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House of Representatives

The House was not in session today. Its next meeting will be held on Wednesday, March 8, 2000, at 10 am.

Senate

TUESDAY, MARCH 7, 2000

The Senate met at 10 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God who is for us and not against us, who recruits us for the battle of what is right and just, and who empowers us to seek the truth and speak it with love, our central purpose is to glorify You by serving our Nation.

Renew a sense of chosenness in the women and men of this Senate. Remind them that You have chosen them; they are here by Your choice. Revive in them a sense of divine calling. Reclaim for them the dignity of the high calling of politics. Rekindle their fires of patriotic passion. Give them a perfect blend of resoluteness and intentionality. Our times demand greatness, the greatness that comes from listening to You so intently that we can speak the truth with intrepid boldness and courage. In the midst of the two-party system, help the Senators to affirm their oneness as Americans and keep a strong spirit of unity in the struggle for what is best for our Nation. You alone are the one who can draw them beyond secondary loyalties to their ultimate loyalty to You and help them work together in civility and respect. Thank You for calling these men and women and helping them choose to be chosen. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MIKE CRAPO, a Senator from the State of Idaho, led the Pledge of Allegiance, as follows:

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

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Maine.

SCHEDULE

Ms. COLLINS. Mr. President, today the Senate will be in a period of morning business until 12:30 p.m. Following morning business, the Senate will recess until 2:15 p.m. so the weekly party caucuses may meet. Upon reconvening, the Senate will begin consideration of the nominations of Marsha Berzon and Richard Paez to be the U.S. circuit judges for the Ninth Circuit.

ORDER OF PROCEDURE

I now ask unanimous consent that the debate time between 2:15 p.m. and 5 p.m. be equally divided between the proponents and the opponents of the Berzon and Paez nominations.

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

Ms. COLLINS. Mr. President, by previous consent, at 5 p.m. the Senate will proceed to a vote on the confirmation of the Executive Calendar No. 423, the nomination of Julio Fuentes. Senators can therefore expect the first vote to occur at 5 p.m. today. I thank my colleagues for their cooperation.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. There will now be a period for the transaction of morning business not to extend beyond the hour of 12:30 p.m. with Senators permitted to speak therein for up to 5 minutes each.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 2194 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Nevada is recognized.

THE RECORD OF JUDGE RICHARD PAEZ

Mr. REID. Mr. President, I wanted to speak a little earlier, but I didn't have the opportunity. The minority is very happy that we are going to move forward on some judicial nominations. One of the nominations holds a record. It is a record that Judge Paez has. He has been waiting more than 4 years to have the Senate decide whether or not he can be elevated to the Ninth Circuit. We feel Judge Paez is eminently qualified. I think we will find that a majority of the majority will also feel that way.

Here is a man whose record is unsurpassed. He is a person who has been said to be—these are different quotes—''a well-respected, experienced judge.''

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

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''Judge Paez has bipartisan support.'' ''Judge Paez is not an 'activist', nor is he 'anti-business.'" Judge Paez has outstanding judicial temperament and is not 'antireligion.'" Judge Paez has not acted ''unethically.'' ''Judge Paez has committed to follow the law on the death penalty,'' and to follow the law generally.

I hope when we look at this man and his qualifications, he will receive an overwhelming vote. He is qualified for the Ninth Circuit.

Judge Paez is a graduate of Brigham Young University and he received his law degree from the University of California at Berkeley in 1972. He has received the highest rating given by the American Bar Association to Federal judicial nominees, which is well qualified.

It is important to note his nomination swept through here earlier when he was confirmed to the trial court on the Federal judicial level. He served with distinction after we, the Senate, approved his nomination. He has done that for 5 years, where he has served, as I have indicated, as a U.S. District Judge for the Central District of California. He has presided over numerous trials. Prior to being a Federal district court judge, he had a distinguished career as a State court judge. He served as a California State judge for 13 years. He is somebody who has been active in charitable and community affairs. He is a family man. His mother and father and 10 brothers and sisters live in another Western State, the State of Utah.

As I have indicated, Judge Paez has bipartisan support from, for example, JAMES ROGAN, a Republican Congressman from California, and a former judge himself; he supports Judge Paez. He has support from Los Angeles district attorney, Gil Garcetti; Los Angeles County Sheriff, Sherman Block; Los Angeles Police Protective League; National Association of Police Organizations; former California judge and president of the Los Angeles Bar Association, Sheldon Sloan; Association for Los Angeles Deputy Sheriffs, President Pete Brodie; Los Angeles County Police Chiefs' Association. It goes on and on. It is a shame we have not worked and gotten this nomination approved earlier. I hope, as I have indicated, this will not become related to some extraneous issue. It should be decided on its merits.

Mr. President, I recognize that my friend from Alaska, the chairman of the Energy and Natural Resources Committee, is going to speak on the Ninth Circuit. I have some familiarity with it because the chief judge in the Ninth Circuit is from Nevada, Procter Hug. We are proud of the fact that he is the chief judge of the Ninth Circuit. He also has rave reviews. He is a graduate of Stanford University School of Law. He has administered the Ninth Circuit very well. I hope those who feel there should be something done about the Ninth Circuit would look at what we have already done. This has become an issue. As a result of that, there was a commission appointed, led by former Supreme Court Justice Byron ''Whizzer'' White. They made a decision on what should be done with the Ninth Circuit, and that it should be kept intact and be administered differently.

So I hope the committee of jurisdiction which will review the Ninth Circuit matters will take into consideration what has already been done, and that there will be hearings held as to what should be done, if anything, with the Ninth Circuit.

EXPORT ADMINISTRATION ACT

Mr. REID. Mr. President, I think it is important this week that we move forward with the Export Administration Act. This is something that is more than 10 years overdue. We must move forward on that. We are talking about being friendly in the Senate to the high-tech industry. There is nothing we could do that would be more friendly to the high-tech industry today than passing the Export Administration Act. If we are going to continue to be the leader in the high-tech industry in the world, we have to pass this act immediately. If not, we are going to have these businesses move offshore. That is, in effect, what this Export Administration Act does.

I commend Chairman GRAMM of Texas. He indicated he would do what he could to move this forward. He has kept his word. This is being held up by just a few of the chairmen of committees. It should not be. This is not a partisan issue. We should move forward, recognizing we are no longer in a cold war, that defense issues can be resolved very easily, and this is something we should finish before we take our break next week.

Mr. President, I ask unanimous consent that following the remarks of the Senator from Alaska, Senator DORGAN be recognized, in keeping with the previous order entered for 20 minutes.

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

MEASURE READ THE FIRST TIME—S. 2184

Mr. MURKOWSKI. Mr. President, I rise this morning to introduce a bill, which I send to the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The senior assistant bill clerk read as follows:

A bill (S. 2184) to amend chapter 3, title 28, United States Code to divide the Ninth Judicial Circuit of the United States into two circuits, and for other purposes.

Mr. MURKOWSKI. Mr. President, I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection is heard. Under the rule, the bill will receive its second reading on the next legislative day.

(The remarks of Mr. MURKOWSKI and Mr. HATCH pertaining to the introduction of S. 2184 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. Under the previous order, the Senator from North Dakota is recognized for up to 20 minutes.

FEDERAL RESERVE BOARD

Mr. DORGAN. Mr. President, I came back from North Dakota on a late flight last evening on Northwest Airlines, flying North Dakota to Washington, DC. When one is traveling all day and up late, one gets up in the morning and it takes a while to adjust to find a good mood. My morning wasn't enhanced when I saw USA Today and saw the headline, once again, that Mr. Greenspan digs in his heels on rate hikes.

Mr. Greenspan goes to Congress and decides he will tell the American people they should brace themselves, he will increase their taxes in the form of higher interest rates. That did not exactly make my day this morning.

I will make a couple of comments about what Mr. Greenspan and the Federal Reserve Board are doing.

March 7, Wall Street Journal:

The U.S. work force was much more efficient in the fourth quarter than initially thought, push labor costs sharply lower.

Nonfarm productivity grew at a 6.4% rate in the last three months of 1999, the fastest pace in seven years and well above the government's initial estimate of 5%, the Labor Department said Tuesday. The increase caused the biggest decline in unit labor costs in seven years—a drop of 2.5% that was more than double the 1% reduction the government estimated.

The surge in productivity, which was in line with expectations, generally would suggest that the risk of inflation remains low despite feverish economic growth. Because workers are producing more goods and services per hour, employers can afford to pay higher wages without having to pass on additional costs to consumers.

I wonder if Mr. Greenspan has seen this information, or does he just disregard it. It does not matter what the facts are. They are intent on increasing interest rates at the Federal Reserve Board.

How about this. Mr. Greenspan says he fears demand is still too strong, even after reports last week that job growth has slowed in February, unemployment rose, and sales for new homes dropped sharply at the beginning of the year. He says our country is growing too fast and too many people are working, and so he has decided he wants, once again, to increase interest rates.

What does increasing interest rates mean? I will tell you what it means. If he, as some expect, increases interest rates another full 1 percent, which will double it from where rates were about a year ago, it means that every North Dakota farm family will pay about $1,500 more per year in interest costs. Typical nonfarm households in North Dakota will pay about $700 more a year in added costs.

There will be no debate in this Chamber about this issue. This is the Federal Reserve Board saying: We are going to tax the American people with higher interest rates. Why? Because we decide we are going to do it.

Who are they? I do this as a public service. These are the members of the Federal Reserve Board of Governors and the regional Federal Reserve Bank presidents. This is a chart showing who they are and from where they come. They all wear gray suits. They all come from the same area. They all think the same. I even put their salaries on the chart. I do this so we can put some faces to this public policy because they want to close their doors, make decisions about interest rates, and impose higher interest rates on every American at a time when it is unjustified.

My children used to go through a book called ''Where's Waldo?'' At night they would lay on the bed and search through those large pages trying to find Waldo. My son especially always claimed to find Waldo even when he had not sighted Waldo. I think my son knows something that Mr. Greenspan knows. Mr. Greenspan has been searching for inflation forever, even as inflation has gone down, way down, and he continues to increase interest rates with no justification at all.

Where is Waldo? Where is inflation, I say to Mr. Greenspan? Where is the justification for deciding that family farmers in desperate trouble already should pay about $750 a year more in interest charges under your current interest rate increases that have already been put into effect by you, and $1,500 a year total in additional interest charges if you do as many analysts expect and increase interest rates another 1 percent over the coming year?

Mr. Greenspan is a public servant. I admire him for his public service, but I profoundly disagree with that monetary policy. Perhaps he will discover what most Americans know: Productivity has increased dramatically, inflation is down, and this economy can least afford, in my judgment, the increased interest rates that Mr. Greenspan is now proposing.

I had asked for time this morning to speak on another subject. I thought if I was coming to the floor, I should at least make a comment about what Mr. Greenspan is talking.

I ask unanimous consent to speak on another subject under a separate heading.

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

ARMS CONTROL

Mr. DORGAN. Mr. President, I wish to talk about the issue of arms control this morning. There are many issues that we consider in this country. We have the deafening sounds of Democracy as the American people and politicians discuss, debate, and describe many, many issues. Both candidates and crowds these days are generously discussing issues ranging from abortion to economic growth to defense policy, and so on. But there is dead silence on the subject of the spread of nuclear weapons and the threat it poses to every single person on this Earth and especially the threat it imposes to our children.

Let me describe where we are with nuclear weapons. In 1985, the Soviet Union had 11,500 nuclear warheads on long range missiles. Defense analysts predicted that would go up to 18,000 or 20,000 nuclear warheads by the mid-1990s. These numbers do not even mean much. What is a thousand nuclear warheads? Each Soviet warhead had about 20 or 30 times the power of the bomb dropped on Hiroshima.

Instead of the 20,000 warheads many predicted, Russia has only about 5,000 warheads today. Why do they have 5,000 warheads? Because they have gotten rid of about 6,000 of the nuclear warheads they used to have. The Soviet stockpile, now the Russian stockpile, has been cut by the equivalent of 175,000 Hiroshima bombs. How did that happen? Because of arms control agreements. We agreed to reduce our nuclear weapons and they agreed to reduce theirs.

I will describe what has happened. We have something called the Nunn-Lugar program, named after our colleagues, former Senator Nunn and Senator Lugar. They said a good way to reduce the threat is by helping a potential adversary destroy his weapons while we reduce our own weapons. As a result the Nunn-Lugar program has reduced the threat to the United States by eliminating 4,900 Russian nuclear warheads, 471 intercontinental ballistic missiles, 12 ballistic missile submarines, and 354 ICBM silos.

For example, this is a picture of a Typhoon submarine owned by the Russians. It carries 20 missiles with 10 warheads on each missile. That is 200 nuclear weapons that can be fired from this Typhoon-class submarine. This submarine is twice the length of a football field and a third larger than the Trident submarine, the largest U.S. submarine.

What is going to happen to this submarine? It is going to be dismantled, and we are going to help pay for the dismantling of this submarine under the Nunn-Lugar program. We are going to reduce the threat by taking a Typhoon-class submarine and destroying it. This is a picture of what it looks like today. This is what it will look like later this year. You can see what once was a submarine carrying 200 nuclear warheads aimed at U.S. targets is now a shell being taken apart and turned into scrap metal.

This picture shows the elimination of intercontinental ballistic missiles. They pull them from the ground and take off the warhead, and then cut the missile to pieces.

This is a picture of an ICBM silo, the last piece of metal being removed. The dirt is then piled over and sunflowers are planted. This is in the Ukraine. Is that progress? You bet your life it is progress. A silo in which a missile once rested aimed at the United States of America with multiple warheads with nuclear explosive power is now eliminated. The Ukraine is free of nuclear weapons because of the Nunn-Lugar program.

Mr. President, I ask unanimous consent to show this piece of a wing strut from a Soviet bomber.

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

Mr. DORGAN. How did I get this? Did we shoot the bomber down? No. This bomber was sawed up. The wings were sawed off as a result of an arms control agreement that we have with the Russians by which we reduced our delivery systems and nuclear weapons and they reduced theirs. Their submarines are dismantled, their intercontinental ballistic missiles are dismantled, and their bombers have had the wings sawed off.

This is a picture of the heavy bomber elimination, TU–95.

That is what is happening with arms control. It is, in my judgment, exciting and breathtaking.

What is expected to happen in the future? Under START III, we are expected to go to 2,500 nuclear weapons. Think of that—2,500 nuclear weapons. What is one nuclear weapon? In most cases, the yield of a nuclear weapon is many times the yield of the one used in Hiroshima. Mr. President, 2,500 weapons on each side if we get to that—we are not there.

What has the Senate done with respect to arms control treaties? The U.S. Senate over the years has done a great deal. We passed START I, START II, the 1988 Intermediate-Range Nuclear Forces Treaty—a whole series of arms control initiatives. We have funded the Nuclear Cities Program to employ scientists in Russia who know how to make nuclear bombs so they are not hired by the Iranians, the North Koreans, and others. We funded the Nunn-Lugar program. We have done a lot of things.

The fact is, there is no discussion anymore about arms control in this Senate. In fact, all the discussion is about deploying a national missile defense system, abrogating the ABM Treaty, and making a full retreat on issues on which we were making significant progress. We need to change that.

In addition to that, last year, after languishing for 2 years without even a hearing, the Comprehensive Nuclear Test-Ban Treaty was defeated by the Senate. The President just asked General Shalikashvili to head a task force to see if everybody can work together toward a common goal and resolve the concerns many Senators have about the treaty.

Does anybody really believe it is in our interest or anybody's interest to begin testing once again nuclear weapons? What a huge step backwards. My

hope is we can, once again, on the Presidential campaign trail and in the Senate and in this country, as a matter of discussion among American citizens, talk about what we want for our future and our children's future.

Do we want a future with 2,000 or 5,000 or 10,000 nuclear weapons? Do we want a future, by the way, in which more and more and more countries have access to nuclear weapons? Because that is going to happen unless the country provides some leadership.

There is no significant leadership in the world at this point to stop the spread of nuclear weapons. It is our responsibility to do that. It is our job to do that. Most people do not understand the danger that was posed just a year or so ago when India and Pakistan—countries that do not like each other, countries that have fights on their border—both exploded nuclear weapons, virtually under each other's chin. Most people do not understand the potential consequences of that.

But we must, once again, as a Congress, and as a Senate, begin working seriously on the issue of controlling the spread of nuclear weapons and reducing the stockpile of nuclear weapons. We must get to full implementation of START II, and get to START III, and continue discussions, and not abrogate the ABM Treaty, and pass the Comprehensive Test-Ban Treaty. We must do those things.

It seems to me we must not run off and decide: Well, now what we want to do is start an arms race once again. Let's deploy a national missile defense system. It does not matter what it costs. It does not matter what the consequences are. We don't care what the Russians think. We do not care what it does to the Nunn-Lugar program. We do not care that it abrogates the ABM Treaty. We just do not care. In my judgment, that kind of mindset does not serve this country's long-term interests well at all.

What will best serve this country's interests is if we decide that a safer world will be a world in which we provide world leadership to stop the spread of nuclear weapons. We do not want any additional countries to access nuclear weapons.

I know people say: But we have these rogue states. They may shoot an intercontinental ballistic missile at the United States. That is probably the least likely threat this country faces. A rogue nation is not very likely to shoot an intercontinental missile. They are much more likely to acquire a cruise missile, for which a national missile defense system would not provide a defense. They are far more likely to get a suitcase nuclear bomb and plant it in the trunk of a rusty Yugo, plant it on a dock in New York City, and hold the city hostage. That is a far more likely threat than that some rogue nation would actually achieve access to an intercontinental ballistic missile.

Even more likely than all of that is the threat of a deadly vial of biological or chemical agents, that is acquired by a rogue nation or some terrorist, planted in a subway system in a major city.

Those are the most likely threats. Yet we have people in this Chamber who stand up and say: We demand deployment, immediately, of a national missile defense system. What that threatens to do is pull the legs out from under every bit of arms control efforts we have had underway for 15 years in this country.

The reason I show this chart is that I want to show that arms control has achieved the reduction of 6,000 nuclear weapons in the Russian arsenal. Six thousand nuclear weapons are gone. The experts predicted it would grow from 11,500 nuclear weapons to 18,000 or 20,000 nuclear weapons. They were wrong because arms control agreements with the Russians and the old Soviet Union represent a substantial decrease in the number of nuclear weapons they now have in their arsenal. The equivalent of 175,000 Hiroshima explosions has been eliminated from the Russian arsenal.

Will our children and grandchildren live in a world in which thousands of nuclear weapons are targeted at their homes, at their cities, at their country? I hope not. Will our children live in a world in which dozens of additional countries have access to and have acquired nuclear weapons and can and may use them to hold others hostage? Will our children live in a world in which terrorists will have access to nuclear weapons and hold cities and countries hostage? I hope not.

But the answer to those questions depends on the will and the aggressiveness here in this country of a President and the Congress to stand up and say: Arms control works. The United States of America will lead in this world to achieve new arms control agreements, dramatically reduce numbers of nuclear weapons, and reduce vehicles to deliver those nuclear weapons, with a substantial regime of inspection and monitoring and a Senate that will pass the Comprehensive Test-Ban Treaty. The American people should expect us to do that.

Let me conclude where I started.

There is a deafening noise in this country about a lot of issues—some important, some not. That is the noise of democracy. It is the sounds of democracy. But there is a dead silence on the subject of arms control.

When Members of the Senate walked out of this Chamber last year, after having voted in the majority against the Comprehensive Nuclear Test-Ban Treaty, most must surely have felt some dissatisfaction about that. That treaty was signed by over 150 countries, sent to this Chamber, and not one hearing was held in 2 years. Most must surely have left this Chamber with a feeling of dissatisfaction.

I hope that dissatisfaction can persuade those of us who care about controlling the spread of nuclear weapons and reducing the arsenal of nuclear weapons to come together and work together. There is nothing Republican or Democrat about the issue of nuclear weapons.

I say today, I hope the Presidential campaign can be about these issues. I hope the debate in Congress can be about these issues because, in my judgment, there is no issue more important to our future and our children's future.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ENZI). Under the previous order, the Senator from Minnesota is recognized for up to 45 minutes.

PERSONAL SECURITY AND WEALTH IN RETIREMENT ACT

Mr. GRAMS. Mr. President, I want to take time this morning to talk about one of the most important issues I think is facing American society today; that is, the future of the retirement system in this country—not only for those who are on Social Security today or for those who are going to be on Social Security very soon, but basically to look down the road to our children and our grandchildren at what kind of Social Security or a retirement system we are going to leave the next generation. I think that is very important.

I am very pleased this morning that President Clinton has finally accepted the Republican Social Security lockbox which would lock in every penny of the Social Security surplus, not for tax relief and not for Government spending but for the retirement program of millions of Americans.

However, what most concerns me is that the President appears to be abandoning his ''Save Social Security First'' pledge. It was one thing to lock in Social Security surpluses last year and in the future and to further attempt to devote interest savings on a lower public debt to Social Security, but that alone will not save Social Security because we have spent too many years of the Social Security surplus prior to the year 2000.

The President's budget does not address the future solvency of Social Security to ensure retirement benefits will be there for the baby boomers and also future generations. All he has proposed is to credit Social Security with more IOUs that do nothing but increase taxes on future generations.

So my point is, the President's Social Security proposal does not push back the date that Social Security will run a deficit by a single year, and the transfer from the general fund to Social Security does not cover a fraction of the shortfall the system is going to face.

Without reform, the unfunded liability of Social Security will crowd out all discretionary spending. It will create financial hardship for millions of baby boomers. It will impose a heavy burden for our future generations in the form of higher taxes. We must address this very vitally important issue and do it as quickly as we can.

Just another note. Recently, a Social Security advisory panel found that the Social Security economic and demographic assumptions the Government uses to project the program's future economic status underestimate the unfunded liability. What that means is, if the panel's recommendations were adopted, Social Security projections would show a financial imbalance in the system that is much greater than currently forecast. In other words, the system is more likely to be in worse shape today financially than previously even thought. This means Social Security could go broke much sooner than we actually expect today.

What I want to do is to look at the system itself and then look at a plan I have introduced called the Personal Security and Wealth in Retirement Act, which is personal retirement accounts, which I believe is the direction in which we should go in order to save Social Security and to have a safe, sound, and good retirement system for the future.

In doing this, I have been across the State of Minnesota, holding many town meetings, talking to hundreds and thousands of Minnesotans, trying to explain to them what the problems are. I think everybody agrees there are some problems in Social Security. In fact, more young people today believe Elvis Presley is still alive or believe in aliens than they believe that Social Security is going to be there for them. So there is a problem of perception.

What Americans are looking for—and I found this out traveling across Minnesota—what they want is some information on what is happening and what are some of the options we are going to have in order to address this problem. That is why I have traveled across the State of Minnesota doing a number of town meetings, talking to Minnesotans about this.

When we look at Social Security over the last 65 years, Social Security has basically done what we have asked the program to do; that is, to provide retirement benefits for millions of Americans over 65 years. It has done the job. In some cases, if one looks at their Social Security check today, they will say it is not very good because it is only $700 a month, $600 a month, $800 a month. That is not the kind of retirement we want to leave to our children.

If we look ahead to the next 30 years, the system is facing some real problems. We are going to strain the system to the point it will not be able to meet the benefits that have been promised. In fact, if we look out about 30 years, without any changes in Social Security, we will see a reduction in the benefits of about one-third. We might have to raise taxes; that is another option. We might have to raise the retirement age.

If those are the options on the table, I don't think they are what we want to leave our children, that they are going to have a retirement system that is going to cost them more, going to give them less in benefits, and they are going to have to be older to retire. Is that what we are promising or hoping for our kids? I don't think it is. That is why I have gone across Minnesota holding town meetings and talking about this issue.

When Franklin Roosevelt created the Social Security program over six decades ago, he wanted it also to feature a private sector component to build retirement income. In other words, he did not think only Social Security alone should do that. Social Security was supposed to be one leg of a three-legged stool: Social Security, pensions, and savings accounts.

But Franklin Roosevelt did have some concerns. In fact, there was a Senator—I think from Missouri—who had passed on the floor of the Senate a proposal to include private retirement accounts as well as the public. When it got into conference, it was stripped out. They promised him they would bring it back on the floor again the next year, but they said: We have to pass this bill now. We are right at the height of the Depression, with all the problems the country is facing. They promised him they would bring this aspect back the next year. They never did. I always say that is one of the first big lies dealing with Social Security.

Social Security is a system that is stretched to its limits. We have 78 million baby boomers who are going to begin retiring by the year 2008. The average is going to be around 2011 or 2012, but 80-plus percent of Americans retire at the age of 62, not at the age of 65. So we can push back when it is going to hit that limit by a couple of years to 2008. Social Security spending will begin to exceed tax revenues by the year 2014.

We have all heard about the Social Security surplus and why we are bringing in these surpluses every year. In 1983, a blue-ribbon panel, chaired by Alan Greenspan, decided the way to extend the life of Social Security was to begin overcharging for the FICA taxes. That excess overcharge would be put into a trust fund or a savings account, and we would then draw on that after the surpluses evaporated so we could meet the shortfall from the savings account which would extend the life of the program to the year 2032.

We hear everybody in debates saying: Social Security will be here until the year 2032. Well, it will be here, but it won't be paying benefits to the max after the year 2014 unless we raise taxes somehow to retire some of the debt.

To give a quick example: It is as if we were paying out $100 in benefits today. By the way, our Social Security system is a pay-as-you-go system. In other words, the money brought in at the first of February went out at the end of February. There is not one account with your name on it with $1 in it in Washington for your retirement. You have been paying in all these dollars, but you do not have an account in Washington that has $1 for benefits for your retirement. All you can rely on or hope for is that there are people working when you retire so they can pay that benefit at the first of the month that you will collect at the end of the month. That is the way this system works. It is a pay-as-you-go system—no investments, no compound interest, no assets, only the hope that there are going to be enough workers paying into the system when you want to retire.

So if we are paying out $100 in benefits, we are bringing in $110 today. We put that $10 in the savings account. But by the year 2014, we will bring in $100 and pay $100. So we are going to be even. By the year 2015, estimates are we are going to bring in $98; we are going to have to pay out the $100. That is when we were going to go to the savings account or the trust fund to draw out $2 to make sure those benefits are paid.

Then by the year 2020, for instance, we will only be bringing in $90 and we will pay out $100. We will have to borrow $10. Between 2014 and 2032, we would have evaporated that savings account. Then we will be facing the problem we were hoping to deal with at that time.

