the Senate was considering the Treasury-Postal Service-general Government appropriations bill. I was concerned about initial reports that the Postal Service would have technical problems raising the projected funds. However, today's legislation both solves those problems and properly authorizes the program. As a supporter of the war on cancer 26 years ago and the author of the pilot program which grew into the Centers for Disease Control's breast and cervical cancer screening program, I am very pleased to see this legislation enacted.

The bottom line is that we need public awareness and research funds, and this legislation provides both. Again, I commend my friend Senator Feinstein for her energetic efforts on this front and am pleased to support this bill.

Mr. D'AMATO. Mr. President, I ask unanimous consent the bill be considered read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to reconsider be laid upon the table.

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

The bill (H.R. 1585) was passed.

Mr. D'AMATO. Mr. President, I want to thank the Senator from California for yielding. I think it is just gratitude at this time because there is no one who has worked harder than Senator Feinstein in terms of the attempts to bring forward this passage.

This will permit the Postal Service to go forward with a program that will pay for it itself and dedicate 70 percent of the net proceeds to cancer research at NIH and give the other 30 percent to the Department of Defense.

We worked together on this with the House, and I think it is a great testimony to the dedication of bringing people together for a sole purpose.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I also want to thank the Senator from New York for his help on this matter.

We have had a true bipartisan effort with Ms. Molinari and Mr. Fazio in the House and Senators D'Amato, Faircloth and Feinstein in the Senate. This bill passed the House on suspension. I believe it is an excellent bill. I think it will get the job done in a way in which we can all be proud.

The bill is slightly different than the bill that we introduced as an amendment on the fiscal year 1998 Treasury-Postal appropriations bill last week. This bill provides for up to 25 percent of the one-cent stamp to be attached, the extra amount added to be used for breast cancer research. Of the amount of funds raised, 75 percent would go to the NIH, and the remainder to DOH.

It is something that is widely supported by virtually every medical and cancer association in the United States.

Let me say one thing. Breast cancer is the No. 1 killer for women between the ages of 35 and 52 in this Nation today. It used to be 1 out of 20 women. Today it is one out of every eight women in the United States will come down with breast cancer. It is extremely serious. This is a unique public/private partnership, the first time it has been tried, a pilot, if you will. I know it has been hotly debated. I am grateful for the results. I thank the Senator from New York so very much for his work and the Senator from Washington, who is wearing his lapel, and I believe the women of America, all of us, also thank every Member of this body.

The PRESIDING OFFICER. The bill has been passed.

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

Mrs. FEINSTEIN. I certainly will.

Mr. BUMPERS. We debated this in the Appropriations Committee, as we know, for a short time. We voted on it the other day. My question is, I am not clear on the difference between the amendment the Senator is offering now and the one that was overwhelmingly passed in the Senate the other day. That was carried—a 1-cent increase in the 32-cent stamp, with the extra penny going to breast cancer research. This one, as I understand it—does this amendment take part of the 32 cents or does it also carry an increase in the 32 cents?

Mrs. FEINSTEIN. The amendment we are to be on is a Commerce, State, Justice amendment that I have sent to the desk involving the ninth circuit split. But before we start that, it is my understanding the bill has passed on the breast cancer stamp, and I would be very happy to discuss it.

Mr. BUMPERS. I did not realize the parliamentary situation. Could the Senator just take a minute to explain?

Mrs. FEINSTEIN. I will be very happy to.

One of the problems with the 1-cent stamp is the uncertainty of the post office that the administrative costs will be fully covered by the additional 1 cent. The legislation which passed the House, authored by Susan Molinari and Dick Fazio, on suspension, essentially provides that it can be up to 25 percent—that would be about 8 cents, determined by the Board of Governors—so that the full cost of administering it is covered. The Board of Governors within a short period of time will set the actual amount, whether it is 1 cent, 2 cents, 3 cents or 4 cents, and I actually feel is a much better way of doing it. I think it will end up producing more money. I think it will give the post office fewer ulcers. I think it will be carried out forthwith. This has passed the House, and with the passage here today we can get the show underway.

The board of governors must, within 1 year of the enactment of the bill, issue the stamp.

Mr. BUMPERS. The Senator mentioned 25 percent. Is that 25 percent of 32 cents or is that 25 percent of something else?

Mrs. FEINSTEIN. It is 25 percent of a first-class stamp which right now is 32 cents.

Mr. BUMPERS. So 25 percent of that goes to the Postal Service to administer this program?

Mrs. FEINSTEIN. No. No. It allows an optional first-class stamp, up to 25 percent of the cost of a first-class stamp. In other words, it could add 8 cents onto it, on an optional basis. There would still be a 32-cent stamp. Then there would be this breast cancer stamp. All right. The Board of Governors in their deliberation would make a decision of administrative cost and then out of the 8 cents or 4 cents or 6 cents or 2 cents, whatever they decide, those administrative costs would come out of that additional amount.

Mr. BUMPERS. I follow you. And the rest of it would go to the Department of Defense and the National Institute of Health?

Mrs. FEINSTEIN. That is correct.

Mr. BUMPERS. I thank the Senator. Mrs. BOXER. Will the Senator yield for a moment?

Mrs. FEINSTEIN. I would be happy to.

Mrs. BOXER. I thank the Senator for her leadership on the breast cancer stamp. I was proud to be one of the co-sponsors of the stamp. I know how hard she worked. I know it took many, many hours of work. I was sitting in the Appropriations Committee when the committee chose to await action on the floor. I know that a couple of the senior members of the committee were not that enthusiastic. But I do feel that what the Senator says is right. This bill, this freestanding bill that we have now passed, takes the best of both worlds. I am very excited about it. I congratulate my friend. I can't wait to go to the post office and buy that stamp. I think all the American people just think about buying a few of those stamps during the year, we will be able to put so much more into research. It is just a great concept. I thank my colleague for her leadership. Mrs. FEINSTEIN. I thank the Senator from California for her comments. I thank the Senator for her help, and I think all of us can be very proud if we just await Presidential signature. It is a fine thing.


The Senate continued with the consideration of the bill.

AMENDMENT NO. 986

The PRESIDING OFFICER. The Senate will now proceed to consider the amendment of the Senator from California, which is to be considered under a pending time agreement.

Mrs. FEINSTEIN. I thank the Chair. Now, if we may turn to something which is of very deep concern. The
amendment that I have sent to the desk is on behalf of the ranking member of the Judiciary Committee, Senator LEAHY; the Senator from Washington, Mrs. MURRAY; my colleague from California, Senator BOXER; and the two Senators from Nevada, Senators REID and BRYAN. The amendment is an amendment to strike and substitute language. The section we would strike from the bill is section 305, which splits the Ninth Circuit Court of Appeals on an appropriations bill.

Mr. GREGG. Will the Senator from California yield for a question?

Mrs. FEINSTEIN. Yes, I will.

Mr. GREGG. I am sorry to break in. I was wondering if the Senator would agree to reducing the time of this amendment down to 3 hours equally divided.

Mrs. FEINSTEIN. I would be happy to.

Mr. GREGG. I ask unanimous consent that, under the prior order on this amendment, the time be reduced to 3 hours.

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

Mr. GREGG. I thank the Senator from California.

Mrs. FEINSTEIN. Mr. President, this bill, with no hearing, no due diligence, no consultation with the Ninth Circuit—any of its judges, attorneys, bar associations within the circuit—splits the circuit, and I would like to show you how it splits the circuit. It creates a twelfth circuit which would comprise Washington, Arizona, Alaska, Oregon, Hawaii, Idaho, and Montana. If you look at the map—separate and distinct, alone—separated from the rest, would be the State of Arizona. The proposal would leave in the Ninth Circuit only two States—the States of California and Nevada—along with the territories of Guam and the Marianas.

Now, what is wrong with that? First of all, the way in which it is done, which I will address in detail, but second, it creates two unequal circuits. The Ninth Circuit and Nevada would have close to 35 million people and the twelfth circuit would have 16 million people. But look at the proposed distribution of the judges. It would distribute 15 judges to the Ninth Circuit and 13 judges to the remainder—an unequal, unfair distribution of judges.

Here is what the effect would be. In the Ninth Circuit, you would have 363 cases a judge. In the new twelfth circuit, each judge would have just 239 cases. So the judges of the Ninth Circuit would immediately have caseloads 52 percent higher than the judges of the twelfth circuit.

Mr. President, the real point is that there is already a resolution to this issue. It was passed by the Senate last session, and it has already passed the House. The resolution is legislation that calls for a study of all of the circuits, with special emphasis on the Ninth Circuit.

The substitute amendment that I am offering today to form a study commission passed the House of Representatives unanimously in June. The bill is identical to the same appropriations bill. The study commission represents, I believe, the only principled approach to dealing with an issue as important and far-reaching as the structure of the U.S. courts of appeals.

If I may, Mr. President, there has never been a division of a circuit court without careful study and without the support of the judges and the lawyers within the circuit who represent the public they serve. There has never been a division of any circuit in this manner—arbitrary, political, and gerrymandered. As a member of the Senate Judiciary Committee, I am deeply concerned that the legislation to split the Ninth Circuit has been included in this appropriations bill without any study, no due diligence as to its impact. Section 305 of the bill contains language for this split. It is a misuse, in my view, of the appropriations process.

Yesterday Representative HENRY HYDE, the chairman of the House Judiciary Committee, wrote a strongly worded letter, which was circulated broadly. I would like to quote from it.

I understand that this week the Senate is expected to consider S. 1022, the Commerce-Justice-State-Judiciary appropriations bill. Included in the bill is a major piece of substantive legislation, the "Ninth Circuit Court of Appeals Reorganization Act of 1997." This provision of the bill (section 305) would amend Title 28 of the United States Code by dividing the existing Ninth Circuit into two circuits. As you well know, altering the structure of the federal judicial system is a serious matter. It is something that Congress does rarely, and only after careful consideration. It is anticipated that an amendment will be offered to replace the circuit division rider with legislation to create a commission.

That is what I am trying to do at this time—to study the courts of appeals and report recommendations on possible change. This legislation, H.R. 908, has already passed the House unanimously on a voice vote on June 17, 1997. A similar bill, S. 956, was passed unanimously by the Senate in the 104th Congress. This is a far superior way of dealing with the problems of caseload growth in the Ninth Circuit and other courts of appeals. I urge your support for the amendment.

Sincerely, Henry Hyde, Chairman.

So the House is on record supporting a study. The chairman of the Judiciary Committee, sitting on July 24, 1997, issued this letter, and yet this split is in the bill. The administration has issued a strong statement to the Senate Appropriations Committee indicating its support for a study commission and its opposition to the inclusion of such far-reaching legislation in an appropriations bill.

Mr. President, I hope the President will veto this bill if it should contain an arbitrary split of the Ninth Circuit Court of Appeals—a split done politically, as a form of gerrymandering.

In a letter dated July 11, Gov. Pete Wilson reiterated his support for the commission study and stated that the present effort to split the circuit involves judicial gerrymandering, apparently designed, and I quote, "to cordon off some judges in one circuit while keeping others in another because of personalities, whether perceived or real, over particular judges' perspectives or judicial philosophy."

Less than 2 weeks ago, when Governor Wilson wrote this letter, there was a proposal that would have divided the Ninth Circuit into three circuits and split California in half. Then there was another proposal that would have left California and Hawaii in a two-State circuit, the first time in history that a Federal judicial circuit would have consisted of fewer than three States.

In a matter of hours, an amendment was made to the bill, and we have the latest proposal which keeps California teams it with Nevada isolating a geographical neighbor, Arizona, and placing Arizona with Oregon, Washington, Hawaii, Idaho, Alaska, and Montana. Mr. President, I respectfully submit this is not the way to do the legal business. This is not the way to restructure the Ninth Circuit Court of Appeals.

Let me offer some history. I authored the first proposal to create a commission on structural alternatives for the Federal courts of appeals in the 104th Congress during a markup session in the Senate Judiciary Committee on December 8, 1985. If that had been passed, the job would have been done by now. The Senate ultimately passed legislation to create a study commission during that Congress on March 20.

As noted above, in the present Congress, a commission bill identical to the one I am offering today unanimously passed the House. Both Houses of Congress have spoken on this issue and both Houses of Congress have said if the Ninth Circuit Court of Appeals should be split, no due diligence, consult the judges, consult the attorneys, who practice before it, look at the precedents, see that there is study, thought and consideration to what would be the best split. None of this has been done. In a matter of a week, four separate proposals have been put forward and changed with no opportunity for anyone who practices law in the Ninth Circuit, the huge Ninth Circuit, to indicate what the impact of those proposals might be.

The House-passed bill was modeled on a proposal introduced with Senator REID on January 30, 1997. The House Judiciary Subcommittee Chairman COBLE and Chairman HYDE moved the bill with the support and cosponsorship of Representative DENMAN. The current H.R. 908 puts a compromise that was worked out in the House and endorsed by every House Republican and Democrat.
I should note that the House-passed bill is very similar to a compromise on a study commission that Senator Burns and I reached together just a few months ago. This all began with Senator Burns. I understand his concerns. He has legitimate interests, legitimate concerns, and I appreciate them. The last I had heard was Senator Burns signed off on the study commission. So you can imagine the surprise when I heard. My goodness, this is on an appropriations bill. And Members of this body have taken it on themselves to arbitrarily just decide, willy-nilly, how the ninth circuit should be split.

The House-passed commission study is fully bipartisan, a 10-member commission. The commission would operate for 18 months, at which time it would make recommendations to Congress for any changes in circuit structure or alignment.

I don’t think we should subject something as important as the structure of our court system in the States of the Ninth Circuit, and that is just what this is. The study called for in H.R. 908 is a responsible method of evaluating the current situation and making recommendations that can provide a sound foundation for Congressional action in the future.

A study is needed to determine whether this or any proposed circuit division would be likely to improve the administration of justice in the region. That is the fundamental question: Would a split improve the administration of justice, and, if so, what should that split be? Even among those who believe that some kind of split should occur, there is no consensus as to where any circuit boundary lines might be redrawn.

During the 105th Congress, proponents of a circuit split put forward these four proposals. One would have split the north from the southernmost States of the circuit. The second would have split the west into three separate circuits and split California in half. The third would have created a narrow stringbean circuit. That was the same proposal that failed to pass the Senate during the 104th Congress.

The current proposal, which represents at least the fourth proposal in the 105th Congress, is a modification of the stringbean circuit. Again, no due diligence, no hearings, no study, no testimony, nothing.

As I noted before, the proposal isolates Arizona. It combines Nevada. It separates coastal States that have common maritime law. And that is why I say it is gerrymandering. I say if it looks like a gerrymander, talks like a gerrymander, it probably is a gerrymander.

Let’s talk about the costs inherent in what is happening here today. If this bill passes and should go into law, splitting the circuit will require duplicative offices of the court, circuit executive, staff attorneys, settlement attorneys and library as well as courtrooms, mail and computer facilities. According to the ninth circuit executive office, neither Phoenix nor Seattle currently have facilities capable of housing a court of appeals headquarters operation.

As part of the review of last year’s similar proposal, the GSA estimated that it would cost a minimum of $23 million to construct new facilities for a headquarters in Phoenix, and I would be very surprised if it was as little as $23 million. Based on GSA studies, the circuit executive has estimated that building and renovation costs for creating or upgrading new headquarters in Seattle and Phoenix would amount to at least $56 million. Additional combined outlay of another $6 million in startup costs would be needed to outfit both Phoenix and Seattle.

The CBO last year estimated the cost of duplicative staff positions at $1 million annually. The new proposal calls for two coequal clerks of the court in Phoenix, and for each clerk, the circuit would have the customary deputy clerk and staff attorney, an additional $300,000 in salaries would be added to the total. So the new twelfth circuit would cost an additional $1.3 million to $1.6 million annually in salaries, and a minimum of $25 million in Phoenix and an additional amount for Seattle. It is estimated the cost would run in the neighborhood of $60 million.

This wouldn’t be so bad if there just hadn’t been approved and spent $140 million to rehabilitate and seismically equip the Ninth Circuit Court of Appeals in the city of San Francisco and Pasadena—$140 million has just been spent. I just visited the San Francisco ninth circuit. It compares with the U.S. Capitol. There is a brand-new library already built in, magnificent chambers, one library that is solid redwood, marble that is incredible, lighting fixtures that go back well over 100 years. It is an amazing and beautiful building.

Under the configuration of States proposed for the new twelfth circuit, the circuit executive estimates that upward of 50 percent of the space recently renovated in San Francisco and Pasadena at a cost of $140 million would no longer be needed. The space was specifically designed to meet the business needs of the court of appeals. The executive office estimates, “It would cost many tens of millions of dollars to modify the space to make it usable by tenants other than the court of appeals.”

Let me talk for a minute about the real risk of an impetuous political and gerrymandered split of the ninth circuit.

Forum shopping: Organizations and entities whose activities cut across State lines, and those who sue them, would be able to forum shop to take advantage of favorable precedents or to avoid those that are unfavorable. And I suspect, frankly speaking, that this is just what is behind this split. Thus, an additional burden would be placed on the U.S. Supreme Court to resolve conflicts that are now handled internally within the circuit.

Here are some examples provided by the ninth circuit of how dividing it could invite forum shopping: water disputes concerning the Truckee River, which affect California, Nevada, and Arizona; commercial disputes between large contractors like Boeing and McDonald—perhaps that is resolved now—or Microsoft and Intel; different legal principles affecting the shipping industry along the coastline of the continental United States and Hawaii.

Think of the complications created if different commercial and maritime rules governed the Port of Los Angeles and the Port of Tacoma and Hawaii. The ninth circuit includes a vast expanse of coastal area, all subject to the same Federal law on cargo loading, on seaman’s wages, on personal injury, and maritime employment. Vessels plying the coast stop frequently at ports in California, Alaska, Hawaii and the Pacific territories. If the circuit were to be divided, seamen would have an incentive to forum shop among port districts in order to predetermine the most sympathetic court appeals to their case.

In the commercial law area, all of the States in the circuit have considerable economic relations with California because of its large and diverse population. In a recent case, Vizcaino v. Microsoft, the Ninth Circuit decided to forum shop among the nine States of the circuit of how dividing it would offer a choice of favorable precedents or to avoid those that are unfavorable. And I suspect, frankly speaking, that this is just what is behind this split. Thus, an additional burden would be placed on the U.S. Supreme Court to resolve conflicts that are now handled internally within the circuit.

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The judges and lawyers of the ninth circuit overwhelmingly oppose what is happening in this bill. Let me repeat that. The lawyers and judges in all of the ninth circuit States overwhelmingly oppose what is happening in this State, Justice, Commerce appropriations bill.

On four occasions, the Federal judges in the ninth circuit and the practicing lawyers in the ninth circuit judicial conference have voted their opposition to splitting the circuit. The official bar organizations of Arizona, California, Hawaii, Idaho, Montana and Nevada, and the National Federal Bar Association, all have taken positions against circuit division. No State bar organizations overwhelmingly oppose what is happening in this bill.

Candidly speaking, this is a political decision of Senators of the Appropriations Committee to affect the legal business of 50 million people in the United States with an arbitrary split, gerrymandered, of the Ninth Circuit Court of Appeals. Candidly speaking,
also, the ninth circuit is large. California alone is predicted to be 50 million people by the year 2025.

Whether the circuit should be split or not, I can’t say. I strongly believe it is a decision that should not be made, however, either politically or in a cavalier fashion. The decision should not be made without study, without hearing, without comment from those lawyers and judges whose clients are affected by it.

If—and I say if—the circuit is eventually split, it should be the product of diligence, of study, of hearing, of commentary. It should be part of an analysis of how the circuit courts are functioning in the United States. There may well be a better split involving other States. I don’t know, and I would hazard a guess that no one in this Chamber knows that either.

But this does mean a careful study of population should be undertaken. It means an even distribution of caseload by judge, not a rammed-through circuit; it means a 52 percent higher caseload for judges in this new ninth circuit than in the twelfth circuit. On its face, it is patently unfair. Anybody who looks at any split that says you split it so that one set of judges has double the number of cases than the other—that doesn’t meet a simple test of fairness.

There should be a careful study of precedent, of commercial law, of maritime law, of the other aspects of precedents. California now has the largest consumer market in the United States in Los Angeles; the third largest in the San Francisco Bay area. It is a huge consumer market, and it is going to be bigger with all kinds of intercommunication among these States.

There should be a study of costs. I pointed out the duplication of staff, I pointed out the need for two new court-houses when two already have been refurbished at a cost of $140 million for the taxpayers. All of this is being done without any study, any hearing, any comment on the matter. It is not something of which this great body can be proud.

I notice that the distinguished Senator from Nevada is here, and if I might ask him, I believe he would like 10 minutes? I will be happy to yield to him.

Mr. GREGG. Mr. President, if the Senator from California wouldn’t mind, I would like to go from side to side.

Mrs. FEINSTEIN. I will be happy to do that.

Mr. GREGG. I yield to the Senator from Washington 20 minutes.

The PRESIDENT pro tempore. The Senator from Washington.

Mr. GORTON. Mr. President, there can be no serious argument posed to Members in body that it is not appropriate to have a circuit court of appeals to serve almost a third of the entire nation. Indeed, it is appropriate for all practical purposes necessary, for the proper administration of justice to the U.S. Court of Appeals—almost twice as large as the next largest court of appeals and almost three times as large in population and in caseload as the average circuit—should not be divided.

Twenty-three years ago, a commission, the Hruska Commission, said the Ninth Circuit Court of Appeals was too large and should be divided; that no circuit court of appeals should have more than 15 judges. The reasons, of course, are efficiency and an effective administration of justice. Any other argument is simply a matter of delay, simply a matter of a maintenance of the status quo.

The Ninth Circuit Court of Appeals should be divided. There have been bills on this subject and hearings on this subject in most of the Congresses since 1975. 22 years ago, to date. The very proposal that is before us right now, with minor changes, was recommended by the Judiciary Committee in the last Congress and did not come to a vote because it was clear that it would be filibustered as an independent vote. That is at least one of the reasons that when he comes to the floor, the chairman of the Judiciary Committee will recommend the rejection of this amendment and supports the division that is included in this bill.

But, Mr. President, before I get back to the merits of the proposal, I want to express my deep concern over some portions of the opposition that come to this bill from California and perhaps elsewhere. One of the reasons that the Senator from California can describe this bill as a gerrymander, one of the reasons that she can call for delay is because the proponents of the division have assured the Senators from the various States that are affected by this division.

Should we have another study commission? That study commission, if it is remotely objective, will recommend the division of the ninth circuit not into two, but into three new circuits, a proposition that this Senator feels to be highly appropriate. The only way to create three new circuits out of the present ninth is to divide the State of California and to place it into two circuits: one centered in San Francisco, the other centered in Los Angeles.

That recommendation has been with us for many years. That recommendation was incorporated into the first version of this bill. The two Senators from California are vehemently opposed to that recommendation, and I strongly suspect that if the States could go 2 years and have another study commission and it comes up with dividing California, they will find a reason to object to it again and to filibuster the proposal.

So what did the sponsors of the division do? The sponsors of the division said, “Fine, we will accede to the wishes of the Senators from California. We will make this a two-new-circuit bill.” California will be left united.

The Senators from Nevada, with some real justice with respect to the bill reported by the Judiciary Committee, is concerned. They point out that they didn’t like the division; that Nevada felt more drawn to California than it did to the Pacific Northwest and Arizona. And so in this bill, we have acceded to the wishes of the Senators from Nevada and have left that State in the ninth circuit with the State of California.

That is the reason that the circuit, as it appears in the bill, is not contiguous. But with the days of e-mail, of faxes, of air transportation, there is nothing but history to require that circuits be made up of contiguous States. And, of course, Alaska and Hawaii have never been an integral part of the States in the ninth circuit. Nor has Puerto Rico and the Virgin Islands to the circuits to which they are attached.

Finally, the State of Hawaii, through its Senators, when it was determined there was to be a bill elected, to my delight, Mr. President, that it would rather be in the smaller, the more intimate, the more collegial circuit, the new twelfth, and that appears in the bill. Then when we asked the representatives of Guam and the territories of the Pacific, they said, while they really don’t want to change that, of course, they prefer to stay with Hawaii.

If the great majority of the Senators from the Northwest and from Arizona wish a new circuit that is so logical, and if they have deferred to the wishes of the Senators from Colorado and Nevada as to their desires, why should we say no on the floor of the Senate to those who wish a new circuit? What business is it of the Governor of California for us to tell how the ninth circuit should be constituted? I am deeply troubled that Senators whose own wishes reflect what they think is best for their States, have been rejected, refuse so arbitrarily as they and their predecessors have for more than two decades to accede to ours.

Mr. President, there are 28 positions authorized for the Ninth Circuit Court of Appeals. There are 10 more requested by those judges and approved by the Judicial Council. Is that a collegial circuit? At the number 28, three-judge panels that are chosen by lot have 3,276 possible combinations of those three judges. You, Mr. President, one of the youngest of our Members, could be appointed to the ninth circuit, could serve on it for 30 years, and the chances are you would never serve on the same panel of three twice in that entire period of time. That is collegiality?

The ninth circuit is slow from the time appeals are filed until they are decided. It is notoriously reversed more frequently than in the case of any other circuit. When I was attorney general of the State of Washington, we figured that if we could get the Supreme Court of the United States to take certiorari from the ninth circuit, we had at least a 75-percentage chance of winning in the U.S. Supreme Court, of causing it to repeal the circuit.

At one level, that is not a totally relevant argument, because the two new
circuits would start with exactly the same judges they have now, and I can't note any difference in philosophy from those who come from the States in the old ninth circuit under this proposal and the new twelfth circuit, and, of course, those they are nominated by the same President, confirmed by the same Members of the U.S. Senate. But I suspect that if the judges who work together knew one another a little bit better than they do now, there would at least be a marginal improvement in the number of times during which they are reversed.

Mr. President, there is simply no justification whatsoever for the maintenance of this huge and unwieldy circuit. The Senator from California said in 20 years, California itself will have 50 million people. We have a wonderful First Circuit Court of Appeals, much smaller than the twelfth we propose in this legislation. New York and Pennsylvania, that don't have the population of California combined, have always been in separate circuits, and they are both on the Atlantic Ocean, and they both have to deal with the same kind of admiralty law.

No, Mr. President. The time has come that we have had hearings galore. Those hearings have occupied a quarter of a century. There have been bills reported. Another study, another delay, only to be followed by another attempt to delay after that when a three-circuit division, I believe, was announced.

No, Mr. President. The time is now. The division is appropriate. It will not be the last in the history of the U.S. courts. But it seems to me we should go ahead. From a personal point of view, I am somewhat unhappy that while we have done all we can to accommodate California, California refuses to accommodate us. Mrs. FEINSTEIN addressed the Chair.

Mrs. FEINSTEIN. How much time is remaining on our side, Mr. President?

Mr. HOLLINGS. How many?

Mrs. FEINSTEIN. The Presiding Officer. The Senator from California.

Mrs. FEINSTEIN. How much time is remaining on our side, Mr. President? And do you know what it was? You say, maybe 30? Probably 20, 10.

Mr. LEAHY. Mr. President, I have been on the Appropriations Committee for 20 years, on the Judiciary Committee about the same amount of time, and I understand that periodically, out of necessity, we have some items of legislation on the appropriations bill. This is about as amazing a step as we could take to determine the fate of the ninth circuit on an appropriations bill.

It is not the way to do it. We say we are going to split the Nation's largest court of appeals on this appropriations bill. We have had no hearings, no testimony, no deliberations on the proposed split before us.

Well, the 45 million people that live in these nine Western States deserve a more considered approach. What we ought to do is have the Senate Judiciary Committee hold hearings, conduct an independent study to determine whether this or any other proposed circuit division is necessary, find out what is the best way to do it, and not just do it basically based on one vote with very little debate in a committee, then on the floor in an appropriations bill.

Last year, the Senate unanimously passed a bill to create a bipartisan commission to study if and how the ninth circuit should be restructured. And that is what the House has done this year. The amendment of the distinguished Senator from California (Mrs. FEINSTEIN), is the same language as H.R. 908, the House-passed bill.

What the Senator from California has done is a principled approach. It is also the approach supported by the majority of the judges and lawyers in the areas served.

Are there problems in the ninth circuit? Of course there are. Let me point out to you, it is a problem not caused by the circuit, but by the U.S. Senate; 9 of the 11 judges in the ninth circuit are vacant. There are nominees up here before the Senate.

As a result, the national average is 315 days to get a decision, but for the ninth circuit, it is 429 days. We have people in the ninth circuit who pay taxes like everybody else but who have to wait an extra 114 days. In fact, the ninth circuit canceled 600 hearings this year because we cannot get judges confirmed to sit.

And what does that mean? It means that a multimillion-dollar settlement of a nationwide consumer class action against a maker of alleged defective minivans is not heard; a $71.7 million antitrust case involving the monopolization of photocopy markets is not there; an arsenic and lead poisoning class action case with a $68 million settlement agreement is not being heard.

