.

Mr. McCAIN. Mr. President, I hope that this explanation of the compromise on the Ak-Chin water makes clear that the circumstances that gave rise to section 8(f) of S. 291 are unique to Arizona and to the central Arizona project. The excess Ak-Chin water is a crucial element of the San Carlos settlement. It represents a major source of future revenue for the improverished San Carlos Apache Tribe—revenue from local, non-Indian entities rather than from federal appropriations. I would emphasize that without the excess Ak-Chin water compromise, the entire San Carlos settlement and the benefits it would provide both the tribe and non-Indians are likely to be lost.

I know the Senator from Wyoming understands all too well how difficult and complex are the problems and issues posed by unresolved federal and Indian claims to water on western watersheds. I appreciate his concerns

about S. 291, and thank him for the opportunity to answer his questions.

Mr. WALLOP. I thank the Senator from Arizona for his responses.

Mr. DECONCINI. Mr. President, the bill before the Senate, S. 291 the San Carlos apache tribe water rights settlement act of 1991, will provide for the settlement of the water rights claims of the San Carlos Indian Tribe. This legislation is extremely important to the water future of Arizona.

For the information of my colleagues, the United States on behalf of the tribe has filed claims for 292,406 acre-feet per year against a variety of parties. At the rate used by the Department of the Interior in previous settlements, the value of these claims is estimated to be $511 million. This legislation resolves these claims. In return for extinguishing these claims, the Tribe will receive 152,435 acre-feet per year [AF/Y] of water from a variety of sources as well as sufficient money from the Federal Government, the State of Arizona, the city of Safford, Phelps Dodge, and receipts from long-term leasing of water in order to develop the beneficial uses of this water on the reservation.

While I now support the bill, as it was reported by the committee, it has not always enjoyed my support. I would like to take a moment to touch upon a previous concern of mine with the bill and discuss how it will be resolved in the bill currently before the Senate.

The San Carlos legislation as introduced, proposed using the 33,000 ac/ft in excess of the amount needed to satisfy the Ak-Chin Indian settlement to complete the water budget for the San Carlos settlement. However, Senator Goldwater and I successfully offered an amendment to the 1984 Ak-Chin legislation which specifically stated that any water not utilized by the Ak-Chin community for this settlement would return to the central Arizona project to be reallocated by the State. Because of this, the State of Arizona, the central Arizona Water Conservation District, along with myself, were opposed to using this water for the settlement.

To respond to this issue, the bill was modified to exempt irrigation districts receiving cap water from the ownership and full cost pricing limitations of Federal reclamation law. In return, these irrigation districts will drop their claims to the Ak-Chin surplus water. It is my understanding that this solution is agreeable with all of the concerned parties including this Senator.

Another issue I would like to touch upon is the acquisition of Planet Ranch. The bill authorizes the Secretary to acquire Planet Ranch by exchange. This is a good provision and I support it. This action will allow for the protection of one of our precious, but rapidly disappearing, desert riparian areas. Some questions have arisen concerning who should manage this area once it has been acquired; the BLM or the Fish and Wildlife Service. The language in the bill is neutral in this regard.

There were other issues in the bill as introduced that I had concerns about. These included the impact to the water supply of the city of Safford and Greenlee County's largest employer. These issues have been addressed to my satisfaction in the bill before the committee.

I applaud the vice-chairman, Senator MCCAIN, for his efforts to work through these and other issues and bring this bill to the floor. I also want to thank the chairman of the Select Committee on Indian Affairs, Senator INOUYE, for his leadership in enacting these Indian water settlements.

The San Carlos Apache Tribe Water Rights Settlement Act of 1991 is a good piece of legislation and I ask that my colleagues join me in supporting it. This bill is an outstanding example of how good legislation is enacted in this body.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 291), as amended, was passed.

S. 291

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "San Carlos Apache Tribe Water Rights Settlement Act of 1991".

SEC. 2. CONGRESSIONAL FINDINGS.

(a) SPECIFIC FINDINGS.—The Congress finds and declares that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency depend on the development of viable Indian reservation economies;

(3) qualification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on November 9, 1871, and by actions subsequent thereto, the United States Government established a reservation for the San Carlos Apache Tribe in Arizona;

(5) the United States, as trustee for the San Carlos Apache Tribe, obtained water entitlements for the Tribe pursuant to the Globe Equity Decree of 1935; however, continued uncertainty as to the full extent of the Tribe's entitlement to water has severely limited the Tribe's access to water and financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and self-sufficiency;

(6) proceedings to determine the full extent and nature of the Tribe's water rights are currently pending before the United States District Court in Arizona and in the Superior Court of the State of Arizona in and for Maricopa County, as part of the General Adjudication of the Gila River System and Source;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Tribe's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Tribe and its neighboring non-Indian communities have sought to settle their dispute to water and reduce the burdens of litigation;

(8) after lengthy negotiations, which included participation by representatives of the United States Government, the Tribe, and neighboring non-Indian communities of the Salt River and Gila River Valleys, who are all party to the General Adjudication of the Gila River System and Source, the parties are prepared to enter into an Agreement to resolve all water rights claims between and among themselves, to quantify the Tribe's entitlement to water, and to provide for the orderly development of the Tribe's lands;

(9) pursuant to the Agreement, the neighboring non-Indian communities will relinquish claims to approximately 58,735 acre-feet of surface water to the Tribe, provide the means of storing water supplies of the Tribe behind Coolidge Dam on the Gila River in Arizona to enhance fishing, recreation, and other environmental benefits, and make substantial additional contributions to carry out the Agreement's provisions; and

(10) to advance the goal of Federal Indian policy and to fulfill the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Tribe to utilize fully its water resources in developing a diverse, efficient reservation economy.

(b) PURPOSES OF ACT.—It is the purpose of this Act—

(1) to approve, ratify, and confirm the Agreement to be entered into by the Tribe and its neighboring non-Indian communities,

(2) to authorize and direct the Secretary of the Interior to execute and perform such Agreement, and

(3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Tribe as provided in the Agreement and this Act.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) "Active conservation capacity" means that storage space, exclusive of bank storage, available to store water which can be released through existing reservoir outlet works.

(2) "Agreement" means that agreement among the San Carlos Apache Tribe; the

United States of America; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Arizona cities of Chandler, Glendale, Globe, Mesa, Safford, Scottsdale and Tempe, the town of Gilbert; Buckeye Water Conservation and Drainage District, Buckeye Irrigation Company, the Phelps Dodge Corporation and the Central Arizona Water Conservation District, together with all exhibits thereto, as the same is executed by the Secretary of the Interior pursuant to sections 10(c) and 11(a)(7) of this Act.

(3) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(4) "CAWCD" means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(5) "Globe Equity Decree" means the decree dated June 29, 1935, entered in the United States of America v. Gila Valley Irrigation District, et al., Globe Equity 59, in the District Court of the United States in and for the District of Arizona, and all decrees and decisions supplemental thereto.

(6) "Reservation" means the reservation authorized by the Treaty with the Apache Nation dated July 1, 1852 (10 Stat. 979), established by the Executive orders of November 9, 1871 and December 14, 1872, as modified by subsequent Executive orders and Acts of Congress including the Executive order of August 5, 1873.

(7) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(8) "Secretary" means the Secretary of the Interior.

(9) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona Corporation.

(10) "SCIP" means the San Carlos Irrigation Project authorized pursuant to the Act of June 7, 1924 (42 Stat. 475), expanded pursuant to the Act of March 7, 1928 (45 Stat. 200, 210), and administered by the Bureau of Indian Affairs.

(11) "Tribe" means the San Carlos Apache Tribe, a tribe of Apache Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476), and duly recognized by the Secretary.

SEC. 4. WATER.

(a) REALLOCATION OF WATER.—The Secretary shall reallocate, for the exclusive use of the Tribe, all of the water referred to in subsection (f)(2) of section 2 of the Act of October 19, 1984 (98 Stat. 2698), which is not required for delivery to the Ak-Chin Indian Reservation under that Act. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be nonreimbursable.

(b) PARTIAL SATISFACTION OF CLAIMS.—Notwithstanding any other provision of this Act, in the event the authorizations contained in section 8(b) do not become effective, the water referred to in subsection 4(a) of this Act shall constitute partial satisfaction of the Tribe's claims for water in the proceeding entitled "In Re the General Adjudication of All Rights To Use Water in the Gila River System and Source, Maricopa County Superior Court Nos. W-1, W-2, W-3, and W-4 (consolidated), as against the parties identified in section 3(2) of this Act.

(c) ADDITIONAL ALLOCATIONS.—The Secretary shall reallocate to the Tribe an annual entitlement to 14,655 acre-feet of water from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to Phelps Dodge Corporation in the Notice of Final Water Allocations to Indian and non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 F.R. 12446 et seq.). The Tribe shall pay the United States or, if directed by the Secretary, CAWCD, all operation, maintenance and replacement costs associated with such CAP water. Except as provided in subsection (e)(3) of section 6, water service capital charges, or any other charges or payments for such CAP water other than operation, maintenance and replacement costs shall be nonreimbursable. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be nonreimbursable.

(d) ADDITIONAL ALLOCATIONS.—The Secretary shall reallocate to the Tribe and annual entitlement to 3,480 acre-feet of water from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to the city of Globe, Arizona in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 F.R. 12466 et seq.). The Tribe shall pay the United States or, if directed by the Secretary CAWCD, all operation, maintenance and replacement costs associated with such CAP water. Except as provided in subsection (e)(3) of section 6, water service capital charges, or any other charges or payments of such CAP water other than operation, maintenance and replacement costs shall be nonreimbursable. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of contract No. 14-06-W-245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be reimbursable.

(e) WATER STORAGE POOL.—Notwithstanding the Act of June 7, 1924 (43 Stat. 475), as amended by the Act of March 7, 1928 (45 Stat. 200, 210), in order to permit the Tribe to maintain permanently a pool of stored water for fish, wildlife, recreation and other purposes, the Secretary shall designate for the benefit of the Tribe such active conservation capacity behind Coolidge Dam on the Gila River in Arizona as is not being used by the Secretary to meet the obligations of SCIP for irrigation storage, except that any water stored by the Tribe shall be the first water to spill ("spill water") from Coolidge Dam. The water stored by the Tribe shall be, at the Tribe's designation, the water provided to the Tribe pursuant to subsections (a), (c) and (d) of this section, its entitlement of 12,700 acre-feet of water under its Tribal CAP Delivery Contract dated December 11, 1981; the water referred to in section 10(f), or any combination thereof. A pro rata share of evaporation and seepage losses shall be deducted daily from the Tribe's stored water balance as provided in the Agreement. The Tribe shall pay an equitable share of the operation and maintenance costs for the water stored for the benefit of the Tribe, subject to the Act of July 1, 1932 (47 Stat. 564, 25 U.S.C. 386 et seq.) The water stored by the Tribe pursuant to this subsection shall not be subject to apportionments pursuant to Article VIII (2) of the Globe Equity Decree. Not later than January 31 of each year, the Secretary shall notify the United States District Court for the District of Arizona of the Tribe's stored water balance as of January 1 of that year. The Secretary shall notify said Court of the Tribe's stored water balance at least once per calendar month and at such more frequent intervals as conditions, in the Secretary's judgment, may require.

(f) EXECUTION OF AGREEMENT.—The Secretary shall execute the Agreement which establishes, as between and among the parties to Agreement, the Tribe's permanent right, except as provided in paragraphs 13.0, 14.0 and 15.0 of the Agreement, to the on-reservation diversion and use of all ground water beneath the Tribe's Reservation, subject to the management plan referred to in section 10(D) of this Act, and all surface water in all tributaries within the Tribe's Reservation to the mainstreams of: The Black River, the Salt River below its confluence with the Black River, the San Pedro River and the Gila River, including the right, except as provided in paragraphs 14.0 and 15.0 of the Agreement, to fully regulate and store such water on the tributaries. The Tribe's rights to the mainstream of Black River, San Pedro River and the Gila River shall be as provided in the Agreement and the Globe Equity Decree. With respect to parties not subject to the waiver authorized by subsection 8(b) of this Act, the claims of the Tribe and the United States, as trustee for the Tribe, are preserved.

(g) GILA RIVER EXCHANGES.—Any exchange pursuant to this legislation of Gila River water for water supplied by the CAP shall not amend, alter or conflict with the exchanges authorized by section 304(f) of the Colorado River Basin Project Act (43 U.S.C. 1524(f)).

SEC. 5. RATIFICATION AND CONFIRMATION OF CONTRACTS.

(a) RATIFICATION OF CONTRACT.—Except as provided in section 10(i), the contract between the SRP and the RWCD District dated October 24, 1924, together with all amendments thereto and any extension thereto entered into pursuant to the Agreement, is ratified, confirmed, and declared to be valid.

(b) SUBCONTRACT.—The Secretary shall revise the subcontract of the Roosevelt Water Conservation District for agricultural water service from the CAP to include an addendum substantially in the form of Exhibit "A" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time or times as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(c) RESTRICTIONS.—The lands within RWCD and SRP shall be free from the ownership and full cost pricing limitations of Federal

reclamation law and from all full cost pricing provisions of Federal law.

(d) DISCLAIMER.—No person, entity or lands shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) or any full cost pricing provision of Federal law by virtue of their participation in the settlement or their execution and performance of the Agreement, or the use, storage or delivery of CAP water pursuant to a lease, sublease or exchange of water to which the Tribe is entitled under this Act.

(e) FULL COST PRICING PROVISIONS.—The lands within the Tribe's Reservation shall be free from all full cost pricing provisions of Federal law.

(f) CERTAIN EXTENSIONS AUTHORIZED.—Notwithstanding any other provision of law or any other provision of this Act, the Secretary, subject to tribal approval, is authorized and directed to: extend the term of that right-of-way permit granted to Phelps Dodge Corporation on March 8, 1950, and all amendments thereto, for the construction, operation and maintenance of an electrical transmission line and existing road for access to those facilities over the lands of the Tribe; extend the term of that right-of-way permit numbered 2000089 granted on July 25, 1944, to Phelps Dodge Corporation, and all amendments thereto, for the construction, use, operation and maintenance of a water plant, pipeline, canal, water flowage easement through Willow Creek and existing road for access to those facilities over the lands of the Tribe; and grant a water flowage easement through the portions of Eagle Creek flowing through the Tribe's Reservation. Notwithstanding any other provision of law, each such right-of-way and flowage easement shall be for a term expiring on March 8, 2090, and shall be subject to the right of Phelps Dodge to renew the rights-of-way and flowage easements for an additional term of up to 100 years, subject to payment of rental at a rate based upon fair market retail value.

SEC. 6. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE, WATER WITHDRAWAL.

(a) AMENDMENT OF CONTRACT.—The Secretary shall amend the CAP water delivery contract between the United States and the Ak-Chin Indian Community dated December 11, 1980, and the contract between the United States and the Ak-Chin Indian Community dated October 2, 1985, as is necessary to satisfy the requirements of section 4(a) of this Act.

(b) CONTRACT AMENDMENT.—The Secretary shall amend the CAP water delivery contract between the United States and the Tribe dated December 11, 1980 (hereinafter referred to as the "Tribal CAP Delivery Contract"), as follows:

(1) To include the obligation by the United States to deliver water to the Tribe upon the same terms and conditions set forth in the Tribal CAP Delivery Contract as follows: water from those sources described in subsections (a), (c), and (d) of section 4 of this Act; except that the water reallocated pursuant to such subsections shall retain the priority such water had prior to its reallocation. The cost to the United States to meet the Secretary's obligation to design and construct new facilities to delivery CAP water shall not exceed the cost of construction of the delivery and distribution system for the 12,700 acrefeet of CAP water originally allocated to the Tribe.

(2) To extend the term of such contract to December 31, 2100, and to provide for its subsequent renewal upon the same terms and conditions as the Tribal CAP Delivery Contract, as amended.

(3) To authorize the Tribe to lease or to enter into an option or options to lease the water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, within Maricopa, Pinal and Pima Counties for terms not exceeding one hundred years and to renew such leases.

(4) To authorize the Tribe to lease water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, to the city of Scottsdale under the terms and conditions of the Water Lease set forth in Exhibit "B" to the Agreement.

(5) To authorize the Tribe to lease water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, including, but not limited to, the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe and the town of Gilbert.

(c) APPROVAL OF AMENDMENTS.—Notwithstanding any other provision of law, the amendments to the Tribal CAP Delivery Contract set forth in Exhibit "C" to the Agreement are hereby authorized, approved and confirmed.

(d) CHARGES NOT TO BE IMPOSED.—The United States shall not impose upon the Tribe the operation, maintenance and replacement charges described and set forth in section 6 of the Tribal CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to the lessee or lessees of the options to lease or leases herein authorized.

(e) WATER LEASE.—Except as provided in paragraph (3) of this subsection, any Water Lease entered into by the Tribe as authorized by section 6 shall specifically provide that—

(1) the lessee shall pay all operation, maintenance and replacement costs of such water to the United States, or if directed by the Secretary, to CAWCD; and

(2) except as provided in paragraph (3) of this subsection, the lessee shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance and replacement costs and lease payments.

(3) with respect to the water reallocated to the Tribe pursuant to subsections (c) and (d) of section 4, the Tribe or lessee shall pay any water service capital charges or municipal and industrial subcontract charges for any water use or lease from the effective date of this Act through September 30, 1995.

(f) ALLOCATION AND REPAYMENT OF COSTS.—For the purpose of determining allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245, Amendment No. 1, between the United States of America and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with the delivery of water to which the Tribe is entitled under the Tribal Delivery Contract, as amended, to the lessee or lessees of the options to lease or leases herein authorized shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(g) AGREEMENTS.—The Secretary shall, in consultation with the Tribe, enter into agreements necessary to permit the Tribe to exchange, within the State of Arizona, all or part of the water available to it under its Tribal CAP Delivery Contract, as amended.

(h) RATIFICATION.—As among the parties to the Agreement, the right of the city of Globe to withdraw and use water from under the Cutter subarea under the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed.

(i) USE OF WATER.—As among the parties to the Agreement, the right of the city of Safford to withdraw and use water from the Bonita Creek watershed as provided in the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed.

(j) WITHDRAWAL AND USE OF WATER.—As between the Tribe and Phelps Dodge, the right of Phelps Dodge to divert, withdraw and use water as provided in the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed.

(k) PROHIBITIONS.—Except as authorized by this section, no water made available to the Tribe pursuant to the Agreement, the Globe Equity Decree, or this Act may be sold, leased, transferred or in any way used off the Tribe's Reservation.

SEC. 7. CONSTRUCTION AND REHABILITATION; TRUST FUND.

(a) DUTIES.—The Secretary is directed—

(1) pursuant to the existing authority of the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.) to design and construct new facilities for the delivery of 12,700 acrefeet of CAP water originally allocated to the Tribe to tribal reservation lands at a cost which shall not exceed the cost for such design and construction which would have been incurred by the Secretary in the absence of the Agreement and this Act; and

(2) to amend the contract between the United States Economic Development Administration and the Tribe relating to the construction of Elgo Dam on the San Carlos Apache Indian Reservation, Project No. 07-81-000210, to provide that all remaining repayment obligations owing to the United States on the date of the enactment of this Act are discharged.

(b) FUND.—There is established in the Treasury of the United States a fund to be known as the "San Carlos Apache Tribe Development Trust Fund" (hereinafter called the "Fund") for the exclusive use and benefit of the Tribe. The Secretary shall deposit into the Fund the funds authorized to be appropriated in subsection (c) and the $3,000,000 provided by the State of Arizona pursuant to the Agreement. There shall be deposited into the Fund any monies paid to the Tribe or to the Secretary on behalf of the Tribe from leases or options to lease water authorized by section 6 of this Act.

(c) AUTHORIZATION.—There are authorized to be appropriated $18,800,000 in fiscal year 1993, and $19,600,000 in fiscal year 1994, together with interest accruing thereon beginning one year from the date of enactment of this Act at rates determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Federal obligations of comparable maturity, to carry out the provisions of subsection (b).

(d) USE OF FUND.—When the authorizations contained in section 8(b) of this Act are effective, the principal of the Fund and any interest or income accruing thereon may be used by the Tribe to put to beneficial use the Tribe's water entitlement, to defray the cost to the Tribe of CAP operation, maintenance and replacement charges as appropriate, and for other economic and community development purposes. The income from the Fund shall be distributed by the Secretary to the San Carlos Apache Tribe only upon presentation to the Secretary of a certified copy of a duly enacted Resolution of the Tribal Council requesting distribution and a writ-

ten budget approved by the Tribal Council. Such income may thereafter be expended only in accordance with such budget. Income not distributed shall be added to principal. The principal from the Fund may be distributed by the Secretary to the San Carlos Apache Tribe only upon presentation to the Secretary of a certified copy of a duly enacted Resolution of the Tribal Council requesting distribution and a written budget approved by the Tribal Council and the Secretary. Such principal may thereafter be expended only in accordance with such budget: Provided, however, That the principal may only be utilized for long-term economic development projects. In approving a budget for the distribution of income or principal, the Secretary shall, in accordance with regulations promulgated pursuant to subsection (e) of this section, be assured that methods exist and will be employed to ensure the use of the funds shall be in accordance with the approved budget.

(e) REGULATIONS.—The Secretary shall, no later than 30 days after the date the authorizations contained in section 8(b) are effective, promulgate regulations necessary to carry out the purposes of subsection (d).

(f) DISCLAIMER.—The United States shall not be liable for any claim or cause of action arising from the Tribe's use or expenditure of monies distributed from the Fund.

SEC. 8. SATISFACTION OF CLAIMS.

(a) FULL SATISFACTION OF CLAIMS.—Except as provided in subsection (e) of this section, the benefits realized by the Tribe and its members under this Act shall constitute full and complete satisfaction of all members' claims for water rights or injuries to water rights under Federal, State and other laws (including claims for water rights in ground water, surface water, and effluent) from time immemorial to the effective date of this Act. Notwithstanding the foregoing, nothing in this Act shall be deemed to recognize or establish any right of a member of the Tribe to water on the Tribe's Reservation.

(b) RELEASE.—The Tribe, on behalf of itself and its members, and the Secretary on behalf of the United States, are authorized, as part of the performance of the obligations under the Agreement, to execute a waiver and release, except as provided in the Agreement, of all claims of water rights or injuries to water rights (including water rights in ground water, surface water and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in ground water, surface water and effluent), from and after the effective date of this Act, which the Tribe and its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States, the State of Arizona or otherwise.

(c) ADDITIONAL RELEASES.—Except as provided in the Agreement, the United States shall not assert any claim against the State of Arizona or any political subdivision thereof, or any person, corporation or municipal corporation, arising under the laws of the United States, the State of Arizona or otherwise in its own right or on behalf of the Tribe based upon—

(1) water rights or injuries to water rights (including water rights in ground water, surface water and effluent) of the Tribe and its members, or

(2) water rights or injuries to water rights (including water rights in ground water, surface water and effluent) held by the United States on behalf of the Tribe and its members.

(d) SAVINGS PROVISION.—In the event the authorizations contained in subsection (b) of this section do not become effective pursuant to section 11(a), the Tribe and the United States shall retain the right to assert past and future water rights claims as to all Reservation lands.

(e) DISCLAIMER.—Nothing in this Act shall affect the water right or claims related to the San Carlos Apache Allotments outside the exterior boundaries of the Reservation.

(f) AK-CHIN WATER CLAIMS; WAIVER AND RELEASE.—Lands receiving CAP water shall be free from the ownership and full cost pricing limitations of Federal reclamation law and from all full cost pricing provisions of Federal law: *Provided*, That, as to each non-Indian agricultural contractor of such water, such exemptions shall be contingent upon the execution by such contractor of a waiver and release of any and all claims resulting from the reallocation of water to the Tribe pursuant to section 4(a) of this Act.

SEC. 9. ENVIRONMENTAL COMPLIANCE.

(a) NO MAJOR FEDERAL ACTION.—Execution of the settlement agreement by the Secretary as provided for in section 10(c) shall not constitute major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary shall carry out all necessary environmental compliance during the implementation phase of this settlement.

(b) AUTHORIZATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out all necessary environmental compliance associated with the settlement under this Act, including mitigation measures adopted by the Secretary.

(c) LEAD AGENCY.—With respect to such settlement, the Bureau of Reclamation shall be designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable Federal environmental laws.

(d) ENVIRONMENTAL ACTS.—The Secretary shall comply with all aspects of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and the Endangered Species Act (16 U.S.C. 1531 et seq.), and other applicable Federal environmental Acts and regulations in proceeding through the implementation phase of such settlement.

SEC. 10. MISCELLANEOUS PROVISIONS.

(a) WAIVER OF SOVEREIGN IMMUNITY.—In the event any party to the Agreement files a lawsuit in any United States district court relating only and directly to the interpretation or enforcement of this Act or the Agreement, naming the United States of America or the Tribe as parties, authorization is hereby granted to joining the United States of America or the Tribe, or both, in any such litigation, and any claim by the United States of America or the Tribe to sovereign immunity from such suit is hereby waived.

(b) CERTAIN CLAIMS PROHIBITED.—The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this Act or the Agreement against any lands within the San Carlos Apache Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

(c) APPROVAL OF AGREEMENT.—Except to the extent that the Agreement conflicts with the provisions of this Act, such Agreement is hereby approved, ratified and confirmed. The Secretary shall execute and perform such Agreement as approved, ratified and confirmed. The Secretary is authorized to execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(d) GROUND WATER MANAGEMENT PLAN.—The Secretary shall establish a ground water management plan for the San Carlos Apache Reservation which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as a management plan developed under Arizona law.

(e) AMENDMENT TO THE ACT OF APRIL 4, 1938.—The Act of April 4, 1938 (52 Stat. 193; 25 U.S.C. 390) is amended by inserting immediately before the period at the end thereof a colon and the following: "*Provided further*, That concessions for recreation and fish and wildlife purposes on San Carlos Lake may be granted only by the governing body of the San Carlos Apache Tribe upon such conditions and subject to such limitations as may be set forth in the constitution and bylaws of such Tribe".

(f) SAN CARLOS RESERVOIR.—There is hereby transferred to the Tribe the Secretary's entitlement of 30,000 acre-feet of water, less any evaporation and seepage losses from the date of acquisition by the Secretary to the date of transfer, which the Secretary may have acquired through substituting CAP water for water to which the Gila River Indian Community and the San Carlos Irrigation and Drainage District had a right to be released from San Carlos Reservoir and delivered to them in 1990.

(g) LIMITATION.—No part of the Fund established by section 7(b) of this Act, including principal and income, or income from options to lease water or water leases authorized by section 6, may be used to make per capita payments to members of the Tribe.

(h) DISCLAIMER.—Nothing in this Act shall be construed to repeal, modify, amend, change or affect the Secretary's obligations to the Ak-Chin Indian Community pursuant to the Act of October 19, 1984 (98 Stat. 2698).

(i) WATER RIGHTS.—Nothing in this Act shall be construed to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona tribe, band or community, other than the San Carlos Apache Tribe.

(j) PLANET RANCH.—The Secretary is authorized and directed to acquire, with the consent of and upon terms mutually acceptable to the city of Scottsdale ("city") and the Secretary, all of the city's right, title and interest in Planet Ranch located on the Bill Williams River in Arizona, including all water rights appurtenant to that property, and the city's January 1988 application filed with the Arizona Department of Water Resources to appropriate water from the Bill Williams River through a land exchange based on fair market value. If an exchange is made with land purchased by the Bureau of Reclamation for the construction and operation of the Central Arizona Project, then, upon commencement of repayment by CAWCD of the reimbursable costs of the Central Arizona Project, the fair market value of those lands so exchanged shall be credited in full against the annual payments due from CAWCD under Article 9.4(a) of Contract No. 14-06-W-245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, until exhausted: *Provided, however*, That the authorized appropriation ceiling of the Central Arizona Project shall not be affected in any manner by the provisions of this subsection.

(k) REPEAL.—Section 304(c)(3) of the Colorado River Basin Project Act (43 U.S.C.

1524(c)(3)) is hereby repealed. This subsection does not authorize transportation of water pumped within the exterior boundary of a Federal reclamation project established prior to September 30, 1968, pursuant to the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 391), as amended and supplemented, across project boundaries.

(l) WATER RIGHTS.—Nothing in this Act shall be construed to affect the water rights or the water rights claims of any Federal agency other than the Bureau of Indian Affairs on behalf of the San Carlos Apache Tribe, nor shall anything in this Act be construed to prohibit the United States from confirming in the Agreement, except on behalf of Indian tribes other than the San Carlos Apache Tribe, the Gila River and Little Colorado River watershed water rights of other parties to the Agreement by making express provisions for the same in the Agreement.

SEC. 11. EFFECTIVE DATE.

(a) EFFECTIVE DATE OF AUTHORIZATION.—The authorization contained in section 8(b) of this Act shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that—

(1) the Secretary has fulfilled the requirements of sections 4 and 6;

(2) the Roosevelt Water Conservation District subcontract for agricultural water service from CAP has been revised and executed as provided in section 5(b);

(3) the funds authorized by section 7(c) have been appropriated and deposited into the Fund;

(4) the contract referred to in section 7(a)(2) has been amended;

(5) the State of Arizona has appropriated and deposited into the Fund $3,000,000 as required by the Agreement;

(6) the stipulations attached to the Agreement as Exhibits "D" and "E" have been approved; and

(7) the Agreement has been modified, to the extent it is in conflict with this Act, and has been executed by the Secretary.