The problem is, all that is in the trust fund today are IOUs. In other words, every time $1 has been collected from you to go into the trust fund, Washington has borrowed that money, put it into the general fund and spent it for other Government programs. They have spent your future retirement dollars. They have put in notes, IOUs, that say they will pay back. It would be similar to going to your kid's piggy bank, taking out 10 bucks and putting in an IOU. You are going to have to have future revenues to pay back that IOU. So the money you have already put in is gone. To replace it, we will have to go to current taxpayers and raise more taxes to pay it off. All the money has been used to increase Government spending. It hasn't gone for your retirement security at all.

The Social Security trust fund goes broke in the year 2033. That is when all the IOUs will be gone. I always like to say, if you think these IOUs are good, go put a million-dollar IOU into your checking account and find out how many checks your banker allows you to write against that IOU. None. You are going to have to find additional revenues. I have $1 million in my checking account. It looks good on paper, but in reality there is nothing there to back it up but the good word and faith of the Federal Government to some day go back and collect more taxes to pay off this debt. So by 2014, we are going to have to begin raising taxes or cut spending in other areas to pay off an IOU. If we need $1 billion in the year 2014 and it is not in the budget, where do we go to get it? We are going to have to go out and get it from the taxpayers. So we are going to have to have a tax increase beginning as early as 2014 to pay the benefits being promised.

Why is the system now being stretched to the limit? Back in about 1940, there were 100 workers for every retiree. Today, there are about 2½ workers for every retiree. In 25 years, there are going to be less than two for every retiree. Why does this put a strain on the system? Say if you were going to have a $1,000-benefit in 1940. One hundred workers would only have to put $10 a month into the system to make sure it was solvent. Today, we are asking that you put nearly $500 a month into the system in order to maintain the benefits for this retiree. In 2025, our grandchildren will have to pay more than $500 apiece in order to maintain those benefits. So $10 compared to over $500 shows the strain that will be put on the Social Security system if we do nothing to improve it.

Where are we today with the system? The numbers say the system is probably more in debt than we expected it to be. If we look at this chart, on this line is zero; this line shows the continuing surpluses we will be bringing in until about the years 2012 to 2014. But after that, we see the red line as it goes down. This is the debt the system is going to incur, and it is over $20 trillion of unfunded liabilities. In other words, this is after we have already collected Social Security taxes from your paychecks. This is what we are going to run short if we are to pay the benefits the Government promises. So if we are going to continue paying just today's level of benefits—adjusting this for inflation, of course—in today's dollars, we are going to be $20 trillion short over the next 70 years.

Again, others would say: Well, if we can't do that, we will lessen the retirement age, and that will lessen the debt; cut benefits by a third. That will lessen the debt even more, or we are going to raise taxes, which could eliminate it. But that is the plan they have proposed.

The biggest risk to our Social Security system today is to do nothing. There are a lot of people who say we can't really touch it, or maybe we should raise taxes a little bit. Right now, proposals are floating around to raise your FICA taxes by another 2.2 percent in order to maintain these benefits. That is like putting a Band-Aid over cancer; you can wait 5 years, but when you pull that Band-Aid off, the cancer is probably going to be much worse than it is today. So that is no cure.

In fact, to support Social Security we have raised taxes 52 or 53 different times. People like to say they want to ''tinker'' with Social Security. If you get out the Washington dictionary and you open it up to ''tinker,'' it means a tax increase. They say, if we can only raise it 2.2 percent more, we can solve this problem. Well, if you believe that, why have they done it 52 or 53 times? This would be 54.

How many more tax increases would have to be imposed in order to do that? To keep promising Social Security benefits, the payroll tax would have to be increased, some say, a minimum of 50 percent—a minimum of 50 percent—not the 2.2, but a minimum of about 6.5 percent. Others say that could be more than double in order to maintain it.

In fact, here are the payroll taxes on this chart. This is where we started in 1950. It was under 3 percent at that time. It started out, by the way, at 1 percent of the first $1,000 of earned income. It has grown now. So it is 12.4 percent on $70,200, or somewhere in that neighborhood.

You can see how taxes have continued to increase to where we are today. But this red line shows the intermediate projections. These are the best-guess estimates of what could happen. By 2030, our children could be paying about 23.5 percent just for Social Security—not Medicare, just Social Security. You can add Medicare and then you are at about 28 or 30 percent. Then add in Federal taxes and it is 56 percent because that averages 28 percent. Then add in local taxes, sales taxes, property taxes, excise taxes, and everything else, and in 30 years our children are going to be looking at tax rates as high as 70 percent or maybe even higher because high-cost projections show that this amount probably would not be 25 but it could actually be somewhere closer to 28 or 29 percent. That would put our children well over the 70-percent mark.

Is that what we want for our children, where, for every $100 they make, they will take $30 or $35 home and the Federal Government gets the remainder of it? I don't know how many children will vote in the year 2030 for a politician who will keep a system such as this.

The diminishing return of Social Security: If you retired in 1960 or 1955, you probably got back everything you had put into Social Security within the first year. It was a good investment for that generation. But today, the average return on Social Security is less than 2 percent. If you are a young person today, by the time you retire, there is actually going to be a negative return. In other words, they would be better off to put their retirement money in a tin can and bury it in the backyard, and they would have more buying power in retirement than if they invested it in Social Security.

For many of the minority groups today, they are already in a negative cash-flow for Social Security because of age expectancy. So already it is beginning to hurt that portion of our population. To compare it, what if we invested it in the markets? The markets traditionally, over the last 80 years, including the crash of 1929 and all the ups and downs of the markets over the last 80 years, averaged a little over 7 percent in real rate of return. That is after inflation and all of the adjustments. It averaged over 7 percent in real rate of return. I don't know how many people would line up at the window to invest in an account that said: We are going to pay you less than 1 percent; in fact, it may be a negative percent. Right now, that is the only option you have. You have no choice as to where your money is going.

What have we done in Washington? Everybody now agrees—the President, Democrats and Republicans, the Senate and the House—that we need to lock it away to make sure all money collected for Social Security goes to pay for Social Security. We have introduced the lockbox. That means all the additional surpluses now are going to be set aside for Social Security retirement. That is very important. We need to continue to do that.

Stop raiding the trust fund. The Social Security Protection Act, which I introduced, would automatically reduce nonentitlement spending of Social Security dollars. Our spending and revenues now are based on the best estimates we can put together. The question is, Are we really serious about making sure we don't spend Social Security surplus money, even by accident?

We should have a protective mechanism in place. So if we estimate we are going to spend $1.8 trillion and we bring in a billion dollars less than that, right now, the only option is to go to the trust funds to make up the difference in spending. My bill would say we don't do that. We would reduce spending across the board evenly by that amount to make sure we did not take any money from the Social Security trust fund.

Again, if that is our promise, if we are serious about doing that, we should not say ''except to'' or make an exception. If we made an exception for $1 billion, you know there would be exceptions for $50 billion. So we have to be honest in what we are doing. It might only be .0003 percent; it might be .01 percent. If instead of getting $100 we would get $99, if that is what we need to do to protect Social Security funds, I think we should do that. If that is our top priority, we should live up to that priority.

When I was putting together the six principles of saving Social Security, I asked, what do we need to do if we are going to at reforming our securing retirement benefits for the future? First and foremost, we have to protect current and future beneficiaries. That means if you are on Social Security today, or plan to retire in the near future, you should be assured that the Government is not going to reduce the promises it has made. In other words, you can retire at the same age the Government says now, and your benefits will be there and protected, and we are not going to raid your taxes between now and then in order to do this.

You basically made a contract with the Government when you started working and you said, all right, I am going to put money into the system, and I expect to get the benefits when I retire. It is a contract. You said you were going to do this, and the Government said you are going to have the

benefits. Late in the game, when you sit down and plan for retirement, in Washington they say: We don't have enough money in the budget anymore. We are going to have to make changes here and raise your retirement age, or cut your benefits, or maybe we need to raise your taxes a little more. That is not the fair way to do that.

Allow freedom of choice. If you want to stay with the current system of Social Security, you have the option to do that. But also if you want to move into a personal retirement account, be in control of your retirement and your investments and maximize those dollars, you should have the freedom of choice to do that. Today, the Government gives you no choice. Washington knows better. Washington tells you what you have to do with your retirement. Somehow Washington doesn't believe you are smart enough to plan for retirement. You might be smart enough to make the money but not smart enough to put it away for yourself.

Preserve the safety net. That means you have to have a net there for disability and survivor's benefits. Let's make Americans better off, not worse off. So when you retire, you are going to have at least the benefits promised, but even better if we can. My plan does that.

Create a fully funded system. We have proposed personal retirement accounts in the Private Security and Wealth in Retirement Act. Bottom line: No tax increases in order to do this. The easiest way is always to raise taxes. The hardest way is to make real reforms. The Personal Security and Wealth in Retirement Act provides for personal retirement accounts. I introduced it in the 105th Congress and last May 24. It is S. 1103; the Personal Security and Wealth in Retirement Act allows for personal retirement accounts.

The plan provides for retirement security. I think it offers better options for you. In other words, right now you have no options. The Government tells you what you are going to do. They tell you what you are going to pay in from your check. They tell you what your benefits are going to be when you retire.

You don't have an option on that. They also tell you at what age you can retire. They give you more options.

Workers under my plan would pay 10 percent of their income. Right now they are paying 12.4. That goes to Social Security. My plan would take 10 percent of your income and put it into personal retirement accounts. The other 2.4 percent we still have to collect.

That is part of the funding mechanism for those who wish to remain on Social Security. That 2.4 percent, plus other means of financing, is going to have to go into the current Social Security Administration in order to fund that. We are going to talk about taking 10 percent of your money and putting it into a retirement account, or a PRA, that will be managed by a government-approved private investment company.

Firms will set up these retirement accounts—whether it is U.S. banks, whether it is Citibank, Travelers, whether it is Lutheran Brotherhood, whether it is Norwest Bank, or whatever. They would set up these retirement accounts based on safety and soundness—such as the FDIC account in which you put your savings accounts in a bank.

There would be very rigid safety and soundness measures to make sure the money put into this account is going to be there when you retire. So safety and soundness is first and utmost.

A couple of examples: On $30,000 of income, you are putting $3,720 a year in to support Social Security. Under my plan you would put $3,000 of that into your personal retirement account, and the rest of it would then go to the Government.

Just to show you the difference on this, they would be taking $3,720 and putting it into Social Security and then being allowed to take $3,000 and put it into a personal retirement account based on the market and what you could then hope to receive at retirement.

Under this example, this is what you would do. If you made $30,000 a year for a lifetime and went to draw your benefits from Social Security, you would get about $10,668 a month. But if you could take that $3,000 and put it into a personal retirement account and get the average market return, you would have about $54,500 per year in benefits. Compare 10.6 to 54.5. That is a big difference in what retirement accounts invested in the market could do compared to pay as you go.

Let's take a couple of other income examples. This would be for an average income family which has $42,000 or $43,000 a year in average income. This is one spouse earning the average income in a household, one spouse not employed outside the home, a one-worker family. If you paid in a lifetime the average earnings into Social Security, you could expect to get about $29,000 a year in benefits. If you would have invested these same dollars from the personal retirement account into a private mixed stock and bond market—in other words, more conservatively and maybe not the highest returns but more conservative investments—you would get at least $66,000 in return. If you had invested in the market, you would have a return of nearly $140,000 per year compared to $30,000 a year in return.

Let's take the same for a two-income, low-income family with both spouses working with an average low income over their lifetime. They would get about $18,400 in benefits. But if they could put the dollars into the personal retirement account and invest it in, say, the market, they could get over $100,000 a year in benefits, or about $45,000—if they put it into a mixed type and more conservative investment account. But, either way, they are still much better off.

The reason Albert Einstein was labeled as ''the man of the century'' by Time magazine was because Albert Einstein at one time said the most powerful force on Earth is compounded interest.

That is what we are trying to show, because if you are working and doing a pay-as-you-go system, you are getting $18,500. But if you use this most powerful force on Earth—compounding interest—you can see how it would compound. So your benefits would increase fivefold over your lifetime in order to draw better Social Security benefits.

Is this a pipe dream or is this just speculation or whatever? No. This is actual. Galveston County, TX, has a personal retirement account, as does the entire country of Chile, as does about 120 other countries in the world. Thirty other countries are doing this.

If you had a little history on our Social Security system, it is all based or duplicated off of one that was started in Germany in 1880. Bismarck at that time designed the system we have adopted as the model that Chile had, and many other countries. In fact, in 1880, Bismarck set the retirement age at 65 years. The average worker in Germany in 1880 was 49.5 years. When we adopted the Social Security system in this country, we set the retirement age at 65. The average life of a worker in this country was 59.5 years.

You can see what happened because as we have extended the life line, as people now enjoy 20-plus years of healthy retirement. The system was never designed to do that. That is why so many limits are being placed on it.

Let's look at Galveston County, TX, and how the employees there are reaping the benefits of a private retirement account instead of Social Security.

In about 1980, one of the administrators in Galveston County saw the loophole in the law. At that time, if you were a public employee and you already had a retirement system, you did not have to join Social Security. You could remain with your own private retirement account.

By the way, the President's plan to reform Social Security is to make sure that all those accounts are closed, and everybody would be drawing from Social Security.

But in Galveston County, they saw this loophole and opted out of Social Security, although the Government quickly closed that door so nobody else could. But that is what happened in Galveston County over the last 20 years.

According to today's schedules, under Social Security a death benefit is $253.

My father died at the age of 61. For all of the money he paid in over his lifetime, when he passed away his heirs received $253. That was all. In Galveston County the minimum death benefit is $75,000.

Disability benefits per month, if you are disabled under Social Security,

total about $1,280. In Galveston County, the disability benefits are $2,750 a month.

Retirement benefits per month: Social Security—again, currently we are basing this on average income—$1,280 a month would be about the best you could get out of Social Security. In Galveston County, you are at nearly $4,800 a month—nearly four times greater in benefits in Galveston County than if you are on Social Security today.

There was a young woman who wrote an editorial to the Wall Street Journal about 2 years ago. Her husband passed away suddenly of a heart attack at 44. She was 42. They had three children. She received the death benefit, plus the benefits she receives from Social Security and from her private retirement account, which allows her to maintain her home. If she had been on Social Security, her family would have been in poverty with the payments she would have gotten. Today, she can maintain the home as she did before. In the article, all she could say was: Thank God for Galveston County and the system they have.

What about moving to this new retirement account? If we move to the personal retirement account, somebody 45 years old would say: I have worked now for 40 years. What happened to all that money I paid into Social Security? What am I going to do? I can't afford to lose that—although you hear some people say: You can keep everything I have paid in; let me out of the system.

We have said those are dollars the Government has collected with the promise of paying you benefits. We know exactly how much we have collected in Washington from you for Social Security. If it is $20,000, we would give you a $20,000 recognition bond. That would be deposited into your private account. Adjusted for inflation and interest over the years, you could then cash this bond when you are 65, because that is the way everything is based right now. If it is $30,000, you get a $30,000 bond. If it is $44,220, we would give you that as a recognition bond. But it would be one of your options to say: I am going to have this credited to my account, and then I am going to begin my personal retirement system.

Again, taking care of today's Social Security recipients means that if an individual chooses to remain within the current system, the Government should and will guarantee the benefits—no age increase, no reduction in benefits, no tax increase, no ifs, ands, or buts. If one decides to stay within the current system, this is what to expect your government to do at the minimum, to guarantee your benefits, and not hear 5 or 20 years from now: I am sorry, we don't have the funds; we will have to reduce your benefits.

We need to rely on this in order to make sure the system is well.

Preserving the safety net is my plan. The Personal Security and Wealth in Retirement Act preserves the safety net for disadvantaged Americans, so that no covered person is forced to live in poverty. Today, poverty is recognized at about $8,240. My plan says workers cannot retire with less than 150 percent of poverty. They have to have income of at least $12,400—that is what workers receive in retirement.

We don't want anybody retiring in poverty. In fact, today about 18 to 20 percent of Americans who retire—mostly women—retire into poverty. We think we should have at least a safety net. Retirees have to have at least 150 percent in order to retire so they don't go into poverty.

Funds that manage PRAs are required to buy life and disability insurance to cover those minimum benefits. As with Social Security today, they are the safety nets for survivor and disability benefits, as I showed earlier with Galveston benefits. The Federal Government will make up the difference for those who fall short of the minimum benefits.

Perhaps someone has been in and out of the workforce or doesn't have enough money in that account, or they have had a minimum-wage job all their life and they cannot come up with the money to buy an annuity to pay the $12,400 a year. For those individuals, which we believe is a very small percentage, the Government will, in the only part that is any kind of entitlement or involvement by the Government at all, fill that glass full so benefits are paid.

Perhaps a worker only had the dollars to buy an $11,000 benefit plan. The Government would put in the additional dollars to make sure when they retire their minimum benefit would be $12,400 a year.

Providing a safety net and soundness: The rules are similar to those who apply to today's IRAs or 401(k)s and would apply to personal retirement accounts, as well. As banks operate under very strict rules of safety and soundness, the same type of rules are applied to the personal retirement accounts to make sure the money in their account is going to be there at retirement, don't worry about it.

By the way, workers can't invest their money into a gold mine that evaporates and then be left with no retirement benefits. Again, this is the safety net, the Government-sponsored plan, to guarantee retirement benefits so you are not a ward of the State, you have the wherewithal to pay your way in retirement.

Now, workers can still have other IRAs, other savings accounts, they can still have a stock portfolio. Only this narrow area will have the safety net or the Government set-aside to make sure individuals have a retirement.

Investment companies that manage PRAs are required to have an insurance plan to ensure at least a minimum of a 2½ percent return on each account. That is not much, but compare that to today's less than 2 percent and a growing number of less than zero in 20 or 30 years. This maintains at least a floor for the return on your investment. That also would be written into the law.

Workers decide when to retire and when to withdraw their retirement. As I said earlier, today workers don't have the choice or the options; they have to do what the Federal Government says. They cannot retire until they reach a certain age. Benefits are determined by the Federal Government. The Government says what each person is going to receive as a benefit. They have decided over the years what your contributions to this package has been.

With our retirement plan, when one can buy an annuity to provide income of 150 percent of poverty, anyone can retire anytime once that obligation is met. Once you have met the obligation to be able to buy an annuity that pays at least 150 percent of poverty, anyone can retire, or stop paying into the system and use that 10 percent of income to do what you want, use it for other investments, or spend it. Once an individual has met the threshold, they do not become a ward of a State. Anyone can arrange regular, periodic withdrawals of money in the account.

An individual 21 today making an average income—about $42,000 a year today—their whole life, tucking away those dollars, would have about $1.5 million in a bank account when they decided to retire. Annuities cost about $100,000 per $1,000 a month of annuity. If one buys an annuity to pay $1,300, one needs $130,000 in order to buy that annuity today. That leaves $1.27 million left in the bank account, in the savings account. You can do whatever you want with that. You can take out periodic withdrawals; you can take a trip to Europe, and write a check to do it. This is your money, not the Government's money.

An individual can withdraw the portion of the PRA that is above the minimum retirement benefits, free of income taxes and earning tests. All of these dollars placed into the retirement accounts are taxed before we put them in, as they are today.

I don't know if many realize this, but the Government taxes everyone on the Social Security moneys that taxpayers put into the Social Security system today. It is taxed before the Government takes it out of their check. We do the same. The Government today, when an individual withdraws Social Security, much of that is exposed to additional Federal taxes, and it could be exposed to even more taxes as part of an estate. We are saying, once you have it in the account, it is your money tax free.

More choices for families with PRAs. In divorce cases, they are treated as community property. Upon death, PRA benefits go to the heirs, without estate taxes. There are no taxes. If you pass away with $1.2 million in your account, that goes to your heirs when you die, not like when my father passed away.

There was nothing after a lifetime of investment into Social Security except a $253 death benefit.

Under this plan, all the money remaining in the account goes to heirs—your children, your spouse, your church, wherever desired. That is what happens: Build up an estate that can be passed on to the next generation.

Workers may arrange PRAs for nonworking children, with workers able to put up to 20 percent of their income. We say now a minimum of 10 percent, with an option of up to 20 percent can be put into their own account.

If one wants to retire at 55, put more money in to make sure you have enough to buy this minimum retirement benefit. Do it quicker and retire earlier. Do what you want, or put it into the account for nonworking children. A parent with five children could put 10 percent aside for himself and 2 percent in each child's account. This gives your children a headstart on retirement benefits.

To demonstrate how this money mounts up, by placing $1,000 into an average account when a child is born, by the time that child reaches 65, that $1,000 would be worth nearly $250,000 with just that one investment into the retirement account. For grandparents, that is a good gift for grandchildren. That shows how it can grow. Additional accounts for children give a real leg up on their retirement benefits in the future.

No new taxes. Bottom line, we say we do not want to raise taxes. There are things we need to do to finance this transition. As I said, there is $20 trillion in unfunded liabilities out there. Somebody has to pay that. We have made the commitment to them. The question is, How do we do that over the next 70 years so we do not put a tremendous strain on any one generation? As I said, in the next 25 or 30 years alone, we could put a strain on our children or grandchildren of up to a 70-percent tax rate in order to support the system if we don't make some changes now.

Again, what this all means, the bottom line, is retirement income will be there for all, whether one decides to stay within the current Social Security system—that is a choice, if that is what you want to do—or whether one chooses to build a personal retirement account. Again, there is a choice. Individuals don't have to do what Washington says; you can have a choice in what you want to do. Citizens can decide which retirement options work for them.

How do you want to do this? When the dollars are taken from your check, as they are today, deducted from Social Security, when the dollars are taken from you, you dedicate where you want the dollars to be sent, which retirement fund is going to handle your dollars—whether it be Citibank, Lutheran Brotherhood, Norwest, or whatever it might be. You decide where the dollars go. It goes into your account.

Also, you can tell that account holder: I want 65 percent in the market; I want 35 percent in Government bonds and securities. You can do that. Each individual has control over how the investments are handled.

Any person visiting the country of Chile, just ride in a taxicab and ask the cabdriver: How much do you have in your retirement account? He will pull out a retirement account passbook and state to the penny how much he has in the retirement account. That is his money.

They do not have their hands on it anymore. This takes Social Security out of the control of Washington and it puts it into the people's control. They make the decisions of what to do and how to build their retirement.

Everybody is different. Families are different. Everybody's hopes and expectations are different. Right now, Washington gives us that cookie-cutter, one system, and that is it. Our plan gives all the options so the American people can provide and create a retirement system they want.

With a PRA, an average Minnesotan could receive at least three times their current projected Social Security income, at least, and some of the projections go as high as 5, 6, maybe even 10 percent.

The bottom line is, the system is under tremendous strain and we are going to have to do something to protect retirement benefits in this country. The question is, What type of retirement system do we want to leave our children and our grandchildren?

Again, there are going to be those out there and some on the campaign trail today for President who are going to be talking about maintaining the status quo. In other words, let's put a Band-Aid over this cancer, let's raise taxes a little bit, and we will get by for a while. When that Band-Aid is pulled off, that cancer is going to be even worse than it is today.

We have an opportunity today to make a decision that is going to be better for retirement; in other words, it is going to cost less and there will be less pain in the transition. The longer we wait, it is going to be harder and more costly to make any kind of decision. We need to do this soon.

Are we going to get it done this year? No, there is not enough time this year to do it. It should be on the front burner when we come back in the 107th Congress in 2001, with a new President and the next Congress. It should be one of the first items we should look at: How are we going to save and support future retirement for our kids and grandchildren in the future.

I am 52 years old today, but I have very few options. I might be stuck with the plan we have today because by the time we implement it, I will be 55, 56 years old. At that time, will I have the option to move into personal retirement accounts? Maybe not.

We have to give our children and grandchildren at least the option to provide a better retirement for themselves than what we have today. For many people on retirement, if they are getting $800 a month and they think that is great, maybe that is what they want their grandchildren to have. But if they have retirement benefits three or four times that, I think that is an option to give our children and grandchildren.

I hope to talk about this again in the near future.

I yield back the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Under the previous order, the Senator from Kansas is recognized to speak for up to 30 minutes.

ELIMINATE THE MARRIAGE PENALTY

Mr. BROWNBACK. Mr. President, I rise today to address a couple of items that are going to be coming before this body and the importance of our addressing them. One is the marriage tax that is so embedded in our Tax Code, and the other is lifting the Social Security earnings limit. Both of these issues need to be taken care of this Congress. It is in the power of this Congress, particularly this body, the Senate, to deal with both of these items, and it is time we do it. I am going to be speaking out often about this until we get these measures passed. They make sense. It is time we do it. The American people want us to do it. The House has passed both of these bills, and it is time we do so as well.

Our Tax Code is riddled with provisions that penalize America's families. If that is not clear to date, it should be, and it will become increasingly clear as we discuss both of these issues, the marriage penalty and the Social Security earnings limit. In fact, our Tax Code regarding marriage penalizes marriage in over 60 different ways, according to the American Association of Certified Public Accountants. That is a body of which the Presiding Officer has been a part in the past.

This is unacceptable. As my colleagues already know, one of the most egregious marriage penalties occurs in the marginal tax rate bracket and in the standard deduction. I want to go through this because everybody hears about the marriage penalty tax, and it occurs in over 60 places. The bill that passed the House and is currently being considered in the Finance Committee addresses it in several places, but not all 60, but they are in several of the most important places.

I want to particularly talk about the marginal tax rate bracket and the

standard deduction. In fact, last year 43 percent of married taxpayers, roughly 22 million couples, paid an average of $1,489 more in Federal income taxes than they would have paid had they remained single. The Government should not use the coercive power of the Tax Code to erode the foundation of our society—the family. We must quit subsidizing and encouraging people not to get married and penalizing marriage.

The House passed a bill to provide marriage tax penalty relief for America's families in the 15-percent marginal rate bracket and to eliminate the marriage penalty in the standard deduction. The House-passed bill provides a good starting point for our discussions on marriage penalty deduction and elimination. It does not do everything, but it is a good starting point and key area with which to go.

Doubling the standard deduction, increasing the width of the 15-percent bracket, and fixing the earned-income tax credit will eliminate or reduce the marriage penalty for all filers.

According to the National Center for Policy Analysis, the highest proportion of marriage penalties occurred when the higher-earning spouse made between $20,000 and $75,000 per year. Clearly, we need to make the marriage penalty elimination a priority for all families, not just a few. We must continually work to make our Tax Code better, to make it fairer for America's families. I am hopeful we will be able to correct this gross inequity in our Tax Code this year.