What is happening, Mr. President, is that we go on some little quick fixes because somebody wants to at the moment on an appropriations bill.

What we ought to do, if we want to really do something to help justice in this country, is for the leadership of the Senate, that is, those who schedule debate, in this case, the majority leader, to take some of these judges and allow us to confirm them.

The distinguished senior Senator from Utah, the chairman of the Senate Judiciary Committee, is on the floor. He has been working hard to get judges heard. But no matter how many we hear in the Judiciary Committee, unless they are confirmed on the floor of the Senate, it is a waste of time.

At this point, incidentally, we have confirmed—and we are down to the seventh month of this session—we have confirmed six judges. We are about to take another vacation. No more judges will be confirmed. That is less than one a month.

There are over 100 vacancies. We have about 40 or so nominees up here waiting to be confirmed. We cannot even get them confirmed. Here is one, William Fletcher, nominated in 1995; still waiting. Richard Paez, the first month of 1996; still waiting. Margaret McKeown, March 1996; still waiting.

This goes on and on and on. We have a whole backlog of vacancies—102 vacancies. This Senate has confirmed six.

We all give speeches of needing judicial reform and needing law and order. You have a whole backlog there, because the leadership of the U.S. Senate will not let us confirm judges, we have courts where prosecutors have to kick cases out, that they have to plea bargain and everything else because there are not enough judges to hear them.

Now, when you have proponents of the split of the ninth circuit say it is because justice is being denied, the reason justice is being denied is because judges are being delayed.

These are four well-qualified in the ninth circuit, four well-qualified people. In fact, they have the highest ratings there are. One nominee has actually been favorably reported by the Judiciary Committee, but no—no action here.

What is happening, Mr. President, is not something that is going to get fixed by the Judiciary Committee, but something that is going to get fixed if the U.S. Senate does the duty it is supposed to. If we have judges here people do not like, vote them down. We held up the Deputy Attorney General of the United States, Eric Holder, week after week. "Oh, we've got Senators, we cannot tell you their names, of course, but we have Senators who have real problems, real problems with this man. We can't bring him to a vote. We've got real problems."

We brought it to a vote. I asked for a rollcall vote. I thought, well, at least let all those Senators, unnamed Senators, who had an excuse for holding the No. 2 law enforcement officer of this country—I said, now we will know who they are, because, obviously, they have problems that they would hold up this man all these months, so they will vote against him. And the clerk called the roll.

And do you know what it was? You know how many votes against him? You say, maybe 30? Probably 20, 10. I ask my good friend, the ranking member, you know how many it was?

Mr. HOLLINGS. How many?

Mr. LEAHY. Zero. I cannot quite say it—I cannot quite say it like my good friend from South Carolina. He is the only person I know who can get five syllables in the word "zero," but zero. It was 100 to nothing; 100 to nothing.

But what we have is, while the Judicial Conference, Chief Justice Rehnquist was seeking for more justices, we have 27 vacancies in the court of appeals. We have all kinds of problems. And the ninth circuit is not...
The ninth circuit can at least be helped by doing what the Senator from California said, have a nonpartisan professional panel look, make a recommendation, go to the Senate Judiciary Committee, vote it up or down, which is exactly what we should be doing on these judges. If we do not want them, vote them down.

But what we have is always some mysterious person who has a problem. But when we have to vote in the light of day, there is no mysterious person at all because they vote for them. So, Mr. President, I know there are others who wish to speak.

Mr. President, I ask unanimous consent that a letter be printed in the RECORD addressed to Majority Leader Lott from all the leaders of seven national legal groups, asking him to file that a letter be printed in the RECORD, as follows:

Mr. LEAHY. Mr. President, let us also not add to the partisanship we have had with stopping judges from being confirmed by now showing even more of a capricious nature on the part of the U.S. Senate by splitting the ninth circuit with no hearings, no debate, no thoughtful consideration.

I yield the floor.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I just mention briefly there have been considerable hearings on this issue, testimony has been given on this forgettable issue, and the matter has been around and been discussed at length in a variety of forums.

Mr. President, how much time do we have?

The PRESIDING OFFICER. Seventy-seven minutes and eighteen seconds.

Mr. GREGG. And the Senator from California has?

The PRESIDING OFFICER. Forty-nine minutes and thirty-nine seconds.

Mr. GREGG. We have 77 minutes?

The PRESIDING OFFICER. Yes.

Mr. GREGG. I yield, in sequence, 5 minutes to the Senator from Utah and 20 minutes to the Senator from Montana, if that is acceptable.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise today to speak in support of the appropriations provision effecting a split of the Ninth U.S. Circuit Court of Appeals, and to respectively oppose the amendment offered by my colleague from California. Splitting the ninth circuit is appropriate at this time for three principal reasons: First, its size. The ninth circuit is the largest of the 13 federal circuits. Indeed, the ninth circuit is larger than the 1st, 2d, 3d, 4th, 5th, 6th, 7th and 11th circuits combined. This has, I believe, contributed to a trend by which some ninth circuit judges feel free to disregard precedent, be it precedent, or even the Supreme Court’s rulings. Just this past term, the ninth circuit had an astounding reversal rate of 95 percent before the Supreme Court. Twenty-eight of 29 cases were reversed. And the usual rate is no less than 75 percent of their cases are reversed. One ninth circuit judge has expressed this regrettable situation, explaining that “the circuit is too large and has too many cases—making it impossible to keep abreast of ninth circuit decisions.”

The third cost of having such a large circuit is the result of having cases decided. The ninth circuit is, in fact, one of the slowest in turning around case decisions from the time of filing. And, because of its size, some cases, especially high-profile ones, are subject to being subject to delay.

These important considerations have persuaded me that the ninth circuit should be split. And, I am happy to report that I believe some of my colleagues on the other side of the aisle, from States within the ninth circuit, will vote against the present amendment, and support the split provided for in the present bill.

And finally, I would like to say a word about the way in which this proposal has come about. Some argue that a significant development like splitting a judicial circuit should not arise in the context of an appropriations bill—that the committee of jurisdiction, in this case the Judiciary Committee, should have the opportunity to review and comment about this proposal. I could not agree more with the proposition that this is a serious matter, deserving serious consideration. I point out, however, that the Judiciary Committee has examined the advisability of splitting the ninth circuit. In just the last Congress, the Judiciary Committee held hearings on the subject, hearing from judges of the circuit and others knowledgeable about the implications of a split. After hearing the testimony, the committee reported out a bill that, in many regards, is similar to the one before the Senate today.

Accordingly, I am confident that the Senate is ready to play a well-considered and desperately needed proposal to divide the ninth circuit. This is a proposal that serves the interests of judicial efficiency, stable case law,
and equal justice for Americans within the ninth circuit.

With all due respect, therefore, I must take exception to the proposed commission my colleague from California is now offering by way of an amendment, which in the time or a split of the ninth circuit is now. I believe we have studied the matter thoroughly, and that there is no need for further hearings or a commission.

Frankly, I would expect that, were we in fact to proceed with another commission, it would simply make a recommendation similar to the Hruska report of nearly 25 years ago—namely, to divide the State of California. I don’t have any doubt in my mind that that is what a future commission will decide, because if you want to get population equality, you are going to have to divide California. This does not do that, in deference to the Governor of California and, I might add, the two Senators from California, and to the various Californiaconcerns of the California and, I might add, the two Senators from California, and to the various Californiaconcerns of the California. And I might add, should this amendment succeed—the amendment of the distinguished Senator from California—and a commission be created that ultimately recommends splitting California, it would be compelled to support the amendment and give others in this body, to support that split and finally put this matter to rest. So this is dangerous stuff to be playing around with because I believe that there will be a split of California if you pursue this route.

Now, while I recognize that many are greatly concerned about the proposal of dividing the State of California, I have to tell everyone today that this is pretty certain to result if this amendment is enacted.

I urge my colleagues to vote against the amendment offered by my colleague from California. I believe, in the best interests of all concerned, this is an adequate and reasonable response. And, frankly, we have given Senators within the total area to be divided their right to choose which circuit they will belong to. I think that is an appropriate, reasonable, decent way to proceed. Otherwise, we are just delaying this another 2, 3 years, and we will come up with another split of California, which will be vigorously fought against by Members of the California delegation in both the House and Senate, and we will wind up right back where we are, or California will split. I think it would be to the disadvantage of California, as I view it.

I hope our colleagues will vote down this amendment, as well-intentioned as it is, and will vote for this split, because it would be a split that would, I think, bring about collegiality, and it will bring about a better functioning of two circuits, and it will give the States who want the split a chance to have their own circuit, where they can work together in the best interests of their States.

If California continues to be the most reversible set of judges in the Nation, then they will have to live with that. Then everybody will know exactly who are the people that are doing this, who are the judicial activists, the ones undermining the judicial system, and are really causing California the pain, the struggles, and difficulties that come from an our judicially activist Ninth Circuit Court of Appeals.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I do not see the Senator from Nevada at the moment. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 48 minutes 40 seconds.

Mrs. FEINSTEIN. I yield 5 minutes to the Senator from Washington [Mrs. MURRAY].

The PRESIDING OFFICER. The Senator from Washington [Mrs. MURRAY] is recognized.

Mrs. MURRAY. Mr. President, I rise in strong support of the Feinstein amendment. We simply should not—must not—divide the Ninth Circuit Court of Appeals. It is an irresponsible way to proceed with such a fundamentally important question about how we best administer justice in the West.

I want to remind my colleagues that this body, the Senate, in the 104th Congress, approved a study commission. In June, the House of Representatives sent us a bill, H.R. 908, establishing a similar commission. That bill is waiting at the desk for our action. House Judiciary Chairman Henry Hyde has voiced his dismay at this end run around his authorizing committee. Tuesday he wrote to Chairman Hatch, saying: “As you well know, altering the structure of the Federal judicial system is a serious matter. It is something that I would take very seriously, and only after careful consideration.”

Mr. President, I am not necessarily opposed to a split of the ninth circuit, but I am adamantly opposed to an appropriation’s rider mandating such a gerrymandered split. As Chairman Hyde suggested, we need judicial experts thoroughly analyzing the courts and advising us on what makes sense from a national perspective.

With so many of those who work directly in the opposition to this split, it seems clear we need guidance before we act. The White House opposes this split, the majority of judges on the ninth circuit oppose this split, and the majority of bar associations of the affected States oppose this split. Simply put, this is not the right way to proceed.

We need answers to some important questions first. How much will this cost? Should we create a virtual one-state court? Should Arizona become a separate circuit? Where should we place a new circuit’s courthouse? How many judges should serve in each circuit and from which States should they come? Should we break the ninth circuit into three circuits? How will our Pacific maritime law be affected?

Before I participate in breaking up an institution that is more than 100 years old, I want those—and many more questions—answered.

Mr. President, I also have another concern. I find it interesting that supporters of this rider so often refer to the pace at which the ninth circuit does its business. Yet, these same Senators have not even tried to fill the many vacancies plaguing the ninth circuit. An outstanding member of the Washington State legal community, Margaret McKeown, has been languishing for nearly 2 years in this body. She has yet to receive a hearing. This is unconscionable and this has real impact on the administration of justice. To make the ninth circuit—or any circuit—work, we must have judges. Let’s get the confirmation process moving, and that will stop the glacial pace that people are concerned about.

Finally, I want to remind my colleagues that we have passed almost every fiscal year appropriations bill without contentious riders. We should have learned from the disaster relief bill what can happen when these riders dominate the process. I believe we should maintain the bipartisan approach we’ve used so far and letting this important bill get bogged down with riders.

Let’s do our appropriations job right and let’s do the very serious job of reconfiguring the judiciary right. I urge my colleagues to support the Feinstein amendment establishing a commission to guide the Congress on how best to resolve any real or perceived difficulties in the administration of justice in the ninth circuit.

I yield my time back to the Senator from California.

Mr. BURNS. Mr. President, I rise to oppose the amendment that would strike the provision from the Commerce, State, Justice Appropriations bill to divide the Ninth Circuit Court of Appeals. We have heard so much said today about how the bar associations oppose it, the judges oppose it, and nobody has said anything about the people. Are they secondary in our justice system? We are supposed to be serving the people, and I think the bar associations do, too. I happen to believe that they believe very strongly in the kind of service that they deliver to their clientele. But we haven’t heard that today.

If there were a judicial equivalent of baseball’s famous “Mendoza line,” marking the mediocre batting average at which players dread dropping, then the Ninth U.S. Circuit Court of Appeals would be laboring in the farm leagues.

In terms of the rate at which its decisions are reversed by the U.S. Supreme Court, the ninth circuit’s record for failure is practically unblemished. In recent years, on average, more than 80 percent of rulings by the ninth have
been overturned. This past term, the Supreme Court reviewed 29 cases from the ninth circuit—it revises, in part or in whole, an astonishing 28 of them.

The ninth circuit in 1996–97 alone was reversed, often 9 to 0, on decisions asserting the right to die, requiring sheriffs to conduct federally mandated background checks on people who buy guns, and denying the right of groups who were economically harmed by the Endangered Species Act to sue even though the law gives legal standing to conduct federal projects.

While the high court undoubtedly chooses many cases with the express intent of reversing them, the ninth circuit this past year has wrecked the curve. For instance, the eighth circuit, which had the second-most cases reviewed, had a reversal-and-affirmance record of only 4 to 4.

But “this isn’t baseball,” says Judge Stephen S. Trott of Boise, ID, according to a recent Los Angeles Times article.

Agreed. The jurisprudence of our Federal appellate court system is far more serious than a game. In my view, the fact that the ninth circuit is unilaterally out of step with the rest of the Nation is perhaps the least of the multitude of reasons to consider splitting this giant court.

First, the ninth circuit outstrips the other circuits in all measures of size, both physically and legally. The ninth circuit encompasses a land mass the size of Western Europe. Its nine States and two territories—Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands—stretch from the Arctic Circle south to the United States-Mexico border and west across the international dateline. It has a population of nearly 50 million people, about 1 in 5 Americans, and is expected to grow by 43 percent over just the next 25 years.

Second, the ninth’s caseload is the largest. More than 8,500 appeals were filed last year, and that number is expected to jump by nearly 700 percent in the next 25 years, making the ninth less than a model of fair and speedy justice. In fact, of the 11 regional circuits and the District of Columbia circuit, it ranks next-to-worst in the duration of pending appeals—an average of 429 days, usually more for criminal cases as compared to the national average of 315 days.

These delays are costly. Appeals take time and money, and they’re putting the squeeze on my State. Litigants and attorneys who must make frequent and expensive trips to San Francisco are pleading for reforms.

Third, the problems of geography and population are two factors that contribute to judicial inconsistency on the ninth. Because the 28 judgeships of the ninth are well scattered, the panel number recommended by the U.S. Judicial Conference—are scattered so far and wide, the court has experimented with limited en banc proceedings in which a panel of 11 judges decides the most important cases. By relying on this approach, conflicting court decisions are common. The right hand doesn’t know what the left hand is doing. As a result, decisions by the ninth are often narrow and set few mandates for use by judges in other cases.

In fact, several of the Supreme Court Justices criticized the Ninth Circuit’s en banc decision in Washington versus Glucksberg that the due process clause guarantees critically ill individuals a limited right to assisted suicide. Even some liberal members of the Court, such as Justice Ginsburg, expressed concern that the Ninth Circuit opinion seemed to give Federal courts a “dangerous power.”

Size was a factor leading a congressional commission in 1973 to urge splitting the fifth and ninth circuits. Congress chose to split the fifth, while the ninth has been bogged down in political squabbles and has had to make due with its enormous size.

One cannot make the argument this has not been heard, or that it has not been studied when in actuality it has.

Some press accounts have portrayed the debate as a clash of party ideologies, of conservatives who favor the split versus liberals who do not. But such a view is short-sighted. These press accounts overlook the bipartisan support behind dividing the ninth. For many of us, it is just as simple as wanting a court that is closer in every sense to the people it serves.

Supreme Court Justice Anthony Kennedy has publicly noted the merit of division. The U.S. Department of Justice has recently said “the sheer size of the Ninth Circuit, even without its attendant management difficulties, argues for its division.” Montana Governor Marc Racicot, a former State attorney general, favors the idea. And I would now like to submit a letter from Governor Racicot favoring this split.

Mr. President, I am thus con- sent that the letter be printed in the RECORD.

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

OFFICE OF THE GOVERNOR,
STATE OF MONTANA,

Senator Conrad Burns,
U.S. Senate, Washington, DC.

Dear Senator Burns: I would like to submit this letter in support of an amendment to the appropriations bill for the Department of Justice and the Judiciary, and related agencies for the fiscal year ending September 30, 1998. The amendment would divide the Ninth Circuit Court of Appeals and create a Twelfth Circuit Court of Appeals made up of the states of Alaska, Arizona, Hawaii, Idaho, Montana, Oregon, and Washington. As you know, I have been supportive of this effort for a long time and I continue to support the proposal for the reasons stated below.

The Ninth Circuit, of which Montana is currently a part, is simply too large to effectively respond to the needs of those it serves. That Court has 28 judges making decisions for 9 states and 2 territories, with a population of between 40 and 50 million people in an area that encompasses about fourteen million square miles. The next largest circuit is the Second, which has a population of 40 million. California cases alone represent over half of the Ninth Circuit’s caseload and the number of judges exceeds by twelve the next largest circuit. The population of Montana is sixteen more than the average appellate bench. I cannot imagine anyone making a compelling argument that a judicial unit of government this size can be administratively efficient.

As you know, our system of jurisprudence relies upon the principles of "stare decisis," or precedent. With a circuit and court so large, most cases must be heard by smaller panels of judges, with increased reliance upon staff attorneys and summary procedures. In fact, there are over 3,276 combinations of panels that may decide cases that involve similar issues. This leads to conflicting and unpublished opinions, reduced communications among judges and little consistency in the court’s determinations. The lack of consistency in a court’s decisions, in turn, makes our system of justice unpredictable and unreliable. As a result, the body of established precedent in the circuit can be rendered meaningless. There is, in essence, a diminution of precedent, which the stability and predictability of the law, and actually leads to increased litigation.

I have questioned whether the operational costs of a circuit such a large circuit are commensurately higher. Travel expenses and efficiency of judges and staff should be examined to determine if significant efficiencies could be realized in a smaller circuit. It is true that a new circuit would result in attorneys traveling to the same cities for argument as before. Montana attorneys often are ordered to travel to San Francisco for oral argument.

The size of the Ninth Circuit also seems to bear upon the length of time it takes to make decisions. The median time to dispose of a case—from the time of filing a notice of appeal to the final decision on the merits—is 14.6 months. Arguments will be made that much of this time is consumed by counsel rather than the Court; however, I can recall as Montana’s Attorney General waiting a long time for the Court to decide cases for which the record had been submitted months or years before.

Habeas corpus matters have taken up to 14 years in one Montana case. It appears that that ultimate inordinate delays in reaching final resolution in these cases is not given equal and appropriate consideration when balancing the rights of petitioners. The resulting delays invite the kinds of “recreational” use of the court system by inmates that we have seen in recent years.

Opponents of splitting the Ninth Circuit argue that the larger the circuit the more the consistency in federal law and mention that judges and attorneys have testified to a sense of community which they feel with the existing appellate courts. As I noted in the beginning of my letter, the size of the Ninth Circuit bench has led to decision-making by the panel, the differing combinations of which leads inescapably to a lack of consistency in precedential authority. And to argue that judges and attorneys are comfortable with the status quo is a position that, with all due respect, I would imagine falls deaf on the ears of those who have been awaiting a decision from the Court for many months or years.

I do not take the position that Montanans can only find justice before a bench made up of Montana judges or judges from neighboring states. And I take any position by the political arguments of interest groups whose position on S. 956 is based upon
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whether they wish their particular body of substantive law to change or remain the same. However, I do not believe that the original intent of the appellate court system, which was to establish circuits which reflected a regional identity by designating a manageable set of contiguous states that shared a common background, is consistent with our current practice. There are twenty-five million people in the United States, which is about twice as many people as the other circuits and covers fourteen million square miles.

Suggestions to divide the Fifth Circuit Court of Appeals have apparently been proposed since before World War II. The Hruska Commission (Commission on Revision of the Federal Court Appellate System) in 1973 recommended dividing the Fifth and the Ninth Circuits (the Fifth was subsequently divided, but not the Ninth). Opponents of dividing circuits recommend a variety of alternatives: consolidation of all circuits into one large national court, dividing California into two different circuits, and finally the familiar solution of studying the problem further. I hope Congress does not delay further correcting a situation that penalizes those states in the Ninth Circuit for the incredible population growth that has occurred in California.

I strongly support the proposed amendment, because I think it will solve some of the problems that were mentioned above and end many of the frustrations we feel with the Ninth Circuit Court of Appeals. If I can be of further assistance in your effort to pass this proposal, please let me know.

Sincerely,

MARC RACICOT,
Governor.

Mr. BURNS. Mr. President, I would like to read one part of the Governor's letter. It reads, “The Ninth Circuit is simply too large to effectively respond to the needs of those it serves.” State legislatures of the Northwest consistently and overwhelmingly call on Congress to split the ninth circuit.

On the other hand, the bill is opposed by judges and lawyers in the ninth circuit who would lose control over their fiefdoms. It is also opposed by special-interest groups that apparently care little about the troubles that are caused to establish above and end many of the frustrations we feel with the Ninth Circuit Court of Appeals. If I can be of further assistance in your effort to pass this proposal, please let me know.

Mr. President, as you may know, since I came to the Senate in 1989, I have sponsored numerous bills and amendments that would achieve a split of the ninth circuit and I commend the Commerce, State, Justice, Subcommittee on their willingness to again take up the fight in the 105th Congress. It’s an old axiom that justice delayed is justice denied. For too long the people of the ninth circuit have been caught in the cogs of the wheels of justice in San Francisco or the metropolitan areas of Reno and Las Vegas. We have tremendously difficult judicial problems. Frankly, the way the State has handled populationwise is we have a great deal in common with the more populated areas of America.

We feel that it would be unfair to have the split any other way than it now is. There may be other and better ways to do it, but the fact of the matter is why this study is so important. That is why the U.S. Senate last year passed a study saying let’s take a look at all the circuit courts before a decision is made as to how you are going to split the ninth circuit. We all have a feeling that the ninth circuit is large. It is larger than most all of the other circuits. But the fact of the matter is, how can we determine how it should be split under the terms that it is now being done; that is, before the Appropriations Committee? It is being done for reasons that are not legal in nature, they are political in nature. The PRESIDING OFFICER. The Senator from California?

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

Mr. President, you and I, in 1995, passed a bill that says let’s have the experts take a look today—what happens when a case is appealed from a lower Federal court to the ninth circuit, which is an intermedial step before it goes to the U.S. Supreme Court. That is what we are talking about. Is it extremely important if you are involved in the judicial process. There isn’t a court that is more important than a circuit court, a Federal circuit court of appeals.

We are very fortunate in the ninth circuit to have the chief judge of the ninth circuit, not only one of the distinguished jurists of this country but also a graduate of Stanford Law School with a great academic record, but, most important for this Senator, is a Nativar, born in Nevada, went to school in Nevada until he got into law school. Without a doubt, he didn’t have a law school.

I have spent a lot of time with Judge Hug learning about the ninth circuit. I would ask the Members of this body to reflect upon what the ranking member of the Judiciary Committee said. The ninth circuit is doing an excellent job. They are reducing caseload. In fact, even with nine vacancies, which the distinguished ranking member, the senior Senator from Vermont, established the ninth circuit is decreasing—not increasing, decreasing. They have increased their termination of cases by almost 1,000 from March 1996 to March 1997. They are doing a good job even though they are handicapped not because the Senate wouldn’t confirm the vacancies that they now have.

I, first of all, want to thank the distinguished Senator on the subcommittee, Senator GREGG, for taking into account my concerns about the split. I very much want this study to go forward, the amendment that is now before this body. But if it doesn’t go forward, it is important that the State of Nevada recognize people—recognize, as the chairman of the subcommittee pointed out, that the State of Nevada is now the most urban State in America. Ninety percent of the people live in the metropolitan areas of Reno and Las Vegas. We have tremendously difficult judicial problems. Frankly, the way the State has handled populationwise is we have a great deal in common with the more populated areas of America.

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Mr. REID. Mr. President, if a litigant in the ninth circuit, which covers the areas that have already been spoken of, has a case heard before a Federal district judge or a bankruptcy court and they are displeased with how the case turned out, they have the right to appeal that case. Under the framework of the courts that we have now in this country, that is appealed to the Ninth Circuit Court of Appeals in San Francisco. That is what we are talking about here today—what happens when a case is appealed from a lower Federal court to the ninth circuit, which is an intermedial step before it goes to the U.S. Supreme Court. That is what we are talking about. It is extremely important if you are involved in the judicial process. There isn’t a court that is more important than a circuit court, a Federal circuit court of appeals.

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are really concerned about the administration of justice. Let's have the majority move those people through this body as quickly as possible.

The fifth circuit, the most recently split circuit, has only 1,000 fewer cases than the ninth circuit, and the seventh circuit, the other half of the most recently split circuit, is the slowest circuit for filing the disposition. It is not the ninth circuit, even though we are hamstrung and are short a significant number of judges. If you look at the circuits which has 1,000 fewer cases than the ninth circuit, it takes them longer to dispose of a case than the ninth circuit.

So the ninth circuit should be commended for the good work they are doing with the limited resources they have.

Mr. President, there are some who say, "Well, it is important that we do this because California takes up so much of the ninth circuit..." Any agreement of fact: California doesn't do as much work in the ninth circuit as, for example, the second circuit. The second circuit, New York, has 86 percent of the filings; the ninth circuit, only has 55 percent. The fifth circuit has 72 percent filings; and the eleventh circuit, Florida, takes up 55 percent of the cases.

So, Mr. President, California is not the glutton that people have alleged it to be. They don't take up as many of the court filings as other circuits.

I would compare the qualifications of the ninth circuit judges—those appointed by Republican Presidents and those appointed by Democratic Presidents—with any other circuit. From the finest law schools in America are the judges who serve on the ninth circuit. Five of the senior judges in the ninth circuit were appointed by Republican Presidents; four by Democratic Presidents.

There has been a lot of talk in this body about the Hruska Commission. The Hruska Commission said, in 1974, you should split the circuits. But let's listen to what the experts said about that. I have a letter here dated July 17, 1977, from Arthur Helman, Professor of Law at the University of Pittsburgh. I will read parts of this letter. This is written to the president of the California State Bar Association.

Again, as the Deputy Executive Director of the Bar, and as a scholar who has studied the ninth circuit extensively during the intervening period, I am in as good a position as anyone to shed light on this matter. My conclusion is unequivocal. Such speculation is baseless.

Mr. President, this isn't some lawyer from California or some professor from California or anyone in the ninth circuit. This is the professor in the School of Law at the University of Pittsburgh.

My conclusion is unequivocal. Such speculation is baseless. The circumstances that led to the Hruska Commission are no longer present, and there is absolutely no reason to think that the commission would endorse such a proposal. Let me be more specific.

The Hruska Commission recommendation was driven primarily by a single factor. The commission believes that "no circuit should be created which would immediately require more than nine active judges." That was a realistic possibility. Today it is not. In fact, of existing circuits, all but one have more than nine active judges. With the nine-judge circuit a relic of the past, a new circuit could be created to recommend a division of California. A second consideration is also relevant. The Hruska Commission held hearings in the ninth circuit, and, although there was no consensus, several prominent California judges expressed support for the idea of dividing California between Federal judicial circuits.

I know that this has been studied and that only underscores how much things have changed since the Hruska Commission carried out its work 25 years ago. Plainly, no such support would be forthcoming today without a record such as the one of the Hruska Commission and with overwhelming opposition from the California bar, no commission would recommend a division of California. For all these reasons the speculation you referred to is totally without foundation. Whatever recommendations the new commission might make, I am confident that dividing California into circuits will not be among them.

Mr. President, in short, we should do the right thing. The right thing calls for us to have enough judges to handle our current load in a reasonable period of time. If they want to do it in a year, even though it would put a tremendous amount of work on them, I would accept that so that next year at this time we could take appropriate action. But to go forward with the Gregg-Stevens amendment to the Appropriations Committee is bad. It is bad legislation and makes this body look bad, and it is bad legislation because it makes our judicial system look real bad. It has never ever happened before that we have divided a circuit court the way we are about to do it now. The lives of people depend on what we do today. Cases that are appealed to the U.S. Supreme Court come from these circuits. I suggest we follow the recommendation of the amendment that is now before this body.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I yield 15 minutes to the Senator from Idaho.

Mr. CRAIG. Mr. President, I thank the chairman for yielding in opposition to the Feinstein amendment and hope that the Senate would concur with the recommendations of the Appropriations Committee. Justice appropriations has dealt in what I believe is an appropriate way with the issue of the ninth circuit court. There should be no surprises. This is simply not a new issue. I have always felt, and I still do, that if you want to not resolve an issue, you create a commission and study something once again, and we know that this has been studied and recommendations have been made.