(b) CONDITIONS.—(1) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), and (7) of subsection (a) of this Act have not occurred by December 31, 1994, subsections (c) and (d) of section 4, subsections (a) and (b), of section 5, section 6, subsection (a)(2), (c), (d), and (f) of section 7, subsections (b) and (c) of section 8, and subsections (a), (b), (c), (d), (e), (g), (h), (j), and (l) of section 10 of this Act, together with any contracts entered into pursuant to any such section or subsection, shall not be effective on and after the date of enactment of this Act, and any funds appropriated pursuant to section 7(c), and remaining unobligated and unexpended on the date of the enactment of this Act, shall immediately revert to the Treasury, as general revenues, and any funds appropriated by the State of Arizona pursuant to the Agreement, and remaining unobligated and unexpended on the date of the enactment of this Act, shall immediately revert to the State of Arizona.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, if the provisions of subsections (a) and (b) of section 5 of this Act have been otherwise accomplished pursuant to provisions of the Act of October 20, 1988, the provisions of paragraph (1) of this subsection shall not be construed as affecting such subsections.

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

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

The motion to lay on the table was agreed to.

EXECUTIVE CALENDAR CONSENT

Mr. MITCHELL. Mr. President, as if in executive session, I ask unanimous consent that the Senate proceed to the immediate consideration, en bloc, of all nominations reported today by the Committee on Foreign Relations, with the exception of Jill Kent.

David A. Colson to be Assistant Secretary of State for Oceans and Fisheries Affairs;

Richard Clark Barkley to be Minister-Counselor to the Republic of Turkey;

James F. Dobbins to be U.S. Representative to the European Community;

John C. Kornblum to be an Ambassador during his tenure as Head of Delegation to the Conference on Security and Cooperation in Europe;

John F. W. Rogers to be Under Secretary of State for Management;

Paul E. Sussman to be a member of the Board of Directors of the Inter-American Foundation;

Elaine L. Chao to be Director of the Peace Corps;

William Hybl and Walter R. Roberts to be members of the Advisory Commission on Public Diplomacy; and

Foreign Service promotions placed on the Secretary's desk.

I further ask unanimous consent that any statements be printed in the RECORD, as if read, that the nominations be confirmed, en bloc; that the motions to reconsider be laid upon the table, en bloc; and that the President be notified of the Senate's action.

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

The nominations considered and confirmed en bloc are as follows:

David A. Colson, of Maryland, a career member of the Senior Executive Service, for the rank of Ambassador during his tenure of service as Deputy Assistant Secretary of State for Oceans and Fisheries Affairs.

Richard Clark Barkley, of Michigan, a career member of the Senior Foreign Service, class of Minister-Counselor, of the United States of America to the Republic of Turkey.

James F. Dobbins, of New York, a career member of the Senior Foreign Service, class of Minister-Counselor, to be representative of the United States of America to the European Communities, with the rank and status of Ambassador Extraordinary and Plenipotentiary.

John Christian Kornblum, of Michigan, a career member of the Senior Foreign Service, class of Minister-Counselor, for the rank of Ambassador during his tenure of service as Head of Delegation to the Conference on Security and Cooperation in Europe (CSCE).

John F. W. Rogers, of New York, to be Under Secretary of State for Management, vice Ivan Selin.

Paul Edward Sussman, of Illinois, to be a member of the Board of Directors of the Inter-American Foundation for a term expiring October 6, 1992, vice John C. Duncan.

Elaine L. Chao, of California, to be Director of the Peace Corps, vice Paul D. Coverdell, resigned.

The following named persons to be members of the United States Advisory Commission on Public Diplomacy:

William Hybl, of Colorado, for a term expiring July 1, 1994 (reappointment).

Walter R. Roberts, of the District of Columbia, for a term expiring April 6, 1994, vice Louis B. Susman, term expired.

ANNUAL REPORTS OF THE DEPARTMENT OF EDUCATION—MESSAGE FROM THE PRESIDENT—PM 83

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

I transmit herewith the annual reports of the Department of Education for fiscal years 1989 and 1990, pursuant to section 426 of the Department of Education Organization Act (Public Law 96-88; 20 U.S.C. 3486).

GEORGE BUSH.

THE WHITE HOUSE, *October 8, 1991.*

MESSAGES FROM THE HOUSE

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 2:28 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolution:

S. 1773. An act to extend until October 18, 1991, the legislative reinstatement of the power of Indian tribes to exercise criminal jurisdiction over Indians;

H.R. 2387. An act to authorize appropriations for certain programs for the conservation of striped bass;

H.R. 3259. An act to authorize appropriations for drug abuse education and prevention programs relating to youth gangs and to runaway and homeless youth, and for other purposes; and

H.J. Res. 189. Joint resolution designating October 8, 1991, as "National Firefighters Day."

The enrolled bills and joint resolution were subsequently signed by the Acting President pro tempore [Mr. ROBB].

At 6:03 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2698) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1992, and for other purposes; it recedes from its disagreement to the amendments of the Senate numbered 28, 31, 61, 68, 75, 94, 111, 116, 125, 127, 138, 162, 178, 202, 209, 212, 213, 214, 215, 219, 222,

227, 228, 229, 230, 231, 232, 234, 235, 236, 237, 239, and 240 to the bill, and agrees thereto; and it recedes from its disagreement to the amendments of the Senate numbered 25, 27, 34, 35, 36, 48, 49, 50, 52, 63, 64, 70, 83, 88, 103, 107, 108, 156, 176, 177, 184, 205, and 241 to the said bill, and agrees thereto, each with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2426) making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes; it recedes from its disagreement to the amendments of the Senate numbered 10, 28, and 29 to the said bill, and agrees thereto, and that the House recedes from its disagreement to the amendments of the Senate numbered 1, 3, 5, 15, 19, 22, and 30 to the said bill, and agrees thereto, each with an amendment, in which it requests the concurrence of the Senate.

The message further announced that pursuant to the provisions of section 1205(a)(4) of Public Law 101–628, the Speaker appoints on the part of the House Mr. TAYLOR of North Carolina, to the Civil War Sites Advisory Commission to fill the existing vacancy thereon.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2003. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the 1990 annual report entitled "Trade Policies and Market Opportunities for U.S. Farm Exports"; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2004. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the President's sixth special impoundment message for fiscal year 1991; pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, referred jointly to the Committee on Appropriations, the Committee on the Budget, the Committee on Armed Services, and the Committee on Foreign Relations.

EC–2005. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the deferral of certain budget authority in the Department of Veterans Affairs; pursuant to the order of January 30, 1975, as modified on April 11, 1986, referred jointly to the Committee on Appropriations, the Committee on the Budget, and the Committee on Veterans' Affairs.

EC–2006. A communication from the Secretary of the Army, transmitting, pursuant to law, a report that the current procurement unit cost baseline has been exceeded by 25 percent or more for the Multiple Launch Rocket System; to the Committee on Armed Services.

EC–2007. A communication from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to amend title 10, United States Code, to permit the Department of Defense to adhere to uniform Federal regulations requiring the informed consent of persons participating in human medical research; to the Committee on Armed Services.

EC–2008. A communication from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to improve foster care available overseas to the children of members of the armed forces; to the Committee on Armed Services.

EC–2009. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report on a transaction involving a medium-term financial guarantee to support United States exports to the Czech and Slovak Federative Republic; to the Committee on Banking, Housing, and Urban Affairs.

EC–2010. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, a report on rent control; to the Committee on Banking, Housing, and Urban Affairs.

EC–2011. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a pay-as-you-go estimate; to the Committee on the Budget.

EC–2012. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the annual report of the Commission for fiscal year 1990; to the Committee on Commerce, Science, and Transportation.

EC–2013. A communication from the Chairman of the National Transportation Safety Board, transmitting, pursuant to law, the 1993 budget submission of the Board; to the Committee on Commerce, Science, and Transportation.

EC–2014. A communication from the Acting Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC–2015. A communication from the Acting Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC–2016. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the annual report on activities under the Toxic Substances Control Act for fiscal year 1989; to the Committee on Environment and Public Works.

EC–2017. A communication from the Administrator of General Services, transmitting, pursuant to law, a proposed prospectus for the lease of certain space for elements of the Department of Commerce in Suitland, Maryland; to the Committee on Environment and Public Works.

EC–2018. A communication from the Executive Director of the Prospective Payment Assessment Commission, transmitting, pursuant to law, the report entitled "Medicaid Hospital Payment"; to the Committee on Finance.

EC–2019. A communication from the Commissioner of Social Security, transmitting, pursuant to law, the publication entitled "Congressional Inquiries Guide"; to the Committee on Finance.

EC–2020. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the third report on the assignment or detail of General Accounting Office employees to congressional committees as of July 31, 1991; to the Committee on Governmental Affairs.

EC–2021. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Analysis of the Home Purchase Assistance Program Moratorium"; to the Committee on Governmental Affairs.

EC–2022. A communication from the Secretary of Education, transmitting, pursuant to law, notice of final funding priorities for fiscal year 1992—National Assessment of Educational Progress Data Reporting Program; to the Committee on Labor and Human Resources.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–227. A concurrent resolution adopted by the Legislature of the State of Texas; to the Committee on Armed Services.

"HOUSE CONCURRENT RESOLUTION 177

"Whereas, The recent conflict in the Persian Gulf has highlighted once again the contribution of this nation's soldiers and returned veterans; and

"Whereas, Integral to the success of our military forces are those servicemen and servicewomen who have made a career of defending their country; in peacetime, they may be called away to places remote from their families and loved ones; in war, they face the prospect of death or of serious disabling wounds; and

"Whereas, Legislation has been introduced in the United States Congress to remedy an inequity applicable to military careerists; and

"Whereas, Military retirees who have served at least 20 years accrue retirement pay based on longevity; disabled veterans receive compensation proportionate to the severity of their injuries; and

"Whereas, The inequity concerns those veterans who are both retired and disabled; under an antiquated law that dates to the nineteenth century, they are denied concurrent receipt of full retirement pay and disability compensation benefits; rather, they may receive one or the other or must waive an amount of retirement pay equal to the amount of disability compensation benefits; and

"Whereas, This duration unfairly denies disabled military retirees the longevity pay they have earned by their years of devoted patriotism; it effectively requires them to pay for their own disability compensation benefits; and

"Whereas, No such deduction applies to the federal civil service; a disabled veteran who has held a non-military federal job for the requisite duration receives full longevity retirement pay undiminished by the subtraction of disability compensation benefits; and

"Whereas, A statutory change is necessary to correct the injustice; America's occasional commitment to war in pursuit of national and international goals must be

matched by an allegiance to those who sacrifice in behalf of those goals; now, therefore, be it

Resolved, That the 72nd Legislature of the State of Texas hereby urge the United States Congress to amend Section 3104(a), Title 38, of the United States Code to permit full concurrent receipt of military longevity retired pay and service-connected disability compensation benefits; and, be it further

Resolved, That official copies of this resolution be forwarded to the president of the United States, to the speaker of the House of Representatives and president of the Senate of the United States Congress, and to all members of the Texas delegation to the congress with the request that it be officially entered in the Congressional Record as a memorial to the Congress of the United States of America."

POM-228. A resolution adopted by the City Council of Seattle, Washington affirming the City's anti-apartheid positions and opposing President Bush's actions in lifting sanctions against South Africa; to the Committee on Foreign Relations.

POM-229. A concurrent resolution adopted by the Legislature of the State of New Jersey; to the Committee on the Judiciary.

"ASSEMBLY CONCURRENT RESOLUTION NOS. 114 AND 103

"Whereas, On June 11, 1990, the United States Supreme Court ruled that the recent federal law making it a crime to burn or deface the American flag violates the free speech guarantee of the First Amendment; and

"Whereas, Previously, on June 21, 1989, the United States Supreme Court had made a similar ruling that the burning of the flag of the United States of America is constitutionally protected as a form of freedom of expression; and

"Whereas, Both Supreme Court rulings were decided by a vote of five to four, which constitutes the barest of majorities; and

"Whereas, These shocking rulings are an affront to all citizens of the United States, and are particularly disturbing to those who have served this grand flag in the armed services so that freedom may forever flourish in this great and wondrous nation; and

"Whereas, The degradation of the flag, which serves as a symbol of freedom, democracy and opportunity, is an offense to the community values of this land of the free and home of the brave; and

"Whereas, These recent rulings have made it apparent that a statutory means of protecting the flag have not produced sufficient results and have reinforced the need for a constitutional amendment to prohibit the desecration of the flag; now, therefore,

Be it resolved by the General Assembly of the State of New Jersey (the Senate concurring):

"1. This Legislature hereby deplores the ruling of the United States Supreme Court which provides constitutional protection for those who would desecrate or burn the flag of the United States of America and strongly urges the Congress of the United States to enact a constitutional amendment prohibiting the burning of the flag of the United States of America.

"2. Duly authenticated copies of this resolution, signed by the President of the Senate and the Speaker of the General Assembly and attested by the Secretary of the Senate and the Clerk of the General Assembly, shall be transmitted to the Chief Justice and each Associate Justice of the United States Supreme Court, the President of the United States, the President of the United States Senate and the Speaker of the United States House of Representatives.

"CRIMINAL JUSTICE

"Urges the Congress of the United States to enact a constitutional amendment prohibiting flag burning."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 1410. A bill relating to the rights of consumers in connection with telephone advertising (Rept. No. 102-177).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 1462. A bill to amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment for advertising and solicitation purposes (Rept. No. 102-178).

By Mr. BURDICK, from the Committee on Environment and Public Works, with amendments:

S. 391. A bill to amend the Toxic Substances Control Act to reduce the levels of lead in the environment, and for other purposes (Rept. No. 102-179).

By Mr. BURDICK, from the Committee on Environment and Public Works, without amendment:

S. 1278. A bill to authorize appropriations for the Office of Environmental Quality for fiscal years 1992, 1993, and 1994, and for other purposes (Rept. No. 102-180).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 772. A bill to amend title V of Public Law 96-550, designating the Chaco Culture Archaeological Protection Sites, and for other purposes (Rept. No. 102-181).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment:

S. 870. A bill to authorize inclusion of a tract of land in the Golden Gate National Recreation Area, California (Rept. No. 102-182).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 1117. A bill to establish the Bureau of Land Management Foundation (Rept. No. 102-183).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1254. A bill to increase the authorized acreage limit for the Assateague Island National Seashore on the Maryland mainland, and for other purposes (Rept. No. 102-184).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.R. 355. A bill to amend the Reclamation States Drought Assistance Act of 1988 to extend the period of time during which drought assistance may be provided by the Secretary of the Interior, and for other purposes (Rept. No. 102-185).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PELL, from the Committee on Foreign Relations:

Jill E. Kent, of the District of Columbia, to be Chief Financial Officer, Department of State;

David A. Colson, of Maryland, a career member of the Senior Executive Service, for the rank of Ambassador during his tenure of service as Deputy Assistant Secretary of State for Oceans and Fisheries Affairs;

John Christian Kornblum, of Michigan, a career member of the Senior Foreign Service, class of Minister-Counselor, for the rank of Ambassador during his tenure of service as head of delegation to the Conference on Security and Cooperation in Europe;

John F. W. Rogers, of New York, to be Under Secretary of State for Management;

Paul Edward Sussman, of Illinois, to be a member of the Board of Directors of the Inter-American Foundation for a term expiring October 6, 1992; and

Elaine L. Chao, of California, to be Director of the Peace Corps.

The following-named persons to be members of the U.S. Advisory Commission on Public Diplomacy:

William Hybl, of Colorado, for a term expiring July 1, 1994. (Reappointment).

Walter R. Roberts, of the District of Columbia, for a term expiring April 6, 1994, vice Louis B. Susman, term expired.

Richard Clark Barkley, of Michigan, a career member of the Senior Foreign Service, class of Minister-Counselor, to the United States of America to the Republic of Turkey.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Richard C. Barkley.

Post: Ambassador Republic of Turkey.

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: None.

3. Children and spouses, names: Katharina Lynn Barkley, none.

4. Parents names: Kenneth Goulet, $35, 1988, the Republican Party. Stepfather, deceased; mother, Chrystal L. Goulet, none.

5. Grandparents, names: N/A.

6. Brothers and spouses names: N/A.

7. Sisters and spouses names: Robert and Marcia Joan Sammis, none.

James F. Dobbins, of New York, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Representative of the United States of America to the European Communities, with the rank and status of Ambassador Extraordinary and Plenipotentiary.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: James F. Dobbins.

Post: Ambassador to U.S. Mission to the European Community (USEC).

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: None.

3. Children and spouses names: James Christian Kleivdal Dobbins and Colin Kaare Kleivdal Dobbins (no contributions).

4. Parents names: James F. Dobbins, none; Agnes Anne Dobbins, $10, 1989, Democratic Party.

5. Grandparents names: Deceased over 4 years ago.

6. Brothers and spouses names: Peter Dobbins, none; Andrew & Julia Dobbins, $20, 1989, Bentsen's Senate Campaign.

7. Sisters and spouses names: Victoria Dobbins, none; Elizabeth & John Fuller, none.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. PELL. Mr. President, for the Committee on Foreign Relations, I also report favorably a nomination list in the Foreign Service which was printed in full in the CONGRESSIONAL RECORD of September 27, 1991, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that these nominations lie at the Secretary's desk for the information of Senators.

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

Treaty Doc. 102-11. International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (Exec. Rept. No. 102-16).

Treaty Doc. 102-12. International Convention on Salvage (Exec. Rept. No. 102-17).

TEXTS OF RESOLUTIONS OF ADVICE AND CONSENT TO RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the International Convention on Oil Pollution Preparedness, Response and Co-Operation, 1990, with Annex, adopted at London November 30, 1990.

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the International Convention on Salvage, 1989 (Salvage Convention) done at London April 28, 1989 and signed by the United States March 29, 1990.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. REID (for himself and Mr. WELLSTONE):

S. 1815. A bill to amend title II of the Social Security Act to promote fairness in Social Security by providing a more gradual period of transition (under a new alternative formula with respect to such transition) to the changes in benefit computation rules enacted in the Social Security Amendments of 1977 as such changes apply to workers born in years after 1916 and before 1927 (and related beneficiaries) and to provide for increases in such workers' benefits accordingly, and for other purposes; to the Committee on Finance.

By Mr. MOYNIHAN (for himself and Mr. SYMMS):

S. 1816. A bill to repeal the prohibition on the importation of gold coins from the Soviet Union; to the Committee on Finance.

By Mr. LAUTENBERG (for himself and Mr. GRASSLEY):

S. 1817. A bill to amend the Trade Act of 1974 to require the National Trade Estimate include information regarding the impact of Arab boycotts on certain United States businesses; to the Committee on Finance.

By Mr. HATCH:

S. 1818. A bill to permit certain justices and judges to retire to senior service, at reduced pay, upon attaining the age of seventy; to the Committee on the Judiciary.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 1819. A bill to establish the American Samoa Study Commission; to the Committee on Energy and Natural Resources.

By Mr. BINGAMAN:

S. 1820. A bill to establish a Classrooms for the Future Program, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. PACKWOOD (for himself and Mr. DOLE):

S. 1821. A bill to amend the Internal Revenue Code of 1986 to simplify the definition of dependent, to provide a uniform definition of child, and for other purposes; to the Committee on Finance.

By Mr. SIMON (for himself and Mr. KENNEDY):

S. 1822. A bill to improve the college participation rates of groups underserved by institutions of higher education and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DECONCINI (for himself and Mr. MCCAIN):

S. 1823. A bill to amend the Veterans' Benefit and Services Act of 1988 to authorize the Department of Veterans Affairs to use for the operation and maintenance of the National Memorial Cemetery of Arizona funds appropriated during fiscal year 1992 for the National Cemetery System; considered and passed.

By Mr. D'AMATO:

S. 1824. A bill to amend the Internal Revenue Code of 1986 to provide that, where there is a distress termination of a pension plan, the tax on the failure to meet minimum funding standards shall be waived in certain cases; to the Committee on Finance.

By Mr. CRANSTON:

S. 1825. A bill to authorize the sale of Bureau of Reclamation loans to the Redwood Valley County Water District, California; to the Committee on Energy and Natural Resources.

By Mr. DASCHLE (for himself, Mr. BOREN, Mr. PRYOR, and Mr. EXON):

S. 1826. A bill to amend the Internal Revenue Code of 1986 to encourage parity giving in order to increase prices to farmers while assisting in feeding the starving of the world; to the Committee on Finance.

By Mr. GARN (for himself, Mr. BOND, Mr. DODD, Mr. DOLE, Mr. NUNN, Mr. DANFORTH, Mr. BURDICK, Mrs. KASSEBAUM, Mr. JOHNSTON, Mr. KASTEN, Mr. GRASSLEY, Mr. SEYMOUR, Mr. WALLOP, and Mr. SPECTER):

S. 1827. A bill to require the Secretary of the Treasury to mint coins in commemoration of the 200th anniversary of the White House; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KENNEDY (for himself, Mr. METZENBAUM, Mr. WELLSTONE, Mr. EXON, Mr. CONRAD, Mr. AKAKA, Mr. DASCHLE, Mr. BRYAN, Mr. SIMON, Mr. PELL, Mr. ADAMS, Mr. BRADLEY, Mr. DODD, Mr. HEFLIN, Mr. KERRY, Mr. LIEBERMAN, Mr. D'AMATO, Mr. SPECTER, Mr. LEVIN, Mr. SARBANES, Mr. ROCKEFELLER, Mr. BURDICK, Mr. LAUTENBERG, Mr. KOHL, Mr. HARKIN, and Ms. MIKULSKI):

S. 1828. A bill to provide extended unemployment benefits during periods of high unemployment to railroad employees who have less than ten years of service; to the Committee on Labor and Human Resources.

By Mr. GLENN (for himself and Mr. METZENBAUM):

S.J. Res. 213. Joint resolution to designate October 12, 1991, as "Centennial of Concrete Paving in America Day"; to the Committee on the Judiciary.

By Mr. RIEGLE (for himself, Mr. CHAFEE, Mr. AKAKA, Mr. BRADLEY, Mr. BURNS, Mr. D'AMATO, Mr. DODD, Mr. FOWLER, Mr. GLENN, Mr. HEFLIN, Mr. INOUYE, Mr. LAUTENBERG, Mr. LEVIN, Mr. MURKOWSKI, Mr. ROCKEFELLER, Mr. SANFORD, Mr. BURDICK, Mr. HOLLINGS, Mr. SEYMOUR, Mr. DOLE, Mr. METZENBAUM, and Mr. CRANSTON):

S.J. Res. 214. Joint resolution to designate May 16, 1992, as "National Awareness Week for Life-Saving Techniques"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LEVIN (for himself and Mr. LUGAR):

S. Res. 193. A resolution expressing support for a just peace in Yugoslavia; to the Committee on Foreign Relations.

By Mr. CRANSTON (for himself, Mr. JEFFORDS, Mr. LAUTENBERG, Mr. D'AMATO, Mr. LIEBERMAN, Mr. WOFFORD, Mr. KASTEN, and Mr. MOYNIHAN):

S. Con. Res. 69. A concurrent resolution concerning freedom of emigration and travel for Syrian Jews; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MOYNIHAN (for himself and Mr. SYMMS):

S. 1816. A bill to repeal the prohibition on the importation of gold coins from the Soviet Union; to the Committee on Finance.

REPEAL OF PROHIBITION ON IMPORTATION OF SOVIET GOLD COINS

• Mr. MOYNIHAN. Mr. President, I rise today with my esteemed colleague Senator SYMMS to introduce a bill to repeal the prohibition on the import of gold coins from the Soviet Union. This prohibition was included in the Comprehensive Anti-Apartheid Act of 1986 along with language prohibiting the import of South African krugerrands.

The prohibition on Soviet gold coins is an example of the lingering vestige of the now ended cold war. I ask my colleagues to join us in taking another small step toward normalization of relations between the former Soviet Republics and the United States, and ask that the text of the bill be printed in the RECORD.

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

S. 1816

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

That section 510 of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5100) is repealed.●

● Mr. SYMMS. Mr. President, I am happy to join with my colleague and good friend Senator MOYNIHAN in offering this bill to repeal the current law prohibiting the sale of Soviet gold coins in the United States.

It was just a few short years ago that I offered an amendment to the Comprehensive Anti-Apartheid Act of 1986 to couple the prohibition on importation of South African gold coins with a similar prohibition of Soviet coins. That amendment eventually became the law that Senator MOYNIHAN's bill seeks to repeal.

My amendment in 1986 was appropriate given conditions within the Soviet Union at the time. We were still deep in the cold war. The conflict between freedom and oppression was being waged in battlefields across the globe. It was appropriate to prevent the Soviets from enjoying access to the United States market for coins as a small step toward weakening that evil empire and reminding the Soviets of our disapproval of their regime.

The empire has fallen; the cold war is over; freedom has prevailed. It may be months or it may be years before we know what nation-state or states will emerge from the ruins of the Communist empire. Our actions can have an effect on those results. There will be a thousand small steps, and a few large ones, needed to normalize fully the political and economic relations between the United States and the Republics of the old Soviet Union. The Moynihan-Symms bill is one such step which we ought to take as soon as possible.●

By Mr. LAUTENBERG (for himself and Mr. GRASSLEY):

S. 1817. A bill to amend the Trade Act of 1974 to require the National Trade Estimate include information regarding the impact of Arab boycotts on certain United States businesses; to the Committee on Finance.

INFORMATION REGARDING IMPACT OF ARAB BOYCOTTS ON CERTAIN UNITED STATES BUSINESSES

● Mr. LAUTENBERG. Mr. President, today I introducing legislation to require the United States Trade Representative to include the Arab League boycott of American companies that do business with or invest in Israel in its annual report on significant foreign barriers to United States exports. The USTR report is called the National Trade Estimate Report on Foreign Trade Barriers. I am pleased that Senator GRASSLEY is introducing this legislation with me.

The USTR is required by law to submit a report to Congress and the President outlining significant foreign barriers to and distortions of trade. The USTR report highlights the practices of foreign countries that keep American products out of their market and put our products at a competitive disadvantage.

In the report, the USTR is also required to provide, if feasible, estimates of the impact of these foreign practices on the volume of U.S. exports. The report outlines the actions our Government is taking to eliminate these barriers to the export of American products and is used to facilitate negotiations.

Mr. President, the Arab League boycott of American companies that do business with Israel is a barrier to trade. It impedes exports of our companies' products. It puts American products at a competitive disadvantage. It should be analyzed and included in the USTR's annual report. Nonetheless, the USTR's Foreign Trade Barriers report is silent on the issue. Nowhere does the report discuss the Arab boycott and the losses in export potential. I think it should. This legislation would simply require the USTR to include the Arab boycott of American companies in its annual report.

It is outrageous that Arab League countries boycott our products, especially after the United States defended so many of those countries in the gulf war. Our troops were not boycotted when they were sent to defend against Saddam Hussein's naked aggression. American products and companies must not be boycotted either.

American companies are prohibited by law from complying with the boycott. The Boycott Compliance Office at the U.S. Department of Commerce keeps track of boycott requests and is supposed to make sure that American companies do not comply. As Our chief trade negotiator, the USTR should be aggressively demanding an end to the trade practices so our companies will no longer be asked to comply. The USTR's office should aggressively seek to eliminate the practice so American companies will be able to export their quality products to the Middle East without hindrance.

But the USTR cannot be effective in demanding an end to the boycott if it doesn't know the scope of the problem. It can't be effective if its major trade barriers report, which is used as the basis for negotiations, doesn't even recognize the Arab League boycott as a significance barrier to trade.

Requiring the USTR to include the Arab boycott in its annual report would be an important step in the right direction. I would put the Arab League countries on notice that our Government's trading arm will not tolerate the barrier to trade erected by its boycott of our products. It would enable our Government to better quantify the lost exports to the Middle East from the boycott. Most importantly, it would give the USTR the facts and ammunition it needs to negotiate an end to this nefarious practice which unjustly discriminates against products from American companies that do business with our friend and ally Israel.

Mr. President, I urge my colleagues to support this legislation, and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1817

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

SECTION 1. NATIONAL TRADE ESTIMATE.

Section 181(a) of the Trade Act of 1974 (19 U.S.C. 2241(a)) is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) ARAB BOYCOTT OF CERTAIN UNITED STATES PERSONS. The United States Trade Representative shall include in the analysis and estimates made under paragraph (1) information with respect to the Arab League boycott of

(A) United States persons doing business with or investing in Israel, and

(B) United States persons doing business with a person who does business with or invests in Israel.".●

By Mr. HATCH:

S. 1818. A bill to permit certain justices and judges to retire to senior service, at reduced pay, upon attaining the age of 70; to the Committee on the Judiciary.