I want to go through some examples of people in Kansas who have written to my office about the impact of the marriage penalty. People know it is there, and they do not like it.

First, we can pass this bill in this body this year and get it to the President. We have to have an agreement between the Republicans and the Democrats as to whether or not we are going to agree to pass this bill. I am calling on my Democratic colleagues to agree with us and pass sensible marriage penalty relief. They have it in their power to block us from doing this as well, but I hope they will come forward and say: We do not want this pernicious tax to be on our married families. We are all for family values, and the central unit of that family is the married couple. We do not want to see placed on America's families this average of $1,480 per family, on 22 million working couples who are making between the $20,000 and $75,000 limit. We do not want to see that tax placed on them. We do not want people saying: I cannot afford to get married because of the Federal Tax Code. People are saying just that now.

I want my colleagues to listen as I share some letters I have received from Kansas constituents about this very issue.

When I go home every weekend and talk with people, the marriage penalty tax comes up regularly.

Listen to this letter:

DEAR SENATOR BROWNBACK: My husband, a mechanic, and I are working hard to raise our two daughters as well as we can on his income. It is tight sometimes, but we get by.

After our littlest one, Emma, starts school I will be returning to work at least part-time or ¾ time. Mitch and I were looking forward to the extra income so we could pay off our car, start saving for our girls' college education and most of all, quit living month to month if something goes wrong.

After doing our taxes this year we fiddled with the numbers to see where a supplementary income would put us. We discovered that my working much more than part time would put us in a higher tax bracket and almost negate my income. In short, my husband is punished for working nights and extra overtime and I am punished for wanting to send my daughters to college.

The best tax strategy that we could find would be to divorce, let Mitch deduct the mortgage interest and I file as the head of household with the girls. In short, the present tax code has a significant incentive for shacking up instead of marrying.

These are my constituent's words—rather blunt, but they do make the point. She goes on to write:

Some people say that this tax cut is bad because it would benefit the wealthy and the richest Americans. If they think a mechanic and a secretary are the richest Americans, and are opposed to the Richest Americans, then who are they for? Obviously not mechanics and secretaries.

Please vote to remove the marriage penalty so our hard work will mean something more than higher taxes.

Here is another letter. This one is from David:

DEAR SENATOR BROWNBACK: I am a college student at Washburn University. My girlfriend and I have been thinking about getting married for several months.

As part of the planning we went through our finances.

It sounds like a good idea to me.

I checked our taxes and found that if we were married this year, we would have paid $200 extra in Federal taxes.

Granted that may not sound like much, but at $9 and change an hour, $200 is a lot of money.

I calculated how much we could be making in a few years and found that we will pay $600 more for being married than just shacking up.

Again, a rather blunt statement, but put forward clearly.

He goes on to say:

Basically, we have to pay $600 for the privilege of being married.

I always thought the government tried to reward constructive, positive behavior through the tax code, but it is punishing one of the most socially stabilizing behaviors, marriage.

We don't think we or anybody else should be punished for being married and hope you can do something about it.

Here is another one:

DEAR SENATOR BROWNBACK: I am writing to express my support for The Marriage Tax Elimination Act recently passed in the House of Representatives and to urge you to vote in support of this measure when it comes to the Senate.

This legislation would address a serious inequity in current tax law by eliminating the disparity that exists with respect to the total "standard deduction" allowed two married taxpayers versus the total "standard deduction" allowed two single taxpayers. Tax policy should not discriminate either in favor of or against two individuals with respect to their decision to be married (or not be married). Rather, the same total itemized deduction amount should be allowed married taxpayers who choose to file jointly as two individuals who file separately.

Thank you for your attention to this matter.

Is that just basic common sense, that if you are going to be married or if it is two singles, you should be taxed at the same level instead of having an increased tax for being married? It is pretty hard to explain that policy to that constituent.

Here is another letter from a constituent:

SENATOR BROWNBACK: We were notified that a Marriage Tax Relief Act was pending in the Congress. We want to go on record as supporting any measure that will roll back the "Marriage Penalty" on America's families, including ours! We trust that you are willing to vote YES on this bill.

Thank you, and God bless.

Here is another letter:

DEAR SENATOR BROWNBACK: I would like to thank you for expressing your ideas and opinions on the marriage penalty tax to the senate on behalf of the Kansas taxpayers.

Doubling the standard deduction for married couples, and doing so as quickly as possible, lessens the blow with which nearly 21 million couples are hit every year. I have seen many people struggle with their taxes each year and I am writing on behalf these people to recognize you for your tremendous effort to make their lives easier. Thank you again.

Here is another letter. This is from Salina, KS:

DEAR SENATOR BROWNBACK: I am writing to you about the reduction of the "marriage penalty". I want to urge your support to correct it. It is a misconception to regard it as a tax cut. It is in fact a tax penalty that must be corrected.

Two single people that choose to get married must not pay more tax than two people that choose not to do so. That is a penalty for getting married. Correcting this problem is not "cutting taxes". It is merely restoring them back to the way they were before the couple joined in marriage. Thus it is not a tax cut. It is the correction of the penalty for getting married. Please do the right thing.

Ask yourself what would a couple do with the extra money? It will get spent. All those millions of dollars flow right back into the economy and get taxed again. It really won't hurt, it will help!

I like his positive attitude on that.

We get a lot of letters and comments from people about this being a tax, a penalty: Why do you say you are all for family values, yet you are willing to tax marriage, the central unit of the family? It just does not make sense to folks.

We are talking about a pretty substantial amount of money per married couple—around $1,445 a year—for an average family. With that money:

They could pay the electric bill, which, if it averages $153 per month, they can do that over a period of 9 months.

They could pay for a week-long vacation at Disneyland. That would be good for a family.

They could make four payments on the minivan. Car payments for an American minivan average between $300 and $350. They could make four payments.

They could have a nice $40 dinner 36 times. I do not know which people would do that. Most working families go to McDonald's, and it does not cost $40. But if you want to spend $40, you can go out to dinner 36 times.

Working families could buy 1,094 gallons of gas at $1.32 per gallon. That example is a little old. We could talk about energy policy if you would like.

They could buy 1,268 loaves of bread at the rate of $1.13 per loaf.

I think you get the picture. But many families could do a lot with that money.

I want to reiterate, we have the bill now to do that. It has passed the House. It is in the Finance Committee. It is going to be here. It will be up to this body to determine, are we going to let it on through or not?

The opposition has the right to stall this, to stop this bill from clearing on through. But this is not right for us to do as a matter of tax policy.

I am going to continue, and a number of us are going to continue, to push aggressively to get this tax relief through, get this penalty off.

Marriage in America has enough difficulties without being penalized by the Federal Government, as one of my constituents wrote. According to a recent Rutgers University study, marriage is already in a state of decline in America. From 1960 to 1996, the annual number of marriages per 1,000 adult women declined by almost 43 percent. Someone might say: Let's tax it some more; maybe it will go down some more.

At the same time that fewer adults are getting married, far more young adults are cohabiting. In fact, between 1960 and 1998, the number of unwed couples cohabiting increased by 1,000 percent.

When marriage, as an institution, breaks down, children do suffer. The past few decades have seen a huge increase in the out-of-wedlock-birth and divorce rates, the combination of which has substantially undermined the well-being of children in virtually all areas of life. That is according to many studies we have. It has adversely affected children physically and psychologically, their socialization and academic achievement, and even increased the likelihood of suffering physical abuse.

That is not to say all children in those circumstances are going to be having those difficulties. They are not. Many single people struggle heroically to do a good job raising their children. Still, the total aggregate result is that, over all, if you have this type of situation increasing, you are going to negatively impact the physical and psychological health, socialization, and academic achievement of that child, and even increase the likelihood of physical abuse. Do we want to encourage that more by continuing this pernicious tax? This is a tax on children, a penalty on children. Study after study has shown that children do best when they grow up in a stable home, raised by two parents who are committed to each other through marriage. I guess we shouldn't need a study to tell us that, but we have them. Newlyweds face enough challenges without paying punitive damages in the form of the marriage tax. The last thing the Federal Government should do is penalize the institution that is the foundation of a civil society. I believe we can and must start now to rid the American people of this marriage penalty. I look forward to working with the chairman of the Finance Committee as well as my other colleagues to make sure we get this job done.

I will continue to come to the floor day in and day out to push that. We now have a bill to eliminate this major portion of the marriage penalty tax. It is going to be the choice of the Democrat Party whether or not we will pass it through this body. I hope they will come forward and say, yes, it is time to end the marriage penalty in America. Yes, it is time to end this tax on our Nation's children. Yes, it is time to end this penalty on 43 percent of the married couples in America. This isn't a tax cut for the wealthy. This is a tax cut for the family. It is not even a tax cut, it is just leveling the playing field and removing the tax penalty. Clearly, we should do this.

One other issue of importance that will also be coming before the body is the Social Security Earnings Test Elimination Act. That, too, has passed the House of Representatives. Thank God for the work the House is doing in getting these bills through and over to the Senate. This bill passed the House 422–0.

This is a bad law that has been on the books since the Depression era. You would have thought somebody would have stood up and said: I thought that was a good law all this time. Nobody did.

We should not use the coercive power of the Federal Government to prevent seniors who want to work from working. They have spent a lifetime paying into the Social Security trust fund. It is simply not fair to deprive them of their Social Security benefits simply because they choose to stay in the workforce longer or choose to begin working again after retirement.

I was talking with a constituent in Kingman, KS, who works at a small factory in Kingman. He lost his farm during the decade of the 1980s, during the farm depression. He is approaching retirement age and will be there shortly.

He said: You really need to remove this thing for me and for a number of people. I lost my farm in the 1980s. That was my savings account. I have to continue to work to earn enough money to support the family. I can't afford to be penalized for working.

The very thing we need to be encouraging people to do, we are penalizing. Here is a man who has worked hard all his life. He is approaching retirement age, will continue to work, and needs to continue to work.

He said: Don't penalize me. Don't pull this away. I wish I hadn't loss the farm in the 1980s, but I did. That was my savings account. I don't have one now. I need to work. Let me work and don't penalize me.

Without a growing on-budget surplus, it is possible to remove this penalty for America's working seniors. It is imperative that the Senate pass this important bill so we can rid the Social Security system of its disincentive to work. Americans should be free to work if they choose. Passage of this bill will help elderly Americans stay in the workforce longer. It should be their choice and not ours. This bill allows people older than 65 and younger than 70 to earn income without losing the Social Security benefits they have paid in their entire life. It is an important bipartisan measure that passed overwhelmingly in the House. I expect it will pass in the Senate as well.

Chairman Greenspan even noted its important positive impact on the economy to increase the potential in the labor force that would be available.

This is another important measure that has passed the House. I call on my colleagues: We must pass this legislation. Let's pass the Marriage Penalty Elimination Act. Let's pass this elimination of the Social Security earnings test so we can allow people to work, so we can allow married families to be able to save up some money and not be penalized for the simple act of being married. It is in our power to determine whether or not we will do this. I call on my colleagues to do that.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AFFORDABILITY OF PRESCRIPTION DRUGS

Mr. WYDEN. Mr. President, this morning, I come to the floor to talk yet again about the issue of prescription drugs. I want to focus on an issue that Senator DASCHLE has, I think, been so correct in identifying as a priority, which is the issue of going forward with prescription drugs as part of a program that offers universal coverage.

Of course, when Medicare began in 1965, the Congress made the judgment that there would be a program available to all eligible seniors, that coverage would be universal for eligible seniors and for disabled folks. I think

it has been one of the unifying aspects of social policy in this country that all older people were covered. I think it is absolutely key that as we tackle this issue of prescription drug coverage, and do it in a bipartisan way, we remember how important the principle of covering all seniors is.

Now, I know there are colleagues on the other side of the aisle who feel strongly about this issue as well. I am very pleased in having teamed up with Senator SNOWE for more than a year. She and I are on a bill together, a bipartisan bill, which offers universal coverage. I also appreciate my colleague from Oregon, Senator SMITH, for being supportive of this effort.

There are a number of reasons why universal coverage is so important, and Senator DASCHLE has identified it as a priority for Senators on this side of the aisle. I want to talk for a moment about why I think it is so key in terms of designing a benefit properly. First, it is absolutely essential to ensure that seniors have as much bargaining power in the marketplace as possible. We have all been hearing from our constituents that many of them cannot afford the cost of prescription medicine. I have been coming to the floor of the Senate and reading from letters where older people, after they are done paying prescription drug bills, only have a couple hundred dollars for the rest of the month to live on.

We are seeing all across this country that many older people simply can't afford their medicine. If we are going to give them real bargaining power in the marketplace—and right now, to belong to an HMO, you have plenty of bargaining power—they can negotiate a good price for you. But if you are an individual senior walking into a pharmacy, you don't have a whole lot of bargaining power. In fact, you are subsidizing those big plans. If we design a prescription drug benefit so as to offer universal coverage, this gives us the largest available group of older people, the largest ''pool of individuals''—to use the language of the insurance industry—for purposes of making sure those older folks really do have bargaining power in the marketplace.

As we address this issue of bargaining power, I happen to think it is important that we do it in a way that doesn't bring about a lot of cost shifting onto other population groups. That is why the Snowe-Wyden legislation uses the model that Federal employees use for the purposes of their health coverage. As we talk about how to design this prescription drug program, I am hopeful we see universal coverage included. Beyond the fact it is what Medicare has been all about since the program began in 1965, it is absolutely key to make sure older people have the maximum amount of genuine bargaining power in the marketplace.

Second, I think if we were to do, as some have suggested—particularly those in the House—which is essentially to not have a program with universal coverage, but hand off a big pot of money to the States, and they could perhaps design a program for low-income people, we will have missed a lot of vulnerable seniors altogether. Their proposal—those who would hand off the money to the States to design a program for low-income people—as far as I can tell, would leave behind altogether seniors, say, with an income of $21,000 or $22,000, essentially a low- to middle-income senior. In most parts of the country, by any calculus, my view is that sum of money is awfully modest altogether. I see these proposals that hand a sum over to the States for low-income people as leaving a lot of seniors with $22,000, $25,000, or $28,000 incomes behind altogether.

If those individuals are taking medicine, say, for a chronic health problem—they might have a chronic health problem due to a heart ailment or something of that nature—they could be spending somewhere in the vicinity of $2,500 per year out of pocket on their prescription medicine. One out of four older people who have chronic illnesses such as the heart ailment are spending $2,500 a year out of pocket on their medicine. As far as I can tell, if they were in that lower- or middle-income bracket, they would simply be left behind altogether under these proposals that would just hand over a pot of money to the States and use this money for low-income people.

Many of the elderly people I described in income brackets of $22,000 or $28,000 and paying for chronic illnesses are the people we are hearing from now saying: If I get another increase in my insurance premium, I am going to simply have to leave my prescription at the pharmacist. My doctor phones it in, and I am not going to be able to afford to go and pick it up.

I think it is extremely important that the design of this program be built on the principle of universal coverage. That is what Medicare has been all about since the program began in 1965. It is what is going to ensure that the seniors have the maximum amount of bargaining power. We can debate issues within that concept of universal coverage so as to be more sensitive to those who have the least ability to pay. I have long believed Lee Iacocca shouldn't pay the same Medicare premium as a widow with an income of $14,000. I think we can deal with those issues as we go forward, if we decide early on that the centerpiece of an effective prescription drug benefit ought to be universal coverage.

There are other important issues we are going to have to discuss. I think there is now growing support for making sure this program is voluntary. When it is voluntary, you avoid some of the problems we are seeing with catastrophic care and ultimately you empower the consumer. It is going to be the consumer's choice in most communities to choose whether they want to go forward participating in this prescription drug program, or perhaps just stay with the coverage they may have. We estimate that perhaps a third of the older people in this country have coverage with which they are reasonably satisfied. If they are, under the kind of approach for which I think we are starting to see support in the Senate, those are folks who would not see their benefits touched; they could simply stay with the existing prescription drug coverage they have today.

Let's go forward. I think Senator DASCHLE in particular deserves credit for trying to bring the Senate together and for trying to reconcile the various bills.

Let's make sure we don't lose sight of the importance of universal coverage. It is key to giving older people real bargaining power in the marketplace—not through a government program but through marketplace forces, the way HMOs and insurance plans do. Focus on keeping the program voluntary.

I know there are colleagues on the other side of the aisle who share similar sentiments as the ones I voiced today. I particularly want to commend my colleagues, Senators SNOWE and SMITH. They have teamed up with me for more than a year now on a proposal that I think can win bipartisan support. In fact, we already have evidence of bipartisan support from the other side of the aisle because we got 54 votes on the floor of the Senate about a year ago for a plan to fund this program.

I intend to keep coming back to the floor of the Senate. Today, I thought it was important to express what Senator DASCHLE spoke on recently, which is universal coverage. I intend to keep coming back to the floor of this body again and again in an effort to build bipartisan support for making sure vulnerable seniors can get prescription drug coverage under Medicare.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived and passed, the Senate stands in recess until 2:15 p.m.

Thereupon, at 12:41 p.m., the Senate recessed until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. THOMAS).

EXECUTIVE SESSION

NOMINATION OF MARSHA L. BERZON, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

NOMINATION OF RICHARD A. PAEZ, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the time between 2:15 and 5 o'clock is equally divided between the proponents and opponents of the Berzon and Paez nominations.

The Senator from Utah.

Mr. HATCH. I ask unanimous consent that the debate now occur concurrently on the two nominations, as under the previous order; however, that any votes ordered with respect to the nominations occur separately.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, it is my understanding that has been cleared with the minority on the Judiciary Committee.

Mr. HATCH. That is my understanding.

Mr. REID. That being the case, Senator LEAHY having approved this, we have no objection.

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

Mr. HATCH. Mr. President, I rise today to speak on the nomination of federal district Judge Richard Paez to the Ninth Circuit Court of Appeals.

Judge Paez was first nominated for this judgeship during the second session of the 104th Congress—a time when all nominees to the Ninth Circuit got bound up with the difficulties we were having in deciding whether to divide the Circuit. Once we established a Commission to study the matter, we were able to begin processing nominees to that court.

Judge Paez was renominated at the beginning of the 105th Congress, but due to questions surrounding his record on the bench and comments he made about two California initiatives, his nomination elicited heightened scrutiny.

Some have attributed this delay in Judge Paez's consideration by the full Senate to sinister or prejudicial motives. And I can only respond by stating what those very critics already know in their hearts and minds to be true: such aspersions are utterly devoid of truth, and are grounded in nothing more than sinister, crass politics.

As we all know, before any judge can be confirmed, the Senate must exercise its duty to provide assurance that those confirmed will uphold the Constitution and abide by the rule of law. Sometimes it takes what seems to be an inordinate amount of time to gain these assurances, but moving to a vote without them would compromise the integrity of the role the Senate plays in the confirmation process.

And so, it has taken a considerable amount of time to bring Judge Paez's nomination up for a vote. Indeed, it was not before a thorough and exhaustive review of Judge Paez's record that I have become convinced that questions regarding Judge Paez's record have, by and large, been answered.

Because such questions have been answered does not, in all instances, mean they have been answered to my complete satisfaction. But on the whole, I am persuaded that Judge Paez will be a credit to the Ninth Circuit Court of Appeals. In so concluding, I do not want to diminish the seriousness of the concerns raised about certain aspects of Judge Paez's record.

I was troubled by comments Judge Paez made about two California initiatives on April 6, 1995, while sitting as a U.S. District Court Judge. At that time, Judge Paez gave a speech at his alma mater, Boalt Hall School of Law, criticizing the passage of Proposition 187 and criticizing the ballot measure that would later be known as Proposition 209. He described Prop 209 as ''the proposed anti-civil rights initiative'' and said it would ''inflame the issues all over again, without contributing to any serious discussion of our differences and similarities or ways to ensure equal opportunity for all.'' Judge Paez went on to opine that a ''much more diverse bench'' was essential in part because how ''Californians perceive the justice system is every bit as important as how courts resolve disputes.''

When questioned at his hearing about these and other comments contained in the speech, Judge Paez stated that he was referring only to the potential divisive effect Prop 209 would have on California. He acknowledged that the Ninth Circuit had in fact upheld the constitutionality of Prop 209 and that this ruling resolved any question as to the legitimacy of the initiative. He also stated that he disagreed with the use of proportionality statistics in Title VII or employment litigation. And, perhaps most telling of his judicial philosophy, Judge Paez stated that federal judges must ''proceed with caution, and respect that the vote of the people is presumed constitutional.''

Legitimate questions have been raised concerning whether his comments were consistent with the Judicial Canon governing judges' extra-judicial activities, and Judge Paez maintains that his remarks fit within the exception set out in that Canon that permits a judge to make a scholarly presentation for purposes of legal education.

I also raised concerns about a decision of Judge Paez's that would allow liability to be imposed on a U.S. company for human rights abuses committed by a foreign government with which the U.S. company had engaged in a joint venture. But it is a single moment in a lengthy catalog of cases in which Judge Paez appears to have handed down solid, legally-supported, precedent-respecting decisions.

Moreover, Judge Paez has earned a good deal of bipartisan support within his home state of California and his native state of Utah, and has given me his word that he will abide by the rule of law and not engage in judicial activism.

For these reasons, I am not willing to stand in the way of this nominee's confirmation. It was during the Committee's thorough review of his record that I became aware of Judge Paez's credentials and career of public service. He is a Salt Lake City native who graduated from Brigham Young University and he received his law degree from Boalt Hall.

Before becoming a Judge on the Los Angeles Municipal Court, he served as an attorney for California Rural Legal Assistance, the Western Center on Law and Poverty, and the Legal Aid Foundation of Los Angeles—and during that time provided legal representation to a Korean War veteran in danger of losing his home to foreclosure, victims of intentional racial discrimination, and others. In 1994, President Clinton nominated, and the Senate confirmed, Judge Paez to sit on the district court bench in the Central District of California.

Although I share many of my colleagues' concerns regarding the stability of the Ninth Circuit, none of us can in good conscience foist those concerns upon Judge Paez—an entirely innocent party with regard to that Circuit's dubious record of reversal by the Supreme Court—and force him into the role of Atlas in carrying problems not of his own making.

Indeed, that Circuit's problems—many of which appear to me to be structural in dimension—call for an altogether different solution than that which this body would seek to impose through its advice and consent powers. And to that end, I have just [this morning] introduced legislation with Senator MURKOWSKI that is being held at the desk so as to enable immediate action by the full Senate—that would divide the 28-judge behemoth of a circuit into two manageable circuits.

To return to the different subject of Judge Paez, I must concede that I have had concerns about his nomination. But on balance I do not believe that Judge Paez will contribute to the roguery that appears to have infiltrated this circuit. I would not, as Chairman of the Judiciary Committee, vote for the confirmation of any nominee who I believed would abdicate his or her duty to interpret and enforce, rather than make, the laws of this Nation.

For these reasons, I will cast a vote in favor of the nomination of Judge Paez to serve on the Ninth Circuit Court of Appeals. I hope a majority of my colleagues will do likewise.

Mr. President, I also rise to speak on behalf of the nomination of Marsha S. Berzon for a seat on the United States Court of Appeals for the Ninth Circuit. Based upon Ms. Berzon's qualifications as a lawyer, I support her nomination. I urge my colleagues to do the same.

It cannot be disputed that Ms. Berzon's training and experience qualify her for a life of public service as a federal appellate judge. Indeed, Ms. Berzon's qualifications are unimpeachable, and her competence is beyond question. Ms. Berzon completed her undergraduate studies at Harvard/Radcliffe College, and then was graduated from the Boalt Hall Law School at the University of California. After law school, Ms. Berzon served as a judicial clerk—first for Judge James R. Browning of the United States Court of Appeals for the Ninth Circuit, and then for Justice William J. Brennan, Jr. of the United States Supreme Court.

For the last 25 years, Ms. Berzon has built a national reputation as an appellate litigator at a private law firm in San Francisco. She has argued four cases and filed dozens of briefs before the United States Supreme Court, and has argued numerous cases before State and federal trial and appeals courts. In addition to representing private clients, Ms. Berzon also has represented the States of California and Hawaii, and the City of Oakland, California. Ms. Berzon is uniformly described as honest, intelligent and fair-minded. Attorney J. Dennis McQuaid, whom she opposed in a case, later stated that ''unlike some advocates, she enjoys a reputation that she is devoid of any remotely partisan agenda and that her service on the court will be marked by decisions demonstrating great legal acumen, fairness and equanimity.'' Another opposing counsel, Carter G. Phillips, said that in a case involving delicate federalism issues, Ms. Berzon

> . . . did an extraordinary job of presenting her clients' position aggressively without overreaching. She presented solid limiting principles that would allow the lawsuit to go forward without placing too much of a burden on the State. I thought her submissions, both written and oral, demonstrated a significant effort to balance the respective interests implicated by the legal issue. . . . Her advocacy demonstrated skill, integrity and sound judgment. These are precisely the traits I would want in a federal appellate judge.

Simply put, Ms. Berzon appears to have the intellect, integrity and impartiality to serve as a federal judge.

The fact that many of Ms. Berzon's clients have been unions should not disqualify her from being confirmed. That Ms. Berzon has advocated on behalf of unions—and, by all accounts, advocated well—cannot, I think, be determinative of her qualifications. In her testimony before the Judiciary Committee, Ms. Berzon testified that she is committed to following the Supreme Court's Beck decision, which sets forth the statutory rights of employees who object to their union dues being used for political activities. Moreover, Ms. Berzon testified that, if confirmed, she will make decisions based upon the law and the facts of the particular case before her. No one has shown me evidence why I should not take Ms. Berzon at her word.

In addition to having excellent legal training and experience as a lawyer, Ms. Berzon also has experience in legal academia. She has taught law students as a practitioner-in-residence at Cornell University Law School and at Indiana University Law School, and has published articles on various legal topics. In my view, she will bring to the Ninth Circuit a significant measure of intelligence, experience and legal scholarship.

In conclusion, Ms. Berzon is well-qualified to assume a seat on the United States Court of Appeals for the Ninth Circuit. She enjoys a reputation among colleagues and opposing counsel for being a fair-minded, well-prepared, and principled advocate. I therefore will cast my vote in favor of Ms. Berzon's confirmation.

The PRESIDING OFFICER. The majority leader is recognized.

UNANIMOUS CONSENT REQUEST—S. 761

Mr. LOTT. Mr. President, I ask unanimous consent to appoint the conferees to S. 761, the Millennium Digital Commerce Act.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, has the leader cleared this with someone on this side of the aisle?