In 1973, the Hruska Commission suggested that the fifth and fifth circuits be split, and the fifth circuit was split, the ninth was not. There was simply too much political controversy around it. My guess is today it is a lot more about politics than it is about justice. Justice to the citizens of our country who deserve a timely process in the courts, and certainly with the ninth circuit court being as large as it is, as other Senators have spoken to this, is time that it is relatively and timely rendered is the question.

It has been mentioned—I believe the Senator from Montana mentioned that the ninth circuit averages 429 days and that the medium national time average is 42 days. When you are in the midst of a lawsuit, do you set it aside? Do you quit spending money? Do you stop the retainer of the attorneys representing you? I doubt it. And that clock ticks on and the money accumulates, and the cost is high and justice goes unrendered.

Then the question in this very extended court is whether the justice is appropriate. The Senator from Utah referenced the number of times the Supreme Court has ruled on cases that were matters of the ninth circuit. Those are all part of the issues that brought the citizens of Idaho to me and to my colleague, Senator KEMPTHORNE, to suggest that it was time we dealt with this issue, that the problem since this issue was found to be one of division, one of the appropriate allocation of States, money, and judges, and that simply has not occurred.

I hope that we would deal with this. This bill before us today would put California, Nevada, Guam, and the Northern Marianas in the ninth circuit. It would also create a new twelfth circuit including Alaska, Idaho, Montana, Hawaii, Oregon, and Washington. I am currently a cosponsor of Senator MURkowski's bill, S. 431, which splits the ninth circuit a little differently. However, I find the division in the Gregg-Stevens amendment to be very well thought out and fair. I think either the ninth circuit would work much better than the current organization of the ninth circuit.

The subject of dividing the ninth circuit split has been discussed now for many years. In fact, as long as 1973, the Hruska Commission suggested the ninth and fifth circuits should be split. Although the fifth circuit was divided, the ninth was not. Ever since then, the debate about splitting the ninth circuit has roared on.

Mr. President, I am perplexed why there is any question about this proposal. The ninth circuit is by the largest circuit in the United States. It currently employs 28 judges—11 more than any other circuit. The U.S. Judicial Conference has called a circuit with more than 15 judges unworkable. I guess that means, in the opinion of the Judicial Conference, we have an unworkable situation.

The ninth circuit currently serves 45 million people. This is 6% of the people in the next largest district. The Census Bureau has estimated that by 2010, the population in the ninth circuit will top 63 million people, an increase of 40
The situation has worsened since the Hruska Commission suggested a split of the ninth circuit—a trend certain to continue with further delay.

Over the years of debate on this issue, there has been much discussion of inconsistency and unmanageable caseloads. I would like to change the focus of the argument for just a moment and instead look at the impact on the people of the ninth circuit, which includes the people of Idaho. The size of the circuit also has quite an effect on these individuals.

The ninth circuit averages 429 days from filing to concluding an appeal. This is much longer than the national median time of 315 days. This affects the individuals who resort to the judicial system to resolve a dispute in their lives. It’s been said that people in this country want and expect swift, efficient justice and I think they deserve it.

It is not fair for the people in the ninth circuit to be subjected to this inefficiency. People want their disputes to be solved quickly so they can go on with their lives. A lawsuit has the ability to consume everything else in one's life. The circuit, it consumes their lives for a longer period of time. Also, during this extended process, these individuals are forced to continue paying legal fees. Mr. President, I ask you if 100 extra days in litigation sounds like efficient justice.

The huge backlog that develops can lead to different sorts of problems in the Northwest. The economic stability of the Northwest is threatened when suits involving, for example, the timber industry are forced into the backlog of inefficiency.

It is unquestioned that the ninth circuit covers a huge area. However, when that is combined with the 7,000 new filings the circuit has last year, it becomes almost impossible to keep abreast of legal developments in the circuit. The result is everchanging judicial patterns that inevitably make conflicting rulings. This leads to judicial inconsistency, which is not good for the system, or the people who seek relief through the system. This might help to explain the fact that the ninth circuit covers a huge area. However, when that is combined with the 7,000 new filings the circuit has last year, it becomes almost impossible to keep abreast of legal developments in the circuit. The result is everchanging judicial patterns that inevitably make conflicting rulings. This leads to judicial inconsistency, which is not good for the system, or the people who seek relief through the system. This might help to explain the fact that the ninth circuit has an 82 percent rate of reversal by the Supreme Court of the United States. Mr. President, I ask you if this sounds like efficient justice.

Opponents of this legislation argue that the extreme size and population of the ninth circuit is not enough of a reason to support a split. However, that was the exact reason for the split of the former eighth circuit, which created the tenth circuit. It was also the exact reason for dividing the fifth circuit and creating the eleventh circuit. In fact, as I said before, when the fifth circuit was split, it was suggested that the ninth circuit be split as well.

Opponents also argue for the need of a new commission to determine the need for a split of the ninth circuit. Twenty-five years ago the suggestion of just such a commission was to split the ninth circuit. It has grown since then, and is continuing to grow. The proposed split has been discussed for many years now, including Senate Judiciary hearings. There is more than enough data currently in the record to make an informed decision, and that decision should be to split the ninth circuit.

Mr. President, this situation has been a long time in coming. It is now time for us to act. The split of the fifth circuit worked 25 years ago, so there is no reason we should not expect similar success with the ninth circuit. It is time that we recognize the competing interests of the differing regions in the ninth circuit and split them up. I ask that my colleagues support the split of the ninth circuit in the interest of returning swift, efficient justice to the people of the ninth circuit.

The PRESIDING OFFICER. Who yields time?

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I yield 5 minutes to the distinguished Senator from California, my colleague, Senator Boxer.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I thank the Chair. I thank my colleague. I stand in favor of the pending Feinstein amendment calling for a study to decide whether the people would be better served by splitting the ninth circuit, and, if so, how to split the ninth circuit.

Mr. President, I am very fortunate at this time to be sitting on the Appropriations Committee, and I knew when I took a seat on that committee it was very powerful. Mr. President, I know you sit on that committee as well, and we are proud to be there. But, in my opinion, I never believed the Appropriations Committee would take it upon itself to determine how to split the Ninth Circuit to the Ninth Circuit. If we are going to undertake this, it ought to be a study. The study ought to go to the Judiciary Committee, of which my distinguished colleague, Senator FEINSTEIN, is a member. That is the proper way to serve the people we represent.

Congress has redrawn circuit boundaries only twice since creating the modern appellate system in 1891. So only twice has Congress stepped in. Congress has had circuits without the support of the circuit judges and the organized bar. The judges and lawyers of the ninth circuit overwhelmingly oppose the split without first studying it. The Federal Bar Association and the bar associations of California, Arizona, Nevada, Montana, Idaho, and Hawaii have all passed resolutions expressing their opposition to splitting the circuit. The Ninth Circuit Judicial Council, the governing body for all the courts in the ninth circuit, is unanimously expressing their opposition to splitting the circuit.

The last time splitting up the ninth circuit was studied was during the Hruska Commission in 1973, and the principal authors of that report, Judge Charles Wiggins of Nevada and former Deputy Executive Director of the Hruska Commission, Professor Arthur Hellman, agree that its recommendations have not been implemented and they oppose a split without first conducting a study. And that, of course, is what the pending amendment is about, to have a study first.

Mr. President, this is a time when we hear many comments in this Chamber, and I heard them in committee, about the delay at the ninth circuit. Any delay in total case processing time is clearly due to unfilled vacancies. I have heard this over and over. There are 28 vacancies on the ninth circuit. Of those 28, there are only 19 active judges. So clearly we have not done our job here, and it seems to me justice delayed is justice denied, and we better get busy.
Now, it may be that this money would be well spent. I certainly am very, very open to splitting this court. That is not a problem for me. The problem for me is how we go about it. Before we invest this money every year plus the $9 million startup costs, and an additional $2 million per year, it seems to me we ought to have a study.

So I strongly support the Feinstein amendment. I am proud to be a cosponsor of it. I hope that wisdom will prevail.

I thank the Chair for its patience. I thank my colleague.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, I yield 5 minutes to the Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I have a prepared statement, but I am going to divert from it and frankly just speak from my heart, from my experience. I am one of Senator FEINSTEIN’s great admirers. She may not know that, but I think she is a terrific human being. But I have an obligation to speak as best I can for the people who elected me.

I believe this may be an imperfect process. Maybe it should not be a rider to a bill. But I am very aware that for 25 years this issue has been debated in this Chamber, and we have had study after study after study, and what we are beginning to develop is a feeling among the electorate that when going for justice in the ninth circuit, that justice will be denied. So I think there is a lot of frustration on the part of many of us here that we have to do whatever we can and stop studying and stop delaying and start doing. So I feel very strongly about this.

I have heard many arguments today that have merit on a procedural basis. Yes, maybe many of the legal profession oppose this. But many people support this.

We have heard charges of gerrymandering. I have a map of the United States and the circuit courts of this country. They are saying we are gerrymandering on the west coast, not necessarily on the east coast in this United States, but I notice that nearly every State on the east coast of the United States is in a different circuit. There are five circuits that cover the Eastern United States, and those circuits have the lowest reversal rates, taken together as any region in this country. I think we need to change it.

So I rise to support what Senator GREGG is doing. I thank him for that. I thank him for his leadership. He doesn’t have a dog in the fight of the ninth circuit, but a lot of us do. So I thank him for that.

I join my colleagues in opposition to this amendment to strike the provision in this bill to divide the Ninth Circuit of the U.S. Court of Appeals. This may not be the most perfect solution to a difficult problem, but I believe it provides a platform from which to relieve the caseload and reverse rate of the Ninth Circuit Court of Appeals.

Several hundred people and spanning 1.4 million square miles, the Ninth Circuit Court of Appeals handles more than 8,500 filings a year—with a reversal rate of 96 percent. By the year 2030, the ninth circuit population will increase in size by 43 percent.

While my colleague from California may argue that this is an issue for further study, I would like to remind my colleagues that the Senate has studied this issue for almost a quarter century and has reported legislation to split the ninth circuit on three separate occasions. Clearly, the time has come to act.

I want to conclude by reading the comments of some judges who support what is happening because some have been read to the reverse.

Mr. President, we are not simply legislating without just cause. The judges that serve in the ninth circuit have given us cause to act without further delay. Judge O’Scannlain from my state of Oregon has stated:

We (the ninth circuit) cannot grow without limit. As the number of opinions increases, we judge risk losing the ability to know what our circuit’s law is. In short, bigger is not necessarily better. The ninth circuit will ultimately need to be split.

I replaced a great senator, Senator Mark O. Hatfield who served in this Chamber for 30 years. He said:

The ninth circuit’s size has created serious problems: too many judges spending more time and money traveling than hearing cases, a growing backlog of cases which threaten to bury each judge, a dangerous inability to keep up with current case law, a breakdown in judicial collegiality and, most importantly, a failure to provide uniformity, stability and predictability in the development of federal law throughout the Western region. It is increasingly clear that these problems cannot be solved by the reforms already implemented by the Court. These arguments adequately state the case for the division of the circuit. We delay at our peril.

Mr. President, justice delayed is justice denied. I ask my colleagues to join me in opposing this amendment.

I yield the remainder of my time.

Mr. GREGG. Mr. President, how much time is left on both sides?

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, how much time is left on both sides?

The PRESIDING OFFICER. The Senator from New Hampshire controls 46 minutes. The Senator from California controls 27 minutes.

Mr. GREGG. Does the Senator from California mind if we take another speaker?

Mrs. FEINSTEIN. Not at all.

Mr. GREGG. I yield to the Senator for 10 minutes.

Mr. KEMPThORNE. Mr. President, may I commend the Senator from New Hampshire for his efforts on this issue.

I applaud him on that. It is long overdue. Therefore, I must rise in opposition to the Senator from California, for whom I have the utmost respect. She and I have served as mayors in this country at the same time. I prefer it when we are on the same side of the aisle. But I look forward to that day again.

The time to alleviate the problems being faced by the ninth circuit has long been passed. It is time for us to deal with this. The potential realignments of the circuits was first considered by the Senate nearly 25 years ago. For 25 years we have known that we should be at this point, that we should have made the decision long ago. Yet, the option presented by this amendment would only serve to further delay this long overdue realignment. And further delay serves only to deny access to justice to the people who fall under the jurisdiction of the ninth circuit.

The immense size of the ninth circuit is one of the problems we are facing. The next closest circuit in size is the sixth. The sixth circuit has a population of just under 30 million people. The ninth circuit has nearly 50 million people—70 percent more people than does the sixth. And this problem will only be exacerbated because, over the next 12 years, the States which make up the current ninth circuit are expected to grow by 43 percent.

So here we have a problem that is 25 years in the making and getting worse, and now we can see the projections that it is just simply going to be driven to the point that access to justice is absolutely impossible. As a result of the tremendous caseloads, adjudication by the ninth circuit is unnecessarily and unfortunately slow. Recent figures indicate the time to complete an appeal in the ninth circuit is 40 percent longer than the national median.

The people of the ninth circuit are simply not served by the unneeded delay experienced within the circuit. The question before us, therefore, is not a question of politics. It is a question of fairness. The judges in the ninth circuit simply cannot keep up with the number of cases which are being decided. It is nearly impossible logistically for judges within the circuit to know the law as it is being decided within the circuit, and therefore you see inconsistencies, you see problems with not staying up with decisions that have been made elsewhere within the jurisdiction, and therefore we see the cases being overturned.

So, should the people of the ninth circuit have to continue to face the unnecessary delays and judicial uncertainty which is becoming commonplace within the circuit? Should the judges of the ninth circuit continue to be burdened with a system which prevents the kind of collegiality which is necessary for effective decisionmaking? The repetitive and repetitive questions reveals that the answer must be no. And, if the answer is no, then we must act now to split the ninth circuit
and provide the people within this jurisdiction the access to justice which all Americans expect and are entitled to. Speaking for the people I represent, I say that it is fundamentally unfair to deny the people of Idaho justice. Yet, the amendment which the Senator from California, Mr. BRYAN, and his colleagues on the Appropriations Committee have seen fit to usurp the kind of injustice that was exposed nearly a quarter of a century ago.

In reviewing a proposal of this magnitude, I believe it is important to speak about what is at stake. The situation with the Ninth Circuit is different from the situation with any other circuit court. It is the largest and busiest circuit court in the nation. It has a larger caseload than all the other courts combined. It handles more cases than any other court in the country. It has a larger number of judges than any other court. It has a larger number of lawyers and litigants. It has a larger number of attorneys and litigants. It has a larger number of clerks and staff. It has a larger number of judges and clerks.

In closing, I would like to quote another friend of mine who is the Governor of the State of Idaho, Phil Batt. With regard to the circuit, he said: The circuit has been overloaded for a long time, and it is in the interest of everyone, especially justice, to split it.

That is what this debate is truly about: justice. I urge my colleagues to vote for justice and to vote against the amendment which is before us. Americans are entitled to justice and they are entitled to access to the justice system, and it is being denied currently in the ninth circuit. The remedy, a new Twelfth Circuit Court, is necessary to resolve these concerns, and, at the same time, reduce the average case processing time by over 400 days to a time period consistent with most other circuits.

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that needs improving and is successfully addressing it.

I find it particularly ironic that in this political environment in which budget decisions are hotly debated and new expenditures are closely watched that a new circuit would be proposed, because it is estimated that a courthouse alone would cost some $60 million and there would be additional costs that would be involved in the transition period. So, therefore, we would face the continuing cost of operating an additional circuit court when, at this point, no determination has been made in a fair and objective way that dividing the circuit is necessary.

In my view, the ninth circuit has worked well for the nine Western States it serves and will continue to do so into the future. For those who believe the ninth circuit must be split, I urge the support of the Feinstein amendment to establish a commission to review the structure and the alignment of Federal courts of appeals. This is a thoughtful and prudent way to address this issue.

When the information necessary to determine whether any circuits need their geographical jurisdiction changed is available then debate this issue more intelligently, having been thoroughly informed as to the facts. But let us not split the ninth circuit at this time.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, I yield the Senator from Alaska 10 minutes.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURkowski. I thank the Chair.

Mr. President, I rise to oppose the amendment offered by my good friend, the Senator from California, the amendment which would strike the provisions of the bill to divide the ninth circuit into two separate circuits of more manageable size and certainly more manageable responsibility.

The division of the ninth circuit is warrant for three very important reasons: its size and population; its caseload; and its astounding reversal rate by the U.S. Supreme Court. Who holds the ninth circuit court accountable? It is the U.S. Supreme Court.

Let’s talk about size and population. I have a chart here which shows the magnitudes of the geographical area covered by the ninth circuit. The ninth circuit is, by far, the largest of the 13 judicial circuits, encompassing nine States and stretching from the Arctic Circle in my State to the border of Mexico and across the international date line. That is how big it is.

We are not against California or Nevada. What we want is a recognition of timely judicial action.

Population: The second chart I have shows the number of people served by the ninth circuit. Over 40 million people are served by the ninth circuit, almost 60 percent more than are served by the next largest circuit. By the year 2010, not very far away, the Census Bureau estimates that the ninth circuit’s population will be more than 63 million, a 43-percent increase in just 13 years. Talk about not doing anything rash. This population is increasing out of control. We better start doing something now.

On the issue of accountability, Mr. President, and that is most important, the only factor more disturbing than the geographic magnitude of the circuit is the magnitude of its ever-expanding caseload. The ninth circuit has more cases than any other circuit.

Last year alone, the ninth circuit had an astounding 8,502 new filings. It is because of its caseload that the entire appellate process in the ninth circuit is the second slowest in the Nation. How do they explain that? As a former chief judge, Judge Wallace of the ninth circuit, stated:

It takes about 4 months longer to complete an appeal in our court as compared to the national median.

Former Chief Justice Warren E. Burger put it more succinctly when he called the ninth circuit an “unmanageable administrative monstrosity.”

Let’s look at this reversal rate which I want to talk to you about, because there is the issue of accountability. Our responsibility of judicial oversight demands action now. Unfortunately, this massive size often results in the decrease in the ability of the judges to keep abreast of legal developments within this jurisdiction. The large number of judges scattered over a large area inevitably results in difficulty in reaching consistent circuit decisions. This judicial inconsistency has led to continual increases in the reversal rate of the ninth circuit decisions by the U.S. Supreme Court.

During the last Supreme Court session, the Court reversed 19 of the 20 cases that it heard from the ninth circuit. That is an astounding 95 percent reversal rate. How do they explain that? They are quite embarrassed. I would think, for the judges. The Supreme Court holds the circuit accountable to the tune of a 95 percent reversal rate. It’s about accountability, Mr. President.

Here is the relative ninth circuit reversal rate: 95 percent in 1996; 83 percent in 1995; 82 percent in 1994; 73 percent in 1993; 63 percent in 1992.

Why does this reversal rate continue to increase? Because the circuit is simply too big. Intracircuit conflicts are the result. Ninth circuit Judge DIRMUOID O’SCANNLAIN, a sitting judge on the ninth circuit, described the problem as follows:

An appellate court must function as a unified body, and it must speak with a unified voice. It must maintain and shape a coherent body of law. A circuit judge must feel as though he or she speaks for the whole court and not merely an individual. As more and more judges are added, it becomes harder for the court to remain accountable to lawyers, other judges, and the public at large.

Listen to that, “the public at large.”

As the number of opinions increase, we judges risk losing the ability to keep track of precedents and the ability to know what our circuit’s law is. In short, bigger is not better, Court Chairman.

Another sitting judge on the ninth circuit, Judge Andrew Kleinfield, agrees:

With so many judges on the ninth circuit and so many cases, there is no way a judge can read all the other judges’ opinions. . . It’s an impossibility.

Now there you have it, Mr. President. Two statements from two sitting judges about what the problem is.

Some today argue that the Senate is acting in haste. This is entirely untrue. The concept of dividing the ninth circuit is not new. Numerous proposals to divide the ninth circuit were debated in Congress since before World War II. More recent congressional history includes:

1973 congressional commission to study realignment with the circuit court, chaired by Senator Hruska, which strongly called for division of the ninth circuit.


A split of the ninth circuit has been reported from a Senate committee on three occasions, Mr. President.

How long do we have to wait? Dividing the ninth has been studied, debated and analyzed to death. It is time for action.

I have one final chart. This is a statement from retired U.S. Supreme Court Justice Warren Burger:

I strongly believe that the ninth circuit is far too cumbersome and it should be divided.

U.S. Supreme Court Justice Anthony M. Kennedy who reviews, if you will, the appeals, has this opinion:

I have increasing doubts and increasing reservations about the wisdom of retaining the ninth in its historic size, and with its historic jurisdiction.

Honorable DIRMUOID O’SCANNLAIN, ninth circuit:

We (the ninth circuit) cannot grow without limit. . . As the number of opinions increases, judges risk losing the ability to know what our circuit’s law is.

Judge Kleinfield currently sitting on the court:

The ninth circuit is too large and has too many cases—making it impossible to keep abreast of ninth circuit decisions.

Our own former Member, a Senator from Alabama, former Alabama Supreme Court Chief Justice Howell Heflin, who we have the greatest respect for:

Congress recognized that a point is reached where the addition of judges decreases the efficiency of the court, complicates the administration of uniform law, and potentially diminishes the quality of justice within a circuit.

That is our own former Senator.

Finally, recently retired Senator Mark Hatfield:

The increased likelihood of intracircuit conflicts is an important justification for splitting the court.
There you have some of the most repected people we know relative to this subject. The Commerce, State, Justice bill splits the circuit in a rational way. The States of California and Nevada, due to their large population, particularly of California, and the rapid population growth of Nevada, will comprise the new ninth circuit. The balance of the States of the circuit will form the new twelfth circuit. The 49 million residents of the ninth circuit are the persons who suffer. Many wait years before the case is decided. And it is not only the money matter. This is true and true new authorization language that has no place being on our appropriations bill.

In our full committee mark of the bill, Senators REID and BOXER asked the committee to create a commission to study the states in all the circuits and make recommendations according to the big picture. The rationale behind this is to let the experts who know and understand our circuit courts tell us what they think before we do anything rash. This issue, as a result of the Ninth Circuit, is a nationwide problem requiring a nationwide solution. We can't sit here on our appropriations bill and pretend to be experts as to what's best for the ninth circuit or all the circuit courts, especially without ever having any hearings on the topic, and especially not knowing how much our decision will cost us. Believe me, splitting the ninth circuit court will without a doubt incur upon us additional costs that we haven't even begun to predict. So I urge my chairman and my colleagues to listen when I say that this issue must go. We need to give this to the Judiciary Committee where I have confidence they will make an informed and thorough decision in a field that is theirs and theirs alone.

Mr. GREGG. Mr. President, can the Chair advise us of the present time status?

The PRESIDING OFFICER. The Senator from New Hampshire controls 30 minutes; the Senator from California controls 19 minutes.

Mr. GREGG. Mr. President, I suggest to the Senator from California, if it is agreeable, that we move to the Senator from Arizona for 5 minutes while we work on a possible unanimous consent agreement for a vote.

Mrs. FEINSTEIN. That is acceptable.

Mr. GREGG. I yield 5 minutes to the Senator from Arizona.

Mr. PRESIDENT. Mr. President, I thank my colleague for yielding. This proposal to divide the ninth circuit is especially important to my State.

Mr. GREGG. May I ask the Senator from Arizona to suspend for a second while I propound a unanimous consent request?

Mr. KYL. Sure.

Mr. GREGG. Mr. President, I ask unanimous consent that the vote occur on or in relation to the pending Feinstein amendment at 7:45 p.m., this evening; and further, that the time between now and then be equally divided in the usual form, and that there be no amendments in the second degree.

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

The Senator from Arizona.

Mr. KYL. Thank you, Mr. President.

As I said, this provision in the bill to divide the ninth circuit is very important to the State of Arizona because Arizona is the second largest State in the existing ninth circuit, both in terms of population and caseload. It, California, and Nevada are all three very fast growing. And there is no question that the caseload will continue to grow at least in proportion to the population.

Phoenix, AZ, is now the sixth largest city in the country. Arizona is, I believe, the fastest growing in the country. So not only do we have a situation in which we are growing very rapidly, along with Nevada and California, but the proposed amendment would result in a division of the circuit which would affect every State of Arizona. So I speak to this issue.

Now, it is not my suggestion, Mr. President, that the circuit be divided. There is a division of opinion in Arizona on that that suggests that the bench and bar are split. I do not think there is a clear consensus in my State as to whether the circuit should be divided, but I think there is a pretty clear recognition that it will be. It will happen sooner or later. It is inevitable, as several of my colleagues have already pointed out here. There is no question, because of its size and other factors, the circuit is going to be divided one way or another.

The question is how will it be divided? On that question I think we have a clear consensus in my State. And the way I look at this question of size, population, growth, caseload growth, and so on. Because if, for example, you divided the circuit the way it calls for in the bill, the caseload division would be as follows: The circuit comprised of California and Nevada would have 63 percent of the cases, and the remainder of the circuit would have 37 percent of the cases. That is about a 2-to-1 division, showing just how big California is. Probably in terms of caseload, the sounder way to do it would be just to have California. It would still be about 60-40 in favor of California versus all of the rest of the States in the circuit.

But I gather that the proponents of this have decided to accommodate States who have expressed a willingness, through their Senators, to be added to California or to remain with California, and that Nevada has done that, as a result of which, to accommodate Nevada, it has been put with California.

Now, if Arizona were to be added to that circuit, as some people suggest—again, there is division of view on this—the caseload would be 73 percent for the Arizona, Nevada, California circuit; 27 percent for the rest of the circuit. Obviously, that is not a good division for the circuits. So I have had to consider it from both a perspective of my State and what makes sense how to approach this issue. It clearly does not make sense, from a caseload division, to divide the circuit in a way that would add the three fastest growing States—Arizona, Nevada and California— together. I think it is bad enough to add Nevada and California together, though I do not deny that Nevada is a right hand California if they desire. But it will soon be unbalanced and soon be the largest circuit in the country.
Mr. President, in the end, I conclude I will not oppose this proposal. I would like to add two comments to those that have been made by my colleagues. First, there has been a suggestion that this circuit would be gerrymandered. I do worry gerrymandering in that is not true. It is not true politically. The division of Democrat and Republican nominees would be exactly the same with the new division as it would be under the existing circuit. So I do not think that anybody believes this is about gerrymandering in a political sense. The percentage of Democrats and Republicans would be the same.

Moreover, it is not a geographical gerrymandering. It simply takes two of the States of the circuit and leaves the remaining circuit as it is.

Again, I would prefer that Nevada remain with the rest of the circuit to have a more evenly balanced caseload. Nevada wants to go with California—fine. That creates the anomaly that Arizona would be divided from the rest of the circuit. But in the day of air travel, I do not think that is a particularly difficult problem for us, particularly since the committee has seen fit to designate both Seattle and Phoenix as administrative sites of the circuit. So you have both a northern and southern administrative site. I know in the existing ninth circuit, cases are argued in Phoenix, Seattle, Los Angeles, San Francisco, and so on. Because of its size, you have to accommodate the travel needs of the parties, the litigants. So there is an accommodation to that. And it would exist in this new circuit as well.

But at least the people in the new circuit would not have to travel to California. So it seems to me that, on balance, maybe the best of a difficult situation has been made. I should say, the best has been made of a difficult situation. That is how to make a division that results in a fairly even distribution of judges. The way in which I objected to along with Senator from California knows. But I do want to suggest that that is not the case.

I happen to agree with my chairman, Mr. Procter Hug. What Judge Hug points out is:

"Under the bill, the Ninth Circuit is to have 15 judges and the Twelfth Circuit is to have 13 judges. The Ninth Circuit would have a 50% greater caseload per judge than the Twelfth."

He goes on and shows the total for California, Nevada, Guam, Northern Marianas, with a total caseload of 5,448.

With 15 judges, the caseload per judge—363 cases, then the caseload for Alaska, 204; Arizona, 691; Hawaii, 204; Idaho, 141; Montana, 175; Oregon, 629; Washington, 671, with a total of 3,112.

With 13 judges, the caseload per judge—239 cases. That is one of my big objections. One thing I would join the Senator from California in assuming that there will be a fairer distribution of judges.

Mr. KYL. Will the Senator yield?

Mrs. FEINSTEIN. If it is on your time, I would be happy to yield.

Mr. KYL. That would be up to Senator GREGG. I am going to agree with you, so perhaps—

Mr. GREGG. I have no problem with that. This colloquy can be on our time.

Mr. KYL. At this time I would like to address the allocation of judges before. The Senator is exactly correct. I totally agree with you there should be a fair allocation, meaning that it should be in rough proportion to the caseload, and the projected caseload, not just the existing caseload. Therefore, if that means that there should be a different division of the judges vis-a-vis the States in the new circuit, I would not only have no objection to that, but I would join the Senator from California in assuming that is the case.

