

In recent years, perhaps one of the biggest backers of the National Guard here in the Senate has been my good friend, and predecessor as chairman of the Armed Services Committee, Senator SAM NUNN of Georgia. Over the years, Senator NUNN has established a well-deserved reputation for being one of the most well-versed Members of the Senate in matters related to defense and national security. Without question, his opinion is valued and respected by Senators on both sides of the aisle, by senior officers in each of the services, by Presidents, and by the people of the United States. He has stood as an advocate for a strong defense, including what he believes should be a well-trained, well-equipped, and well-supported National Guard.

In recognition of Senator NUNN's support of the military and his belief in the National Guard, the National Guard Association of Georgia established the Sam Nunn Award which it presents each year to a person who they believe has demonstrated "solid and continuous support for the role, function, mission and purpose of the National Guard in meeting its international, national, state, and local mission." I am very proud to have been the recipient of the award for 1995, and I am pleased to have this opportunity to congratulate my friend, Mr. Coy Short of Atlanta, on being awarded this recognition by the National Guard Association of Georgia this year.

I have had the pleasure of knowing Coy for a number of years, over which time he has consistently demonstrated not only his patriotism, but his support for those who serve in all branches of the service, in both the Active Forces, the Reserves, and the Guard. He is a person who has taken a leadership role in community-military relations, lending his leadership to a number of committees designed to serve those who serve, including the Governor's Military Advisory Council; the USO Council of Georgia; and the Atlanta Chamber of Commerce's Greater Atlanta Military Affairs Council. His efforts on behalf of those in uniform have been recognized numerous times over the years by the Army, the National Guard, and by defense-related and community-spirited groups in the following manners:

The 94th Airlift Wing Man of the Year Award; National Committee for Employer Support of the Guard and Reserve Award for Outstanding Public Service; Oglethorpe Distinguished Services Medal for Outstanding Support of the Georgia National Guard, and National Distinguished Service Award, Association of the United States Army.

Also the Phoenix Award by the Atlanta Chamber of Commerce, for providing leadership to the Greater Atlanta Military Affairs Council; Award from the National Guard Bureau for outstanding support of the Army National Guard; and Army Commendation Medal for public service on behalf of Forces Command.

Coy Short not only works hard on behalf of Atlanta's military community, he is one of the city's biggest boosters. As a member of the Peach Bowl's executive committee, he helps to make one of college football's most popular events a success, and through his position as the Deputy Regional Commissioner for the Social Security Administration's Atlanta region, Coy's professional efforts have benefited tens of thousands of Georgians. Not surprisingly, he has been recognized by the Social Security Administration for his work, including being awarded the Commissioner's Citation, the highest recognition that can be given by that agency.

At this very moment, there are National Guard soldiers and airmen who are selflessly serving in dangerous assignments throughout the world, and if given the opportunity, I am certain that they would want to express their appreciation to Coy Short for all he has done to support them. I join these brave men and women who are serving in the defense of our Nation, along with the National Guard Association of Georgia, in saluting a man who sets the highest standard for civic mindedness and support for the Nation's military forces. His efforts make Atlanta a better place to live and the United States a safer and more secure Nation.

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, the skyrocketing Federal debt recently surpassed \$5 trillion.

As of the close of business Friday, March 15, the Federal debt—down to the penny—stood at exactly \$5,045,003,375,350.97 or \$19,077.15 on a per capita basis for every man, woman, and child in America.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

BALANCED BUDGET DOWNPAYMENT ACT, II

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to H.R. 3019. The clerk will report the bill.

The bill clerk read as follows:

A bill (H.R. 3019) making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes.

The Senate resumed the consideration of the bill.

Pending:

Hatfield modified amendment No. 3466, in the nature of a substitute.

Lautenberg amendment No. 3482 (to amendment No. 3466), to provide funding for programs necessary to maintain essential environmental protection.

Hatch amendment No. 3499 (to amendment No. 3466), to provide funds to the District of Columbia Metropolitan Police Department.

Boxer/Murray amendment No. 3508 (to amendment No. 3466), to permit the District of Columbia to use local funds for certain activities.

Gorton amendment No. 3496 (to amendment No. 3466), to designate the "Jonathan M. Wainwright Memorial VA Medical Center", located in Walla Walla, Washington.

Simon amendment No. 3510 (to amendment No. 3466), to revise the authority relating to employment requirements for recipients of scholarships or fellowships from the National Security Education Trust Fund.

Simon amendment No. 3511 (to amendment No. 3466), to provide funding to carry out title VI of the National Literary Act of 1991, title VI of the Library Services and Construction Act, and section 109 of the Domestic Volunteer Service Act of 1973.

Coats amendment No. 3513 (to amendment No. 3466), to amend the Public Health Service Act to prohibit governmental discrimination in the training and licensing of health professionals on the basis of the refusal to undergo or provide training in the performance of induced abortions.

Bond (for Pressler) amendment No. 3514 (to amendment No. 3466), to provide funding for a Radar Satellite project at NASA.

Bond amendment No. 3515 (to amendment No. 3466), to clarify rent setting requirements of law regarding housing assisted under section 236 of the National Housing Act to limit rents charged moderate income families to that charged for comparable, non-assisted housing, and clarify permissible uses of rental income in such projects, in excess of operating costs and debt service.

Bond amendment No. 3516 (to amendment No. 3466), to increase in amount available under the HUD Drug Elimination Grant Program for drug elimination activities in and around federally-assisted low-income housing developments by \$30 million, to be derived from carry-over HOPE program balances.

Bond amendment No. 3517 (to amendment No. 3466), to establish a special fund dedicated to enable the Department of Housing and Urban Development to meet crucial milestones in restructuring its administrative organization and more effectively address housing and community development needs of States and local units of government and to clarify and reaffirm provisions of current law with respect to the disbursement of HOME and CDBG funds allocated to the State of New York.

Lautenberg amendment No. 3518 (to amendment No. 3466), relating to labor-management relations.

Santorum amendment No. 3484 (to amendment No. 3466), expressing the Sense of the Senate regarding the budget treatment of federal disaster assistance.

Santorum amendment No. 3485 (to amendment No. 3466), expressing the Sense of the Senate regarding the budget treatment of federal disaster assistance.

Santorum amendment No. 3486 (to amendment No. 3466), to require that disaster relief provided under this Act be funded through amounts previously made available to the Federal Emergency Management Agency, to be reimbursed through regular annual appropriations Acts.

Santorum amendment No. 3487 (to amendment No. 3466), to reduce all Title I discretionary spending by the appropriate percentage (.367%) to offset federal disaster assistance.

Santorum amendment No. 3488 (to amendment No. 3466), to reduce all Title I 'Salary and Expense' and 'Administrative Expense' accounts by the appropriate percentage (3.5%) to offset federal disaster assistance.

Gramm amendment No. 3519 (to amendment No. 3466), to make the availability of

obligations and expenditures contingent upon the enactment of a subsequent act incorporating an agreement between the President and Congress relative to Federal expenditures.

Wellstone amendment No. 3520 (to amendment No. 3466), to urge the President to release already-appropriated fiscal year 1996 emergency funding for home heating and other energy assistance, and to express the sense of the Senate on advance-appropriated funding for FY 1997.

Bond (for McCain) amendment No. 3521 (to amendment No. 3466), to require that disaster funds made available to certain agencies be allocated in accordance with the established prioritization processes of the agencies.

Bond (for McCain) amendment No. 3522 (to amendment No. 3466), to require the Secretary of Veterans Affairs to develop a plan for the allocation of health care resources of the Department of Veterans Affairs.

Warner amendment No. 3523 (to amendment No. 3466), to prohibit the District of Columbia from enforcing any rule or ordinance that would terminate taxicab service reciprocity agreements with the States of Virginia and Maryland.

Murkowski/Stevens amendment No. 3524 (to amendment No. 3466), to reconcile seafood inspection requirements for agricultural commodity programs with those in use for general public consumers.

Murkowski amendment No. 3525 (to amendment No. 3466), to provide for the approval of an exchange of lands within Admiralty Island National Monument.

Warner (for Thurmond) amendment No. 3526 (to amendment No. 3466), to delay the exercise of authority to enter into multiyear procurement contracts for C-17 aircraft.

Burns amendment No. 3528 (to amendment No. 3466), to allow the refurbishment and continued operation of a small hydroelectric facility in central Montana by adjusting the amount of charges to be paid to the United States under the Federal Power Act.

Burns amendment No. 3529 (to amendment No. 3466), to provide for Impact Aid school construction funding.

Burns amendment No. 3530 (to amendment No. 3466), to establish a Commission on restructuring the circuits of the United States Courts of Appeals.

Coats (for Dole/Lieberman) amendment No. 3531 (to amendment No. 3466), to provide for low-income scholarships in the District of Columbia.

Bond/Mikulski amendment No. 3533 (to amendment No. 3482), to increase appropriations for EPA water infrastructure financing, Superfund toxic waste site cleanups, operating programs, and to increase funding for the Corporation for National and Community Service (AmeriCorps).

AMENDMENT NO. 3530

Mr. BURNS. Mr. President, I call up amendment No. 3530 and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to laying aside the pending amendment? Without objection, it is so ordered. The amendment is now before the Senate.

AMENDMENT NO. 3548 TO AMENDMENT NO. 3530
(Purpose: To amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes)

Mr. BURNS. Mr. President, I send to the desk a second-degree amendment to amendment No. 3530 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Montana [Mr. BURNS], proposes an amendment numbered 3548 to amendment No. 3530.

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

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

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

Mr. BURNS. Mr. President, I offer this amendment on behalf of the people of Montana. This issue was reported—in other words, dealing with the ninth judicial district—this issue was reported out of the Judiciary Committee with an 11 to 7 vote, with strong bipartisan support, and a conference report that was overwhelmingly recommending its passage.

It has often been said that one would wonder, why is there such a movement to reform habeas corpus when the very idea of habeas corpus is as American as apple pie and hot dogs? Americans have always been sensitive to the rights of the accused. It has been a hallmark as long as this United States has been a union. But in our court of appeals, Mr. President, we happen to be situated, in the State of Montana, in the largest judicial district. It is the ninth: Montana, Idaho, Washington, Oregon, California, Nevada, Arizona, Hawaii, and Alaska.

Our proposal, under this proposal to split the ninth circuit, would leave California, Hawaii, Guam, and the northern Mariana Islands with a mission of a 15-judge unit. Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington would form the new 12th circuit of 13 judges. The caseload would be split, and 60 percent of the present-day caseload would still be represented in California and Hawaii, and 40 percent of the present-day caseload would be in the newly formed twelfth. The reasons are very, very compelling for those States that would remain in the 9th district, after the newly formed 12th went into full operation, to remain there.

In this amendment is also a section that allows a national study of our courts of appeals. I think that study should move on. It was recommended by the Senator from California, and I see her on the floor. It made good sense whenever the suggestion was made, and it still makes good sense today. But I think we already have studies. We have studies on the shelf, and yet, after we got the studies, nothing was done to address the problems.

Let us take a look at this circuit. The ninth circuit is big, too big. It includes nine States, 1.4 million square miles, 45 million people. By comparison, the sixth judicial district serves less than 29 million people, and every other circuit serves less than 24 million people.

The Census Bureau is telling us that by the year 2010 the population in the ninth, if it remains in its present size,

will be more than 63 million people because of the demographics and the movement of people. That is a 40-percent increase in just 15 years.

Judge O'Scannlain, of the ninth judicial district, testified, and I quote:

In light of the demographic trends in our country, it is clear that the population of the States in the ninth circuit, and thus the caseload of the Federal judiciary sitting in those States, will continue to increase at a rate significantly ahead of most other regions in the country.

The number of judges stands at 28. The fifth judicial district has 17 judges; the first has 6 and the seventh and eighth each have 11. The average of the circuits, other than the ninth, is 12.6 judges. I do not know what they do with the other four-tenths of 1 percent. The ninth recently unanimously made a request from that district requesting an additional 10 more judges. So the prospect of even a larger ninth will be upon us in just a very near future.

If you can imagine having 38 active judges, in addition to 12 senior status judges, on one court, that should give all of us pause. If we do not deal with this issue now, we will only be putting it off into the future. In other words, let us get started.

Having said that, this is the situation that is existing in the district itself today. No. 1 is delay. The ninth is the second slowest of all the circuits. The chief judge himself on the circuit commented in his written testimony, "It takes about 4 months longer to complete an appeal in our court as compared to the national median time." Mr. President, 315 days is the national median time from the filing of appeal to the final conclusion. In the ninth, it is 429 days.

Other methods have been used and they come up with similar results. What does it do? Delay; the bigness leads to inconsistency, unpredictability, and I think what is more important, the lack of collegiality.

The formation of the 3-judge panel, and with 28 of them there on the court, gives us 3,276 different combinations whenever you go up before the ninth district court of appeals. It is difficult for litigants to predict outcomes. The sheer size of the caseloads makes it increasingly difficult for judges to keep abreast of the decisions to avoid conflicting decisions.

We will be hearing the argument there are new devices, new computer systems, where they have a ready library of information to where they be consistent with other decisions. Mr. President, that just has not been the case. They cannot even use what all other districts use. That is en banc. In other words, all the judges in that district getting together, listening to a case, trying to come to some consensus in the consistency of the law. The ninth does not even use that. Mr. President, 28 judges do not use that procedure to resolve intracircuit conflicts. Instead, they use a limited en banc procedure, forming 11-member

panels—10 drawn from the list of judges plus the chief judge. The method permits as few as 6 of the sitting judges to dictate the outcome of a case contrary to a judgment of 22 others, solely depending on the luck of the draw.

In summary, there was a judge in the eleventh circuit that noted what happens and the many ill effects you have in business courts. First, the dynamics of a jumbo court are such that as the court grows larger, the productivity of individual judges declines. Second, the clarity and the stability of the circuit law suffers, creating incentives to litigate that do not exist in jurisdictions with smaller courts. Finally, jumbo courts create and maintain a legal environment that is inhospitable to individual rights. Individuals find it more difficult to conform their conduct to increasingly indeterminate circuit law and suffer higher litigation costs to vindicate a few remaining clear rights to which they may claim. In other words, we go right back and we say it is too big.