Mr. LOTT. Mr. President, if I could respond to the distinguished Democratic whip, this is for conferees on this Millennium Digital Commerce Act. We have tried, over the past couple of weeks, to get clearance to appoint conferees.

The recommendation was that we have, I believe, 11 from the Commerce Committee, 3 from Banking—6 and 5 and 2 and 1. For some reason, there have been objections to that. There continue to be objections, but this is a bill that has broad support in the industry and on both sides of the aisle. So I am confused and perplexed about why we can't get these conferees appointed and move forward to this conference. So it has not been signed off on, as I understand it. But since I talked to the Democratic leader last week twice, I thought perhaps we had reached a point where this could be done.

Mr. REID. I am confident we can work it out. But at this stage, I will have to object.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTT. Mr. President, if I could be heard on this issue at this time.

I don't understand, again, what the objection is to this procedural motion. The House appointed conferees to this bill 2 weeks ago, and they have been calling over saying, ''What is the deal?'' I understand that perhaps there are other Senators who would like to be conferees from other committees. There is some indication that maybe the problem is they don't like the fact there are some Banking conferees. The House bill has several provisions that are clearly in the Banking jurisdiction, and that is why we have recommended having three from Banking—two and one—so we can get this into conference and get it worked out.

There are a lot of us who realize there are Silicon Valley interests in this. We also have the Dulles corridor high-tech industry in Northern Virginia that really wants this legislation completed. I don't think it would be a long conference. So I want to highlight the fact that we are anxious to get to conference.

I have addressed concerns as best I could. I don't think we can take Banking members off the conference. Maybe there is another way to solve this problem. But since I was getting questions both from the high-tech industry and from the House as to why we weren't going on to conference, I had to point out or emphasize what the problem was.

I would be glad to yield to the Senator from Michigan, the author of this legislation. He probably knows more about it than any other Senator.

Mr. ABRAHAM. If the majority leader will yield briefly, I thank him for making another attempt to appoint conferees on this legislation.

Mr. President, I share the majority leader's frustration over our inability to really move anywhere with this bill. This bill, the Millennium Digital Commerce Act, is a bipartisan bill. This legislation passed the Senate by unanimous consent. We worked together here to try to craft the legislation in a bipartisan fashion. The House companion legislation passed by an overwhelming margin.

I understand—and the majority leader has just indicated it again—there may be some Members who have concerns with the bill. But, obviously, going to conference is the usual procedure for moving legislation. As I understand the request that has been put forward, there would be six Democratic Senators on the conference committee, which is about 15 percent of the entire Senate Democratic caucus who would then be able to participate in the proposal.

Mr. LOTT. If the Senator will yield on that point, I also note at this time that I think the House only has perhaps five conferees. I don't believe I have ever been to a conference where the House has one-third as many conferees as the Senate. So we have already tried to include as many Senators as we possibly could.

Mr. ABRAHAM. I do think that is a sufficient number to guarantee the views reflected by each side. They would be adequately represented in the conference.

Mr. LOTT. Let me ask the Senator something, if I may. This is a sophisticated title, the Millennium Digital Commerce Act. What does this bill do?

Mr. ABRAHAM. Essentially, the legislation is designed to address a problem we have now with respect to the

enforceability of contracts that are entered into electronically. A number of States have attempted to deal with this. This would be where parties, over the Internet, engage in some form of contractual activity. A number of States have passed legislation—in fact, about 45 States have done so. The problem is that each of these State laws is different from the other. As a result of that, it has created a serious potential impediment to the expansion of electronic commerce because if the laws of two different jurisdictions are different, somebody can hide behind that difference to argue that they did not have to fulfill the terms of the contract.

Fortunately, the States are trying to work toward a solution, as they have done in other areas of commercial activity. We have a Uniform Commercial Code, and the States are trying to work together to address these kinds of interstate contracts. That will take time. Even after they come to final agreement on a specific format or formula for the legislation, it is going to take probably years for all the States to adopt it. So this would guarantee the enforceability of contracts entered into electronically in the interim. That is the approach we have taken, and we hope it will therefore allow continuing growth in the area of electronic commerce, which is, as you well know, becoming one of the key sectors and key activities in our economy today.

Mr. LOTT. Mr. President, I want to clarify a point.

As author of this legislation and as a member of the Commerce Committee where this legislation originated—I am a member of that committee—does the Senator object to having banking representation as a part of this conference?

I note that the House bill has several provisions that are clearly banking-type provisions. Does the Senator see a problem with that?

Mr. ABRAHAM. I don't, for the very simple reason that in the House, the House-passed legislation went beyond the scope of what we passed in the Senate to include legislation, or to expand the use of this legislation to transactions that involved securities and other transactions which would fall under our Banking Committee's jurisdiction. Had those been in the initial legislation we introduced here, then the jurisdiction of this bill in the Senate might have been altered or in some way divided.

For that reason, I think there is a very valid argument for the Banking Committee, because of the broader nature of the legislation that came to the House, to participate in the conference.

Mr. LEAHY. Mr. President, which of the two Senators has the floor?

The PRESIDING OFFICER. The majority leader has the floor.

Mr. LOTT. Mr. President, I would be glad to yield to Senator LEAHY, and I will come back to Senator ABRAHAM, if he desires to have some additional time.

Mr. LEAHY. I wish to ask a question. Were we referring to the Abraham-Leahy substitute as it passed the Senate on digital signature? Is that what we are referring to? I ask that question of either Senator.

The PRESIDING OFFICER. The Senate is considering nominations.

Mr. LEAHY. I thank the distinguished majority leader for yielding. I ask the question of either the Senator from Michigan or the Senator from Mississippi: Are we referring to the Abraham-Leahy substitute that passed the Senate on digital signature?

Mr. LOTT. Mr. President, if I could try to respond, is the Senator a cosponsor of the legislation?

Mr. LEAHY. I believe so, with the substitute that I authored along with the Senator from Michigan.

Mr. LOTT. As is our tradition around here, it could be the Abraham-Leahy bill, or the Lott-Daschle bill, or something other bill.

Mr. LEAHY. That is what I am asking.

Mr. LOTT. I assume the Senator has been interested and involved in this.

Mr. LEAHY. I ask the question of the Senator from Michigan: Am I correct that the House only appointed members of the Commerce Committee, as opposed to the Banking Committee?

Mr. LOTT. They appointed only five.

Mr. LEAHY. They did not appoint anyone from the Banking Committee?

Mr. LOTT. They did not appoint anybody from the Banking Committee, as I understand it.

Mr. LEAHY. I thank the Senator.

Obviously, as one of the authors of this legislation, along with the distinguished Senator from Michigan, I would like to see the law in its present form. I just wanted to make sure, having spent enormous amounts of time with the Senator from Michigan and others to work out a compromise that allowed it to pass unanimously from this body. Had we not done otherwise, we would be in a position of having to make sure improvements made in this body were preserved within the legislation.

Mr. LOTT. I think that clearly would be the intent of our conferees. Therefore, I assume Senator LEAHY would support getting conferees appointed and going to conference. Is that correct?

Mr. LEAHY. I would be supportive of the Leahy-Abraham compromise.

Mr. LOTT. I yield to the Senator from Michigan. Senator DASCHLE is on the floor. He may want to get involved in this.

Mr. ABRAHAM. Mr. President, point of clarification: In the process of the appointment of conferees, obviously each Chamber has to appoint them based on the respective jurisdictions of the parts of this bill that are before us; that is, the House bill as it finished the House and the Senate bill as it finished the Senate. Although I don't have an intricate knowledge of the jurisdictions of various areas in the House, it is my understanding that matters that pertain to the SEC and securities-related issues in the House fall under the Commerce Committee's jurisdiction, whereas in the Senate they fall under the Banking Committee's jurisdiction.

I think that may explain the problem a little bit because in the House it is perfectly reasonable and appropriate that the Commerce Committee alone be represented. They have jurisdiction over those provisions that are securities-related as well as those that are related to the technology side of this. In the Senate, that is not the case. Our Banking Committee, not the Commerce Committee, has responsibility for those areas. I think that is part of the problem.

Mr. LOTT. Mr. President, I would be glad to yield to Senator DASCHLE or yield the floor, if he wants to speak on his own time.

Mr. DASCHLE. Mr. President, I appreciate the leader yielding to me.

As we go through our daily schedules and responsibilities, I bet I do a lot of things which are a source of concern for the majority leader. I am sure he is not surprised that the way this matter has been handled is a source of concern to me. We talk daily. Sometimes we talk hourly. Sometimes I am sure we talk more than he would like. But, nonetheless, we talk. To say we were surprised and disappointed that a unanimous consent request could be propounded without any notification is an understatement. It is disappointing.

I hope we can avoid surprising one another. But, of course, we do it. That is understandable. Certainly, the majority leader has every right to proceed in any way he sees most appropriate. I think it is a violation of the trust and communication that we try to maintain. And I am very disappointed he sought to come to the floor without any notification of the issue.

Let me say three things.

Mr. LOTT. Mr. President, if the Senator will yield, I apologize to Senator DASCHLE for what led him to make his comments.

First of all, the Senator will recall that last week we discussed on a couple of occasions how we could work through getting the conferees' names agreed to and through the body. This morning—I don't remember the exact hour—we decided to have a colloquy on this issue. I assumed he had been notified and that all of you were aware we were going to try to get the conferees appointed and have a colloquy. I first realized it had not been done when I saw the expression on one of our staff members' face when I stood up and made the unanimous consent request. I assumed he had been notified, as he is when we do this sort of thing. I don't shift the blame to staff; I accept the responsibility. I apologize to Senator DASCHLE because he should have been notified. I assure him we have done a lot of things already this year together and I always notify him. We should have done that.

Nevertheless, it doesn't diminish the need to get an agreement on conferees. I will be glad to work with him to get this done because this is a bill that really is important to a large segment of our society.

My own son is also harassing me about how he wants to do e-commerce. He is concerned about what he can do. He is doing business in Kentucky. We are not only hearing from House Democrats and Republicans, asking, Where are your conferees? This is also something my son is harassing me about.

We have to get this worked out some way and real quick.

I think the Senator is entitled to an apology because of the way this was handled. I would expect him to be notified.

Mr. DASCHLE. Mr. President, I appreciate the majority leader's graciousness and accept the apology.

As I say, we have had a great working relationship this year already on a lot of different issues. I appreciate very much the manner in which he has expressed himself on this particular situation.

Let me say to the issue, as he noted, we have attempted to resolve this in the past. I give Senator LOTT great credit for trying to find as many innovative ways in which to address what has been an irresolvable conflict.

We have indicated a willingness to go to conference so long as it involves the committee that was responsible for passing this legislation. The Commerce Committee held hearings. They marked up the bill. They passed it. We are now at a point where the conference includes conferees from the Commerce Committee in the House, and we are prepared as we move to conference to accept conferees from the Commerce Committee.

The problem is, the chairman of the Banking Committee wants to be part of the conference, and, frankly, the Banking Committee didn't have jurisdiction.

The Banking Committee is not represented on the House side. There is no reason that we can understand why the Banking Committee, in and of itself, ought to be involved in the conference when they didn't have jurisdiction.

Certainly, the chairman ought to be heard and he ought to be recognized as one who certainly has every right to express himself to the conferees, as other Members. Let him go to the conference and express himself. Let him offer suggestions on the Senate floor.

But to make him a conferee when we have already agreed that the Commerce Committee could move forward, could accomplish what I think is unanimous support for the legislation—I am sure we could achieve that at some point, and it would be the fastest and most meaningful way with which to get it done.

I am hopeful we can do that. There is no reason for this legislation to be delayed anymore. Let's have the conferees work their will. Let's get this legislation passed. Like Senator LOTT, I think there are a lot of people out there, including his son, who ought to see the Senate act. I desire that no less than he. Hopefully, we can do it soon.

Mr. LOTT. Mr. President, I note the House bill includes an entire title pertaining to the use of electronic signatures in securities transactions. That language falls under the jurisdiction of the House Commerce Committee, but in the Senate, the jurisdiction is in the Banking Committee. Clearly, there is Banking Committee jurisdiction in this legislation in the House bill.

Also, let me get specific about what and whom we are talking about. We are talking about three very thoughtful Members of the Senate who have a real interest in these electronic signatures and securities transactions. They are: Senator GRAMM, the chairman of the Banking Committee from Texas; Senator BENNETT from Utah, who had been very much involved in our efforts to pass the Y2K legislation last year and in a number of areas, including cyberterrorism—he is very knowledgeable in this whole area—and Senator SARBANES, the ranking member on the Banking Committee.

These are not three Senators who would be anything but instructive in sharing information in an area in which they have a greater knowledge than the Members of the Commerce Committee.

Did the Senator from Michigan wish to comment further?

Mr. ABRAHAM. I think the majority leader has outlined the jurisdictional situation well.

I reiterate, had the bill that the House passed been the bill that was introduced here, clearly the jurisdiction on the Senate side would have been differently arranged in some fashion. I don't know if it is called sequential jurisdiction or what, but provisions would have fallen under the Banking Committee's domain.

Mr. LOTT. Let me conclude by saying again to Senator DASCHLE, we talked last week and we both tried a couple of innovative ideas as to how to work this out. I will continue to do that because I think we need to get the conferees appointed. I don't recall any situation quite like this, in the last year or two anyway. We ought to be able to find a way to get the conferees appointed.

I yield the floor.

Mr. DASCHLE. I share the desire expressed by the majority leader to get this done. I want to publicly, again, commend Senator LEAHY for all of his leadership and effort to get the Senate to this point. He spoke earlier and I appreciate very much his willingness to stay committed and his persistence in getting the Senate to a point where we actually could see this become law.

Maybe there is a way, if we go beyond Commerce jurisdiction, to include the leadership of the Judiciary Committee and the leadership of the Banking Committee and maybe expand it to include a lot more Members than just Commerce Committee members.

As Senator LOTT noted, we can perhaps try to find another innovative mix of participants. Certainly if this happens, the distinguished Senator from Vermont ought to be a part of the conference. I am sure we can work it out at some point.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Before we conclude, I ask unanimous consent to have printed letters from a number of organizations that have called on the Senate to move to appoint conferees.

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

AMERICAN ELECTRONICS ASSOCIATION,
Washington, DC, March 3, 2000.

Hon. THOMAS A. DASCHLE,
Senate Democratic Leader, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DASCHLE: On behalf of the American Electronics Association (AEA), I urge you to appoint conferees on S. 761, the Electronic Signatures in Global and National Commerce Act (''E-Sign''), which was passed by the Senate by unanimous consent on November 19, 1999. As you know, the House passed its version of E-Sign by a margin of 356–66 on November 9, 1999.

AEA is the largest high-technology trade association in America, representing over 3,000 companies who develop and manufacture software, electronics and high-technology products. Our member companies range from industry leaders such as Intel, Motorola, Compaq, Microsoft and America Online, to small and medium sized high-technology start up ventures.

Passage of the E-Sign bill is one of AEA's top legislative priorities for this session of Congress. As you know, our members conduct a tremendous amount of business online. In order to continue the growth of online commerce, companies need to know that they are operating in an atmosphere of legal certainty. The E-Sign bill would establish certainty in online contracting and promote e-commerce by recognizing the validity and enforceability of electronic signatures and records.

It is now time to move forward with this legislation. The Senate Democratic leadership needs to appoint conferees and move the process along. If there are any legitimate consumer concerns they can be ably addressed in conference.

Thank you again for your leadership on this most important matter. Please feel free to contact me if I may be of any assistance to you and I look forward to working with you on this and other issues of concern to the high-technology community.

Very Truly Yours,

WILLIAM T. ARCHEY.

BUSINESS SOFTWARE ALLIANCE,
Washington, DC, March 1, 2000.

Hon. THOMAS A. DASCHLE,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DASCHLE: I am writing to you on behalf of the Business Software Alliance* to urge prompt action by the Senate on S. 761, the Millennium Digital Commerce Act. This bill was passed by the Senate last November, and a similar bill, H.R. 1714, The Electronic Signatures in Global and National Commerce Act, was approved by the House. It is our understanding that further action on these bills is now awaiting

the appointment of conferees by the Senate so that reconciliation of the two bills can proceed. We urge you to act quickly.

Electronic commerce is now a reality. Using electronic networks to purchase goods and services, as well as conduct financial transaction, has rapidly gained tremendous consumer acceptance. A number of legal elements are needed to ensure the continued development of the electronic marketplace. Key among these is ensuring that digital signatures, and other forms of digital authentication, receive substantially the same legal treatment as their pen and ink counterparts. Likewise, the authorization of electronic disclosures in e-commerce transactions would be an important step forward. It is critically important to clarify and update the law in these areas, which would deliver a boost to e-commerce and the economy.

S. 761 is one of the top legislative priorities for software and computer companies for this Congress, and we urge you to appoint conferees at the earliest possible date.

Sincerely,

ROBERT W. HOLLEYMAN II,
President and CEO.

SECURITIES INDUSTRY ASSOCIATION,
Washington, DC, March 2, 2000.

Hon. TOM DASCHLE,
Minority Leader,
The Capitol, Washington, DC.

DEAR SENATOR DASCHLE: On behalf of the Securities Industry Association (SIA) and our member firms I am writing to urge your prompt action on the conference committee to reconcile pending electronic authentication legislation (H.R. 1714 and S. 761). The House has appointed their conference committee members and SIA encourages the Senate to do the same. We ask that you do all within your power to appoint the committee members as soon as possible.

After many delays this very important legislation is once again being detained. Electronic authentication legislation will play a vital role in expanding electronic commerce. It will not only allow the business community to continue to compete nationally and globally but it will also provide the consumer with choices he did not have before.

Electronic authentication legislation, when completed and signed into law, will be historic in the effects it will have on the marketplace. But, quick action is needed and with each delay another missed opportunity passes by. SIA thanks you for your leadership and attention to this important issue and encourages you to name conference committee members quickly.

Sincerely,

STEVE JUDGE.

COALITION FOR E-AUTHENTICATION,
Washington, DC, March 2, 2000.

Subject: Conference on Electronic Signature Legislation (S. 761/H.R. 1714)

Hon. TOM DASCHLE,
Minority Leader, U.S. Senate.

Hon. HARRY REID,
Minority Whip, U.S. Senate.

DEAR MINORITY LEADER DASCHLE AND MINORITY WHIP REID: The Coalition on Electronic Authentication (CEA), which includes many of the Nation's leading electronic commerce companies, is writing to urge you to take all steps necessary to expeditiously begin the conference on the Electronic Signature legislation passed by both Houses last Fall.

Now, with a tight legislative calendar, it is imperative that the conference begins as soon as possible so Congress can complete work on its most important high-tech legislative initiative this year. The House has appointed conferees, as have the Senate Republicans. Now it is time to complete conferee selection so the conference can move forward.

When enacted, Electronic Signature legislation will be a truly historic step. It will have an immediate and dramatic impact on the growth of electronic commerce and the Internet because it will create, for the first time, the legal certainty required to permit electronic signatures to become widely used nationally by both consumers and businesses. Electronic Signature legislation is essential to help businesses of all kinds expand their use of electronic commerce and meet their customers' growing expectations on how business should be transacted over the Internet. Most importantly, consumers will benefit from the increased security, convenience, and lower costs associated with online business transactions. In addition, with this legislation, businesses will be able to greatly expand their use of business-to-business electronic commerce in ways that will significantly lower their costs.

Therefore, we respectfully urge you to do everything possible to appoint conferees expeditiously, so the conference can meet and conclude its work as soon as possible.

Sincerely,

COALITION FOR ELECTRONIC AUTHENTICATION.

The PRESIDING OFFICER. The Senator from Nevada.

NOMINATIONS OF RICHARD A. PAEZ AND MARSHA L. BERZON—Continued

Mr. REID. I rise to speak on the comments and statements made by Senator HATCH, chairman of the Judiciary Committee.

First, Senator HATCH and I don't always agree on substantive issues. I think the country is well served with the leadership of the Judiciary Committee, the Senator from Utah, and the Senator from Vermont. These two men worked tireless hours to try to clear one of the busiest committees we have. I personally wish there were more nominations cleared. I have the greatest respect for Senator HATCH, and, of course, my dear friend, the Senator from Vermont.

However, this Ninth Circuit issue is something that should be approached cautiously. We have done that. I say to my friend from Utah and the Senator from Alaska, who introduced legislation, as I said earlier today, we need to take a look at what the White commission said should be done with the Ninth Circuit. They spent a year's period of time listening to witnesses and using their experience and his experience as a member of the U.S. Supreme Court as to what should happen to the Ninth Circuit. They came up with the decision after they reviewed all the alternatives, and the decision was not to split the Ninth Circuit but to change the way it was administered. I think that is something at which we need to take a close look.

Senator LOTT, the majority leader, talked about his son being involved in the last issue before the body. I say candidly I have had two sons, one of whom was the administrative assistant for the chief judge of the Ninth Circuit, my son Leif; and my son Key, who is presently a clerk for the chief judge of the Ninth Circuit, Procter Hug. I have a keen interest there not only because my two sons have worked for the chief judge of the Ninth Circuit, but, in fact, the chief judge of the Ninth Circuit is a Nevadan, a graduate of the University of Nevada at Reno and Stanford School of Law, and has rendered great credit to this country, the Ninth Circuit, and the State of Nevada.

In short, let's not beat up on the Ninth Circuit because there are a lot of people in the circuit. Let's take a look at what should be done with the Ninth Circuit. I think the starting point should be what Justice White's commission said. If there were a few hearings held in the Judiciary Committee, I think we could move on to resolve this problem.

I am happy we are moving forward on these two nominations. It is something that should have happened some time ago. We are moving forward on them. Based upon the statements made by Senator HATCH, there should be bipartisan support for both of these nominees. I hope tomorrow, or whenever it is decided by the leadership that we will vote on them, that there are overwhelming votes in support for Judge Paez and Judge Berzon.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Vermont.

Mr. LEAHY. Mr. President, I appreciate the comments of my friend from Nevada. I also want to commend the distinguished senior Senator from Utah for his support of Judge Paez and Marsha Berzon.

Today, we are going to take up the long delayed nomination of Judge Julio Fuentes for the U.S. Court of Appeals for the Third Circuit. It is long delayed; Judge Fuentes was nominated 365 days ago. We tried for a whole year to get his nomination moving. He was finally included in a confirmation hearing on February 22, then on to the Judiciary Committee 2 days later, then reported without a single objection.

Now, I understand it came on the calendar yesterday and the distinguished majority leader scheduled it immediately for a vote. I thank him for doing that. No need to linger, especially after waiting a year to get his hearing and a vote.

Moving at once from the hearing, quickly to a committee agenda and to committee consideration and on to the floor is how we used to proceed. In the days before 1994, nominees were favorably reported by the Judiciary Committee, then routinely considered by the Senate within a day or so thereafter. That was before the unfortunate practice that has developed in the last 6 years, where oft times extremely well-qualified nominees are held for long times—weeks, months, sometimes years.

I am glad in this case, at least, while he had to wait almost a year for a hearing, once we got the hearing, the

nomination is being moved very quickly.

I look forward to Julio Fuentes' confirmation. I congratulate the two Senators from New Jersey, Mr. LAUTENBERG and Mr. TORRICELLI, for their longstanding support.

Having said that, we should look at where we are. We have 76 current vacancies on the Federal judiciary and 9 more on the horizon. Last month, the Judicial Conference renewed its request for an additional 59 judgeships and taking 10 of the existing temporary ones and making them permanent. There are only 22 weeks left in session this year. We should get moving if we are going to fulfill our constitutional responsibility and help the President fill these vacancies.

In the first 2 months of this year, the Senate has only confirmed four judicial nominations—two a month. Incidentally, having waited for some time to even have their hearings and have their vote, they were voted overwhelmingly. Two of them were confirmed by votes of 98–0, which makes one wonder why in Heaven's name they were held up so long. The other two did have opposition. They had two votes against them: 96 for them, 2 against them. Again, one wonders what held them up so long. In fact, they had all been reported favorably last year, or, as someone pointed out, last century, and voted on favorably this century. There are still three very important nominees reported last year to be taken up.

The distinguished majority leader and the distinguished minority leader had a colloquy last November 10 talking about them. I fully expect them to be voted up or down. The three are Richard Paez, Marsha Berzon, and Timothy Dyk. Each has waited more than 23 months for Senate action. The Los Angeles Times calls Judge Paez the Cal Ripken of judicial nominations. This distinguished Hispanic, a man with one of the highest ratings ever to come before the Senate, one of the most sterling backgrounds of any nominee by either Republicans or Democrats, this distinguished jurist has waited more than 4 years. That is unforgivable. We should do our constitutional duty and vote up or vote down, not vote maybe.

I am glad the majority leader has agreed to bring them to a Senate vote before the Ides of March. The nominees deserve to be treated with dignity and dispatch, not delayed for years.

Judge Paez has been pending for over 4 years. He has the strong support of his home State Senators and of local law enforcement. He has had a distinguished judicial career in which he has served as a State and Federal judge for I believe 19 years. His is a wonderful American story of hard work, fairness, and public service. He and his family have much of which they can be proud. Hispanic organizations from California and around the country have urged the Senate to act favorably and soon.

I hope we do the right thing when we are called upon to vote. As I recall, when Judge Sonia Sotomayor, another outstanding district court judge, was nominated to the Second Circuit and her nomination was delayed by this Senate, apparently she was so extremely well qualified, some feared if we confirmed her too quickly, she might possibly be considered as a Supreme Court nominee, and that is why she was held up through all kinds of secret holds. It was not the Senate's finest moment. In fact, after all the delay in Judge Sonia Sotomayor's case, it was interesting that not a single Senator who voted against her confirmation and not a single Senator who delayed her confirmation uttered a single word against her.

Any Senator can vote as he or she sees fit, but I hope in the case of Judge Richard Paez, where his nomination has been delayed for over 4 years—the longest period in the history of the Senate—that those who have opposed him will show him the courtesy of using this time to discuss with us any concerns they may have and explain the basis for the negative vote against a person so well qualified for this position.

I believe we should come to a vote on Timothy Dyk. We should have done so long before now. He was first nominated to a Federal vacancy in April of 1998. After having a hearing and being reported favorably, the Senate in September 1998 left without action. The President had to resubmit the name. He was renominated in January 1999, favorably reported again in October 1999.

Again, he is a man with a tremendous background. He is the only person I can remember clerking for three Supreme Court Justices. He is supported by the U.S. Chamber of Commerce, the National Association of Manufacturers, and others. I hope we will get on with this nomination.