RETIREMENT TO SENIOR SERVICE OF CERTAIN JUSTICES AND JUDGES

Mr. HATCH. Mr. President, I am pleased today to introduce a bill to amend title 28 of the United States Code, section 371, concerning the retirement and senior status of Federal judges.

This bill would make it possible for all judges with at least 5 years of service to take senior status upon reaching the age of 70, thus increasing the ranks of this valuable judicial resource. It recognizes the biological fact that, with age, some judges find it increasingly difficult to carry the heavy workload that is expected of Federal judges on active service. My bill would give those reaching 70, who now are not qualified to do so, the opportunity to move to senior status at reduced pay on the condition that they continue to meet the minimum work requirement specified in the bill.

It is important that our Federal judges be encouraged to elect senior status. Congress established the category of senior judge in 1919 to bring in younger judges and to expand the capacity of the Federal court. Many believe senior judges are essential to the Federal court system because they offer experience on the bench and help to ease the court calendar. Allowing judges appointed after age 60 to fulfill requirements for senior status at age 70

will encourage many of them to make this election, thus expanding the number available to assist in disposing of the vast judicial backlog that clogs so many of our courts.

Before addressing the proposed bill, it is important to first understand the statute as it works today. Currently, under section 371 of title 28, United States Code, a Federal judge who has met certain age and service requirements has three options; First, to continue working full time, since a Federal judgeship is a lifetime appointment; second, to take full retirement by resigning and receive for life the annual salary equal to the salary he or she was receiving on the last day on the bench; or third, to retire in "senior status"—semiretirement that allows full pay and benefits and a salary that rises with those of active judges as long as certain work requirements are met.

To qualify for options two and three, judges must generally meet an age and service requirement called "the rule of 80" whereby the sum of a judge's age and number of years on the bench totals 80. For example, a Federal judge who is 65 years of age and has served on the bench for at least 15 years meets the requirement for the "rule of 80;" so also does a judge who is 70 years of age and has served at least 10 years. The present law, however, imposes a minimum service requirement of 10 years. Thus, a judge who begins service at age 64 must wait until he or she is 74 before being able to elect senior status.

As of January 1, 1990, specific work standards have been established for judges on senior status. (28 U.S.C. 371(f).) In order to continue to receive "the salary of the office," that is to say the same salary received by colleagues in active status, a senior judge must be certified each year as having performed, during the prior year, at least 25 percent of the work required of active judges in his or her court.

My proposed amendment to section 371(b)(1) would allow a Federal judge who has served at least 5 years but less than 10 to retire in senior status upon reaching the age of 70. That judge, however, would be required to continue to perform the minimum amount of work required by subsection (f) during the balance of the 10 years of service remaining in order to become entitled to pay for life. Moreover, the amount of that pay would be reduced to that proportion of full pay as the period of active service prior to the election bears to 10 years.

For example, a judge who has completed 6 years of active service when he or she reaches 70 must continue to perform a minimum of 25 percent of an active judge's normal workload for 4 additional years. When the judge has served a total of 10 years, he or she may either retire from the judiciary or continue to serve in senior status. Either way, he or she would continue to receive the same level of pay—60 percent of regular pay—for life.

I believe that this proposed system provides a reasonable and fair alternative to what at present is an all-or-nothing system: Unless a judge continues to work full time until qualified to retire at full pay, he or she will not receive a penny in retirement benefits. My bill will correct that situation because it acknowledges the facts of human biology. After a certain age, individuals may begin to slow down, albeit at different rates. Age 70 appears an appropriate time to allow individuals to lighten their work load should they desire to do so.

At the present time, however, Federal judges who have not yet served sufficient years to enable them to retire in senior service do not have that option. It is in order to prevent judges from hanging on and serving full-time when they might otherwise wish to take senior status that this bill is proposed. It replaces the all-or-nothing system with a sliding scale that will enable judges who reach the age of 70 and have completed a minimum of 5 years in active service to retire in senior status at reduced pay.

Finally, Mr. President, while my bill would add to the pool of senior judges available for judicial service, it would not add to the overall cost of the judiciary. The reason for this is actuarial. The present life expectancy of a 70-year-old American is 13.6 years. Thus, under present law, a judge who has reached the age of 70 will receive, during the balance of his life, total compensation equal to 13.6 times the compensation of an active judge.

Under my bill, a judge electing senior status who, on reaching 70, has served 6 years would receive 60 percent of active service pay for 13.6 years, for a total of 8.16 times regular pay. To this, however, must be added the 4 years of compensation that would be paid to the active judge appointed to fill the vacancy created by the retiring judge's election of senior service, for a total cost of 12.16 times regular pay. Thus, the net saving over the life expectancy of that judge would be 1.44 times regular pay, or approximately $185,000 at the current rate of compensation.

I look forward to hearings in the Judiciary Committee on this bill and hope that my colleagues will join me in support of this needed and worthwhile legislation.

By Mr. PACKWOOD (for himself and Mr. DOLE):

S. 1821. A bill to amend the Internal Revenue Code of 1986 to simplify the definition of dependent, to provide a uniform definition of child, and for other purposes; to the Committee on Finance.

FAMILY SIMPLIFICATION ACT

Mr. PACKWOOD. Mr. President, today Senator DOLE and I are introducing the Family Simplification Act of 1991.

There has been a lot of talk about tax simplification this year. Several bills have been introduced in Congress but none of them address the difficulties low-income working families face in computing their earned income tax credit [EITC].

The legislation we are introducing today will correct this so that the Internal Revenue Service [IRS] can compute the EITC from the front page of someone's tax return, eliminating the need for additional forms of worksheets.

The EITC is a key means of helping low-income workers with dependent children get off and stay off welfare. First enacted in 1975, the EITC was originally intended to ease the burden of Social Security taxes on low-income workers. Since that time, the EITC has been expanded to partially cover the cost of other work-related expenses and health insurance, and to reduce the burden of regressive excise taxes.

Generally, to qualify for the EITC, at least one parent must work and a dependent child must live with the family. In 1991, the Basic EITC is roughly $100 a month—$1,192 for the year. The EITC amount is increased if the family has more than one dependent child, a child under the age of 1 or health insurance expenses. To receive the full EITC, family income cannot exceed $11,250—in 1991. Families with income between $11,250 and $21,242 will receive a partial EITC.

About 13 million working families currently receive the EITC. That's 1 in every 10 American households. In my home State of Oregon, over 120,000 families receive the EITC.

But here's the rub. Many hard-working families have never heard of the EITC. They are too busy trying to feed their families and make ends meet every day to attempt to learn about the intricacies of our tax laws. Even if they know of the EITC, they must wade through a morass of complicated rules, instructions, and forms, only to end up confused about whether or not they qualify for the EITC. As a result, many needy families are not receiving this important benefit.

Our bill corrects this by making several changes and clarifications to current law.

First, the bill eliminates a major source of confusion over whether someone qualifies for the EITC by adopting the same definition of "dependent child" for both the dependency deduction and the EITC. The bill eliminates the current law requirement that a taxpayer generally must provide more than one-half of the support of a child to claim him/her as a dependent. Instead, the bill adopts a simpler standard that a child must live with the taxpayer for more than one-half of the year—the same rule used for the EITC.

This change will not only clear up confusion over EITC eligibility but also will greatly simplify the tax returns of almost 40 million families having dependent children.

Second, the bill makes similar changes to the definitions of "head of household" and "suriving spouse" in the Tax Code by eliminating the requirement that the taxpayer provide more than one-half of the cost of maintaining a household for a dependent. Instead, the bill adopts a simpler standard that a dependent must live with the taxpayer for more than one-half of the year—also the same rule used for the EITC. This change will simplify the tax status of more than 10 million families.

Third, the bill includes a uniform definition of the term "child," clarifying the meaning of this term in over 50 places in the Tax Code. This is not, however, intended to change the attribution rules in section 267 of the Tax Code in any way.

Fourth, the bill eliminates the so-called interactions of the health insurance and young child features of the EITC with the medical deduction, dependent care tax credit, and exclusion for employer-provided dependent care assistance. These changes were recommended by the Department of the Treasury in recent testimony before the Committee on Finance. Eliminating these interactions will greatly simplify EITC computations and is necessary for the IRS to be able to compute the EITC from the front page of someone's tax return.

Lastly, the bill corrects an inequity in current law by allowing military personnel living overseas with their family to qualify for the EITC.

A more detailed explanation of our legislation has been prepared by the staff of the Joint Committee on Taxation. Mr. President, I ask unanimous consent for this explanation to appear in the RECORD at the end of my statement along with the full text of the bill.

It is my understanding that the IRS has recently announced a temporary solution to some of the problems sreaddressed by our legislation. For this year—1991—only, the IRS will attempt to compute the basic EITC from the front page of the tax return. The IRS acknowledges that it will not be able to compute the EITC for all taxpayers, such as those serving in the military. Nor will the IRS be able to compute additional EITC amounts for children under age 1 and health insurance.

Our bill provides a permanent solution to the complexity problems associated with the EITC. Low-income working families will automatically receive the full EITC because the IRS will compute it from the front page of the tax return. These families will not have to make any complicated computations or file any additional tax forms. Those who are eligible for the EITC, but unaware of it, will now receive it.

This legislation is needed now. The EITC is extremely important to low-income workers with dependent children. It helps with the expenses of going to work. These hard-working families should not have to sift through a maze of complicated tax rules to receive the EITC. Our bill will relieve them from this burden.

Mr. President, I hope that our colleagues will join us and cosponsor this important bill.

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

S. 1821

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Family Simplification Act of 1991".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—DEFINITION OF DEPENDENT

SEC. 101. DEDUCTION FOR PERSONAL EXEMPTION FOR DEPENDENTS.

(a) IN GENERAL.—Section 152 (defining dependent) is amended to read as follows:

"SEC. 152. DEPENDENT DEFINED.

"(a) IN GENERAL.—For purposes of this subtitle, the term 'dependent' means—

"(1) a qualifying child, or

"(2) a qualifying relative.

"(b) EXCEPTIONS.—For purposes of this section—

"(1) DEPENDENTS INELIGIBLE.—If an individual is a dependent of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall be treated as having no dependents for any taxable year of such individual beginning in such calendar year.

"(2) DEPENDENTS OF 2 OR MORE TAXPAYERS.—If, after application of all provisions of this section other than this paragraph, an individual would be treated as the dependent of 2 or more taxpayers for taxable years beginning in the same calendar year, such individual shall be treated as the dependent of the taxpayer with the highest adjusted gross income for such taxable years.

"(3) MARRIED DEPENDENTS.—An individual shall not be treated as a dependent of a taxpayer under subsection (a) if such individual has made a joint return with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

"(4) CITIZENS OR NATIONALS OF OTHER COUNTRIES.—

"(A) IN GENERAL.—An individual who is not a citizen or national of the United States shall not be treated as a dependent under subsection (a) unless such individual is a resident of the United States.

"(B) EXCEPTION FOR ADOPTED CHILD.—Subparagraph (A) shall not apply to any legally adopted child of a taxpayer if—

"(i) for the taxable year of the taxpayer, the child's principal place of abode is the home of the taxpayer, and

"(ii) the taxpayer is a citizen or national of the United States.

"(c) QUALIFYING CHILD.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifying child' means, with respect to any taxpayer for any taxable year, an individual—

"(A) who is a child of the taxpayer or a descendant of a child of the taxpayer,

"(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, and

"(C) who meets the age requirements of paragraph (2).

"(2) AGE REQUIREMENTS.—An individual meets the requirements of this paragraph if such individual—

"(A) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or

"(B) is a student who has not attained the age of 24 as of the close of such taxable year.

"(3) SPECIAL RULES FOR DISABLED CHILDREN.—In the case of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the calendar year described in paragraph (2)—

"(A) the requirements of paragraph (2) shall be treated as met with respect to such individual, and

"(B) if the requirement of paragraph (1)(B) is not met, such requirement shall be treated as met if the taxpayer provided over half of the individual's support for such calendar year.

"(d) QUALIFYING RELATIVE.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifying relative' means, with respect to any taxpayer for any taxable year, an individual—

"(A) who bears a relationship to the taxpayer described in paragraph (2),

"(B) whose modified adjusted gross income for the calendar year in which such taxable year begins is less than the exemption amount,

"(C) with respect to whom either—

"(i) the principal place of abode of the individual is the same as the taxpayer for more than one-half of such taxable year, or

"(ii) if clause (i) does not apply to any taxpayer bearing a relationship to the individual described in paragraph (2), the taxpayer provides over half of the individual's support for the calendar year in which such taxable year begins, and

"(D) who is not a qualifying child of such taxpayer or any other taxpayer for any taxable year beginning in the calendar year in which such taxable year begins.

"(2) RELATIONSHIP.—An individual bears a relationship to the taxpayer described in this paragraph if the individual is any of the following with respect to the taxpayer:

"(A) A child or a descendant of a child.

"(B) A brother, sister, stepbrother, or stepsister.

"(C) The father or mother, or an ancestor of either.

"(D) A stepfather or stepmother.

"(E) A son or daughter of a brother or sister of the taxpayer.

"(F) A brother or sister of the father or mother of the taxpayer.

"(G) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

"(3) MULTIPLE SUPPORT AGREEMENTS.—For purposes of paragraph (1)(C)(ii) and subsection (c)(3(B), over half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

"(A) no one person contributed over half of such support,

"(B) over half of such support was received from 2 or more persons each of whom, but for the fact that any such person alone did not contribute over half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year,

"(C) the taxpayer contributed to the support of the individual in an amount equal to or greater than the exemption amount, and

"(D) each person described in both subparagraphs (B) and (C) (other than the taxpayer) files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such person will not claim such individual as a dependent for any taxable year beginning in such calendar year.

"(4) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income—

"(A) determined without regard to sections 135, 911, 931, and 933, and

"(B) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

"(5) CERTAIN INCOME OF HANDICAPPED DEPENDENTS NOT TAKEN INTO ACCOUNT.—

"(A) IN GENERAL.—For purposes of paragraph (1)(B), the gross income of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the taxable year shall not include income attributable to services performed by the individual at a sheltered workshop if—

"(i) the availability of medical care at such workshop is the principal reason for the individual's presence there, and

"(ii) the income arises solely from activities at such workshop which are incident to such medical care.

"(B) SHELTERED WORKSHOP DEFINED—For purposes of subparagraph (A), the term 'sheltered workshop' means a school—

"(i) which provides special instruction or training designed to alleviate the disability of the individual, and

"(ii) which is operated by an organization described in section 501(c)(3) and exempt from tax under section 501(a), or by a State, a possession of the United States, any political subdivision of any of the foregoing, the United States, or the District of Columbia.

"(e) SPECIAL RULES FOR DIVORCED PARENTS, ETC.—

"(1) SPECIAL RULE WHERE CHILD LIVES WITH BOTH PARENTS FOR REQUIRED PERIOD.—Notwithstanding subsection (b)(2), if a child has parents—

"(A) who—

"(i) are divorced or legally separated under a decree of divorce or separate maintenance,

"(ii) are separated under a written separation agreement, or

"(iii) live apart at all times during the last 6 months of the calendar year, and

"(B) who both satisfy the requirements of subsection (c)(1)(B) or subsection (d)(1)(C)(i), then such child shall be treated as the qualifying child or qualifying relative, whichever is applicable, of the parent with whom such child shared the same principal place of abode for the greater portion of the calendar year (hereafter in this subsection referred to as the 'custodial parent').

"(2) EXCEPTION WHERE CUSTODIAL PARENT RELEASES CLAIM TO EXEMPTION FOR THE YEAR.—A child of parents described in paragraph (1)(A) shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if—

"(A) the non custodial parent provides support for such calendar year in an amount equal to or greater than the exemption amount, and

"(B) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

For purposes of this subsection, the term 'noncustodial parent' means the parent who is not the custodial parent.

"(3) EXCEPTION FOR CERTAIN PRE-1992 INSTRUMENTS.—

"(A) IN GENERAL.—A child of parents described in paragraph (1)(A) shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if—

"(i) a qualified pre-1992 instrument between the parents applicable to the taxable year beginning in such calendar year provides that—

"(I) the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, or

"(II) the custodial parent will sign a written declaration that such parent will not claim such child as a dependent for such taxable year, and

"(ii) in the case of an agreement executed before January 1, 1985, the noncustodial parent provides at least $600 for the support of such child during such calendar year.

"(B) QUALIFIED PRE-1992 INSTRUMENT.—For purposes of this paragraph, the term 'qualified pre-1992 instrument' means any decree of divorce or separate maintenance or written agreement—

"(i) which is executed before January 1, 1992,

"(ii) which on such date contains either of the provisions described in subparagraph (A)(i), and

"(iii) which is not modified on or after such date in a modification which expressly provides that this paragraph shall not apply to such decree or agreement.

"(f) OTHER DEFINITIONS AND RULES.—For purposes of this section—

"(1) STUDENT DEFINED.—The term 'student' means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

"(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii), or

"(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

"(2) PLACE OF ABODE.—An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of local law.

"(3) SPECIAL RULES FOR SUPPORT.—For purposes of this section—

"(A) payments to a spouse which are includible in the gross income of such spouse under section 71 or 682 shall not be treated as a payment by the payor spouse for the support of any dependent,

"(B) amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support, and

"(C) in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

"(4) CROSS REFERENCES.—

"For provision treating child as dependent of both parents for purposes of certain provisions, see sections 105(b), 132(f)(2)(B), and 213(d)(5)."

(b) MODIFICATIONS OF DEDUCTION.—Section 151(c) (relating to additional exemption for dependents) is amended to read as follows:

"(c) ADDITIONAL EXEMPTIONS FOR DEPENDENTS.—An exemption of the exemption amount for each individual who is a dependent (as defined in section 152) of the taxpayer for the taxable year."

(c) MODIFICATIONS OF CERTAIN CREDITS.—

DEPENDENT CARE CREDIT.—

(A) In general.—Section 21(a) is amended by striking "who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1))" and inserting "who has one or more qualifying individuals (as defined in subsection (b)(1)) who have the same principal place of abode as the taxpayer for more than one-half of the taxable year".

(B) CONFORMING AMENDMENT.—Section 21(e)(1) is repealed.

(2) EARNED INCOME CREDIT.—

(A) IN GENERAL.—Paragraph (3) of section 32(c) is amended to read as follows:

"(3) QUALIFYING CHILD.—

"(A) IN GENERAL.—The term 'qualifying child' means a qualifying child of the taxpayer (as defined in section 152(c)) with respect to whom the taxpayer is entitled to a deduction under section 151(c) for the taxable year (determined without regard to section 152 (d)(3) or (e)(2)).

"(B) PLACE OF ABODE.—For purposes of subparagraph (A), the requirements of section 152(c)(1)(B) shall be met only if the principal place of abode is in the United States. The preceding sentence shall not apply during any period during which the taxpayer is stationed outside the United States while serving on extended active duty (as defined in section 1034(h)(3)) with the Armed Forces of the United States."

(B) REPORTING REQUIREMENTS ON CERTAIN EXCLUDABLE INCOME.—

(i) IN GENERAL.—Subsection (a) of section 6051 (relating to receipts for employees) is amended by striking "and" at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting a comma, and by inserting after paragraph (9) the following new paragraphs:

"(10) in the case of an employee who is a member of the Armed Forces of the United States, such employee's earned income as determined for purposes of section 32 (relating to earned income credit), and

"(11) in the case of a minister of the gospel, any amount excludable from gross income under section 107 (relating to rental value of parsonages)."

(ii) SIMPLIFIED VALUATION.—The Secretary of the Treasury or his delegate may, for purposes of paragraphs (10) and (11) of section 6051(a) of the Internal Revenue Code of 1986 (as added by clause (i)), prescribe a simplified valuation method for determining the value of any housing allowances of members of the Armed Forces and the rental value of parsonages.

(C) CONFORMING AMENDMENT.—Section 32(c)(1) is amended by striking subparagraphs (B) and (C) and by redesignating subparagraph (D) as subparagraph (B).

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 21(e)(5)(A) is amended by striking "or (4)" and inserting "or (3)".

(2) Section 51(i)(1) is amended to read as follows:

"(1) RELATED INDIVIDUALS.—No wages shall be taken into account under subsection (a) with respect to an individual—

"(A) who bears a relationship described in section 152(d)(2) to—

"(i) the taxpayer,

"(ii) if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation (determined with the application of section 267(c)), or

"(iii) if the taxpayer is an estate or trust, a grantor, beneficiary, or fiduciary of the estate, or trust, or

"(B) in the case of a taxpayer which is an estate or trust, who is a grantor, beneficiary, or fiduciary of the estate or trust."

(3) Section 170(g)(3) is amended to read as follows:

"(3) RELATIVE DEFINED.—For purposes of paragraph (1), the term 'relative of the taxpayer' means an individual who bears a relationship described in subsection (d)(2) of section 152 to the taxpayer."

(4) Section 2032A(c)(7)(D) is amended by striking "section 151(c)(4)" and inserting "section 152(f)(1)".

(5) Section 7701(a)(17) is amended by striking "152(b)(4), 682," and inserting "682".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1991.

(2) REPORTING REQUIREMENTS.—The amendments made by subsection (c)(2)(B) shall apply to taxable years beginning after December 31, 1992.

SEC 102. MODIFICATIONS OF DEFINITIONS OF HEAD OF HOUSEHOLD AND SURVIVING SPOUSE.

(a) SURVIVING SPOUSE.—Section 1(a)(1) is amended—

(1) by striking subparagraph (B) and inserting;

"(B) subject to the provisions of subsection (e), who has a child who is a dependent with respect to whom the taxpayer is entitled to a deduction for the taxable year under section 151.", and

(2) by striking the last sentence.

(b) HEAD OF HOUSEHOLD.—Section 2(b) is amended to read as follows:

"(b) HEAD OF HOUSEHOLD.—For purposes of this subtitle—

"(1) IN GENERAL.—An individual shall be considered a head of a household for any taxable year if—

"(A) such individual is not married as of the close of the taxable year, and

"(B) subject to the provisions of subsection (e), such individual is entitled to a deduction for such taxable year under section 151(c) for 1 or more dependents (determined without regard to section 152 (d)(3) or (e)(2)).

"(2) DETERMINATION OF STATUS.—For purposes of this subsection—

"(A) an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married;

"(B) a taxpayer shall be considered as not married at the close of his taxable year if at any time during the taxable year his spouse is a nonresident alien; and

"(C) a taxpayer shall be considered as married at the close of his taxable year if his spouse (other than a spouse described in subparagraph (B)) died during the taxable year.

"(3) LIMITATION.—A taxpayer shall not be treated as a head of a household under this subsection if any time during the taxable year the taxpayer is a nonresident alien."

(c) CERTAIN DEPENDENTS MUST LIVE WITH TAXPAYERS.—Section 2 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) CERTAIN DEPENDENTS MUST LIVE WITH TAXPAYER.—For purposes of subsections (a)(1)(B) and (b)(1)(B), an individual shall not be treated as entitled to a deduction under section 151(c) for a qualifying relative unless the requirements of section 152(d)(1)(C)(i) are met with respect to such relative. The preceding sentence shall not apply to the father or mother of a taxpayer."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 103. MARRIED INDIVIDUALS LIVING APART.

(a) IN GENERAL.—Section 7703(b) (relating to married individuals living apart) is amended to read as follows:

"(b) CERTAIN MARRIED INDIVIDUALS LIVING APART.—For purposes of the provisions of this title which refer to this subsection or section, an individual shall not be treated as married for a taxable year if—

"(1) such individual—

"(A) is married (within the meaning of subsection (a)) and files a separate return, and

"(B) has a principal place of abode for more than one-half of such taxable year which is the same principal place of abode of a child (as defined in section 7701(1)) with respect to whom such individual is entitled to a deduction under section 151 (or would be so entitled but for paragraph (2) or (3) of section 152(e)), and

"(2) such individual's spouse does not have at any time during the last 6 months of such taxable year the same principal place of abode as such individual."

(b) CONFORMING AMENDMENTS.—

(1) Section 21(e)(4) is amended to read as follows:

"(4) CERTAIN MARRIED INDIVIDUALS LIVING APART.—Individuals described in section 7703(b) for any taxable year shall not be treated as married."

(2) Section 7703(a) is amended by inserting "or section" after "subsection".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 104. COORDINATION OF BENEFITS FOR DEPENDENTS.

(a) HEALTH INSURANCE CREDIT AND MEDICAL DEDUCTIONS.—

(1) MEDICAL EXPENSE DEDUCTION.—Section 213 is amended by striking subsection (f).

(2) SELF-EMPLOYED INDIVIDUALS.—Paragraph (3) of section 162(l) is amended to read as follows:

"(3) COORDINATION WITH MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a)."

(b) YOUNG CHILD CREDIT AND DEPENDENT CARE CREDIT AND EXCLUSION.—Section 32(b)(1)(D) is amended by striking the last sentence.

(c) EFFECTIV DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

TITLE II-DEFINITION OF CHILD

SEC. 201. UNIFORM DEFINITION OF CHILD.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) UNIFORM DEFINITION OF CHILD.—For purposes of this title—

"(1) IN GENERAL.—The term 'child' means, with respect to any individual, the son, daughter, stepson, or stepdaughter of the individual.

"(2) ADOPTION.—The term 'child' includes—

"(A) any legally adopted child of an individual, and

"(B) any child who is a member of an individual's household if placed with such individual by an authorized placement agency for legal adoption by such individual.

"(3) OTHER CHILDREN.—The term 'child' includes any individual not described in paragraph (1) or (2) who—

"(A) a taxpayer cares for as the taxpayer's own child, and

"(B) has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 21(e)(6) is amended by striking "a child of the taxpayer (within the meaning of section 151(c)(3))" and inserting "a child of the taxpayer (within the meaning of section 7701(l))".

(2) Section 129(c)(2) is amended by striking "a child of such employee (within the meaning of section 151(c)(3))" and inserting "a child of such employee (within the meaning of section 7701(l))".

(3) Section 132(f)(2)(B) is amended by striking "any child (as defined in section 151(c)(3))" and inserting "any child (as defined in section 7701(l))".

(4) Section 318(a)(1) is amended to read as follows:

"(1) MEMBERS OF FAMILY.—An individual shall be considered as owning the stock owned, directly or indirectly, by or for—

"(A) his spouse (other than a spouse who is legally separated for the individual under a decree of divorce or separate maintenance), and

"(B) his children, grandchildren, or parents."

(5) Section 1563(e)(6) is amended by striking subparagraph (C).

(6) Section 2032A(e)(2) is amended by striking the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1992, except that such amendments shall not apply to taxable years beginning before such date.

FAMILY SIMPLIFICATION ACT

PRESENT LAW

Earned income tax credit

Under present law, eligible low-income workers are able to claim a refundable earned income tax credit (EITC) of up to 16.7 percent (17.3 percent for taxpayers with more than 1 qualifying child) of the first $7,140 of earned income for 1991. The maximum amount of credit of 1991 is $1,192 ($1,235 for taxpayers with more than 1 qualifying child), and this maximum is reduced by 11.93 percent (12.36 percent for taxpayers with more than 1 qualifying child) of earned income in excess of $11,250. The EITC is totally phased out for workers with the greater of adjusted gross income or earned income over $21,250. Earned income consists of wages, salaries, other employee compensation (including certain allowances provided to military personnel and the rental value of parsonages), and net self-employment income.

To be eligible for the EITC, the taxpayer must have a "qualifying child". In order to

be a qualifying child, an individual must satisfy a relationship test, a residency test, and an age test. The relationship test requires that the individual be a child, stepchild, descendant of a child, or a foster or adopted child of the taxpayer. The residency test requires that the individual have the same place of abode as the taxpayer for more than one half the taxable year. This place of abode must be located in the United States. The age test requires that the individual be under 19 (24 for a full-time student) or be permanently and totally disabled. If two or more persons would be eligible to claim the EITC with respect to a qualifying child, then only the person with the highest adjusted gross income is treated as eligible. A taxpayer who is qualifying child with respect to another taxpayer cannot claim the EITC.

There are two additional credits that are part of the EITC. A supplemental young child credit is available for qualifying children under the age of one year. The young child credit rate is 5 percent and the phase-out rate is 3.57 percent. It is computed on the same base as the ordinary EITC (the maximum credit for 1991 is $375).

A supplemental credit for health insurance costs is also provided for taxpayers who purchase health insurance policies that include coverage for qualifying children. The health insurance credit rate is 6 percent and the phase-out rate is 4.285 percent. It is computed on the same base as the ordinary EITC (the maximum credit for 1991 is $428). The maximum credit available to a taxpayer is limited to the amount paid for the health insurance coverage.

To claim the EITC, the taxpayer must complete a separate schedule and attach it to his or her income tax return. In addition, the taxpayer must supply each qualifying child's name, age and, for children over the age of one, taxpayer identification number (social security number).

Present law contains a number of so-called "anti-double dipping" provisions designed to prevent a taxpayer from claiming both the ETIC and other tax benefits with respect to the same child or expenses. Thus, a taxpayer cannot claim the dependent care tax credit (DCTC) or receive an exclusion of employer-provided dependent care assistance with respect to a child for which the taxpayer claimed the supplemental young child credit portion of the EITC. Similarly, the amount of expenses that may be taken into account for purposes of the itemized deduction for medical expenses and the deduction for medical expenses for self-employed individuals is reduced by the amount of the supplemental health insurance credit allowable.