This was not my proposal, as the Senator from California knows. But I would suspect that the proponents of this amendment would be very happy to ensure that that distribution of judges is made a part of the legislation. At least, I would work with the Senator from California to assure that, if that would be the case.

Mrs. FEINSTEIN. I very much appreciate that, and I take you at your word. However, what this legislation does will be the law if it is accepted by the House.

Mr. MURKOWSKI. Could I ask my friend from California a question?

Mrs. FEINSTEIN. Of course.

Mr. MURKOWSKI. At this time I would have to reclaim my time because we do have some additional speakers. So any additional colloquy should come off the time of the Senator from California.

Mrs. FEINSTEIN. If I may just make my quick statement.

On four occasions, the Federal judges of the ninth circuit and the practicing lawyers of the Ninth Circuit Judicial Conference have voted in opposition to splitting the circuits. The official bar organization of Arizona—as recently as July 14, a few days ago—and the bars of California, Hawaii, Idaho, Montana, and Nevada, and the National Federal Law Judges Association have taken a position against the circuit division. No State bar organization to this day has taken a position in favor of circuit division, let alone this division.

Now, let me try to begin to summarize:

I believe strongly—and I think the other side knows I do not throw these comments around lightly—that this is really being done for the wrong reasons and in the wrong way. I think some people did not like some of the decisions, specifically in mining and grazing. For some it is being done because they think they will get more judges for their State. I have had Senators tell me that directly. For some, a new court-house is attractive.

The point is, the House of Representatives has passed the very bill, the amendment of which I am carrying here in the Senate. This proposal, notably, by standing anything that Judge Hug has said, as a member of the Judiciary Committee for the last 4½ years—there has never, Mr. President, in the time you’ve been there, there has never been a hearing on this split. There has never been a discussion of the ramifications of this split on legal precedent or forum shopping. There has never been input from the judicial council, from the judges, from the bar associations on this split. That is fact, Mr. President.

Yet, an appropriations committee has stolen the jurisdiction of the Judiciary Committee and moved ahead and proposed a split a few weeks ago—2 days later they had a split which split California in half—the next day that was gone and there was the split we are faced with today. That is why I say it is a gerrymander.

If this were a map before a court on an electoral district with Arizona floating out here alone, they would say, aha, it is a gerrymander. Yet it can be done by a committee that does not even have authorizing oversight jurisdiction, and, bingo, it is before the full body. I really have a problem with that. I do not think that is right.

I happen to agree with my chairman, California is going to have 50 million people by the year 2025. We should take a look at whether our interests of justice would be carried out by splitting the largest circuit in the Union. I do not have a problem with that.

What do I do have a problem with is worrying, aha, is this being done because Montana doesn’t like a mining decision? Is it being done because Washington does not like a timber decision? Is it being done because someone else doesn’t like another decision? Is it being done because a state wants an additional judge?

I mean, this is a very real and pertinent consideration because never before in the history of the Union has a
Mr. President, we have studied this matter to death. The issue, in 1973, was recommended by Senator Hruska and the Hruska Commission was created. It recommended then, in 1973, that the ninth circuit court be split. Every Congress we hear the same thing from the large delegation in the House and the two Senators in the Senate from California: we need more study. I think that is what we are hearing again now—have another study.

It has only been 24 years now that we have been studying since the first commission reported. But, of course, we do need the advice of another commission.

Mr. President, I am a California lawyer. I was raised in California that I am pleased to have that background. But I tell you, in all sincerity, I cannot believe that we can continue this situation. This chart—I am not sure it can be seen. Mr. President. This chart shows the population and caseload of the United States. California is almost 50 million people in the ninth circuit, and it requires some change when, clearly, the average of all of the others is somewhere around 20 million people.

I want to address the concern spoken to, I think, by my good friend from Hawaii, Senator Inouye. It has been 13 years now since a Hawaii resident was appointed to the ninth circuit. Fourteen judges have been seated on the circuit since that time, but Hawaii was never recognized. Senator Inouye has included an amendment in this provision. I believe that one judge will be appointed to the circuit court of appeals from the new circuit, when it is created, from each State. Now, I think the Senate should listen to that kind of frustration and should listen to the frustration of others who see how long it takes for a case to be decided by the Ninth Circuit Court of Appeals.

Mr. President, I said the other day that the Ninth Circuit Court of Appeals judges come to our State. They come during the summer, and they have a delightful time visiting our State. In the winter, they all our people fly south and some of our lawyers like that. But the litigants don’t like it because the average time that an appeal is pending before the ninth circuit is so long, it puts a great burden upon our States, the smaller States in this circuit.

Now, in 1995, the Senate Judiciary Committee report showed that New York accounted for approximately 87 percent of the second circuit docket; Texas cases were approximately 70 percent of the fifth circuit docket. We have considered splitting the ninth circuit. Senate Inouye and I have been in the Senate for seven years, and those seven years have been in the Senate. Mr. President, the overload of the ninth circuit is now such a serious problem, and it is only going to get worse if we continue to
talk about another commission to discuss whether this split should take place.

The appellate process, for almost one-fifth of the citizens of the United States, will continue to be inadequate. I believe we are doing California a favor by splitting this court. They are the only State that has one circuit all to itself, all to itself—well, Nevada could make the decision to join if they wish. But the establishment of tribunals is a responsibility of the Congress, not of an amendment. It is one of our most important responsibilities under the Constitution. I believe the Senate will shirk its responsibility if we do not act to correct this problem of the Ninth Circuit, and I urge the Senate to do what this amendment would do: create a new Twelfth Circuit and allocate to the States that are suffering greatly by the current crowded situation and long delays in the Ninth Circuit Court of Appeals.

I thank the Chair and yield back the balance of my time.

Mr. GREGG. Mr. President, does the Senator from California have any additional speakers?

Mrs. FEINSTEIN. I would like to know how much time I have remaining, if any.

The PRESIDING OFFICER. Nine minutes.

Mrs. FEINSTEIN. I reserve the balance of my time.

Mr. GREGG. Does the Senator plan to close? We have one additional speaker. I will have that speaker go if the Senator is planning to close as the final speaker.

Mrs. FEINSTEIN. I will speak after the Senator from Washington.

Mr. GREGG. I yield the balance of our time to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. MCDONALD. Mr. President, the Senator from California makes a serious argument: we should not split the circuits because we will waste the $140 million investment in a courthouse in San Francisco, except that we can split the circuits if this so-called study commission says we should do so, and she would then have no objection.

Well, either the courthouse is an important consideration, or it is not an important consideration. Obviously, Mr. President, it is not an important consideration. I presume—I hope—that the Senator from California is not arguing that, even if there is a split, all of the staff and all of the people who are now in that courthouse in San Francisco would still be there and everything has to be added onto that. That is often a way in which the Federal bureaucracy operates. But there is no reason in the world for us to allow it to operate in that fashion under this set of circumstances.

This can be done efficiently and effectively. But that is the fundamental argument against this amendment and in favor of the bill as it stands. The ranking minority member of this Judiciary Committee said that this is the wrong way to act. The Senator from California says this is the wrong way to act because it is on an appropriations bill.

Yet, I believe, a few years ago when a bill practically identical to this was reported by the Judiciary Committee, after full hearings and a full debate, they objected to it even being debated on the floor of the U.S. Senate. Now for the first time we have an opportunity to do so.

This Senator has favored this flip since the early 1980's. And this is the first time we have ever been able so much as to debate it on the floor of the U.S. Senate.

The arguments against the proposal for split are essentially procedural. "Oh, no, we have not had enough hearings. We have not talked about it for a long enough time. There have not been enough study commissions."

There have been hearings for decades. There has been a debate for decades. It simply cannot be argued in any kind of rational manner that a circuit with this number of States, with 14 million square miles of land and water, with almost 50 million people growing more rapidly than any other part of the country, with 28 authorized judges at the present time, 10 more requested on top of that, can be a collegial body, a court that can understand the cases that come in, and in which the members can even learn the names of the other members of the court.

Of course a division is appropriate, and the division that is being discussed here today is the division, if there is to be one, that the Senators in opposition asked for.

We are criticized because the bill changed in form as it got in front of us. Well, California is not divided because the Senators from California asked that it not be divided. And we went along.

Nevada remains a part of the Ninth Circuit because the Senators from Nevada asked that that be the case as against the bill that was reported 2 years ago.

Hawaii and the trust territories are with the new Twelfth circuit because, assuming a division, that is where they wanted to be.

Yes, there have been changes, but they have been changes requested by the very Senators who are here on the floor arguing against the result of their requests. Justice in these circuit courts will be done better in circuits that are roughly similar to the other circuits—all of the other circuits in the United States. Each of these circuits will still have more square miles than any other, except for, I believe it is the tenth in the Mountain States, and more when you include Alaska. The Ninth circuit will still be the largest of any and all of them.

I don't believe this is going to be the last such division. But it is a division whose time came almost a quarter of a century ago. And that has been resisted by lawyers and judges who are comfortable with the present situation, with the wonderful travel opportunities they have, and rank that convenience ahead of the convenience of individual judges whose courts can be served far better, far closer to home, with far more understanding, if this division becomes law, than if we simply say, "Oh, let's wait. Let's have another study. And let's see if the study comes up with the results we did before. And then we will have another excuse to oppose the division."

That is what we got when we heard, on one hand, "Fine, let's have the study, and we will agree with it. But, no, we can't divide the circuit because we have a brand new $140 million courthouse in San Francisco."

No, Mr. President, it is time for the Senate of the United States to deal with this question as a matter of substance today. It is time to do justice. It is time to reject this amendment and pass this bill.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I believe I have 9 minutes remaining on my time. I would like to yield 7 of them to the distinguished Senator from Delaware, the former chairman of the Judiciary Committee.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Thank you very much. Mr. President, this is not the right way to do this. Let me repeat that again. This is not the right way to do this. If the circuit were to be split, we should do it in a way we have done it in the past.

When some of my colleagues who have argued for the split in the past have come before the committee, they have said some of the following things. The argument is, "Well, the reason we want a split is we don't want to have the court, basically a California-dominated court, making the law for the folks in my State. We are different."

And I point out to my colleagues who say that, you know, it is a funny thing about the circuit courts. Our Founding Fathers set the circuit courts up for a basic fundamental reason. They didn't want 50 different interpretations of the Federal Constitution. It is kind of strange. The whole purpose of the circuit court of appeals was to make sure there was a uniform view as to how to read the Constitution—not a Montana reading, not a Washington State reading, not a Nevada reading, not a Hawaii reading, and not an Alaska reading. Geography is relevant only in terms of convenience—not ideology.

This is all about ideology at its core. That is what this is about. That is what the attempt to split it is about.

There is no data to sustain that this should be done. Let the Senate and the Judicial Conference make a judgment, make a recommendation to us. Let them decide as they have in the past.
I say to my friends from the South, before I got here, we split up what used to be a giant circuit from Texas to Florida. The Senator’s home State was part of the Presiding Officer’s home State, was part of this giant district of the circuit court, and it got split. We did it to the right way. We got the facts. We heard from the Judicial Conference. We listened to the court.

This is about politics. It is no way to deal with the court. It isn’t how to do this.

Let’s look at what we have. We don’t have any data on the operation of the circuit as it is presently configured. So, therefore, it seems to me, we should at least give some weight to those folks who are on the court, and those folks who are litigants argue before the court—the bar of those States.

With that in mind, let me point out that the Ninth Circuit Judicial Council, the governing body of all the courts in the ninth circuit, is unanimously opposed to this. Democratic appointees to that court, Democratic appointees to that circuit, liberal appointees, conservative appointees, pointed-head appointees, flat-headed appointees. They are all opposed.

Let’s look at the next thing that makes sense to look at—those who litigate before the court.

The California bar is opposed to this. The Arizona bar is opposed to this. The Hawaii State Bar Association is opposed to this. Republican appointees to that court, Democratic appointees to that court, liberal appointees, conservative appointees, pointed-head appointees, flat-headed appointees. They are all opposed.

Look at the fact that makes sense to look at—those who litigate before the court.

The California bar is opposed to this. The Arizona bar is opposed to this. The Hawaii State Bar Association is opposed to this. Republican appointees to that court, Democratic appointees to that court, liberal appointees, conservative appointees, pointed-head appointees, flat-headed appointees. They are all opposed.

Look at the second thing that makes sense to look at—those who litigate before the court.

The California bar is opposed to this. The Arizona bar is opposed to this. The Hawaii State Bar Association is opposed to this. Republican appointees to that court, Democratic appointees to that court, liberal appointees, conservative appointees, pointed-head appointees, flat-headed appointees. They are all opposed.

So, Mr. President, you can make an argument that this court is overworked. You can make the argument that this distribution is but part of the problem. You can make the argument that it is part of the July 22 letter from the Chairman of the Judicial Conference.

Mr. President, I thank the Senator from California for his excellent comment. I agree with him 100 percent. This is the wrong way for the wrong reason. The reasons are not regional. The reasons are, if we do not like the decision, we don’t appoint the judges.

One-third of the ninth circuit today is vacant. I repeat, one-third of the judgeships on the ninth circuit today are vacant. And I do not believe that there is a plan to appoint another judge to the Ninth Circuit until we bow to this. What we are bowing to is something that has never been heard, never been studied in the 4½ years that I have been on the Judiciary Committee of the Senate.

Mr. President, I ask unanimous consent to include in the Record a July 14, 1997 statement of the Arizona bar in opposition to this split, a statement of the California bar in objection to this, a recent letter from the Governor of the State of California in objection to this. I also have in my files letters objecting to the earlier proposals to split the circuit. These include letters of objection from the State Bar of Nevada, the State Bar of California, the State Bar of Hawaii, the Los Angeles County Bar, lawyers’ representatives of the ninth circuit, and the Judicial Council.

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

DEAR ORRIN: I understand that this week the Senate is expected to consider S. 1022, the Commerce-Justice-State-Judiciary appropriations bill. Included in the bill is a provision that would authorize the Appropriations Committee to consider the establishment of the new twelfth circuit. This provision and the related amendment are not part of the Appropriations Committee’s recommendation and were not part of the Senate amendment to the Appropriations Act of 1997. This provision of the bill (section 305) would amend Title 28 of the United States Code by dividing the existing Ninth Circuit into two new circuits. I well know, altering the structure of the Federal judicial system is a serious matter. It is something that Congress does rarely, and only after careful consideration.

It is anticipated that an amendment will be offered to replace the circuit division with legislation to create a commission to study the courts of appeals and report recommendations on possible changes. This legislation, H.R. 906, has already passed the House unanimously on a voice vote on June 3, 1997. A similar bill, S. 956, was passed unanimously by the Senate in the 104th Congress. This is a far superior way of dealing with the problems of caseload growth in the Ninth Circuit and other courts of appeals. I urge your support for the amendment.

Sincerely,

HENRY J. HYDE,
Chairman.
legal challenges to its actions may generally be brought in any venue within the State.

While a split of the Ninth Circuit would generate a number of inconsistent rulings along the West Coast, in areas such as commercial law, environmental law (including standing to sue), and admiralty law, a split of California would exacerbate this incompatibility by subjecting Northern California's cities, like San Francisco, to different controlling law than Southern California's cities, like Los Angeles.

Nor would the spectacle of forum shopping between circuits within California be alleviated by a mechanism similar to that proposed in bill (H.R. 3654), which suggested the creation of an "Interircuit California En Banc Court." As proposed in that bill, the Interircuit California Court would be reviewed by judges of different circuits "whose official duty stations are in the State of California." Such an intercircuit en banc panel would necessarily differ from the composition of the en banc panels for each of the participating circuits. This, of course, raises the specter of greater inconsistencies among the circuits arising from overlapping en banc panels. As the proposal would permit the Interircuit Court to resolve only intercircuit conflicts of federal law, conflicting interpretations of California substantive law in such cases would presumably remain unresolved. Of course, these additional circuits would impose additional burdens on the U.S. Supreme Court.

Admittedly, the Ninth Circuit handles more cases than any other circuit. However, statistics refute any objection that the Circuit is "too big." The median time for it to decide appeals (14.3 months as of September 30, 1996) is less than that for the Eleventh Circuit (15.1 months), and only slightly higher than that for the Seventh and District of Columbia Circuits.

The real issue underlying this debate appears to be one of judicial gerrymandering, which seeks to cordon off some judges on one circuit while keeping others in another because of concerns, whether perceived or real, over particular judges' perspectives or judicial philosophy. If this is the issue, I submit that the proper means to address it is through the appointment of judges who share our judicial philosophy. If this is the issue, I submit that any split should not be achieved.

We have heard that various proposals to split the Ninth Circuit may be made in the Senate Appropriations Committee, for example, to include California and Nevada in one circuit and to join other states in the Continental United States in another circuit, including non-contiguous Arizona, or to place California in a single circuit with the island territories, with all other states presently in the Ninth Circuit in a separate circuit. The variety of proposals indicates that there is no consensus, even among proponents, as to how any split should be achieved.

We are strongly opposed to all of these proposals to split the Ninth Circuit. They represent a form of judicial gerrymandering and are not based upon any study of the Ninth Circuit or of the overall needs of the federal courts as a whole. They violate the established principles that federal judicial circuits encompass three or more states and be designed to transcend parochial interests. These proposals are likely to increase the problems of the federal courts of appeals and make these problems more costly and difficult to fix. The multiplicity of proposals that have been made, without study, simply emphasize the need for a thorough study of the federal appellate courts as a whole.

For these reasons, we believe that any proposal to split the Ninth Circuit, or to realign any other circuit, needs to be informed by a non-partisan study of the structure and alignment of the federal court system. I have written a similar letter to Senator Boxer, who is a member of the Senate Appropriations Committee.

Sincerely,

THOMAS G. STOLPMAN, President.

THE STATE BAR OF CALIFORNIA,

Re State Bar of California Support for Commission to Study the Federal Courts of Appeals and Opposition to Splitting the Ninth Circuit Court of Appeals.

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

DEAR SENATOR FEINSTEIN: The Board of Governors of the State Bar of California strongly opposes the recent proposals to split the Ninth Circuit Court of Appeals. Such a proposal would erode the integrity of the federal courts of appeals by supporting the establishment of a non-partisan commission to study the structure and alignment of the federal courts of appeals. A bill to establish such a commission, H.R. 908, unanimously passed the House in June. It has been 24 years since the last major study of the structure and alignment of the federal courts of appeals. No proposal to restructure the Ninth Circuit should be considered prior to the completion of a thorough study.

Some have argued that the size of the caseload of the Ninth Circuit argues for its division; however, caseload growth is an issue common to courts of appeals nationwide. Splitting the Ninth Circuit, ostensibly because of its caseload, before considering how to respond to growing caseloads nationwide, will complicate rather than advance solutions to caseload growth. Furthermore, repeated division of circuits in response to growth is likely to create a proliferation of balkanized circuits.

We support the establishment of a non-partisan commission to study the federal courts of appeals. Altering the structure of the federal judiciary system is an extremely serious matter, something that should be done rarely and only after careful, serious study and consideration.

We strongly urge the members of the Senate to support the creation of a commission to conduct a thoughtful, thorough and complete study of the matter.

Our court asked me to convey to you our appreciation for your continued leadership in this matter.

Yours sincerely,

PROCTOR HUG, Jr., Chief Judge.

STATEMENT OF ADMINISTRATION POLICY
The Administration opposes the provision in the Committee bill that would reorganize the structure of the federal judiciary in the Ninth Circuit.

After a thorough discussion, the judges voted overwhelmingly to support the creation of a study commission to study the structure of the courts.

Alternating the structure of the federal judiciary system is an extremely serious matter, something that should be done rarely and only after careful, serious study and consideration.

We strongly urge the members of the Senate to support the creation of a commission to conduct a thoughtful, thorough and complete study of the matter.

Our court asked me to convey to you our appreciation for your continued leadership in this matter.

Yours sincerely,

PROCTOR HUG, Jr., Chief Judge.

UNITED STATES COURTS
FOR THE NINTH CIRCUIT

Hon. HARRY M. REID,
U.S. Senator,
Washington, DC.

DEAR HARRY: After reviewing this matter yet again, I have some possible arguments for the floor of the Senate, giving examples of why this is a hasty and ill-considered bill and why the Commission should study an important issue.

1. Under the bill, the Ninth Circuit is to have thirteen judges and the whole circuit is to have thirteen judges. The Ninth Circuit would have a 50% greater caseload per judge than the Twelfth Circuit.

States:

<table>
<thead>
<tr>
<th>State</th>
<th>Filings</th>
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<tr>
<td>California</td>
<td>4,840</td>
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<tr>
<td>Nevada</td>
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<tr>
<td>Guam</td>
<td>87</td>
</tr>
<tr>
<td>Northern Marianas</td>
<td>21</td>
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<tr>
<td>Total</td>
<td>5,448</td>
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With 15 judges, the caseload per judge \( \geq \frac{5,448}{15} = 363 \),

With 13 judges, the caseload per judge \( \geq \frac{5,448}{13} = 419 \).

The provision in the bill for co-equal clerks in the Twelfth Circuit is completely unworkable. How can it be efficiently administered in this way? Is the administration of the circuit to be done in two separate co-equal headquarters? Where would the Circuit Executive be located?

2. The provision in the bill for co-equal clerks in the Twelfth Circuit is completely unworkable. How can it be efficiently administered in this way? Is the administration of the circuit to be done in two separate co-equal headquarters? Where would the Circuit Executive be located?

Consider the travel time and expense of the judges. Presumably, the judges from Montana and Arizona who travel to Phoenix and the Arizona judges who travel to Seattle. Presently, the circuit headquarters in San Francisco is equidistant and air routes convenient. This would not be the case in the new Twelfth Circuit.

Harry, I suggest these arguments be saved for the floor to avoid changes or arguments prepared to meet them.

Yours Sincerely,

PROCTOR HUG, Jr., Chief Judge.

DEAR SENATOR HATCH: This letter is simply to confirm that the State Bar of Arizona has repeatedly opposed any division of the Ninth Circuit Court of Appeals to support the House's proposal for a study commission.

Sincerely,

DON BIVENS, President-Elect.

UNITED STATES COURTS
FOR THE TWELTH CIRCUIT

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

DEAR SENATOR HATCH: This afternoon we had a meeting of the active and senior judges of the Ninth Circuit Court of Appeals, for the sole purpose of discussing the current efforts underway by the Senate Appropriations Committee to split the Ninth Circuit.

Sincerely,

PROCTOR HUG, Jr., Chief Judge.

STATEMENT OF ADMINISTRATION POLICY
The Administration opposes the provision in the Committee bill that would reorganize the structure of the federal judiciary in the Ninth Circuit.

After a thorough discussion, the judges voted overwhelmingly to support the creation of a study commission to study the structure of the courts.

Alternating the structure of the federal judiciary system is an extremely serious matter, something that should be done rarely and only after careful, serious study and consideration.

We strongly urge the members of the Senate to support the creation of a commission to conduct a thoughtful, thorough and complete study of the matter.

Our court asked me to convey to you our appreciation for your continued leadership in this matter.

Yours sincerely,

PROCTOR HUG, Jr., Chief Judge.
the Ninth Circuit by splitting it into two separate circuits. We understand that other substantive amendments to divide the Ninth Circuit may be offered on the Senate Floor. The Administration—strongly object to using the appropriations process to legislate on this important matter. The division of the Ninth Circuit is an important issue not just for the bench and the bar of the affected region, but also for the citizens of the Ninth Circuit. The Administration believes that a much better approach would be passage of legislation, H.R. 906—already passed by the House and currently pending at the desk in the Senate—that would create a bipartisan commission to study this difficult and complex question and make recommendations to the Congress within a date certain. This would allow for substantive resolution of the issue in a deliberative manner, allowing all affected parties to voice their views.

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

Mrs. FEINSTEIN. I thank the Chair.

Mr. GREGG. Mr. President, I have a couple of minutes left.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Before getting to a vote on this issue, just let me make this point.

Were this a judicial proceeding, there is something called judicial notice. That is like water runs downhill and the Sun comes up in the East. I think the Court would take judicial notice of the fact the Ninth Circuit does not work; it is too big; it has too many people for one circuit to manage; it has too many judges to work effectively; it has too large a geographic region. This is an attempt to address that issue. It is a very important issue to address. It is an affordable issue to address. I hope my colleagues will vote down this amendment.

Have the yeas and nays been asked for on this amendment?

The PRESIDING OFFICER. They have not.

Mr. GREGG. Does the Senator from California wish to ask for the yeas and nay?

Mrs. FEINSTEIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The result was announced—yeas 45, nays 55, as follows:

Robb
Rockefeller
Sarbanes
Torricelli
Welstone
Wyden

NAYS—55

Abraham
Aliard
Alford
Bennett
Bend
Brownback
Burns
Campbell
Chafee
Caucus
Cochran
Collins
Courerdel
Craig
D’Amato
DeWine
Demenci
Enzi
Faircloth
McCain

YEAS—45

Akaka
Baucus
Biden
Bingaman
Boxer
Buxton
Burns
Campbell
Chafee
Caucus
Cochran
Collins
Courerdel
Craig
D’Amato
DeWine
Demenci
Enzi
Faircloth
McCain

Unless otherwise provided for in the instrument concerned, a withdrawal under this section shall be completed by the end of the fiscal year in which the withdrawal is required.

This is a small section located in the latter part of this legislation. As you read through this bill, all of a sudden, you come across the provision. If we are going to withdraw from the U.N., we ought to have a full-scale debate. This is not a minor decision. There are some people in the country who would like to do that, but if we are going to undertake to do so we ought to have a full scale debate.

What this section says as it starts off is:

Notwithstanding any other provision of law, the United States shall withdraw from an international organization if the President determines that the amount appropriated or otherwise available for a fiscal year . . . is less than the actual amount of such contributions.

In other words, the assessments. So, if we do not appropriate the full assessment, as I understand this section, the President has to begin withdrawal procedures.

There are many years when we have not met the assessment. In fact, we continue to run arrearages. We just passed legislation here that had certain conditions for paying our U.N. dues, that withheld certain amounts, required certifications, and so forth and so on.

I don’t know where this provision came from but it is a backdoor way of compelling our withdrawal from the United Nations.

The amendment that was sent to the desk would strike this section from the bill. I urge my colleagues to support the amendment. We should not be talking about withdrawal from international organizations. We are the world’s leading power. We essentially use these international organizations to serve our interests. Now we come to this section, which is sort of hidden away. The upshot of it would be, in effect, lead us to begin withdrawal procedures from the United Nations.

I don’t think we even ought to have any references to withdrawal. Certainly the way this provision is written, the bill is going to force us out of the U.N.

I hope the committee, upon reflection, would agree to drop the section from the bill.

Mr. HATCH. Will my colleague yield for a second?

Mr. SARBANES. Certainly.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. He is just yielding to me. But I absolutely agree with you. I absolutely agree with you. Let me tell you, during this last cold war time, I had a lot to do with the ILO when I was chairman of the Labor Committee and ranking member there, and ever since, when our tripartite organization—Governments, labor and employers—have visited this country and countries all around this world from the tyranny of totalitarianism, right at the ILO.
I can remember one trip I made over there because Irving Brown called me. He was the head of our delegation. He was the International Vice President of the AFL-CIO, and in my opinion the strongest anti-Communist in the world at that time. He stopped the Communists from taking over the French docks. He went into Paris before the end of the Second World War—one of the most heroic figures I ever met in my life. And he led our delegation with the full support of labor, business, and Government year after year. He died here a few years ago. I went to his memorial service here.

But I know what the ILO has meant to this country and what it has meant to free trade unionism around the world and what it has meant to freedom.

I have to tell you, if we have this provision in this bill, since all three of these organizations, the WHO, the ILO, and the agricultural organization, and in payment to them, it would mean it would have to come down to choosing one of them that they would delete. I can tell you right now, the one, probably the weakest that would be deleted, would be the ILO. I have to tell you, that preserves free trade unionism around the world, it protects freedom around the world, and, I have to tell you, quells disruptions and problems all over the world. It helps us all over the world to spread democracy.

I don’t want to see that happen, and I think the distinguished Senator from Maryland has brought up a very, very good point here. I call my colleagues’ attention to it. I am grateful he has yielded to me for these few remarks. I hope they have been helpful to my colleagues on both sides, but I have been there, I know how important this is. I believe this is not the thing to do, to have that particular language left in there as it is. So I support my colleagues from Maryland.

Mr. BIDEN. Will the Senator from Maryland yield for a brief comment?

Mr. President, this is the second time we have addressed this issue in the last several weeks. A similar provision was in the State Department authorization bill that we dealt with. We raised the issue then, and the Senator moved to strike a similar provision, a withdrawal provision. It was accepted by a voice vote. This bill went on to pass the Senate, I believe.

I am surprised this issue has surfaced again. Not only does section 408 depart from the State Department authorization bill, but it is bad policy; it is just simply bad policy.