I look forward to the Senate finally approving the nomination of Marsha Berzon to the Ninth Circuit Court of Appeals. One-quarter of the active judgeships authorized for that court have been kept vacant for several years. The Judicial Conference recently requested that Ninth Circuit judgeships be increased, in light of its workload, by an additional five judges. That means that while Ms. Berzon and several other nominees have been waiting for confirmation, the court actually has been doing its work with 10 fewer judges than it needs.

Marsha Berzon is an outstanding nominee. She is an exceptional lawyer with extensive appellate practice, including a number of cases heard by the Supreme Court. She has the highest rating from the American Bar Association and the support of both the Senators from California.

It may well be coincidence, as someone suggests, that if you are a woman or a minority, you take a lot longer getting through the Senate. That is the way it has been the last 5 years.

The Chief Justice of the United States Supreme Court said:

> Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. . . . The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry, it should vote him up or vote him down.

Which is exactly what I would like.

We had one minority nominee, an extremely well-qualified individual, Jorge Rangel. He became tired of waiting. He got into this block of, if you are a minority or a woman, one seems to take longer. He said to the President:

> Our judicial system depends on men and women of good will who agree to serve when asked to do so. But public service asks too much when those of us who answer the call to service are subjected to a confirmation process dominated by interminable delays and inaction. Patience has its virtue, but it also has its limits.

Jorge Rangel withdrew.

All three of the nominees reported last year and before have been extremely patient. Each remains among the 10 longest pending judicial nominations before the Senate, and one has waited the longest of anybody in the Senate's history.

Some say, if it is a Presidential election year, we have to slow things down—the so-called Thurmond rule. Sure, if we are within a couple months of a Presidential election, we might slow things down. But before people justify the fact we have only moved four judges this year, I remind my colleagues of what happened in Presidential election years past.

Let's take a few of the Presidential election years since I have been here: 1980 was a Presidential election year. We confirmed 64 judges that year; 1984 was a Presidential election year, and we confirmed 44 judges that year.

Let me take 1988, when President Reagan was at the end of his second term, as much of a lame duck as one could possibly be. There was a Democratic majority in the Senate. We could have done the same thing to President Reagan that the Republicans have been doing for years to President Clinton, but instead we confirmed 42 of his nominees.

A better example: In 1992, under President Bush, when he was about to become a lame duck President, during a Presidential election year, where Democrats were in the majority, we confirmed 66 judges, as compared to the 4 who have been confirmed this year. At the end of President Bush's term, with Democrats in the majority, we confirmed 66.

My friend from New York may be interested in knowing that in 1996, again at the end of the first term of President Clinton, where Republicans were in the majority—do you know how many were confirmed? Seventeen. Democrats confirmed 66 of a Republican President's nominees; Republicans confirmed 17 of a Democrat President's nominees.

What happens is qualified nominees, such as Richard Paez or Marsha Berzon

or Tim Dyk, instead of being treated with dignity and dispatch, are delayed for years—or those like Jorge Rangel, they say: We cannot put up with the delay anymore. We withdraw our name.

Then we have to understand what this does to people who have offered themselves for this public service. But we have to also ask: What does it do to the independence of our Federal judiciary, the independence that is praised worldwide?

So if Judge Fuentes is confirmed this afternoon, as I fully expect he will, I congratulate him because he will be the first judicial nomination both reported by the Judiciary Committee and confirmed by the Senate this year.

I would hope that would give some indication that we might move forward with the nominations of Richard Paez, Marsha Berzon and Tim Dyk from years past, as well.

I am glad we are finally going to have the opportunity on this extremely well-qualified nominee to move forward to the Third Circuit. We will move forward on Judge Julio Fuentes, as I say, an outstanding Hispanic nominee, an outstanding American, to the Federal judiciary.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, first, I thank my colleague from New Hampshire for allowing me to speak for a brief period of time before him. I saw those books piled up on his desk and realized if I did not get my words in now, I might not ever get them in.

I very much appreciate his graciousness.

I also thank my colleague from Vermont for, as usual, his intelligent and considerate words. I also thank the chairman of our Judiciary Committee for bringing this nomination forward and for, just as importantly, announcing he will support the nomination of Judge Paez.

Mr. President, first, I rise in support of the nomination of Judges Paez, Berzon, Fuentes, and Dyk. But, more importantly, I rise to talk about the process very briefly. For instance, we do not have any problem with the Senator from New Hampshire debating, to the end, whether Judge Paez should be a judge. We have a problem that he had to wait 4½ years to do it.

The basic issue of holding up judgeships is the issue before us, not the qualifications of judges, which we can always debate. The problem is it takes so long for us to debate those qualifications. It is an example of Government not fulfilling its constitutional mandate because the President nominates, and we are charged with voting on the nominees.

The Constitution does not say if the Congress is controlled by a different party than the President there shall be no judges chosen. But that is sometimes how the majority has functioned.

Second, by not filling vacancies, we hamper the judiciary's ability to fulfill its own constitutional duties.

Our courts—my own in New York State—have large backlogs. We have three vacancies in New York: One in the eastern district; two in the southern district. We had four, and I thank the chairman of the Judiciary Committee for approving George Daniels last week. But we still have vacancies.

I also plead with my colleagues to move judges with alacrity—vote them up or down. But this delay makes a mockery of the Constitution, makes a mockery of the fact that we are here working, and makes a mockery of the lives of very sincere people who have put themselves forward to be judges and then they hang out there in limbo.

Judge Paez, Judge Berzon, Judge Dyk, and Judge Fuentes are extremely qualified. I urge all of my colleagues, at long last, to vote for their confirmation.

Again, I very much appreciate the Senator from New Hampshire for allowing me to speak for this brief moment.

I yield back my time.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I was very much intrigued by the remarks of my colleagues from New York and Vermont a few moments ago, talking about how we should move on in the process and that there does not seem to be much of a history of blocking nominees and that it is not good for the constitutional process.

I think the constitutional process is very clear that the Senate has the right and the responsibility, under the Constitution, to advise and consent. That is exactly what I intend to do in my role as a Senator as it pertains to these two nominees before us.

Let me summarize where I think we are on the issue of judicial nominees in general.

It is no secret that I am opposed to Judge Berzon and Judge Paez, as many of my colleagues on this side of the aisle are, I hope. At least that is what I am told.

The issue, though, is whether it is OK to block judicial nominees. We have heard from a couple of my colleagues in the last few moments that it isn't OK to block judicial nominees, as if there was something unconstitutional about it. There is thinking among some that we should not start down this path of blocking a judicial nominee whom we do not think is a good nominee for the court because it may come back to haunt us at some point when and if a Republican should be elected to the Presidency.

Let me say, with all due respect to my colleagues, I am not starting down any new path. The tradition of the Senate is one of blocking judicial nominees in the final year of an administration. I am going to be very specific and prove exactly my point that we are not starting down any new path. The path is well worn. We are following a path; we are not starting down any new path.

I am going to go back to 1992, since that is the most relevant year for this discussion, the final year of the Bush administration.

How did the Senate treat judicial nominees? Facts are sometimes pretty devilish things. They do point out the truth. They are pretty hard to discredit. Let's look at the facts.

There was only one controversial judicial nominee considered the entire year in 1992—in fact, only one rollcall vote, period, on judicial nominees. Why is that? That is no big deal. They voted the only one that came up. That is the point. Why didn't they come up? With all due respect to my colleagues from Vermont and New York, it is called blocking the nomination. It is called bottling them up in committee. It is called not bringing them to the floor. Let's be specific.

In 1992, we had a nominee by the name of Edward Carnes. He was nominated to the Eleventh Circuit. There were no fewer than three full votes in the Senate on one nominee: A motion to proceed, followed by a filibuster, a 66–30 cloture vote, and finally, on September 9, 1992, approval—a long process for this one judge. But other than that one nominee who was, in fact, filibustered, there was nothing—no action, no debate, no nothing—on the floor of the Senate. All other controversial nominees were filibustered in committee under the Democrat leadership in the Senate.

Sure, the Senate approved nominees here or there. I admit that. But if we define ''controversial'' as having at least a rollcall vote, there weren't any.

What about the controversial ones? Let's take a look at a few. Let me stick with the appeals court since that is what we are dealing with today with Judges Berzon and Paez. In April of 1990, President George Bush nominated Kenneth J. Ryskamp to the Eleventh Circuit. Mr. Ryskamp was opposed by none other than civil rights activists, and the Judiciary Committee bottled up the nomination of Mr. Ryskamp for an entire year. At the end of the year, they sent the nomination back to President Bush, and Mr. Ryskamp was resubmitted but never made it.

Don't come here on the floor and tell me that if I want to block Judge Paez or Judge Berzon, somehow I am going down some new path. I am not going down any new path. I am following the tradition and precedent of this Senate. Those who did that in 1992 had every right to do it under Senate rules and under the Constitution, as I do today and as I intend to do on these nominations.

In September of 1991, President Bush nominated Franklin S. Van Antwerpen of Pennsylvania to the Third Circuit. The nomination was blocked in committee for the entire final year of the Bush Presidency. It never saw the light of day. In November of 1991, President Bush nominated Lillian R. BeVier, a conservative from Virginia who had testified for Robert Bork. That was her first mistake. Lord help us, she was a conservative, No. 1, in the Democrat

years here. No. 2, she testified on behalf of Robert Bork. She was nominated to the Fourth Circuit. Guess what happened to her. Her nomination languished for a whole year. Finally, the committee deep-sixed her at the end of the Bush Presidency—gone, didn't see the light of day. I guess that was unconstitutional. If it is unconstitutional now, surely it was unconstitutional then.

Of course, it is not unconstitutional. You have that right. On the same day, President Bush nominated Terrence W. Boyle to the Fourth Circuit. Again, the chairman put a hold on the nomination for an entire year. It languished in the darkness of Judiciary and never saw the light of day.

Here is an article from 1992. It says: ''North Carolina Judge One of 50 Bush Court Nominations that Won't be Approved.'' It talks about the intentional strategy of Chairman BIDEN to delay and kill Bush nominees because of the likely Clinton victory. That speaks for itself.

Here are a few lines from the news service, September 28, 1992:

> Men and women named by President Bush to 50 vacant judgeships will not be confirmed by the Senate this year, leaving Republicans and Democrats pointing fingers of blame at each other. The nominees who must be approved by the Senate Judiciary Committee include Terrence W. Boyle, 46, a U.S. District Court Judge in Elizabeth City who was proposed for a seat on the U.S. Circuit Court of Appeals. Last week, Senator Joe Biden, Democrat of Delaware, who chairs the panel, said no additional hearings on nominations will take place this year. With Congress expected to adjourn for the year next Monday and Democratic presidential candidate Bill Clinton ahead in the polls, many Republicans fear the nominees will never be approved and charged Biden with intentionally delaying the process.
>
> South Carolina Senator Strom Thurmond, highest ranking Republican on the panel, said he had asked Biden earlier this year to increase the number of hearings and the number of nominees considered at each hearing. This was not done and we are now out of time, he said. ''It's got partisan written all over it,'' said Andy Wright, political director of the North Carolina Republican Party. Biden, Wright said, is ''taking advantage of an opportunity. He knows what power he has.'' But a Judiciary Committee aide rejected charges that the panel has initially stalled progress on the nominees, saying the committee had approved ''a record number of nominees in a presidential election year when the Senate and White House were controlled by different parties.''

Well, they are controlled by different parties. The thing is reversed.

They go on to explain that ''the Senate had approved 59 Bush nominees,'' so forth and so on.

The point is, this is not new ground; this is old ground we are walking.

In November of 1991, George Bush nominated Frank Keating of Oklahoma to the Tenth Circuit. It was blocked for the entire year. It died 2 years later at the end of the Bush Presidency.

Let me read an article from the Philadelphia Tribune entitled ''Shelving of Keating Nomination Pleases Rights Groups.'' The nomination wasn't defeated by the Senate. It was shelved by the committee. A group of liberal organizations opposed him, and the committee buried the nomination.

> National civil rights groups like the NAACP Legal Defense Fund, National Fair Housing Alliance, Children's Legal Defense Fund, are still smiling as a result of the U.S. Senate Judiciary Committee's decision not to vote on the nomination of Francis Keating for a judgeship on the Tenth U.S. Circuit Court of Appeals.
>
> This means that Keating's nomination and the fate of 50 other judicial nominees still under consideration by the committee will have to wait until January when the Senate is scheduled to come back into session.

It goes on to discuss this nomination—again, a nomination killed in committee by the other party. Controversial, never saw the light of day. New ground? I don't think so.

In January of 1992, President George Bush nominated Sidney Fitzwater to the Fifth Circuit. Same old story: Nomination languishes, a whole year goes by and the nomination dies.

Here is a story from the Texas Lawyer entitled ''Judiciary Panel Kills Texans' Nominations.'' This is American Lawyer Newspapers Group, October 1992:

> Surprised? Hardly. ''It's an every four-year occurrence,'' said U.S. District Judge Lucius D. Bunton, III of Midland, Texas, chief of Texas' Western District.
>
> As spring turns to summer in presidential election years, the party out of power at the White House traditionally throws up roadblocks to slow a process that in normal times confirms most candidates automatically. In addition to the expected slowdown, those close to the process from both parties say Governor Bill Clinton's lead in the polls has prompted Democrats to delay judicial confirmations in hopes of preserving the vacancies of the presidential candidate.

Again, they have the right to do that. They did do it, and they did it effectively. So when we come out here to do it now because of two very liberal activist judges, why should we be criticized for exercising our rights under the process? If you disagree with us on the basis of why we are objecting, fine. But don't pontificate on the floor of the Senate and tell me that somehow I am violating the Constitution of the United States of America by blocking a judge or filibustering a judge that I don't think deserves to be on the circuit court because I am going to continue to do it at every opportunity I believe a judge should not be on that court. That is my responsibility. That is my advise and consent role, and I intend to exercise it. I don't appreciate being told that somehow I am violating the Constitution of the United States. I swore to uphold that Constitution, and I am doing it now by standing up and saying what I am saying.

The same day in 1992, Bush nominated John G. Roberts of Maryland to the D.C. circuit. That was filed in the same old black hole with the rest of them. Congress adjourned; the nomination was blocked, end of story. Another nomination in January of 1992 was blocked in committee and killed at the end of the Presidency. Justin Wilson, nominated in May of 1992, was killed by committee. Here is an article, September of 1992: ''Outlook grim for Wilson nomination,'' from the Gannett News Service.

Byline by Lacrisha Butler, this article says:

> Nashville lawyer Justin Wilson's nomination to fill a vacancy on the U.S. Sixth Circuit Court, which has been pending in the Senate committee for 6 months, is among more than 100 Federal judge nominations still awaiting action before Congress adjourns in early October.
>
> And it appears unlikely that Wilson's nomination will see action before the session ends, because of snags in his background check and what is being called an attempt by Democrats to hold up nominations in anticipation of a change in administration.

Again, this is not new ground. This is a role the Senate has played for years, decades. It is an appropriate role if we believe a nomination, or the other side believes a nomination might be too far to the left or right—depending on which side you are.

Mr. President, this is just one year of the Presidency I am talking about. I have only dealt with 1992 when circuit court nominees were blocked in committee. I could have gone back further into the Bush Presidency. I could have gone back into other Presidencies. I didn't do that, but these are filibusters. When you don't allow a nomination to get to the Senate floor—it may not be under the technical term ''filibuster,'' but when you block it, that is a filibuster. You are not getting it here and you can't talk about it if it isn't up here. If it is languishing in committee, then we are not going to be able to debate it, approve it, or reject it. No matter how you shake it, they were filibusters led by committee chairmen rather than the majority leader on the floor.

If you want precedent for floor filibusters—I have heard it said there is no history of filibusters on the Senate floor. OK, they have been in committee; we stopped them in committee. All right. Well, let me read this:

> On July 2, 1999, Senate Judiciary Committee ranking member Patrick Leahy issued a statement claiming, ''I cannot recall a judicial nomination being filibustered ever.''

OK. Mr. President, I have 1, 2, 3, 4, 5, 6, 7, 8 volumes of the CONGRESSIONAL RECORD, Senate proceedings, and not every word is of the filibuster, but in each volume is a filibuster of 4 judicial nominations, both political parties, since 1968—4 out of 13. So out of 13 judges who have been filibustered on the floor of this Senate since 1968, these volumes here, 8 volumes, represents only 4 of the 13. Yet the ranking member of the Judiciary Committee says he can't ever recall a filibuster being offered.

As a challenge to my friend from Vermont, if he comes down and says it again, I am going to read every word of these filibusters on the floor of the Senate and filibuster these nominations by doing it. If he doesn't come

down or retract that statement, I won't. If he comes down and says he can't ever remember a filibuster taking place on the floor of this Senate, I am going to read every word of just these four. If he continues to aggravate me, I might read all 13 of them, if I can dig out the information.

Let's get real and understand what is happening. The names are Abe Fortas in 1968; William Rehnquist, who sat in that chair and was praised by all during the impeachment trial, was filibustered by Senator Birch Bayh. There are volumes and volumes, hundreds of pages here of that filibuster. I am prepared to read every word of it if he wants to say there have been no filibusters.

Stephen Breyer was filibustered; J. Harvie Wilkinson, Sidney Fitzwater, Daniel Manion in 1985, Edward Carnes, Rosemary Barkett, H. Lee Sarokin—there are 13 of them.

So don't tell me we haven't filibustered judges and that we don't have the right to filibuster judges on the floor of the Senate. Of course we do. That is our constitutional role. Some like it. And I have been on the other side. Listen, I wasn't in the Senate when it disapproved Robert Bork, but we lost one heck of a good judge. Clarence Thomas wasn't filibustered, but he sure was debated. I didn't like that either. But it is our right as Senators to do that. So don't criticize our right to do these things and don't say things didn't happen that did happen.

Now, let me move to the question at hand, which is the Ninth Circuit, where we have the nominations of Judges Paez and Berzon for the Ninth Circuit Court of Appeals. We need to understand this circuit is a very controversial circuit. Not only is it a controversial circuit, it is a renegade circuit. It basically is out of the mainstream of American jurisprudence. It is interesting that this circuit has been reversed by the Supreme Court—get this—in nearly 90 percent of the cases decided in the past 6 years. Let that sink in for a moment. Ninety percent of the decisions made by the circuit court in this Ninth Circuit have been reversed by the U.S. Supreme Court, the next highest court. What does that tell you about the judges on that court?

Mr. REID. Will the Senator from New Hampshire yield for a brief time?

Mr. SMITH of New Hampshire. Yes.

Mr. REID. Mr. President, I would like to have a colloquy between the two of us based on some statements made to this point. If I could say to my friend—and there is nobody in the Senate I have more respect for than the Senator from New Hampshire. We have served together on the MIA/POW Committee, and for many years, until he became a full committee chairman, we served as the two leaders of our parties with the Ethics Committee. I have the greatest respect for the Senator. I say, of course, he has a right to filibuster if that is what he chooses. Since the time I have been in the Senate, there have been a number of occasions when there has been, if not a filibuster, at least a delaying of judicial nominees. That is part of the tradition of the Senate. I have no problem with that.

I say, though, to my friend that the year the Senator has talked about in some detail—1992—holds the record for confirming more judges than during any other presidential election year. Sixty-six judges were confirmed at that time. That is when we had a Democratic Senate and a Republican President. So that year, 1992, should stand out as an example of how you can move these nominees, in spite of the fact that you have a majority of one party in the Senate, and the other party is represented in the Presidency. I will not take a lot of time, but I want the record to reflect that in 1996 we only had 17 confirmations.

So I think what we have been able to do in 1988 and 1992 when we got 42 nominees and 66, which is an all-time record—there is no question because I was there then. Toward the end of the session, there were a lot of nominees who didn't come forward. There was a line drawn and they said no more. Some were submitted too late.

What I am saying to my friend is that in addition to what I have just said, we now have 30 nominations pending. Once they get out of committee, let's bring them here and vote up or down on them. I don't know Richard Paez. I talked to him on the phone. I have talked to his mother. I think anybody who has to wait 4 years deserves an up-or-down vote.

I say to my friend that if there is something wrong with Judge Paez or Ms. Berzon, come out here and vote them down. But I think we need to move forward with these nominations as quickly as we can.

I can only say to my dear friend from New Hampshire that the State of Nevada for 14 years has been the fastest growing State in the Union. We have tremendous problems with the administration of justice. At this time, when the Senator and I are speaking, we are short four judges. It is not Senator LEAHY's fault, it is not Senator HATCH's fault, that these are not being voted on now. They are in the pipeline, so to speak. But we are desperate for judges. That is the way it is in other parts of the country.

We really need to move forward. I understand the Senator's feelings on the Ninth Circuit. I have heard them expressed several times today: It is too big. It is unwieldy. They have been reversed too much. That is a problem. I think we need to do something about it.

I would be happy to join with my friend. A number of Senators were really upset about this a number of years ago. The commission was appointed led by Justice White. He made recommendations. I think that is a starting point as to how we resolve it.

I close by saying, yes, there were people in 1992 who were not given the chance to vote. Keep in mind that the record for the Senate in 1992—when we had a Republican President and a Democratic Senate—is that we approved 66 nominees. There were 17 in 1996 when there was a Democratic President and a Republican Senate.

Mr. SMITH of New Hampshire. Mr. President, let me say to my colleague that I don't disagree with what he just said as far as the numbers are concerned. I point out that I am really referring here to controversial nominees. When a nominee has some controversy about him or her, if it gets to the floor, there are normally quite a few discussions; i.e., a filibuster. There were no votes. There was only one vote in the year 1992 on a controversial judge. That was filibustered. It eventually passed the nomination under the Bush Presidency. But it was filibustered and substantially debated.

That is the point I was making. Most of the nominees I listed and referred to languished for a whole year in the committee. I am not criticizing the Senator and his party for what they did then. They have a right to do that. I might not agree because I perhaps would have supported the judges. But I think you have the right to do it. I think we have a responsibility to the President of the United States duly elected by the American people. I think in our advice and consent role, we have an obligation to confirm some of those judges, especially those who are not controversial. But I think on those controversial judges, we should have the right to be able to air the concerns.

I don't want to speak at great length on this because I know one of my colleagues—perhaps Senator SESSIONS—wishes to do that.

But in the case of Paez, for example, I don't know that the American people are aware he has been involved in two decisions pertaining directly to the Clinton scandals. Why don't you get both of those decisions, the Marya Hsia case, for one, and the John Huang case? In both of those cases, the sentencing was lenient—perhaps as lenient as it could be.

I think those questions ought to be answered. I think we should know the answers to those questions about what happened before we put this person on the circuit court.

I tend to agree that to simply hold somebody up forever and never let them know how it is going to be resolved is very unfortunate for the individual. I tend to agree. But these are serious questions. When I say ''filibuster,'' I use the term in the sense of right now because the rule is pretty fairly restrictive. We have 48 hours after the motion is filed for cloture and, at the most, 30 hours after that. So we are not talking forever. But we are talking about just venting and airing concerns. That is what I am doing with both the Ninth Circuit as well as two individuals to which I will speak more directly in detail on Thursday.

It is not pleasant to stand here and criticize and air concerns you have about people who are wanting to move up to another level on the court. But I think we have an obligation to air our concerns. Certainly, concerns are aired about us when we run for our respective offices.

I think it is fair that as to judges who are appointed forever, who will be making decisions long after we are out of here, probably when our children are coming into voting age, or our grandchildren, whatever the case may be—these judges may still be here long after the President leaves—we have a responsibility to look very carefully at them. If they are active as judges and are making decisions that are being overturned almost 90 percent of the time in the case of the current court—I am not saying that would necessarily be the case of the two nominees, but the court itself has a very undistinguished record, in my view.

Mr. REID. If the Senator will yield with his right to have the floor, I agree. If there is a Senator who believes there is a problem with any judge, whether it is the one we are going to vote on at 5 o'clock or the two we are going to vote on tomorrow, or Thursday, they have every right to come to talk at whatever length they want. But with Judge Paez, it has been 4 years. There has been ample opportunity to talk about this man. He has bipartisan support. I have no problem with people talking about the decisions he has rendered. He has been a judge for about 18 years in State and Federal courts. I think there has been an exhaustive review of those.

If the Senator from Alabama, who has a fine legal mind and is former attorney general of Alabama, and the Senator from New Hampshire, who has had wide-ranging experience in government and in the Senate and House of Representatives, want to talk, more power to them. My only point is, 4 years is too long.

I also repeat some of the things the ranking member of the committee has said. It is a myth that judges are not traditionally confirmed in Presidential election years. It is simply not true. Recall that in 1980, a Presidential election year, 64 judges were confirmed; in 1984, 44; in 1988—we talked about that when we had a Democrat Senate and Republican President—42 were confirmed; in 1992, we had 66. That is the record. I think that really says a lot.

When we had President Bush and a Democratic majority, and a significant majority, we could have stalled things. We approved 66 nominees—I repeat that for the Record—whereas, in President Clinton's last year of his first term, 17 were approved. That is really not fair.

My point is that we need to move these along. I think as part of the legacy of the Republican leadership of this Congress, you can't hold your heads high when you have up to this point confirmed three or four nominees. You need to move up and have 40, 50, or 60. Otherwise, I think you are not fulfilling the need the country has to take care of the tremendous backlog of 30 pending judges and probably 35 or 40 more in the pipeline as we speak.

I hope Senator SESSIONS and Senator SMITH of New Hampshire, who are both very fine legislators, will say all they want to say negative or positive about the nominees. But let us move forward and vote on them.

I again repeat, I don't think it is a good legacy for the Republican leadership of the Senate to break a record that you certainly don't want to break; that is, in the country that is rapidly growing with all kinds of Federal crimes being committed, we have fewer judges to do the job. It is very desperate.

In the State of Nevada, a fine judge in the prime of his judicial life and a senior judge took senior status. It was the only way we could get another judge. It is that way all over the country.

I have no problem, I repeat, with what the Senator is doing. I think it is commendable.

I also think when we talk about the Ninth Circuit, which I have defended, I have, as I have stated, I guess some could say, a conflict of interest because one of my two sons was administrative assistant to the chief judge and my other boy is presently working there. It is a circuit in which I live and practice law. Let Members not denigrate that circuit.

Of course, they have so many cases; and it is true, their reversal rate is high. They decided almost 5,000 cases in a year. Out of approximately 5,000 cases, they have had about 12 or 14 reversals. That is not so bad. The cases that are taken up are ripe for the Supreme Court because they are in conflict with other circuits.