Personal exemption for dependent children

In general, a taxpayer is entitled to claim an exemption for any dependent children of the taxpayer. In order to claim a child as a dependent, the taxpayer must provide more than one half of the child's total support during the calendar year as well as meet certain other requirements. For purposes of the support test, governmental benefit payments (e.g., Aid to Families with Dependent Children (AFDC) payments, food stamps, and housing) are not treated as support provided by the taxpayer but rather are treated as support provided by the governmental unit.

Also, the Code provides special support rules in the case of a child of parents: (1) who are divorced or legally separated under a decree of divorce or separate maintenance, (2) who are separated under a written separation agreement, or (3) who live apart at all times during the last 6 months of the calendar year. If the child is in the custody of one or both of these parents for more than one half of the calendar year then the parent having custody for the greater portion of the calendar year satisfies the support test. That parent can release claim to the exemption for any year by filling the proper written declaration with the Secretary of the Treasury.

A child over the age of 19 (24 if the child is a full-time student) cannot be claimed if the child has gross income equal to or in excess of the personal exemption amount ($2,150 for 1991 returns).

Personal exemption for dependents other than children

A taxpayer may claim an exemption for specified relatives other than if the taxpayer provides more than half the support of the relative for the year, the relative has income less than the exemption amount, and certain other requirements are satisfied. A taxpayer may also claim an exemption for an individual other than a specified relative if the taxpayer provides more than one half of the individual's support for the year and the individual lives with the taxpayer for the entire year, has gross income less than the exemption amount, and satisfies certain other requirements.

Other rules

To qualify as a dependent under any category, a person must be a U.S. citizen, resident or national, or a resident of Canada or Mexico for some part of the calendar year in which the taxpayer's tax year begins. Also, a person is disqualified as a taxpayer's dependent if he or she files a joint income tax return. In the case of a dependent who is permanently and totally disabled, income from a sheltered workshop is not taken into account for this purpose.

Interaction with filing status

A taxpayer may be entitled to file an income tax return as a surviving spouse or as a head of household if the taxpayer is entitled to a dependency exemption for certain dependents and the taxpayer pays more than one half of the cost of maintaining a home which is the principal place of abode for such dependents. A taxpayer may claim head of household filing status if the taxpayer pays more than one half the cost of maintaining a home which is the principal place of abode for a non-dependent, unmarried son, stepson, daughter, stepdaughter or a descendent of a son or daughter of the taxpayer.

Uniform definition of child

The word "child" is used throughout the Internal Revenue Code but lacks a common definition.

REASONS FOR CHANGE

The different tests used under present law to determine if a child may be claimed as a dependent or qualifies a taxpayer for the basic EITC and supplemental young child credit component or surviving spouse or head of household filing status create complexity for taxpayers and prevent the Internal Revenue Service from determining an individual's eligibility for the basic EITC and the supplemental young child credit component from his or her tax return without specialized tax forms. The support test for dependency and the maintenance of household test used in the surviving spouse and head of household filing status are complex, often requiring difficult factual and legal determinations by taxpayers. A single rule for all these provisions will reduce taxpayer burdens and increase taxpayer compliance. Also, use of a residency test will approximate the greatest single component of support, namely the cost of housing.

Generally, conforming the definition of a qualifying child in both the personal exemption for dependents and the EITC will allow the Internal Revenue Service to determine an individual's eligibility for the basic EITC and the supplemental young child component from his or her tax return and to compute the amount of the EITC to which the individual is entitled without the use of specialized tax forms. This should increase the number of eligible individuals who actually receive the EITC.

The interactions of the EITC with other tax provisions, (e.g., the DCTC) make it difficult for affected taxpayers to properly complete their tax returns. They also require complex calculations for the taxpayer to determine which provision provides the largest benefit. The EITC could be simplified by repealing the complicated rules dealing with the interaction of the supplemental young child credit and the child health insurance credit with the dependent care tax credit (DCTC), the medical expense deduction, the exclusion of employer-provided dependent care, and the deduction for health insurance costs of self-employed taxpayers.

Present law requires taxpayers to take into account certain noncash compensation for purposes of the EITC, (e.g., military allowances for housing and subsistence). It may be difficult for taxpayers to ascertain the proper value of such compensation.

DESCRIPTION OF BILL

In general

The bill simplifies the personal exemption for dependents by generally replacing the complicated factual determination necessary under the present-law support test. Instead, the bill utilizes a residency test similar to that used in the computation of the EITC.

The bill also simplifies the determination of a taxpayer's filing status as a surviving spouse or head of household by generally replacing the current rules requiring the maintenance of a household with a residency test for qualifying dependents.

Finally, the bill simplifies the operation of the Code by standardizing the definition of a child.

Earned income tax credit

The residency test of the EITC is extended to the personal exemption to ease taxpayer burdens and to facilitate compliance. Also, the bill repeals the provisions that reduce the expenses that are taken into account for: (1) The medical expense deduction and (2) the deduction of health insurance costs for self-employed taxpayers for the allowable supplemental health insurance credit component of the EITC. Also, the provision that denies the dependent care credit and the exclusion for employer-provided dependent care assistance for expenses incurred or employer care provided for children claimed under the supplemental young child credit component of the EITC is repealed.

The bill also extends eligibility for the EITC to members of the Armed Forces whose principal place of abode is outside of the United States.

Personal exemptions

In General

The bill generally conforms the personal exemption rules to those used in the EITC. Specifically, the bill provides that an individual must be either a qualifying child or a qualifying relative (described below) to be a dependent of a taxpayer. Any individual who can be claimed as a dependent by another taxpayer for any taxable year shall not be treated as having any dependents for that taxable year.

Also, the bill modifies present law to limit the exemption to citizens or nationals of the United States and residents of the United States. An exception is provided for any legally adopted children of a U.S. citizen or national whose principal place of abode is the taxpayer's home for the entire taxable year. Generally, these modifications conform the definition of a qualifying child for purposes of the dependency exemption to that used in the EITC.

Dependent Children

The bill generally applies the definition of a qualifying child, which is currently used for purposes of the EITC, to the personal exemption for dependent children. This definition of dependent child is then used to determine eligibility for the EITC and for filing status. Under this definition, a qualifying child is a child of the taxpayer or a descendant of a child of the taxpayer who has the same principal place of abode as the taxpayer for more than half the year. For these purposes, temporary absences from the abode (e.g., due to schooling or illness) will not affect this determination.

Dependent Relatives

The bill provides that non-relatives (and relatives not listed in section 152(a)(1) through 152(a)(8)) may no longer be claimed as dependents. With respect to the definition of qualifying relative, three changes are made to the present-law rules for dependents who are not qualifying children of the taxpayer. First, the support test is replaced with the same residency test used for qualifying children. If an individual does not satisfy the residency test with respect to any taxpayer, then the present-law support test applies. Second, in the case of multiple support agreements, any otherwise qualifying taxpayer who contributed support in an amount at least equal to the exemption amount may claim the exemption if all other qualifying taxpayers file a written declaration with the IRS that they will not also claim the exemption. This determination may be modified each taxable year. Third, the bill modifies the definition of gross income for these purposes to mean adjusted gross income determined without regard to section 135, 911, 931, and 933 plus the amount of interest received or accrued by the individual during the taxable year which is exempt from tax and the amount, if any, of social security and Tier 1 railroad retirement benefits included in gross income under section 86.

Divorced or separated parents

In the case of divorced or separated parents, a child may be treated as the qualifying child or relative of the noncustodial parent for a calendar year if the noncustodial parent provides support for the calendar year equal to or greater than the exemption amount and the custodial parent signs a written delcaration (which declaration must be attached to the noncustodial parent's tax return) that the custodial parent will not claim the child as a dependent for such year. However, agreements executed before January 1, 1992, are exempt from these requirements under a special grandfather provision.

If in the year of divorce or separation, a child lives with each parent for more than 6 months, the parent with whom such child lived for the greater portion of the year is deemed to be the custodial parent.

Interaction with filing status

Both the surviving spouse and head of household filing status generally require that the taxpayer pay more than half of the cost of maintaining a home which is the principal place of abode for certain dependents. Generally, the bill replaces these requirements with the requirement that the taxpayer be eligible for a dependency exemption for one or more individuals.

The bill also modifies the treatment of certain married individuals living apart. Specifically, it repeals the maintenance of a household requirement.

Uniform definition of child

The bill creates a uniform definition of "child" for purposes of the Code. For these purposes, a child means, with respect to an individual, a son, daughter, stepson, or stepdaughter of the individual. It also includes: (1) the legally adopted son or daughter of an individual, (2) any child who is a member of an individual's household placed there by an authorized placement agency for legal adoption by that individual, and (3) any other individual who the taxpayer cares for as the taxpayer's own child, and has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year.

Reporting requirements

The bill requires that the employers of members of the Armed Forces and ministers of the gospel report to their employees the amount of excludable income received in the form of allowances for housing and subsistence and the rental value of parsonages, respectively. The bill also allows the Secretary of the treasury to prescribe a simplified valuation method for these purposes.

EFFECTIVE DATES

Generally, the bill is effective for taxable years beginning after December 21, 1991.

The provision relating to the reporting requirements on certain excludable income of members of the Armed Forces of the United States and ministers of the gospel is effective for taxable years beginning after December 31, 1992.

The provision relating to the uniform definition of "child" is effective on January 1, 1992, except that such provision does not apply to taxable years beginning before such date.

By Mr. SIMON (for himself and Mr. KENNEDY):

S. 1822. A bill to improve the college participation rates of groups underserved by institutions of higher education, and for other purposes; to the Committee on Labor and Human Resources.

HISPANIC ACCESS TO HIGHER EDUCATION ACT

• Mr. SIMON. Mr. President, I rise to introduce the Hispanic Access to Higher Education Act of 1991. In my role as this year's chairman of the Senate Hispanic Task Force, I am introducing this bill to ensure that the Hispanic community's recommendations and concerns are heard as we work on the reauthorization of the Higher Education Act.

When I was chairman of the Subcommittee on Postsecondary Education in the House of Representatives, I held a hearing on Hispanic participation in higher education. I found that Federal student aid programs can and do make a difference in the ability of economically disadvantaged students to obtain a higher education. For Hispanic youth, who are twice as likely to come from low-income families than white youth, these programs are critical.

The expansion of Federal student aid programs in the 1960's and 1970's made an important difference in enabling more minority and low-income students to attend colleges. During the late 1970's and the 1980's, however, Federal student aid has failed to keep pace with the increasing cost of college, and the aid that is available has shifted overwhelmingly toward loans, rather than direct grant assistance. Low-income students, in particular, have suffered from these changes. Reversing these trends could have a revitalizing effect on the college entrance rates of these groups, and thus mitigate not only the problem of lower college access for African Americans and Hispanics but of low degree attainment.

In its report last year, "The Decade of the Hispanic: An Economic Retrospective," the National Council of La Raza calls for an expansion of the Pell Grant Program. I would agree that we must establish a Pell grant entitlement, and while we do not include that in this bill, it is equally a part of the agenda.

I must give credit for much of this bill to Senators KENNEDY and PELL. The teacher recruitment programs, in particular, are virtually identical to the proposals that my colleagues developed in the 101st Congress, and introduced again this year in the National Teacher Act, S. 329.

While any teacher can be a good role model, it is natural for Hispanic students, bombarded with negative racial stereotypes in the mass media, to look for a teacher who looks like them, and who might sometimes feel the way they do about being Hispanic. It is equally important that students who are not Hispanic have Hispanic teachers to counter those stereotypes. In testimony I provided to the Department of Education last year, I recited some of the statistics on Hispanic teachers in Illinois, and the numbers are appalling. While 8 percent of the students are Hispanic, less than 2 percent of the teachers are Hispanic. In Chicago, with an almost 25 percent Hispanic student population, less than 6 percent of the teachers are Hispanic. In particular subject areas, finding an Hispanic role model can be virtually impossible. For example, in the 1986–87 school year, only one in every 157 math teachers was Hispanic, and there was not one Hispanic physics teacher to be found in all of Illinois.

The bill we are introducing today establishes programs to attract more minorities into college and into teaching, and offer scholarships and loan forgiveness, especially for those who agree to teach in the innercity.

A study of eighth graders released last year found that while two-thirds of the students surveyed planned to finish

college, only one-third were slated to enter a high school program that would prepare them for college. This points to the need for the current Upward Bound Program, and for expanded early intervention programs that start as early as the sixth grade. This bill includes a new $200 million program of matching grants to States to significantly expand early intervention activities. The bill also proposes some amendments to the TRIO programs, to ensure that certain groups or areas are not being underserved.

Mr. President, I commend the Congressional Hispanic Caucus, and in particular its chairman, Mr. ORTIZ, for developing this proposal in the House. It is important not only for Hispanic Americans, but for all Americans.●

Mr. KENNEDY. Mr. President, today I am cosponsoring the introduction of the Hispanic Access to Higher Education Act of 1991. Hispanics in this country have suffered a long history of discrimination and racism. These barriers have been particularly notable in the area of education. Even though Hispanics are highly concentrated among the school-age population, they are less likely than their non-Hispanic peers to have been enrolled in preschool programs or to go on to secondary education. The Hispanic high school completion rate remains at only 55 percent.

The failure of elementary and secondary school systems to meet the educational needs of Hispanic students is reflected in our Nation's postsecondary institutions. Except for our native American population, the Hispanic population in the United States has the lowest college participation rate for 18 to 24-year-olds of any major race or ethnic group. Furthermore, of those Hispanics who do enroll in post-secondary education, 56 percent attend 2-year institutions. An almost negligible minority of these students transfer to 4-year colleges and universities. Thus, the share of bachelor's degrees conferred upon Hispanics is not comparable to their proportion of undergraduate enrollment.

In light of these historic inequalities it is appropriate that during National Hispanic Heritage Month, I am cosponsoring the introduction of the Hispanic Access to Higher Education Act. This bill will help increase the college participation and graduation rates of Hispanics by establishing early intervention programs designed to prevent at-risk students from dropping out of high school; by establishing a migrant student minicorps program to provide financial assistance to migrant students in higher education in return for serving as mentors to migrant students in elementary and secondary education, and by enhancing TRIO programs. In addition, the bill requires the Secretary to annually conduct a national survey of factors associated with participation including data on academic progress and college enrollment of racial and ethnic minorities underrepresented in higher education. All of these programs need to be given serious consideration as we enter the Higher Education Act reauthorization process. This bill will increase the educational opportunities for Hispanics and other disadvantaged youth. It will challenge them to reach their potential, and it will benefit all of us for we will be enriched by their accomplishments and their achievements.

By Mr. CRANSTON:

S. 1825. A bill to authorize the sale of Bureau of Reclamation loans to the Redwood Valley County Water District, California; to the Committee on Energy and Natural Resources.

SALE OF CERTAIN BUREAU OF RECLAMATION LOANS

● Mr. CRANSTON. Mr. President, I introduce for appropriate reference a bill to authorize the Secretary of the Interior to sell loans made pursuant to the Small Reclamation Projects Act to the Redwood Valley County Water District. This water district is located in Mendocino County, CA, and serves fewer than 1,200 residential and agricultural customers.

In the Budget Reconciliation Act of 1987, Congress authorized the Secretary of the Interior to sell Small Reclamation Projects Act loans during fiscal year 1988. Loan borrowers were offered the opportunity to repurchase their outstanding loans at a discounted price. About 150 water districts in the Mid-Pacific region of the Bureau of Reclamation bought back their loans. The Redwood Valley County Water District, however, was unable to take advantage of the opportunity due to its poor financial condition at the time. In fact, while other districts were repurchasing their loans, the Redwood Valley County Water District was seeking congressional authority to defer its loan repayments and to renegotiate its loan repayment schedule. Congress provided such authority in Public Law 100–516.

Today, the water district is financially sound and would like to have the opportunity it missed in 1988 to repurchase the two Small Reclamation Projects Act loans it has from the Bureau of Reclamation.

This bill would renew the authority for the Secretary of the Interior to sell these loans to the Redwood Valley County Water District for 1 year. The legislation provides that the sale price would be determined through the application of the discount rate methodology used by the Secretary during the loan assets sales program in 1988, but reflecting the investment factors applicable at the time of the sale. In 1988, the Secretary offered to sell the loans to the district for $2,460,042.00. Additionally, the bill would require the district to pay all administrative costs associated with the sale. The original program used revenues from the sales to cover the costs.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 1825

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

SECTION 1. SALE OF BUREAU OF RECLAMATION LOANS.

(a) The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall sell loans made pursuant to the Small Reclamation Projects Act (43 U.S.C. 422a–422l) to the Redwood Valley County Water District.

(b) The sale of the loans which are numbered 14–06–200–8423A and 14–06–200–842A Amendatory to the Redwood Valley County Water District shall realize an amount to the federal government as determined by the Secretary through application of the discount rate methodology used by the Secretary during the loan assets sales program authorized by Section 5301 of the Budget Reconciliation Act of 1987. Said amount shall reflect the investment factors applicable at the time of the determination of the amount.

SEC. 2. SAVINGS PROVISIONS.—Nothing in this Act, including prepayment or other disposition of any loans, shall

(a) except to the extent that prepayment may have been authorized heretofore, relieve the borrower from the applications of the provisions of Federal Reclamation Law (Act of June 17, 1902, and Acts amendatory thereof or supplementary thereto, including the Reclamation Reform Act of 1982), including acreage limitations, to the extent such provisions would apply absent such prepayment, or

(b) authorize the transfer of title to any federally owned facilities funded by the loans specified in section 1 of this Act without a specific act of Congress.

SEC. 3. FEES AND EXPENSES OF PROGRAM.—In addition to the amount to be realized by the United States as provided in section 1, the Redwood Valley County Water District shall pay all reasonable fees and expenses incurred by the Secretary relative to the sale.

SEC. 4. TERMINATION.—The authority granted by this Act to sell loans shall terminate one year after the date of enactment of this Act.●

By Mr. DASCHLE (for himself, Mr. BOREN, Mr. PRYOR, and Mr. EXON):

S. 1826. A bill to amend the Internal Revenue Code of 1986 to encourage parity giving in order to increase prices to farmers while assisting in feeding the starving of the world; to the Committee on Finance.

CROP-SHARING HUNGER RELIEF ACT

Mr. DASCHLE. Mr. President, I rise to introduce an innovative proposal that addresses the dual challenges of creating new markets for surplus agricultural products and feeding the hungry.

In my years as a representative of the State of South Dakota, I can say

that nothing frustrates a farmer more than to have grain wasting away in a bin because prices are too low to sell it, while he watches television news stories about the growing numbers of hungry people around the world, even in our own country. There's something wrong in a world where we have bushels and tons of excess commodities rotting and spoiling, while millions of people are starving.

The statistics on hunger tell one side of the story. In this country, 37 percent of homeless persons report eating 1 meal per day or less, and 36 percent report going at least 1 day per week without any nourishment. A survey of 30 major U.S. cities in 1990 reported a 22 percent increase in demand for emergency food assistance. At present rates, more than 100 million children will die in the world from illness and malnutrition in the 1990's. An estimated 1 billion people, roughly 20 percent of the world's population, are diseased, in poor health or malnourished.

At the same time, the Federal Government spends enormous sums purchasing surplus commodities each year. The Commodity Credit Corporation has 518 million pounds of butter, 240 million pounds of nonfat dry milk, and 387 million pounds of corn in its inventory. Moreover, some 15 percent of our wheat acreage and 7.5 percent of our corn acreage is idle.

It's not often that one problem offers a solution to another. But I think that's what we have here.

The proposal I am introducing today, the Crop Sharing Hunger Relief Act, will enable the American taxpayer to provide the link between our surplus commodities and hungry people everywhere. Here's how it works.

An individual purchases commodities that are in surplus in a given year. That same year, he or she donates the commodities to a qualifying hunger relief organization and takes a tax deduction for the "parity" price of the commodity. The deduction would also be available for taxpayers who fall under the alternative minimum tax.

The parity price is published monthly by the Department of Agriculture. Simply put, it reflects the cost of a commodity in today's market, plus a fair return to the farmer.

The proposal includes several provisions to focus it and ensure that the taxpayer contributes to the transaction. For example, no individual may use the deduction for more than $10,000 worth of commodities. Furthermore, regardless of the parity price, in no event would a taxpayer be able to take a deduction for more than twice what he or she paid for the commodities. Finally, the deduction is available only for commodities that are in surplus.

It is possible that this proposal would result in revenue loss in its initial phases, and I plan to ask the Joint Committee on Taxation to estimate its revenue impact. Once it is fully utilized, however, the benefits of the Crop Sharing Hunger Relief Act could be substantial. It is anticipated that the proposal will spur a system of private purchasing of surplus commodities that are donated to the hungry. The use of these commodities would represent a net gain in consumption that would not occur without the program. The more individuals who participate, the more surplus commodities are sold, with a corresponding increase in the prices of commodities and reduction in Federal spending on agricultural subsidies.

Some in Congress believe that the best way to accomplish sustained growth in markets for our abundant agricultural products is by increasing the purchasing power of the countries in need of those products. They argue that it is far better from our perspective for other countries to purchase our agricultural goods on the open market than for us to donate our goods in surplus.

To achieve economic development among the countries in greatest need of our products, however, is a long-term objective. Even among countries that receive significant amounts of economic development aid, the beneficial effects of that aid do not occur overnight. Moreover, there is a limit to how much the United States alone can finance or even guarantee the financing of other countries' growth—at least in the short term.

That is why we need interim solutions. We need to find ways to get from here to there. Certainly, we must never lose sight of the goal of encouraging long-term economic growth among developing countries so that they can purchase our goods outright, but at the same time we must not hesitate to find innovative ways to create new avenues for the flow of our agricultural products in the short term. What better way to do so than through a proposal that directs those products to the people who need them the most.

As chairman of the Finance Subcommittee on Energy and Agricultural Taxation, I plan to hold hearings this month on the Crop Sharing Hunger Relief Act. At that time, we will have an opportunity to hear comments on the measure with a view toward making necessary refinements.

The Crop Sharing Hunger Relief Act represents a new approach to the persistent concern about markets for one of this country's greatest resources. It also meets a glaring humanitarian need in a way that ultimately should be cost-effective. I believe this proposal merits the consideration of my colleagues, and I ask unanimous consent that its text be printed in the RECORD.

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

S. 1826

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Crop-Sharing Hunger Relief Act".

SEC. 2. DEDUCTION FOR PARITY GIVING.

(a) IN GENERAL.—Section 170(e) of the Internal Revenue Code of 1986 (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end thereof the following new paragraph:

"(6) QUALIFIED COMMODITY CONTRIBUTIONS.—

"(A) IN GENERAL.—In the case of a contribution of an eligible commodity which constitutes a qualified commodity contribution, the amount of such contribution taken into account under this section shall be equal to the lesser of—

"(i) the parity price of the commodity, or

"(ii) 200 percent of the taxpayer's basis in such property.

"(B) DOLLAR LIMITATION.—Contributions of eligible commodities shall not be taken into account under subparagraph (A) for any taxable year to the extent that the taxpayer's aggregate basis in all such commodities contributed exceeds $10,000.

"(C) QUALIFIED COMMODITY CONTRIBUTION.—For purposes of this paragraph, the term 'qualified commodity contribution' means a charitable contribution by an individual of an eligible commodity to an organization which is described in section 501(c)(3) and which is exempt from taxation under section 501(a) (other than a private foundation described in paragraph (3)(A)), but only if—

"(i) the use of the property by the donee is solely for the purpose of feeding individuals in famine, disaster, or other economically depressed areas, and

"(ii) requirements similar to the requirements of clauses (ii), (iii), and (iv) of paragraph (3)(A) are met with respect to the contribution.

"(D) ELIGIBLE COMMODITY.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'eligible commodity' means any agricultural commodity which, at the time of purchase (or, if not purchased by the taxpayer, at the time of contribution), is a commodity on the surplus commodity list under clause (ii).

"(ii) SURPLUS COMMODITY.—The Secretary, in consultation with the Secretary of Agriculture, shall establish a list of surplus commodities for purposes of this paragraph. Such list shall be revised to reflect any changes in the availability of any commodity.

"(E) PARITY PRICE.—For purposes of this paragraph, the parity price for any agricultural commodity shall be determined under section 301(a)(1) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(a)(1)).

"(F) EXCLUSION OF ESTATES AND TRUSTS.—For purposes of this paragraph, an estate or trust shall not be treated as an individual."

(b) EXEMPTION FROM ALTERNATIVE MINIMUM TAX.—Section 57(a)(6)(B) of the Internal Revenue Code of 1986 (defining capital gain property) is amended by adding at the end thereof the following sentence: "Such term shall not include any eligible commodity contributed in a qualified commodity contribution described in section 170(e)(6)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions after December 31, 1991, of commodities acquired after December 31, 1991.

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By Mr. GARN (for himself, Mr. BOND, Mr. DODD, Mr. DOLE, Mr. NUNN, Mr. DANFORTH, Mr. BURDICK, Mrs. KASSEBAUM, Mr. JOHNSTON, Mr. KASTEN, Mr. GRASSLEY, Mr. SEYMOUR, Mr. WALLOP, AND Mr. SPECTER):

S. 1827. A bill to require the Secretary of the Treasury to mint coins in commemoration of the 200th anniversary of the White House; to the Committee on Banking, Housing, and Urban Affairs.

WHITE HOUSE COMMEMORATIVE COIN ACT OF 1991

• Mr. GARN. Mr. President, the White House is one of the enduring symbols of our great country, emblematic of our history of strong leaders and a testament to the principles of democracy which forged this Nation, and which are now shaping the face of the world. It is surely one of the most, if not the most, recognizable landmarks in America; not only to the people of our Nation, but to people all over the world.

Every year, more than 1½ million people—Americans, visitors from abroad, and heads of state—visit the White House. Literally hundreds of millions more have seen the White House in pictures or on television.

In 1792, the President's House was the first of the Federal buildings to be commenced in the new national capital, even before the city was named "Washington." The American Revolution had ended only 9 years before and the Constitution was just 3 years old.

Today, the White House continues to serve not only as home of the President and the First Lady, but as an integral part of our constitutional government, where important decisions are made every day, decisions which affect us and the rest of the world. Treaties are signed at the White House and foreign heads of state and dignitaries are received there. The public rooms of the White House also serve as a cultural center and a museum of American history and decorative and fine art.

The Congress appropriates funds for the daily operation and maintenance of the White House. However, refurbishing projects and important historical acquisitions have traditionally been funded primarily by the generosity of private contributors. The First Lady, Barbara Bush, has been working tirelessly to assure the future of the White House. At the request of the First Lady, the White House Endowment Fund was established in January 1990 as a not-for-profit organization to raise a $25 million endowment to provide permanent support for the White House collection of fine art and furnishings and to preserve the historic character of the public museum rooms of the White House.

The White House Historical Association, a not-for-profit private organization whose historical and educational purposes are to enhance understanding, appreciation, and enjoyment of the White House, has proposed as one of the projects that would contribute to the endowment, the sale of a commemorative coin to celebrate the 200th anniversary of the laying of the cornerstone of the White House, which took place on the 13th day of October, in the year 1792.

Mr. President, I am therefore pleased to be able to introduce the White House Commemorative Coin Act of 1991, which authorizes the Secretary of the Treasury to mint a White House Commemorative Coin under the sponsorship of the association. Proceeds from the sale of the silver dollar coin, after paying the expenses of the mint, will go to the White House Endowment Fund to help in fulfilling the purpose of ensuring the future of the White House. These moneys will augment private contributions to the fun.

This legislation has strong bipartisan support and has been cosponsored by Senators BOND, DOLE, DODD, KASSEBAUM, DANFORTH, KASTEN, GRASSLEY, SEYMOUR, BURDICK, NUNN, WALLOP, and SPECTER. In addition, it has the support of the First Lady, the Department of the Treasury, the U.S. Mint, and the Office of Management and Budget, all of whose suggestions have been incorporated in the bill. I urge my colleagues to join me in supporting this important legislation to help ensure the future of one of the great symbols of our country, the White House.

Mr. President, I would also like to include in the RECORD following my remarks, a statement prepared by the White House Historical Association, which more fully describes the circumstances of laying the cornerstone of the White House.

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

THE CORNERSTONE OF THE WHITE HOUSE

The President's House was the first of the federal buildings to be commenced in the new national capital, even before the city was named "Washington." Few quiet moments in the history of our country have been more symbolic than October 13, 1792, when the cornerstone of the White House was laid. The American Revolution had ended only ten years before; the Constitution was three years old. With sincere faith and high hopes the federal government, under the presidency of George Washington, was laying the cornerstone for the future of the new country.

The cornerstone of the White House is in fact not the traditional stone familiar in public architecture, but a brass plate, which has been hidden within the walls of the White House since it was put there in the autumn of 1792. On the plate is engraved the following:

"This first stone of the President's House was laid the 13th day of October 1792, and in the seventeenth year of the independence of the United States of America. George Washington, President. Thomas Johnson, Doctor Stewart, Daniel Carroll, Commissioners. James Hoban, Architect. Collen Williamson, Master Mason. Vivat Republica."