The conclusion is that it is inevitable that this is going to happen. A study of 23 years ago called for it then. I think they called for it and also the split of the fifth circuit at that time. The fifth circuit did what it was told to do or was recommended to do and it has been very, very successful. This is a balanced approach and allows the wheels to start turning where we can serve our people in the judiciary a lot better and more efficiently, with more consistency. It is the right thing to do. After all, we provide the services for our citizens. The infrastructure has to be there in order to get it done.

The fifth circuit split was very, very successful. I think when we look at the evidence, the evidence of what is happening in all the other circuits, the first circuit only has 6 judges, a total population of 13 million people; in the ninth circuit, 28 judges, population 49 million people, over 1.4 million square miles. It is hard to serve an area that big.

I urge my colleagues to pass this amendment. We need to do it for the justice of the people who live and reside and do business in the ninth judicial district. I yield the floor and I reserve the balance of my time.

Mrs. FEINSTEIN. Mr. President, I rise to oppose the amendment and also to raise a point of order. Prior to making the point of order, however, I point out that as a member of the Judiciary Committee, I do not believe this measure passed by an overwhelming majority. It really passed only on the basis of partisan lines with one exception on our side of the aisle.

Essentially, this was the subject of much discussion before the Judiciary Committee, Mr. President. As you, yourself, know, there was no hearing on the bill to split the ninth circuit that is encompassed in this second-degree amendment. No public hearing on this proposal was held before the Judiciary Committee.

Essentially, what this proposal does is take the States of Alaska, Washington, Oregon, Idaho, Montana, Nevada, and Arizona, split them from the ninth circuit, and set up their own circuit. This would leave the States of California and Hawaii, along with the territories of Guam and the northern Marianas, in their own circuit. Never before in history has there been a circuit comprised of fewer than three States.

If Congress votes to divide the ninth circuit despite the overwhelming opposition of its bench and bar, Congress will be making, I believe, an irreversible decision that will have far-reaching and long-term implications for all circuits. Congress will be endorsing the view that a political division with no real data to support it is an acceptable way to determine circuit composition. I say it is not an acceptable way to determine what a circuit court of the United States should be.

The fifth circuit has been held to be some kind of a model. This was split in 1980, following the 1973 findings of the Hruska Commission. It is my understanding that the fifth circuit has one of the poorest records with respect to delays today.

The problems of caseload growth are nationwide problems that cannot be resolved by zeroing in on one circuit and wantonly, haphazardly, chopping it up.

I believe that there ought to be a study of the structural aspects of all of the circuits. There ought to be a study of the structural alternatives available to the circuit courts of appeal. Qualified members of a commission should make recommendations to the Congress on circuit structure and alignment, whether and how any realignment should occur.

If you recall, the Hruska Commission, a long time ago, recommended a split of the State of California. I think, in view of the new techniques that have been put into play by the ninth circuit in the past 23 years, this recommendation is perhaps out of date. The ninth circuit has made requests for new judges. These requests have not been honored in terms of presenting the circuit with an adequate number of judges to do the job.

The State bars oppose a ninth circuit split. That is also what makes this a very dangerous proposal. The eleventh circuit split from the fifth only after all of the judges and bar associations essentially agreed with the proposal to create a new circuit.

This is the opposite case. The bar associations of Arizona, of Nevada, of Montana, of California, and of Hawaii have all expressed their opposition to splitting the circuit, as did Idaho, the last time this split came up. I ask unanimous consent that those resolutions be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mrs. FEINSTEIN. The ninth circuit judicial conference has opposed the

split. The Judicial Council, the governing body of the ninth circuit, unanimously opposes a split. The Federal Bar Association has opposed this split.

I ask unanimous consent, also, that their statements be printed in the RECORD at the end of my remarks.

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

(See exhibit 2.)

Mrs. FEINSTEIN. As the distinguished Chair knows, the board of governors of the Arizona bar has issued a resolution against the recent Burns proposal, stating the following:

The proposal cuts Arizona off from California, the State with which it shares the greatest legal and economic ties.

This bill would create a two-State circuit, with one tiny State dwarfed by a large State. California would have 94 percent of the new ninth circuit's caseload.

It is also a very costly proposal. I find it just ironic that the committee would vote to spend so much for no demonstrated gain, when this Congress is so concerned—and I believe commendably concerned—with reducing the costs of the judiciary.

Splitting the ninth circuit would require duplicative offices of clerk of the court, circuit executive, staff attorneys, settlement attorneys, courtrooms, libraries, and mail and computer facilities.

The estimated additional costs of a new or rehabilitated courthouse for a proposed headquarters in Phoenix range from \$23 to \$59.5 million. Both GSA and CBO have allocated startup costs at an additional \$3 million.

GSA and CBO have estimated annual costs of duplicative staff positions at \$1 million, and an additional \$2 million for the cost of leasing space for the headquarters until permanent quarters could be made available.

So we have duplicative staff to the tune of \$1 million, and additional lease costs—unnecessary—of \$2 million.

If the twelfth circuit, as proposed in this second-degree amendment, were to be created, substantial expenses already incurred by the taxpayers also would be wasted. Congress has authorized, and GSA has already completed, an extensive post-earthquake restoration of the current ninth circuit headquarters building in San Francisco, at a cost of over \$100 million. The GSA has also completed the build-out of the court of appeals courthouse in Pasadena. I am told that 35 percent of the \$100 million was essentially spent on quarters for the ninth circuit.

I do not believe that this effort to split the ninth circuit really represents a genuine effort to deal with the problems of the U.S. court system.

I believe, really, it is an example of judicial gerrymandering because some decisions made by that court were not to the liking of certain people. I am aware of the fact that the Senator from Montana, in his press release of May 25, states:

We are seeing an increase in legal actions against economic activities in States like

Montana, such as timbering, mining, and water development. This threatens local economic stability, but as bad as this economic backlog is, I am particularly disturbed by the delays experienced by families of victims.

The press release of the Senator from Montana also says:

State Senator Ethel Harding, of Polson, knew firsthand the pain of this kind of delay, whose daughter was murdered by Duncan Meccans 20 years ago, but Meccans was put to death only 2 weeks ago. The appeal ended up in the ninth circuit three times over the 20-year period, and part of the delay can be attributed to the heavy caseload and inefficient system of the ninth circuit.

Senator BURNS' press releases illustrate the fact that, clearly, this effort to split the ninth circuit is politically motivated—because a habeas decision of the ninth circuit was not agreed with, for example, I respectfully submit to my distinguished colleague from Montana that there is habeas reform pending. I happen to support that reform. I submit to this body that that is the appropriate way to deal with habeas reform—not to gerrymander the circuit, but to pass a reform law that changes habeas corpus.

Another issue that was brought out in Senator BURNS' press release was the Montana sheriff's appeal of background checks under the Brady law. This was cited as further evidence of the need to split Montana and other northwest States from the circuit. I go into this not to measure the good or the bad of the decision relating to background checks, but simply to say that I believe this is the heart of the reason for the split. It is being done precipitously, without study, at great cost, and I believe for the wrong reasons. It, therefore, sets a precedent for these kinds of political maneuverings.

Let us take a look at the ninth circuit. The ninth circuit does a good job. In the 23 years following the Hruska Commission report, the ninth circuit has become a national leader in experimentation in judicial administration. It is producing good results. The average time, from oral argument submission to disposition, is 1.9 months, or half a month less than the national average. In fact, the ninth circuit is the second most efficient circuit in deciding cases once they are submitted to judges.

The ninth circuit terminates over 8,500 cases a year, almost two-fifths more than the number it terminated 7 years ago.

Since 1992, the number of cases pending before the ninth circuit has decreased annually.

It is also the first Federal court circuit to automate its docket with computerized issue tracking systems that are far more sophisticated than anything available in 1973. These systems keep ninth circuit panels apprised of other panel decisions, helping them avoid intra-circuit conflicts.

So the ninth circuit has pioneered a number of different technological and structural improvements. Additionally,

it has used a limited en banc procedure, which has also proved effective in resolving potential intra-circuit conflicts. All active judges participate in the decision as to whether a case will go en banc. The Court's rules allow for rehearing by the full court at the request of either judges or litigants. So either a judge or a litigant can request a hearing by the full court.

It should be noted that the limited en banc procedure is called upon very infrequently. There are only about 12 to 13 limited en banc decisions per year out of a total of about 4,000 written decisions.

[Exhibit 1]

STATE BAR OF NEVADA
RESOLUTION

Whereas, The State Bar of Nevada, through the years, has consistently supported the maintenance of the Ninth Circuit as presently constituted; and

Whereas, a question of dividing the circuit may well reoccur during the present session of Congress or in the discussions before the Judicial Conference;

Now, therefore, the Board of Governors of the State Bar of Nevada *Resolves* that the Ninth Circuit is well constituted as is, promotes judicial economy, and as constituted, promotes the interests of justice, and no alteration should be made nor should the Ninth Judicial Circuit be divided.

Dated: This 9th day of March, 1995.

STATE BAR OF MONTANA
RESOLUTION 4

Whereas, Montana is one of nine states and two territories of the United States Court of Appeals for the Ninth Circuit; and

Whereas, the United States Court of Appeals for the Ninth Circuit has provided significant guidance to all circuit courts regarding issues of collegiality, maintaining precedent and effectively accomplishing and administering the business of the circuit courts; and

Whereas, the United States Court of Appeals for the Ninth Circuit has been a leader in implementing Gender Equity and recognizing the need to address Racial and Ethnicity concerns to improve the involvement of all citizens in the administration of justice; and

Whereas, the United States Court of Appeals for the Ninth Circuit has provided innovative leadership in the involvement of lawyers in all functions and committees of the circuit; and

Whereas, the United States Court of Appeals for the Ninth Circuit has instituted long range planning to project the needs of the circuit into the upcoming century; and

Whereas, Montana has therefore reaped significant benefit from being a part of the Ninth Circuit; and

Whereas, the Congress has once again undertaken consideration of a bill to divide the circuit and to create a new Twelfth Circuit which would divide out the northern tier states into a new separate smaller circuit; and

Whereas, a divided circuit would remove the numerous benefits which Montana enjoys as a part of the United States Court of Appeals for the Ninth Circuit with very little, if any, gains; and

Whereas, a divided circuit would result in additional one time construction and division costs and increased annual administrative expenses thereby straining the already inadequate budget of the Judiciary, resulting in fewer funds for the direct administration

of justice and for Civil Justice panel lawyers and other essential components of the administration of justice; and

Whereas, a division of the Ninth Circuit would not address or resolve the principal problem of circuits which serve rapidly growing regions, that is, the crisis of volumes of filings with inadequate judicial resources to resolve them; and

Whereas, a division of the circuit would remove the present opportunity to obtain the appointment of a practicing Montana lawyer to current vacancies on the Ninth Circuit and would significantly reduce the opportunity to appoint practicing Montana lawyers to the Twelfth Circuit in the future.

Now, therefore, be it *Resolved* that the State Bar of Montana Opposes Passage of the Ninth Circuit Court of Appeals Reorganization Act of 1995. Senate Bill 853.

Dated this day of June, 1995.

THE STATE BAR OF CALIFORNIA,
San Francisco, CA, February 26, 1996.

Re Opposition to H.R. 2935 and Substitute Bill S. 956, Ninth Circuit Court of Appeals Reorganization Act of 1995.

Hon. BILL BAKER,

House of Representatives, Longworth Office Building, Washington, DC.

DEAR REPRESENTATIVE BAKER: The Board of Governors of the State Bar of California urges you to oppose H.R. 2935 and substitute bill S. 956, which would split the Ninth Circuit Court of Appeals, leaving California, Hawaii and the Pacific territories in a new Ninth Circuit and placing the remaining seven states (Alaska, Arizona, Montana, Nevada, Oregon, Utah and Washington) into a new Twelfth Circuit.

H.R. 2935 was introduced on February 5, 1996. Substitute bill S. 956 was reported out of the Senate Judiciary Committee on December 21, 1995. We urge you to oppose both of these bills.

The case for splitting the circuit has not been made. The Ninth Circuit is the largest circuit; however, size alone does not argue for its division. In fact, we believe the size of the Ninth Circuit gives its residents certain advantages. It is an advantage to all states bordering the West Coast to have a single federal court of appeals. This single circuit provides uniform and predictable case law applicable to the region and crucial to Pacific Rim trade, which is of growing importance to California and other Western states. Splitting the region into two circuits is likely to increase inter-circuit conflict, forum shopping and races to the courthouse. The size of the Ninth Circuit also provides greater flexibility in responding to caseload growth and greater diversity of judicial backgrounds as a result of judges drawn from a larger area.

The issue of caseload growth is common to courts of appeals nationwide. However, repeated division of circuits in response to growth is not likely to be the answer to this problem and will likely create a proliferation of balkanized circuits. Splitting the Ninth Circuit, ostensibly because of its caseload, before considering how to respond to growing filings nationwide, will complicate rather than advance solutions to caseload growth.

In an era where shrinking financial resources dictate cost-saving measures, a Ninth Circuit split would increase costs by requiring a new circuit office, more court clerks and attorneys, as well as additional courtrooms and libraries. Absent a compelling argument for a split, and a clear and comprehensive study on the most efficient method to effectuate this division, the proposals are both premature and imprudent.

The Board of Governors respectfully urges you to oppose H.R. 2935 and substitute bill S. 956.

Very truly yours,
 JAMES E. TOWERY,
President.