That reversal rate has improved. The numbers, as indicated by Senator MURKOWSKI earlier today, are from another year.

I think criticism of the Ninth Circuit is certainly in order. Go ahead and criticize the Ninth Circuit. As far as the Senator doing anything unconstitutional, it isn't even close. The Senator has every right to do what he is doing.

I appreciate very much the courtesy of the Senator. He did not have to allow me to speak out of order. I know the Senator has a lot to say.

Mr. SMITH of New Hampshire. I appreciate my colleague's remarks and will yield to him at any time.

I will respond briefly to my colleague because I think he is correct on the numbers. I think the numbers speak for themselves. I believe there were some 66 nominations brought through during the Bush years. This is not about the number of people. I think it is a fairly reasonable assessment to say if those nominations came through in 1992 or from 1989 through the end of the term in 1993, it is likely they were not very controversial. There was no debate, really. They were pretty much unanimously agreed to.

We are talking about two issues: One is the controversial nature of the judges involved; two, the controversial nature of the Ninth Circuit. Both the Ninth Circuit and the judges are in and of themselves controversial. In the case of the one vote the Democrats in 1992 brought forth, although it did win, it was a controversial nomination. I think Judge Paez, with all due respect, and Judge Berzon, are controversial nominations. Clearly, the Ninth Circuit is controversial.

I have agreed with the majority leader; if he chooses to accept, I have indicated I am willing to limit the debate on Thursday to about 5 hours total time on our side to discuss these nominations. I am not blocking for the sake of blocking. I am trying to make some points that I hope will result in the rejection of these nominees.

I will discuss this Ninth Circuit and the reversals. As I said, from 1994 to 2000, 85 of 99 decisions—86 percent—by the Ninth Circuit were reversed by the Supreme Court.

What kind of a record is that? What kind of knowledge of the law does this indicate when the Supreme Court could overturn 86 percent of the cases in the last 6 years and, as I said, 90 percent of the cases overall?

To be specific, in 1999 to 2000, 7 of 7—100 percent of the cases set down by this court—were overturned by the Supreme Court. There are four more pending now that are being challenged. I will not go into the details of each case, but U.S. v. Locke, Rice v. Cavetano, Roe v. Flores-Warden, U.S. v. Martinez-Salazar, Smith v. Robbins, Gutierrez v. Ada, Los Angeles Police Department v. United Recording Publication—all of those were overturned, all 7 of 7.

From 1998 to 1999, during that year, 13 of 18 of the decisions of this court, 72 percent, were overturned by the Supreme Court—reversed.

From 1997 to 1998, 14 of 17 were overturned by the Supreme Court, 82 percent of the cases.

From 1996 to 1997, 27 of 28 cases were overturned, 96 percent of the cases overturned.

From 1995 to 1996, 10 of 12, 83 percent, were overturned.

And on and on and on.

I have the documentations of these cases.

The bottom line is the Ninth Circuit is notorious for its antilaw enforcement record, its frequent creation of new rights for criminals and defendants, often in the face of clearly established law.

These two judges we now are debating, I believe based on their own records and comments and paper trail, are going to be act the same. They will be making the same kinds of decisions.

It is an embarrassment to have 90 percent of the cases overturned. In my view, it shows, frankly, an ignorance of

the law, or certainly a disrespect for the Constitution in some way to get that many cases overturned by the Supreme Court.

The Ninth Circuit, as I said before, is a renegade circuit. It is out of the mainstream of American jurisprudence. It has been reversed by the Supreme Court 90 percent of the time, 84 of 98 cases. That is terrible.

It routinely issues activist opinions. While the Supreme Court has been able to correct some of the worst abuses, the record is replete with antidemocratic, antibusiness, procriminal decisions which distort the legitimate concerns and democratic participation of the residents of the Ninth Circuit.

To give a couple of examples of the more outrageous decisions: Striking down the NEA decency standard, creating a right to die, blocking abortion parental consent law, and a slew of obstructionist death penalty decisions.

The Senate, and particularly Republican Senators from the Ninth Circuit, are on record in favor of a split of the circuit they are so upset with this. In 1997, all Republicans voted against an amendment to strike a provision to split the circuit. That is how outrageous these decisions have been. Even the independent White commission recommended a substantial overhaul of the circuit's procedures; it still has not been implemented. We are adding two liberal, very activist judges to this circuit, without any of the reforms that have been called for by many.

The Ninth Circuit covers 38 percent of this country, more than twice as much as any other circuit. It covers 50 million people. President Clinton has already appointed 10 judges to this circuit. Democrat appointees comprise 15 of the 22 slots currently occupied.

I say to the American people who may be listening right now, judges impact our lives big time in the decisions they make. Citizens complain about the violence and the criminals getting out. We hear all the stories about somebody serving 5 years for murder and going out and killing somebody else; or somebody stalking, serving a little time, and stalking and killing the woman he stalked before because he didn't spend enough time in jail, over and over again.

This is not by accident. These are bad judges making bad decisions that cost Americans their liberties, cost them their lives sometimes. That is wrong.

We have an obligation in the Senate to take a good, hard look at a lifetime appointment to the circuit. The members are there forever, even when they get real old. It is pretty hard to get rid of them. This is a lifetime appointment.

We have a responsibility to make darn sure these judges are going to represent the views of the majority of the American people in terms of the law. I intend to do that as long as I can stand here to do it.

Let me briefly hit two points on the two judges in question and then make a couple of other points and wrap up. The U.S. Chamber of Commerce is officially opposed to the nomination of Paez. In Berzon's case, the nomination was described by the National Right to Work Committee as the worst judicial nomination President Clinton has ever made.

I am going to go into more detail on Thursday on the Ninth Circuit and its anti-law enforcement record, for its frequent creation of new rights for criminals and defendants, often in the face of clearly established law. For that reason alone, we should look very carefully and very cautiously at whom we put on that court.

For instance, in Morales v. California, 1996, the Ninth Circuit struck down the California State law governing when defendants could present claims during habeas corpus appeals which had not been made during the appeals in the State courts. According to the California-based Criminal Justice Legal Foundation, this holding ''opened the door to a flood of claims that would be barred anywhere else in the country.''

In United States v. Watts in 1996, the Supreme Court issued summary reversals in two cases without even hearing arguments after the Ninth Circuit allowed past acquittals to be considered during sentencing.

This is just silliness in terms of the obvious intent of the law and the Constitution.

I will conclude, I say to my colleagues who may be prepared to speak, on this point. These judges are activist judges who are going to promote an agenda on the Ninth Circuit that has already been rejected 90 percent of the time by the U.S. Supreme Court. Let's not add insult to injury by putting two judges on this court, essentially fulfilling that promise of continuing that bad judicial policy.

I yield the floor.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Nevada.

Mr. REID. Mr. President, I want to make an observation. We have heard a lot about the reversal rate of the Ninth Circuit. There has been a lot of talk that the Ninth Circuit's reversal rate in 1996 was some 90 percent, but that was less than five other circuits' reversal rates of 100 percent.

In the 1997–1998 term, the Ninth Circuit's reversal rate was 76 percent, equivalent to that of the First Circuit and less than other circuits because those circuits continued to have a 100-percent reversal rate.

In the 1998–1999 term, the Ninth Circuit's reversal rate was 78 percent, which was far less than several other circuits.

The point I am making is the Ninth Circuit decides thousands of cases, and they acknowledge, we acknowledge, everyone acknowledges, that 12 to 14 cases are reversed. That is not bad. Remember, the Supreme Court picks cases they believe will make good law, and that is why all these other circuits have a huge reversal rate. That is the way it is. That is the job of the U.S. Supreme Court, to look at these circuits and find cases it believes deserve to be interpreted one way or the other.

I hope my friends do not continue harping on the 90-percent reversal rate. It is lower than other circuits.

Also, Judges Paez and Berzon are qualified to sit on the court. I went over at some length earlier today the qualifications of Judge Paez, with whom I have spoken on the telephone, and I have talked with his mother. I do not have that same familiarity with Judge Berzon.

These are nominations that should go forward. These are good people who deserve the attention of the Senate. Certainly, Paez, after 4 years, deserves an up-or-down vote. I hope we can get to that at the earliest possible date. Judge Paez is not going to go away. He is a good man who is well educated and has been a judge for 18 years, 13 years in State court, some 5 years as a Federal district court judge. Everyone speaks highly of him, not the least of whom is a member of the House Judiciary Committee, a former State judge in California, a devout Republican, James Rogan, who supports Paez. He has bipartisan support. I hope we can move forward on these as quickly as possible.

Also, to illustrate what I said earlier, my friend from New Hampshire talked about the fact that in 1992 certain judges were not approved. More judges were approved in 1992 than in the entire history of the country, and we had a Democratic Senate and a Republican President.

In Presidential election years, we had a large number of judges approved.

Look what happened the last year of President Clinton's first term: 17 judges. And this year we are starting out worse than that.

I say to my friends on the other side of the aisle, this is not a legacy of which one should be proud. My colleagues need to move these nominations. If there are some nominees whom they do not like, vote them down or do not bring them forward, but let's get these numbers up this year into the fifties or sixties. We need that badly. States all over this country are in desperate need of judges, especially at the trial level.

Let's not be so hard on the Ninth Circuit. There are those of us who have practiced law in the Ninth Circuit. We are willing to move forward and do something to improve it. The Presiding Officer is a person who has argued before the Supreme Court—I do not think there is any doubt about this—far more times than anybody else in this body. I could be wrong, but I doubt it. He certainly understands the appellate process very well.

The Ninth Circuit needs some changes. Justice White, the leader of a study commission, sat down and decided what needed to be done. Let's start from there and see if we can do

something constructive rather than berate this appellate division that has 51 million people in it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, you have practiced in the Ninth Circuit. So has the distinguished assistant minority leader. There is no doubt that over a period of years, the Ninth Circuit has been reversed more than any other circuit. Their record of having 27 out of 28 reversed in 1 year is absolutely unprecedented. It has never been approached by any other circuit.

As a Federal prosecutor who spent 15 years full time in Federal court, I can assure my colleagues there is no circuit in America that is looked on with less respect on questions of law enforcement than the Ninth Circuit. It is the furthest left Circuit in the American judiciary, and there is no doubt about it. There are some great people there. They are wonderful. I would not mind having them over to my home discussing great legal issues, but they have been outside the mainstream of American law.

Mr. REID. Will the Senator yield for a brief question?

Mr. SESSIONS. Yes.

Mr. REID. Mr. President, maybe the Senator was busy with his staff, but in the 1996–1997 court term, the Ninth Circuit reversal rate was 90 percent. Five other circuits—the Fifth, Second, Seventh, D.C., and Federal Circuit—had a 100-percent reversal rate.

The only point I am trying to make——

Mr. SESSIONS. The D.C. Circuit had one case and Federal Circuit had one case reviewed by the Supreme Court, whereas the Ninth Circuit had 27 out of 28 reversed.

Mr. REID. The point, I say to my friend from Alabama, recognizing the different workloads the courts had, the appellate division with 51 million people has thousands of cases every year.

Also, the Senator has every right to feel the way he does about the Ninth Circuit, but I do not want the Senator's statement to go uncontested that reversal rates of other circuits pale in comparison to the Ninth Circuit because it is simply not factual.

Mr. SESSIONS. I do admit, in 1996, it looks as if the D.C. Circuit and the First Circuit had one case considered by the Supreme Court and it was reversed. D.C. Circuit had one, and it was reversed. And the Federal appeals court had one, and it was reversed.

Let me show you an article from the New York Times.

Mr. REID. One more thing, and then I promise to leave.

Mr. SESSIONS. All right.

Mr. REID. The Senator has not mentioned the Fifth, Second, and Seventh Circuits which also were 100 percent reversed.

Mr. SESSIONS. The Seventh had three cases, and those were reversed. Over the 3 years—I have done the numbers—the Ninth Circuit remains No. 1 in the number of cases reversed.

Mr. REID. I appreciate the Senator yielding.

Mr. SESSIONS. The New York Times had an article some time ago, saying this:

> The Ninth Circuit, which sits in San Francisco, remains the country's most liberal appeals court, and there is some evidence that the Supreme Court's conservative majority—

I would say it is a moderate to conservative majority—

> views it as something of a rogue circuit, especially on questions of criminal law and even more particularly on the death penalty.

That is from the New York Times, which certainly is not a conservative organ, particularly on legal matters. I think they are misunderstanding the importance of a lot of legal matters, frankly, but that is a comment they made, their observation.

That is why the Ninth Circuit has been reversed so regularly. As a matter of fact, I will mention a little later in my remarks—I believe in 1996–1997—there were 17 reversals in that year of the Ninth Circuit by a unanimous U.S. Supreme Court. In other words, the liberal and conservative members of the Supreme Court, in 17 out of 27 cases reversed, unanimously agreed the Ninth Circuit was wrong. I think that is a matter that we ought to think about.

I may go into that more because it is important to my analysis of how we ought to vote on these nominees.

There are two purposes for my remarks today. I would like to enter into the RECORD the results of the research I have done on two nominees—Mrs. Berzon and Judge Paez—for the Ninth Circuit Court of Appeals. My research forms the basis for my opposition to their nominations.

I would like my colleagues who do not sit on the Judiciary Committee, as I do, and who were not part of the initial evaluation process of these nominees to have the benefit of the full record and my observations on it.

Secondly, I would like to take this opportunity to ask my colleagues to consider the points I am raising and to join me in opposition to these nominees.

First, I would like to mention, I believe it is 330 or 340 nominees that have been brought forward by the President. Only one of those 300-plus nominees has been voted down on this floor.

We now have two nominees that have been held up for some time because they have been particularly controversial, and they are nominees to a particularly controversial circuit. That is what the Senate ought to do. We are not a potted plant. We are not a rubber stamp. We have given fair and just consideration to nominee after nominee after nominee of this President. We have confirmed his nominees overwhelmingly; 300-something to 1 have been confirmed to this date.

In terms of vacancies, nearly half of the vacancies that now exist in the Federal courts in this country are because the President has not submitted a nomination yet. This Senate cannot vote on a nomination when we do not have a nominee. The President is required to nominate. He ought to be careful. He ought not to rush in and pick the first name that comes out of a hat. But I am just saying that we are close to what experts have declared to be a full employment Federal judiciary.

I do not think that we have a crisis in failing to move nominees. We are going to continue to move them. We are going to have other votes on nominees this year; some which I will support and others who I will oppose.

I do not believe we ought to take these decisions about how to vote on a judicial nominee lightly. Having had to undergo, myself, an unsuccessful confirmation process for a Federal judgeship, I know better than most the thoughts and feelings these nominees have. That is why I always make sure I treat them in a respectful manner. I do not believe they are people who are unworthy in a lot of ways. What I believe is that their deeply held personal views are such that even though I might respect them as a person for those views, I do not believe that at this point in time, for this circuit, these nominees ought to be approved. I believe that very deeply. That is why I am here and share these comments.

I have done my best to ensure that the concerns I have raised about a nominee have been fair and objective over the 3 years I have been in this body. I try to ask questions that are appropriate and make sure that we are treating people fairly.

For a variety of reasons, I regrettably have concluded that Berzon and Paez should not be confirmed.

Let me talk about the Ninth Circuit in a fashion that I think is fair and gives an overall perspective.

First, we need to look at the problems that are in existence now in this circuit. It is the largest circuit, covering Alaska, Hawaii, the State of Washington, Oregon, California, Idaho, Nevada, Arizona, and Montana, as well as Guam and the Northern Mariana Islands. This amounts to roughly 38 percent of the country's area, approximately 50 million people.

In recent years, this circuit has been singled out to be the subject of increased scrutiny by the Supreme Court because of its tendency to engage in judicial activism.

In other words, roughly 20 percent of the American population lives in this circuit in which the rule of law is regularly being challenged by the issuance of activist opinions by ideologically driven Federal judges.

But do not just take my word for it. We have the article in the New York Times describing this circuit that I just quoted. The court's conservative majority—five members of the Supreme Court of the United States constitutes a majority; they are all not conservatives, a lot of them are more

moderate judges—they view it as something of a rogue circuit. That is strong language, I submit. If you look at the reversal figures for the Ninth Circuit, I believe you will tend to agree with the assessment made in that article.

In my experience as a Federal prosecutor, I found that a reliable index of a court's performance is the history of the circuit's reversals.

For the benefit of individuals who may be watching this debate at home and are not familiar with the workings of the Federal judicial system, a reversal rate is simply the measurement of the number of times a decision entered by that circuit is being reversed by the U.S. Supreme Court—changed or reversed because the lower court's decision was incorrect.

These figures illustrate the instances in which a judge, or in this case, a circuit is acting incorrectly. Reversal rates are a warning system of judicial activism and judicial error.

What do the statistics say? Do they lend validity to the New York Times charge I just cited? As a matter of fact, a fair reading of the reversal figures for this circuit does reveal that year after year, the Ninth Circuit leads the Nation in the number of times it is reversed in total numbers. It is the highest in percentage.

By way of illustration, allow me to present the reversal figures for the last three terms for which I have the data. In the 1996–1997 term, 28 cases were reviewed; that is, the Supreme Court agreed to hear 28 cases that arose out of the Ninth Circuit. Many times the Supreme Court does not hear a case unless it is important for them to hear it. They hear a case because a circuit rendered an opinion that they believe is plainly wrong. They hear a case if a circuit has rendered an opinion that is contrary to the other 11 circuit courts of appeals. They think there ought to be a uniform answer. So the Supreme Court renders the answer and, once it does, every circuit is bound by that answer. But in terms of the cases that are being heard by the Eleventh Circuit, hundreds, thousands of cases go through that on an annual basis. And most of those, even if wrong, will never be reviewed by the Supreme Court. The Supreme Court cannot and will not review every wrong case in America. It picks those that are most important, that will likely perpetuate an error, and tries to correct it and create a uniform system of law in the country.

Again, there were 27 out of 28 cases in 1996. That, in my view, is a stunning figure. It is a figure unmatched at any time by any circuit anywhere. In the 1997–98 term, the court reviewed 17 opinions and reversed 13 of those in the Ninth Circuit. In 1998–99, they reviewed 18 opinions and reversed 14. And this year, they have only heard, to date, six opinions from the Ninth Circuit, and they reversed all six of them.

This is from an article that appeared in the University of Oregon Law Review in 1998. The title of the article was ''Reversed, Vacated and Split: The Supreme Court, the Ninth Circuit, and the Congress.'' The author, realizing this is an important, newsworthy item, wrote a law review on it and said:

> Another interesting phenomenon is that the Supreme Court unanimously agreed—across the political spectrum—that the Ninth Circuit was wrong seventeen times during the [1996–97] term. This is a fairly remarkable record, considering that the rest of the Circuits combined logged in with only twenty unanimous votes, seven of which were affirmances.

Only 13 unanimous reversals throughout the whole United States, 17 in the Ninth Circuit. This circuit is out of step, in my view. In other words, over the 3-year span from 1996 through 1999, the Ninth Circuit has reversed 54 of 63 cases examined by the U.S. Supreme Court. That means that of the cases the Supreme Court has reviewed, the Ninth Circuit has been wrong a staggering 86 percent of the time. No other circuit in my analysis approaches these kind of numbers.

If this number were not bad enough on its own, it becomes truly appalling when it is compared to the number of reversals in the other circuits. Over the same 3-year period in which the Ninth Circuit was reversed 54 times, the next highest total number of reversals in any circuit was 14 out of 24 cases reviewed occurring in the Eighth Circuit and 14 reversals out of 22 cases in the Fifth Circuit.

In fact, the Ninth Circuit is so substantially wrong so much of the time that it even leads in the number of instances in which the U.S. Supreme Court is unanimous. Unfortunately, the Supreme Court has a limited docket and gets the opportunity to only review a relative handful of cases which any of the circuits or the Ninth Circuit adjudicates. So while the reversal rates are very revealing on their own, they fail in one troubling regard. They are unable to accurately quantify the number of activist or just plain wrong decisions that get through and become established law in the circuit because they cannot be reviewed by the Supreme Court. This is a sobering thought, and it is why we need to insist that we will only confirm judges to the Ninth Circuit who will move that court into the mainstream of American legal thought and not confirm judges who will continue the Ninth Circuit's leftward drift. That is the plain duty and responsibility of all of us in this body.

Many of these are just not trivial errors. If it is heard by the U.S. Supreme Court, it is a significant error. These reversal figures are not being inflated by mere inadvertence. Instead, they are the products of a seeming desire by the circuit to make law when the opportunity arises. In fact, I will describe one of the cases the Supreme Court has reversed in which the Ninth Circuit, without restraints, twisted the Constitution to further what appears to me to be their political goals.

In the case of Washington v. Glucksburg, the Ninth Circuit struck down the State of Washington's ban on assisted suicide by reading a constitutionally protected ''right to die'' into the 14th amendment. The 14th Amendment doesn't say anything about a right to die. I revere the text of the Constitution, and I assure my colleagues that there is nothing in that amendment that says anything about a right to die. Just look it up.

Despite the clear language of the 14th amendment, the Ninth Circuit judges chose to read into it the social policy outcome the circuit desired, overturning the will of the people of Washington who had voted for this law. That is what we are talking about. We have elected representatives in the State of Washington, elected by the democratic process, a free vote, held accountable. If they vote wrongly, they can be voted out of office. But what about Federal judges who are appointed. The only review they ever get is in this Senate. If we fail—and we do too often—they just go right on the bench and serve for life. No matter how wrong their opinions are, they get to stay in there. Who ought to set policy in America if we have a republic? I believe this a responsibility of the elected branch, not the lifetime-appointed branch.

The reason these issues are important is that it goes to the question of fundamental rights of the people to set the standards in America. The Ninth Circuit threw out the law that was passed by the legislature because the Ninth Circuit judges chose to read into it the social policy they desired even though it meant overturning the will of the people. This is what we classically call judicial activism. In an ironic twist, the Ninth Circuit employed their apparent belief in a living Constitution, which is what liberal people say the Constitution is, a living document. It is a piece of paper; it is not living. It is a contract with the American people entered into by our ancestors. The Ninth Circuit evidently said it is a living document, and, ironically, they read into this living document a right to die.

Upon review, the U.S. Supreme Court corrected the Ninth Circuit and restored the validity of Washington State's ban on assisted suicide. In blunt language, the U.S. Supreme Court reminded the Ninth Circuit that:

> * * * in almost every State—indeed, in almost every Western democracy—it is a crime to assist suicide. The States' assisted suicide bans are not innovations. Rather they are longstanding expressions of the States' commitment to protection and preservation of human life. * * *

I submit to you, the Supreme Court was directing that language to them directly. The judges on that circuit knew that was a rebuke, in my opinion. In fact, the Supreme Court further used the Glucksburg case to illustrate just how far out of the mainstream the Ninth Circuit is. The Supreme Court wrote further:

> Here * * * we are confronted with a consistent and almost universal tradition that

has long rejected the asserted right, and continues to explicitly reject it today, even for terminally ill, mentally competent adults. To hold for the respondents [the way the Ninth Circuit did] we would have to reverse centuries of legal doctrine and practice, and strike down the considered policy choice of almost every state.

But these unelected judges, with lifetime appointments, in no way accountable to the American people, just blithely go in there and wipe out the right, the statute of the State of Washington, and claim that the 14th amendment to the Constitution of the United States directed them to do so. And that is bogus because there is nothing in the 14th amendment that says anything of the kind. They got busted by the U.S. Supreme Court for it. That is just one of the cases. This is a recent one, and that is the reason I quoted it.

Glucksburg does not stand by itself on this dishonorable list of activist Ninth Circuit opinions that have been struck down, of course, but it is a perfect illustration of judicial arrogance that seems to permeate many judges, particularly in this circuit, and it helps frame the point that many of us who care about maintaining the rule of law in this country constantly make. We have a responsibility as Senators to ensure that the judicial branch is composed of individuals who will faithfully interpret the Constitution and the laws of this country. If we have doubts about a nominee's ability to do that, then we have a responsibility, a constitutional duty, if you will, under our advise and consent power to reject the nominee.

The President has the power to nominate, but we are given the power to advise and consent, which means in effect, in the words of the Constitution, we have a right to reject a nominee if we do not consent.

While statistics and written opinions are useful in looking at this troubled circuit, they do not get to the heart of the matter in that they don't answer the fundamental question as to why this circuit behaves in such an aberrational manner. I have looked at these issues and what legal analysts have said, and I want to share findings with you. Essentially, my findings strongly support an argument that one of the core problems with the Ninth Circuit is its composition of judges.

The Oregon State Bar Bulletin, in 1997, identified the current composition of judges on the Ninth Circuit as a primary cause of the circuit's extraordinarily high reversal rate. In fact, the author found:

There is probably an element of truth to the claim that the Ninth Circuit has a relatively higher proportion of liberal judges than other circuits. . . .

Furthermore, the analysis concluded:

The effect of the Carter appointments is that, relative to other circuits, there is a greater likelihood that a Ninth Circuit panel will be comprised mostly of liberals. This may result in decisions in some substantive areas that are out of step with the current thinking of the Supreme Court and other circuits.

In other words, when you have a substantial number on there, and a panel is randomly selected of three judges to hear a case, that is the way they do it. Three of the 20-some other judges will be selected to be on the panel. All three of them could be activist selectees. So the opinion may not even really speak for the Ninth Circuit. That points out again how important it is that we have a balance on the circuit to avoid panels routinely coming up that are out of step with mainstream legal thinking of the Supreme Court and other circuits throughout the United States.

One of the big reasons for this is, there was a major expansion of the size of the Ninth Circuit during President Carter's administration. It allowed him to make a number of appointments—an incredibly large number of appointments—and now we see that President Clinton has similarly successfully appointed a large number. Of the 23 judges that are active on the circuit, Democratic Presidents have appointed 15 of them. In fact, President Clinton has already appointed 10 and confirmed them to this circuit, and he has 5 additional nominees, including Paez and Berzon, awaiting Senate action, giving him the opportunity to have personally, himself, appointed 15 of the 28 judges.

So it is easy to see why activists and liberals are interested and chomping at the bit to push these nominations through, so it will solidify the stranglehold that Democrats and liberal activists have on this court. In fact, this is the impetus that drives me to believe we need to and are justified in reviewing more carefully nominees to this circuit. It is all right for there to be Democrats and for people to be liberal; every judicial nominee who has come up here since the Clinton Administration took office has been a Democrat and liberal. But the question for these nominees is: Will they remain disciplined and honor the law? Do they have a history and a tendency to impose their will under the guise of interpreting law? This is the fundamental question we have to answer.