It was a simple little ceremony that marked the completion of the first cornerstone of the first public building begun in Washington. The city as yet had no name; from the hill where the White House was to be, the few participants could look over the sprawl of tobacco fields and meadows where the Mall would be, and perhaps even as far away as the impressive and higher hill upon which, in the next year, the cornerstone of the Capitol would be laid in a far more august ceremony. The small company that had gathered to lay the cornerstone of the President's House, at the close of the building season, 1792, walked after their work was done to Suter's Tavern in Georgetown, where they ate an "elegant dinner' and drank many toasts into the night.

Two of the great ironies of history are that George Washington was not present at the cornerstone laying—public business kept him away—and that he would never live in the White House. He was the only President of the United States never to live in the White House; yet, he was the man who built that house. When Congress approved the erection of a new city, a capitol and a house for the President, the President put forward ideas of his own. He wanted a city that would impress the world. To implement his plan he turned to, Pierre Charles L'Enfant, who made a plan of a city and described to Washington public buildings of great extent. The house of the President was first imagined as a palace (somewhat the size of today's National Gallery of Art) and over the protests of the commissioners of the Federal District, the cellars for this palace were dug. Streets were laid out to conform to the palace, and they remain so described in the city plan.

George Washington would yield to building a smaller house only when it became clear that the palace could not be completed by November 1800, the deadline Congress had designated for occupancy of the new city. The White House is about one-fifth the size of the palace originally envisioned. When it came time to site the new house in the cellars dug for the palace, the commissioners dared not make the decision on their own. Washington himself appeared on the scene and, being a surveyor by training, located the house without hesitation precisely where it stands today and drove the stakes in the ground himself. Although he had started work on the largest house the United States was to know for eighty years, he frequently remarked that it was built for the ages, and could be enlarged by the addition of wings. He ordered for the house the most elaborate stone carving seen in America up until that time.

He built the house we know today. Changes are few, although the White House has been rebuilt twice within its original walls, the first time after it was burned by British invaders in 1814 and the second time in the 1948–1952 restoration by President Truman. The cornerstone of 1792 lies undisturbed. Two centuries will soon have passed since the cornerstone was laid.

America's greatest moments are its simplest, and the laying of the White House cornerstone is one of these. Those who gathered on that hill two hundred years ago had no idea what was to come, any more than we do today. The cornerstone was a mark of faith, and promise, and carries that message well into its third century.•

• Mr. BOND. Mr. President, I rise today to join Senator GARN in introducing this bill to commemorate the laying of the cornerstone of the White House.

Mr. President, 1992 will mark the 200th anniversary of the laying of the

White House cornerstone. This bill provides a treasured and lasting monument to this historic event.

On October 13, 1792, the first of the Federal buildings was commenced in the new Capital City. George Washington, being a surveyor by training, sited the house where it now stands today. Yet, ironically, he was not present at the laying of the cornerstone, nor did he ever live in the White House.

He built the house to last through the ages and the changes made since that time are few. The cornerstone brass plate, commemorating the beginning of construction on the White House, has lain undisturbed for almost 200 years.

Every year, more than 1.5 million people visit the White House to view its elaborate stone carvings, collection of fine art, and historic furnishings.

Although Congress provides the funding for the daily operation and maintenance of the White House, the special refurbishing projects are usually funded by appeals for private contributions.

The White House Endowment Fund was established in 1990, at the request of First Lady Barbara Bush, as a nonprofit organization to raise a $25 million endowment to provide permanent support for the White House collection of fine art and furnishings and for the public rooms of the White House.

This bill will authorize the minting of the White House commemorative coin. The proceeds from the sale of this coin, after repaying all costs to the Government, will go to the White House Endowment Fund. These moneys, in addition to private contributions, will establish a permanent fund for the maintenance of the White House art collection, antique furnishings, and public rooms for which Government funds are not available.

First Lady Barbara Bush, Honorary Chairman of the White House Endowment Fund, is very supportive of a White House commemorative coin. It is her hope and it is my hope that through the endowment fund, the sale of this coin will assure permanent support for the historic and museum character of the White House in such manner that all Americans can be proud of this national treasure.

I believe that the 200th anniversary of the laying of the cornerstone of the White House is a special event which deserves a lasting and distinguished commemorative and I encourage my colleagues to please join me in supporting the White House Commemorative Coin Act of 1991.●

By Mr. KENNEDY (for himself, Mr. METZENBAUM, Mr. WELLSTONE, Mr. EXON, Mr. CONRAD, Mr. AKAKA, Mr. DASCHLE, Mr. BRYAN, Mr. SIMON, Mr. PELL, Mr. ADAMS, Mr. BRADLEY, Mr. DODD, Mr. HEFLIN, Mr. KERRY, Mr. LIEBERMAN, Mr. D'AMATO, Mr. SPECTER, Mr. LEVIN, Mr. SARBANES, Mr. ROCKEFELLER, Mr. BURDICK, Mr. LAUTENBERG, Mr. KOHL, Mr. HARKIN, and Ms. MIKULSKI):

S. 1828. A bill to provide extended unemployment benefits during period of high unemployment to railroad employees who have less than 10 years of service; to the Committee on Labor and Human Resources.

EXTENDED RAILROAD UNEMPLOYMENT BENEFITS

Mr. KENNEDY. Mr. President, the legislation I am introducing today is intended to ensure that railroad workers are not left out of the relief we are providing for unemployment workers in other industries.

This is an issue that Senators METZENBAUM, EXON, WELLSTONE, CONRAD, the other original sponsors and I have been particularly concerned about. We had hoped to amend S. 1722 to ensure equal treatment for railroad workers under that bill, but because of procedural complications, that was not possible, and this legislation is necessary.

It was not the intention of S. 1722's sponsors to exclude any group of workers from the benefits provided under the bill. However, because unemployment compensation for railroad workers is provided under a separate railroad unemployment system, an amendment to the Railroad Unemployment Insurance Act is necessary to enable railroad workers to receive extended benefits.

It would be unfair to deny these benefits to unemployed railroad workers. They are experiencing the same difficulties in finding jobs as workers in other industries in this recession. This bill will correct this inequity by establishing an extended benefit program for railroad workers under the Railroad Unemployment Insurance program.

The legislation will give approximately 3,000 unemployed railroad workers with less than 10 years in the railroad system up to 13 weeks of extended benefits through July 4, 1992, as long as the national unemployment rate equals or exceeds 6 percent. Under reachback provisions identical to those for other workers, these benefits will be available to workers who exhausted their regular benefits prior to enactment of the extended benefit program, but after March 31, 1991.

In every previous recession, when Congress has acted to provide supplemental unemployment benefits to workers who have exhausted regular benefits, we have always included provisions to ensure that railroad workers receive similar benefits. The needs of unemployed railroad workers are just as great as the needs of other workers, and they deserve these benefits too.

The benefits for railroad workers under this legislation will be paid out of the existing surplus in the Railroad Unemployment Insurance Trust Fund. The current balance of that fund is $324 million, compared to an average baseline balance of $225 million.

The Railroad Retirement Board, which administers the fund, has stated that the current balance is sufficient to pay the extended unemployment benefits under this legislaiton without the need for additional funding. The Congressional Budget Office has estimated that the cost of this program will be less than $10 million.

I urge my colleagues to support this effort to extend unemployment benefits for workers in all industries, including the railroad industry.

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

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

S. 1828

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

SECTION 1. EXTENDED RAILROAD UNEMPLOYMENT INSURANCE BENEFITS DURING PERIODS OF HIGH NATIONAL UNEMPLOYMENT.

(a) IN GENERAL.—For purposes of section 2(h)(2) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(h)(2)), a "period of high unemployment" includes any month if the average unadjusted total rate of unemployment (as determined by the Secretary of Labor) for the period consisting of the most recent 6 months for which data are available as of the close of such month equals or exceeds 6 percent.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no employee shall have an extended benefit period under the second proviso of section 2(c) of the Railroad Unemployment Insurance Act beginning before October 6, 1991, or after July 4, 1992.

(2) TRANSITION.—If an employee has established an extended benefit period under the second proviso of section 2(c) of the Railroad Unemployment Insurance Act and the last day of such extended benefit period, as established, is after July 4, 1992, such employee shall continue to be entitled to extended unemployment benefits for days of unemployment in registration periods included in such extended benefit period, provided that such employee meets the eligibility requirements of this Act and the Railroad Unemployment Insurance Act.

(3) REACHBACK PROVISIONS.—If (A) an employee has exhausted his rights to normal unemployment benefits under section 2(c) of the Railroad Unemployment Insurance Act after February 28, 1991, but before October 6, 1991, and (B) a period described in subsection (a) is in effect as of October 6, 1991, such employee can have an extended benefit period under the second proviso of section 2(c) of the Railroad Unemployment Insurance Act beginning with his first day of unemployment after February 28, 1991. If an employee exhausted his rights to normal unemployment benefits after February 28, 1991, and is not a qualified employee, within the meaning of section 3 of the Railroad Unemployment Insurance Act, with respect to the general benefit year beginning July 1, 1991, such employee can have an extended benefit period under the second proviso of section 2(c)

of the Railroad Unemployment Insurance Act beginning with his first day of unemployment in such general benefit year, provided that no such extended benefit period shall begin after October 5, 1991.

(c) LIMITATION ON PAYMENT.—Extended benefits under this section shall be payable for a maximum of 65 days of unemployment, including any extended benefits payable by reason of the application of the reachback provisions.

By Mr. GLENN (for himself and Mr. METZENBAUM):

S.J. Res. 213. Joint resolution to designate October 12, 1991, as "Centennial of Concrete Paving in America Day"; to the Committee on the Judiciary.

CENTENNIAL OF CONCRETE PAVING IN AMERICA DAY

• Mr. GLENN. Mr. President, I rise today to introduce a joint resolution designating October 12, 1991, as "Centennial of Concrete Paving in America Day." My colleague from Ohio, Mr. HOBSON, has introduced this joint resolution in the House of Representatives.

One hundred years ago, George W. Bartholomew of Bellefontaine, OH, confident that concrete was a superior material for paving streets, convinced the city council to test his idea by paving an 8-foot wide section of the Main Street next to the hitching rail of the Logan County Courthouse. That original concrete paving has been in continuous use since 1891 and has been recognized in the National Register of Historic Places as the first concrete street in the United States.

The concrete street in Bellefontaine, OH, was the genesis of our highway system. Since concrete paving made a more durable road, trucks and automobiles were more productive, and commerce expanded. The durability and reliability of concrete roads is an effective investment for government and taxpayers.

Mr. President, a celebration of the Centennial of Concrete Pavement is planned on October 12, 1991 in Bellefontaine, OH. I urge my colleagues to join me in commemorating this event.•

By Mr. RIEGLE (for himself, Mr. CHAFEE, Mr. AKAKA, Mr. BRADLEY, Mr. BURNS, Mr. D'AMATO, Mr. DODD, Mr. FOWLER, Mr. GLENN, Mr. HEFLIN, Mr. INOUYE, Mr. LAUTENBERG, Mr. LEVIN, Mr. MURKOWSKI, Mr. ROCKEFELLER, Mr. SANFORD, Mr. BURDICK, Mr. HOLLINGS, Mr. SEYMOUR, Mr. DOLE, Mr. METZENBAUM, and Mr. CRANSTON):

S.J. Res. 214. Joint resolution to designate May 16, 1992, through May 22, 1992, as "National Awareness Week for Life-Saving Techniques"; to the Committee on the Judiciary.

NATIONAL AWARENESS WEEK FOR LIFE-SAVING TECHNIQUES

• Mr. RIEGLE. Mr. President, today with my distinguished colleague Senator CHAFEE, and 20 of our colleagues, we are introducing a joint resolution to designate May 16 through May 22 of 1992 as "National Awareness Week for Life-Saving Techniques."

There is a very serious problem that deserves our earnest attention: It is the pervasive illiteracy that Americans have to basic life-saving techniques.

Every year, about 850,000 Americans die from accidents or heart attacks, according to the National Center for Health Statistics and the National Safety Council. Accidents alone took nearly 95,000 U.S. lives in 1990, ranking as the No. 1 killer of young Americans between 1 and 37 years old. Strikingly, 75 percent of those who die due to accidental causes are male. Overall, heart disease remains to be the predominant cause of death in America today, killing 725,010 people in 1990. In Michigan alone, 28,031 people died from heart disease and 3,228 were lost to accidental causes in 1989. Many of these lives may have been saved if someone had known basic rescue breathing, cardiopulmonary resuscitation, and other such skills that save lives.

The irony is that opportunities to learn these vital lifesaving skills are available to all Americans through the American Red Cross, the American Heart Association, the YMCA, and other national organizations.

Although many Americans have taken the time to learn lifesaving techniques, close to 10 million, there are significantly more people who have never learned them. It appears that many Americans are unaware of the need to be prepared to use such skills.

Imagine, Mr. President, what one such person would do on an ordinary day when encountering an out-of-the ordinary accident or heart attack. Imagine a situation that depends upon rapid intervention for another person to survive. Imagine the helplessness and final horror of watching another person's life slip away out of ignorance. No one should ever have to face such a moment, and no one has to.

On an ordinary day at Kneff Lake in Grayling, MI, the McGuire family, of Dearborn, MI, were celebrating their son Joe's fourth birthday. That same day, 16-year-old Buddy Latesky was swimming at the lake with some friends when he noticed a white T-shirt floating in the water. When he drew closer he found a small boy, Joe McGuire, floating facedown in the water. Buddy immediately pulled the boy from the water and performed the mouth-to-mouth resuscitation techniques he learned in a middle school health class. After a few unpredictable minutes, Joe began coughing up water and breathing on his own. He was then treated by and released from a local hospital.

Because of Buddy Latesky, 4-year-old Joe McGuire, who had momentarily wandered from his parents, lived through the trauma of his fourth birthday. Because of training received in a health class, Buddy knew how to prevent Joe from becoming a statistic. And today, Buddy is a hero and example to us all.

Senate Joint Resolution 214 designating May 16 through 22, 1992, as "National Awareness Week For Life-Saving Techniques" is designed to inform and prompt Americans to take advantage of the lifesaving educational programs that are available to them in their areas and create more happy endings. Because accidental deaths increase by approximately 1,000 every June, July, and August, the month of May is the most appropriate time for "National Awareness Week For Life-Saving Techniques." I urge my colleagues to cosponsor this important resolution.

Mr. President, I ask unanimous consent that the full text of the joint resolution be printed in the RECORD.

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

S.J. RES. 214

Whereas the National Safety Council reported that about 850,000 Americans died in 1990 as a result of accidents and heart disease;

Whereas accidents are the leading cause of death for children and youth ages 1 to 24 years;

Whereas drowning and choking are a leading cause of accidental death in children under the age of 5 years;

Whereas Rescue Breathing and Cardiopulmonary Resuscitation, commonly referred to as CPR, are life-saving techniques that significantly reduce the incidence of sudden death due to accidents and heart disease;

Whereas it is critical that more Americans learns such basic life-saving techniques in order to reduce the number of deaths related to accidents and heart disease;

Whereas the opportunity to learn basic life-saving techniques is available to all Americans through the American Red Cross, the American Heart Association, the YMCA, and other national organizations; and

Whereas the death rate due to accidents and heart disease would be greatly reduced if more Americans received training in basic life-saving techniques: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That May 16, 1992, through May 22, 1992, is designated as "National Awareness Week for Life-Saving Techniques". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe the week with appropriate ceremonies and activities designed to encourage training in life-saving techniques for Americans.•

• Mr. CHAFEE. Mr. President, I am pleased to join Senator RIEGLE in introducing a resolution to designate the week of March 16, 1992, as "National Awareness Week for Life-Saving Techniques."

According to the National Safety Council almost 850,000 Americans died in 1991 as a result of accidents and heart disease. Many of these deaths could have been prevented if lifesaving

techniques, such as the Heimlich maneuver and cardio-pulmonary resuscitation [CPR], were administered to victim in a timely manner.

As you may recall last month, Troy Trice, a local high school football player, was struck by lightning during practice. The lightning struck Troy with such force that it knocked off his shoes and helmet. Troy's heart and lungs stopped functioning, and his arms and legs were burned. Immediately after the lightning struck, teammates and coaches began CPR on Troy. Last week, Troy was released from the hospital and is expected to recover completely. Doctors credited Troy's teammates and coaches with saving his life by administering CPR.

It does not take long to learn CPR and other life-saving techniques. And as Troy and his family found out, knowing them can mean the difference between life and death for an accident victim. The Senate Health Promotion Office offers a CPR course that requires a 6-hour time commitment. The YMCA, Red Cross, and the American Heart Association also regularly hold classes. The resolution we are introducing today will help improve awareness about opportunities to learn CPR and other life-saving techniques. I am hopeful that Members will join us in cosponsoring this important resolution.●

ADDITIONAL COSPONSORS

S. 291

At the request of Mr. DECONCINI, his name was added as a cosponsor of S. 291, a bill to settle certain water rights claims of the San Carlos Apache Tribe.

S. 359

At the request of Mr. BOREN, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 359, a bill to amend the Internal Revenue Code of 1986 to provide that charitable contributions of appreciated property will not be treated as an item of tax preference.

S. 567

At the request of Mr. SANFORD, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 567, a bill to amend title II of the Social Security Act to provide for a gradual period of transition (under a new alternative formula with respect to such transition) to the changes in benefit computation rules enacted in the Social Security Amendments of 1977 as such changes apply to workers born in years after 1916 and before 1927 (and related beneficiaries) and to provide for increases in such workers' benefits accordingly, and for other purposes.

S. 1069

At the request of Mr. MITCHELL, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1069, a bill to assess and protect the quality of the nation's lakes.

S. 1087

At the request of Mr. HARKIN, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1087, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 100th anniversary of the Pledge of Allegiance to the Flag.

S. 1111

At the request of Mr. MITCHELL, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1111, a bill to protect the Public from Health Risks from Radiation Exposure from Low-Level Radioactive Waste, and for other purposes.

S. 1175

At the request of Mr. KERRY, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 1175, a bill to make eligibility standards for the award of the Purple Heart currently in effect applicable to members of the Armed Forces of the United States who were taken prisoners or taken captive by a hostile foreign government or its agents or a hostile force before April 25, 1962, and for other purpose.

S. 1179

At the request of Mr. JOHNSTON, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 1179, a bill to stimulate the production of geologic-map information in the United States through the cooperation of Federal, State, and academic participants.

S. 1257

At the request of Mr. BOREN, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 1257, a bill to amend the Internal Revenue Code of 1986 with respect to the treatment of certain real estate activities under the limitations on losses from passive activities.

S. 1330

At the request of Mr. HOLLINGS, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 1330, a bill to enhance the productivity, quality, and competitiveness of U.S. industry through the accelerated development and deployment of advanced manufacturing technologies, and for other purposes.

S. 1423

At the request of Mr. DODD, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 1423, a bill to amend the Securities Exchange Act of 1934 with respect to limited partnership rollups.

S. 1482

At the request of Mr. DIXON, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 1482, a bill to amend the Social Security Act to improve the notice of Medicaid payment of Medicare cost sharing, and for other purposes.

S. 1574

At the request of Mr. RIEGLE, the names of the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Montana [Mr. BURNS] were added as cosponsors of S. 1574, a bill to ensure proper and full implementation by the Department of Health and Human Services of Medicaid coverage for certain low-income Medicare beneficiaries.

S. 1623

At the request of Mr. DECONCINI, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 1623, a bill to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

S. 1663

At the request of Mr. SIMON, the names of the Senator from Missouri [Mr. BOND] and the Senator from Missouri [Mr. DANFORTH] were added as cosponsors of S. 1663, a bill to amend the act of May 17, 1954, relating to the Jefferson National Expansion Memorial, to authorize increased funding for the East St. Louis portion of the memorial, and for other purposes.

S. 1777

At the request of Mr. ADAMS, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a cosponsor of S. 1777, a bill to amend the Public Health Service Act to establish the authority for the regulation of mammography services and radiological equipment, and for other purposes.

SENATE JOINT RESOLUTION 96

At the request of Mr. RIEGLE, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of Senate Joint Resolution 96, a joint resolution to designate November 19, 1991, as "National Philanthropy Day."

SENATE JOINT RESOLUTION 100

At the request of Mr. KOHL, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from New Jersey [Mr. BRADLEY], the Senator from Montana [Mr. BURNS], the Senator from Illinois [Mr. DIXON], the Senator from Texas [Mr. GRAMM], the Senator from Alabama [Mr. HEFLIN], the Senator from New York [Mr. MOYNIHAN], the Senator from Illinois [Mr. SIMON], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 100, a joint resolution designating January 5, 1992 through January 11, 1992 as "National Law Enforcement Training Week."

SENATE JOINT RESOLUTION 107

At the request of Mr. MOYNIHAN, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of Senate Joint Resolution 107, a joint resolution to designate October 15,

1991, as "National Law Enforcement Memorial Dedication Day."

SENATE JOINT RESOLUTION 133

At the request of Mr. HOLLINGS, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of Senate Joint Resolution 133, a joint resolution in recognition of the 20th anniversary of the National Cancer Act of 1971 and the over 7 million survivors of cancer alive today because of cancer research.

SENATE JOINT RESOLUTION 166

At the request of Mr. DOLE, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of Senate Joint Resolution 166, a joint resolution designating the week of October 6 through 12, 1991, as "National Customer Service Week."

SENATE JOINT RESOLUTION 188

At the request of Mr. LAUTENBERG, the names of the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Idaho [Mr. CRAIG], the Senator from Arkansas [Mr. PRYOR], the Senator from Nevada [Mr. REID], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of Senate Joint Resolution 188, a joint resolution designating November 1991, as "National Red Ribbon Month."

SENATE JOINT RESOLUTION 190

At the request of Mr. MOYNIHAN, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of Senate Joint Resolution 190, a joint resolution to designate January 1, 1992, as "National Ellis Island Day."

SENATE JOINT RESOLUTION 197

At the request of Mr. COCHRAN, the names of the Senator from Montana [Mr. BURNS], and the Senator from California [Mr. CRANSTON] were added as cosponsors of Senate Joint Resolution 197, a joint resolution acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 25, 1991, as "National Military Families Recognition Day."

SENATE CONCURRENT RESOLUTION 57

At the request of Mr. DOMENICI, the names of the Senator from Indiana [Mr. LUGAR], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of Senate Concurrent Resolution 57, a concurrent resolution to establish a Joint Committee on the Organization of Congress.

SENATE CONCURRENT RESOLUTION 68

At the request of Mr. HATFIELD, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of Senate Concurrent Resolution 68, a concurrent resolution expressing the sense of the Congress relating to encouraging the use of paid leave by working parents for the purpose of attending parent-teacher conferences.

SENATE RESOLUTION 184

At the request of Mr. DIXON, the names of the Senator from Minnesota [Mr. DURENBERGER], the Senator from Florida [Mr. MACK], the Senator from Michigan [Mr. LEVIN], the Senator from Hawaii [Mr. AKAKA], the Senator from New Jersey [Mr. BRADLEY], the Senator from Illinois [Mr. SIMON], the Senator from North Dakota [Mr. BURDICK], the Senator from Nevada [Mr. BRYAN], the Senator from New Mexico [Mr. DOMENICI], the Senator from Hawaii [Mr. INOUYE], the Senator from Virginia [Mr. WARNER], and the Senator from Montana [Mr. BURNS] were added as cosponsors of Senate Resolution 184, a resolution to recommend that medical health insurance plans provide coverage for periodic mammography screening services.

SENATE CONCURRENT RESOLUTION 69—RELATIVE TO FREEDOM OF IMMIGRATION AND TRAVEL FOR SYRIAN JEWS

Mr. CRANSTON (for himself, Mr. JEFFORDS, Mr. LAUTENBERG, Mr. D'AMATO, Mr. LIEBERMAN, Mr. WOFFORD, Mr. KASTEN, and Mr. MOYNIHAN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 69

Whereas the estimated 4,000 Jews who remain in Syria are deprived of their internationally recognized human right to travel freely;

Whereas Syrian Jews who wish to leave the country must post an onerous monetary deposit and leave family members behind as assurance for their return;

Whereas the restrictions on emigration and movement on Syrian Jews violate the Universal Declaration on Human Rights, to which Syria is a signatory;

Whereas Syrian Jews are restricted in the extent of their contact with their families outside Syria;

Whereas the Syrian secret police (Mukhabarat) engage in 24 hour a day surveillance of the Jewish quarter in Damascus, keep a file on every Jewish person, monitor all contacts between Jews and foreigners, and read mail and wiretap hone conversations of Syrian Jews;

Whereas some members of the Syrian Jewish community have been arrested on mere suspicion of intention to leave Syria and are imprisoned without trial, often tortured, and held incommunicado;

Whereas families of those Syrian Jews who succeed in fleeing the country are subject to imprisonment and torture;

Whereas there are at present 6 Syrian Jews in prison for attempting to leave Syria, 2 of which have been incarcerated since 1987; and

Whereas Syrian President Hafez al-Assad has ignored the repeated efforts of the United States President, the State Department, and Members of Congress to secure the freedom of emigration for the Syrian Jewish community

Resolved by the Senate (the House of Representatives concurring): Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress—

(1) condemns Syria's continuing denial of Syrian Jews' basic human right to travel freely and calls upon the Syrian Government to—

(A) immediately grant Syrian Jews the right to travel freely without imposing any tax, levy, fine or other fee (other than the standard fee for administrative expenses); and

(B) release all Jewish prisoners who were charged or suspected of traveling illegally;

(2) urges the President to encourage the allies and trading partners of the United States to make similar pleas to the Syrian Government on behalf of Syrian Jews' right to emigrate freely; and

(3) calls upon the United Nations to send an official delegation to Syria to investigate the present condition of Syrian Jews.

Mr. CRANSTON. Mr. President, I rise today to submit a concurrent resolution concerning freedom of emigration and travel for Syrian Jews.

While our attention is focusing on the latest revelations about the Iraqi nuclear program, the vicissitudes of the hostage situation, and the administration's efforts to further the peace process by bringing all the parties, including the Syrians, to the negotiating table, we must not forget the Syrian Jewish community being held hostage by the brutal Assad regime.

Approximately 4,000 Syrian Jews are trapped in Syria, prevented from emigrating and from moving freely around the country. They are concentrated in three Syrian cities: Damascus, where there are approximately 3,500 Jews, Aleppo, where there are approximately 400, and Quamishli, where a small community of 100 remains. In these cities, the Jewish communities are concentrated in ghettos where they are monitored 24 hours a day by the Syrian secret police, the Mukhabarat.

Life for Syrian Jews is full of restrictions and arbitrary repression. It is not uncommon for Syrian Jews to be incarcerated without cause or trial. All contacts between Syrian Jews and foreigners are monitored. Mail is read and phone calls are tapped. Although there are Jewish elementary schools, they are supervised by Muslim headmasters and instruction in Hebrew, as a language, is strictly forbidden.

Syrian Jews must receive approval for the Mukhabarat for all transactions involving the purchase and sale of property. And the property of Jews who leave Syria is given to the Palestinian Refugee Agency.

Jews who wish to travel are subject to government interviews to explain why they want to travel abroad. They must post a huge monetary deposit and leave behind family members to ensure that they will return. And even after meeting these requirements, Syrian Jews are often subject to extreme reprisals for attempting to leave.

There are presently six men in Syrian prisons, two who have been held for more than 4 years, on the grounds that they were trying to flee the country. Reports of their treatment are appalling. Severe beatings and torture, imprisonment without trial, and incarceration for extensive periods of time incommunicado.

The Syrian Government has repeatedly resisted United States pleas to

grant this community basic freedoms, especially the freedom to immigrate. We must send a strong signal to Assad and let him know that human rights practices and the willingness to respect international standards of human rights are an appropriate measure of Syria's willingness to abide by international commitments overall. If we are to have confidence in the peace process, we must have confidence in the commitments of those being asked to make peace.

This resolution, identical to a resolution introduced in the House by Congressman MEL LEVINE earlier this year, condemns Syria for continuing to deny its Jewish community the right of free travel and calls on the Syrian Government to grant this right without imposing an exorbitant economic burden on the community.

This resolution also calls for the release of all Jewish prisoners who were charged or suspected of traveling illegally and it urges the President to encourage our allies to petition the Syrian Government on behalf of the Syrian Jewish community.

Above all, this resolution calls upon the United Nations to send an official to Syria to investigate the present condition of Syrian Jews.

It is essential that we raise the profile of this issue with the international community. As Syria looks to the West for support, now that they have lost their Soviet patron, I believe we can make a difference in the direction the Syrian Government takes on this issue.