I hope my friends, the managers of this bill, will consider the fact that we have been through this once already and may allow us just to have a voice vote and move on. We have enough to fight over in this bill.

I have to tell you, on this one, but, as the old joke goes, everybody has already said it, so I am not going to repeat it. The Senator from Maryland is absolutely right; it is a repeat of what we did. I thank the Senator for yielding to me, and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

Mr. GREGG. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue calling the roll.

The legislative clerk continued to call the roll.

Mr. LOTT. 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. LOTT. Mr. President, I seek recognition so we can announce there will be no further roll call votes tonight. There will be at least one vote tomorrow. And I believe that we can say there will be one vote tomorrow. It will be an important vote. We expect that that vote will be either on the tuna-dolphin issue or, more likely, under the agreement we are going to propound, it would be on the global warming issue.

So there would be a vote tomorrow. A time would have yet to be determined exactly what time that would be, but probably not before 10 o’clock in the morning. And then we hope to work out some understandings with regard to State, Justice, Commerce. And then we would probably not have final votes on that until next Tuesday. I believe it would be.

So that is the point I wanted to announce. There will be at least one vote tomorrow, and no further roll call votes tonight. We make an announcement with regard to Monday later on, in a few minutes, or tomorrow, about the situation on Monday.

Mr. Mccain. Is the leader’s intention, if there is no agreement on tuna-dolphin, that there will be a cloture vote tomorrow morning on tuna-dolphin that he had previously anticipated?

Mr. LOTT. Unless there is an agreement, there will be a cloture vote on tuna-dolphin. We are working on an agreement where it may not be in the morning. But we will have one in short order. We are trying to work through all the different players and make sure everybody has been consulted. That is why we are not asking for the UC right now.

I think I should go ahead and say to the chairman of the Appropriations Committee, it would be our intent, because of requests of a number of Senators, and because the cooperation we have received, that we would not have any recorded votes on Monday. But we are trying to also clear an agreement that the Democratic leader indicated he would like to approve with us to take up the Transportation appropriations bill some time during the day on Monday, but it would not lead to recorded votes. The next recorded vote would be tomorrow, and then Tuesday morning and Wednesday under the agreement we are working. But we have not cleared them with everybody at this point.

With that, at this time, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERRY. 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. KERRY. Mr. President, I ask unanimous consent to proceed as in morning business.

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

(The remarks of Mr. KERRY pertaining to the introduction of S. 1067, as located in today’s Record under “Statements on Introduced Bills and Joint Resolutions.”)

Ms. COLLINS. Mr. President, I ask unanimous consent that the pending amendment be set aside so that I can engage in a brief colloquy with the chairman of the subcommittee.

The PRESIDING OFFICER (Mr. BROWNBACK). Is there objection?

Mr. SARBANES. Reserving the right to object, I don’t think it is necessary to set the amendment aside in order to have a colloquy.

The PRESIDING OFFICER. The Senator is correct. It is not necessary.

Ms. COLLINS. I stand corrected.

Mr. SARBANES. Mr. President, I object to the request, but it doesn’t preclude the distinguished Senator from having her colloquy.

The PRESIDING OFFICER. The objection is heard. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, I ask unanimous consent to be recognized for such time as I may consume for a brief colloquy.

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

NWS REORGANIZATION

Ms. COLLINS. Mr. President, I rise today to engage in a colloquy with the distinguished chairman of the subcommittee, regarding the National Weather Service’s ongoing top-to-bottom review of its operations and structure.

I am taking this opportunity today to express my hope and belief that this review process will conclude that the Weather Service Office in Caribou, ME, should be fully upgraded to a Weather Forecasting Office. I just want to comment very briefly, Mr. President, on a few of the reasons why the Caribou Weather Service Office should be upgraded.

In general, it is the Weather Service’s policy that weather forecasting
offices should cover roughly 17,000 square miles. Right now, the Weather Forecasting Office in Gray, ME—which is more than 230 miles from Caribou—is attempting to provide services for roughly 63,000 square miles, an area more than three times larger than the normal forecast area. In a huge area involved, it is extremely difficult for the small staff of a Weather Service Office to provide the services necessary to ensure public safety.

For example, the Weather Service Office in Caribou has only one electrical technician who must service equipment in Frenchville, Caribou, Houlton, and as far south as Millinocket, in Penobscot County. This is an enormous workload for just one employee, particularly in light of the possibility that repairs may be needed at the same time at different locations far away from each other.

Accurate and timely weather reports are essential to Aroostook County, the largest county in Maine, for two reasons: one involving public safety, the other an economic concern.

Mr. President, northern Maine experiences more than its fair share of severe weather, including blizzards in the winter and thunderstorms in the summer. Many of my colleagues have probably heard weather reports in which my hometown of Caribou has recorded the lowest temperature in the Continental United States. Accurate and timely weather reports are essential for public safety in our county.

The second reason for upgrading the Weather Service Office centers on the nature of the economy in the county. Natural resource-based industries such as agriculture, logging, and tourism are the mainstay of the county's economy. Our potato farmers, for example, must have quality weather forecasts and reports in order to know best when to plant and harvest their crops.

For these public safety and economic reasons, I believe that upgrading the Weather Service Office in Caribou is a necessary action for the National Weather Service to undertake, and I hope that the Appropriations Committee will act favorably on upcoming funding requests.

Mr. President, I yield the floor so that my distinguished New England neighbor and colleague, Senator Gregg, may respond to my concerns. Ms. Snowe, Mr. President, I am pleased to have my colleague from Maine, Senator Collins, and the distinguished chairman of the subcommittee, Senator Gregg, today to discuss an issue of utmost importance to Aroostook County, the Caribou Weather Service Office.

The bill before us requires the National Weather Service (NWS) to consult with the subcommittee before making any reprogramming requests in relation to the top-to-bottom review that is currently underway. As part of their review, NWS will consider whether the Caribou Weather Service Office should be upgraded to a weather forecasting office.

Under the National Weather Service's modernization plan, a weather forecasting office will have Doppler radar. The Doppler radar would give Caribou the ability to forecast warnings for sudden and severe changing weather patterns so that the community will be able to respond quickly. At the present time, the nearest Doppler radar is in Gray, ME, more than 200 miles away. This is too far away to be of immediate help to Aroostook County.

Aroostook is one of the largest counties in the United States—the size of Connecticut and Rhode Island combined—and its economy is dominated by agriculture, trucking, and forest products industries, all of which rely heavily on timely and accurate weather information. The Caribou station provides vital information on a daily basis to northern Maine communities that must deal with a wide range of weather patterns from bitter cold and snow to severe thunderstorms and flooding. An upgrade from a weather service office to a weather forecasting office would improve the weather forecasting abilities of the Caribou station, thereby improving the ability of the affected towns to react to sudden and severe weather changes.

Once the NWS has completed its review, I look forward to working with Chairman Gregg and the subcommittee to ensure that the recommended changes are funded in an expeditious manner.

Mr. President, I appreciate the Senator from Maine raising this very significant issue to the folks of Northeastern Maine. Those of us who have been to Caribou understand that it is the coldest place in America, consistently, and recognize that the issue of predictability of weather is very important. Also, I know how important upgrading the Caribou Weather Service Office into a Weather Forecasting Office is for the people of Aroostook County. It is a major issue that I understand how strongly my friend and colleague from Maine feels about this matter.

The Senator from Maine, Senator Collins, has made a very persuasive case for why the Weather Service Office in Caribou, ME, should be upgraded into a Weather Forecasting Office. We must always work to ensure public safety, and given the enormous land area, a Weather Forecasting Office would be a tremendous benefit for the people of northern Maine.

You have mentioned, Senator Collins, that when the subcommittee receives the National Weather Service report and recommendations on a reorganization plan, the subcommittee will work closely with you regarding the Caribou, ME, Weather Service Office.

Ms. Collins, I thank the Senator very much for his assistance. Mr. Reed addressed the Chair. The PRESIDING OFFICER. The Senator from Rhode Island.
like to just briefly describe the problem and also the ongoing discussion with the FCC and also here within Congress.

First, as both my colleagues have indicated, this is an alarming and growing problem. The Federal Communications Commission is dealing with the problem now. They will shortly propose a rule that will take away the financial incentive for some of these renegade companies who essentially illegally change service. The Federal Communications Commission is dealing with this problem. In 1996, the FCC received 16,000 complaints about slamming, but they only were able to successfully prosecute and induce judgment against 15 companies. They don’t have the resources. They need those resources. In fact, I worry that law enforcement agencies around the country not only lack resources but lack, ultimately, the proof that a switch has been made illegally. Law enforcement officials in certain states, such as Connecticut, Wisconsin, California, Texas, and Illinois, have been successful, but they need additional support.

Indeed, one of the major elements of the legislation I was contemplating was the requirement not only of written proof but, also, in the case that an oral or verbal consent was given, some type of recording of consent so that law enforcement authorities could verify decisively whether or not the appropriate assent had been made. It is necessary for us to balance the needs for a flexible system by which consumers can make choices and change their service to one that protects their right to ensure that it is their choice and not the result of unfair manipulative practices by unscrupulous companies. I believe we can do that.

I believe we have taken a step forward today with this sense-of-the-Senate resolution to start on that path. I look forward to offering independent legislation which I think will assist the current effort of the FCC to resolve this grave problem that is growing each day.

Once again, I thank my colleagues, Senator Gregg, Senator Hollings, Senator McCain, and Senator Burns, for their work and for their effort on this. Others are interested. I know Senator Campbell and Senator Durbin are also interested in this problem.

We have an opportunity today to send a strong message to the FCC to move forward and also to continue to contemplate and deliberate about legislation which will assist in their efforts and end this scandalous problem, the No. 1 consumer complaint today with respect to telecommunications slamming.

I thank my colleagues. I yield the remainder of my time.

Mr. KERRY addressed the Chair.

THE PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I had a discussion with the Senator from North Dakota. I am going to be very, very brief, with his indulgence.

THE PRESIDING OFFICER. Is there objection to laying aside the pending amendment?

Mr. KERRY. Mr. President, I ask unanimous consent that we temporarily lay aside the amendment for the purpose of introducing my amendment, and the moment my introduction is completed that the pending amendment will return and be the pending amendment.

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

AMENDMENT NO. 992

(Purpose: To provide funding for the Community Policing to Combat Domestic Violence Program)

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

THE PRESIDING OFFICER. The clerk will report.

The bill clerk reads as follows:

The Senator from Massachusetts (Mr. KERRY), for himself, Mr. Dodd, Mrs. Murkowski, Mr. Lautenberg, and Mr. Johnson, proposes an amendment numbered 992.

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

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

The amendment is as follows:

On page 29, line 18, insert “That of the amount made available for Local Law Enforcement Block Grants under this heading, $37,000,000 shall be for the Community Policing to Combat Domestic Violence Program established pursuant to section 1701(d) of part Q of the Omnibus Crime Control and Safe Streets Act of 1968: Provided further, after ‘Provided,’.

STOP DOMESTIC VIOLENCE NOW

Mr. KERRY. Mr. President, this amendment continues the successful COPS “Community Policing to Combat Domestic Violence” Program. Police departments currently use these COPS funds for domestic violence training and support. This amendment would allow local law enforcement agencies to renew their grant funding so they can continue to employ innovative community policing strategies to combat domestic violence.

Mr. President, domestic violence is a very serious national problem. Almost four million American women were physically abused by their husbands or boyfriends in the last year alone. A woman is physically abused every 9 seconds in the United States. Women are victims of domestic violence more often than they are victims of burglary, muggings, and all other physical crimes combined. In fact, 42 percent of women murdered were killed by their intimate male partners. In Massachusetts, 33 women were killed in domestic related cases in 1995. This
amendment is necessary to fight this epidemic of domestic violence.

Mr. President, this problem of domestic violence affects all classes and all races. More than one in three Americans have witnessed an incident of domestic violence according to a recent nationwide survey released by the Family Violence Prevention Fund. Mr. President, battering accounts for one-fifth of all medical visits by women and one-third of all emergency room visits by women in the U.S. each year. As Dartmouth, MA, Police Chief Stephen Soares said recently, domestic violence “goes from the lowest economic planes to the highest in terms of professional persons. There isn’t a line drawn in terms of profession or money.”

Domestic violence hurts women and hurts our economy. The Bureau of National Affairs estimates that domestic violence costs employers between $3 billion and $5 billion each year in lost workdays and decreased productivity. In a recent survey of senior business executives, 49 percent said that domestic violence has a harmful effect on their company’s productivity. Forty-seven percent said domestic violence negatively affects attendance and 44 percent said domestic violence increases health care costs.

Mr. President, domestic violence also has tragic effects on children. Children who witness the violence often do poorly in school, maltreat another victim or abuser as adults, and are more prone to have a variety of emotional problems.

According to Linda Aguiar, the head of “Our Sisters’ Place” in Fall River, Massachusetts, “One child that was at the shelter, we found out he had taken knives from the kitchen and hid them in the bedroom. He did this because he was afraid his father would come. He thought his father would come and put a ladder to the window.”

To attempt to deal with these problems, Congress in the 1994 Crime Act provided that up to 15 percent of the funding for the COPS program could be made available for innovative community policing activities. A small part of that money, $47 million, was made available to police departments for domestic violence training and support. I would like to read excerpts from a letter I received from the Chief of Police of Gardner, MA. The Gardner Police Department, in coordination with a local battered women’s and children’s shelter, has been able to conduct personal follow-up in more than 1,100 incidents of domestic violence since September of 1996.

Mr. President, before these funds were available, many local law enforcement agencies lacked the resources to provide anti-domestic violence training and support. In 1995 prior to the awarding of the COPS domestic violence grant, police in Gardner, MA, were called to intervene in a dispute involving domestic abuse. Due to the lack of cooperation from the victim, officers did not have sufficient evidence to arrest her boyfriend, but instead were only able to get the boyfriend to leave the property. Two hours after the incident, the victim’s boyfriend returned to the property and set it on fire, and the woman was killed by asphyxiation. Subsequent to this crime the suspect was arrested, convicted of the crime with which he was charged and sentenced to time in prison. This incident demonstrated the need for a victim’s advocate employed by the police department who might have been able to convince the girlfriend to help and then intervene on her behalf. Due to the COPS Domestic Violence grants, the Gardner Police Department now has the resources to more successfully combat domestic violence.

When the Department of Justice announced these Community Policing to Combat Domestic Violence grants on June 1, 1996, police departments were promised 1 year of funding with the ability to receive two additional years of funding. Unfortunately, these successful training programs will be denied the additional 2 years of funding because of a little-noticed change, included in the appropriations bill report language, which no longer allows up to 15 percent of COPS funds to be used for innovative community policing activities such as anti-domestic violence training and support for local law enforcement agencies.

Our amendment earmarks $47 million of the $505 million provided by the Commerce/State/Justice Appropriation bill for the Local Law Enforcement Block Grant (LLLEBG) to renew funding of grants made under the COPS Domestic Violence Program. It is appropriate that this money be earmarked for this purpose because the Local Law Enforcement Block Grant Program was designed to provide funds to local governments to fund crime reduction and public safety improvements broadly defined. Additionally, the LLLEBG already contains several earmarks in the C/S/J Appropriations bill: $2.4 million for discretionary grants for local law enforcement to form specialized cyber units to prevent child sexual exploitation, and $4 million for the Boys and Girls Clubs.

Some will argue that this appropriation bill increases funding for the Violence Against Women Act (VAWA) and that therefore no additional funds are available to confront domestic violence. However, that is incorrect for three reasons. First, the increase in funding for the Violence Against Women Act is only $15 million, far less than the $47 million needed to renew the COPS Domestic Violence grants. Second, only 25 percent of the VAWA money goes to police departments—most of the rest goes to prosecution and direct victims services. Third, most of the VAWA money for police departments goes to buy equipment, not for training and support.

Mr. President, this funding is necessary to help police departments to deal with the epidemic of domestic violence. I would like to thank Senators Domenici and Bentsen for joining me in proposing this important amendment and urge all my colleagues to support it.

Mr. DODD. Mr. President, I rise to support the amendment of my colleague, the Senator from Massachusetts (Mr. Kennedy). This amendment will restore the COPS antidomestic violence grants created by the Violence Against Women Act—a program of vital importance that funds local police and community initiatives to combat domestic violence.

Domestic violence is a serious scourge on our society. Once every 9 seconds, a woman is beaten by her husband or boyfriend, according to FBI crime statistics. Four women are killed each day by their domestic attackers, according to the National Clearinghouse for the Defense of Battered Women. And 16 people were killed by family violence in Connecticut between September 1995 and September 1996. That is totally unacceptable.

Mr. President, for quite some time I have been extremely concerned that...
would do just that. Hundreds of police
victims who need
they've just begun to win the bat-
they should be one of our highest priorit-
In Connecticut, many communities
 programs, and I am pleased today
together and stop domestic violence, and that it
should visit with two police chiefs who are
using anti-domestic violence COPS
resources for domestic violence, utilizing po-
funding for initiatives to
use anti-domestic violence COPS
make use of a wide range of resources
to fight domestic violence, utilizing po-
and to prevent and
brides. These programs say that if you are
be one of our highest priorities.
Many more than ten Connecticut cites and
to support a diverse range of anti-domes-
violence programs, each specifically
tailored to the needs of that local com-
I recently had the opportunity
 programs, each specifically
wishes to end to their
to fight domestic violence, utilizing po-
and when we can get votes to-
and that domestic violence is no place in
Connecticut or anywhere in our coun-
these programs say that if you are
in our communities. These programs say
that government and our communities
that they received anti-domestic vio-
and services, incorporating counseling
for both victims and batterers, and ag-
gressively pursuing prosecution of
Programs like these send a message from our communities to victims
brideries. These programs say
that domestic violence has no place in
Connecticut or anywhere in our coun-
try. These programs say that if you are
being harrassed, you will stop you, we will
convict you, and we will prosecute you to
the fullest extent of the law. And I am
told by police chiefs throughout
Connecticut that that is why these pro-
grams, and the funds that make them
possible, have truly improved their
ability to combat domestic violence.
Domestic violence is preventable, if we
can provide the funding for initiatives
to stop it.
Now, however, the elimination
violence programs threaten to force an untimely end to
support domestic violence and
catch and punish perpetrators, and victims
domestic violence would continue to
Let's not abandon police chiefs
when they've just begun to win the bat-
test against domestic violence. Let's not
turn our backs on the victims who need
our help.
I wrote to the Commerce-State-Jus-
tice appropriations to ask them to
maintain the funding for these im-
portant programs, and I am pleased today
to cosponsor the amendment that
would do just that. Hundreds of police
chiefs and countless victims across the
country are counting on us to do no
less.
I thank the Senator from Massachu-
setts for his amendment, and I join him
in urging my colleagues to adopt it.
Mr. LOTT addressed the Chair:
The PRESIDING OFFICER. The ma-
jority leader.
UNANIMOUS-CONSENT AGREEMENT
Mr. LOTT. Mr. President, I thank
the Senator from Massachusetts for fin-
ishing expeditiously and for his help on
a number of issues throughout the day
as we try to proceed for the remainder of
the day, and when we can get votes tomor-
row and next week.
Mr. President, I ask unanimous con-
sent that the following be the only re-
maining first-degree amendments in
order to S. 1022, and they be subject to
relevant second-degree amendments.
Mr. President, I will submit the list
since there are several of them. But ev-
eybody has been consulted on this list.
The Democratic leadership is aware of
it as well as the Members on this side.
I ask unanimous consent that the list
be printed in the RECORD.
There being no objection, the mate-
rial was ordered to be printed in the
RECORD, as follows:
DEMOCRATIC AMENDMENTS TO COMMERC-
STATE-JUSTICE
Baucus, EDA.
Biden, COPS.
Biden, trust fund.
Bingaman, registration of nonprofits.
Bumpers, OMB.
Byrd, anti-alcohol.
Conrad, relevant.
Daschle, law enforcement.
Dorgan, sense of Senate—Univ.
Fund.
Dorgan, XII grant.
Graham, public safety officers.
Harkin, funding for globe.
Inouye, Ninth circuit—northern terri-
tories.
Kennedy/Leahy, capital murder.
Kerry, COPS.
Lautenberg, PTO.
Reed, S&O telecom slaming.
Robb, public safety grants.
Sarbanes, Sec. 408 pending No. 989.
Wellstone, Legal Services Corp.
Wellstone, Legal Services Corp.
Harkin, private relief.
Hollings, managers.
Hollings, managers.
REPUBLIC AMENDMENTS TO STATE-JUSTICE-
COMMERCE
Domenici, court appointed attorney’s fees.
Hatch, DOJ LEG. AFFAIRS.
Burns, Mansfield fellowships.
McCain, INS inculpations.
Stevens, California funding.
Hatch, Limitation of funds for Under Sec-
retary of Commerce.
DeWine, visas.
Helms, Technical.
Warner, Terrorism.
Coverdell, DNA testing/sex offenders.
Bond, small business.
Warner, patent trademark.
Kyl, masters.
Abraham, INS fingerprinting.
Stevens, women's World Cup.
Costs, gambling impact.
McCain, relevant.
McCain, relevant.
Burns, EDA.
Hatch, antitrust provisions.
Gregg, relevant.
Hatch, local law enforcement.
Mr. LOTT. Mr. President, I further
ask unanimous consent that all amend-
ments must be offered and debated to-
night and any votes ordered with re-
spect to S. 1022 be postponed to occur
beginning on 9:30 a.m. on Tuesday, July 29,
with 2 minutes for debate equally divided before each vote, and following the
disposition of amendments, S. 1022 shall be advanced to third reading and a pas-
sage vote occur, all without further ac-
dition or debate.
I have more to this request, but I
want to emphasize what that means.
We will complete all of the amend-
ments tonight. The votes on those amend-
ments and final passage will occur next Tuesday beginning the 9:30.
I further ask that if the Senate has
not received the House companion bill
at the time of passage of S. 1022, the
bill remain at the desk; and I further
ask unanimous consent that when the
Senate receives the House companion
bill, the Senate law and order be in-
mediate consideration and all after the
enacting clause be stricken and the
text of S. 1022, as amended, be inserted,
the House bill then be read a third time
and passed and the Senate insist on its
amendment, request a conference with
the House and that the Chair be au-
orized to appoint conferees and that
S. 1022 be indefinitely postponed.
The PRESIDING OFFICER. Is there
objection?
Mr. SARBANES. Mr. President, re-
seizing the right to object, in the dis-
cussions with the chairman of the sub-
committee, as I understand it, the
amendment that is pending at the desk
will be adopted this evening.
Mr. LOTT. That is my understanding
Mr. President.
Mr. HOLLINGS. That is correct.
The PRESIDING OFFICER. Without
objection, it is so ordered.
Mr. LOTT. I further ask that at 8:30
a.m. on Tuesday the Senate resume the
State, Justice, Commerce Appropriations
bill and there be 30 minutes re-
maining, equally divided, for debate on
each of the two amendments to be of-
fered by Senator WELLSTONE.
The PRESIDING OFFICER. Without
objection, it is so ordered.
Mr. LOTT. I further ask that it be in
order, if necessary, for each leader to
offer one relevant amendment on Tues-
day prior to the scheduled 9:30 votes.
The PRESIDING OFFICER. Without
objection, it is so ordered.
Mr. LOTT. With regard to the tuna-
dolphin issue, I ask unanimous consent
that the Senate resume the motion to pro-
sage to S. 39, the tuna-dolphin bill, and
there be 30 minutes equally divided be-
tween Senator McCaIN, or his designee,
and Senator BOXER. I further ask unan-
imous consent that following the use
of yielding back of the time, the Sen-
ate proceed to the vote on the motion
to invoke cloture on the motion to pro-
sage to S. 39.
The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I further ask that if an agreement can be reached with respect to S. 39—and it appears there may be—it be in order for the majority leader to vitiate the cloture vote, the Senate to then immediately proceed to S. 39, that the managers' amendment be in order, and the amendment and bill be limited to a total of 30 minutes equally divided, and following the disposition of the amendment, be advanced to third reading, and pass, occur, all without further action or debate.

I think I should clarify this and put it in common language.

If an agreement is worked out, we will vitiate the cloture vote. I would like to modify that agreement to say that, if an agreement is reached, we will vitiate; then we will take that issue up next week with 30 minutes of debate and a vote next week, unless a voice vote is agreed to for tomorrow or next week.

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

Mr. LOTT. With regard to Wednesday of next week, I ask unanimous consent that at 3:30 on Wednesday, July 30, the Senate proceed to the consideration of Senate Resolution 98. I further ask unanimous consent that there be 2 hours of debate on the resolution equally divided between the chairman and the ranking member, or their designees, with the following amendments in order to this bill.

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. LOTT. 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. LOTT. Mr. President, I realize it gets a little confusing on how we are lining these up. But I think it is being helpful to all Senators. I think it is allowing us to complete the debate and get votes and move important legislation forward in the best way possible.

So the way we are getting it rapped up, so to speak, I think is good for the Senate, and we are trying to do the right thing.

So I would like to modify that earlier request to this extent:

That we come in in the morning and go immediately at 9:30 to the global-warming bill. That bill is Senate Resolution 98. I ask consent that there be 2 hours of debate on the resolution equally divided between the chairman and the ranking member or their designees with the only amendments in order to be the following: Kerry amendment adding specific negotiating positions Senator BYRD's amendment, relevant.

I further ask unanimous consent that following the disposition of the above-mentioned amendments and the expiration or yielding back of time for debate, the Senate proceed to a vote on the resolution with no intervening action or debate, and, if the resolution is agreed to, the preamble then be agreed to, which means that the final vote on global warming would occur around 11:30 tomorrow morning.

Mr. KERRY. Mr. President, reserving the right to object— I will not object— I simply ask the majority leader if he would modify that further, per our agreement, that they would be first-degree amendments with no second-degree amendments.

Mr. LOTT. Mr. President, I ask to further modify my unanimous-consent request.

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

Mr. LOTT. Then the modification of what we had earlier agreed to is that after that vote on Senate Resolution 98, we would then have the vote on the cloture motion on tuna-dolphin unless an agreement is worked out, at which point we would vitiate that cloture vote, and we would get a subsequent time agreement of 30 minutes and a voice vote, or a recorded vote, on that issue next week.

Mrs. BOXER. Reserving the right to object, and I shall not object— The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. The leader did not say exactly what time the cloture vote would take place.

Mr. LOTT. The cloture vote would then take place, after the global warming vote, I presume about 11:45, 11:50, something of that nature.

Mrs. BOXER. Could we say by 12 o'clock?

Mr. LOTT. It certainly would be by 12 o'clock.

Mrs. BOXER. That would be very helpful. One more point. If there should be a recorded vote, which many of us do not anticipate, on the dolphin-tuna compromise, if there is one, could we reserve just a couple of minutes on either side just to talk before that vote, on next week, just 2 minutes?

Mr. LOTT. Before the vote next week.

Mrs. BOXER. Yes.

Mr. LOTT. Sure. I would have to enter into a time agreement on a specific time now but we would have a recorded vote at time and we would have some time to explain it. I think it is appropriate.

Mr. KERRY. It is my understanding the majority leader in the prior order already requested 30 minutes.

Mr. LOTT. I had indicated 30 minutes.

Mrs. BOXER. That is very acceptable. Thank you very much. And I wanted to thank the Senator from Arizona as well for helping resolve this procedure.

Mr. LOTT. Mr. President, I thank the Senators for their cooperation. Let us keep going then. I think we are making good progress.

I ask unanimous consent that at 5 o'clock on Monday, July 28, the Senate proceed to the consideration of the Transportation appropriations bill.

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

Mr. LOTT. For the information of all Senators, any votes ordered with respect to the Transportation appropriations bill will be postponed to occur on Wednesday morning immediately following the global warming resolution vote.

We have changed that now. The Transportation appropriations bill would occur on Wednesday morning.

Mr. FORD. I liked the first one better.

Mr. LOTT. Therefore, no votes will occur during the session on Monday, July 28.

Mr. President, I will yield the floor at this point and in a few minutes we will recap everything we agreed to in unanimous-consent agreements so that they will be clear and understandable. We will do that before we go out tonight.

I yield the floor. Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

AMENDMENT NO. 989

Mr. SARBANES. Mr. President, is the Sarbanes amendment now the pending business? The PRESIDING OFFICER. The Sarbanes amendment is now the pending business.

Mr. SARBANES. I ask unanimous consent that Senators MONTIENHAN, HATCH, JEFFORDS, KERRY, BIDEN, and LEAHY be added as cosponsors. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Mr. President, I hope we could move to adoption of the amendment.

Mr. GREGG. I hope the Senator would ask for adoption.

Mr. HOLLINGS. The question is on the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 989) was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. HOLLINGS. I move to lay that motion on the table.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

AMENDMENT NO. 983

(Purpose: To make an Amendment Relating to the Health Insurance Benefits of Certain Public Safety Officers)

Mr. GRAHAM. Mr. President, at the completion of these brief remarks, I will send an amendment to the desk.