STATE BAR OF ARIZONA
 RESOLUTION OF THE BOARD OF GOVERNORS,
 OCTOBER 20, 1995

This Board, in repeated resolutions, has expressed its opposition to the various proposals to divide the Ninth Circuit Court of Appeals and its support for maintaining the Circuit as it is. A new proposal has now been raised as to which the view of the Bar is desired. This new proposal would divide the Circuit by creating a Ninth Circuit of California, Hawaii and the Pacific Islands and a Twelfth Circuit consisting of Alaska, Washington, Oregon, Idaho, Montana, Nevada and Arizona. Such a plan would be extremely unfortunate for Arizona and wastefully unwise as a matter of judicial administration. The considerations which concern us follow:

1. The proposal cuts Arizona off from California, the state with which it shares the greatest legal and economic ties. On the one hand, as we have previously declared, Arizona does not wish to be in a circuit dominated by California; but at the same time, it needs to be in a circuit with California. Our law is commonly guided by California law. The proposed division puts a premium on racing for choice of forum so that California and Arizona parties to a disputed business transaction will each have an incentive to sue first to keep the matter in "their" circuit; and yet this may be a matter which, without fostering a race to the courthouse, might never be litigated at all.

2. The headquarters of the proposed Twelfth Circuit would presumably be in Seattle. This would materially increase costs and inconvenience for Arizona attorneys and litigants. Airfare between Arizona and either Portland or Seattle is such that this proposal will cost Arizonans at least two or three times as much in every case. Flights to the Northwest take twice as long as to San Francisco and are less than half as frequent, giving Arizona endless burdens with so remote a court.

3. Politically the disadvantages to Arizona are substantial. With the present Ninth Circuit, non-California senators outnumber California senators 14 to 2, and non-California judges also outnumber California judges. In the newly proposed Twelfth Circuit, Arizona and Nevada would be outnumbered in the Senate 10 to 4, which means that the judgeships and courthouses will go to the Northwest.

4. The dollar waste is regrettable. The Ninth Circuit presently has a major court building to serve the Circuit in Pasadena and is in the final stages of completion of a \$100 million post earthquake renovation of the present Circuit headquarters in San Francisco, a headquarters for the entire Circuit. Not only will much of the San Francisco space be wasted under this proposal, but something of the kind will have to be duplicated in the proposed Twelfth Circuit. There will also need to be duplication of offices of Clerk, Circuit Executive, computer center, mailroom and other support offices.

In the light of all these factors, the Board of Governors of the State Bar of Arizona strongly recommends against the proposal for a new Arizona-to-Alaska Twelfth Circuit.

MICHAEL KIMERER,
President.

HAWAII STATE BAR ASSOCIATION,
 Honolulu, HI, August 21, 1995.
 Re Division of Ninth Circuit Court of Appeals (S. 956).

Hon. DANIEL K. INOUE,
 U.S. Senate, 109 Hart Senate Office Building,
 Washington, DC.

DEAR SENATOR INOUE: The Hawaii State Bar Association Board of Directors last week voted unanimously to oppose proposed legislation to divide the Ninth Circuit Court of Appeals.

Similar legislation proposed in 1989, 1991, and earlier this year was also opposed by the Hawaii State Bar Association. See 10/30/91 letter from Wolff to Inouye, *Exhibit A*.

A position paper prepared by the Office of the Circuit Executive dated 6/22/95 sets forth the arguments against dividing the Ninth Circuit. See Exhibit B. The Hawaii State Bar Association is in agreement with those arguments and would like to reiterate its concern over inconsistent law that would inevitably occur as a result of a division in the Ninth Circuit. As explained in Peter Wolff's 10/30/91 letter to you, a different rule of law might apply to a maritime case depending on whether the departure or destination point was Seattle or Los Angeles.

We hope that you will vote and lobby against the passage of Senate Bill 956. If we can be of any assistance to you in this matter, please do not hesitate to contact me at 547-6119.

Sincerely,
 SIDNEY K. AYABE,
President.

THE FEDERAL BAR ASSOCIATION
 RESOLUTION 95-

SUPPORT FOR THE POSITION OF THE NINTH CIRCUIT COURT OF APPEALS CONCERNING THE SPLIT OF THE NINTH CIRCUIT

Whereas, Congress has before it Senate Bill No. 956, which is designed simply to split the Ninth Circuit Court of Appeals by creating a new Twelfth Circuit comprised of the District Courts for the States of Montana, Idaho, Washington, Oregon and Alaska; and

Whereas, the Ninth Circuit Judges are overwhelmingly against the division of the circuit and the Ninth Circuit Judicial Council, the governing body for all of the courts in the Ninth Circuit, recently voted unanimously against any legislation which would divide the Ninth Circuit;

Now, therefore, be it *Resolved*, that the Federal Bar Association states it support for the position of the United States Court of Appeals for the Ninth Circuit, as expressed by Chief Judge J. Clifford Wallace of the Ninth Circuit given before the Senate Judiciary Committee on September 13, 1995, and in the Position Paper of the Office of the Circuit Executive for the United States Court for the Ninth Circuit dated June 30, 1995;

Be it further *Resolved* that the President of the Federal Bar Association is authorized and directed to communicate copies of this resolution to Senator Orrin Hatch and the Senate Judiciary Committee, and Senator Dianne Feinstein forthwith.

IDAHO STATE BAR,
 February 7, 1990.

Re Idaho State Bar Resolution S2-1
 Hon. JAMES R. BROWNING,
 Ninth Circuit Court of Appeals, San Francisco,
 CA.

DEAR JUDGE BROWNING: This is in response to your inquiry concerning the Idaho State Bar's position on the proposal to split the 9th Circuit Court of Appeals.

Perhaps uniquely, the Idaho State Bar is limited in its ability to take political positions. Idaho Bar Commission Rule 906 requires that we engage in a plebiscite of our members before considering resolutions for changes of law or policy. The resolution process is conducted each November.

Resolution S2-1, considered last fall, was entitled "Bifurcation of 9th Circuit Court of

Appeals," and was circulated at the request of both of our U.S. Senators. A copy of the resolution is included with this letter.

The resolution failed by a vote of 978 to 2373.

Please feel free to contact me if you have any questions.

Sincerely,
 WILLIAM A. MCCURDY,
President, Idaho State Bar.

EXHIBIT 2
 GOVERNOR PETE WILSON,
 December 6, 1995.

Hon. ORRIN G. HATCH,
 Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR ORRIN: I have been following with interest the current debate over whether to split the Ninth Circuit, and wish to register my strong opposition to any split before an objective study is concluded as to whether a split before an objective study is concluded as to whether a split will properly address the concerns that have been raised concerning the size of the circuit.

As you know, I have been on record in opposition to previous bills to split the circuit on the grounds that they were a form of gerrymandering which sought to cordon off some judges and keep others.

Admittedly, the Ninth Circuit handles more cases than any other circuit. However, the median time for it to decide appeals (14.8 months as of December 1994) is only slightly higher than that for the Sixth, Seventh, and D.C. Circuits and less than the Eleventh Circuit (14.8 months), and in fairness, the destruction of the San Francisco courthouse in the Loma Prieta earthquake is partly responsible for the backlog.

Splitting the circuit, without adding more judge, will not necessarily expedite the processing of the Ninth Circuit's cases and may generate a number of inconsistent rulings along the West Coast in areas such as admiralty, environmental law, and commercial law, since the West Coast would be split, under the pending proposal, into two circuits (i.e., California in one, and Washington and Oregon in the other). Indeed, splitting the Ninth Circuit could add an additional burden on the Supreme Court, which ultimately must resolve conflicts between circuits. I recognize that some concerns have been raised over intra-circuit conflicts, but there is a mechanism for resolving them—the en banc hearing. See Fed.R.App.Pro. 35.

Ultimately, the real issue raised in the debate over splitting the Ninth Circuit appears to be one of judicial gerrymandering, which seeks to cordon off some judges in one circuit and keep others in another. If this is the issue, I submit that the proper means to address this is through the appointment of new judges who do not inspire judicial gerrymandering because they share our judicial philosophy that judges should not make policy judgments but interpret the law, based on the purpose of the statute as expressed in its language, and who respect the role of the states in our federal system.

An objective study can focus on the concerns raised about the Ninth Circuit and determine whether a split is the answer. For instance, reform of our habeas corpus procedures and reforms which curb frivolous inmate litigation may do more to address a growing caseload than splitting the circuit.

In any event, I would urge that a study be commissioned to carefully examine the concerns raised about the Ninth Circuit and determine whether the concerns are legitimate and whether a change in the circuit's boundaries is the best method of addressing them. I would be pleased to contribute one or more representatives to assist with such a study.

Sincerely,
 PETE WILSON.

U.S. COURT OF APPEALS,
NINTH CIRCUIT,
Reno, NV, December 18, 1995.

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

DEAR SENATOR FEINSTEIN: I am pleased that you are going to carry your opposition to S. 956 to the floor of the Senate. You will be speaking for more than the interests of the citizens of your state. This important issue affects all of the people of our nation and their united belief that there must be one federal law applicable to each of us.

As you know, I was a Republican member of the United States House of Representatives from a district in southern California for a period of 12 years, commencing in 1967. I served continuously on the House Judiciary Committee. In addition, I was a member of the Hruska Commission in 1972-73. I left Congress voluntarily in 1979. In 1984, I was appointed by President Reagan to the United States Court of Appeals for the Ninth Circuit. I am now an active judge on that Court.

The foregoing record of public service gives me, I believe, special insights into the management of cases within the existing Ninth Circuit. My understanding of the role of circuit courts in our system of federal justice has changed over the years from that which I held when the Hruska Commission issued its final report in 1973. At that time, I endorsed the recommendations of the Commission calling for a division of the Fifth and Ninth Circuits. I have grown wiser in the succeeding 22 years.

The Hruska Commission was created to deal with the problem of the Fifth Circuit. In recommending the division of the old Fifth Circuit into a new Fifth Circuit and a new Eleventh Circuit, we were responding to the united views of federal judges and bar associations in the respective states, and not insignificantly, the views of the late Senator Eastland, the then Chairman of the Senate Judiciary Committee. The recommended changes in the Fifth Circuit were ultimately implemented, but those respecting the Ninth Circuit were, wisely I think, not.

You have recommended a new Commission to be appointed to review and update the findings of the old Hruska Commission. I endorse this recommendation. Although I strongly oppose the division of the Ninth Circuit, I believe the Senate is entitled to review facts, and modern case management techniques, now employed within the Ninth Circuit. Moreover, the continued balkanization of our circuits must be confronted and the case for fewer, larger, circuits, must be studied. I wish you well in this undertaking.

The proponents of a new Twelfth Circuit have evidently abandoned their often made arguments that the new circuit would be needed to save excessive travel costs. No circuit stretching from Tucson, Arizona, to Prudhoe Bay in Alaska will support this argument.

The majority report also contains the misleading statement that the recommended division of the Ninth Circuit is not in response to ideological differences between judges from California and judges elsewhere in the circuit. I strongly disagree that such a motive does not in fact underlie the proposal for the change. Such a regionalization of the circuits in accordance with state interests is wrong. There is *one* federal law. It is enacted by the Congress, signed by the President, and is to be respected in every state in the union. The law in Montana and Washington is the same law as exists in Maine and Vermont. It is the mission of the Supreme Court to maintain one consistent federal law. I do hope that you will challenge the supporters

of the revision to explain the reasons justifying their proposal.

Respectfully,

CHARLES E. WIGGINS,
Circuit Judge.

Mrs. FEINSTEIN. Mr. President, let me speak for just a moment on the subject of the pertinence of this amendment at this time. This amendment filed by the distinguished Senator from Montana is really not a relevant amendment, to which, if the subject of the amendment were known, there would clearly have been objection. The amendment carries an appropriation for the Judiciary, which has been funded for the entire fiscal year through a previous continuing resolution. That is the vehicle for this kind of appropriation. It is not relevant to this bill before us.

So, Mr. President, on behalf of Senator REID and myself, I raise this point of order.

Mr. REID. Mr. President, will the Senator withhold for just a moment so that we can consult?

Mrs. FEINSTEIN. I would be happy to withhold for a moment.

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

The PRESIDING OFFICER (Mr. BURNS). The clerk will call the roll. The bill clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, I raise this point of order that amendment No. 3530 is not relevant to the Hatfield substitute or to the House bill.

The PRESIDING OFFICER. The point of order is well taken.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I would like to speak on the underlying amendment that has been offered by my friend from Montana.

Mr. President, first of all, in reviewing the amendment, it appears to me that the amendment is backward. What I mean by that is that the amendment by my friend from Montana calls not only for the division of the ninth circuit but it also calls for a commission to study the restructuring of the circuit.

I have spoken to the Presiding Officer of this body, I have spoken to the Senator from Montana, I have spoken to the Senator from California, who is in the Chamber, and lots of other people about this circuit and whether or not it should be split. I think this is a very good question. We should give some serious consideration to it. But it would seem to me that the best way for this body to do that would be to have a commission, one that is composed of prominent people appointed by the judiciary. The Chief Justice of the U.S. Supreme Court, I think, should be in on the appointment of people to serve

on this prestigious commission, and the President of the United States. Of course, we should have legislative input into this commission.

I think, also, the commission should have adequate staff so that they can report back to us in a short period of time. It seems to me, if we would empower this commission to go forward with the appropriate resources to look into the structuring of the circuits, that we, by next year at this time, would have all of the information at our disposal to make an appropriate decision.

The Hruska commission that was impaneled some 23 years ago came up with some ideas that were based on some good that they have done. They decided that the fifth circuit and the ninth circuit should be split. I say to my friend, the junior Senator from Montana, that the split of the fifth circuit subsequently took place. The split of the ninth circuit has not taken place. But I say to my friend from Montana that, if you are going to follow the 23-year-old Hruska commission and its findings, you certainly will not split the ninth circuit the way they have done it in this bill, because what the Hruska commission said is that you would, in effect, cut the ninth circuit in half and have one-half in northern California and one half in southern California and the rest of the circuit would be split up in a number of different ways.

So I say to my friend from Montana and to everyone within the sound of my voice that I think the amendment is backward. I think we should have a commission to study the restructuring of the circuits, and once that is done, come back here and determine if, in fact, there should be changes in the ninth circuit and all of the rest of the circuits in the country, because, if you go ahead and divide the ninth circuit and create a twelfth circuit, you have already taken away the ability we have to realign some of the other circuits.

Mr. President, if you look at this long, very narrow twelfth circuit, you have the chief judge, the headquarters of the court, sitting in Phoenix, AZ. I do not know how far away from Montana, I do not know how far away from Alaska, but it is away from major population centers in that circuit. Seattle and Portland are examples. I cannot imagine, with most of the cases coming from Oregon and Washington, why it would be fair for them to have to travel to Phoenix.