SENATE RESOLUTION 193—SUPPORTING A JUST PEACE IN YUGOSLAVIA

Mr. LEVIN (for himself and Mr. LUGAR) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 193

Whereas the civil war in Yugoslavia threatens stability and peace in Europe and the world,

Whereas the unfolding events in Yugoslavia are a challenge to the United Nations' ability to find peaceful resolution to conflict in the post-cold-war world, and

Whereas the United States and the free nations of the world have a vested interest in the United Nations' ability to secure and maintain peace in troubled areas of the world: Now, therefore, be it

Resolved, That it is the sense of the Senate that:

The Senate condemns the use of force by the parties in Yugoslavia to resolve their political differences,

The Senate urges the President to support efforts at the United Nations to promote and maintain a cease-fire, and to support by any appropriate actions the resolutions of the Security Council, including consideration of sending a peace-keeping force to Yugoslavia which would help preserve a cease-fire,

The Senate urges the President to advocate the furtherance of human and civil rights for all minority groups, and

The Senate urges the President to also support the European Community and other international efforts to find a just peace in Yugoslavia.

Mr. LEVIN. Mr. President, the ongoing civil war in Yugoslavia threatens the stability of peace in Europe. The war is both a challenge and a threat to the United Nations peacekeeping ability. As the European Community's negotiated temporary 3-month suspension of Slovenian and Croatian independence expires, and as the European Community mounts an 11th hour effort to once again put in place a cease-fire that will hold, Senator LUGAR and I are introducing a resolution that condemns the violence in Yugoslavia, and urges the President to support United Nations and European Community efforts to forge and maintain a cease-fire, including consideration of sending a U.N. peacekeeping force to Yugoslavia.

Mr. President, the loss of life and violations of human rights and decency in this war are appalling. The destruction of cultural and historical treasures is a tragedy. This resolution urges the President to work for and support efforts to find a just peace in Yugoslavia, before this terrible war escalates even further.

AMENDMENTS SUBMITTED

TECHNICAL AMENDMENTS TO VARIOUS INDIAN LAWS ACT OF 1991

INOUYE AMENDMENT NO. 1253

Mr. MITCHELL (for Mr. INOUYE) proposed an amendment to the amendment of the House to the amendment of the Senate to the bill (S. 1193) to make technical amendments to various Indian laws, as follows:

In lieu of the language inserted by the House amendment, insert the following:

(b) REAUTHORIZATION OF APPROPRIATIONS FOR THE NATIONAL INDIAN GAMING COMMISSION.—Section 19(b) of the Indian Gaming Regulatory Act (25 U.S.C. 2718(b)) is amended by adding at the end thereof the following new sentence: "Notwithstanding the provisions of section 18, there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992.".

At the end of the bill, add the following new sections:

SEC. 5. AMENDMENT TO THE CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT TO PROVIDE AUTHORITY FOR THE PROVISION OF ASSISTANCE UNDER TITLE IX OF THE ACT TO PROGRAMS ADMINISTERED BY THE STATE OF HAWAII UNDER THE ACT OF JULY 9, 1921.

(a) Title IX of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101–625) is amended by adding at the end of subtitle D the following:

"SEC. 962. AUTHORIZATION FOR THE PROVISION OF ASSISTANCE TO PROGRAMS ADMINISTERED BY THE STATE OF HAWAII UNDER THE ACT OF JULY 9, 1921.

"(a) ASSISTANCE AUTHORIZED.—The Secretary of Housing and Urban Development is authorized to provide assistance, under any housing assistance program administered by the Secretary, to the State of Hawaii, for use by the State in meeting the responsibilities with which it has been charged under the provisions of the Act of July 9, 1921 (42 Stat. 108).

"(b) MORTGAGE INSURANCE.—

"(1) IN GENERAL.—Notwithstanding any other provision or limitation of this Act, or the National Housing Act, including those relating to marketability of title, the Secretary of Housing and Urban Development may provide mortgage insurance covering any property on lands set aside under the provisions of the Act of July 9, 1921 (42 Stat. 108), upon which there is or will be located a multifamily residence, for which the Department of the Hawaiian Home Lands of the State of Hawaii—

"(A) is the mortgagor or co-mortgagor;

"(B) guarantees in writing to reimburse the Secretary for any mortgage insurance claim paid in connection with such property; or

"(C) offers other security that is acceptable to the Secretary, subject to appropriate conditions prescribed by the Secretary.

"(2) SALE ON DEFAULT.—In the event of a default on a mortgage insured pursuant to paragraph (1), the Department of Hawaiian Home Lands of the State of Hawaii may sell the insured property or housing unit to an eligible beneficiary as defined in the Act of July 9, 1921 (42 Stat. 108).".

(b) Section 958 of the Cranston-Gonzales National Affordable Housing Act (Public Law 101–625) is repealed.

SEC. 6. AVAILABILITY OF FUNDS.

(a) FISCAL YEARS 1989 AND 1990.—(1) Moneys appropriated under the heading "Community Planning and Development" and the subheading "Community Development Grants" in the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989, and under the same heading and subheading in title II of the Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors Act of 1989, for infrastructure development on Hawaiian Home Lands are hereby made available for the purposes for which appropriated without regard to any fiscal year limitation, Public Law 88–352, Public Law 90–284, or any other law.

(2) Moneys appropriated under the heading "Community Planning and Development" and the subheading "Community Development Grants" in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990, for infrastructure development on Hawaiian Home Lands are hereby made available for the purposes for which appropriated without regard to any fiscal year limitation, Public Law 88-352, Public Law 90–284, or any other law.

(b) FISCAL YEARS 1991 AND 1992.—(1) Moneys appropriated for special purpose grants under the heading "Annual Contributions For Assisted Housing" and the subheading "(Including Rescission And Transfer Of Funds)" in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991, for infrastructure development on Hawaiian Home Lands are hereby made available for the purposes for which appro-

priated without regard to any fiscal year limitation, Public Law 88-352, Public Law 90-284, or any other law.

(2) Moneys appropriated for special purpose grants under the heading "Annual Contributions For Assisted Housing" and the subheading "(Including Rescission and Transfer of Funds)" in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, for infrastructure development on Hawaiian Home Lands are hereby made available for the purposes for which appropriated without regard to any fiscal year limitation, Public Law 88-352, Public Law 90-284, or any other law.

SAN CARLOS WATER RIGHTS ACT

McCAIN AMENDMENT NO. 1254

Mr. SIMPSON (for Mr. McCAIN) proposed an amendment to the bill (S. 291) to settle certain water rights claims of the San Carlos Apache Tribe, as follows:

On page 36, line 1, strike out "Water service" and insert in lieu thereof "Except as provided in subsection (e)(3) of section 6, water service".

On page 36, line 22, strike out "Water service" and insert in lieu thereof "Except as provided in subsection (e)(3) of section 6, water service".

On page 40, line 15, strike out "to" and insert in lieu thereof "or".

On page 44, line 4, strike out "Any" and insert in lieu thereof "Except as provided in paragraph (3) of this subsection, any".

On page 44, line 11, strike out "the" and insert in lieu thereof "Except as provided in paragraph (3) of this subsection, the".

On page 44, between lines 15 and 16, insert the following:

(3) With respect to the water reallocated to the Tribe pursuant to subsections (c) and (d) of section 4, the Tribe or lessee shall pay any water service capital charges or municipal and industrial subcontract charges for any water use or lease from the effective date of this Act through September 30, 1995.

On page 57, line 11, strike out "If" and insert in lieu thereof "(1) If".

On page 58, line 3, strike out "provision of paragraph (1)" and insert in lieu thereof "provisions of paragraph (1) of this subsection".

On page 58, line 6, beginning with the second comma, strike out all through "Act" on line 7.

On page 58, line 8, immediately after "(1)," insert "of this subsection".

NOTICES OF HEARINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. NUNN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold hearings on efforts to combat fraud and abuse in the insurance industry: part 4.

These hearings will take place on Thursday, October 17, 1991, at 9:30 a.m. in room 342 of the Dirksen Senate Office Building. For further information, please contact Eleanore Hill of the subcommittee staff at 224-3721.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON SMALL BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to hold a field hearing in Milwaukee, WI, on Tuesday, October 8, 1991, from 9:30 to 11:30 a.m. Senator KASTEN will chair a full committee hearing on economic opportunity, empowerment, and urban and minority business development.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, October 8, at 2 p.m. to receive a closed briefing from administration officials on the situation in Haiti.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, October 8, at 5:45 p.m. to hold a business meeting to vote on pending committee business.

BUSINESS MEETING, TUESDAY, OCTOBER 8, 1991

Immediately following the scheduled 5:30 p.m. floor vote on the foreign aid authorization conference report—Approximately 5:45 p.m.

The Committee will consider and vote on the following business items:

NOMINATIONS

(1) Mr. David A. Colson, of Maryland, for the rank of Ambassador during his tenure of service as Deputy Assistant Secretary of State for Oceans and Fisheries Affairs.

(2) Mr. Richard Clark Barkley, of Michigan, to be Ambassador to the Republic of Turkey.

(3) Mr. James F. Dobbins, of New York, to be U.S. Representative to the Economic Communities, with the rank of Ambassador.

(4) Mr. John Christian Kornblum, of Michigan, for the rank of Ambassador during his tenure of service as Head of Delegation to the Conference on Security and Cooperation in Europe (CSCE).

(5) Ms. Elaine L. Chao, of California, to be Director of the Peace Corps.

(6) Mr. John F. W. Rogers, of New York, to be Under Secretary of State for Management.

(7) Ms. Jill E. Kent, of the District of Columbia, to be Chief Financial Officer for the Department of State.

(8) Mr. Walter R. Roberts, of the District of Columbia, to be a Member of the U.S. Advisory Commission on Public Diplomacy, for a term expiring April 6, 1994.

(9) Mr. William Hybl, of Colorado, to be a Member of the U.S. Advisory Commission on Public Diplomacy, for a term expiring July 1, 1994.

(10) Mr. Paul E. Sussman, of Illinois, to be a Member of the Board of Directors of the Inter-American Foundation for a term expiring October 6, 1992.

(11) Foreign Service Officers' Promotion List, Mr. Taft, et. al., dated September 27, 1991.

TREATIES

(1) The International Convention on Oil Pollution Preparedness, Response and Cooperation (Treaty Doc. 102-11)

(2) The International Convention on Salvage, 1989 (Treaty Doc. 102-12)

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

ADDITIONAL STATEMENTS

JOHN EVANS ON THE NATIONAL THEATER FOR THE DEAF AND THE NATIONAL ENDOWMENT FOR THE ARTS

• Mr. DODD. Mr. President, the State of Connecticut is blessed in many ways, not the least of which is in its status as home to the National Theater for the Deaf. For the past 25 years, first in Waterford, and now in Chester, the National Theater for the Deaf has served as a center for theater for deaf Americans and has been a training ground for a number of deaf actors and actresses, including Marlee Matlin, Phyllis Frelich, and countless others. It has also enriched Americans all across the country who have seen the theater on tour.

On June 16, the theater gave a party to celebrate its 25th anniversary. It was a delightful occasion, complete with a birthday cake and a brief performance by the theater. In addition, it marked one of the last official functions for Mr. John Evans in his role as chairman of the board of the theater.

Mr. Evans has done much to make the theater what it is today. Under his leadership over the past decade, the theater broke its ties to other organizations, and successfully established itself as an independent nonprofit operation. Mr. Evans also worked diligently to gain additional funding for the theater, and he has been responsible in no small measure for the theater's growing reputation during the past 10 years. In fact, it was under his leadership that the National Theater for the Deaf became the first Western theater company invited to China, in 1986.

During the anniversary celebration in June, Mr. Evans delivered some excellent remarks on the role of the arts in America and on the clear need for both public and private support of the arts. I ask that Mr. Evans' comments be printed in the RECORD so that all of my colleagues may have the benefits of his insight.

The remarks follow:

NOT THE ICING ON THE CAKE

It seems to me that most Americans should have little trouble in recognizing the central role that the Arts have played in civilized life since the very dawn of civilization itself. A single trip to a museum of natural history or a major museum of art, a single issue of National Geographic, or for that matter its equivalent on television, should disclose that most civilized societies have been remembered more for their arts than for their politics or their wars.

It should be surprising to all of us that in the past few years the very priority of the Arts in America has been a topic of debate. Most of us should know that without our Arts, past and present, we would be a breed of mere economic animals. So it should be clear that the Arts justify our labors in fields, factories and office buildings—not the other way around.

In other words, the Arts are not "the icing on the cake." A cake without icing can still be a perfectly good cake. But life without the Arts cannot be good. It cannot be civilized—or even human as we understand the word.

For instance, what defines the Russians?

Communism, and its poverty? Or the richness of Russian authors, playwrights, composers, dancers, icon makers?

For another, I contend that we Americans could have had no western movies as we know them without the paintings, drawings and sculpture of Frederic Remington and Charles Russell. And some western movies in turn have aimed to be, and have become, works of art—and shapers of our rather colorful image of ourselves.

From the Hanging Gardens of Babylon during the Mesopotamian beginnings of settled societies, art has been supported with public resources. Very few people know anything about the Egyptian pharaoh Tutankhamen except that he collected great art and paid the artists by collecting taxes. The major ducal patrons of Renaissance Italy got fortunes from taxes after all, and the Vatican of the day was not exactly the private sector. Today the British government owns the Royal Opera House Covent Garden and supports the Royal Opera and Ballet companies. The Japanese government similarly supports the Kabuki Theatre—and pays the pensions of the leading actors. What has happened in America to cause us to think of diminishing, or even dispensing with, public support? Public support that is so small to begin with that it gets rounded off in most of the budget figures everyone sees?

Also from the beginning, it has been experimentation and innovation in the Arts that have changed our images of the world from one age to another. Even though change has always been scary for some, not many of us who have seen Matisse or heard Beethoven would like to have been denied those experiences because both artists were little understood at first by most of the people of their day. What has happened that should cause us even to consider repression of public support of artistic experimentation and innovation in our confident, mature democracy? If it's junk it won't last very long—but most gems come out of the ground looking like junk.

In a place like the United States today, simply put, the Arts have an urgent need for public, corporate and individual support and a fair toleration of experiment. All of us must strongly argue this case.

As I have thought about these things during the budgetary trials of The National Endowment for the Arts and the state commissions, the example of The National Theatre of the Deaf (NTD) has repeatedly come to mind.

Twenty-five years ago The NTD was a fairly far-out experiment in the Arts paid for by the taxpayers of the United States.

As was its intent, The NTD has lifted a crushing stigma from an innocent minority that has been persecuted since the beginning of history—and probably before. That minority now proudly includes a president of a great university and the new co-artistic director of The National Theatre of the Deaf.

But The NTD, with its very visual and theatrical style, has also brought joy and enlightenment to thousands of audiences in 50 United States and many foreign countries. It has created lasting images that could not have been dreamed of without it. Along the way it has won a "Tony", the Connecticut Commission on the Arts Award and represented the U.S.A. at the Los Angeles Olympics Arts Festival. It numbers a "Tony" and an "Oscar" winner among its alumnae.

The NTD has replicated itself, moreover, in a number of other countries—including Japan and China—and in so doing has given the world a glimpse of America in its best possible light.

The Company has both public and private support these days. Both are inadequate in the sense that The NTD has had to endure painful artistic deficits in order to avoid financial ones and to stay in business. Times were tough for the Arts through the prosperous but somewhat philistine 1980s. They are still hard in the poorer but wiser 90s.

But The NTD, 25 years old, remains a distinct presence in the living theatre of the world, thanks in no small part to the taxpayers of the United States and the State of Connecticut.

The NTD is just one case among many, in which the taxpayers have gotten their money's worth. But I think it is high time the taxpayers were thanked for, and encouraged in, the part they play in the Arts throughout America.

It would be fortunate indeed for the country if more of our elected representatives got the message.•

TRIBUTE TO MR. VIRGIL CARRITHERS AND "OLD GLORY"

• Mr. McCONNELL. Mr. President, I would like to take a moment from today's debate to bring my colleagues' attention to the patriotism of one of Kentucky's finest citizens—Mr. Virgil Carrithers of Louisville.

At the age of 94, Mr. Carrithers has witnessed key events in our Nation's great history—from the Great Depression of the 1930's to the allied victory in Operation Desert Storm. As a veteran of World War I, Captain Carrithers understands and appreciates the sacrifices necessary to keep America strong and proud.

A self proclaimed "working advocate for the proper respect and display of our flag," Mr. Carrithers enthusiastically promotes "Old Glory." He freely distributes stickers of the flag to his fellow citizens, and has penned works in the flag's honor. Mr. President, I ask that Mr. Carrithers' work entitled the "Flag of the United States" and an essay entitled "Old Glory Speaks" be printed in the RECORD following my remarks.

Captain Carrithers holds close to his heart a 1908 song entitled "My Dream of the U.S.A." He composed a second verse of this ballad that will ring true in the hearts of all Americans:

I saw Roosevelt at San Juan Hill;
I saw Black-Jack Pershing in Mexico, MacArthur impose his great will;
I saw General Ike advance in France; Patton fight in Normandy,
And they all preserve our liberty, In my dreams of the U.S.A.

I am certain my colleagues will join me in extending admiration and praise to Mr. Carrithers for his patriotism and dedication to freedom.

The material essays follow:

OLD GLORY SPEAKS

Hello! Remember me? Some people call me Old Glory. Others call me the Star Spangled Banner. But whatever they call me. I am your flag—the flag of the United States of America. Something has been bothering me and I want to talk it over with you because it concerns you and me.

I remember when people would line up on both sides of the street to watch a parade go by, and naturally I was leading it, proudly waving in the breeze. When your daddy saw me coming, he immediately took off his hat with his right hand and held it against his left shoulder so that his hand was over his heart. Remember? And you; I remember you, standing there as straight as a soldier. You didn't have a hat, but you were giving the right salute. Remember little sister? Not to be outdone, she was saluting the same as you—with her right hand over her heart.

What happened? I'm still the same old flag. Oh, I have a few more stars than I used to have, and a lot of blood has been shed since those parades of long ago. But now I don't feel as proud as I used to. When I come down the street you just stand there with your hands in your pockets. You may give me a glance, then you look away. I see all the children running around and playing. They don't seem to know who I am. I saw a man take off his hat and look around, and when he didn't see anyone else with theirs off, he immediately put his back on.

Is it a sin to be patriotic anymore? Have you forgotten what I stand for and where I've been? Valley Forge, Bull Run, San Juan Hill, The Argonne, Iwo Jima, Korea, Vietnam? Take a look at the memorial honor rolls of those who gave their lives in order that this country might remain free—one nation under God. When you salute me, you are actually saluting them.

Well, it won't be long until I'll be coming down the street again, so when you see me, stand straight, give that right salute, and I'll salute you by waving back.

Anonymous

Distributed by V.E. Carrithers, Zachary Taylor Post 180, The American Legion, St. Matthews, Ky.

The rules and customs pertaining to the display and use of the flag of the United States of America were established, certainly, for the laudable purposes of instilling respect of it and providing appropriate ways to show that respect; and their enactment into Public Law 623 on June 22, 1942, surely was to standardize those rules and customs and to perpetuate that respect—and it behooves every citizen, individually and collectively, privately and publicly, to conform to those precepts.

V.E. CARRITHERS,
Army Veteran, World War I
Captain, USAR (Retired).

OUR FLAG FOREVER

All of the supreme sacrifices that have ever been made in its service have made the flag of the United States of America forever worthy of all the honor that can ever be accorded to it.

Don't ever forget that.

And worthy of a constitutional amendment to prevent its desecration.

And have preserved our freedom to worship as we please.

V.E. CARRITHERS.

THE FLAG OF THE UNITED STATES

From time immemorial flags of various colors and designs, shapes and sizes have been used as national symbols, and on June 14th, 1777, the stars and strips motif of our flag was adopted when the Continental Congress resolved, "That the flag of the United States be thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field, representing a new constellation."

The Congress did not specify the arrangement of the stars, consequently some flags had the stars in a circle, some in rows, and some scattered on the blue field without any apparent design.

After the admission into the union of Vermont in 1791 and Kentucky in 1792, the flag became one of fifteen stars and fifteen stripes. Realizing that the addition of a new stripe for each new state would soon make the flag unwieldy, naval Captain Samuel C. Reid suggested to Congress that the stripes again be thirteen to represent the thirteen original states and that a star be added to the blue field for each new state coming into the union. An April 4, 1818, law that resulted, requires that a star for each new state be added on the 4th of July after its admission and that the stripes again be thirteen as suggested.

There is no legal or other official authority for assigning the stars to certain states—they collectively represent all of the states; however there is a popular wish that each star should represent a certain state, according to the date it ratified the constitution or entered the union. It appears that this plan would cast no stigma on, or dishonor any state, but would be of historical significance by designating the sequence in which they entered the union.

The rules and customs pertaining to the display and use of our flag were established certainly for the laudable purposes of instilling respect for it and providing appropriate ways to show that respect, and their enactment into Public Law 623 on June 22nd, 1942, and the five amendments thereto, surely was to standardize those rules and customs and to perpetuate that respect, and it behooves every citizen, individually and collectively, privately and publicly, to conform to those precepts. Those who do should be proud to do so—those who do not do so should be ashamed.

That law, and the amendments thereto, were transcribed into flag laws and regulations in the old booklet Our Flag and into the new booklet Our Flag.

Fringe is not an integral part of the flag but is sometimes used to enhance its appearance.

The name Old Glory was given to the flag on March 17th, 1824 by Salem, Mass. sea captain William Driver when he was presented with one.

A 1976 "Year of the Flag" resolution passed by both houses of Congress states, in ". . . the colors of the flag signify qualities of the human spirit for which all Americans should strive: red for hardiness and courage, white for purity and innocence, and blue for vigilence and justice."

All of the sacrifices that have ever been made in its service have not only preserved our freedom to worship as we please, but have made the flag of the United States forever worthy of all the honor that can ever be accorded to it and worthy of a Constitutional Amendment to prevent its desecration. Don't ever forget these facts.

Virgil E. Carrithers, Capt. USAR (Ret.), age 94, Army Veteran, World War I.

Because this essay is about the United States flag which is the glorious emblem of every citizen, it is not the exclusive property of any person, organization or magazine.●

CONFERENCE REPORT ON H.R. 2519

● Mr. KERREY. Mr. President, on October 2, the Senate adopted the conference report on H.R. 2519, the VA-HUD-independent agencies appropriations bill for fiscal 1992. The VA-HUD-independent agencies appropriations bill funds several programs of special interest to our States and localities. These are programs which help provide basic services and support in our communities.

One of these is the Community Development Block Grant [CDBG] Program, perhaps the current staple of aid to our cities. It is an old and proven program and it continues to serve us well. For fiscal 1992, the conferees have agreed to the Senate figure of $3.4 billion.

Another is the HOME Investment Partnership Program, a new program which offers our communities the opportunity to meet their varied housing needs in a flexible manner. For this first year of funding, the conference agreement provides $1.5 billion. In addition, the agreement waives for 1 year the match requirement, which should make it more feasible for many of our communities to participate.

The bill also includes $2.8 billion for public housing modernization and $2.4 billion for public housing operating subsidies. These are the funds which allow our public housing authorities to do the maintenance and repairs and upkeep which will keep public housing units viable.

Finally, the conference agreement includes $2.4 billion for EPA's Wastewater Construction Program, as proposed by the Senate. This $2.4 billion figure is particularly important since the budget request was for $1.9 billion, with more than $300 million of that earmarked. Since the administration's request was already less than the fiscal 1991 appropriation and since there were earmarks, we could have had substantial reductions in the States programs. Under the Senate and conference figure, however, we are able to approximate last year's appropriation for the States and also fund the earmarks for five coastal cities.

These five cities—Boston, New York, Los Angeles, San Diego, and Seattle—represent the largest communities that have not yet achieved secondary treatment at their water pollution control plants. They are all densely populated areas where a special effort to address water pollution will benefit millions of Americans. In New York City alone, over 20 million people, residing in three States, will benefit from cleaning up the waters surrounding the city. The Boston Harbor project is an effort to restore what is said to be the dirtiest harbor in America.

As a member of the Subcommittee on VA-HUD-Independent Agencies, I want to commend the chair, Senator MIKULSKI, for the extraordinary and exemplary manner in which she handled this bill. With an allocation far below the President's request, she fashioned and guided through the legislative process a bill which recognizes the myriad worthy programs which compete for funding in this legislation. Again, I commend Senator MIKULSKI and her ranking member, Senator GARN.●

SPEECH BY LYNNE CHENEY

● Mr. STEVENS. Mr. President, on September 25, Lynne Cheney, Chairman for the National Endowment for the Humanities, addressed the National Press Club on a very troubling problem which is spreading through our colleges and universities, and indeed has expanded its reach into such venerable institutions as the Smithsonian. It is known to many as Political Correctness, or P.C., others might use the term "thought police." Indeed, George Orwell's "Big Brother" would be pleased with the kind of thought patrol encouraging "Political Correctness."

I urge my colleagues to read and consider the remarks of Mrs. Cheney. She is absolutely right in her conclusion that political correctness is a threat to the free inquiry and free expression which have made this Nation so great.

Quite frankly, I am amazed at the lack of press coverage of this speech. Because of that lack, Mr. President, I ask to have the remarks of Mrs. Cheney printed at the end of my statement.

The remarks follow:

POLITICAL CORRECTNESS AND BEYOND

(Remarks by Lynne V. Cheney, Chairman, National Endowment for the Humanities)

It's a great pleasure to be here with you today. I know that with a group as knowledgeable as this one I do not have to begin in the way I often do: that is, by explaining what the humanities are. There is confusion on this point, as my mail frequently makes clear. I received a letter not long ago addressed to the *Natural* Endowment for the Humanities—a mistake that has a certain woodsy charm about it. My favorite misaddressed piece of mail, though, was a card sent to me recently at the National Endowment for the *Amentities*.

That is an interesting slip, partly because of the truth it reveals. There is pleasure connected with the humanities. Through the ages, history, literature, and philosophy have been sources of immense satisfaction. Long ago, St. Augustine observed that the only reason to philosophize was in order to be happy.

But the humanities, particularly in Western civilization, have also been contentious; and that has certainly been the case in recent years. Today I want to talk about some

of the reasons for this contentiousness, focusing particularly on "political correctness," or "p.c.," as it's sometimes called.

Political correctness typically involves faculty members trying to impose their views on others, and the results can be funny—particularly when the forces of political correctness try to identify ever new forms of offense. At a recent conference at Yale, for example, a distinguished professor of literature suggested that limiting the humanities to the study of humankind was a form of "speciesism." Now, this concept attracted my attention, and so I tried to find other examples of it. Speciesists, I have learned, are people who refer to their dogs and cats as "pets"—a term much too condescending to be politically correct. Or the speciesist is the person who talks about "wild" animals, when the proper description is "free-roaming."

Smith College did its part to add to the English language when it recently warned the incoming class to beware no only of classism and ethnocentrism, but also of "look- ism," a form of oppression that involves putting too much stock in personal appearance. John Leo, a wonderful columnist for *U.S. News and World Report*, suggested not long ago that this new vocabulary—and the sensibility it reflects—is going to require us to rename some of the old classics. *Beauty and the Beast*, for example, is hopelessly incorrect, with part of the title too concerned with female appearance and the other part putting animals in a negative light. A politically correct title for *Beauty and the Beast*, Leo suggests, might be something like . . . *Lookism Survivor and a Free-roaming Fellow Mammal*.

I'm not sure it will sell.

Political correctness does invite parody, but there is a serious aspect to it as well, and I thought I'd begin talking about that today by telling a story. It begins in the spring of 1990 when the English Department at the University of Texas at Austin decided to revise its freshman composition program. Henceforth English 306, the required composition course taken by some 3,000 freshmen, would focus on race and gender; and all classes would use the same text, an anthology called *Racism and Sexism*.

This book—the central required test for every section of freshman English—begins by defining racism as something only white people can be guilty of, and it tells students that sexism is unique to men. It goes on to portray the United States as a society so profoundly racist and sexist as to make a mockery of all our notions of liberty and justice. There are no comparisons with other cultures offered, no context to show how American ideals and practices actually stand up against those of the rest of the world—or the rest of history. The overwhelming impression that this textbook leaves is that every injustice of race or gender that human beings ever visited upon one another happened first and worst in this country. And the only way we can redeem ourselves, the textbook tells us, is to change fundamentally the way we produce and distribute wealth. Abandon capitalism, in other words.

Now, one might well think that the decision to focus English 306 on *Racism and Sexism* would cause some debate. For one thing, English 306 is a course intended to teach students how to write. Will they be better writers when they have stopped referring to poor people and instead speak of the "economically exploited," as one essay in the book instructs them to do? Will they become better writers from reading sentences such as the following?

Demagogic conservative imagery is built on the loss associated with the decline in family life.

When you see *demagogic* and *conservative* lined up together like this, you sense a certain political inclination; but there's not much here by way of clear meaning—and shouldn't textbooks used in composition classes provide, above all, examples of clear expression?

Some people in the English Department did object to the plans to revise course 306, but they had little effect, until finally, Alan Gribben, a noted scholar of American literature, decided to go public. He sent letters to newspapers around the state, and citizens began to express their opinions about the English 306 revision. Fifty-six faculty members from across the university signed a "Statement of Academic Concern." The revised course was revised again so that English 306 would include a broader array of subjects, a diversity of viewpoints, and extensive instruction on how to analyze, argue, and write.