I voted against Raymond Fisher to the circuit last year as I believed he was an activist nominee who would perpetuate this circuit's leftward drift, and I was joined by 28 colleagues in opposition to that nomination. I was able to support the nomination of Ronald Gould to the circuit after reviewing his record and hearing him in the Judiciary Committee. I believed him to be someone who was likely to serve as a moderating force to temper the activism of this circuit, and I believed his nomination was proof that my efforts, which I communicated to the White House, to begin sending moderate nominees forward was beginning to pay off. Regrettably, however, neither Judge Paez nor Mrs. Berzon meets that standard. I do not believe they will restore balance. As a matter of fact, I believe their nominations represent a further move to the left.

Let's talk about Judge Paez. I don't have anything against him personally. He is a fine man, and he has a fine family. But it should be noted that both of these nominees, Berzon and Paez, were controversial even in the Judiciary Committee. Both came out of the committee with only a 10–8 vote—pretty unusual—which is the highest level of opposition any judicial nomination faced in the committee. This vote reflected serious concerns committee members have with regard to the records these two nominees have compiled over their careers. In my opinion, the record of each indicates that confirming them to this circuit would be like adding fuel to the fire.

I want to begin this discussion by focusing first on Judge Paez. First, he is, in fact, a self-proclaimed activist. This is remarkable. If there is one thing the Ninth Circuit does not need, it is a nominee who will maintain activist traditions. However, his own words show that he is just that. First, he called himself a person with ''liberal political views.'' While this is hardly incriminating in itself, these statements do indicate some of the tendencies he might have. In his own words, he described his judicial philosophy as including an appreciation for—I will read this to you and ask you to think about these words carefully. This is from the Los Angeles daily Journal:

The need of the courts to act when they must, when the issue has been generated as a result of the failure of the political process to resolve a certain political question. . . .

So as a failure, in his view, of the political process to resolve a certain political question, the courts can act, and they must act.

He goes on to say:

because in such an instance [Paez explained] ''there's no choice but for the courts to resolve the question that perhaps ideally and preferably should be resolved through the legislative process.''

Now, that is a statement by an already sitting judge that a judge has the power, when a legislative body fails to act, to do what that judge believes he must to solve the policy problem before him. I submit to you, that is the very definition of what activism by the judiciary is.

Think about this. When a legislative body fails to act, it has made a decision just as certainly as if it had decided to act. A decision not to act is a decision. It is a decision made by elected representatives, and if the people who send them to Washington or to the State legislature don't agree, they can remove them from office. But can you remove a Federal judge who declares he has a right to act when the legislature does not? Can you remove that person? No, you cannot, under the Constitution, because he has a lifetime appointment with no ability to be reviewed whatsoever. That is one of the most thunderous powers ever given by our Founding Fathers, I have to say. In many ways, it works well. Judges are free, for the most part—Federal judges

who I have practiced before for 15 years during the majority of my career as a professional lawyer in Federal court, almost entirely. I respect Federal judges. But when you have a Federal judge who has an activist mentality, who believes that he or she has the power to solve political questions when the legislature does not act, you have the makings of a rogue jurist, and you cannot contain that person. It costs litigants thousands and thousands of dollars to appeal their rulings. They cannot always get to the Supreme Court. The Supreme Court is too busy. Even if they have a bad ruling, they can't always get there to get it reversed. Sometimes they are just stuck by these rulings no matter what they do.

That is wrong. That is a philosophy of adjudication that is false. It is precisely what Americans are concerned about. It should not be affirmed by this body in approving this judge to a circuit that is already out of control, in my opinion.

The record indicates that the judge is hostile to law enforcement. We have to be careful about that. I prosecuted many years, as I said. A judge can rule against a prosecutor, and he cannot appeal. If he rules against a defendant, the defendant can appeal.

Mrs. BOXER. Mr. President, will the Senator yield for a question on this very point?

Mr. SESSIONS. Very well.

Mrs. BOXER. I thank my friend.

Is the Senator aware that Judge Paez has been endorsed by the National Association of Police Organizations, Executive Director Robert Skully, the Los Angeles Police Protective League Board president, the Los Angeles County Police Chief Association, the Los Angeles Association of Deputy Sheriffs, the commissioner of the California Department of Highway Patrol, and a whole host of Republicans and Democrats alike in law enforcement and on the bench?

I am surprised that my friend would make the statement that the judge is hostile to law enforcement when, in fact, he has tremendous support from law enforcement.

Mr. SESSIONS. Mr. President, I was going to mention a few reasons for that.

I believe his record would indicate that he is not going to provide the kind of balanced adjudication that would be required in law enforcement matters.

For example, shortly after the judge was nominated, Los Angeles newspapers—I know the Senator supported his nomination, or was responsible perhaps for it—were filled with quotes made by his supporters. One supporter happened to be Ramona Ripston, the executive director of the American Civil Liberties Union of Southern California. Now, I would like to state for the RECORD that I doubt that the ACLU shares my concerns about the Ninth Circuit's activist bent. In any event, Ms. Ripston welcomed Paez' nomination to the Federal Bench describing Judge Paez as: ''A welcome break after all the pro-law enforcement people we've seen appointed to the state and federal courts''.

From the ACLU's position, Ms. Ripston's support for Judge Paez appears to be well-justified, as Judge Paez soon began to issue anti-law enforcement opinions. One case in point involved the case of Los Angeles Alliance for Survival v. City of Los Angeles, in which Judge Paez granted an injunction sought by the ACLU which prohibited the city's ordinance prohibiting aggressive panhandling from taking effect.

The city had an ordinance against aggressive panhandling passed by the people of Los Angeles. And a judge just up and threw it out, and said it was unconstitutional; no matter what you pass, I am the judge; no good, out.

The ordinance, incidentally, was passed following the stabbing death of an individual who would not give a panhandler 25 cents. In his decision, Judge Paez viewed the Los Angeles ordinance as ''facially invalid'' under the ''Liberty of Speech Clause''—I don't know exactly what that is. But the ''Liberty of Speech Clause'' is found in the California's State Constitution.

Listen to how one legal commentator described the judge's ruling:

> Judge Paez struck down the law as an unconstitutional restriction on ''speech'' and issued a preliminary injunction against its enforcement. He found that the ordinance constituted ''content based discrimination'' because it applied only to people soliciting money. Just hope Judge Paez doesn't get his hands on any laws against extortion, bribery or robbery. ''Stick 'em up'' could become Constitutionally protected speech in certain parts of California . . . The identical law has been upheld in other parts of California by other federal judges, but thanks to Judge Paez, the ordinance lawfully enacted over two years ago has yet to be enforced in Los Angeles.

The PRESIDING OFFICER. All time for the opponents of the nomination has expired. The time between now and 5 o'clock belongs to the proponents.

Mr. SESSIONS. I would ask unanimous for one minute.

Mrs. BOXER. Reserving the right to object, and, of course, I shall not object, we would like one minute on our side as well. Senator KENNEDY and I will divide the time.

Thank you.

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

Mr. SESSIONS. Mr. President, I point out in that case the Ninth Circuit asked the California Supreme Court for an advisory opinion. The California Supreme Court reversed Judge Paez' opinion, finding it to be erroneous, and condemned Judge Paez's ruling in exceptional strident terms stating:

> As noted above, the regulation of solicitation long has been recognized as being within the government's police power. . . . If, as plaintiffs suggest, lawmakers cannot distinguish properly between solicitation for immediate exchange of money and other kinds of speech, then it may be impossible to tailor legislation in this area in a manner that avoids rendering that legislation impermissibly overinclusive. In our view, a court [Judge Paez] should avoid a constitutional interpretation that so severely would constrain the legitimate exercise of government authority in an area in which such regulation long has been acknowledged as appropriate.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, will you let me know when I have used seven minutes? The rest of the time will be yielded to Senator KENNEDY.

Mr. President, I am very pleased to be here.

Finally, we are debating the nominations of Richard Paez and Marsha Berzon, two eminently qualified people for the Ninth Circuit. We have heard a lot of complaining about the Ninth Circuit. I think it is important to note that many of the opinions cited on the other side of the aisle as being overturned were written by Reagan appointees.

This isn't about politics. This is about allowing a court to function for the justices, whether they are appointed by Ronald Reagan, or George Bush, or Bill Clinton, to give it their best judgment. We have nominated two people who would add a tremendous amount to the Ninth Circuit.

Instead of the negativity we have heard today, I want to put a human face on these two nominees who have waited so long for this day.

The first one I want to talk about is Marsha Berzon. I have a photo. Here is Marsha with her husband and children.

There is a reason I have done this. I think it is important when we hear about the candidates; they have kind of become statistics. People talk about how many years it has taken.

Here is Marsha. Here is her family. I want to talk a little bit about this eminently qualified woman. She is an outstanding woman. She has displayed in her career a strong sense of integrity, dedication, and compassion, the very characteristics we should expect any Federal judge to have.

She has built a distinguished career as an attorney, and beyond that she has shown through her activities in the community a real caring and concern. She is an impassioned teacher and a published author. She is a wife and mom. She is an extraordinary person who deserves confirmation.

I am not going to go through all of her incredible accolades through college and law school because I have a feeling we will be talking about these nominees at length at another time.

I will talk a little bit about her experience with Federal court issues. She specializes in U.S. Supreme Court representation. She has argued four cases before the Supreme Court and has submitted over 100 briefs to the Court on behalf of a broad spectrum of cases. In the past 5 years, she has acted as chief counsel on five Supreme Court cases, as well as cocounsel before the Court on numerous other occasions.

This is the kind of support that Marsha Berzon has. Let me read what Senator HATCH wrote in her favor.

I am impressed by Miss Berzon's intellect, accomplishments and the respect she has earned from labor lawyers representing both management and the unions.

I do appreciate Senator HATCH's kind words and his decisive action in behalf of Marsha Berzon.

Former Republican Senator James McClure of Idaho, in support of Marsha, stated:

What becomes clear is that Miss Berzon's intellect, experience, and unquestioned integrity have led to strong and bipartisan support for her appointment.

Mr. President, the gentleman who ran against me the first time I ran for Congress in 1982, Dennis McQuaid, a Republican attorney, said:

Unlike some advocates, Ms. Berzon enjoys a representation devoid of any remotely partisan agenda.

He goes on to say:

Frankly, her presence will enhance the reputation of the ninth circuit.

We can go on and on with quotes from her opposing counsel. She has support from the Los Angeles County Professional Peace Officers Association. They wrote that she is analytical, fair and thorough.

When it comes to Marsha Berzon, I hope we will have a tremendous vote for her. She deserves that vote. She has waited 2 years. I hope she will get it.

Equally important and equally wonderful in terms of a nomination that stands on its own merit is Judge Richard Paez. Look at this man. He has been on the bench for many years. Behind him are photographs of his children. He has been married for many years, another wonderful family man and a wonderful jurist.

This Senate has already confirmed Richard Paez to a seat on the district court, and he has shown himself to be an incredible jurist. I don't have time to go through all the accolades. He was the first Mexican American on that particular bench in Los Angeles. He has won the respect of law enforcement, attorneys practicing in his courtrooms, and local scholars.

When Members poke holes in Richard's record, we will have time in the next 2 days to respond to every single example because there has been tremendous misstatement.

In the remaining short time I have, I will quote lawyers who have appeared before him. These are anonymous quotations that appeared in a review.

He is a wonderful judge. He is outstanding. He rates a 12 or 13 on a scale of 10.

Another:

He is highly competent, one of the smartest people on the bench; thoughtful and reflective.

Another:

I don't know anyone here who hasn't been exceedingly impressed by him. He does a great job.

Another:

He is very well represented. He knows more about a case than the lawyers will.

And another:

He has a great temperament. He never says or does anything that is off. He has a very good demeanor. He is professional. He doesn't have any quirks. He is very fair. He has a sense of justice.

It goes on.

Mr. President, we have some terrific editorials in behalf of Judge Paez that at another time I will have printed in the RECORD.

In closing this particular brief presentation, I thank my colleagues for listening. We have two incredible nominees deserving a yes vote. I hope we can all celebrate when this is behind us and as a Senate confirm these two excellent people.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I yield myself 6 minutes.

I ask my friend and colleague from California, there was reference made on the Senate floor a few moments ago about a Los Angeles Daily Journal article that reviewed a variety of Judge Paez's rulings, which I think is fair to point out.

I wonder whether the Senator could confirm that in that Daily Journal review, seven cases were selected by the Los Angeles Daily Journal that would most effectively test the ability of Judge Paez to serve on the Ninth Circuit. The Journal asked 15 experts, including a fair balance of liberal and conservative law professors and attorneys, to evaluate Judge Paez's legal rulings. The Journal concluded:

The portrait that emerged is of a thoughtful, unbiased, even-tempered judge, propelled into the political spotlight, only to be trapped into a seemingly never-ending and bitterly polarized nomination process. . . . Of the 15 legal experts who examined Paez's ruling for the Daily Journal, 13 praised them, using descriptions such as ''clear, concise, and straightforward,'' ''clearly written and carefully reasoned,'' and ''scholarly and thorough.''

This is the import of the Los Angeles Daily Journal, as I understand. One could draw, perhaps, a different conclusion from the earlier references.

Would the Senator agree my characterization was a more accurate characterization than referenced earlier?

Mrs. BOXER. The Senator from Massachusetts is correct. I quote from the headlines in this paper: ''Paez's Opinions Praised as Well-Reasoned.'' Another says, ''Experts Say His Rulings Will Stand the Test of Time.''

My friend is right; this is a positive story. I think if every Senator read this story, there would be no question he should be confirmed.

Mr. KENNEDY. It was a reference to an objective evaluation. In that evaluation, the reviewers came to the same conclusion that the Bar Association arrived at, which was that the cause of justice in the Ninth Circuit would be well served and the people highly served with his confirmation.

I join with my friend and colleague from California, as well as others, in urging the favorable consideration of Marsha Berzon and Richard Paez for the Ninth Circuit Court of Appeals. They are exceptional nominees who have waited far too long for action.

The delay in reviewing the nominations is a case study in the failure of the Senate to deal effectively with judicial nominations. That failure has left the courts with 29 judicial emergencies, and is the result of the Senate's adbication of its constitutional responsibility to act on judicial nominees.

Marsha Berzon, as the Senator has pointed out, is an outstanding attorney. She is a graduate of Harvard/Radcliffe College and the University of California Law School. She clerked for the Ninth Circuit Court of Appeals and the U.S. Supreme Court—rare commendations for a young lawyer.

Nationally known as an appellate litigator in a highly regarded San Francisco law firm, she has written more than 100 briefs and petitions. She received strong recommendations from a bipartisan list of supporters, from major law enforcement organizations, and from those who have opposed her in court.

As our chairman, Senator HATCH, commented last June, Marsha Berzon ''is one of the best lawyers I've ever seen.''

It reflects poorly on the Senate that such a gifted lawyer was denied a vote on the Senate for so long.

The Senate's shabby and insulting treatment of Richard Paez is worse. He has almost two decades of judicial experience and received the highest rating from the American Bar Association. He was first nominated more than 4 years ago to serve in the Ninth Circuit. Judge Paez graduated from Brigham Young University and Boalt Hall Law School. Early in his career, he represented low-income clients. He later served in the Los Angeles Municipal Court, and the Los Angeles Superior Court, the California Court of Appeals, and 5 years ago he was nominated and appointed to the U.S. District Court for the Central District of California.

Clearly, Judge Paez has the experience and the ability to serve with great distinction on the Ninth Circuit. He has the support of former California state judge and Republican Congressman JIM ROGAN, as well as the Sheriff, the District Attorney, and the Police Officers Association of Los Angeles.

We rarely have two nominees who are as well qualified with the breadth of support these nominees have. We are fortunate to have these two nominees who are willing to serve in the judiciary. What they have been put through in terms of the failure of this body to act, I think, is indeed unfortunate.

Now we do have that opportunity. I join with all of my colleagues to urge the approval of both of these nominees. Since his nomination in January 1996, 4 years ago, Judge Paez has been approved by the Senate Judiciary Committee twice. Surely he deserves an affirmative vote by the full Senate. It is

time for the Senate to stop abusing its power.

Over 200 years ago, the Framers of the Constitution created a system of checks and balances to ensure that excessive power is not concentrated in any branch of government. The President was given the authority to nominate federal judges with the advise and consent the Senate. The clear intent was for the Senate to work with the President, not against him, in this process.

In recent years, however, by refusing to take timely action on so many of the President's nominees, the Senate has abdicated its responsibility.

Both of these nominees are uniquely well qualified. Both have demonstrated outstanding qualities and abilities to serve in the courts of this country and serve the cause of justice in this nation. I hope both of them will be speedily approved by the Senate.

At long last the Senate is considering the nominations of Marsha Berzon and Richard Paez for the Ninth Circuit Court of Appeals. They are both exceptional nominees who have waited far too long for action by the Senate. Indeed, the delay in reviewing these nominations is a case study in the failure of the Senate to deal effectively with judicial nominations. That failure has left the courts with 29 judicial emergencies, and is the result of the Senate's abdication of its constitutional responsibility to act on judicial nominees.

Marsha Berzon is an outstanding attorney with an impressive record. She is a graduate of Harvard/Radcliffe College and the Boalt Hall Law School at the University of California, Berkeley. She clerked for both the Ninth Circuit Court of Appeals, and the U.S. Supreme Court.

She is currently a nationally known appellate litigator with a highly regarded San Francisco law firm. She has written more than 100 briefs and petitions in the Supreme Court, and has argued four cases there. She has received strong recommendations from a bipartisan list of supporters, from major law enforcement organizations, and from those who have opposed her in court. She has argued in many U.S. Circuit Courts of Appeals, U.S. District Courts, and at all levels of the California state court system. She has represented numerous private clients, as well as the governments of the States of California and Hawaii, and the City of Oakland, California. Senator HATCH commented last June that Marsha Berzon, ''is one of the best lawyers I've ever seen.'' She was first nominated by President Clinton on January 27, 1998—over two years ago—and it reflects poorly on the Senate that such a gifted lawyer was denied a vote by the full Senate for so long.

The Senate's shabby and insulting treatment of Judge Richard Paez is even worse. He has almost two decades of judicial experience. He received the highest rating from the American Bar Association, and was first nominated more than four years ago—more than four years ago—to serve on the Ninth Circuit.

Judge Paez is a graduate of Brigham Young University and Boalt Hall Law School. Early in his career, he represented low income clients. He later served on the Los Angeles Municipal Court, the Los Angeles Superior Court, and the California Court of Appeals. Five years ago, Judge Paez was appointed to the United States District Court for the Central District of California.

Clearly, Judge Paez has the experience and the ability to serve with great distinction on the Ninth Circuit. He has the support of former California state judge and Republican Congressman JIM ROGAN, as well as the Sheriff, the District Attorney, and the Police Chiefs' Association of Los Angeles County.

Since 1991, Judge Paez has been appointed twice by the chief justice of the California Supreme Court to serve as a member of the California Judicial Council, the policy-making body for the California judiciary.

Last month, the Los Angeles Daily Journal reviewed a variety of Judge Paez's rulings, and selected seven cases that would most effectively test his ability to serve on the Ninth Circuit. The Journal then asked fifteen experts, including a fair balance of conservative and liberal law professors and attorneys—to evaluate Judge Paez's legal rulings. As the Journal concluded,

> The portrait that emerged is of a thoughtful, unbiased and even-tempered judge, propelled into the political spotlight, only to be trapped in a seemingly never-ending and bitterly polarized nomination process. . . . Of the 15 legal experts who examined Paez's rulings for the Daily Journal, 13 praised them, using descriptions such as ''clear, concise and straightforward,'' ''clearly written and carefully reasoned,'' and ''scholarly and thorough.''

Even the ruling subjected to the greatest scrutiny was complimented by other prominent legal experts.

In its evaluation of Judge Paez, The Almanac of the Federal Judiciary notes that attorneys have praised him highly in the following terms. They say he is one of the smartest judges on the bench; he rates a 12 or 13 on a scale of one to 10; he is highly competent; he's very professional; and he's always fair. Despite what some contend, he is not anti-business, he is not anti-religion. He is a well-respected and right-minded judge.

Since his nomination in January 1996—over four years ago—Judge Paez has been approved by the Senate Judiciary Committee twice. Surely, he deserves an affirmative vote by the full Senate.

It is time for the Senate to stop abusing its power over nominations. Over 200 years ago, the Framers of the Constitution created a system of checks and balances to ensure that excessive power was not concentrated in any branch of government. The President was given the authority to nominate federal judges with the advice and consent of the Senate.

The clear intent was for the Senate to work with the President—not against him—in this process. In recent years, however, by refusing to take timely action on so many of the President's nominees, the Senate has abdicated its responsibility. By doing so, the Senate has seriously undermined the judicial branch of our government.

This kind of partisan stonewalling is irresponsible and unacceptable. It's hurting the courts, and it's hurting the country. Chief Justice William Rehnquist felt so strongly about the long delays in acting on nominees that he sharply criticized the Senate in his 1997 Year-End Report,

> Judicial vacancies can contribute to a backlog of cases, undue delays in civil cases, and stopgap measures to shift judicial personnel where they are most needed. Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal judiciary . . . Whatever the size of the federal judiciary, the president should nominate candidates with reasonable promptness, and the Senate should act within a reasonable time to confirm or reject them . . . The Senate is, of course, very much a part of the appointment process for any Article III judge. One nominated by the President is not ''appointed'' until confirmed by the Senate. The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.

Little has changed since Chief Justice Rehnquist made that statement in 1997. For decades, the average time from nomination to a final vote on a judicial nominee was 91 days. But in 1998, the delay more than doubled—to 232 days. Of the 65 judges confirmed in 1998, only 12 were confirmed in 91 days or fewer.

The trend continued in 1999. As of February 24, 2000, the average time between nomination and confirmation in the current Congress is 152 days.

In addition, it is women and minorities who have suffered the most during the impasse over judicial nominations. According to one study, it took an average of 60 days longer for non-whites than whites and 65 days longer for women than men to be considered by the Senate in the last Congress. Minorities have failed to win confirmation at a 35% higher rate than white candidates. In 1999, six out of the ten nominees who waited the longest were women and minorities.

While the Senate plays political games with the judiciary, the backlog of cases continues to pile up in the courts and undermines our judicial system. There are currently 76 vacant federal judgeships. Several more are likely to become vacant in the coming months, as more and more judges retire from the federal bench. Of the current vacancies, 29 have been classified as ''judicial emergencies'' by the Judicial Conference of the United States. That means that they have been vacant for 18 months or longer. Thirty-

four nominees are currently waiting for Senate action. Three nominees are pending on the Senate floor, 3 are waiting for a vote in Committee, and all the others are waiting for a Judiciary Committee hearing. Only four judges have been confirmed by the Senate so far this year.

The effect of Senate inaction is clear. At the circuit court level in Texas, the court's workload has increased 65% over the past nine years, with no increase in judges and three vacancies. In California in 1997, 600 hearings had to be canceled because of the large number of vacancies. This slowdown in judicial confirmations is jeopardizing the integrity and viability of our judicial system.

The Senate has a constitutional duty to work with the President to confirm judicial nominees—particularly at a time when Congress is shifting more responsibility to the courts. Members should not use the excuse of an election year to stall this process. In 1988 the Democratic-controlled Congress confirmed 42 judicial nominees, and in 1992, they confirmed 66.

Opponents of Berzon and Paez argue that the high reversal rates of the 9th Circuit by the Supreme Court are proof that the Ninth Circuit is too liberal. This argument is false and a poor excuse for Republican stonewalling. In fact, from 1998 to 1999, five circuits had reversal rates higher than or equal to the Ninth Circuit. The Ninth Circuit reversal rate was lower than the combined reversal rate of the state appellate courts. And from 1996 to 1997—the year that critics point to—the Ninth Circuit had lower reversal rates than the Second, Fifth, Seventh, D.C., and Federal Circuits. As Chief Judge of the Ninth Circuit, Procter Hug, Jr., has written,

> . . . the reversal rate has little to do with the effectiveness of any circuit court of appeals. For example, the 13, 14, or 20 cases reversed in a term were out of 4,500 cases decided on the merits in the Ninth Circuit. The reversal rate in any circuit should also have little to do with the nomination or confirmation of judges to fill vacancies on a court.

The Senate has a constitutional obligation to fill the existing judicial vacancies. After such long delays, a vote in favor of Marsha Berzon and Richard Paez would be a significant step in the right direction. I urge my colleagues to support both of these highly qualified nominees.

Mr. DOMENICI. Mr. President, I rise today to announce that I intend to vote to confirm Judge Richard Paez to the Ninth Circuit. Judge Paez has waited four years for this vote, and I believe that the time has come for the Senate to perform its constitutional duty to advise and consent on this nomination.

I have reviewed Judge Paez's record, including some of the issues which have proven controversial over the last four years, and am satisfied that he has adequately responded to the concerns raised by some in this body about his fitness to serve on the Ninth Circuit.

Particularly, Judge Paez has expressed his regret about commenting publicly about two California ballot initiatives while he served on the federal bench. Affirmative action and welfare benefits for illegal immigrants are two issues which inspire passion in many people on both sides of the political aisle. While I understand, but do not necessarily agree with Judge Paez's comments and concerns about these two initiatives, I think he also knows that he made a mistake. That mistake should not prevent his elevation to the appellate court.

I also have reviewed several of Judge Paez's more controversial opinions. While I cannot say that I agree with some of his legal conclusions, I do believe that he has a well-deserved, bipartisan reputation for fairness, and for being a thoughtful, scholarly jurist. His fifteen years as a municipal and federal district court judge will serve him well on the Ninth Circuit.

Mr. President, Judge Paez has earned bi-partisan support from a variety of sources. Not only is he universally supported by the Hispanic community, but he also has received the endorsement of law enforcement officials, district attorneys and the business trial bar in California. I believe we have taken enough time to study Judge Paez's record on and off the bench. Despite the fact that Judge Paez and I come from opposite ideological positions, I am ready to join a majority of this body, Democrats and Republicans, in support of his confirmation. Thank you and I yield the floor.

Mr. SPECTER. Mr. President, this afternoon the Senate takes up the nominations of Ms. Marsha Berzon and also Judge Richard A. Paez. These nominations have been pending in the Judiciary Committee for a considerable period of time. I supported both of those nominees in moving them to the floor from the Judiciary Committee.