In addition to that, Mr. President, in November 1994, after there was this revolution that took place with the elections in the House and, to a lesser degree, in the Senate, we were told that we were going to start saving money, that we would not be wasteful in the things that we spent money on. If there was ever a waste of money, it would be what we are trying to do here—upward of \$60 million in one-time spending to create this new circuit and, of course, spend lots more money on a

yearly basis because you would have two circuits whereas in the past you have one circuit.

So, Mr. President, I really believe that I should ask my friend, with whom I serve on the Appropriations Committee and for whom I have the greatest respect, to review the offering of this amendment.

The Chair has ruled that this amendment is not germane, and it really is not. I appreciate the ruling of the Chair because we entered into a unanimous-consent agreement that there would be only relevant amendments. Mr. President, if, in fact, the Chair had ruled any other way, this place would be chaotic. There simply would be no end to floor procedures. There would never be another unanimous-consent agreement reached.

I, for example, wrote a letter to our staff here on my side of the floor several months ago saying if anything comes up regarding the splitting of the ninth circuit that I be notified. The reason I mention that, of course, is that this amendment was offered late at night, and, for whatever reason, the procedure was that this is not relevant. I am glad the Chair has ruled accordingly.

I think it is appropriate, though, Mr. President, that we talk about the ninth circuit and whether or not this should be split. To divide the ninth circuit would create two geographically and demographically unequal units. What I mean by that is, splitting this circuit is not going to solve the problem. Splitting the circuit is not going to solve the problems that I know my friend from Montana—and, believe me, many of my constituents in Nevada—is concerned about. Creating two circuits from one without increasing judicial resources would not address the fundamental problems of expanding caseloads and delays. We know from dividing the fifth circuit in 1980 that it has resulted in no long-term benefits in expediting case processing.

I, also—back to the commission aspect of it—again stress that I would be very happy to have this commission that we created on a bipartisan basis have a short time-line as to when to report back to us. The Hruska Commission reported back in 1973. In 1980, the fifth circuit was split. But, as I have mentioned, there have been no long-term benefits in expediting case processing. That does not mean the split was not important and was not necessary, but if we are going to look at splitting the circuits to expedite case processing, that will not do it, especially when you consider the ninth circuit judges are the fastest in the Nation in disposing of cases once a panel receives the cases.

Also, understand that, if you look at the western coast of the United States, you have the long, long State of California. But also on that coast you have Oregon and Washington, two extremely important States as far as maritime and admiralty law. One reason we have

had peace and quiet in the admiralty and maritime law in the western part of the United States is because there has been one voice that has spoken about that most important part of our commerce. If the split took place, we would have one circuit ruling and deciding cases in Washington and Oregon; you would have another circuit deciding cases based in California, that great Western United States. The maritime law of that part of the country would be bifurcated. That is not the way it should be.

It would increase the potential for inconsistent law relating to admiralty, commercial trade, and the utility laws on the western seaboard. Establishing a circuit consisting of just two States would defeat the federalizing function of the multistate circuit. That is the central purpose of the American Federal appellate process.

Senator FEINSTEIN talked, Mr. President, about the cost to construct a new twelfth circuit with its headquarters. As I have indicated, the estimate, among others, with the GAO is \$60 million—approximately \$59.5 million—plus \$2 to \$3 million in annual costs duplicating existing administrative functions.

An additional headquarters would result in waste of taxpayer dollars spent on the recently completed \$100 million earthquake rehabilitation in San Francisco.

Mr. President, prior to coming back here, I was a trial lawyer, and I have appeared in that beautiful ninth circuit where I have argued cases. It is a beautiful, beautiful building, and the earthquake damaged that. One reason the ninth circuit does not have a better record of moving cases is because they had no building in which to work. The earthquake damaged the building so that the Ninth Circuit Court of Appeals could not work in it. So the money that was spent rehabilitating that facility, \$100 million, in effect would be wasted.

Mr. President, it is also important, I think, for me to say something—it is unnecessary, but in this age of political correctness, perhaps I should mention it. I have a son who just graduated from Stanford Law School last June. We are very proud of him. He is one of my four boys. He works as a clerk in the ninth circuit. So if I have any prejudice because of my son, I acknowledge that here in this Chamber, but I was against this split long before my son went to work in whatever—sometime this past summer—for one of the judges of the ninth circuit.

That beautiful ninth circuit court building was restored, and I am happy it was restored. But let us not have any waste of it at this stage.

The official bar organizations of Arizona, California, Hawaii, Idaho, even Montana, and Nevada, and the Federal bar associations have all adopted resolutions opposing any split. I think it is important we have input of the bar relative to this split. But I can say to my

friend from Montana that if, in fact, we have a commission and the study comes out that there should be a restructuring, I would weigh that much more heavily than I weigh the opinion of the bar from the State of Nevada because the bar from the State of Nevada, even though I have great respect for them, are traditionalists and would not have the benefit of the study of what I feel would be this bipartisan Commission composed of people appointed by the Chief Justice, people appointed by the President, and people appointed from the legislative branch.

The ninth circuit judges, I repeat, are the fastest in the Nation in disposing of cases once the panel receives the cases. That is pretty good. The ninth circuit I think—I have certainly not asked them individually, but I think they would welcome an independent, congressionally mandated study of Federal appellate courts to update Congress certainly before it makes any far-reaching structural changes. The Ninth Circuit Court of Appeals has functioned successfully in its present configuration for more than 100 years. The sponsors, including my friend from Montana and also my friend, the senior Senator from the State of Washington, who is one of the prime movers of this legislation, have cited a number of reasons for this legislation. One is the unmanageable caseload, a decrease in consistency of decisions due to size, inability to appreciate the interests of the Northwest, and, lastly, a decline in the performance of the circuit.

First of all, let us talk about caseload. The ninth circuit has managed efficiently a caseload that is comparable on a per-judge basis and far exceeds in total that of other circuits. Also, as far as caseload, the ninth circuit has maintained a high degree of consistency in its case law. Also, the ninth circuit has functioned well to avoid regionalism by federalizing the application of national law over a wide geographic area, and, Mr. President, they have demonstrated a high level of performance in managing the caseload.

I also say that the ninth circuit is a court that our U.S. Supreme Court looks to for guidance, for lack of a better word, if the Supreme Court looks anywhere for guidance. If there is a conflict in the ninth circuit and one in the tenth circuit, heavy reliance is placed upon precedents developed out of the ninth circuit. I think that answers one of the criticisms that my friend from Montana has raised.

I think the proposals to divide the circuit have numerous drawbacks, including the substantial cost of setting up, as I have already outlined, the duplicative administrative structures and a new circuit headquarters. I do not think I can talk too much here about the fact that we are supposed to be balancing the budget, so how can we, in good conscience, spend \$60 million with this legislation and still call for a study where we are going to have to do some more restructuring. It just does not make a lot of sense.

I would also say that the loss of advantage of size really does not answer the question. We have strong opposition of the majority of the lawyers and judges in the circuit to which we have to give some credence. This is the ninth circuit. We cannot say we are going to ignore the lawyers and judges. We are talking about one of our branches of government, a separate but equal branch of government. With the potential for inconsistent law relating to admiralty, commercial trade, and utility law along the western seaboard, including Alaska and Hawaii, which I have not talked about, and the territories, it is important that we speak with one voice in that regard.

An opportunity for litigants to forum shop certainly would come about as a result of this split. The potential for increased inner-circuit conflicts would place an additional burden on the U.S. Supreme Court to resolve these conflicts that are now handled internally within the circuit.

We need hearings on this. I am willing to forego hearings. I know that the Judiciary Committee, of which neither sponsor of this legislation, and certainly not the junior Senator from Montana, is a member, has spent, as I understand it—I know it is true—the full Judiciary Committee had a single half-day hearing on this legislation that is now before the Senate. So I think that we really need to spend a little more time on this.

I am convinced that the Commission could do a good job with all the many things that we have to do, especially this being a Presidential election year. And I know how my friend from Montana and others feel about it. I repeat for the third time here today that we would be willing to put a short time limit on how long it would take for them to come back with their work. We would make sure during that short time period that they have adequate resources to study it well.

The proposed legislation very simply would not solve the problems of caseload growth and would increase the ninth circuit caseload burden. Here is why I say that. Throughout the United States, in all the circuits, the caseload has increased dramatically in proportion to the number of judges. Some of these figures are really startling. So the key problem to be addressed is the number of judges to handle the caseload rather than configuration of circuits.

It is interesting here; this Senator from Nevada, a Democrat, and my friend, the Senator from California, who has just spoken, a Democrat, have always supported the Republicans in the changing of habeas corpus. Every time I have had a chance to vote here since I have been in the Senate I have supported streamlining and expediting the habeas corpus procedures in this country.

That is something that would allow the ninth circuit and every other circuit to move on with its cases. I think

it is absolutely wrong for a person—it does not matter how you feel about the death sentence. If you believe in the rule of law, it is absolutely wrong that someone be sentenced to death when it takes an average of 16 or 17 years from the time that sentence is imposed until the time the execution takes place, if, in fact, it ever takes place. If we want to talk about expediting the cases that the ninth circuit and other circuits hear, that is how we can do it. Let us move the habeas legislation that would streamline what the Federal courts hear.

There are other things we could do. Forty percent of the cases in the Federal District in Nevada are cases that are initiated by prisoners. The majority leader, Senator DOLE, and I, and others have joined in legislation that has passed this body, saying let us do away with that. If somebody has a good case, a prisoner, let him file it. But not as to whether or not it should be chunky peanut butter or smooth peanut butter, how many times can you change your underwear, whether it is real sponge cake or not sponge cake. These are ridiculous things that really turn my stomach, and that is what is taking the time of our Federal judiciary, hearing these ridiculous nonsense cases. It is not the size of the circuits, it is what they are forced to hear because we, as a legislative body, have not acted responsibly.

I repeat, the key problem to be addressed is the number of judges to handle the caseload rather than the configuration of the circuits. From 1978 to 1995 the number of appeals filed in the Ninth Circuit Court of Appeals increased by 179 percent. The number of judges increased 22 percent. In spite of this, in spite of this, plus the earthquake that completely disrupted its operations, the Ninth Circuit Court of Appeals should receive an award, rather than being criticized for not doing their work well. Remember, the Ninth Circuit Court of Appeals moves its cases. There is no one faster in the entire circuit system in disposing of cases once the panel receives the cases.

In spite of this, in spite of the 22-percent increase in judges to cover the 180 percent increase in caseload, and the courthouse being damaged and ruined, almost—it took \$100 million to fix it up—they still managed to keep up with their work. They actually are determining more cases in the last 3 out of 4 years than were filed. They are not dropping behind, they are gaining. This is a remarkable record.

The presumption that increasing the number of circuits would solve the problem of expanding Federal court caseloads is the underlying fallacy of my friend's amendment. I say the cases are resolved by judges, men and women wearing those robes, not by circuits, this artificial tenth or twelfth, because increasing the number of circuits without increasing the number of judges would only exacerbate the problem. What we are being asked to do here is

not only not increase the number of judges, but build an entire new court complex, and of course we would have a new circuit with all of its administrative personnel, which we have already established would cost at least \$3 million extra a year. This would have no effect on caseload growth and there is no reason to believe it would be different in the proposed twelfth circuit than in the ninth circuit.

In its review of circuit size, the American Bar Association Appellate Practice Committee—and we have to go to the American Bar Association or some group of lawyers. Remember, we are dealing with courts here. We cannot go to the American Medical Association or certified public accountants or the Stock Car Racers of America. We have to go to attorneys, no matter how people feel about attorneys. What the ABA has said is, "We have found no compelling reasons why circuit courts of various sizes, ranging from a few judges to 50, cannot effectively meet the caseload challenge."

Indeed, for every argument in favor of smaller circuits there is an equally compelling argument for larger circuits. That is why I say, Mr. President, we are not doing this the right way. That is why it is important that we step back from this and let experts look at it, not we Senators who have preconceived ideas. Let us have the Chief Justice of the U.S. Supreme Court appoint some prominent people to take a look at this, and the President, and we as legislators should have our input. Equal numbers, so the judicial does not have too many on it, the executive does not have too many, nor do we—equally distributed between the legislative, judicial, and executive branches of the Government. I repeat, give them adequate staff, other resources, and have them report back to us in a reasonable period of time. That way, then we can make decisions as to whether it is going to be important to have more circuits, or have more judges, or have both.

I believe that the administration of justice in any society, especially in ours, is based upon the certainty of punishment, if we are talking about the criminal justice system. The problem we have in our system, of course, is that we do not have certainty of punishment. I think a study of the circuit system in our country, with that in mind, would go a long ways to satisfying some of the questions that I have.

I think it is important that we spread across this record the fact that the proposed legislation would be costly and it would be wasteful, for the reasons I have already outlined. The GSA [General Services Administration] has virtually completed an earthquake rehabilitation of this historic building in San Francisco at a cost of over \$100 million. That renovation was designed to accommodate the administrative personnel of the ninth circuit as it presently exists, to meet its needs for

the foreseeable future. If we did not do that, we would waste what we have already done.

We have some advantages from the size of the ninth circuit. The consequences are not all negative. That is why I think this panel, this commission we should appoint, will be instructive. The size of the ninth circuit, some say, is an asset that is to improve decisionmaking and judicial administration both within the circuit and throughout the Federal judiciary. There are some legal scholars who feel rather than splitting circuits we should be joining some of them; that there are built-in efficiencies. As my friend from Montana, in his statement, talked about one circuit—and I apologize, I do not know to which he was referring, but there were six appellate judges, as I recall the statement—maybe we should join that with another circuit. I do not know. But, certainly, is it not worth looking at?

A single court of appeals serving a large geographic region, the ninth circuit, has promoted uniformity and consistency in the law and has facilitated trade and commerce by contributing to stability and orderly process.