Mr. President, last year in consideration of this same appropriations bill, the Senate and the House adopted and the President signed into law what is known as the Alito-Hara bill. This is legislation which was the result of a tragic circumstance in which two law enforcement officers called to a hostage-taking scene were seriously
burned when the hostage taker set fire to the structure in which the hostages were being held. These two law enforcement officers were subsequently discharged from the law enforcement agency because of their severe injuries, and in the course of their discharge they lost their insurance coverage. So now they were two heroes out of work, lifetime injuries and without health insurance.

This Al-Wahara bill, which we adopted last year, provided that law enforcement agencies would provide for any public safety officer “who retires or is separated from service due to an injury suffered as the direct and proximate result of a personal injury sustained in line of duty while responding to an emergency situation or in hot pursuit with the same or better level of health insurance benefits that are otherwise paid by the entity to a public service officer at the time of retirement or separation.” The enforcement for this was a public safety officer block grant award.

Mr. President, as I indicate, this has been the law since last year. It is currently in the House appropriations bill. Frankly, we are seeking an opportunity to put this into substantive law so we will not have to continue to rely upon the appropriations bill as the means of continuing this important protection for law enforcement officers which has strong support by all the major law enforcement agencies in America.

So I send this amendment to the desk and will ask my colleagues for its favorable adoption when we consider these matters on Tuesday.

The PRESIDING OFFICER. The clerk will report the amendment. The bill clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 993.

Mr. GRAHAM. 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 in title I of the bill, insert the following:

SEC. 1. Of the amounts made available under this title under the heading “OFFICE OF JUSTICE PROGRAMS” under the subheading “STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE”, not more than 90 percent of the amount otherwise to be awarded to an entity under such subheading shall be made available to that entity, if it is made known to the Federal official having authority to obligate or expend such revenues that the entity employs a public safety officer (as that term is defined in section 1294 of title I of the Omnibus Crime Control and Safe Streets Act of 1968) does not provide an employee who is a public safety officer and who retires or is separated from service due to injury suffered as the direct and proximate result of a personal injury sustained in line of duty while responding to an emergency situation or a hot pursuit (as such terms are defined by State law) with the same or better level of health insurance benefits that are otherwise paid by the entity to a public service officer at the time of retirement or separation.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. We have no objection to this amendment and I ask unanimous consent the amendment be accepted.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 993) was agreed to.

Mr. GRAHAM. Mr. President, I move to reconsider the vote.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have been working on a sense-of-the-Senate resolution which I hoped to have the agreement of a number of Members of the Senate that was similar to the interests I have on the issue of the using universal service funds for the purpose of reaching a balanced budget in the budget reconciliation conference that is now going on. I know that sounds foreign as I subject to those who are not familiar with it, but I want to explain it a little bit and describe why this is important.

I have spoken to a number of Senators in the Chamber this evening—Senator STEVENS, the distinguished chairman of the appropriations subcommittee, Senator ROCKETT, Senator HOLLINGS, Senator DASCHEL, Senator SNOWE, and others who are concerned about something that is happening in the reconciliation conference that could have a significant impact on the cost of telephone service in rural areas in this country in the years ahead. Here is what it is.

Our country has been fortunate to enjoy the benefits of a telecommunication system that does not matter where you live. If you live in an area where you have very high-cost service, there will be something called a universal service fund that helps drive down that high cost so that everyone in this country can enjoy the benefits of a telephone service, universally affordable telephone service. That is what the universal service fund is designed to do and has been designed to do for a long, long while. I come from a town of 300 people and telephone service there is affordable. It is not just the high-cost service that the universal service fund drives down the rate of what would otherwise be high cost. The benefits of a national system is that every telephone in the country makes every other telephone more valuable. A telephone in my hometown in Regent, ND, makes Donald Trump’s television more valuable in New York City because he can reach that telephone in Regent, ND. That is the whole concept of universally affordable telephone service, and it is why we have a universal service fund.

Now, having said that, the universal service fund was constructed somewhat not dramatically—during the Telecommunications Act passed by Congress a year and a half ago. We now have a balanced budget proposal that is in conference between the House and the Senate and some are saying in this negotiation that they want to use the revenues from the universal service fund to help plug a leak on the budget side. The fact is the universal service fund was never intended to be used for such a purpose. In fact, the universal service fund is not held by the Federal Government. It does not come into the Federal Treasury and is not expended by the Federal Government. It, therefore, ought not be a part of any discussion on budget negotiations, and yet it is.

This week I have spoken several times to the Office of Management and Budget, and they have explained to me in great detail with no clarity at all why it is now part of this process. I have spoken to people who claim to be experts on this, and none of them have had any idea about what the proposal actually does.

Now, the reason I come to the floor to speak about this is: We are nearing presumably the end of a conference, and if a conference report comes to the Senate that takes the universal service fund as part of a manipulated set of revenues in the year 2002, in order to reach some sort of budget figure, it will be an enormous disservice for the universal service fund. It will deny the purpose of the fund for which we in the Commerce Committee worked so hard to preserve in the Telecommunications Act of 1996. This provision in the reconciliation bill will set a precedent that will be a terrible precedent for the future. The result will be, I guarantee, higher phone bills in rural areas in this country in the years ahead.

I once stopped at a hotel in Minneapolis, MN, and there was a sign at the nearest parking space to the front door, and it said “Manager’s parking space.” And then below it, it said, “Don’t even think about parking here.” I don’t expect anybody ever parked in that space besides the manager. Don’t even think about parking here. I hope that the Senate will pass the sense-of-the-Senate resolution I have proposed that says to the reconciliation conference: “do not even think about this.” I say to the budget negotiators: “Do not even think about parking here.” I don’t even think about parking here. I hope that the Senate will pass the sense-of-the-Senate resolution I have proposed that says to the reconciliation conference: “do not even think about this.”
now being proposed is, I am afraid, budget juggling at its worst. Juggling I suppose at a carnival or in the backyard is entertaining. Juggling in this circumstance using universal fund support to manipulate the numbers in 2002 is not entertaining come to me. It is fundamentally wrong. This money does not belong to the Federal Government. It does not come to the Federal Treasury, and it is not spent by the Federal Government and has no place and no business in any reconciliation conference report.

I was flabbergasted to learn that it was there and it is being discussed. I have spoken to the Director of the Office of Management and Budget about this several times this week, spoken to others who are involved with it. And I must tell you I think that the Congressional Budget Office, the Office of Management and Budget, and any member of the conference that espouses this is making a terrible, terrible mistake. I hope that the Senate will pass the sense-of-the-Senate resolution I have proposed and that we can garner the support of the position I now espouse to say as that parking sign, “don’t even think about this.” It is wrong, and it will disserve the interests that we have fought so hard to preserve affordable telephone service all across this country.

The Senator from South Carolina has spent a great deal of time on this issue, as has the Senator from Alaska, the Senator from West Virginia, the Senator from Maine, and so many others. As I said, the wording is not yet agreed to on the sense-of-the-Senate resolution. I hope it will be very shortly, and when it is I hope we will pass it and send a message to the public that comes back here ought not use universal service support funds because they are not our funds to use.

Mr. President, I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 994

(Purpose: To amend section 3006A of title 18, United States Code, to provide for the public disclosure of court appointed attorneys’ fees upon approval of such fees by the court)

Mr. DOMENICI. Mr. President, I have an amendment and I understand it is going to be accepted, I will let the managers do that in their wrap-up if they would press the Senator has indicated that it is all right.

Mr. President, I ask, has Senator HOLLINGS cleared it?

Mr. HOLLINGS. It has been cleared.

Mr. DOMENICI. I thank the Senator very much.

I send an amendment to the desk, and since it is acceptable on both sides I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico (Mr. DOMENICI) proposes an amendment numbered 994.

Mr. DOMENICI. 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:

SEC. 1. PUBLIC DISCLOSURE OF COURT APPOINTED ATTORNEYS’ FEES.

Section 3006A(d) of title 18, United States Code, is amended by striking paragraph (4) and inserting the following:

(4) DISCLOSURE OF FEES.—

(A) IN GENERAL.—Subject to subparagraphs (B) through (E), the amount paid under this subsection for services in any case shall be made available to the public by the court upon the court’s approval of the payment.

(B) PRE-TRIAL OR TRIAL IN PROGRESS.—If a trial is in pre-trial status or still in progress and after considering the defendant’s interests as set forth in subparagraph (D), the court shall:

(i) redact any detailed information on the payment when the defendant’s interests as set forth in subparagraph (D) require a limited disclosure, the defendant’s interests set forth in subparagraph (D) will be compromised.

(ii) make public only the amounts approved for payment to defense counsel by dividing those amounts into the following categories:

(1) Arrangement and or plea.

(2) Bail and detention hearings.

(3) Motions.

(4) Hearings.

(5) Interviews and conferences.

(6) Obtaining and reviewing records.

(7) Legal research and brief writing.

(8) Travel time.

(9) Investigative work.

(10) Expert witnesses.

(11) Trial and appeals.

(12) Other.

(C) TRIAL COMPLETED.—If a request for payment is not submitted until after the completion of the trial, the court shall:

(i) redact any detailed information on the payment when the defendant’s interests as set forth in subparagraph (D) require a limited disclosure, the defendant’s interests set forth in subparagraph (D) will be compromised.

(ii) make public only the amounts approved for payment to defense counsel by dividing those amounts into the following categories:

(1) Arrangement and or plea.

(2) Bail and detention hearings.

(3) Motions.

(4) Hearings.

(5) Interviews and conferences.

(6) Obtaining and reviewing records.

(7) Legal research and brief writing.

(8) Travel time.

(D) PROTECTION OF THE RIGHTS OF THE DEFENDANT.—If the court determines that the defendant’s interests as set forth in subparagraph (D) require a limited disclosure, the court shall disclose such amounts as provided in subparagraph (3).

(E) CONSIDERATIONS.—The interests referred to in subparagraphs (B) and (C) are:

(i) to protect any person’s right against self-incrimination;

(ii) to protect any person’s 5th amendment right against self-incrimination;

(iii) to protect the defendant’s 6th amendment right to effective assistance of counsel;

(iv) the defendant’s attorney-client privilege;

(v) the work product privilege of the defendant’s counsel;

(vi) the safety of any person; and

(vii) any other interest that justice may require.

(E) NOTICE.—The court shall provide reasonable notice of disclosure to the counsel of the defendant prior to the approval of the payments in order to allow the counsel to request redaction based on the considerations set forth in subparagraph (D). Upon completion of the trial, the court shall release unredacted copies of the vouchers provided by defense counsel to justify the fees to the court. If there is an appeal, the court shall not release unredacted copies of the vouchers provided by defense counsel to justify the fees until such time as the appeals process is completed, unless the court determines that none of the defendant’s interests set forth in subparagraph (D) will be compromised.

Mr. DOMENICI. Mr. President, I am not sure, if I were to ask every Senator to take a guess, anyone would come anywhere close to answering this question correctly.

I ask, how many dollars do you think we spent last year paying for defense lawyers for criminals in the Federal court who claim they don’t have enough money to defend themselves? Without an obligation. The court has interpreted our Constitution to say they must have counsel, so I am not here complaining. But I don’t think anyone—I see my friend from Iowa looking at me—would guess $308 million, and growing tremendously, taxpayers’ dollars to defend criminals in the Federal court system.

I am not asking in this amendment that we review that process, although I kind of cry out to any committee that is jurisdiction and ask them to take a look. All I am doing in this amendment is changing the law slightly with reference to letting the taxpayer know how much we are paying criminal defense lawyers. All this amendment does is say when a payment is made to a criminal defense lawyer, a form has to be filed that indicates that payment. There is no violation of the sixth amendment because there are no details. We are not going to, in this statement, reveal the secret strategy of the defense counsel or our dispositional theory. We are just saying, reveal the dollar amount so the American people know, through public sources, how much we are paying.

Frankly, if I had a little more time, I would state some of the facts that we finally have ascertained, and I think many would say, “Are you kidding?” I will just give you three that we know of.

Mr. President, what would you say if I told you that from the beginning of fiscal year 1996 through January 1997, $472,841 was paid to a lawyer to defend a person accused of a crime so heinous that the United States Attorney in the Northern District of New York is pursuing the death penalty? Who paid for this lawyer—the American taxpayer.

What would you say if I told you that $470,968 was paid to a lawyer to defend a person accused of a crime so reprehensible that, there too, the United States Attorney in the Northern District of Florida is also pursuing the death penalty? Who paid for this lawyer—the American taxpayer.

What would you say if I told you that during the same period, for the same purpose, $443,683 was paid to another United States Attorney in the Northern District of New York who claim they don’t have enough money to defend themselves?

Now, Mr. President, what would you say if I told you that some of these cases have been ongoing for three or more years and that total fees in some
instances will be more than $1 million in an individual case? That’s $1 million to pay criminal lawyers to defend people accused of the most vicious types of murders often which are of the greatest interest to the communities in which they occur.

At minimum, Mr. President, this Senator would say that we are spending a great deal of money on criminal defense lawyers and the American taxpayer ought to have timely access to the information that will tell them who is spending their money, and how it is being spent. That is why today I am introducing the “Disclosure of Court Appointed Attorney’s Fees and Taxpayer Right to Know Act of 1997”.

Under current law, the maximum amount payable for representation before the United States Magistrate or the District Court, or both, is limited to $3,500 for each lawyer in a case in which one or more felonies are charged and $25 per hour per lawyer in death penalty cases. Many Senators might ask, if that is so, why are these exorbitant amounts being paid in the particular cases you mention? I say to my colleagues the reason this happens is because under current law the maximum amounts published by statute, may be waived whenever the judge certifies that the amount of the excess payment is necessary to provide “fair compensation” and the payment is approved by the Chief Judge on the circuit. In addition, the lawyer is awarded “fair compensation” at the $125 per hour per lawyer rate may also be approved at the Judge’s discretion.

Mr. President, the American taxpayer has a legitimate interest in knowing what is being provided as “fair compensation” to defend individuals charged with these dastardly crimes in our federal court system. Especially when certain persons the American taxpayer is paying for mock legal services, that the people the American taxpayer is shelling out their hard earned money to defend urinated in open court, in front of the Judge, to demonstrate his feelings about the judge and the American judicial system.

I want to be very clear about what exactly my bill would accomplish. The question of whether these enormous fees should be paid for these criminal lawyers, is not about the merits of my bill. In keeping with my strongly held belief that the American taxpayer has a legitimate interest in having timely access to this information, my bill simply requires that at the time the court approves the payments for these services, that the payments be publicly disclosed. Many Senators are probably saying right now that this sounds like a very reasonable request, and I think it is, but the problem is that even if these payments are not disclosed until long after the case has been completed, and in some cases they may not be disclosed at all if the remains are sealed by the Judge. How much criminal defense lawyers are being paid should not be a secret. There is a way in which we can protect the alleged criminal’s sixth amendment rights and still honor the American taxpayer’s right to know. Mr. President, that is what my bill does.

How would this occur? Under current law, criminal lawyers must fill out Criminal Justice Act payment vouchers in order to receive payment for services rendered. Mr. President, I have brought two charts to the floor to provide a barebones fashion the nature of the work performed. These detailed time sheets break down the work performed. These detailed time sheets break down the work performed. They name each and every person that was interviewed, each and every phone call that was made, the subjects that were discussed and the days and the times they took place. They go into intimate detail about what was done to prepare briefs, conduct investigations, and prepare for trial.

Mr. President, clearly if this information were subject to public disclosure the alleged criminal’s sixth amendment rights might be compromised. My bill does this by providing notice to defense counsel of the release of the information, and providing the Judge with the authority to black-out any of the barebones information contained on the payment voucher if it might compromise any of the aforementioned interests. I believe it is reasonable and fair, and I hope I will have my colleagues’ support.

I am very pleased the Senate will accept this. I hope the House does. I believe they will. Because I think the public has a right to know. As a matter of fact, I think we have a right to know, case by case, payment by payment, how much is being paid by the taxpayer to defend criminals in the Federal court. I yield the floor.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 994) was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote.

Mr. GREGG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 995

(Purpose: To Provide for the Payment of Special Masters, and for Other Purposes)

Mr. GREGG. Mr. President, on behalf of Senator KYL, I send an amendment to the desk.
The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. Gregg], for Mr. KYL, proposes an amendment numbered 996.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . REPORT ON COLLECTING DNA SAMPLES FROM SEX OFFENDERS.

(a) DEFINITIONS.—In this section—

(1) the term ‘offense against a victim who is a minor’; ‘sexually violent offense’, and ‘sexually violent predator’ have the meanings given those terms in section 1701(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(a));

(2) the term ‘DNA’ means deoxyribonucleic acid; and

(3) the term ‘sex offender’ means an individual who—

(A) has been convicted in Federal court of—

(i) a criminal offense against a victim who is a minor; or

(ii) a sexually violent offense; or

(B) is a sexually violent predator.

(b) REPORT.—From amounts made available to the Department of Justice under this title, not later than 180 days after the date of enactment of this Act, the Attorney General shall submit to Congress a report, which shall include a plan for the implementation of a requirement that, prior to the release (including probation, parole, or any other supervised release) of any sex offender from Federal custody following a conviction for a comparable offense, who is a minor or a sexually violent offender, the sex offender shall provide a DNA sample to the appropriate law enforcement agency for inclusion in a national law enforcement DNA database.

(c) PLAN REQUIREMENTS.—The plan submitted under subsection (b) shall include recommendations concerning—

(1) a system for—

(A) the collection of blood and saliva specimens from any sex offender;

(B) the analysis of the collected blood and saliva specimens for DNA and other genetic typing analysis; and

(C) making the DNA and other genetic typing information available for law enforcement purposes only;

(2) guidelines for coordination with existing Federal and State DNA and genetic typing information databases and for Federal cooperation with State and local law in sharing this information;

(3) addressing constitutional, privacy, and related concerns in connection with mandatory submission of DNA samples; and

(4) procedures and penalties for the prevention of improper disclosure or dissemination of DNA or other genetic typing information.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The amendment is as follows:

At the appropriate place, insert the following:

SEC. . SENSE OF THE SENATE THAT THE FEDERAL GOVERNMENT SHOULD NOT MANIPULATE UNIVERSAL SERVICE SUPPORT PAYMENTS TO BALANCE THE FEDERAL BUDGET.

Whereas the Congress reaffirmed the importance of universal service support for telecommunications services by passing the Telecommunications Act of 1996:

Whereas the Telecommunications Act of 1996 required the Federal Communications Commission to preserve and advance universal service based on the following principles:

(A) Quality services should be available at just, reasonable, and affordable rates;

(B) Access to advanced telecommunications and information services should be provided in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including internet services and advanced telecommunications and information services, that are reasonably comparable to rates charged for similar services;

(C) Providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service;

(D) There should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service; and

(F) Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services and information services.

Whereas Federal and State universal contributions are administered by an independent, non-Federal entity and are not deposited into the Federal Treasury and therefore not available for Federal appropriations;

Whereas the Conference Committee on H.R. 2015, the Budget Reconciliation Bill, is considering proposals that would withhold Federal and State universal service funds in the year 2002; and

Whereas the withholding of billions of dollars of universal service support payments will mean significant rate increases in rural and high cost areas and will deny qualifying schools, libraries, and rural health facilities the discounts directed under the Telecommunications Act of 1996:

Now, therefore, be it

Resolved, That it is the sense of the Senate that the Conference Committee on H.R. 2015 should not manipulate, modify, or impair universal service support to achieve a balanced Federal budget or achieve Federal budget savings.

The amendment is numbered 998.

Mr. HOLLINGS. Mr. President, I also, on behalf of the distinguished Senator from Delaware, Senator BIDEN, send an amendment to the desk and ask the clerk to report it.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS], for Mr. DORGAN, and others, I send an amendment to the desk and ask the clerk to report it.

The PRESIDING OFFICER. The amendment is numbered 998.

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

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

Mr. HOLLINGS. 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 the following:

SEC. 3. EXTENSION OF VIOLENT CRIME REDUCTION TRUST FUND.

Section 311(d) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14211(b)) is amended—

(1) in paragraph (5), by striking “and” at the end and inserting “; and”;

(2) in paragraph (6), by striking the period at the end and inserting a semi-colon; and

(3) by adding at the end the following:—

"(7) for fiscal year 2001, $4,355,000,000; and

"(8) for fiscal year 2002, $4,455,000,000.
"

Beginning on the date of enactment of this legislation, the non-defense discretionary spending limitations contained in Section 201 of H.Con Res. 105th Congress are reduced as follows:

for fiscal year 2000, $4,305,000,000 in new budget authority and $5,805,000,000 in outlays;

for fiscal year 2001, $4,355,000,000 in new budget authority and $4,455,000,000 in outlays;

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROCKEFELLER. 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. ROCKEFELLER. Mr. President, the junior Senator from West Virginia wishes to continue, a little bit, the comments that were made by the Senator from North Dakota [Mr. DORGAN]. Needless to say, the Senator from West Virginia not only wholly agrees with him, but would carry the argument even further.

The concept of universal service is literally sacred in our country. For the majority of the people of our land, which is rural land, it is the only life-line they have potentially to the present day and to their future day. They are able to afford certain kinds of rural rates. But if people start to take the universal service fund and use it for any other purpose other than what it was originally intended, the whole system of equality between rural States and urban States, of user States, disappears.

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I would like to suggest that this is not a thought which is held by myself alone. I ask at this moment to have printed in the RECORD a letter from the U.S. Telephone Association and a letter from the Rural Telephone Coalition on the subject that the Senator from North Dakota and I were discussing.

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

UNITED STATES TELEPHONE ASSOCIATION,

"7/9/97

Hon. Byron L. DORGAN,
U.S. Senate,
Washington, DC.

Dear Mr. Senator:

The undersigned represents more than 1,200 companies, is dis-
Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, NECA is the National Exchange Carriers Association. Mr. President, this association was formed at the breakup of AT&T back in 1984, and it is a private entity, whereby the different carriers, through their trade associations, self-impose, in an intervalist fashion, the amounts due and owing in order to constitute what they call the universal service fund. It is a private entity. There is no Federal law that says you can be a member or shall be a member or you cannot be a member. It is not under the Federal law; it is under this particular entity that it was associated with and together at that particular time of the breakup.

It depends on the volume of business, obviously. If you get a greater volume and more burdens and so forth—for example, they are saying for the first time of the breakup. It is now being extended to rural, being extended for the schools and the hospitals. But the high-cost areas are being taken care of under this universal service fund.

Mr. President, what we are seeing here—and I hope the conferees on reconciliation get the message—this is the epitome of the national loot. In 1994, this Congress passed, President Clinton signed into law the Pension Reform Act. Under that Pension Reform Act, it provided, and it is there, you can’t lose the pension funds of the particular corporate America. They wanted to make sure that a person in this particular corporation who had worked over the years and everything else, didn’t have a newcomer in a merg- er or buyout or whatever it is, is, abscend with all the moneys and all of a sudden your pension was gone.

Now, it so happens that in the news here, about 6 weeks ago, now 8 weeks ago, that the great Denny McLain, the all-time all-star pitcher, I think it was, for the Detroit Tigers, became a president of the corporation, and he used the corporate pension fund in violation of law to pay the company’s debt, and he was promptly sentenced to an 8-year jail sentence. We do it at the Federal level and get the good Government award.

We loot the Social Security pension fund, the Medicare trust fund, the civil service pensions trust fund. They want to make sure that a person in that particular trust fund is not going to turn over to the service under the service fund and the rules and regulations of the entity that controls it or raise the rates, and then the politicians will all mail it in and say, “Well, then we have the problem.” I am against rate increases,” when they are causing it in a shameful, shameless way in this particular provision and not even put in the amount. They have a blank here, and they are going to fill it later, and it is another smoke and another mirror and another loot.

Oh, yes, wonderful. We pass overwhelmingly the Pension Reform Act to make sure that it is a trust and it can be depended upon, and here, in the very next Congress, we are going to loot the all the particular funds, and now we find a private one. Maybe they will get the Brownback fund before they get through, if they can find it, and add that to it, too. They can get anybody’s fund and put something down in black and white and they say, “Oh, what good boys we are. We put in our thumb and pulled out a plum, and we balance the budget.”

Turn to page 4 on the conference report on a so-called balance budget agreement and report for the 5-year period terminating fiscal year 2002, and on page 4, line 15, the word is not “balance,” the word is “deficit,” $173.9 billion deficit.

Yet, the print media—I am glad this is on C-SPAN so the people within the sound of my voice can at least hear it, because they are not going to read it—the media goes along with the loot, and then they wonder why the budget is not balanced. If we only level with the American people, they would understand you can’t cut taxes without increasing taxes.

We have increased the debt with that particular shenanigan to the tune now of $5.4 trillion with interest costs on the national debt of $1 billion a day. So when you cut down more revenues to pay, you increase the debt, you increase the interest costs, so you get re-elected next year, because I stood for tax cuts, but they won’t tell them that with the child tax cut that they have actually increased the tax for the child. Now that is at least in the Congressional Record in black and white. I yield the floor.
Mr. DOMENICI. Mr. President, I rise in support of S. 1022, the Commerce, Justice, State, and the Judiciary Appropriations bill for fiscal year 1998. The Senate bill provides $31.6 billion in budget authority and $21.2 billion in new outlays to operate the programs of the Department of Commerce, Department of Justice, Department of State, the Judiciary and Related Agencies for fiscal year 1998. When outlays from prior-year budget authority and other competing actions are taken into account, the bill totals $31.6 billion in budget authority and $29.4 billion in outlays for fiscal year 1999. The subcommittee is within its revised section 602(b) allocation for budget authority and outlays.

Mr. President, I commend the distinguished subcommittee chairman, Senator CHAFEE, for bringing this bill to the floor. It is not easy to balance the competing program requirements that are built into this bill. I thank the chairman for the consideration he gave to issues I brought before the subcommittee, and his extra effort to address the items in the bipartisan balanced budget agreement. It has been a pleasure to serve on the subcommittee.

Mr. President, I ask unanimous consent that a table displaying the Budget Committee scoring of this bill be printed in the RECORD at this point.

The request is objected to, the table was ordered to be printed in the RECORD, as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Senate-Reported Bill</th>
<th>Senate-602(b) Allocation</th>
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<tbody>
<tr>
<td>Budget authority</td>
<td>275</td>
<td>212</td>
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<tr>
<td>Outlays</td>
<td>258</td>
<td>208</td>
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<td>Senate-Reported Bill</td>
<td>297</td>
<td>264</td>
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<tr>
<td>Outlays</td>
<td>258</td>
<td>230</td>
</tr>
<tr>
<td>President's request</td>
<td>297</td>
<td>250</td>
</tr>
<tr>
<td>Budget authority</td>
<td>258</td>
<td>208</td>
</tr>
<tr>
<td>Outlays</td>
<td>258</td>
<td>208</td>
</tr>
<tr>
<td>House-passed bill</td>
<td>258</td>
<td>208</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Defense</th>
<th>Non-defense</th>
<th>Crime</th>
<th>Mandate</th>
<th>Total</th>
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<td>Budget authority</td>
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</tbody>
</table>

Committee, Senator CHAFEE.

I would have preferred that the EPA not go forward with a bump-up on the rating of Fairbanks air from moderate to serious. I recognize that this bill is not the place to accomplish that goal. I would like to point out that in the past 20 years, Fairbanks has reduced its violation days from 160 to as low as 1 last year. It is these last violations that are causing difficulties for communities nationwide. However, Fairbanks may never be able to prevent several violations per year due to its unique and extreme cold weather. It is my hope that the EPA would work with Fairbanks to develop strategies to mitigate the pollution that is so severely magnified by the extreme cold weather of my hometown.

Mr. CHAFEE. I thank the Senators from Alaska for their remarks about carbon monoxide violations in Fairbanks. Their hometown has dramatically reduced the number of exceedences over the past 20 years and should be recognized for this success. It is my hope that the EPA will continue to work with Fairbanks to develop pollution reduction strategies that recognize the unique conditions that exist in Fairbanks.

Mr. MURKOWSKI. I thank my friend from Alaska.

Mr. CHAFEE. Mr. President, I want to take a moment to discuss one provision in the legislation now before the Senate. Under the heading of Related Agencies, the Commerce-State-Justice Appropriations bill provides funding for the Office of the U.S. Trade Representative.

As my colleagues know, our Nation’s Special Trade Representative, backed by the team of staff at USTR, is responsible for negotiating and administering trade agreements and coordinating overall trade policy for the United States. Those are significant responsibilities, and they are critical to our economic well-being. We have signed a number of trade agreements, and our ability to enforce those agreements is a matter of great importance to our trading partners.

Mr. President, I want to commend the chairman of the Commerce-State-Justice Subcommittee for allocating the full budget request for USTR for fiscal year 1998. Under his bill, the Office of the USTR will receive $22,092,000, exactly what the administration sought. I want to thank him for that.