But Alan Gribben was unable to take much pleasure in this victory. He found himself vilified at campus rallies. He was the victim of hate mail, rumors, and anonymous late-night phone calls denouncing him as racist. Most members of the English Department stopped speaking to him, and they certainly didn't send graduate students his way or put him on departmental committees. Finally, in the spring of this year, he announced his intention to leave Texas, where he had been for seventeen years, and move to Montgomery, Alabama, where he will teach at a branch of Auburn University. "If I continued to live here," he told a newspaper in Texas, "I'd have to live under siege."

Several aspects of this story make it an almost classic example of what is happening on many campuses today. There is, first of all, the idea underlying the English 306 reform that it is perfectly all right—even desirable—to use the classroom and the curriculum for political purpose. This would once have been regarded as unethical. It was once thought that teachers who used the classroom to advance a political agenda were betraying their professional responsibilities. But on many campuses now faculty members have taken the political transformation of their students as a mission. They believe deeply in the radical critique offered by books like *Racism and Sexism* and see themselves furthering the cause of social justice by using the classroom and the curriculum to advance their views.,

This approach to the classroom and the curriculum is one of the sources of controversy in the humanities today. There are people, myself among them, who object to making teaching and learning into the handmaidens of politics. Students ought to hear the good as well as the bad about our society, know about our triumphs as well as our failures. There ought to be an attempt to get at the complex truth of our experience rather than imposing a singleminded, political interpretation on it. Yes, there has been oppression, but the history of Western civilization in the United States is also marked by the discovery and blossoming of remarkable concepts: individual rights, democracy, the rule of law. In 1989, before Tiananmen Square, the distinguished Chinese dissident Fang Li Zhi put it this way: "What we are calling for is extremely basic," he said, "namely, freedom of speech, press, assembly and travel. Concepts of human rights and democracy," he went on, "the founding principles of the U.S. government, are a legacy [of the West] to the world."

These ideas are no small gift to have brought to humankind. They are gifts of such worth that people go into exile for them and into prison. They are gifts of such great worth that people die for them, as they did in Tiananmen Square, as they have done in Vilnius and Riga—and Moscow.

I think of it as my great good fortune that I have opportunities to speak for he freedoms we enjoy. The case for them is so strong that it is immensely gratifying to make. It is not only my right but my pleasure to dissent from university officials who decide, as officials at the University of Maryland did during the Persian Gulf War, that students cannot display the American flag. It might offend someone, they said; and they relented only after students called in the media. It is not only my right but my pleasure to dissent from university officials who decide, as administrators at Rice University in Texas did, that students could not tie yellow ribbons to trees in the main academic quadrangle.

But I also recognize that I am able to express myself so freely because I am neither part of a university nor do I long for a university career. The views I hold represent dissent from the orthodoxy that reigns on our campuses, and such dissent is not very well tolerated there. That's the most significant part of Alan Gribben's story. He disagreed, and he was driven from the university.

About the time Gribben was resigning, I received in the mail a copy of the minutes of a University of Texas English department faculty meeting. The person who sent them to me was appalled at talk that had gone on in the meeting of "flushing out" other opponents of the revised English 306 syllabus. This student recognized the signs of the new McCarthyism, and he was afraid of becoming himself a victim of it. "Please let me remain anonymous," he wrote. "If it came out that I had written to you—or to someone else similarly disreputable—I wouldn't be [here] for long."

The new McCarthyism—like the old—often works its way by name-calling. People aren't labeled "communist" now, but "racist." Harvard professor Stephen Thernstrom found himself denounced that way. His offenses included using the word Oriental to describe the religion of 19th century Asian immigrants and assigning students to read an article that questioned affirmative action. New York University professor Carol Iannone found herself called racist for writing an article in which she said that certain literary prizes have been awarded on the basis of race rather than literary merit. She was not the first to make such an assertion. Two of the five judges on the National Book Award fiction panel had said the same thing. Nevertheless, Carol Iannone was said to be racist.

Using this word so loosely and carelessly hurts the people who are smeared by it. And in the end it hurts all of us by cheapening the concept of racism. A word that can mean almost anything, eventually comes to mean almost nothing, and we are encouraged to overlook how reprehensible true racism really is.

Sexual harassment is a phrase that has been similarly misused. In the politically correct world of the post-modern campus, it can, apparently, mean almost anything. At the University of Minnesota not long ago six members of the Scandinavian Studies Department were charged with sexual harassment by a group of graduate students. The complaint provided a long list of the professorial activities that had led to the charge: not greeting a student in a friendly

enough manner, for example. Not teaching in a sensitive enough way. Not having read a certain novel. The charges against the professors were finally dropped, but not until the faculty members had incurred considerable expense and suffered deep, personal pain. One professor reported that it cost him $2,000 to have a lawyer draft a response to the complaint. Another confessed that he wept when the charges were finally dropped.

Yale's Benno Schmidt, one of the few university presidents to speak out forcefully about what is happening in so many colleges and universities today, has declared: "The most serious problems of freedom of expression in our society . . . exist on our campuses." And one of the most important consequences of this freedom's being suppressed is the chilling effect that results, the silencing of discussion about important issues. Stephen Thernstrom, the Harvard professor I told you about earlier, decided to quit teaching the course about American immigrants that had resulted in his being called racist. In order to protect himself, he decided, he would have to record all his classes, record conversation with students, too, perhaps, so that no one could take his remarks out of context. Better, he concluded, to discontinue the course. Reynolds Farley, a distinguished demographer and scholar of race relations, made a similar decision when students in a course he was teaching at the University of Michigan accused him of racial insensitivity. If reading from Malcolm X's autobiography that portion in which Malcolm X describe himself as a pimp and thief—if reading from that was enough to bring charges of racism down upon himself, Farley decided, there was simply no way he could continue to teach the course.

On crucial issues, faculty members are silent. Perhaps apathy plays some part, but concern for reputation, concern for professional well-being—these, I suspect, play a role as well. The University of California at Berkeley has adopted an ethnic studies requirement to go into effect this fall. Now, this requirement was a major step for the university. There are no other required courses, and so instituting one represents a sharp break with practice. But on this crucial matter, only one-fifth of the eligible faculty members voted. The measure passed narrowly and it seems reasonable to suspect that among the 1,500 or so faculty members who didn't vote were some who had doubts. What is the purpose of the ethnic studies requirement? Is it a response to political pressure? Are curricular requirements now to be set by interest groups who lobby for them? If, on the other hand, the aim is educational, then aren't there other courses that should be required? Perhaps a course in American history, one that would stress the democratic values we share and thus provide balance to the ethnic studies approach, which emphasizes differences that set us apart. Perhaps a course in world history that would prepare students for the decades ahead in which people of all countries and continents are going to be increasingly interdependent. Shouldn't a foreign language be required? If the goal is really to understand people different from ourselves, isn't foreign language study the most effective route? Surely among the 80 percent of faculty who didn't vote were some who had such questions, but the atmosphere on our campuses today doesn't encourage questions. And expressing doubts can be costly.

This is true not only of large universities, but of some smaller institutions too. Professor Christina Sommers of Clark University has been interviewing faculty and students across the country, and she has particularly striking interviews from Wooster College in Wooster, Ohio, a school near Cleveland that enrolls 1800 students. At Wooster, the textbook *Racism and Sexism*—the textbook that the University of Texas finally rejected—is required reading for all freshmen. Or freshpersons, I should say. The term freshman is forbidden at Wooster. If you use it, one student warned Professor Sommers, you could be taken before the Judiciary Board.

Another student described the seminar required of all first year students. "Difference, Power, and Discrimination," it is called, with the subtitle "Perspectives on Race, Gender, Class, and Culture." According to the student, the seminar resembled "a reeducation camp" more than a "university program." "Now we know," he said, "that when we read the Declaration of Independence that it's not about equality and inalienable rights—but it is a sexist document written by white male elites."

Faculty, who are evaluated on their "gender sensitivity," said they are afraid to speak out. According to one, to do so would be "suicidal." Another said, "I am getting old and tired and I do not want to get fired. Until there is an atmosphere of tolerance, I do not want to go on the record." Promised anonymity, he noted, "What you have here, on the one hand, are a lot of students and faculty who are *very* skeptical, but they are afraid to voice their reservations."

When political correctness steps off campus, the results can be instructive. In Washington, DC, the Smithsonian Institution recently put together a show called "The West as America." Its purpose was to show that westward expansion in this country was not an heroic effort, worthy of our awe, but that it was instead one more tale—in a long, sad string of such tales—of white, male, capitalist oppression. The exhibit deconstructed paintings by Bingham and Farney and Stanley and Remington so that viewers could perceive the race and class conflict and the economic exploitation that they are *really* about. Frederick Remington's "Fight for the Water Hole," the exhibit explained, is, despite the fact that it shows five cowboys defending a water hole in the middle of the desert, not really about anything so simple as a battle over a desert water hole. Instead, it is *really* about the anxieties of Eastern industrialists who found themselves challenged by the foreign laborers they had imported to work in their mills and factories.

So heavy-handedly p.c. was "The West as America" that it created a firestorm. Historian Daniel Boorstin declared it "a perverse, historically inaccurate, destructive exhibit." A critic for the *Washington Post* said "It effectively trashes not only the integrity of the art it presents, but most of our national history as well." The Smithsonian, to its credit, organized forums on the exhibit where its main tenets could continue to be challenged.

Which is exactly as it should be. The point of opposing political correctness is not to silence those who advance it, but to open their views to challenge and debate. This often happens when p.c. enters the larger world, but it will not happen on our campuses, I fear, unless those of us who live in the larger world help it to happen. People who care about higher education in this country ought to inform themselves about what is happening on campuses and to work whenever it is in their power to nurture free expression there. When it is time for us to help our children choose a college, we should ask hard questions about which campuses not only allow but encourage a diversity of opinion. When it comes time for us to make contributions as alumni, we should ask how well the college we attend is doing at making sure all sides are heard. Those who serve on boards of trustees should encourage discussion of free speech itself. Does political correctness reign on this campus? That's a topic that should provide lively debate—though not if it's done as the University of Michigan plans to do it. A conference is being held there called "The PC Frame-Up: What's Behind the Attack?"—which hardly seems a formulation likely to encourage debate. And let me add an ironic footnote here. I couldn't help but notice that on the same page of the *Chronicle of Higher Education* which announced the Michigan conference—the conference that will prove that p.c. does not exist—on the same page there was a story about Reagan appointee Linda Chavez being disinvited from a speech she was scheduled to make at Arizona State University. It seems that minority students there had decided her views were politically unacceptable.

The *New York Times* today reports on its front page about a group, mostly English professors, who are uniting to prove that political correctness is nothing more than the product of overheated conservative imaginations. But they are going to have a very hard time maintaining that view. There are too many examples of p.c. at work, powerful examples like that of Alan Gribben. And there are people from across the political spectrum—not just conservatives but liberals as well—coming together now to defend free speech on our campuses: people like Duke University's James David Barber, a former president of Amnesty International; Emory's Elizabeth Fox Genovese who heads the Women's Institute there; Berkeley's John Searle; Harvard's David Riesman; Yale's Benno Schmidt—none of whom do I suspect of being registered Republicans.

All of these people know the stakes are high. All of them know the issue here is whether the rising generation of Americans will come to understand what free inquiry is—and how it can sometimes be heard—and how it is always necessary if truth and justice are to have a chance.

These are no small matters—and I greatly appreciate your interest in them.●

DROUGHT IN PENNSYLVANIA

● Mr. WOFFORD. Mr. President, I rise today to address an issue that has affected over 90 percent of the counties in Pennsylvania. Unprecedented drought conditions exist in 60 out of 67 counties. The drought has placed many of our farmers and agribusinesses in yet another tough bind, straining their finances and their families. As I traveled across Pennsylvania from Westmoreland to Wayne and from Lancaster to Erie County the effect is the same—some 40 percent of our crops and $600 million in economic activity lost in the State's No. 1 industry.

It took the administration more than a month to finally grant the Federal disaster declaration. The pastures and CRP lands that are eligible for grazing were already dried up because we were in a drought for 2 months by that time. Much of the corn dried up, hay fields are short, and barns are all but empty

in many parts of the State. Farmers have been forced to use up next winter's feed supplies now—placing them in an even tougher financial position. Just as the recent heavy rain fall has reassured us that there is a higher power than Congress, they came too late to put any more corn in the crib and cash in the account. Many of these farmers will have to borrow to feed their livestock, increasing their debt even further.

We have to remember that when our farmers borrow money to grow a crop and for some reason they cannot produce, they are still responsible to pay it back. The banks do not say "well since you were affected by the drought don't worry about paying us back."

Many of these farmers will hang on as long as they can, but the drought—coupled with the current dairy situation—will force many of them to seriously reevaluate their financial positions. Once they have depleted their feed supply they will be forced to make a tough decision whether to stay in business or get out for good. This decision will be forced on them much more quickly if the administration fails to see the drought as a human emergency. Just as they failed to see the unemployed workers and their need for extended jobless benefits as an emergency right here at home.

The disaster declaration makes farmers eligible for low interest loans from the Farmers Home Administration. This aid will help, but it will not pay the bills. New loans will only force farmers deeper into debt as they struggle to repay their operating loans. The kind of assistance they need must be immediate, direct payment for losses due to drought conditions. That is why it is so important to pass an appropriation with emergency aid to our farmers. Either we support our farmers, when for no fault of their own they run into financial difficulties, or we allow them to leave the business further weakening our rural areas.

The administration wants to give unconditional most-favored-nation trade status to China. I think it is time we give most-favored-neighbor status to America's farmers. I find it incomprehensible that this administration will reach out with emergency aid for the Kurds and the Turks and the people of Bangladesh, but wants to turn its back on American farm families. I say it is time to take care of our own and help our farmers make it through this unprecedented drought.

Mr. President, the Senate, hopefully in the next few weeks, will be deliberating S. 1441, the Disaster Assistance Act of 1991 which will provide the framework for disaster payments that may become available if the Bush administration believes that this drought is an emergency. I strongly encourage my colleagues to support this bill and more importantly support the $1.75 billion emergency supplemental for agriculture. We have to send a very clear signal to our farmers and all who rely upon their output that we care what happens in rural America.●

SLAYING OF BUDDHIST MONKS IN PHOENIX TEMPLE

● Mr. DECONCINI. Mr. President, while newspaper reports of violent acts of crime and multiple killings have become disturbingly commonplace, the murder of nine individuals in Phoenix on August 10, 1991, shocked the people of Arizona. That shock turned to disbelief when it was discovered that those nine individuals included six Buddhist monks and three lay members of the Thai Buddhist community. Their bodies had been found inside the temple Wat Promkunaram in a small community west of the city, apparently the work of thieves intent on robbery.

While authorities have arrested four individuals and are continuing their investigation into the slayings, this tragedy has had a resounding effect on the Arizona religious community. It has brought them together to discuss the need to work together to foster interfaith cooperation. Recently, religion editor Kim Sue Lia Perkes authored an article in the September 21, 1991 edition of the Arizona republic, which outlined 10 commandments of religious pluralism, or lessons learned from the Buddhist temple massacre. These guidelines were developed by the Reverend Arlo Nau and members of the Arizona ecumenical council in response to the Buddhist temple slayings. Mr. President, while these guidelines were authored in a religious context, we would be well served to apply these guidelines to our own lives. They serve as a reminder that we often neglect to conduct ourselves with kindness and respect for individuals. It is regrettable that these lessons are often learned only through adversity. I am hopeful that, as a tribute to the individuals whose lives were lost, the people of Arizona will work together to improve the acceptance of persons of differing cultural, ethnic and religious backgrounds. Mr. President, I ask that the complete text of the article be included in the record following my statement.

The article follows:

MONK'S DEATHS ALTER RELIGIOUS COMMUNITY

It's hard to believe that something good can evolve from such a tragedy as the Aug. 10 killngs of six Buddhist monks and three others at Wat Promkunaram.

But mainline Valley religious leaders say they have learned a lesson: It's time to reach out to religious outside the loop.

It's time to invite all non-Judeo-Christian groups to get involved with the Arizona Ecumenical Council.

And it's time to apologize to Thai Buddhists for not responding immediately to the tragedy.

"The religious community, I thought, let them (Buddhists) down," said Rabbi Albert Plotkin of Temple Beth Israel in Phoenix. "We acted like it (the killings) happened in no-man's land."

The Rev. Arlo Nau, spokesman for the Arizona Ecumenical Council and a Lutheran minister, said Valley religious leaders were in a quandary over what to do for the temple congregation.

"Our initial hesitance when this happened was, 'Are we interfering?'" Nau said.

Plotkin, who in 1978 lived with a Buddhist monk in Japan, hosted an ecumenical meeting that included members of the Thai Buddhist community at Temple Beth Israel a month ago. As a result, the ecumenical council released a statement deploring the mass slaying and extending its heartfelt condolences to the Thai community.

"It's a blight on all of us that such a tragedy should happen here," Plotkin said. "We need to educate our community as to the meaning of non-Judeo-Christian religions."

From that meeting, Nau developed his "10 Commandments of Religious Pluralism," or "Lessons Learned From the Buddhist Temple Massacre."

NEW COMMANDMENTS

1. Make a conscious effort to identify all ethnic and religious minority groups in your community.

2. Research in advance their culture, history, art, religion. Demonstrating some specific knowledge suggests honest interest. Ignorance is insulting.

3. Be intentional about contacting them. Do not be put off by initial expressions of discomfort or distrust. Repeat the contacts as opportunities arise.

4. Respect their basic humanity. Do not see them as foreigners or competitors for jobs, etc.

"Have we not all one father? Has not one God created us?" (Malachi 2:20)

5. Respect their independence but not to the point of indifference. Fear of interfering may be seen as lack of interest and sincerity.

6. Respect individuality. Not all members of the same nationality are exactly alike.

7. Be specific. Avoid generalizations, stereotypes, assumptions.

8. Do not mistake apologies about difficulty with the English language, their refugee status or poverty as expressions of cultural inferiority. They have pride, too.

9. Understand their perception of nationality and religion as synonymous. Our concept of the separation of church and state is unusual, and may be foreign to them. Our "sin" of denominational division may be even more difficult for them of them to understand.

10. Analyze honestly many of our own customs and practices. It will make you much more tolerant of theirs.

GROUPS CAN CONTACT COUNCIL

"If we can speak of anything positive from this experience, this tragic experience at the temple, it's that it has sensitized to a greater extent than ever before the need to be aware of the pluralistic society in which we live," Nau said.

"We are continuing to try to get a list of the minority religious groups around the Valley to send them a letter telling them that if there is anything the council can do for you, or be of service to you, let us know."

The council can be contacted at 468-3818.

Arizona's population is growing. It's time for all of us to grow, too.●

ADMINISTRATION'S PROPOSAL TO RESTRUCTURE THE RESOLUTION TRUST CORPORATION

• Mr. KERREY. Mr. President, recently the Bush administration circulated a proposal to restructure the Resolution Trust Corporation. This was quickly followed by an announcement that Albert Casey would be appointed to fill a newly created position as Chief Executive Officer of the RTC.

I welcome the administration's attention to problems with the structure of the RTC, which many in Congress have been raising since the original FIRREA legislation was passed in 1989. However, the administration's proposal merely address the symptoms and not the cause of the problems faced by the RTC.

The proposal, if enacted, would not address the current lack of accountability and openness in the RTC's operation. It is merely a shell game: boards are expanded, individuals are moved around, but the underlying weaknesses remain.

From the beginning Secretary Brady has insisted on keeping complete control of the decisions made at the RTC. He has resisted and opposed all efforts to dilute his and the President's direct authority over decisions at the RTC. Further, the Treasury Secretary objects to increasing the number of public meetings which would go a long way toward increasing public confidence in the handling of the bailout.

Under the administration's proposal, the agency would still be governed by a dual Board. This arrangement is not found in any other area of the Federal Government. Secretary Brady will retain the Chair and control of the Oversight Board. This gives both he and President Bush veto power over Mr. Casey's decisions and allows the policy to be determined in a closed, private manner.

The new Chief Executive Officer would continue to be accountable to both Boards and lack the authority he or she needs to properly oversee the RTC's work. In fact, Stephen Labaton reported in the New York Times, September 24, 1991, that there was already behind the scenes wrangling between William Taylor, the new Chair of the RTC Board of Directors, and Treasury officials over the extent of Mr. Casey's authority.

One of my strongest concerns about the RTC is that the Treasury appears interested in retaining authority over the agency's work, while seeking simultaneously to avoid responsibility. They effectively exercise decisive influence over the agency's work behind the scenes, although publicly the responsibility is spread around to two separate Boards with the Secretary of the Treasury sitting only on the Oversight Board. Unless we create a single Board overseeing the agency's work it is difficult to imagine that we can be assured of attaining accountability.

Under the administration's proposal there is some effort made to increase the power of the RTC Board of Directors and better delineate the specific responsibilities of the two Boards. However, any action short of establishing a single Board will fail to address the root of the problem.

One suggestion offered by many is the importance of putting one individual in charge and granting that individual the necessary authority to execute the RTC's mandate. The administration's proposal falls short on this count. The new CEO would be appointed by the RTC Oversight Board and would serve at their pleasure, yet without eliminating the dual Board structure this individual would be responsible to two separate Boards. Although the CEO is granted a seat on the Oversight Board, it is only a nonvoting position. I suspect this move is designed to demonstrate that the administration is concerned about coordination between the two Boards. Coordination would be far better served by eliminating the source of the problem: The dual Boards.

Efforts to give a single executive sufficient authority to be in charge should not be confused with guaranteeing accountability. A single Board enhances accountability, but the composition of that Board is equally important. I have offered a proposal that would establish a single Board with a non-Government majority headed by a non-Government Chair and I would like to include requirements that proceedings of the Board be as public as possible. The current system makes it difficult for the public to know what is going on and consequently does nothing to enhance the public's trust in the RTC's work.

Before the Congress provides an additional $80 billion for the RTC's work, we must ensure that an accountable structure is in place.•

HEARINGS ON INTERIOR'S GRAZING PROGRAM

• Mr. WALLOP. Will the Senator from Louisiana yield for a question?

Mr. JOHNSTON. I would be happy to yield to the Senator from Wyoming.

Mr. WALLOP. During the Senate floor debate on the Interior appropriations bill, we spent many hours on the subject of grazing and specifically a proposal to raise the fees charged by the Departments of Agriculture and the Interior to permit holders on the public lands in the Western States.

There are obviously two sides to the grazing issue. I agree that we need to review how we can improve program management, particularly at the field level. I ask the distinguished chairman of the Committee on Energy and Natural Resources if he would support my endeavor to hold hearings on the grazing program during the early months of the second session of this Congress.

Mr. JOHNSTON. Mr. President, I would note that this is the first request to hold such hearings that has been made to our committee in a number of years and I would support the Senator from Wyoming in that request.

Mr. WALLOP. I thank that Senator for his response and appreciate his interest in and assistance in this endeavor.•

EASTERN ORCHID CONGRESS

• Mr. WOFFORD. Mr. President, later this month the Southwest Pennsylvania Orchid Society [SEPOS] will host the Eastern Orchid Congress which will be held in Valley Forge, PA. This congress will bring representatives from across the United States and the globe to Pennsylvania.

I must admit, I have a special fondness for orchids as it is the State flower of my wife Clare's home State of Minnesota. It is fitting that the Eastern Orchid Congress selected SEPOS for this honor—36 years ago, SEPOS founded the Eastern Orchid Congress and hosted the first show at the world famous Longwood Gardens.

Orchids are one of the most versatile and beautiful flowers in the world. Wild orchids grow in all 50 States and on almost every continent. Crossbreeding among the 35,000 varieties of orchid plants has produced millions of different orchid flowers—each a unique testimony to the beauty of the orchid.

It is expected that over 10,000 varieties of orchid flowers and plants will be displayed—including some one-of-a-kind orchids, that no longer exist due to environmental destruction. These orchids have been saved by devoted orchid enthusiasts, private growers, and breeders.

I ask that the Senate join me in honoring the Southwest Pennsylvania Orchid Society as the host society for the 36th annual Eastern Orchid Congress.•

SOCIAL SECURITY NOTCH ADJUSTMENT ACT

• Mr. D'AMATO. Mr. President, I rise today out of concern, frustration, and frankly, anger, at the Government's failure to take action against the obvious injustice of the Social Security notch. It is estimated that over 10 million senior citizens receive lower Social Security payments as a result of the notch, simply because they happened to be born in the wrong year. These so-called notch babies have been dealt arbitrary and harsh cuts in the Social Security checks that provide their lifeline of support. This is wrong, and it cannot be allowed to continue.

I have consistently supported measures to correct this injustice. I have sponsored my own notch legislation in the 99th, 100th, and 101st Congresses,

and I have supported efforts to bring this matter to a vote on the Senate floor. Today, I am pleased to join 40 of my Senate colleagues in cosponsoring S. 567, the Social Security Notch Adjustment Act.

This legislation provides a more equitable level of benefits for individuals born between 1917 and 1926 than they receive under current law. It does this by establishing a new 10-year transition formula, which includes a $29,700 cap on creditable earnings to ensure that retirees with modest earnings histories receive fairer, more adequate benefits.

The sponsors of this legislation have tried to craft a consensus bill, and as a result they have had to make compromises. Consequently, this bill does not contain certain provisions—such as some form of retroactive benefit—that I believe should be part of any final legislation to correct the notch.

Nevertheless, I think it is vital that we demonstrate, both to the millions of notch babies who have been waiting more than a decade for their fair benefits, and to the Finance Committee which has to date refused to act on this issue, that there is strong, bipartisan support for this legislation. Those who are indifferent to the plight of the notch babies need to be put on notice that we won't just stand idly by while senior citizens are being denied their rightful benefits.

Mr. President, I urge my colleagues to join me in this effort to provide our Nation's notch babies with the just compensation they need and deserve.●

WANDA LATHAM REEVES

● Mr. WIRTH. Mr. President, I rise today to pay tribute to a dear friend of mine who has contributed greatly to the economic development and well-being of Colorado Springs, Wanda Lathan Reeves. Wanda recently announced her retirement as executive vice president of the Colorado Springs Chamber of Commerce. She has decided to move her efforts to Texas to pursue other business and personal interests. Colorado's loss is certainly Texas' gain, and I wish her well at her new home.

Wanda Reeves began her distinguished career at the chamber in 1978 as director of governmental affairs and was later promoted to vice president of governmental and internal affairs. From 1986, as executive vice president, she was responsible for governmental, military, staff management and development, events management, budget planning, and program of work oversight.

In addition to her duties at the chamber, Wanda Reeves was actively involved in various national, State, and community affairs through her membership at numerous organizations, including, University of Colorado at Colorado Springs Engineering Advisory Council, Wagon Wheel Girl Scout Council, Colorado Technical College Board of Governors, and the Colorado Association of Commerce and Industry. She is a founding member and first president of the Colorado Springs Executive Women International Chapter and was instrumental in the development of the Domestic Violence Prevention Center. She was awarded an honorary degree in electronic engineering from Colorado Tech in 1983, and in 1988 received the Women's Recognition Award of Special achievement in Overall Community Involvement.

Wanda Reeves has been recognized for her work in military-community relations and is a recipient of the General Creighton C. Abrams Medal from the U.S. Army. She was invited by Secretary of Defense Richard Cheney to participate in the Joint Civilian Orientation Conference and in 1990 she was appointed a member of the Defense Advisory Committee on Women in the Services. It was in this capacity that I had the honor to work with Wanda Reeves in Colorado Springs. I found her ideas to be sound and her work thorough and innovative.

Mr. President, I join all Coloradans in thanking Wanda Lathan Reeves for her contributions to military-community relations in Colroado and her commitment for bringing economic development to all the State. She will be a sorely missed asset to the Pikes Peak region and we are all sorry to see her move on.●

S. 1808, THE VETERANS BILL OF RIGHTS

● Mr. MACK. Mr. President, I rise today to inform my colleagues of a significant piece of legislation which I have introduced along with my colleague from Florida, Senator BOB GRAHAM. The veterans bill of rights is designed to ensure that all veterans have access to the same care and benefits regardless of race, ethnicity, sex, religion, age, or geographic location.

Under this bill, for example, a 100-percent service-connected disabled veteran living in Florida would be entitled to the same benefits as a 100-percent disabled veteran in any other State. This would include equal access to such services as VA medical facilities, treatment, and personnel; VA home loan guaranty assistance, job training assistance; the administrative claims process; equal treatment in the handling of claims for increased benefits; and the list could go on.

While equal access to these essential veterans benefits is implied, in reality, it is not always the case. My home State of Florida, for example, has the most 100-percent service-connected disabled veterans in the United States. It is also home of the third largest overall veterans population. Consequently, the demand for services from the Department of Veterans Affairs is far greater than other States. Florida's veterans population however, has less access to medical care and other benefits than nearly every other State. The same inequity holds true in many other States as well. That is not right, and it must be changed.

Our Government made a contract with the men and women who bravely served our country in times of need. The contract guaranteed that the Federal Government would provide for them in return for their service. Many who honored this contract were injured or disabled. The Federal Government must live up to its end of the contract by providing equitable treatment regardless of where the veteran lives.