I again talk about admiralty and commerce under that entire western Pacific United States, which includes, as I have mentioned, Hawaii and the area out through there. We have one voice speaking about what the law should be. That has been very important. The court of appeals is strengthened and enriched, and the inevitable tendency to be parochial is done away with. This is because of the variety and diversity of the background of its judges drawn from the nine States comprising the circuit.

I had a conversation with a very close friend of mine who was home this weekend, somebody for whom I have the greatest respect. He was complaining about a decision that had been reached within the past couple of weeks, dealing with assisted suicide. He was complaining about that, about, "This judge did this."

I proceeded to remind my friend that it was an 11-member panel that decided the case, 11 judges out of the ninth circuit. They heard this case en banc. The decision by the majority was by 8 of the 11. The decision was written by that one man just because he happened to have drawn the assignment to write it, but seven of the other judges joined with him. So, in the ninth circuit more than any other circuit, there is not a tendency of one judge to dominate that circuit. There is not a tendency of two or three or four judges to dominate that circuit.

The ninth circuit is a leader in developing innovative solutions to caseload and management challenges, and they have done this in many different ways. It served as a laboratory for experimentation in many other areas, including computerized docketing and case tracking systems, decentralized budgeting, improving tribal court relations,

flexible judicial reassignments and effective and limited en banc procedures, which is—really, what they have done with en banc procedure in that case is really historic in nature.

No one complains about 11 of these appellate judges sitting down and hearing these cases. They do it expeditiously. We have had improved Federal-State judicial relations. They have been far advanced with alternative dispute resolution and use of appellate commissioners.

If I were going to vote today, I would vote against splitting the circuit, but I am not going to be voting today, Mr. President. I am going to be, hopefully, reviewing what has taken place on the floor.

I see standing today my friend from Arizona, who is a fellow attorney. I have great respect for his legal talents and abilities. He was a prominent and very refined lawyer before he came here. I am willing to sit down and talk with him and anyone else as to what is the right way to go in coming up with this division. But let us not make it here on a Monday afternoon or by an amendment offered late at night.

I think there is a better way to do this. I do not in any way criticize or think that my friend from Montana did anything improper or wrong. If I felt that, I would say that to him personally. I do not feel that is the way it is. I just feel that on multiple appropriations bills—five bills lumped into one—it is not the way to do it. I think what we should do, I repeat for the fourth time, is have a commission, a fair commission with a reasonably short period of time to report back.

Mr. President, while we are still talking about the ninth circuit, it has a high degree of consistency in its case law. It would be improper for a circuit court of appeals to favor regional interests. This is a court of the land.

Also, an objective, updated study is needed before undertaking piecemeal realignments of the circuit. We had the Hruska study, which took place 23 years ago, and it was very important that we did that. The effects of growth on the entire Federal appellate system needs to be reviewed. It can be done in a relatively short period of time with computerization and all the other modern methods we have at our disposal to get statistics.

Yet, in the last two decades, no hearing has been held on that subject, nor has any commission conducted a study to determine how the Federal appellate system will continue to manage the continuing, growing influx of cases. It is not only that the ninth circuit is growing, the whole United States is growing. So we need to look at all of them.

I repeat to my friends who feel this is the appropriate way to go—stop and look at this. What this amendment does is call for a split of the ninth circuit, creating the twelfth circuit, and, at the same time, it calls for a commission to study restructuring. It is the

wrong way to do it. We have already, in effect, let the cow out of the barn, because it makes it almost impossible to go back and pull out some of the resources, the assets of the twelfth and ninth circuits to help realign part of the other circuits if, in fact, that is necessary.

If you look, Mr. President, at the alignment of the court system, you will find that the way my friend from Montana has proposed this in his amendment, we have a very strange-looking circuit. I do not know how far it is from the tip of Washington to the tip of Arizona, but I would say it has to be 1,000 miles or more, because I know the State of Nevada is 600 miles long or more. So it is probably, I would say, 1,200 miles.

If we are going to talk about realignment, we might want to see if it is appropriate that the tenth circuit remain the way it is. I think if we follow the findings of the Hruska Commission, or at least take that as a starting point, we might want to cut California right in two, if, in fact, there is a cut necessary. If you did that, I think there would be a significantly different division than my friend has here.

Also, there are some long-time tendencies, practices, and procedures of which we have to be aware, and I think people need to study this. For example, we do not have a law school. Nevada does not have a law school. I do not know if there is another State in the Union that does not have a law school, but we do not have a law school. The vast majority of our lawyers are educated in California. I might say just offhand, I oppose the taxpayers of Nevada spending a lot of money on a law school. It comes up in every legislative session. I think we have enough law schools, and Nevada has plenty of lawyers. They are not having difficulty finding a place to go to school.

I say that it is going to take a little education in Nevada—and I think this commission is the way to go—to have lawyers, judges find some rationale for splitting Nevada off from California. What the U.S. Senate decides in a debate of a few hours is not going to satisfy the court and bar in the State of Nevada.

I think this commission that I have recommended, that was originally the idea of my friend from California, Senator FEINSTEIN, is an appropriate way to go. I respectfully submit, Mr. President, that it is not the right way to go to split the circuit and then come back and say, "Let's do a restructuring study." An objective, updated study is needed before undertaking piecemeal realignment of the courts.

Some say that the Hruska Commission is outdated and the time has long since passed when its findings are of any merit. I do not know that to be the case, although there are some who feel that is the case. Arthur Hellman, who testified at our hearing, who is a professor and served as deputy executive director of the Hruska Commission 23 years ago, wrote in 1995:

Although the Hruska Commission recommended in 1973 that the ninth circuit be divided, that recommendation has been made obsolete by intervening events.

This is not some disinterested professor who was asked to look at it; this was the executive director of the commission.

A former Congressman, a member of the ninth circuit, Judge Wiggins, who was a member of the Hruska Commission and a former Member of the House of Representatives on the Judiciary Committee, one of the people who was responsible for the Hruska Commission going forward, has expressed in a recent letter his opposition to a circuit division and supported the idea of an up-to-date new study. That is not unreasonable.

Our lurching off into this is not the right way to go. Senator, now Governor, Pete Wilson conveyed similar sentiments in a recent letter to Senator HATCH. He said, among other things:

I would urge that a study be commissioned to carefully examine the concerns raised about the ninth circuit and determine whether those concerns are legitimate and whether a change in the circuit's boundaries is the best method of addressing it.

That is from Pete Wilson, a veteran legislator and certainly now a veteran administrator.

I ask unanimous consent, Mr. President, to have the letter from Governor Pete Wilson printed in the RECORD.

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

GOVERNOR PETE WILSON,
December 6, 1995.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR ORRIN: I have been following with interest the current debate over whether to split the Ninth Circuit, and wish to register my strong opposition to any split before an objective study is concluded as to whether a split will properly address the concerns that have been raised concerning the size of the circuit.

As you know, I have been on record in opposition to previous bills to split the circuit on the grounds that they were a form of gerrymandering which sought to cordon off some judges and keep others.

Admittedly, the Ninth Circuit handles more cases than any other circuit. However, the median time for it to decide appeals (14.3 months as of December 1994) is only slightly higher than that for the Sixth, Seventh, and D.C. Circuits and less than the Eleventh Circuit (14.8 months), and in fairness, the destruction of the San Francisco courthouse in the Loma Prieta earthquake is partly responsible for the backlog.

Splitting the circuit, without adding more judges, will not necessarily expedite the processing of the Ninth Circuit's cases and may generate a number of inconsistent rulings along the West Coast in areas such as admiralty, environmental law, and commercial law, since the West Coast would be split, under the pending proposal, into two circuits (i.e., California in one, and Washington and Oregon in the other). Indeed, splitting the Ninth Circuit could add an additional burden on the Supreme Court, which ultimately must resolve conflicts between circuits. I recognize that some concerns have been

raised over intra-circuit conflicts, but there is a mechanism for resolving them—the en banc hearing. See Fed.R.App.Pro. 35.

Ultimately, the real issue raised in the debate over splitting the Ninth Circuit appears to be one of judicial gerrymandering, which seeks to cordon off some judges in one circuit and keep others in another. If this is the issue, I submit that the proper means to address this is through the appointment of new judges who do not inspire judicial gerrymandering because they share our judicial philosophy that judges should not make policy judgments but interpret the law, based on the purpose of the statute as expressed in its language, and who respect the role of the states in our federal system.

An objective study can focus on the concerns raised about the Ninth Circuit and determine whether a split is the answer. For instance, reform of our habeas corpus procedures and reforms which curb frivolous inmate litigation may do more to address a growing caseload than splitting the circuit.

In any event, I would urge that a study be commissioned to carefully examine the concerns raised about the Ninth Circuit and determine whether the concerns are legitimate and whether a change in the circuit's boundaries is the best method of addressing them. I would be pleased to contribute one or more representatives to assist with such a study.

Sincerely,

PETE WILSON.

Mr. REID. Mr. President, I have indicated that Arthur Hellman, former deputy executive director of the Hruska Commission, is opposed to the split. I also ask unanimous consent to have printed in the RECORD a letter written to Senator FEINSTEIN, dated December 5, 1995, from Prof. Arthur Hellman, at the University of Pittsburgh School of Law, in opposition.

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

UNIVERSITY OF PITTSBURGH
SCHOOL OF LAW,
Pittsburgh, PA, December 5, 1995.

Re S. 956.

Hon. DIANE FEINSTEIN,
U.S. Senator, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: You have asked whether dividing the Ninth Circuit today would interfere with Congress's ability to pursue more comprehensive appellate reform in the future. Plainly, it would.

The Ninth Circuit's problems are problems that are shared, in varying degrees and in differing manifestations, by all of the circuits. As the American Bar Association's Standing Committee on Federal Judicial Improvements emphasized in a 1989 report, "the problems of the federal courts of appeals . . . are problems of an entire system, which cannot be solved by examining each component of the system in isolation."

In 1990, the Federal Courts Study Committee, which included among its members Senators Heflin and Grassley, concluded that the Federal appellate courts were already in a "crisis of volume." It anticipated that "within as few as five years the nation could have to decide whether or not to abandon the present circuit structure in favor of an alternative structure that might better organize the more numerous appellate judges needed to grapple with a swollen caseload." The Committee's report presented several "structural alternatives," but it did not endorse any of them; instead, it called for "further inquiry and discussion."

Dividing the Ninth Circuit today would significantly interfere with Congress's abil-

ity to pursue the reconsideration that the Study Committee urged. This is so for three reasons.

First, if a Twelfth Circuit is established—whatever its configuration—the effect will be to create new structural arrangements and institutionalize new modes of doing business. These will soon take on a life of their own, reinforcing the status quo and making comprehensive reform more difficult.

Second, dividing the Ninth Circuit would set Congress on a course that prefers circuit splitting to other, perhaps more fruitful, measures for meeting the "crisis" of appellate overload. Indeed, even today, the division of the Fifth Circuit is being cited as a precedent for dividing the Ninth, notwithstanding the many and significant differences between the two situations.

Finally, to divide the Ninth Circuit now would be to lose the full benefit of a vital experiment in judicial administration. As noted above, the Federal Courts Study Committee presented several models of appellate reorganization, but it did not endorse any of them. That is quite understandable. None of the models is very attractive; all have serious drawbacks.

Over the last decade, the Ninth Circuit has undertaken a remarkable range of innovations in an effort to determine whether a large circuit can be made to work effectively. Nothing could be more useful to Congress as it considers systemic reform than to have the concrete empirical information that the Ninth Circuit's experimentation will provide.

Of course, it would be wrong to conduct an experiment if the "subjects"—here, the judges, lawyers, and citizens of the Ninth Circuit—were being hurt. But the evidence is overwhelming that they are not. For example, bar associations in five Ninth Circuit states have spoken out on S. 956. All have expressed opposition to the split. Other evidence is presented in Chief Judge Wallace's statement at the September hearing.

More than five years have passed since the Federal Courts Study Committee issued its strong warning. Rather than divide one circuit ad hoc, Congress should proceed systematically by creating a new, focused commission to examine the problems of the "entire [appellate] system" and make recommendations that will serve the country for the long run.

Sincerely,

ARTHUR D. HELLMAN,
Professor of Law.

Mr. REID. Mr. President, also, I think we should look at how the press feels about this split throughout the Western part of the United States.

I think it is fair to say that most all the press is opposed to the split. I say this, not based upon the newspapers being all of a liberal persuasion, because I think that, for example, if you take the Arizona Republic, I think it has been accused of a lot of things, but certainly it does not have a liberal bias. They wrote in an editorial on November 10, 1995, among other things:

The bill can best be described as a case of unwarranted political meddling in the Federal judiciary . . . The bill is a wolf in sheep's clothing. What it's really about is a perceived liberal bias that comes from domination of the district by—guess who?—California. The agenda of the bill's backers is less geared toward the efficient administration of justice than it is to isolate California.

It goes on to state what a bad idea it is to split this.

Mr. KYL. Would my friend yield for one quick question or comment on my

behalf in relation to what the Senator just said?

Mr. REID. Mr. President, prior to doing that, I ask for the regular order. Mr. President, I ask for the regular order.

The PRESIDING OFFICER (Mr. CRAIG). The regular order is amendment 3533 to amendment 3482, which is the first-degree amendment to 3466.

Mr. REID. Parliamentary inquiry. The regular order having been called, it is my understanding that the ability to appeal the rule of the Chair on germaneness is now not possible; relevancy is not possible.

The PRESIDING OFFICER. Intervening business having taken place, the right of appeal has been lost.

Mr. REID. Thank you, Mr. President.

I would be happy to yield to my friend from Arizona, without losing my right to the floor, for purposes of a question.

Mr. KYL. I appreciate my colleague yielding. I want to make it clear, since you were quoting from my hometown newspaper editorializing against the bill, it was not the bill that is before us today.

Mr. REID. I appreciate that, I say to my friend from Arizona. I did not know that.

Mr. KYL. That was the original bill as introduced that they were writing about, not the amendment of the Senator from Montana.

Mr. REID. I thank my friend very much.

Mr. President, we have editorials, as corrected, from the Arizona Republic, from the San Francisco Chronicle, the Seattle Times, the Los Angeles Times—and not a western newspaper, of course—the New York Times.