Let me raise one concern, however, that I know is shared by the leadership and most members of the Senate Finance Committee. Since the January 1995 implementation of the Uruguay round agreements and the WTO, USTR has taken on an enormous new docket of cases in which the United States is involved, and all of these cases now come with strict deadlines. As of July 1, there were pending some 77 WTO or NAFTA cases in which the United States is a plaintiff, a defendant, or otherwise a participant. That is quite a workload. Yet despite the increase, USTR has not increased its career legal staff. The number of lawyers and litigators now on staff is virtually the same as in the pre-WTO days. USTR has just 12 lawyers in Washington, 2 more in Geneva, and only 2 of them are able to devote themselves full-time to the international litigation. That dearth of staff makes no sense—and only hurts our efforts to win our cases. I believe USTR must have the resources and personnel that it needs to fulfill its responsibilities. While I am delighted that USTR received its full budget request, I must say that the budget request amount is simply not realistic for an agency facing these new responsibilities. Even a modest increase of, say, $1 million—which again, in terms of the federal budget is not even visible—would make a significant and positive difference to the ability of USTR to carry out its work. And that in turn would only benefit US workers, consumers, families, and the overall US economy.

I want to urge USTR to press the Office of Management and Budget to recognize their new workload. I have mentioned this repeatedly to Ambassador Bashirsky and I hope she will act on it. And I want to exhort OMB in the strongest terms possible to adjust next year’s budget request accordingly for USTR, we have in place trade agreements and policies that allow our companies to compete successfully worldwide. And where barriers remain, the USTR team works continuously to make further progress. Their work over the years has affected billions of dollars in US trade and contributes enormously to the health of the overall US economy.

Now, USTR does not require much in funding because for the most part, appropriations are spent on two items: salaries and travel. Those basic necessities—the salaries that pay the staff, and the travel that is required for the various ongoing negotiations with our trading partners around the world—make up the bulk of USTR’s financial needs. There is not much fat there. Therefore, every dime they get is critical.

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Mr. MCCAIN. Mr. President, I am happy to say that, after reviewing the bill before the Senate, I find relatively few objectionable provisions. There are far fewer problems with this bill than the last few appropriations bills we have passed in the Senate.

This bill contains the usual earmarks for centers of excellence. In particular, bill earmarks $22 million for the East-West Center in Hawaii and $3 million for the Center for Cultural and Technical Interchange between East and West in the State of Hawaii, and $3 million for an educational institution in Florida known as the North/South Center.

This enormous increase in funding for the East-West and North/South Centers is incomprehensible given the dire state of U.S. diplomatic representation in most of the new independent countries of the post-cold-war world. They are particularly inexplicable in light of the committee’s decision to zero out the funding for the National Endowment for Democracy, a decision which the Senate fortunately reversed earlier today.

Mr. President, I would not be at all surprised to see in next year’s bill funding for a North-by-Northwest Center, perhaps to include a banquet room honoring Fred Flanagan.

The bill also contains language that directs the U.S. Marshals Service to provide a magnetometer and not less than one qualified guard at each entrance to the Federal facility located at 625 Silver, S.W., in Albuquerque, NM. I must say that this is perhaps the most specific earmark I have ever seen, even providing an address to ensure the assets are delivered to the proper beneficiaries.

I must say that this is perhaps the most specific earmark I have ever seen, even providing an address to ensure the assets are delivered to the proper beneficiaries.

Once again, though, the Appropriations Committee has contributed a few new and innovative ways to earmark port-barrel spending.

The most interesting is language that I will call a reverse earmark. The report earmarks $8 million to begin addressing the backlog in repair and maintenance of FBI-owned facilities, other than those located in and around Washington, DC and Quantico, VA. I wonder tourists from this area were aware that they had been singled out for exclusion from an earmark.

Other report language earmarks are more mundane, such as: Various earmarks for southwest border activities, although I note that my colleagues singled out the New Mexico and Texas borders for special attention to combat illegal border crossing and drug smuggling problems. I was of the impression that these problems were prevalent across the entire border with Mexico, including Arizona and California.

Similarly, the report requires that two-thirds of the additional 1,000 border patrol agents are to be deployed in Texas and Florida, with the remaining 300+ agencies to be scattered across New Mexico, Arizona, or California. The report earmarks $1 million for Nova Southeastern University in Florida for the establishment of a National Disaster Research Center, an attempt to research on, what else, coral reefs. And it also earmarks $1 million to the University of Hawaii to conduct similar coral reef studies. I suppose this might be considered a good idea to fund competitive research projects, except these institutions did not have to compete to get these funds, nor will they likely have to compete to continue to receive hand-outs to continue their coral reef research.

The report contains $140,000 for the Alaska Eskimo Whaling Commission, and $200,000 for the Beluga Whale Commission. It contains $2.3 million to reduce tsunami risks to residents and visitors in Oregon, Washington, California, and Alaska. And it earmarks $385 million in NOAA construction funds for specific locations in Alaska, Hawaii, South Carolina, Mississippi, and other States.

And finally, this bill contains earmarks for assistance to the U.S. Olympic Committee to prepare for the 2002 Winter Olympics in Utah. I found $3 million for communications and security infrastructure upgrades, $2 million to formulate a public safety master plan, and $1 million to the NTLIA for providing telecommunications support to the Utah Olympics similar to that provided in Atlanta last summer. As my colleagues know, this is just a small portion of the funding we will see channelled to the Utah Olympics. It is in addition to the money included in the supplemental bill earlier this year and in other appropriations bills that have already passed this body.

While the wasteful spending in this bill is less onerous than in other bills I have seen in the past few weeks, I still have to object strenuously to the inclusion of these earmarks and add-ons in the bill. We cannot afford pork-barrel spending, even the amount contained in this bill.

I ask unanimous consent that a list of the objectionable provisions in this bill be printed in the RECORD.

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

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OBJECTIONABLE PROVISIONS IN S. 1022 FY 1998

Commerce/Justice/State/Judiciary Appropriations Bill

Earmarks for funding for the National Ad-

densive Command Center in Columbia, South Carolina, which was authorized in 1993 as a center for training federal, state, and local prosecutors and litigators in advocacy skills and management of legal operations ($2.5 million for operations, salaries, and expenses of the Center, $2.1 million to support the National Dis-
Direction to examine proposals and provide grants, if warranted, to the following entities:
- Hill Renaissance Partnership, Lincoln Council on Alcoholism and Drugs, Hamilton Fish National Institute on School and Community Violence, Low Country Children's Center, and Comprehensive Juvenile Justice Crime Prevention and Juvenile Assessment Center in Gainesville, Florida;
- National Forensic Science at New Mexico State University for automation and security equipment; $1 million for the Santee-Lynches Regional tsunami demonstration project in Alaska; $2 million for Southwest Surety Institute for a rural states management information system demonstration project in Alaska; $500,000 for Native Village of Bethel;
- $1 million for the Santee-Lynches Regional Council of Governments Local Law Enforcement Coordination Council to develop and support a public safety master plan;
- $2 million as a grant to establish a Public Training Center for First Responders at Fort McClellan, Alabama;
- $3.85 million for the National White Collar Crime Prevention and Juvenile Assessment Center in Richmond, Virginia;
- Earmarks of Violent Crime Reduction Trust Fund dollars for: $190,000 for the Gospel Rescue Ministries of Washington, D.C. to renovate the Fulton Hotel as a drug treatment center; $2 million for the Marshall University Forensic Science Program; $2 million for a rural states management information system demonstration project in Alaska; $500,000 for the Native Village of Bethel; $1 million for the Santee-Lynches Regional Council of Governments Local Law Enforcement Coordination Council to develop and support a public safety master plan;
- Language urging the United States Coast Guard to upgrade to counter potential terrorist threats at the 2002 Winter Olympic Games, and $2 million to allow the Law Enforcement Coordinating Council for the Olympics to develop and support a public safety master plan;
- $2 million as a grant to establish a Public Training Center for First Responders at Fort McClellan, Alabama;
- $3.85 million for the National White Collar Crime Prevention and Juvenile Assessment Center in Richmond, Virginia;
- Earmarks of Violent Crime Reduction Trust Fund dollars for: $190,000 for the Gospel Rescue Ministries of Washington, D.C. to renovate the Fulton Hotel as a drug treatment center; $2 million for the Marshall University Forensic Science Program; $2 million for a rural states management information system demonstration project in Alaska; $500,000 for the Native Village of Bethel; $1 million for the Santee-Lynches Regional Council of Governments Local Law Enforcement Coordination Council to develop and support a public safety master plan;
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- $2 million as a grant to establish a Public Training Center for First Responders at Fort McClellan, Alabama;
- $3.85 million for the National White Collar Crime Prevention and Juvenile Assessment Center in Richmond, Virginia;
- Earmarks of Violent Crime Reduction Trust Fund dollars for: $190,000 for the Gospel Rescue Ministries of Washington, D.C. to renovate the Fulton Hotel as a drug treatment center; $2 million for the Marshall University Forensic Science Program; $2 million for a rural states management information system demonstration project in Alaska; $500,000 for the Native Village of Bethel; $1 million for the Santee-Lynches Regional Council of Governments Local Law Enforcement Coordination Council to develop and support a public safety master plan;
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upon the children of this Nation, particularly in New Hampshire.

Mr. HATCH. Meth abuse, unfortunately, is also rapidly becoming one of our top public health threats. According to the latest data released by SAMHSA's Drug Abuse Warning Network report released last week the number of children aged 12 to 17 who have had to go to emergency rooms due to meth use increased well over 200 percent between 1993 and 1995 alone. The number of deaths associated with meth has also increased dramatically. From 1989 to 1994, methamphetamine accounted for 80 percent or more of clandestine lab seizures by the DEA. Clandestine lab crackdowns are at an all-time high, and many more are going undetected. Mobile labs in rural areas of Utah, including numerous locations in Ogden, Provo, and the St. George area are making meth with virtual impunity. Local law enforcement does not have the manpower, resources, or technical knowledge to handle such volumes of meth in a truly meaningful fashion. Federal law enforcement, most principally the Drug Enforcement Administration, has agents specially trained in the areas of methamphetamine lab take downs, but the number of specialists are extremely limited, and certainly is of insufficient numbers to be any sort of meaningful presence in Utah, as well as the rest of the Rocky Mountains.

I am deeply concerned about the Methamphetamine problem in Utah, as well as the rest of the Nation. In my State, distribution by Mexican traffickers has been expanded by using networks established in the cocaine, heroin, and marijuana trades. Wholesale distribution is typically organized into networks in major metropolitan areas, to include Salt Lake City. Utah has 2,500 isolated noncontrolled airstrips to include the Department of Justice, and the Federal Emergency Management Agency to transfer surplus real property to State and local governments for law enforcement, fire fighting, and rescue purposes.

Mrs. BOXER. Mr. President, I would like to join my colleagues from California for their hard work in including this language in the bill. We all know that the police and fire departments are the first to respond to crises, and this change in law will facilitate local agencies in obtaining surplus Federal property for primary and secondary law enforcement and rescue purposes. I am pleased to support this change in law for the benefit of our communities.

Mr. HOLLINGS. I join my colleagues in recognizing the value of this language. I would like to ask if the Senator from California knows of any situations where this change in law would serve immediate benefit?

Mrs. FEINSTEIN. I would be pleased to answer that question. I was first made aware of the problems that the current property transfer laws pose by the Sheriff of Riverside County in southern California. The sheriff’s office...
would like to engage the chairman and the ranking member of the Commerce, Justice, State, and the Judiciary Subcommittee in a colloquy regarding abusive and exploitative child labor.

According to the International Labor Organization [ILO], some 250 million children between the ages of 5 and 14 are working in developing countries and the number is on the rise. I strongly believe that access to primary education reduces the incidence of child labor around the world. It is my understanding that the Asia Foundation supports efforts to improve access to primary education.

I would like to see some language in the conference report urging the Asia Foundation to continue its work in Pakistan. I know that our staffs have conferred, and that you and the ranking member share my concern about abusive and exploitative child labor.

Mr. GREGG. I commend the Senator for his concern, and would welcome any report language he has regarding the matter. Though it is outside the scope of the conference, I will exploit any opportunity that presents itself that would allow language to be inserted in the conference report.

Mr. HOLLINGS. The Senator from Iowa has been working this issue hard, and I agree with the chairman.

Mr. MURkowski. Mr. President, Ketchikan, AK, just north of the Canadian border in southeast Alaska, has recently suffered an extreme economic blow due to changes in Federal forest management policies. It is a town of just a few thousand people, and the loss of 406 jobs due to the closure of one of the town’s major industries, a pulp mill, severely disrupted the community.

The need for economic revitalization in Ketchikan is great, but the available opportunities are limited. One potentially important opportunity is provided by a local shipyard, Ketchikan Ship and Drydock. However, the ability of this yard to contribute to the local economy is limited without a significant upgrade of its ability to handle a variety of vessel sizes.

It is my understanding that the subcommittee report on this appropriation recognizes similar situations in other areas by suggesting that the Economic Development Administration consider proposals which meet its procedures and guidelines.

Would the distinguished managers of the bill, my friends from New Hampshire and South Carolina, agree that if the EDA receives a proposal for the Ketchikan shipyard which meets its procedures and guidelines, the EDA should consider that proposal and provide a grant if the latter is warranted? Mr. GREGG. Mr. President, the distinguished Senator from Alaska is correct. I would urge the Economic Development Administration to consider such a proposal that meets its procedures and guidelines to provide a grant if it finds the proposal warranted.

Mr. HOLLINGS. Mr. President, I agree with the response by my friend from New Hampshire.

NIST FUNDING FOR TEXAS TECH UNIVERSITY WIND RESEARCH

Mrs. HUTCHISON. Mr. President, I would like to ask the distinguished Subcommittee Chairman, Senator GREGG, to engage in a colloquy on a matter of extreme importance to my State and a number of others, and that is the need for more research into wind and severe storm disasters and ways to protect people and property from catastrophic harm.

Mr. GREGG. Mr. President, I would be happy to yield to the Senator from Texas and engage in a colloquy.

Mrs. HUTCHISON. Mr. President, as you know, there have been a number of severe tornados, wind storms, hurricanes and wind-related disasters in recent months which have killed scores of people and destroyed communities. Earlier this year, the small town of Jarrell, TX, experienced a tornado that killed 29 people, seriously injured many others, and caused millions of dollars in damage to homes and businesses.

The President’s home State of Arkansas was also hit by a wind disaster that resulted in loss of life. The home State of the Ranking Minority Member of the Committee, Senator HOLLINGS is still rebuilding after the devastation of Hurricane Hugo in 1989.

Mr. President, there is important work being done at Texas Tech University to help improve design construction of buildings to make them more resilient to windstorms. The laboratory building will include space to house a wind tunnel, a structural and building component testing lab and a material testing lab. These laboratory facilities will be used to develop innovative building frames and components that are resilient to extreme winds and windborne debris and yet are economically affordable.

The research will also produce results to help cope with the environmental effects of wind erosion and dust and particulate generation.

The Department of Commerce, through the National Institute of Standards and Technology, does wind research. NIST in particular is engaged in research that complements the Texas Tech wind research.

The Committee has provided $276,852,000 for the scientific and technical research and services (core programs) appropriation of NIST. Part of the increased amount is for continued research, development, application and demonstration of new building products, processes, technologies and methods of construction for energy-efficient and environmentally compatible buildings.

Senator GREGG, do you concur that it is the intent of the committee to direct $3.8 million in funds provided to NIST for scientific and technical research and services for cooperative research between NIST and Texas Tech University to pursue this important wind research?

Mr. GREGG. It is the intent of the Committee to direct $3.8 million of NIST’s scientific and technical research and services funding provided in the bill for cooperative research with Texas Tech University. I look forward to working with the Senator from Texas and a number of others, and that is the need for more research into wind and severe storm disasters and ways to protect people and property from catastrophic harm.

SMALL BUSINESS DEVELOPMENT CENTERS

Mr. CHAFEE. I wonder if I could get the attention of the distinguished managers of the bill, Commerce, Justice, State Appropriations Subcommittee Chairman JUDD GREGG. I have a proposal related to small business development centers, and I’d like to get him to comment on it.

Mr. GREGG. I’d be happy to.

Mr. CHAFEE. I thank the Senator. What I propose to do is give more SBDCs the tools they need to encourage small companies to start exporting. As the Senator knows, the SBDCs are doing a terrific job helping small business owners devise business plans, marketing strategies, and so forth, but many of them simply don’t have the capacity to offer advice on how to export.

We ought to try to change that, in my view. Exporting is the name of the game today—even for small businesses. And one way to do that would be to broaden access to a successful small business export promotion program called the International Trade Data Network, or ITDN.

Now, what is the ITDN? The ITDN is a computer-based service that small business owners can use to retrieve a stunning amount of international trade data—compiled both from Federal Government sources and the private sector. With a few quick keystrokes, individuals can read about everything from market demographics to descriptions of upcoming trade missions to explanations of relevant export and import regulations to potential contract leads. Small businesses anxious to export can learn about virtually every industry and virtually every country.

The ITDN was developed in 1988 by the Export Assistance Center at Bryant College in Smithfield, RI, and it’s
been a big help to literally hundreds of Rhode Island’s small businesses. In fact, 18 companies in Rhode Island use the ITDN every single day.

Listen to some of these endorsements from Rhode Island business owners. One stop shopping. It’s my understanding that the ITDN is an integral part of our Pre-Entry Level Market Analysis.” Another reported, “I find the ITDN to be a state-of-the-art, user friendly software that is a one-step college it in understanding information. It is a virtual tool for businesses today that need to survive in a global environment.”

But right now, only 30 or so of our 960 Small Business Development Centers have direct access to the ITDN. So what I’d like to do is expand the program, so that SBDCs all across the country are connected to it. Specifically what I have in mind is converting the ITDN to an internet-based website, and establishing an Interactive Video Trading Center at each State’s lead small business assistance office. My proposal would also make the ITDN technology available to the Approximately 2,500 SBDC sub-centers across the country.

As I mentioned the situation, SBDCs are already authorized to conduct export promotion activities under Section 21 of the Small Business Act. In fact, representatives of Bryant College met with the SBA’s Associate Administrator for the SBDC program earlier this year to discuss this proposal, and received a very positive response. For one reason or another, however, the SBA has been reluctant to dedicate any money to this purpose.

The 1988 Commerce, Justice, State Appropriation bill contains $75.8 million for the SBDC program, an increase of some $2.3 million over the 1997 funding level. In talking with the folks at the Export Assistance Center at Bryant College, it’s my understanding that expanding the ITDN could be done over 2 years, with a first year cost of about $925,000. I’d ask the distinguished manager if I could get his endorsement of my proposal.

Mr. GREGG. I appreciate the Senator’s interest in this matter, and I agree that we ought to look for ways to increase American small businesses’ capacity to export. Having looked at the Senator from Rhode Island’s proposal, and listened to his remarks, I think that the ITDN program could be an excellent tool for opening international markets. I strongly encourage the Small Business Administration to make funds available for the expansion of the ITDN in fiscal year 1998.

Mr. CHAFEE. I want to thank my friend from New Hampshire for his support for this initiative.

“MADE IN THE USA” ADVERTISING

Mr. KOHL. I understand that the FTC has proposed to weaken the standard for “Made in the U.S.A.” advertising from “all to virtually all” U.S. content to “substantially all” U.S. content. The proposal sets forth two alternative safe harbors for “Made in the U.S.A.” claims: 75 percent U.S. content—U.S. manufacturing costs represent 75 percent of the total manufacturing costs for the product and the product was substantially transformed in the U.S. or; two level substantial transformation—The product was last substantially transformed in the United States and all significant inputs were last substantially transformed in the United States.

I also understand that the new proposed guidelines would have the effect of allowing products made with 25 percent or more foreign labor and foreign materials to be labeled “Made in the U.S.A.” In some cases, the FTC’s proposed guidelines would allow products made entirely with foreign materials and foreign components to be labeled “Made in the U.S.A.”

The “Made in the U.S.A.” label, a time-honored symbol of American pride and craftsmanship, is an extremely valuable asset to manufacturers. Allowing this label to be applied to goods not wholly made in America will encourage companies to ship U.S. jobs overseas because they can take advantage of lower labor markets while promoting their products as “Made in the U.S.A.” For products not wholly made in the U.S.A., companies already can make a truthful claim about whatever U.S. content their products have—whether made in the U.S.A. of 75 percent U.S. component parts” or “Assembled in the U.S.A. from imported and domestic parts”. However, if manufacturers seek to voluntarily promote their products as “Made in the U.S.A.” they must be honest in that promotion and only apply the “Made in the U.S.A.” label to products wholly made in the U.S.A.

Mr. GREGG. I am aware of the concerns expressed by my colleague on the Appropriations Committee and share the Senator’s concerns on the need to protect American jobs. My subcommittee has jurisdiction over the FTC and you can be assured that we will closely watch any action taken by the FTC regarding the current standard for “Made in the U.S.A.”

Mr. HOLLINGS. I too want to assure the Senator that our Subcommittee will closely monitor any actions on the FTC’s part to change the “Made in the U.S.A.” or “Produced in the U.S.A.” label should continue to assure consumers that they are purchasing a product wholly made by American workers.

Mr. KOHL. I thank Senator Gregg and Senator Hollings for their comments on this important issue. I am reassured by their interest in this matter.

JEFFERSON PARISH COMMUNICATIONS SYSTEM

Mr. BREAUX. Mr. President, I rise to discuss with the distinguished chairmen of the subcommittee, Senator Gregg, the distinguished ranking member of the subcommittee, Senator Hollings, and my distinguished colleague from Louisiana, Senator Landrieu, an important safety issue facing Jefferson Parish, LA.

As my colleagues know, the Jefferson Parish Sheriff’s Office is one of the most progressive and notable law enforcement offices in the country. Unfortunately, they have been forced to use a conventional 450 MHz UHF radio system that is far too small and antiquated to handle current traffic volumes and to provide the centralized and varied communications capabilities necessary in today’s law enforcement environment. Replacing this old system with a new 800 MHz digital system is necessary to ensure the safety of its residents and guests, and to enhance the operational efficiencies of the sheriff’s office.

Hurricane Danny recently demonstrated the dire need for this new communications system. Grand Isle, off the entire State of Louisiana, is a barrier island with approximately 2,500 residents. There is, however, only one road leading from Grand Isle to the mainland. When it appeared this road was at risk because of Danny’s 70-75 mph winds and high tides, the sheriff’s office decided to evacuate the island. Unfortunately, before the island could be safely evacuated, one of the radio towers was damaged and rendered inoperable by the hurricane. The sheriff’s office was forced to borrow cellular telephones in order to evacuate the island.

Ms. LANDRIEU. The Senator makes a fine point, and I would like to add that the new communications system would also support inter-operability with most of the adjoining parishes and the city of New Orleans. This would mean expanded emergency capabilities throughout the region which are vital to the safety of our citizens.

Mr. BREAUX. Mr. President, as my colleague knows, the sheriff’s office of Jefferson Parish has sought assistance in the past and has helped to highlight the need for Federal assistance to help law enforcement replace outdated communications equipment. In fact, the sheriff’s office was influential in getting a discretionary grant program created in 1994 that would provide funds for these types of activities. However, Congress has consistently earmarked these funds, leaving no funds for grant applicants.

Ms. LANDRIEU. Mr. President, the Jefferson Parish Sheriff’s Office has demonstrated its commitment to this project by allocating over 50 percent of the cost of this initiative in a dedicated escrow account. In a competition for funds, the sheriff’s office, with its well developed procurement strategy and available matching funds, had no doubt prevail as a deserving candidate.

Mr. GREGG. I thank the Senators from Louisiana for bringing this issue to my attention. I understand that the new communication system for the sheriff’s office in Jefferson Parish is a priority and I will give this request my attention and consideration in conference.
Mr. HOLLINGS. I too, thank the Senators from Louisiana and believe that this is a project worthy of attention in conference.

Mr. BREAUX. I greatly appreciate the assistance of the distinguished chairman and ranking members of the subcommittee in this matter. I would like to thank them and my colleague from Louisiana, Senator LANDRIEU, for joining me in this colloquy.

ODYSSEY MARITIME DISCOVERY CENTER

MR. MURRAY. Mr. President, I would like to urge the chairman and ranking member of the Commerce, State Justice Appropriations Subcommittee to join me in directing the National Marine Fisheries Service, through the Information and Analyses, Resource Information account, to provide $250,000 to the Odyssey Maritime Discovery Center in Seattle, WA.

This is a new educational learning center opening in July, 1998. This Center will establish an educational link between the everyday maritime, fishing, trade, and environment that occur in the waters of Puget Sound and Alaska, and the lessons students learn in the classroom. Through high-tech and interactive exhibits, over 300,000 children and adults per year will discover that what happens in our waters, on our coast lines, at our ports affects our State’s and Nation’s economic livelihood, environmental well-being, and international competitiveness. The Center wishes to establish an exhibits and resources to link the public, particularly school children, with the maritime, fishing, trade, and environmental industries. Named in honor of the great Senator of Washington, Warren G. Magnuson, this series would honor Senator Magnuson’s dedication to our maritime heritage, his commitment to the marine environment, and his steadfast support of this nation’s fisheries.

Mr. MURRAY. I thank the chairman and ranking member of the Subcommittee for their support and interest.

Mr. GORTON. Mr. President, I join in support of this effort on behalf of the Odyssey Maritime Discovery Center and applaud Senator Murray’s efforts on the behalf of this legislation.

WOMEN’S BUSINESS CENTERS

MR. DOMENICI. Mr. President. On June 12, I introduced in behalf of myself and Senator Bond, along with 24 other cosponsors, a bill to strengthen the Small Business Administration’s [SBA] women’s business centers program. This bill, S. 888, the “Women’s Business Centers Act of 1997,” reflects our commitment for a stronger and more dynamic program for women-owned businesses.

I am pleased that the Small Business Committee has included the text of this bill into its 3-year reauthorization of the Small Business Act. It is anticipated that this reauthorization bill will be considered by the Senate within the next few months. The language in the reauthorization bill, as stated in the “Women’s Business Centers Act of 1997,” increases the annual funding authorization for the women’s business centers from $4 million to the level of $8 million. This authorizes the centers to receive funding for 5 years rather than the present 3 years, changes the matching Federal to non-Federal funding formula, and enables organizations receiving funds at the date of enactment to extend their program from 3 to 5 years.

Since the Small Business Committee’s reauthorization bill has not yet been considered by the Senate, the additional funds for the annual centers’ program are not included in S. 1022. I do want, however, to thank Senator GREGG, Chairman of the Commerce, State, Justice, and Judiciary Subcommittee of the Senate Appropriations Committee, for providing full funding authorization for the centers in 1998. This is most appreciated by all of us who support the women’s business centers’ activities, and it is especially important since the House has requested $1 million less for this program.

It will be most beneficial if the Small Business reauthorization bill is considered and passed in the Senate and House prior to conference on this appropriations measure. I draw my colleagues’ attention to the fact that the House bill is $8 million for the women’s centers’ program. It means in 1998 we may not be able to achieve the expansion of this program as we intended. There will be insufficient funds to expand the program into States which presently do not have women’s centers and existing programs cannot extend their programs from 3 to 5 years. This is a serious problem because we are well aware of the positive benefits of the women’s business centers. It provides to women entrepreneurs, the fastest growing group of new small businesses in the United States. These business centers are able to leverage public and private resources to help their clients develop new businesses or expand existing ones, and their services are absolutely essential for the successful and continued growth of this sector of our economy.

We must keep in mind that the funds in this bill for the women’s business centers reflect those appropriated in 1998. If this legislation is passed and the House agrees to the language of this program as envisioned in S. 888, the “Women’s Business Centers Act of 1997” and the reauthorization of the Small Business Act, may be delayed. As evidenced by cosponsorship of S. 888, a fourth of the Senate, on a bipartisan basis, supports expansion of the women’s business centers’ program. We need to be aware of the consequences of this and do everything we possibly can to provide the support this critical and highly successful program needs in the future. Thank you.

THE VERMONT WORLD TRADE OFFICE

MR. LEAHY. Mr. President, I would like to take a moment to highlight a
program in my State which I believe is a model the Small Business Administration [SBA] should consider investing in. Small businesses are the driving force of Vermont's economy. An important reason for their success in the State is the development of a healthy export market for the goods they produce. Forty percent of Vermont companies, employing some 70,000 Vermonters, are engaged in some degree of export trade. In 1993, Vermont created and funded the Vermont World Trade Office [WTO] to provide technical assistance to Vermont businesses and information on foreign trade opportunities. The office has been overwhelmed by requests from companies interested in exploring trade opportunities. To meet that demand and make the office more convenient to Vermont businesses, the WTO hopes to open satellite offices in other parts of the State, expand services to additional seminars for interested businesses. Funding from the SBA would make this expansion possible. I believe that a modest investment by SBA would yield a valuable demonstration of the importance of export building in building expanding markets for small businesses. Does the Senator from New Hampshire agree that this would be an appropriate use of SBA funding?