Many States, like Florida, do not receive their fair share of benefits. The veterans bill of rights corrects this inequity, and I strongly urge my colleagues to cosponsor this important legislation.●

HAITIAN MILITARY COUP

● Mr. BRADLEY. Mr. President, last year's Presidential elections provided Haitians with hope that the democratic process would finally prevail over the despotism, class warfare, and military thuggery which plagued the country throughout its history. Jean-Bertrand Aristide was named President of the country in an election in which Haiti's overwhelmingly poor majority was able to express its views. However, once again, the citizens of that poor island nation are being held hostage to the whims of a small number of military elites.

I applaud President Bush for suspending economic and military aid to Haiti. However, I urge President Bush to take all other actions, including suspension of economic and diplomatic ties, to isolate the current military junta from the international community.

I applaud the Organization of American States [OAS] for its effort in favor of democracy and urge it to work with both the legitimate government and the military to insure that the constitutional process is respected and followed.

I urge the Haitian military to withdraw from the Presidential Palace and cease killing innocent civilians. Haiti's constitution provides the military with an outlet for asserting its influence over the civilian government. The military should not have to resort to unconstitutional measures to vent its grievances.

We in the United States have a responsibility to strongly support democracy in Haiti just as we recently did in response to the military coup in the U.S.S.R. We must not allow despotism to retard the growing democratic spirit of the Haitian people.●

TERRORISM AND THE MIDDLE EASTERN PEACE CONFERENCE

• Mr. D'AMATO. Mr. President, I rise to discuss the issue of terrorism and the Middle Eastern peace process. As the United States prepares to open the Middle East Peace Conference, it is imperative that we include discussion aimed at the complete termination of Arab, state-sponsored terrorism. They must renounce all forms of terrorism and end the material and financial support of all terrorist groups.

Syria, a major party to this peace conference, has sponsored, trained, and financed bloody murderers such as Abu Nidal, Ahmed Jabril, and the terrorcrats of the PLO. Responsible for such atrocities as the bombings of Pan Am flight 103 and UTA flight 722, the massacres at the Rome and Vienna airports, and the bombing of the Marine barracks, the graduates of the "Syrian Academy of Terror," have cut a wide swatch of destruction and devastation worldwide.

The victims' families well understand what terrorism is. They know the pain of receiving posthumously awarded medals and the sad telegrams. They are angry that these horrendous acts of terrorism, unpunished as they are, are being set aside merely to placate certain parties, such as Syria. It is our moral obligation to confront terrorism, not to ignore it.

At the upcoming Middle East Peace Conference, the issue of terrorism must be discussed. The Arab States must completely renounce all forms of terrorism and cease and desist all support for terrorism, including its finance, training, and basing on their territory.

A peace conference without a discussion on the elimination of Arab terrorism ignores an issue facing the entire world, not only the Middle East. A failure to address terrorism is to dismiss it. Let us do what is just and right. We must insist that terrorism cease, or any peace will be illusory.•

A GRAND BARGAIN

Mr. SIMON. Mr. President, in its September 9 issue, Newsweek published an article by our colleague Senator MOYNIHAN calling for dramatic breakthroughs in arms control in exchange for some economic assistance to the Soviet Union.

Since the article appeared, President Bush has taken an initiative that, frankly, could not have passed the U.S. Senate if a Member of the Senate proposed it. However, if it has been proposed by President Bush, it would have passed the Senate. That is simple political reality.

Our colleague has proposed significantly greater steps, and who can successfully and reasonably argue that the initial steps taken by the President do not logically call for more dramatic steps? The President's plea in the middle of his talk for continuing the star wars fantasy, I trust, is going to receive careful analysis by the Members of the Senate.

Senator MOYNIHAN has managed to understand where this society is, and where it is going, as well as where the world scene is with remarkable clarity. Sometimes he has been criticized by his contemporaries only to find people praising his comments more than a decade later.

Because it contains so much common sense that it is just as valid today a when the President made his speech, I ask to insert Senator MOYNIHAN'S article from Newsweek in the RECORD at this point.

The article follows:

A GRAND BARGAIN: AID FOR ARMS CONTROL

(By Daniel Patrick Moynihan)

Back in 1979, when Newsweek published a forum on The '80s, I argued that the critical issue would be how to deal with the breakup of the Soviet Union. I warned that the U.S.S.R. could "blow up," and I added, "The world could blow up with it." Now that the U.S.S.R. is fast disintegrating, my fears have only grown. The empire of the czars has 30,000 nuclear warheads. one third of them strategic and aimed at us, and about two thirds of them tactical or battlefield range. The intercontinental missiles are pretty well under the control of the Strategic Rocket Forces, a central command. But the theater weapons—artillery rounds, bombs—are scattered all over the different services throughout the Soviet Union. It is entirely possible that warring republics will use these weapons on each other. It is conceivable as well that military hard-liners would use them—or threaten to use them—against the West in a last-ditch gamble.

The Soviets understand these risks. Nuclear bombs and artillery shells, unfortunately, are quite durable and portable, and not very difficult to arm. Last week, we learned that the commander of Soviet Strategic Rocket Forces withdrew mobile nuclear missiles from their launch positions because he feared some errant commander would try to fire them. Now Yevgeny Velikhov, science adviser to Soviet President Gorbachev, has called for "the international community to play a role in controlling the Soviet Union's nuclear arsenal while the country faces the possibility of political collapse."

A political collapse is all too possible. It wouldn't be the first time. After this successful Bolshevik coup of 1917, internecine warfare raged on until 1922. With rifles and machine guns, then. What, Velikhov asks, would it be like this time with tactical nuclear weapons?

A political collapse could easily be brought on by the economic disaster that beckons this winter. Anders Aslund reported in last week's Newsweek that it already seems certain that the Soviet economy will suffer a 20 percent slump in 1991—the worst economic crisis in Europe since World War II—indeed, surpassing the Great Depression in the United States. In view of the current collapse, he predicts "it would be quite possible to see a decline to half the former level of production . . . before the end of the year."

It seems obvious to me that we have to help the Soviet Union avoid this catastrophe. It is in our national interest. I would propose a Grand Bargain: give the Soviets aid on the strict condition that they dismantle all or most of the nuclear forces that now threaten them as much as us.

To achieve this, we must convene an international peace conference—and fast. Obviously, the United States would have to agree to further reduce its nuclear arsenals, beyond the limits already called for in the START treaty. START went a long way, cutting back the Soviet arsenal by a third. But both sides are still poised for a first strike, and both still have the power to make the rubble bounce. One simple approach would be to declare a nuclear-free zone from the Urals to the English Channel, with deep cuts in strategic systems and intrusive inspection systems on both sides.

It will be said that we can't afford to aid the Soviet Union. To be sure, we wasted trillions building up our defenses against the Soviet Union under the false impression that its empire was expanding. Now that the empire has imploded, we have fewer resources left to ease the transition toward stability and safety. But surely we can afford to seize this chance to avoid Armageddon. I am not proposing that we seek to eliminate nuclear weapons altogether. Too late for that. But we could surely reduce the number of warheads in the world by one half to three quarters and build in greater safeguards against the risk that they would ever be used. Just think. We will have escaped the 20th century with our lives.•

TRIBUTE TO HAL DORAN

• Mr. WOFFORD. Mr. President, I rise today to pay tribute to Mr. Hal Doran, who is retiring after 25 years as a professor of agricultural education and agricultural economics, as well as director of Penn State's Cooperative Business Education Program. Earlier this month, Hal received the 1991 National Cooperative Education Award—a well deserved honor to Hal who has been a leader in Pennsylvania's agricultural community for nearly 40 years.

Hal has devoted his life to two pursuits—education and agriculture. The greatest testimony to Hal's service to Pennsylvania's cooperatives comes from his peers: "In Pennsylvania, Hal Doran's name is synonymous with cooperative education." In the agricultural community, Hal has been noted for his vision, his leadership, and his commitment to ensuring the success of cooperatives across Pennsylvania.

As an educator, as cooperative business advocate, and as an agricultural extension agent, Hal has been a constant source of pride to Pennsylvania. Hal Doran's commitment and service to Pennsylvania's agricultural community will be missed but not forgotten.•

NEW DEVELOPMENTS IN EL SALVADOR

• Mr. DURENBERGER. Mr. President, a number of momentous events have occurred recently concerning El Salvador. I want to comment briefly on these developments and to express my strong and enduring hope for the people and future of El Salvador.

Since the terrible tragedy of the Jesuits' murder in November 1989, the international community, the United States, and the people of El Salvador, have been monitoring very closely the progress of the investigation and judicial proceedings. Late last month, the jury finally returned a verdict in the case.

A colonel and lieutenant have been convicted. Several others, including the accused gunmen, have been judged innocent, by reason they were following orders. The judge now has 30 days to punish these persons as well, on the terrorism charges.

I ask that an article in the New York Times be printed at this point in the RECORD.

The article follows:

[From the New York Times, Oct. 6, 1991]

JESUITS WILL NOT OPPOSE AMNESTY IN KILLINGS

(By Shirley Christian)

SAN SALVADOR, October 5.—The Jesuit order has made known that it will not oppose an amnesty or other legal reduction of the sentences for two military officers convicted by a Salvadoran court last week in the country's most notorious human rights case, the murders of six Jesuit priests, their cook and her daughter.

While criticizing the failure to convict the actual gunmen and calling for the investigation to go higher than Col. Guillermo Alfredo Benavides Moreno, who was found guilty of ordering the massacre, the Jesuits said their interest was in eliminating "the culture of death" in El Salvador.

"In this sense, we will not oppose any steps taken within the framework of existing law that tend to reduce the sentence for those convicted," the order said in a communiqué Wednesday.

CONVICTIONS ON SEPT. 28

On Sept. 28, a jury found Colonel Benavides guilty of eight counts of murder for sending an army patrol to the Jesuit residence with instructions to kill the rector of the Jesuit-run Central American University, Ignacio Ellacuria, and leave no witnesses. His aide, Lieut. Yusshy René Mendoza Vallecillos, was found guilty in ordering one death, that of 15-year-old Celina Mariceth Ramos.

The murders took place on the night of Nov. 15-16, 1989, in the midst of a major offensive launched against the capital by guerrillas of the Farabundo Martí National Liberation Front. The army considered the Jesuits to be sympathetic to the guerrillas and suggested that the university might be a guerrilla command post.

Two other lieutenants and five enlisted men were found innocent of murder charges in the case, even though four of the enlisted men confessed to directly participating in the killings.

Under Salvadoran law, Judge Ricardo Zamora has 20 working days from the date of the convictions in which to process civil demands related to the case, then 30 working days in which to issue the sentences. The sentence for murder is 20 to 30 years in prison, with multiple sentences to run concurrently.

AMNESTY AS PART OF ACCORD

There have been persistent rumors that Colonel Benavides and Lieutenant Mendoza would benefit from a broad amnesty that could be presented to the Legislative Assembly in coming months as part of efforts to settle the nearly 12-year-old civil war.

President Alfredo Cristiani has said he will not rule out such an amnesty as long as it emerges from a consensus among the political parties that negotiated a sweeping accord last weekend intended to pave the way for a ceasefire, a political settlement and a reintegration of the Salvadoran guerrillas into mainstream society.

The Jesuits said they considered the recent moves toward peace to be "a call to personal and social conversion."

"Our eight assassinated brothers and sisters gave their lives for peace with justice in El Salvador," the statement continued. "And for our part, the trial makes sense only as an effort leading to the disappearance of the culture of death and the birth of a new style of coexistence backed by democratic institutions that guarantee peace and justice for all."

Referring to the lack of convictions for the gunmen in the case, the Jesuits recalled an admonition by the former Archbishop of San Salvador, Oscar Arnulfo Romero, on March 23, 1980, just days before he was murdered by an unidentified gunman.

"The law of God, which says not to kill, must prevail over any order of man," Monsignor Romero said, adding, "No soldier is obliged to obey an order against the law of God."

CALLS FOR FURTHER INQUIRY

The Jesuits, like international observers at the trial and many opposition political leaders, called for the investigation of the case to continue in an effort to find out whether anyone in the high command of the armed forces gave orders for the killings.

But the Jesuits also said the convictions, the first in El Salvador involving military officers accused of killing civilians, "showed that the judicial system can function if it wants to."

Mr. DURENBERGER. Notwithstanding some of our difficulties that the judicial process has encountered during the past 2 years, this is a watershed event in El Salvador's determined drive toward a more open and just democracy.

Yes, there have been problems with the Jesuits investigation, and El Salvador cannot yet claim a fully functioning judicial system. But, bringing in these convictions demonstrates that the judicial system can work in El Salvador.

In another watershed event recently, the government and guerrillas have agreed to major new steps to advance the peace process. I commend U.N. Secretary General Perez de Cuellar for taking such an active and productive role in helping to resolve some extremely difficult issues.

I also commend President Cristiani for his persistence and unyielding commitment to peace and democracy in his country. There are still significant hurdles to overcome, and the cease-fire and lasting peace that we all seek is yet to be achieved. But I believe we should be thankful for this progress, and pray that a final peace settlement can be arranged as quickly as possible.

The leadership of the FMLN has had a difficult task. They still do. On the one hand, a peace settlement can bring an end to the conflict. On the other hand, if this is not Nicaragua, and it only bring back the death squads, how do you justify years of hardship.

The FMLN now appear to recognize that the future holds nothing for them if they fail to embrace the democratic process in El Salvador. Times are changing in the world. And in El Salvador, they could change for the better.

Earlier this summer, the U.S. Senate, thanks in large measure to the foresight and determination of my friend and colleague, Senator MCCAIN, withheld action that could have made matters much worse in El Salvador.

There are still those who argue for immediate action on the aid question. In fact, there are still those who say that we should cut off aid now, today. But, acting now on the aid question, when the negotiations seem to be approaching the end game, would be counterproductive.

Now is the time for the United States to plan to convert its military aid program to economic, development, and other humanitarian assistance.

It is my understanding that the Senate will consider the foreign operations bill sometime early next year. At that time, I want us to discuss and decide how best to help El Salvador consolidate its democratic gains and move more confidently into the postwar period.

If that is the case, these previous levels of military aid hopefully will no longer be necessary. For the time being, however, there can be no doubt that the Congress should leave well enough alone.●

ORGAN DONOR CLASSIC

● Mr. WOFFORD. Mr. President, this Columbus Day marks the fourth running of the Organ Donor Classic at Philadelphia Park. The purpose of the Organ Donor Classic is simple—to raise funds to those in need of organ transplants and to underscore the need for organ donors.

The greatest gift one person can give to another is the gift of life. Communities across America work endlessly to ensure that the critical need for blood does not go unfulfilled. Unfortunately, we do not get this same support for people in need of organ transplants.

In the Commonwealth of Pennsylvania there are approximately 3,000 to 4,000 people in desperate need of organ transplants. When considering that all that is needed to save many of these peoples' lives is a simple signature, this is quite a tragic situation.

On the occasion of the fourth running of the Organ Donor Classic, it is my hope that everyone who attends—and even those who do not—will use this opportunity to sign an organ donor card and join the struggle to give the gift of life.●

THE FIRST ANNUAL EDUCATION REPORT CARD

• Mr. DECONCINI. Mr. President, I rise today to address our Nation's first report card issued recently by the National Education Goals Panel. I commend the hard work and leadership of Gov. Roy Romer of Colorado. Delivering news that is not completely positive is not an easy or enviable task. But it must be done and I appreciate his willingness to provide the necessary leadership. He is holding our feet to the fire and keeping education at the forefront of our domestic agenda.

No one disagrees that education must be our domestic priority. But, unless we subject ourselves to an annual evaluation to check our progress and use it to target additional resources on the shortcomings, I fear that all the great speeches extolling the importance of education will not translate into true progress. Clearly, this initial report card shows in graphic terms the tremendous price which a country pays for neglecting domestic responsibilities, especially one as critical as educating its citizens. But it does represent one important step in our efforts to improve the quality of education and, I hope, will force us to redirect our national fiscal priorities.

While the report points out the fundamental weaknesses of American education, it also shows that we have made some gains. We know that almost 50 percent of the sophomores who dropped out in 1980 subsequently returned to school to get their high school degree by 1987. This doesn't mean, of course, that we have licked nor brought our shamefully high rates of student dropout under control. We still have the 60 percent dropout rate among Hispanic students and must not relent in our efforts to reduce this number.

An analysis of the 1990 National Assessment of Educational Progress [NAEP] indicates that only 4 percent of our public and private high school graduates meet the NAEP standard for college readiness. This is shocking when compared to 20 to 30 percent of students in our competitor nations who are meeting achievement standards that are at least equivalent to NAEP's. Despite this dismal picture, student achievement trends at the junior high level reflect some positive movement. Science and math achievement went up among 9- and 13-year-olds from 1977 until 1990. Math achievement also improved for 17-year-olds over the same period. More high school graduates completed challenging academic courses in English, math, science, and history from 1982 to 1987. These improvements, though slight, reflect the initial benefits of emphasizing excellence in core subjects like math and science by schools in the past few years.

I cannot help but wonder how much more they could have done had the U.S. investment in education kept pace with increasing costs associated with a quickly evolving high tech workplace. Afterall, we face a new global economy where the competition is intense. This international economy will become more complex and require higher job skill levels. Clearly we must raise our educational standards, and we must do so by increasing our investment in the Amercian education system. We cannot allow our support for education to stagnate as has happened in the past decade.

The precipitous decline in the threat from the Soviet Union and Eastern Europe to our national security in the past year offers a genuine opportunity to change our Federal capital investment strategy. The sweeping arms cuts pledged by the United States and the Soviet Union in recent days signal the beginning of a new era where the cold war budget should no longer dictate our fiscal priorities. The prospect of war with the Soviet Union is "no longer a realistic threat" in the words of President Bush. Under these changed circumstances, we must reexamine the military budget and re-order our spending priorities to emphasize domestic needs like education and reducing our national debt.

No one can begrudge past domestic sacrifices we made collectively to ensure our national security by making defense our highest national priority over the past decade. We believe those sacrifices helped to make the world a truly safer place for our children. Now we must attend to their domestic needs as they prepare to enter that world. As shown by the education report card, they will require a lot of help if they are to compete effectively and become fully productive citizens.

They are America's future and we must reinvest in them. We can do so by shifting defense resources no longer required to protect our national security to homefront needs like education. Until we do this, we will not see widescale improvements in our schools. We will not be able to give all students the same opportunity to advance themselves through education. All the goals and standards we set for ourselves and schools will only continue to highlight our shortcomings. Let us make a sincere commitment to our children by reinvesting the peace dividend in their future.•

THE WASHINGTON AREA GIRL'S SOCCER TOURNAMENT

• Mr. WARNER. Mr. President, I am pleased to announce that the world's largest women's soccer tournament will be held at George Mason University in northern Virginia on October 12, 1991. This event, the Washington Area Girl's Soccer Tournament, will feature the American team matched against a team representing China.

This year, the American women's team qualified to play in the first ever FIFA Women's World Championship on November 16-30, 1991 in Ghangzhou, China. Athletes and soccer enthusiasts are particularly interested in gaining recognition for the sport as soon as possible because it will not be recognized as an exhibition sport in the Olympic games in Spain next year. The American women's team, as well as the 11 other worldwide teams that qualified to participate, hope that this competition will qualify women's soccer as a Gold Medal Sport in the Olympic Games beginning in 1996 in Atlanta, GA.

Over 40 percent of all U.S. registered soccer players are women. I would like to propose today that the American women's soccer team be recognized as an exemplary model of U.S. citizens involved in a sport that has served as a source of pride for participants and spectators alike. The World Cup, the largest international single-sport event, offers athletes from around the world a chance to improve their athletic skills, represent their country, and inspire young players. This year, the World Cup will help promote the game of women's soccer into the Olympic schedule. The current American women's team is ranked in the top five in the world, and I believe they have the ability to win this tournament.

The women who are members of the American team truly deserve recognition by their country and the Olympic Committee. I urge each of my colleagues to join me in supporting them and wishing them good luck as they compete to bring home the gold.•

WALLACE C. WILLIAMS, FOUNDER AND ORGANIZER OF MICHIGAN MINORITY BUSINESS WEEK

• Mr. RIEGLE. Mr. President, I wish to pay special recognition to Wallace C. Williams of Detroit, MI.

As chairman of the board and immediate past president of the Booker T. Washington Business Association in Detroit, Wallace Williams continues to champion the cause of minority business persons. On October 25, he will be honored by the Minority Business Week Appreciation Committee for being the pioneer of Minority Business Week in 1971. For the past 20 years, Wally has helped numerous minority entrepreneurs.

After taking an early retirement from the State of Michigan as director and founder of the Office of Minority Business Enterprise, Williams became a consultant to J.L. Dumas & Co. Presently he is vice president of METCO/SOMAT Engineering Services, Inc. and recently he was appointed research associate of the University of Michigan business and industrial division. He is

responsible for coordinating and implementing the business and industrial division's continuing effort to provide greater management and technical assistance to Michigan's minority firms.

During his unprecedented 3 years as president of the Booker T. Washington Business Association, Wallace Williams increased the size and circulation of the association's monthly newsletter, appointed more women to leadership roles, and played a major part in the election of the first female president of the association. His networking efforts resulted in a greater awareness of the importance of the organization and its role in helping to shape Michigan's economy.

In being an active member of the community, he has served as a director of the Greater Detroit Chamber of Commerce, chairman of the Wayne County Set-Aside Ordinance Citizens Advisory Council, director of Minority Business Enterprise for the State of Michigan, the American/Israel Chamber of Commerce, the Economic Growth Corp., executive board of National Symphony Orchestra Hall, the Northside Family YMCA, the St. Vincent DePaul Employment Agency, and is a deacon and president of the United Congregational Christian Church.

Wallace Williams is a pioneer who has promoted the cause of minority entrepreneurs throughout our State and Nation. After many years of involvement, he continues to place the welfare of others first.●

HISPANIC EDUCATION COMMISSION NEEDS PUERTO RICAN REPRESENTATION

● Mr. SIMON. Mr. President, I rise today to express my concern about the state of Hispanic education in the United States and to call upon the President Bush to ensure that his new Advisory Commission on Educational Excellence fairly represent the Hispanic community.

Specifically, Mr. President, I must note with some concern that among the President's new Commission appointments, 17 in all, not one is Puerto Rican. I recently received a letter from Louis Nunez, a former official at the U.S. Commission on Civil Rights and currently the president of the National Puerto Rican Coalition who has brought the lack of Puerto Rican representation to my attention.

Mr. Nunez underscores the difficulties facing the Puerto Rican community in education today. Both on the island and on the mainland, the Puerto Rican community suffers from an extremely serious educational deficit. According to census data released in March 1990, only 55 percent of Puerto Ricans over age 25 completed high school compared to 77 percent of the general population. In major metropolitan areas on the mainland, the high school dropout rate for Puerto Ricans exceeds 50 percent. Since 1976, the percentage of Puerto Ricans graduating from college has steadily declined.

I have written to President Bush asking that he appoint one or more Puerto Ricans to the Advisory Commission on Educational Excellence for Hispanic Americans. These appointments will enable the Commission to adequately begin to address many of the educational concerns of the entire Hispanic community.

Mr. President, I ask that my letter previously mentioned be printed in the RECORD immediately following my remarks.

The letter follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 7, 1991.

President GEORGE BUSH,
The White House, Washington, DC.

DEAR MR. PRESIDENT: It has been one year since you issued an Executive Order on Educational Excellence for Hispanic Americans. In July, on behalf of the U.S. Senate Democratic Hispanic Task Force, I wrote to urge you to appoint members to the Advisory Commission on Educational Excellence for Hispanic Americans established by the Executive Order. Last month, one year after signing the Executive Order, you named an executive director and appointed seventeen individuals to the commission.

I am pleased that your appointees included some distinguished educators and respected Hispanic community leaders. I also noted that the commission's chairman hails from the state of Illinois. However, I am greatly concerned that you did not select any Puerto Ricans to serve on the commission. I ask that there be Puerto Rican representation among your next seven appointments to the commission.

The Puerto Rican population on the island and on the mainland is now over six million. This community suffers from an extremely serious educational deficit. According to census data released in March 1990, only 55% of Puerto Ricans over age 25 completed high school compared to 77% of the general population. In major metropolitan areas on the mainland, the high school dropout rate for Puerto Ricans exceeds 50 percent. Since 1976, the percentage of Puerto Ricans graduating from college has steadily declined.

I urgently ask that the Puerto Rican community be placed in consideration when appointing the 7 remaining positions on your Advisory Commission on Educational Excellence for Hispanic Americans. Appropriate staff support is needed so that more substantive steps may be taken as soon as possible.

Certainly,

PAUL SIMON,
Chairman, U.S. Senate,
Democratic Hispanic Task Force.●

ORDERS FOR FRIDAY, OCTOBER 11, 1991, AND TUESDAY, OCTOBER 15, 1991

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:45 a.m., Friday, October 11; that on Friday, the Senate meet in pro forma session only; further that at the close of the pro forma session, the Senate stand in recess until 10 a.m., Tuesday, October 15; that on Tuesday, following the time reserved for the 2 leaders, there be a period for morning business, not to extend beyond 10:30 a.m., with Senators permitted to speak for up to 5 minutes each; that at 10:30 a.m., Tuesday, the Senate return to executive session to resume consideration of the Thomas nomination; and that on Tuesday, the Senate stand in recess from 12:30 p.m., to 2:15 p.m., in order to accommodate the party conferences.

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

PROGRAM

Mr. MITCHELL. Mr. President, for information of Senators, following the vote on the Thomas nomination next Tuesday at 6 p.m., it is my intention to complete action on the available conference reports.

I am advised that the military construction and agriculture appropriations conference reports are here awaiting action, and by next Tuesday we could have available Transportation and Interior.

Senators should be aware that the next vote will be at 6 p.m. next Tuesday, but that it is my intention that there will be additional votes on that evening following that vote to complete action on as many of these appropriations conference reports as we possibly can.

Mr. SIMPSON. Mr. President, let me just thank the majority leader for his again continued patience in the face of demands that are sometimes truly not just demands, but sometimes appalling demands. And I thank him for that, and know that the Judiciary Committee will be laboring while the rest of the body is in the recess period with constituent visits. I think it is very important that we get about our business. We will do that in the interim.

I wanted to state that I noted rule 29.5, which has been discussed, was adopted in 1844, and the rule was created in response to a situation where a Senator Tappan leaked the terms of a proposed Indian treaty to the press. He did that in violation of a standing order, and rule 29.5 was later adopted to prevent that. And Tappan was later expelled for committing "a high breach of trust." So he was sacked in the process.

We would not want to do that. But we might find some poor, wandering staff member that deserves an adroit cuffing. Let me just say that I will pledge to join in that.

And I think it is very important, as the majority leader has said, and the Senator from New Mexico and the Senator from Missouri cannot let that continue. And I assure the majority leader, if he will notify me, in my great

pleasure to serve as an assistant Republican leader, whether it cuts one way or the other, I will join him in those activities.

I hear very clearly what the majority leader was saying about the Ethics Committee, and I assure him that I will assist in that. And I think the sooner, the better, to bring these people to the bar of the Senate for deliberation and their own presentation of their views, and then take it to its conclusion.

I thank the majority leader for all of the activity that made it possible for us to resolve this very tough situation, and we can get on with it now.

Mr. MITCHELL. I thank my colleague for his cooperation.

RECESS UNTIL FRIDAY, OCTOBER 11, 1991, AT 9:45 A.M.

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess until 9:45 a.m. on Friday, October 11.

There being no objection, the Senate, at 9:36 p.m., recessed until Friday, October 11, 1991, at 9:45 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 8, 1991

DEPARTMENT OF STATE

DAVID A. COLSON, OF MARYLAND, A CAREER MEMBER OF THE SENIOR EXECUTIVE SERVICE, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS DEPUTY ASSISTANT SECRETARY OF STATE FOR OCEANS AND FISHERIES AFFAIRS.

RICHARD CLARK BARKLEY, OF MICHIGAN, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO THE UNITED STATES OF AMERICA TO THE REPUBLIC OF TURKEY.

JAMES F. DOBBINS, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE EUROPEAN COMMUNITIES, WITH THE RANK AND STATUS OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY.

JOHN CHRISTIAN KORNBLUM, OF MICHIGAN, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS HEAD OF DELEGATION TO THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE (CSCE).

JOHN F.W. ROGERS, OF NEW YORK, TO BE UNDER SECRETARY OF STATE FOR MANAGEMENT.

INTER-AMERICAN FOUNDATION

PAUL EDWARD SUSSMAN, OF ILLINOIS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING OCTOBER 6, 1992.

PEACE CORPS

ELAINE L. CHAO, OF CALIFORNIA, TO BE DIRECTOR OF THE PEACE CORPS.

U.S. ADVISORY COMMISSION ON PUBLIC DIPLOMACY

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE U.S. ADVISORY COMMISSION ON PUBLIC DIPLOMACY:

WILLIAM HYBL, OF COLORADO, FOR A TERM EXPIRING JULY 1, 1994.

WALTER R. ROBERTS, OF THE DISTRICT OF COLUMBIA, FOR A TERM EXPIRING APRIL 6, 1994.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING ROBERT A. TAFT, AND ENDING LAURENCE E. POPE, II, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 27, 1991.