I yield the floor, Mr. President.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I would like to comment on some of the things that have been said so far. I say to the Senator from California, Senator FEINSTEIN, and the Senator from Nevada, who has just been speaking about their presentation, this is a rather complex issue. I certainly would begin by noting this is a matter on which reasonable people can differ.

In this case I do differ, but certainly the arguments they have made are legitimate points to debate. I would like to get on with that prospect right now. The Senator from Montana has revised the original version of the bill as introduced, as I just pointed out to the Senator from Nevada, and has presented what I think now represents a division of the ninth circuit of appeals that would make a lot more sense than proposals that had earlier been made.

As the Senator from Montana knows, there have been numerous hearings and numerous substitutions as to how to divide the circuit, hearings being conducted almost every 5 years, 1984, 1990, 1995, not to mention the hearing of the Hruska Commission back in 1993. I am

sure the Senator from California winced a little bit when the Senator from Nevada said that Hruska recommended dividing the State of California into two parts.

In any event, to the first point. The Senator from Nevada said that this would be a rather odd looking circuit, stretching from the tip of Alaska to the southern boundary of Arizona. I would note that that is exactly what the north and south boundaries of the ninth circuit today are. It stretches from the northern tip of Alaska to the southern boundary of Arizona.

This new circuit would be precisely the same. What it would not have is the extreme western part of the trust territories, the States of California and Hawaii. The States of Arizona and Alaska, those would be made part of the new twelfth circuit. The remainder of the ninth would remain the same, but be part of the new twelfth circuit.

So it does not seem to me that represents some strange division, but rather a commonsense way of dividing the circuit in order to operate more efficiently. What we are talking about is a caseload which would be split roughly 60 to 40, with the States of California, Hawaii, and the Trust Territories.

Mr. President, to show you how much the State of California dominates the ninth circuit today, it dominates it by virtue of the fact that it has by far and away the largest amount of the caseload and the largest population. The ninth circuit itself represents by far and away the largest circuit in the country. It spans nine States and two territories, covering 1.4 million square miles, serving the population of 45 million people. The next circuit in size by way of illustration is the sixth circuit, serving fewer than 29 million people. Every other circuit serves fewer than 24 million.

Mr. President, the Census Bureau estimates by the year 2010 the population of the ninth circuit will be more than 63 million, a 40-percent increase. That is in just 15 years. Everyone who studies the issue understands that sooner or later that the size of the ninth circuit will have to be dealt with.

As long ago as 1993 the Hruska Commission was suggesting a division of the circuit. In the ninth circuit there are 28 judgeships there today, and 13 active senior judges. The court has asked for 10 additional judgeships, which would make 38—excuse me—I think there are about 10 senior circuit judges right now. So in addition to the 28 existing, and 13 senior judges, the court has asked for an additional 10, which would put it close to the 50 mark in terms of the number of judges that would be deciding cases when those additional 10 are granted.

As a result of the large number of judges in the circuit, there are divisions within the circuit unlike other circuits. It is impossible for all of the judges to know what each of the judges is deciding. It is also impossible for the court to sit en banc, as the Senator from Nevada noted.

I will state from the beginning, that I think that the ninth circuit has done a good job and the presiding judges of the ninth circuit have done a good job under very difficult circumstances in managing the caseload of the circuit. They have tried to institute efficiencies which have enabled it to do its job notwithstanding the huge amount of area and population under its jurisdiction and the large number of cases coming to it as a result. So my discussion of the court's handling of its caseload is in no way meant to be a criticism, Mr. President. If anything I would take my hat off to the presiding judges, who have done a good job under the circumstances. But facts are facts.

This is a circuit that has never been able to have an en banc hearing because the number of judges are simply too great. You do not have all 26 judges or 28 judges sitting down at the same time to hear a decision or an argument based on a decision of the 3-judge panel, which is what the courts ordinarily sit on.

As a result of the ninth circuit, you end up with 11-judge en banc hearings, unique among all of the other circuits. What that means is essentially by a luck of the draw, your decision is reviewed not by the entire circuit but by 11 judges in the circuit. I will come back to that point in just a moment.

One of the questions about the splitting of the circuit is whether it would make much of a difference. I think that depends on what you define the problem as. A part of the problem is the large caseload.

The Senator from Nevada makes the point that until we add more judges, we will not know whether that problem has been resolved. But that is not the only problem, Mr. President. As a matter of fact, size itself is just part of the problem. As I noted, adding more judges might help to resolve more cases, but it does not do anything about the problems that are cropping up in this large circuit as a result of judges not being able to keep track of what each other are doing and what the various 3-judge panels are doing. This has created opportunities for intracircuit conflicts. It has also meant there are more per curiam decisions. Judges usually write opinions. And an average is more than a fourth of the cases result in opinions being written. In the ninth circuit, it is down to about 19 percent of the cases that actually have opinions written.

So with that low number of cases in which opinions are written, it is difficult for the judges to keep up with the decisions that have been made by the other three-judge panels, and it is not always the case they can clearly follow or clearly determine the circuit's precedent has been followed when cases are simply decided without the benefit of an opinion.

This is also rather maddening for the litigants and for the lawyers. It is, I am sure, understandable that if litigants spend thousands of dollars to

take a case to the circuit and say, "You win in the lower court and take it on appeal to the ninth circuit," and they reverse without opinion—all they say is, "The case is reversed." You do not know why they reversed the case. It is more than maddening because you ordinarily have to make decisions based on what the law is. If the court has not told you why it reversed, then you are not going to know what you have to do in the conduct of your business or other affairs to comport with what the law theoretically is. It is difficult when you do not have an opinion telling you what you should be doing. That is one of the problems that lawyers have told me has caused them to be unclear about advice that they give their clients with respect to the question of whether or not to appeal in a case.

This is very difficult for clients because you may lose a case at the lower level and wonder whether you should expend the time, energy and money to take the case to the circuit court. If it is unclear what the law is going to be, it is kind of a crap shoot, to use the phrase that a lawyer in Arizona used with me. He said, "With so many judges, it is a crap shoot as to what kind of a panel you get." In a circuit that has six judges, as mentioned earlier, you have a pretty good idea of who will be sitting on your panel or what its likely composition will be. If you have a number of possibilities, as exists in this particular circuit, you have no idea what the composition of the court is going to be. There are 3,276 possible combinations of panels on this court—3,276. It is impossible for a litigant to have any idea who the judges will be and, therefore, what to expect. Given the broad range of ideology within this particular circuit, therefore, a lawyer hardly knows how to advise his clients.

Assume you have a decision from a three-judge panel. The question is, do you try to take it en banc? But you have no idea who the 11 en banc will be and whether it will be a fair reflection of the circuit. Since there are not as many written decisions as there are in other circuits, you also find it more difficult to follow the precedence of the court. It is more difficult for lawyers to advise their clients on whether to take an appeal or not in the ninth circuit than it is in most of the other circuits.

Much has been made, Mr. President, of the length of time that it takes for a case to get to hearing, and the ninth circuit is the worst or second worst, depending on how you count in this regard. There has been a statistic cited, and I think cited by both the Senator from Nevada and the Senator from California, that suggests, actually this court is fairly quick. That is the time from the time the judges get the case to the time their decision is published. That is the only area of the nine areas in which this circuit does particularly well.

There is a reason for that: They do not write as many opinions. It is fairly

easy once you decide the case to notify the litigants of the decision if you do not have to write an opinion expressing your view. I suspect that is the reason why that particular statistic is one in which the ninth circuit looks good. Otherwise, the ninth circuit is the slowest from filing of the last brief to the hearing or submission of a case. It takes about 4 months longer to complete an appeal compared to the national median time. It is over 14.3 months, as I understand.

In the other indicia of speed, the court does not fare well compared to the other circuits. That is something that more judges would do something about. You have to wonder how many judges in number you get to for the court still to function adequately. At the hearing we held a few months ago on the subject, judges from the nine-county circuit were asked that question, and they acknowledged there was a point at which, obviously, the court would have too many judges. It would be too big and have to be split. There was disagreement, as you might imagine, on exactly what the appropriate number is.

I mentioned the fact that there is inconsistency between the panels, which results from the fact that there are so many different possible combinations in the ninth circuit. That is the thing that worries the attorneys for the litigants so much.

I also think it is instructive, Mr. President, to determine how the Supreme Court has dealt with the opinions from the lower circuits, from the circuit courts in the lower courts. It may be some evidence of a court that is overburdened that it is reversed frequently, and in this regard it is interesting that the ninth circuit has one of highest reversible rates of any of the circuits. For example, last year in the cases that the U.S. Supreme Court decided in the term ending June 29, 1995, according to the Court's records, 82 percent of the ninth circuit cases heard by the Court were reversed—82 percent. That is not a very good standard of success, I suggest, Mr. President.

Now, lest people jump to the conclusion that this means that the ninth circuit cannot get it right 82 percent of the time, let me hasten to note that this is of the cases that the Court takes. By definition, the cases that the U.S. Supreme Court takes on review are the more difficult, the more controversial cases. So we should not believe that being wrong 82 percent of the time represents the full caseload of the court. That is not the case. We are talking about the number of cases that the court has been reversed in by the U.S. Supreme Court, of those cases taken by the Supreme Court. Again, by definition, those are going to be the more difficult cases. Still, being reversed 82 percent of the time is not a particularly good record.

I suggest that an article recently appearing in the Wall Street Journal may indicate a reason why this is so. It may

be that some members of some of the courts do not have the high regard for precedent that we would like to see in our circuit court judges. It may also be, as I noted, that this court simply is particularly burdened.

Just a few days ago, last Friday, March 15, the Wall Street Journal carried an article I found fascinating but also very troubling. The headline of the story is, "Bench Pressure: Federal Appeals Judge Embraces Liberalism in Conservative Times," and a sub-heading, "Ninth Circuit's Reinhardt Discovers New Rights That Appeal to the Left."

The story, written by Paul Barrett of the Wall Street Journal, discusses a most recent ruling in which Judge Reinhardt was the author of a lengthy opinion, according to the Wall Street Journal, announcing that the terminally ill now have a right to die with the help of a doctor. According to the Wall Street Journal, "The mammoth 109-page ruling struck down a Washington State ban on assisted suicide—the first such action by a Federal appeals court."

They quote the author of the opinion, Judge Stephen Reinhardt, as saying, "I think this may be my best ever." The article goes on to discuss the record and career of this very bright, very intellectual and, according to the article, very liberal lawyer-judge, who the article says is widely respected by friend and foe as a crafty advocate for his left-leaning views.

Mr. President, I do not know Judge Reinhardt or the degree to which his views may inform his decisions, but one indication that the ninth circuit might be overruled as often as it is could be reflected in the reported comments of Judge Reinhardt about the current U.S. Supreme Court, and suggests that there is perhaps not enough respect for the precedent coming from the U.S. Supreme Court. Remember, Mr. President, that the judges on the circuit courts are supposed to be not making new law but simply applying the precedents of the U.S. Supreme Court.

According to this article, after discussing the fact that Judge Reinhardt has been somewhat criticized by some of his opinions, he says it has happened many times that he has been reversed by the Supreme Court, and then is quoted as saying, "There's nothing I can do if that court is run by reactionaries." "There's nothing I can do if that court"—meaning the U.S. Supreme Court—"is run by reactionaries."

Mr. President, I hope that Judge Reinhardt was kidding if he is suggesting that the U.S. Supreme Court is run by a bunch of reactionaries because those who have defended the current composition of the ninth circuit have correctly said that the circuit courts should not reflect the attitude of just their own area. That is not really how circuit judges should be selected because, after all, they are not supposed

to declare the law just for their area; they are supposed to be declaring the law of the United States as enunciated by the precedence of the U.S. Supreme Court, the Constitution of the United States, and the laws of the United States. Those are not defined by any kind of regionalism. So they correctly note that the judges are supposed to be declaring the law, informed by those three sources.

Yet, here is a judge who at least is quoted in the Wall Street Journal last Friday as apparently referring to the current members of the U.S. Supreme Court as "a bunch of reactionaries." As I said, I hope he was kidding. It is probably not a very judicious thing for him to have said, and I hope that, in retrospect, he will reflect upon that and perhaps pronounce himself chagrined that that perhaps off-the-cuff comment found its way into print. I hope that will be his reaction.

But, as I said, it might illustrate why this circuit has been reversed as many times as it has been. There are stories, which I cannot confirm, that many of the opinions from this particular judge in this particular court are in some sense red-flagged for their review. The high percentage of cases reversed from the ninth circuit may suggest that that is true, and we may have a suggestion of why that is so.

Now, that does not suggest that the answer to this is the split in the circuit. I do not make that claim here. But I do find it interesting that the opinion written by Judge Reinhardt in this particular matter, this right-to-die case, was written for an en banc panel which was hardly representative of the court as a whole—which illustrates the problem with an en banc hearing of less than the entire membership of the court—unique to the Ninth Circuit Court of Appeals and only the case because the court is too big to have all of the judges sitting by themselves.

The calculations have been done here, and what we find is that in this particular decision, the limited en banc panel was comprised of six Democratic appointees and five Republican appointees. The ninth circuit has 15 Republican appointees and 9 Democrat appointees. So the limited en banc panel in the right-to-die case had 5 of the 15 Republican appointees and 6 of the 9 Democrat appointees.

Now, Mr. President, I am not suggesting that being appointed by a Democrat or a Republican President will dictate how you decide a case either. But I do suggest that of all of the indicators of how a case might be decided—the State from which a judge comes, the age of the judge, the sex of the judge, the race of the judge, the color of hair of the judge, or whatever criteria you may want to look at—the party of the President appointing the judge probably has more to do with the decisions of that judge, day in and day out, than any other single factor.

Therefore, it is not irrelevant to look, in this particular case, at the po-

litical composition of the panel. Again, I am not suggesting that that is what caused the decision in this case. But it is a most controversial decision, the first of its kind ever, and, I suspect, the kind of case the Supreme Court will want to take a look at.