Mr. GREGG. Mr. President, I thank the Senator from Vermont for bringing this project to my attention. I agree that many small businesses do not have adequate access to information on building an export market for their goods. A demonstration of the importance of this assistance by the Vermont World Trade Office would benefit other States considering a similar system. I urge the SBA to consider providing the Vermont World Trade Office with $150,000 to conduct such a demonstration.

VIOLENCE INSTITUTE

Mr. LAUTENBERG. I want to express my support for the University of Medicine and Dentistry of New Jersey's [UMDNJ] Violence Institute, which provides valuable assistance to our efforts to curb violent behavior in all aspects of our society. The Violence Institute's programs are not directed solely at violent behavior of a criminal nature, but also focus on issues of domestic violence, and violence against women. I want to note that the Violence Institute was one of only a handful of projects recommended for special funding in the conference report accompanying the fiscal year 1997 Commerce, Justice, State appropriations bill.

I ask my colleagues, the chairman and ranking member of the Commerce, Justice, State Appropriations Subcommittee, Senators GREGG and HOLINGS, if they agree that the Violence Institute has been successful in curbing violent behavior are consistent with the Department of Justice's objectives and that such programs are worthy of the Department's support?

Mr. GREGG. I appreciate the concerns of my colleague from New Jersey about reducing violent behavior in our society, and I agree that the Violence Institute provides valuable assistance in addressing the epidemic of violent crime in the United States. Successful programs that provide research into the basic causes of violence, and that develop initiatives to prevent the spread of violent crime, can be valuable tools in our Nation's fight against crime. I believe that programs such as the one conducted by the Violence Institute are worthy of the Department's support.

Mr. HOLINGS. I, too, share the concerns of the Senator from New Jersey about violent crime in our society. The Violence Institute's research in this area makes a significant contribution to the Department of Justice's efforts to address this problem, and I agree with the chairman that programs like the Violence Institute are worthy of the Department's support.

COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT

Mr. LEAHY. Mr. President, Chairman GREGG and the Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, in its Report for S. 1022 that "the pace of technological change in the telecommunications industry poses enormous challenge" both to law enforcement and national security agencies in conducting court-authorized wiretaps and "in the conduct of foreign counterintelligence and terrorism investigations in the United States." The Communications Assistance for Law Enforcement Act [CALEA], which I sponsored in the 103d Congress, addressed this public safety and national security problem, after considerable debate and hearings in the Judiciary Committees of both the House and the Senate. I commend the chairman and the subcommittee for recognizing "that digital telephony is a top law enforcement priority."

CALEA authorizes $500 million for the Attorney General to pay telecommunications carriers for costs associated with modifying the embedded base of equipment, services, and facilities to comply with CALEA. Nevertheless, S. 1022 does not include any funding for this law, based upon the Committee's finding "that the Bureau has adequate resources available."

Moreover, the report recommends that no funds be expended for CALEA until the following requirements are met: First, the Bureau creates a working group with industry officials approved by the House and Senate Appropriations Committees, and second, the working group develops a new "more rational, reasonable, and cost-effective CALEA implementation plan" that is satisfactory to the Senate Appropriations Committee.

Would the Senator GREGG agree with me that in addition to the Appropriations Committees, the Judiciary Committees of both the House and Senate, which authorized CALEA, should also be involved in approving the industry officials on the working group and any plan provided by the working group?

Mr. GREGG. Yes. It is appropriate for the Committees on the Judiciary of both the House and the Senate to be involved and that was the intention of the committee when it prepared the report.

Mr. HOLINGS. Yes, I agree with Senators LEAHY and GREGG.

Mr. LEAHY. This addresses one of the concerns I have with the report's new requirements for expenditures of money for CALEA implementation.

I am also concerned about whether creation of the working group tasked with developing a CALEA implementation plan will delay, rather than facilitate, implementation of this law and compliance by telecommunications carriers with the four law enforcement requirements enumerated in this important law. Indeed, the report places no time constraints on creation of this working group or on when the Bureau working group implementation plan must be submitted to the specified committees.

Further delay in implementation of CALEA poses risks for the effectiveness of our law enforcement agencies. As the committee acknowledges, they already are encountering problems in executing court-authorized wiretaps. The industry, with the input of law enforcement, has drafted a specifications standard for CALEA. I am concerned that objections from the Bureau over elements in that proposed standard are delaying its adoption. I would like to see the Bureau accept that standard and get on with CALEA implementation.

I am also concerned that the working group proposed by the committee will work behind closed doors, without the accountability to CALEA intended. We should make sure that any meetings of the working group will be open to privacy advocates and other interested parties.

I fully appreciate that questions have been raised about how the implementation of CALEA is proceeding. That is why, over a year ago, Senator SPECTER and I asked the Digital Privacy and Security Working Group, a diverse coalition of industry, privacy and government reform organizations, for its views on implementation of CALEA, and other matters. We circulated to our colleagues on June 20, 1997, a copy of this group's "Interim Report: Communications Privacy in the Digital Age." The report recommends that hearings be held to examine implementation of CALEA, how the Bureau intends to spend CALEA funds, and the viability of CALEA's compliance dates. This recommendation is a good one.

We should air these significant questions at an open hearing before the authorizing Committees. It would rather make the authorizing Committees work in that fashion with the Appropriations Committees to make funds immediately available and insure those
funds are spent to establish a minimum standard that serves law enforcement’s pressing needs, without some of the enhancements being proposed by the FBI that industry claims are delaying the process of implementation. The committee should insist on some priorities in terms of geographic need and capability. I think we could resolve this with a little oversight, and return to the spirit of reasonableness that characterize the drafting of CALEA.

**TECHNICAL CORRECTIONS**

Mr. GREGG. Mr. President, the following are technical corrections to the fiscal year 1998 Departments of Commerce, Justice, and State, the Judiciary and related agencies appropriations report: First, under “Title I—Department of Justice”, on page 7, line 3, delete $17,251,958,000; and insert $17,278,990,000; on page 7, line 6, delete $826,955,000 and insert $853,987,000; and second, under “Title V—Related Agencies, Small Business Administration”, on page 126, line 22, delete $8,756,000 and insert $8,779,000,000.

**AMENDMENT NO. 979**

Mr. GREGG. Mr. President, I ask unanimous consent that we now adopt the managers’ amendment, which is the pending amendment No. 979.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 979) was agreed to.

Mr. GREGG. Mr. President, I move to reconsider the vote.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay the motion on the table was agreed to.

Mr. GREGG. Mr. President, I now send a series of amendments to the desk and ask unanimous consent that they be considered read and agreed to, the motion to reconsider be laid upon the table, and any statements relating to these amendments be inserted at this point in the RECORD, with all of the above occurring, en bloc.

These amendments have been cleared by both desks of the aisle.

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

The amendments (Nos. 999 through 1021) were agreed to, as follows:

**AMENDMENT NO. 999**

At the appropriate place, insert the following: Notwithstanding any other provision of law, the Economic Development Administration is directed to transfer funds obligated and awarded to the Butte-Silver Bow Consolidated Local Government as Project Number 05-01-02622 to the Butte Local Development Corporation Revolving Loan Fund to be administered by the Butte Local Development Corporation, such funds to remain available until expended.

**AMENDMENT NO. 1000**

(Purpose: To require a non-profit public affairs organization to register with the Attorney General that their sources of funding are foreign governments, some other nonprofit public affairs organizations actually try to keep from public view the fact that they receive substantial foreign government revenue. When they receive funding, some Members of Congress and staff, mail information all around the country, and organize public affairs events without ever disclosing the fact that their funding comes from other countries’ national governments, something is wrong.

Mr. President, this amendment has a different target than the discussions going on about campaign finance reform. It is focused on a rather narrow window in the law which allows some nonprofits to be bolstered by foreign government funds while not having to be upfront with the broader public. I believe that our public policy process can only benefit by the disclosure that this legislation would require. And I trust that my colleagues will agree and hope that they will support this amendment which I am offering today.

**AMENDMENT NO. 1001**

At the appropriate place, insert the following: On page 7 of the bill, on line 18, before the “’’” insert the following: “of which $25,000,000 shall be for grants to states for programs and activities to enforce state laws prohibiting the sale of alcoholic beverages to minors or the purchase or consumption of alcoholic beverages by minors, have laws prohibiting the consumption of alcoholic beverages by minors, and still others ban possession of alcoholic beverages by minors. In addition, there are a range of other laws regarding youth access to alcohol. This amendment adds no money to the bill and needs no offset.

All states prohibit the sale of alcoholic beverages to minors. In addition, there are a range of other laws regarding youth access to alcohol. These amendments would ensure that $25 million would be provided for grants to states for programs and activities to enforce state laws regarding youth access to alcohol. This amendment adds no money to the bill and needs no offset.

All states prohibit the sale of alcoholic beverages to minors. In addition, there are a range of other laws regarding youth access to alcohol.

Mr. BYRD. Mr. President, of the funds appropriated for law enforcement grants in the bill before us, my amendment would ensure that $25 million would be provided for grants to states for programs and activities to enforce state laws regarding youth access to alcohol. This amendment adds no money to the bill and needs no offset.

Mr. President, just today in The Washington Post there is an article regarding a sting operation in Arlington County in establishments that sell alcohol to minors. According to the office of the chief of police, minors purchased alcoholic beverages without any kind of I.D. check in 57 percent of the establishments visited. This is a
This legislation helps to save lives and sends a message to our nation’s youth that drinking and driving is wrong, that it is a violation of the law, and that it will be appropriately punished.

Our children are besieged with media messages that create the impression that alcohol can help to solve life’s problems, lead to popularity, and enhance athletic skills. These messages coupled with insufficient enforcement of laws prohibiting the consumption of alcohol by minors give our nation’s youth the impression that it is okay for them to drink. This impression has deadly consequences. In the three leading causes of death for 15 to 24 year olds, accidents, homicides, and suicides, alcohol is a factor. Efforts to curb the sale of alcohol to minors have high payoffs in helping to prevent children from drinking and driving death or injury.

There is a link between alcohol consumption and increased violence and crime, and I believe that directing funding to programs to enforce underage drinking and sale-to-minors laws will have a positive effect on efforts to address juvenile crime. According to the Center on Addiction and Substance Abuse at Columbia University, on college campuses, 95 percent of violent crime is alcohol-related and in 90 percent of campus rapes that are reported, alcohol is a factor. 31.9 percent of youth under the age of 18 in long-term, state operated juvenile institutions use alcohol at the time of their arrest. These statistics are frightening and they need to be addressed.

This amendment will send a clear message to states that the federal government recognizes that enforcement of underage drinking laws is an important priority and that we are willing to back that message up with funds to assist states in their efforts. It is not good enough to simply urge better enforcement. We must provide the resources.

In addition, Mr. President, I would like to say to my good friend, the Chairman of the Judiciary Committee, Senator HATCH, that I intend to work with him when S. 10, the Violent and Repeat Juvenile Offender Act of 1997, is being reauthorized and before the Senate in order to authorize funding for this program in the coming fiscal years.

I urge all of my colleagues to support this amendment which will help states and localities better enforce youth alcohol laws and protect our children.

AMENDMENT NO. 1003

On page 86, line 3 after “Secretary of Commerce,” insert the following:

S 211. In addition to funds provided elsewhere in this Act for the National Telecommunications and Information Administration’s Information Technology Grants program, $10,490,000 is available until expended: Provided, That this amount shall be offset proportionately by reductions in appropriations provided by this Act to the Department of Commerce in Title II of this Act, provided amounts provided: Provided further, That no
Mr. HARKIN. Mr. President, it is my great pleasure to offer this sense of the Senate to recognize and commend John H.R. Berg for 50 years of service to the United States Government on behalf of myself and Senator WARNER. Mr. Berg’s employment with the U.S. Government began at age 15 working for the U.S. Army in 1946. From July 1947 to February 1949 he worked with the American Graves Registration Command in Paris.

In July 1949, Mr. Berg began his employment with the U.S. Embassy in Paris. Currently, he is the chief of the visitors and travel unit in our Embassy in Paris. Currently, he is the chief of the visitors and travel unit in our Embassy in Paris. So far this year, as chief of the Embassy’s travel and visitors office, Mr. Berg and his staff of three have supported over 10,700 official visitors, 500 conferences, and over 15,000 official and unofficial reservations. The position entails coordinating all travel, transportation, housing control rooms and airport formalities for visits and conferences. Mr. Berg’s dedication, efficiency, and wide range of useful host government and private sector contacts have been invaluable to his work with the U.S. Government. His support efforts, personal interest, and ability to accomplish the impossible have become legend in the Foreign Service and to those of us who know his work personally.

A little known fact about John Berg is that he has devoted his life to providing dedicated, faithful, and loyal service to the U.S. Government. He willingly and cheerfully works long hours—evenings, weekends and holidays—to ensure that our visits are handled in the most skillful and efficient manner possible. And he has received five Department of State Meritorious Honor Awards for his outstanding work.

A little known fact about John Berg was that he was a stateless person at the beginning of his service to the U.S. Government. He was born in Germany in 1930, but lost his German citizenship in 1943 due to Nazi Jewish persecution. After his father was deported to Auschwitz, he and his mother with a small group of brave Jews, hid in Berlin from the Gestapo until the end of the war. The heroism they exhibited and the dangers they faced are documented in the book, “The Last Jews of Berlin,” by Leonard Gross. His father died in the concentration camp. And after World War II, John Berg moved to France where he began working for the American Government, and has now completed 50 years of service to the U.S. Government. For all his adult life, John Berg’s most fervent desire was to become a U.S. citizen. That goal was realized, and he was sworn in as an American citizen in 1981.

Mr. President, I cannot think of a better role model for those in the public sector. Therefore, I believe that John Berg deserves the absolute highest praise from the President and the Congress for his 50 years of dedicated service to the U.S. Government.

Mr. WARNER. Mr. President, I am privileged to join my friend from Iowa, Senator HARKIN, in putting in the Senate’s recognition of John Berg—an individual he represents himself.

His service to Americans was his life. No task was insurmountable; no task was performed with less than all-out dedication.

My most memorable among many trips to Paris was during the bicentennial of the Treaty of Paris in 1983. President Reagan had appointed me as his representative to the many events the French hosted to honor the first treaty to recognize, in 1783, a new Nation—the 13 colonies as the United States of America. John Berg was my aide-de-camp throughout that visit. I should add to that official visits to the 40th and 50th recognitions of D-day, June 6, 1944.

And so it goes for all of us in Congress as we salute John Berg. Well done, sir.
provides their long-distance phone service. As many as fifty million consumers now change their long-distance provider annually.

(2) The fluid nature of the long distance market has also allowed an increasing number of fraudulent transfers to occur. Such transfers have been termed “slamming”, which constitutes any practice that changes a consumer’s long distance carrier without the consumer’s knowledge or consent.

(3) The largest single consumer complaint received by the Common Carrier Bureau of the Federal Communications Commission. As many as one million consumers are fraudulently transferred annually to a telephone consumer which they have not chosen.

(4) The increased costs which consumers face as a result of fraudulent practices threaten to rob consumers of the financial benefits created by a competitive marketplace.

(5) The Telecommunications Act of 1996 sought to combat this problem by directing that any revenues generated by a fraudulent transfer be payable to the company which the consumer has not chosen, not the fraudulent transferor.

(6) While the Federal Communications Commission has proposed and promulgated regulations on this subject, the Commission has not been able to effectively deter the practice of slamming due to a lack of prosecutorial conditions as well as the difficulties of proving that a provider failed to obtain the consent of a consumer prior to acquiring that consumer as a new customer. Commission action to date has not adequately protected consumers.

(7) The majority of consumers who have been fraudulently denied the services of their current long-distance service provider do not turn to the Federal Communications Commission for assistance. Indeed, section 258 of the Communications Act of 1934 directs that State commissions shall be able to enforce regulations mandating that the consent of a consumer be obtained prior to a switch of service.

(8) It is essential that Congress provide the consumer, local carriers, law enforcement, and consumer agencies with the ability to efficaciously and effectively prosecute those companies which slam consumers, thus providing a deterrent to all other firms which provide phone services.

(c) By the Senate.—It is the sense of the Senate that—

(1) the Federal Communications Commission should, within 22 months of the date of enactment, promulgate regulations, consistent with the Communications Act of 1934 which provide law enforcement officials dispositive evidence for use in the prosecution of fraudulent transfers of presubscribed customers of long distance and local service; and

(2) Senate should examine the issue of slamming and take appropriate legislative action in the 105th Congress to better protect consumers from unscrupulous practices included in, proposed to, and mandated by the recording and maintenance of evidence concerning the consent of the consumer to switch phone vendors, establishing higher civil fines for violations, and establishing a civil fine of action against fraudulent providers, as well as criminal sanctions for repeated and willful instances of slamming.

AMENDMENT NO. 1009

(Purpose: To foster a safer elementary and secondary school environment for the nation’s children through the support of communities and schools)

On page 65, line 10, insert the following: “Section 120. There shall be no restriction on the use of Public Safety and Community Policing Grants, authorized under title I of the 1994 Act, to support innovative programs to improve the safety of elementary and secondary school children and reduce crime on or near elementary or secondary school grounds.”

AMENDMENT NO. 1101

(Purpose: To limit the funds made available for the Office of the Under Secretary of Commerce for Intellectual Property Policy, if such office is established, and for other purposes)

On page 75, line 3, strike all beginning with “$20,000,000,” through line 8 and insert the following: “such funds as are necessary, not to exceed 2 percent of projected annual revenues of the Patent and Trademark Office, shall be made available from the sum appropriated in this paragraph for the staffing, operation, and support of said office once a plan for this office has been submitted to the House and Senate Committees on Appropriations pursuant to section 655 of this Act.”

AMENDMENT NO. 1011

At the appropriate place, add the following:

“Section 1701(b)(2)(A) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796(d)) is amended to read as follows: “(A) may not exceed 20 percent of the funds available for grants pursuant to this subsection in any fiscal year.”

AMENDMENT NO. 1012

At the appropriate place, insert “Provided further, That none of the funds appropriated or otherwise made available to the Immigration and Naturalization Service may be used to accept, process, or forward to the Federal Bureau of Investigation any FD-258 fingerprint card, or any other means used to transmit fingerprints, for the purpose of conducting a criminal background check on any applicant for any benefit under the Immigration and Nationality Act unless the applicant’s fingerprints have been taken by an office of the Immigration and Naturalization Service or by a law enforcement agency, which may collect a fee for the service of taking and forwarding the fingerprints.”

AMENDMENT NO. 1013

(Purpose: To strike a restriction concerning the transfer of funds to the Office of Legislative Affairs or the Office of Public Affairs of the Department of Justice)

On page 2, lines 17 through 22, strike the colon on line 17 and all that follows through “basis” on line 22.

AMENDMENT NO. 1014

On page 125, strike lines 3-9.

AMENDMENT NO. 1015

(Purpose: To provide a waiver from certain immunization requirements for certain aliens entering the United States)

At the appropriate place, insert the following:

“WAIVER OF CERTAIN VACCINATION REQUIREMENTS

Sec. . (a) IN GENERAL.—Section 212 of the Immigration and Nationality Act (6 U.S.C. 1102) is amended by adding at the end the following:

“(p) The Attorney General should exercise the waiver authority pursuant to subsection (g)(2)(B) of any alien orphan applying for an I-31 or I-44 category visa.”

Mr. MCCAIN. Mr. President, This is intended to resolve a potentially serious problem involving foreign children emigrating to the United States for the purpose of being united with their adoptive parents. Quite simply, the amendment urges the Attorney General to exercise that authority to waive vaccination requirements for certain categories of emigrés that is part of current law.

Last year, my colleague from Arizona, Senator KYL, succeeded in getting passed legislation authorizing the Attorney General to waive the immunization requirements for legal aliens entering the country if medical, moral or religious considerations so warrant. Unfortunately, that authority has not been exercised, despite extenuating circumstances that clearly argue for such a waiver from the immunization requirement. No where is this failure to exercise that authority more damaging than in the area of foreign-born orphans being adopted by U.S. citizens.

Neither Senator KYL nor I would argue that immigrants with serious communicable diseases should be allowed into the United States. What we are saying is that children whose medical conditions cannot be properly determined without a more thorough examination than can be administered in their home country should not be subjected to vaccinations that may trigger unforeseen reactions, for instance, from allergies to a specific serum. Additionally, other medical conditions may exist that make immunization at a specific time unadvisable, as would be the case with a child suffering from influenza. All this amendment does is tell the Attorney General to do what common sense dictates should be done anyway: not subject children to vaccinations to which their systems may not be immediately adaptable.

Mr. President, I urge my colleagues to support this amendment. It would do nothing that could add to the health risk to the American public; it only eliminates the risk to children, often from countries with far more primitive health care than is available here, of immunizations if their individual medical conditions indicate such treatment would pose a serious risk to the health of the child.

SEC. . The second proviso of the second paragraph under the heading “OFFICE OF THE CHIEF SIGNAL OFFICER.” in the Act entitled “An Act Making appropriations for the support of the Regular, National Guard, and Volunteer Army for the fiscal year ending June thirtieth, nineteen hundred and one”, approved May 26, 1900 (31 Stat. 206; chapter 586; 47 U.S.C. 17), is repealed.

AMENDMENT NO. 1017

(Purpose: To exclude from the United States aliens who have been involved in extrajudicial and political killings in Haiti)

At the appropriate place, insert the following:
The legislation also includes a reporting requirement. The Administration would be directed to submit, to the appropriate congressional committees and the Senate, a list of those suspects in these killings. We need to encourage the Haitians to bring these killers to justice. We need to let them know that these killings cannot be tolerated.

The amendment denies funding for the issuance of visas to those who have been found, ordered, carried out, materially assisted, or sought to conceal extrajudicial and political killings. The amendment exempts persons for medical reasons, or if they have cooperated fully with the investigation of these political murders.

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Mr. Gregg. I ask unanimous consent that Senator Kerry of Massachusetts and Senator Feinstein be added as cosponsors to Senator Stevens's USIA amendment.

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

Mr. Gregg. Mr. President, at this point I wish to thank, obviously, my staff and the minority staff for the extraordinary amount of time and energy they have put into this bill. They have been here all day and have done an incredible amount of work in an extremely complex situation, I would have to say, and I am very grateful to the distinguished chairman, the Senator from New Hampshire, for his leadership. His staff has been very productive and cooperative. It is truly a bipartisan measure. It has been a privilege and pleasure to work with him. Obviously, my staff has

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been working around the clock, and I am really indebted to them. I thank the distinguished chairman.

Mr. GREGG. I thank the Senator for all his work.

MORNING BUSINESS

Mr. GREGG. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak therein for up to 5 minutes each.

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

PRIVILEGE OF THE FLOOR

Mrs. BOXER. Mr. President, in behalf of Mr. BINGMAN, I ask unanimous consent that privileges of the floor be granted to Dr. Robert Simon on detail from the Department of Energy to his staff, during the pending of Senate Resolution 98 or any votes occurring thereupon.

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

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, July 23, 1997, the Federal debt stood at $5,367,622,941,689.53. (Five trillion, three hundred sixty-seven billion, six hundred twenty-two million, nine hundred forty-one thousand, six hundred eighty-nine dollars and fifty-three cents.)

One year ago, July 23, 1996, the Federal debt stood at $5,171,664,000,000. (Five trillion, one hundred seventy-one billion, six hundred sixty-four million.)

Five years ago, July 23, 1992, the Federal debt stood at $3,988,415,000,000. (Three trillion, nine hundred eighty-eight billion, four hundred fifteen million.)

Ten years ago, July 23, 1987, the Federal debt stood at $2,300,098,000,000. (Two trillion, three hundred billion, ninety-eight million.)

Fifteen years ago, July 23, 1982, the Federal debt stood at $1,080,341,000,000. (One trillion, eighty-six billion, three hundred forty-one million, which reflects a debt increase of more than $4 trillion, $4,281,281,941,689.53. (Four trillion, two hundred eighty-one billion, two hundred eighty-one million, nine hundred forty-one thousand, six hundred eighty-nine dollars and fifty-three cents) during the past 15 years.

APPROVAL OF GEORGE TENET AS DIRECTOR OF CENTRAL INTELLIGENCE

Mr. BYRD. Mr. President, on Thursday evening, July 10, 1997, the Senate confirmed the nomination of George J. Tenet, of Maryland, to be the Director of Central Intelligence. I am delighted that the Senate has taken this action, based on the unanimous recommendation of the Senate Intelligence Committee.

George Tenet is well known to many members of the Senate, as he served with distinction as a staff member, and then Staff Director of the Senate Intelligence Committee during the service of Senator David Boren, of Oklahoma, when he was then Chairman of that Committee. When Senator Boren retired, to take up the post of President of the University of Oklahoma, George became the Assistant to the President for Intelligence matters on the staff of the National Security Council, and served with great distinction in that capacity. As a result of that service, he was asked by Mr. John Deutsch to be the Deputy Director of Central Intelligence when Mr. Deutsch was appointed Director, and he has served as the Acting Director since January of this year when Mr. Deutsch returned to the private sector. Mr. Tenet has been praised on the floor by the current leadership of the Senate Intelligence Committee, by the Chairman, the distinguished Senator from Alabama, Mr. SHELBY, and the Ranking Democrat, the distinguished Senator from Nebraska, Mr. KERREY. They have praised Mr. Tenet's capabilities, judgment and character. I wish to express confidence in his leadership and I believe he has the capacity to bring the agency out of the unfortunate period that it has recently experienced which was tarnished by espionage scandals, and too rapid a turnover of the Director. He faces the challenge of bringing morale up, as well as restoring public and Congressional confidence in the intelligence organization of the nation. It is his responsibility to ensure that the Intelligence Community performs on the basis of the highest standards of integrity, and that the tremendous analytical, technical, and personnel resources that the community possesses, without rival in the world, are brought to bear on the often dangerous and difficult targets of the world that constitute the intelligence agenda of the nation.

Mr. Tenet is already known as a strong leader with clear focus and a broad vision. I do not believe there is any recent Director of Central Intelligence that I have dealt with that brings as strong a knowledge of and constituency in the Senate as he enjoys. Intelligence in the confusing and shifting world of this post-cold war era is vital to the success of our national government, and to be successful must enjoy the strong support of both of them. George is uniquely qualified to bring about a working consensus on the priorities, activities and budget of the Intelligence Community. He enjoys an extraordinarily deep reservoir of support here in the Senate, and I believe in the White House and the Intelligence Community as well. He is an outstanding choice, and the President is to be commended on his selection. I look forward to working with him to ensure that the highly dedicated, talented and courageous individuals who serve the nation silently day and night across the globe enjoy the support that they need to carry out their duties. I wish him a long, fruitful and rewarding tenure as our new Director of Central Intelligence.

CNN'S COVERAGE OF THE SENATE CAMPAIGN FINANCE HEARINGS

Mr. CRAIG. Mr. President, Cable News Network announced this week that it would provide live television coverage of the Senate Governmental Affairs Committee hearings on campaign finance activities. But, Mr. President, their decision was based only on the fact that former Republican National Committee chairman, Haley Barbour, is scheduled to testify.

CNN has been suspiciously absent in its live coverage of the hearings, only allowing its viewers to see the opening statements of the chairman and the ranking member during the past 2 weeks of the hearings.

As I understand it, CNN based its decision to provide live coverage of Mr. Barbour's testimony on the judgment that he has celebrity status. Or, as CNN's own Washington bureau chief, Frank Sesno, called them yesterday, "major players".

That is a decision more fitting of the program "Entertainment Tonight", instead of a network which prides itself on being the world's leader of news.

I am certain that I am not the only one disappointed by CNN's decision to forgo live coverage of the hearings. In fact, on CNN's own Internet web page, an overwhelming number of CNN's viewers are distressed over the network's failure to provide live coverage.

One viewer wrote, and I quote:

Although I am very pleased that you are carrying the campaign finance hearings through your Web site, I must say after all of the interminable O.J. hearings you carried live on CNN, why on God's earth aren't you carrying the hearings as well? I am very disappointed.

It was signed by Jim Merrick on July 16.

Mr. President, there has been such sufficient controversy over the CNN's lack of live coverage of the hearings— and even the lack of regular coverage of the hearings by the other television networks—that CNN devoted a substantial portion of its program "Inside Politics" on Tuesday, to discuss the uproar.

In a roundtable discussion, where journalists interview each other about what a great job they're doing, CNN's Judy Woodruff asked ABC's Hal Bruno about the difference of these hearings as compared to the Watergate and Iran-Contra hearings. Hal Bruno replied, and I quote:

Government was at a standstill in Washington as a result of Watergate and the whole country was immersed in it. And the same was true to a lesser degree with Iran-Contra. These were major stories of revelations of criminal wrongdoing.

Mr. President, Hal Bruno's comment is an outrage.