My point in all of this, Mr. President, is that a court that gets so big that you cannot even have an en banc hearing of all of the judges, which can result in a skewed composition of en banc panels, can result in skewed decisions, can result in overruling in many, many cases. That is what we have found with respect to the Ninth Circuit Court of Appeals. So it is not just the fact that we have not given them the 10 additional judges they want that creates a problem with a court of this size.

Let me dispel some of the other notions that have crept into this debate so far. One is that this is going to be costly. I find it interesting that a Congress that frequently spends money like it is going out of style is suddenly concerned about cost. But let us put that in perspective. Justice, of course, should be one of the highest priorities of this Congress. I, for one, Mr. President, do not want to skimp when it comes to providing for justice. I have voted against a lot of appropriations bills since I have been in the Congress, but I cannot recall a bill that I voted against that funded the judiciary. I believe strongly in enforcing the laws of our country and ensuring the judiciary has what it needs.

The cost of this particular bill, according to the General Accounting Office, for the construction of the new offices that would be necessary, is \$18 million—\$18.1 million to be precise. That is just 0.68 percent, which is less than 1 percent, slightly over half of 1 percent of the annual budget of the judiciary last year, about \$2.5 billion. Next year, we are looking at \$3.1 billion. So in the year it will occur, it will be much less than 1 percent of the budget. There would be a small start-up cost of about \$3 million, but that would be a one-time-only cost.

It has been noted that the chambers in San Francisco and Pasadena have recently been renovated and that they could accommodate more judges. The fact is that judges of the ninth circuit today sit in, have chambers in, and argue cases throughout the circuit—in Phoenix, in San Francisco, in Pasadena, in Portland, in Seattle. That is the way it is done today. I think it would be nice if the judges moved to the site of the headquarters of the circuit and sat there and had their chambers there, but they fly around the country today. That is why you only have 5 chambers in San Francisco, even though it is the headquarters of the circuit with 28 sitting judges, with 10 more requested. In addition, there are eight offices in Pasadena, the other place of primary headquarters of the circuit.

So you have a situation that could accommodate additional judges as they

are appointed, and, certainly, at least half of the 10 judges that have been requested would have to be assigned to California. Apparently the headquarters there could accommodate those judges.

It is also noted that the bar associations of most of the States, and the Federal Bar Association itself, oppose the split of the circuit. That is not surprising, although I note that in my State of Arizona, there is very definitely a split. The so-called organized bar, the political organization, has written a letter in opposition. Of the lawyers and judges I have talked to, I find a real split, depending upon their point of view. I do not want to suggest that we should, however, simply follow the advice of the lawyers and the States on this. While I have not taken a poll of all of the lawyers in Arizona—for my sake anyway—I do not think that would be the determining factor, in my view. I understand the point others have made that bar associations may oppose it. I do not find that to be a persuasive reason to not support the amendment of the Senator from Montana.

Another question is that Phoenix is kind of out of the way. Those of us in Phoenix do not really think that. In any event, it is about \$38 or \$39 to fly from Las Vegas, NV, to Phoenix, the home of my colleague from Nevada. It is pretty cheap on at least three or four of the airlines to get to Phoenix. It does not take very long at all. The point here, I think, is missed, and that is that cases are argued throughout the circuit. That would remain the case whether the circuit is split or not.

It is also the case that the law would remain the same. I think the Senator from Nevada made a good point in noting that his own State did not have a law school and that many of the lawyers there are educated in California. It is important that the law remain the same. It should be noted here that when the fifth circuit was divided into the fifth and eleventh circuits, they made the decision, correctly, to keep the law of the previous circuit. That has been done. Our hearing indicated, and people who testified at our hearing indicated, that it worked very well. Of course, that is the way it would be done here, as well. We would not have to dictate that result. The judges on the circuit themselves would correctly make the decision as a result, even though the court would be split into two parts. The law that had been built up from the ninth circuit would, of course, continue to be the law governing the new twelfth circuit as well. That should not be a factor.

Mr. President, there are several other things I think we can say about this. But let me simply conclude with this point. This is not judicial gerrymandering, because the amendment of the Senator from Montana would result in a division that just about evenly divides the judges on the court, and they could go wherever they wanted to

between the ninth circuit and the twelfth circuit. If you go by their State of origin, presumably half would go to California and the other half would remain or would go to the twelfth circuit in the States from which they come.

So you would have a division geographically that is almost identical to the division that you had today. And, by the way, for those who are interested, the division politically would be almost identical as well. So both circuits would end up with just as many Republicans and Democrats and percentage as the court today has. And, in any event, as I said, this is not an effort to put all of the conservatives in one court and all of the liberals in another. I think that is illustrated by the fact that perhaps at least from public accounts one of the most conservative leaders on the ninth circuit and one of the most liberal leaders on the ninth circuit would both remain in California under the divisions imposed here.

So there is not an effort at judicial gerrymandering. It is an effort to do finally what countless studies have suggested; that is, sooner or later this circuit is going to have to be divided—going back well over 20 years. I suppose we could have another study, and I am sure it would be informative. But I question whether the Senate and the House would act on the study—at least would any time soon. And, therefore, at least this legislation is an attempt to get the ball rolling and make something happen so we do not continue to have the circumstance we have today.

A study, by the way, is also I think prone to the same kind of thing that has occurred in the past where you have people doing the studying themselves. I would suggest that, if there is going to be a study, it should not be done by the very people who are involved; that is to say, the judges on the ninth circuit. There is a certain incestuousness that develops over time and a desire to do it the way we have been doing it, and liking the way it is done. It seems to me, if there is going to be a fresh look at this, it ought to be done by people who can with some expertise view the situation from some distance as well as relying upon the expertise of those who are on the inside.

I think also that it should be composed of people who are not just the judges by also litigants, members of the bar who practice before the circuit, and perhaps people who have other expertise to bring to bear.

But in the end, as the Constitution requires, it is the U.S. Congress that has the responsibility here to decide on the composition of the so-called lower courts. So it is our responsibility to make this decision, Mr. President.

I simply want to conclude by complimenting the Senator from Washington, Senator GORTON, and also the Senator from Montana, Senator BURNS, for bringing this matter to the attention of the Congress, and for getting the bill through the Judiciary Committee. I urge our colleagues to review the re-

port of the committee. It is a good report, a good description of the issue I think, and they can all benefit by reading that report and then determine whether additional study is necessary, or whether it is time to take action now.

I hope that in the comments that I have made I have made two or three things clear. No. 1, that I am not criticizing the court or its administration. As I said about four times, it has done admirably well under the circumstances. The circumstances are what bring the difficulty. I am suggesting that adding more judges is not just the answer to this problem. So we should not think that simply funding more judges will solve the problem here.

The problem here is the point at which any circuit becomes too large to function in the way intended. Virtually everybody who has talked about this—opponents and proponents alike—agree that there is a point beyond which the court is too large. Many have determined that that point has now been reached. Others think it is around the corner a bit. But in any event, we all understand that that is a problem which this Congress has to address. So whether it is done by this legislation, or whether it is done by a committee, clearly one of the probable recommendations has to be a division.

And the third and final point is that of all of the ways that have been considered to divide the court—dividing California in the middle, cutting off Arizona and sending it to the tenth circuit, allowing Nevada, California, Hawaii, and the trust territories, and perhaps others to constitute another circuit—a lot of different iterations have been proposed. The only one that has made sense to the people with whom I have discussed the issue in Arizona—judges, lawyers, and litigants—is the proposal that the Senator from Montana has presented to us today. And it is, therefore, that proposal and only that proposal which I am willing to support, and urge my colleagues, therefore, to consider that proposal as really the only viable alternative to the situation that we have today.

AMENDMENT NO. 3533

Mr. BOND. Mr. President I would like to take a moment to outline what the increases for EPA are in the Bond-Mikulski amendment which we will be voting on tomorrow. The amendment is a complete substitute for the pending Lautenberg amendment.

First, the amendment takes the \$162 million of EPA addbacks included in title IV of the bill, removes their contingency status, and finds offsets for them. These four provisions are:

[In millions of dollars]

Safe drinking water State revolving fund	50
Clean Water State revolving fund	50
EPA buildings and facilities	50
Program & Management	12

Second, the amendment then provides another \$325 million for EPA in the following manner, also fully offset:

[In millions of dollars]

Safe Drinking water State revolving fund	125
Clean water State revolving fund	75
Superfund	50
Operating programs	75

Thus the total new noncontingent funding for EPA is \$487 million—all now fully offset. The amendment attempts to continue our ongoing efforts to force the EPA to set priorities and to spend their resources in areas of greatest need. In particular—the unfunded mandates that the State revolving funds are designed to address.

In the Bond-Mikulski amendment, of the additional \$487 million, the two State revolving funds receive \$300 million; Superfund is given \$50 million; program management \$87 million, and building and facilities the remaining \$50 million.

I believe this is a fair compromise and should be supported.

Mr. HATFIELD. Mr. President, we are in the process of trying to clear some other amendments which we have—11 amendments that we had clearance at one time, or agreement—and other intervening actions have now made it impossible to adopt those amendments at this moment.

Mr. President, I also indicate that we were here 3 hours today waiting for amendments, as we were most of Friday. I am very grateful to the Senators who have just completed the colloquy on this ninth circuit subject for at least bringing up one of our amendments. Very frankly, I have more important business pending in my office than I have waiting for Senators to appear on the floor and offer their amendments.

I have to also say, again in the context as chairman of the Appropriations Committee, that we are expected to create miracles around here by completing this omnibus package, going to conference with the House of Representatives, getting that resolved, and getting the conference reports adopted before midnight Friday this week. I am not a miracle person. I cannot commit miracles. Others in history have. But I am not such a person.

Also I note that the Senator from Arizona, the Senator from Idaho, and myself as western Senators—and the Senator from Nevada—four western Senators find it increasingly difficult due to the plane schedules to get out to the West and back. And we all would like a 3-day workweek in order to do that. But we are here to do business. And I would be highly tempted to do a bedcheck vote right now of how many Senators are in town to do business.

So I think it is imposing upon our time, and it is imposing upon the time of the requirements with the conference of the House. Therefore, it is an imposition on the House as well for us to then say everybody comes back to Washington and they will come running in here with their amendments on Tuesday, and they have to all be acted upon by a certain time on Tuesday. I

can see it now. They will come to Senator BYRD and myself where they do not have time to debate their amendments, or get them acted upon, and they will say, "Include my amendment in the managers' package."

I am going to look with great reservation on such requests because that is not again the procedure by which we should enact some of these very important amendments or dispose of them.

I stood here before with such pleas to my colleagues. Maybe I could get a going away present and have them all come immediately and we will complete this bill this afternoon because this is my last year to stand here and manage an appropriations bill. But having been gentle in my remarks in so urging our colleagues, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been noted. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENTS NOS. 3499, 3510, 3518, 3529, 3549, AND 3550, EN BLOC, TO AMENDMENT NO. 3466

Mr. HATFIELD. Mr. President, I have a group of amendments that have been cleared that I now send to the desk. I ask unanimous consent that they be considered en bloc, agreed to en bloc, and the motions to reconsider be laid upon the table.

I emphasize, Mr. President, that these are six amendments that have been cleared on both sides of the aisle.

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

So the amendments (Nos. 3499, 3510, 3518, 3529, 3549, and 3550) were agreed to.

The texts of amendments Nos. 3549 and 3550 are as follows:

AMENDMENT NO. 3549

On page 754, before the heading on line 5, insert:

SEC. . (a) In addition to the amounts made available in Public Law 104-61 under the heading "Research, Development, Test and Evaluation, Defense-Wide", \$50,000,000 is hereby made available to continue the activities of the semiconductor manufacturing consortium known as Sematech;

(b) Of the funds made available in Public Law 104-61 under the heading "Research, Development, Test and Evaluation, Army", \$7,000,000 are rescinded;

(c) Of the funds made available in Public Law 104-61 under the heading "Research, Development, Test and Evaluation, Navy", \$12,500,000 are rescinded;

(d) Of the funds made available in Public Law 104-61 under the heading "Research, Development, Test and Evaluation, Air Force", \$16,000,000 are rescinded;

(e) Of the funds made available in Public Law 104-61 under the heading "Research, Development, Test and Evaluation, Defense-Wide", \$14,500,000 are rescinded; and

(f) Of the funds rescinded under subsection (e) of this provision, none of the reduction shall be applied to the Ballistic Missile Defense Organization.

AMENDMENT NO. 3550

(Purpose: To provide for the transfer of funds for carrying out training and activities relating to the detection and clearance of landmines for humanitarian purposes)

Insert at the appropriate place:

SEC. . Of the funds appropriated in Title II of Public Law 104-61, under the heading "Overseas Humanitarian, Disaster, and Civic Aid", for training and activities related to the clearing of landmines for humanitarian purposes, up to \$15,000,000 may be transferred to "Operations and Maintenance, Defense Wide", to be available for the payment of travel, transportation and subsistence expenses of Department of Defense personnel incurred in carrying out humanitarian assistance activities related to the detection and clearance of landmines.

AMENDMENT NO. 3496

Mrs. MURRAY. Mr. President, I rise as a cosponsor of the amendment to change the name of the Walla Walla Veterans Medical Center in Walla Walla, WA, to the Jonathan M. Wainwright Memorial VA Center.

General Wainwright was born at Fort Walla Walla and was a member of the 1st Cavalry after graduating from West Point. He served in France during World War I and was awarded the Congressional Medal of Honor in 1945 by President Truman for his service in World War II. He spent nearly 4 years in a prisoner of war camp in the Philippines and was known as the Hero of Bataan and Corregidor. General Wainwright was a true war hero and won the praise and respect of all Americans.

Mr. President, the people of Walla Walla, WA, want this name change to honor a war veteran and local hero. In May, they are dedicating a statue in his honor and would like to dedicate the name change of the hospital at the same time. The entire Washington State congressional delegation supports this change. And all of the veterans service organizations in Washington State support the change.

I urge my colleagues to support changing the name of the Walla Walla Veterans Medical Center to the Jonathan M. Wainwright Memorial VA Medical Center, and to allow this war hero the recognition he so rightly deserves.

Mr. HATFIELD. 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. ASHCROFT. 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. ASHCROFT. Mr. President, I rise to speak in regard to the matter under consideration, the appropriations bill, that this body is considering, and I ask unanimous consent to speak for 10 minutes.

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

Mr. ASHCROFT. The situation we debate today concerning our inability as an institution to control spending is not a situation about allocating spend-

ing or the responsibility to pay for spending from one group in our society or culture to another. We are not talking about whether the rich should pay for the spending or the poor should pay for the spending. All too frequently, we find ourselves talking about the displacement of the costs which we incur from our current culture to the culture of the future, to the next generation.

We literally, in so many cases, find ourselves debating about the expenditure of the earnings of the next generation, because when we go into debt, we break our responsibility to pay for that which we consume. When we go into debt, we really ask the next generation to pick up the tab.

No family in America finds its children encumbered by the debts of their parents. That is against the rules in our society. No parent, no matter how irresponsible the parent is, can cause an enforceable obligation to fall upon the children. We just say that is inappropriate. However, when it comes to us collectively as a group of individuals, we can spend as recklessly, apparently, as we like and cause the greatest of debts to fall upon the next generation.

I find that to be unwise and counterproductive, because it means that instead of leaving them with assets, we are leaving the children with debts. That is very bad for the future of the country. I find it to be immoral to spend the money and resources of the next generation without the consent of the next generation.

We have tried over and over again as a body here in the U.S. Senate to deal with this problem of recurring debt. We had the Gramm-Rudman-Hollings Act, the Gramm-Rudman Act II, then we had the budget deals of 1990 and 1993. We have not been able to get one Senate to bind the next Senate successfully with discipline.

As a matter of fact, this past year we had a substantial debate about whether or not we should have a balanced budget amendment. The occupier of the chair and I firmly agree we need a balanced budget amendment to the Constitution to bind, not only ourselves, but future Senates to the discipline of paying for that which we consume.

Unfortunately, there are enough Members of this body who resist that, saying that we should not bind future Senates, that we should not bind future Congresses to live with the discipline of paying for that which is consumed. Equally unfortunate, as a matter of fact more unfortunately, is the willingness of those same people to bind future generations to debt.

So what we have is a Congress unwilling to bind itself to discipline but which finds itself more than willing to bind the next generation in debt. It is a kind of bondage which will restrain the next generation substantially in the way it consumes its resources and the way it allocates what spending it ought to have the right to allocate.

The next generation will end up allocating that spending to the payment of our debts.

It appears from this debate that we are not even able to successfully bind this Senate to the limits it set for itself. Every year the Senate passes a budget resolution to cap our spending. We passed a budget reconciliation act, the so-called Balanced Budget Reconciliation Act of 1995.

That act would have saved enough money by slowing the increase of spending in Government to have enabled us to reach a balanced budget by the year 2002, if the President had not vetoed it. We all know what happened. President Clinton, after alleging compellingly and consistently his desire for a balanced budget, had the opportunity, the first opportunity in a quarter century to sign one, and he vetoed it.

As introduced, the omnibus appropriations bill might have allowed us to achieve the first-year target for reducing the deficit set up by the Balanced Budget Act of 1995, but it did not achieve that by reducing the rate of Federal spending as we had intended.

Instead, this pending bill, it is my understanding, increases the rate of spending by displacing some of the overall savings which we had hoped to achieve over the next 7 years under the Balanced Budget Act. That means we will no longer be able to count on these funds which were gathered from out-years, stolen, or taken from outyears, to help balance the budget over the next 7 years.

This malady, or this pathology, this consistent way of doing business is not a stranger to the Congress, which has always been gathering to itself spending, deferring from itself savings, and displacing from itself the payment of its responsibility.

If that were not bad enough, look at what is happening now. I think it is time that we need to stand firm. It is time to prioritize programs, and it is time to make tough choices, protect at least our deficit target if not the target for slowing spending. We are somehow experiencing in this body a collapse of will. We cannot allow that to happen.

Each time we add more spending to this bill, we push ourselves further away from achieving a balanced budget that we had hoped to achieve under the Balanced Budget Act. We are throwing away the savings from slower spending which we had worked so hard to achieve and we cast votes to achieve last year.

We should not be spending more of the taxpayers' money that is included in this bill. We should be spending less. Are the spending limits really so onerous, are they so draconian, are these limits so oppressive when this bill includes a couple hundred thousand dollars for the expenses of the Commission for the Preservation of America's Heritage Abroad? Are these spending limits that we need to impose really onerous in this bill when they provide for

hundreds of thousands of dollars for the purchase of passenger cars for the International Trade Administration bureaucrats abroad at \$30,000 per vehicle designation, as though that is an exercise in fiscal restraint?

During the first session of this Congress, in the deliberations concerning the adoption of a balanced budget amendment to the Constitution, we frequently heard that there was no need for us to amend the Constitution. Why amend the Constitution when we, as reasonable individuals sent here by voters who want a balanced budget, when we can exercise the restraint, it was said, in order to balance the budget, in order to provide a stable fiscal therapy for the next generation instead of a malady for the next generation?

Let us just do the right thing. We do not have to have a balanced budget amendment to the Constitution, we were told; there is authority for the U.S. Congress to do what is right and to be able to live within our means and that we should do so immediately.

Frankly, it is not such authority that this Congress lacks. We do have the authority. The truth of the matter is that we lack the discipline. We have not had the will, we have not had the courage. I see it eroding as we amend this bill over and over to add spending, and we do it from savings from the years in which we would need to exercise restraint in order to balance the budget by the year 2002.

Money was and is the source of Government's basic power. The tale of history bears out this truth undeniably. The Magna Carta prescribed that the king could not impose taxes except through the consent of the Great Council. Charles I was executed because he tried to govern without seeking the consent of Parliament in spending public money. Let us not forget that the American Revolution itself was rooted in the relationship between taxation and representation. Very frankly, the taxes we are spending now are the taxes of the next generation, and they are not represented in this Chamber.

Congress today does not have to vote to raise more revenue in order to spend more money. Unfortunately, our legislature takes the debtor's path of spend and beg, spend and plead, spend and borrow, and borrow against the future of the young people of America. Our current system of government lets the Government spend on credit and sign the next generation's name to the dotted line. When their credit card becomes due, it is the American people who are confronted with the dilemma. They can either send more money to Washington to pay the bill or default on the debt incurred in their name.

When the American people expressed the belief that Government is out of control, as they did in the November election of 1994, they indeed were correct. For too long we have been out of control. This body has assembled to satisfy the appetites of narrow interests at the public's expense. Protracted

deficit spending empowers the central Government with the means to undermine our basic liberties. The American people are understandably fed up with the Congress that spends the yet unearned wages of the next generation.

Mr. President, deficit spending is not only a threat to our own prosperity here and now, but it undermines and threatens substantially our children's future. It is the method by which Washington's imperial elite has circumvented the public, the law, and the Constitution. Deficit spending allows beltway barons to run this country without regard for the people.

Whether it is pork projects or political payoffs, the Washington elite know how to play the game. The playing of the game must end. We must develop the will, the intensity, and the capacity to enact a balanced budget.

Mr. President, as a freshman Senator, I may have not yet mastered the rules of the Senate budget process to the same extent as many of my learned colleagues, but as a former Governor who balanced budgets on a regular basis without raising taxes, I have more experience than most in this Chamber at achieving a balanced budget.

Something is wrong with the system when an amendment which increases spending by \$3.1 billion can be brought forward for a vote while an amendment proposed by the junior Senator from Minnesota, Senator GRAMS, to put the savings that we achieve into a deficit lockbox instead of spending it on other programs, is deemed to be a violation of the Budget Act. It is time for us to have our House in order. It is time for us to have an order which allows us to be orderly in this House.

A good friend of mine says something which is undeniably true: Your system is perfectly designed to give you what you are getting. It may not be what you are wanting or intending, but the system is giving you what you are getting, and it is perfectly designed to do it or you would not be getting that result.

What have we been getting? Instead of discipline, we have been getting debt; instead of a restrained Government, we have been getting an intrusive Government. These are not outcomes that are lauded by anyone. We all know that these are outcomes which threaten not only our own existence, but they threaten the next generation's ability free people. If we do not like the outcome, if we do not like what we are getting from the system, it is time to change the system.

I think it is time for us to consider the kind of remedy which has been brought forward by the Senator from Minnesota and the Senator from Arizona, together, in the lockbox provision. If we do not like what we are getting—debt—and we need and want discipline, we should change our structure in favor of discipline, rather than a

structure which favors debt and is prejudiced toward debt, being institutionalized and solidified over and over again.

Mr. President, I thank you for allowing me the opportunity to speak. I want to say that because I believe this omnibus appropriations bill which is now before the Senate will impair our ability to reach a balanced budget in the year 2002, I intend to vote against it. I intend to vote against it because I want to vote in favor of the next generation and their capacity to allocate their own resources. I want to vote in favor of discipline and against debt. I want us to have not only the ability to put our House in order, I would like to have us enjoy the structure which would require us to keep our House in order.

I hope that other Members of this body will similarly review the evidence as I have and come to a similar conclusion; a conclusion that it is not time for us to additionally burden the next generation, but to exercise the kind of restraint and discipline which will provide for them investment and opportunity, rather than debt.

I thank the Chair.

COMMENDING JEAN SCHRAG LAUVER

Mr. CHAFEE. Mr. President, today I come to the floor in what you might call a bittersweet mood, and that is to announce to my colleagues the retirement of one of our most trusted Senate advisers, Ms. Jean Lauver, who has served on the Environment and Public Works Committee for over 21 years.

Together with Senator BAUCUS, the ranking Democrat, and the entire membership of the committee, I send a resolution to the desk to express the gratitude of the committee and of the Senate to Jean Lauver for her years of service to the U.S. Senate, and will later ask for its immediate consideration.

Mr. President, Jean was born on a farm in Sioux Falls, SD, and graduated from Goshen College in Indiana and later received a master's degree in education from George Washington University. After serving as a school teacher in Puerto Rico, Jean joined the Environment Committee staff in 1974. Jean has been with us ever since.

Anyone who knows her also knows that she is the undisputed expert in the Senate on Federal highway issues. Jean and the committee have been through scores of pieces of legislation over the past many years. There have been some great successes: The Surface Transportation Act of 1987, the so-called ISTEA bill of 1991, just to name two. There have been scores of tough battles, as well, on transportation safety issues, demonstration projects, and billboards on our highways and byways. Over the years, I have no doubt Jean has seen it all.

Yet, after all the hearings and all the bills, the meetings in room 468 Dirksen

and S-211 of the Capitol, what we will all remember most about Jean is her unflappable professionalism, her extraordinary knowledge and memory, and her dedication to doing a good job for Republicans and for Democrats alike.

Without question, Jean is one of the most extraordinary staffers that I have had the pleasure to work with. So it is with great admiration that we wish Jean and her husband, Hesston, and their son, Jason, all the best in their future endeavors. I might add that Jean and her family are off to a new challenge, and that is owning and operating a bed and breakfast in Goshen, IN. If Jean's service to the Senate is any indication, you can be sure that the Prairie Manner B&B in Goshen will be top notch. I am tempted to give a telephone number of the new B&B, but that might be considered advertisement. For anybody that is interested, I have her telephone number for the B&B they are establishing called the Prairie Manner in Goshen, IN.

I know all Senators join with me in wishing Jean good luck and thanking her for her dedicated service to the Senate and this Nation of ours. Jean, we say thank you.

I urge the adoption of the resolution, and I ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 232) to commend Jean Schrag Lauver for her long, dedicated, and exemplary service to the United States Senate Committee on Environment and Public Works.

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

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. Without objection, the resolution is agreed to.

The resolution (S. Res. 232) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 232

Whereas Jean Lauver has expertly served the Committee on Environment and Public Works over the past twenty-one years, both as a majority and minority professional staff person;

Whereas Jean Lauver has helped shape federal infrastructure policy for over two decades;

Whereas Jean Lauver has at all times discharged the duties and responsibilities of her office with unparalleled efficiency, diligence and patience;

Whereas her dedication, good humor, low key style and ability to get along with others are a model for all of us in the Senate; and

Whereas Jean Lauver's exceptional service has earned her the respect and affection of Republican and Democratic Senators and their staffs alike: Now, therefore, be it

Resolved, That the United States Senate—expresses its appreciation to Jean Schrag Lauver and commends her for twenty-one years of outstanding service to the Senate and the country.

BALANCED BUDGET DOWNPAYMENT ACT, II

The Senate continued with consideration of the bill.

Mr. HATFIELD. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The pending question is amendment No. 3533.

Mr. HATFIELD. Mr. President, I ask unanimous consent to temporarily lay aside the pending amendment in order to offer an amendment.

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

AMENDMENT NO. 3551 TO AMENDMENT NO. 3466 (Purpose: To amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes)

Mr. HATFIELD. Mr. President, I send to the desk an amendment on behalf of Senator BURNS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for Mr. BURNS, proposes an amendment numbered 3551 to amendment No. 3466.

The PRESIDING OFFICER. 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:

At the appropriate place, insert:

TITLE IX—RESTRUCTURING OF THE CIRCUITS OF THE UNITED STATES COURTS OF APPEALS

Subtitle A—Ninth Circuit Court of Appeals Reorganization

SEC. 901. SHORT TITLE.

This subtitle may be cited as the "Ninth Circuit Court of Appeals Reorganization Act of 1996".

SEC. 902. NUMBER AND COMPOSITION OF CIRCUITS.

Section 41 of title 28, United States Code, is amended—

(1) in the matter before the table, by striking out "thirteen" and inserting in lieu thereof "fourteen";

(2) in the table, by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

"Ninth California, Hawaii, Guam, Northern Mariana Islands.";

and

(3) between the last 2 items of the table, by inserting the following new item:

"Twelfth Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington.".

SEC. 903. NUMBER OF CIRCUIT JUDGES.

The table in section 44(a) of title 28, United States Code, is amended—

(1) by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

"Ninth 15";

and

(2) by inserting between the last 2 items at the end thereof the following new item:

"Twelfth 13".

SEC. 904. PLACES OF CIRCUIT COURT.

The table in section 48 of title 28, United States Code, is amended—