Ms. Berzon has an outstanding record academically and as a practicing lawyer. She received her bachelor's degree from Harvard and Radcliffe colleges in 1966. She received her J.D. degree, doctorate of law, from the University of California, Boalt Hall School of Law in 1973. Thereafter, she clerked for Ninth Circuit Judge James R. Browning and then for Supreme Court Justice William J. Brennan.

She has been in the practice of law since 1975 and most recently, from 1978 to the present time, with the firm of Altshuler, Berzon, Nussbaum, Berzon & Rubin, where she has had a very active litigation practice. She argued four cases before the Supreme Court of the United States, which is a large number of cases for a practicing lawyer to have before the Supreme Court.

That kind of appellate practice is a strong indicator of her preparation for work as an appellate court judge on the Ninth Circuit to which she has been nominated.

There have been objections raised to Ms. Berzon on ideological grounds. It is my view that this kind of a challenge ought not to be a basis for defeating a nomination to the Federal court.

She has opposed as a personal matter the death penalty, as many nominees do on a personal level, but has stated her willingness to follow the law in imposing the death penalty.

She has been supported by many police organizations, which I ordinarily would not mention except that the challenge has been made to her qualifications based upon her opposition to the death penalty.

I think it appropriate to note that she has been supported by a number of law enforcement organizations, including the National Association of Police Organizations, the California Correctional Peace Officers Association, the International Union of Police Associations, and the Los Angeles County Professional Police Officers Association.

I have attended the hearings on Ms. Berzon, which have been very detailed. I recall one day the hearing was interrupted. We came to the floor to vote and later continued the hearing in one of the Appropriations Committee rooms. On the basis of that hearing and her familiarity with the law and her extensive practice, especially her appellate practice, I believe she is qualified to be confirmed for the Ninth Circuit. Accordingly, I urge my colleagues to support her.

Judge Richard Paez is also on the list for confirmation. Judge Paez brings a distinguished record. He is a graduate of Brigham Young University where he received his Bachelor's degree in 1969; a graduate from Boalt Hall, University of California at Berkeley in 1972; worked for the California Rural Legal Assistance as a staff attorney from 1972 to 1974; took on work for the next 2 years for the Western Center on Law and Poverty as a staff attorney; and from 1976 to 1981 was with the Legal Aid Foundation.

Those are tough jobs, not high-paying jobs. I know from my work as district attorney of Philadelphia where I saw public defenders work—did a volunteer stint many years ago in the public defender's office—I know the pay in those positions and I know the nature of the work. It is a real contribution.

From 1981 to 1994, Richard Paez was a judge on the Los Angeles municipal court, and from July of 1994 until the present time, he has been a U.S. District Judge for the Central District of California.

A number of objections have been raised to Judge Paez. One, that he made a speech in 1995 where he criticized a couple of initiatives in California: Initiative 187, on benefits to illegal aliens; and a second, No. 209 on affirmative action.

I don't think a judge gives up his right to freedom of speech when he is on the bench. It could be said it would be a little more prudent not to speak on matters that might come before the court. But if the matter does come before the court, there are many other

judges who can undertake the litigation matter on recusal. Even if Judge Paez had not spoken up on the matters and had such strongly held views, that probably would have been an appropriate matter for recusal in any event. I don't think speaking up on those matters is a burden or inappropriate for his judicial duties. Again, it might be better not to do that, but it is not a disqualifier.

Objections have been raised on two matters where he refused to dismiss a case brought against Unocal involving charges of abuse of human rights in Bosnia—a pretty tough standard to get a case dismissed on a preliminary motion. There again, not a weighty matter which would warrant disqualification.

An issue was raised at him being a municipal court judge handling a case involving Operation Rescue where there was an issue of whether he stormed off the bench or simply called a recess for a cooling off period, and some issue as to how he treated people in the audience who were waving Bibles, an issue of whether he threatened to take the Bibles away.

Again, I think the aggregate of these three matters are not sufficient to rise to the level of disqualification.

There is one matter which concerns me and that was a plea bargain which Judge Paez handled on a case involving John Huang. I have reviewed that matter in some substantial detail on the notes of testimony, of the sentencing, and of the Government's brief filed on the downward departure and believe that the Government did not present all the evidence, all the materials which should have been presented at the John Huang sentencing. I have discussed the matter with Judge Paez by telephone.

There has been a pattern on plea bargains where the Department of Justice has, in my judgment, not done the vigorous, forceful work that a prosecutor ought to do in the plea bargain. One of those cases involves Dr. Peter Lee, where there were serious charges of espionage. I went to California and talked to the Chief Judge Hatter out there about that case and found there was insufficient information presented to Judge Hatter. I mention that because it is a parallel to the case involving John Huang with Judge Paez.

The Judiciary oversight subcommittee, which I chair, is looking into the Huang plea bargain, as we are looking into the Dr. Peter Lee plea bargain, as we shall look into other campaign finance matters, including the probation of Charlie Trie in the campaign finance case, and the probation of Johnny Chung in a campaign finance case. However, there were very serious matters which were not presented to Judge Paez. The essence of the complaint filed by the Department of Justice involved only $7,500 of illegal campaign contributions, and an obtuse, obscure reference in the Government's brief to a figure of $156,000 for the period covered by the conspiracy, which lasted from 1992 to 1994.

What the Government did not bring forward was information disclosed by the Governmental Affairs Committee that John Huang was involved in soliciting $1.6 million which was returned by the Democratic National Committee. In that was a $250,000 contribution from a John H. Lee, a South Korean businessman, which Huang collected, knowing that Lee was a foreign national, and also the Huang solicitation for arranging for Ted Sioeng, a foreign businessman, with connections I will not describe on the Senate floor, which should have been called to Judge Paez's attention.

After reviewing the records in the case, the notes of testimony at sentencing, and what was made available in the Government's memorandum, none of these matters were called to Judge Paez's attention.

I have made a request of Judge Paez, as I made a request of Chief Judge Hatter in the Dr. Peter Lee case, to examine the presentence report. That is customarily a confidential matter, but Judge Paez said on a showing of cause after notification of the parties, that might be made available to the Judiciary subcommittee on oversight.

I make these references to Judge Paez on this state of the record, and we are continuing to make the inquiries as to what the Government put on as to John Huang, but there is nothing on this record which suggests that Judge Paez knew of these other factors, which I think would have warranted a very different and a much more substantial sentence, just as I think had Chief Judge Hatter been informed about the details of Dr. Peter Lee, there would have been a different sentence in that espionage case.

These matters are now ripe for decision by the Senate. There has been some suggestion of a further investigation on this matter, but when Judge Paez's nomination has been pending since January of 1996, and all of the factors on the record demonstrate it was the Government's failure, the failure of the Department of Justice to bring these matters to the attention of Judge Paez and on the record, he has qualifications to be confirmed. I do intend, on this state of the record, to support his confirmation.

The PRESIDING OFFICER. All time has expired.

NOMINATION OF JULIO M. FUENTES, OF NEW JERSEY, TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT

The PRESIDING OFFICER. Under the previous order, the clerk will report the nomination.

The assistant legislative clerk proceeded to read the nomination of Julio M. Fuentes, of New Jersey, to be United States Circuit Judge for the Third Circuit.

Mr. LAUTENBERG. Mr. President, I want to start by thanking the Judiciary Committee—particularly Chairman HATCH and Ranking Member LEAHY—for moving the nomination of Judge Julio Fuentes through the committee process so efficiently.

Judge Fuentes clearly is the kind of candidate that we want on the federal bench. In many ways, his life demonstrates the promise of America—the idea that anyone committed to getting an education and working hard can build a distinguished career.

Judge Fuentes wasn't born to wealth or privilege. He was raised by a single parent—his mother who worked as a nurse. But he pursued his education diligently, earning a college degree while serving his country in the Army's Special Forces. Eventually, he earned not only a law degree but also two Masters degrees.

After completing law school, Judge Fuentes began building a successful legal practice, honing his skills as an associate with a Jersey City law firm. He later established his own firm and gained experience handling a wide range of criminal and civil matters.

In 1978, he was appointed a judge on the Newark Municipal Court, where he served until his appointment to the New Jersey Superior Court in 1987. As a Superior Court judge, he has presided over criminal cases and a wide range of civil disputes, including product liability actions, environmental suits, and property claims. He has also ruled on a number of federal and state constitutional issues.

In addition to his professional endeavors, Judge Fuentes has also volunteered his time to help members of the community. He has mentored many Hispanic youths and he has received several awards for his public service.

Judge Fuentes' hard work on and off the bench has earned the respect of his judicial colleagues, the lawyers who appear before him, and the people of New Jersey. The people who know him well describe him as ''bright,'' ''dedicated,'' and ''even-tempered.''

In short, I feel certain that Judge Fuentes' depth of experience, his legal knowledge, his compassion and his temperament would make him an exceptional federal judge.

Again, I thank Senators HATCH and LEAHY for their hard work on this nomination, and I urge all of my colleagues to vote to confirm Judge Fuentes.

Mr. SPECTER. Mr. President, I seek recognition today to express my support for the nomination of Julio M. Fuentes to be a judge on the Third Circuit Court of Appeals.

I recently had the opportunity to meet Judge Fuentes when he came before the Senate Judiciary Committee for his nomination hearing on February 22nd. At that time, I questioned the Judge on his experience and credentials for the bench and was persuaded that he will be able to meet the great challenge of serving on the Third Circuit.

Judge Fuentes has had a distinguished legal career. He earned his law

degree from the State University of New York in Buffalo in 1975. He then entered the practice of law in New Jersey and continued to practice for 7 years. While he was practicing, Mr. Fuentes was appointed to be a judge on the Newark Municipal Court, where he served from 1979 to 1987. In 1987, Judge Fuentes was appointed to the New Jersey Superior Court, where he has served until the present day.

His 20-plus years on the state bench have given Judge Fuentes a strong judicial background that will serve him well on the Third Circuit. Many of the issues that Judge Fuentes will encounter on the federal bench, from criminal law to torts to contracts, are ones with which he will be well acquainted from his time on the state bench. Other issues before the federal courts, such as antitrust and securities cases, will be new to Judge Fuentes. But I am confident that his experience has given him the skills and temperament needed to tackle these issues.

The Third Circuit is a prestigious court with a proud history. It has a tremendous volume of very high-powered litigation. I wish Judge Fuentes a long and productive career in this most important position.

Mr. TORRICELLI. Mr. President, it is with great pleasure that I rise to thank my colleagues for their support of the nomination of Judge Julio Fuentes to the Third Circuit Court of Appeals.

There has been much discussion of late of the slow pace at which the Senate has moved to confirm judicial nominees in the 106th Congress. It is a fact of which no one should be proud. Each judicial seat that we leave vacant slows the administration of the courts and access to justice for the American people.

That being said, I want to publicly thank Senator HATCH who has repeatedly—and admirably—demonstrated his commitment to moving nominees through the Judiciary Committee in a timely fashion. I want to thank both Senator HATCH and Senator LEAHY for their support in assuring Judge Fuentes' confirmation.

The vote that we took this evening on Judge Fuentes is an important step towards easing the burdens on the courts. It is also evidence that a qualified candidate with broad support can get a fair vote in this Senate and move quickly from a hearing to confirmation. Judge Fuentes' nomination was reported out of the Judiciary Committee just last week by a unanimous voice vote.

George Washington once said, ''The Administration of Justice is the firmest pillar of government.'' As I stand here today I am reminded of that quote because long after we all leave the Senate, those who sit on the Judiciary will continue to impact public policy and the lives of other Americans. When I recommended Judge Fuentes, I did so with the utmost confidence that he was well-suited to such great responsibility. In fact, I first considered Judge Fuentes for the position of District Court Judge. However, it soon became apparent that his stellar qualifications were so impressive that he deserved consideration for the Third Circuit. And I note with considerable pride that Judge Fuentes will be the first person of Hispanic descent to serve on the Third Circuit.

His career has been distinguished by a solid record of public service, which began in 1966 when he left college for three years to serve in the United States Army, including service in the Airborne Rangers. From his days in law school to his current tenure on NJ's Superior Court, he has demonstrated that he is an accomplished attorney who has made a commitment to improving the quality of justice in our society. I have no doubt that he will bring these same qualities to the federal bench.

A graduate of SUNY—Buffalo School of Law, Judge Fuentes began his legal career in private practice where he worked for 7 years on both civil and criminal matters. For his last three years in private practice, he also served as a part-time Judge on Newark's Municipal Court. Then in 1981, he assumed the bench full-time as a Municipal Judge where he remained until 1987 when he was promoted to the New Jersey Superior Court.

In his now 13 years on the Superior Court, he has built a reputation as a fair and able jurist. When you speak with those who have had the opportunity to work with Judge Fuentes throughout this distinguished career, they universally praise his integrity as well as the depth and breadth of his knowledge of the law. And those who know him well describe him as bright, dedicated, and compassionate.

I could not be more confident that Judge Fuentes is the right person to fill this seat—a view that is shared by those best in a position to know the Judge's qualifications. New Jersey's Governor Christie Whitman, the New Jersey State Bar Association, and the Hispanic Bar Association—both nationally and in New Jersey—have written letters enthusiastically supporting the Judge's nomination.

I am extremely proud to support Judge Fuentes nomination to the Third Circuit Court of Appeals. I know he will be a superb addition to the bench.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Julio M. Fuentes, of New Jersey, to be United States Circuit Judge for the Third Circuit? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN), the Senator from Missouri (Mr. BOND), and the Senator from Georgia (Mr. COVERDELL) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. FEINSTEIN), the Senator from Nebraska (Mr. KERREY), and the Senator from Minnesota (Mr. WELLSTONE) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. WELLSTONE) and the Senator from Delaware (Mr. BIDEN) would vote ''aye.''

The PRESIDING OFFICER (Mr. SMITH of Oregon). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 0, as follows:

[Rollcall Vote No. 34 Ex.]

YEAS—93

Abraham	Feingold	Lugar
Akaka	Fitzgerald	Mack
Allard	Frist	McConnell
Ashcroft	Gorton	Mikulski
Baucus	Graham	Moynihan
Bayh	Gramm	Murkowski
Bennett	Grams	Murray
Bingaman	Grassley	Nickles
Boxer	Gregg	Reed
Breaux	Hagel	Reid
Brownback	Harkin	Robb
Bryan	Hatch	Roberts
Bunning	Helms	Rockefeller
Burns	Hollings	Roth
Byrd	Hutchinson	Santorum
Campbell	Hutchison	Sarbanes
Chafee, L.	Inhofe	Schumer
Cleland	Inouye	Sessions
Cochran	Jeffords	Shelby
Collins	Johnson	Smith (NH)
Conrad	Kennedy	Smith (OR)
Craig	Kerry	Snowe
Crapo	Kohl	Specter
Daschle	Kyl	Stevens
DeWine	Landrieu	Thomas
Dodd	Lautenberg	Thompson
Domenici	Leahy	Thurmond
Dorgan	Levin	Torricelli
Durbin	Lieberman	Voinovich
Edwards	Lincoln	Warner
Enzi	Lott	Wyden

NOT VOTING—7

Biden	Feinstein	Wellstone
Bond	Kerrey	
Coverdell	McCain	

The nomination was confirmed.

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

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

The motion to lay on the table was agreed to.

• Mr. BIDEN. Mr. President, circumstances have prevented my being able to be here for the vote this evening on Julio Fuentes's nomination to the United States Court of Appeals for the Third Circuit, but I wanted to take this opportunity to make it clear that I am pleased to support his nomination.

Judge Fuentes is eminently qualified for this important position. After several years in private practice, Judge Fuentes has served the New Jersey community with honor first, as a judge on the Newark Municipal Court, and now, as a judge on the New Jersey Superior Court, where he has served admirably for well over a decade.

Judge Fuentes is an excellent jurist with an unblemished record and a man of integrity. He is regarded with great esteem within his community and has

received the endorsement of many different organizations. In fact, I understand that Judge Fuentes was originally recommended for a seat on the District Court in New Jersey, but the White House was so impressed after meeting him that the President nominated him to the Third Circuit instead.

I always monitor the nominations made to the Third Circuit with special interest because my own state of Delaware is part of that Circuit. And I can say without reservation that I am confident that Judge Fuentes will discharge his new responsibilities with distinction and will make a fine addition to that court. I commend the two Senators of New Jersey for their support of this nominee and am proud to join them.●

NOMINATIONS OF MARSHA L. BERZON AND RICHARD A. PAEZ—Continued

CLOTURE MOTIONS

Mr. LOTT. Mr. President, I understand there have been a couple of hours of spirited debate on the nominations of Judge Paez and Mrs. Berzon, which is certainly the right of the Senate. I am sure we will have some further spirited discussion about these nominees.

However, I have given my word that these two nominees should at least have the opportunity for a vote. We did work out an agreement last year, and I made a commitment that these two nominees would have a Senate vote on their confirmation. With that in mind, in order to accomplish this—while I had hoped it would not be necessary, again, I emphasize, as I did last year and earlier this year, I think it is a mistake to begin to have cloture votes on judicial nominations on the floor. We had one instance of that last year, and I said to my Democratic friends I thought that was a mistake, and pretty shortly thereafter we worked that out and moved that nomination.

I don't like to have to file cloture on these nominations either, but in order to fulfill the commitments that have been made and have a good debate but some limit on it where we would get a vote, I send a cloture motion to the desk on the nomination of Marsha Berzon to the Ninth Circuit Court of Appeals.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 159, the nomination of Marsha L. Berzon, to be United States Circuit Judge for the Ninth Circuit:

Trent Lott, Orrin G. Hatch, Susan M. Collins, Arlen Specter, Ted Stevens, Thad Cochran, James M. Jeffords, Robert F. Bennett, Richard G. Lugar, Chuck Hagel, Conrad Burns, John W. Warner, Patrick J. Leahy, Harry Reid of Nevada, Charles E. Schumer, and Tom Daschle.

Mr. LOTT. Mr. President, I send to the desk also a cloture motion on the pending nomination of Richard Paez.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 208, the nomination of Richard A. Paez to be United States Circuit Judge for the Ninth Circuit:

Trent Lott, Orrin G. Hatch, Susan M. Collins, Arlen Specter, Ted Stevens, Thad Cochran, Robert F. Bennett, Harry Reid of Nevada, Richard G. Lugar, Chuck Hagel, Conrad Burns, John W. Warner, Patrick J. Leahy, Charles E. Schumer, Tom Daschle, and Barbara Boxer.

Mr. LOTT. Mr. President, I ask unanimous consent that notwithstanding rule XXII, these cloture votes occur in the order in which they were filed at 5 p.m. on Wednesday, and that the mandatory quorum under rule XXII in each case be waived.

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

Mr. LOTT. Mr. President, it is my understanding that if cloture is invoked in each case, Senator SMITH of New Hampshire will require 5 hours of total debate on both nominations under his control, and following the conclusion of the time, the Senate would be in a position to vote in a back-to-back sequence on the confirmations of Berzon and Paez. I will not propound that request at this time but will put Members on notice that this is the fashion in which I see the Senate considering these nominations.

I have discussed that with Senator DASCHLE, and he understands that. Of course, there will be a need to have equal debate on both sides, if that is required by Senators.

I thank all my colleagues for their cooperation. I look forward to further debate on these nominees during tomorrow's session prior to the 5 p.m. back-to-back cloture votes. In light of this agreement, we can announce that there will be no further votes this evening.

Mr. DASCHLE. Mr. President, I know there is another unanimous consent to propound.

Let me briefly thank the majority leader for keeping his commitment. He and I both hoped we wouldn't have to file cloture. We may yet have the opportunity to vitiate cloture if something can be worked out. I am hopeful that we will have an opportunity to have the votes as he has anticipated tomorrow at 5 o'clock. This agreement accords everybody their rights. People will have an opportunity to further discuss this matter. They will be able to respond to whatever statements may be made on the floor. We will have a good debate about these nominees tomorrow, even though we will be taking up other legislation.

I think this is a very good agreement. I am grateful to him and to all of our colleagues for their cooperation. I appreciate the fact that we have come this far.

I yield the floor.

Mr. LEAHY. Mr. President, will the Senator yield?

Mr. LOTT. I am glad too yield.

Mr. LEAHY. Mr. President, I wish to associate myself with the comments of the distinguished Senator from South Dakota. I was privileged to be part of some of the discussions the distinguished Republican leader and the Democratic leader had last fall, along with the distinguished Senator from Mississippi. He has fulfilled the commitment he made to us at that time. I suspect that some aspects probably will not be debated with great ease. I wish to commend them for doing that. As I have said all along, I want to be in the position where Senators can vote up or down on these two outstanding nominees.

I thank the Chair.

Mr. LOTT. Mr. President, I thank both Senators for their comments.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, I ask unanimous consent that at 9:30 a.m. on Wednesday, the Senate proceed to the conference report to accompany H.R. 1000, the Federal Aviation Administration reauthorization bill. I further ask unanimous consent that there be 60 minutes of debate equally divided as follows: 20 minutes for the majority manager, 20 minutes for the minority manager, and 20 minutes for Senator LAUTENBERG.

I further ask unanimous consent that following that debate time, the conference report be laid aside with a vote on adoption to occur at 5 p.m. just prior to the scheduled cloture votes with no intervening action or debate.

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

Mr. LOTT. Mr. President, it will be my intention that following the hour of morning business, at 11:30 a.m. on Wednesday the Senate proceed to the Export Administration Act. I am not propounding that at this time, but that would be the next legislation on which we have been working. It has broad bipartisan support. It involves a very important segment of our economy. We need to move forward with this legislation as soon as possible. We would like to start on that at 11:30 tomorrow. Between that time and the stacked votes at 5 o'clock, we could have opening statements and begin to move forward

on this very important Export Administration Act.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I think this is a very good agreement. I think we can have a good discussion about the conference report.

I know there are other Senators who may want to enter into a colloquy with the majority leader or others with regard to some of the implications of the FAA bill. This will accommodate any colloquies Senators may desire.

I also am pleased that we are able to move to the Export Administration Act. As the majority leader noted, this bill is important. We ought to finish it this week. There is no reason why we can't finish it this week, if we can get agreement. It passed out of the committee unanimously. It is long overdue. It is important for us to act on it.

I think this would be a good week for us to be able to deal not only with these nominations, not only with the FAA, but also with the Export Administration. We have an opportunity to do some real good work, and this agreement accommodates that.

I appreciate Senators' cooperation on both sides.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I indicated that I might object to the motion to proceed to the Export Administration Act. It is not my intention to do that. In checking with my other colleagues who have been concerned with this matter, I have learned they are satisfied, as I am, that there have been negotiations in good faith with regard to some of the provisions of the Export Administration Act that cause us great concern; therefore, I will be content to offer amendments tomorrow. But I would like to state for the Record that I do not intend immediately to enter into any time agreement.

The chairman of the Banking Committee has indicated that he does not intend to ask for any time agreement going in. There will be amendments. We need thorough discussion of this matter. This is not something we can hastily go into and dispense with. It is very complicated. It is very important. It has to do with our export policy with regard to our dual-use items—very sensitive items which some countries are now using to enhance their nuclear and other weapons of mass destruction capabilities. There is hardly anything more serious than that.

My own view is that we have needed to reauthorize the Export Administration Act for some time. But we need to tighten the rules, not loosen the rules. My concern is that this does, indeed, loosen some of the important rules.

While I will not object to a motion to proceed, I want it understood that we are going to need a full discussion of the issue.

I yield the floor.

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. 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, we have been able to work through an agreement on consenting to go to the Export Administration Act.

I ask unanimous consent, following an hour of morning business, that at 11:30 a.m. on Wednesday the Senate begin debate on the Export Administration Act.

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

Mr. LOTT. Thank you, Mr. President. I thank my colleagues for their cooperation on this.

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

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

MORNING BUSINESS

Mr. ENZI. Mr. President, I now ask consent there be a period for the transaction of routine morning business, with Senators permitted to speak for up to 10 minutes each.

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

NOMINATION OF TIMOTHY B. DYK

Mr. KENNEDY. Mr. President, Senate action on Timothy Dyk's nomination to the U.S. Court of Appeals for the Federal Circuit is long overdue. He has waited almost two years for this vote. Yet he is a nationally known and exceptionally well-regarded attorney who received a ''Qualified'' rating from the American Bar Association and was well received by the Senate Judiciary Committee. He deserves a favorable vote by the Senate here today.

Mr. Dyk is an honors graduate of both Harvard College and Harvard Law School. After graduation he served as a law clerk for Chief Justice Earl Warren, and for Justices Stanley Reed and Harold Burton. He served in the Justice Department for a year in the early 1960's and has spent the last 37 years as a distinguished and highly respected attorney in private practice in Washington, DC. He has argued cases before the Supreme Court and in numerous Federal courts of appeals, including five cases before the Federal Circuit. He clearly has the qualifications and ability to serve on the Federal Circuit with great distinction.

Mr. Dyk's nomination is supported by a variety of corporations and organizations, including the U.S. Chamber of Commerce, the National Association of Manufacturers, the National Association of Broadcasters, the Labor Policy Association, the American Trucking Association, Kodak, and IBM.

Timothy Dyk is highly qualified to serve on the Federal Circuit. He should have been confirmed long ago, and I urge my colleagues to approve his nomination today.

THE COUNTERINTELLIGENCE REFORM ACT OF 2000

Mr. LEAHY. Mr. President, I am pleased to join my colleagues Senators GRASSLEY, SPECTER and TORRICELLI, and others, in cosponsoring the Counterintelligence Reform Act of 2000, S. 2089. I look forward to working with my colleagues on making any improvements and refinements to the legislation which may become apparent as we hold hearings. This is an important issue with serious implications for the careful balance we have struck between the need to protect our national security and our obligation to defend the constitutional rights of American citizens.

This legislation was crafted in response to perceived problems in the investigation of nuclear physicist Wen Ho Lee. Our review of that matter is far from complete and, in view of the pending criminal case, must be put in abeyance to avoid any prejudice to the parties or suggest political influence on the proceedings. Based on the Subcommittee's review to date, however, I do not share the views of some of my colleagues who have harshly criticized the Justice Department's handling of this matter. Notwithstanding my disagreement, as explained below, with those criticisms of the Justice Department, I support this legislation as a constructive step towards improving the coordination and effectiveness of our counterintelligence efforts. Senators GRASSLEY, SPECTER and TORRICELLI have provided constructive leadership in crafting this bill and bringing together Members who may disagree about the conclusions to be drawn from the underlying facts of the Wen Ho Lee investigation.

My view of the Justice Department's handling of the Wen Ho Lee investigation differs in at least three significant respects from those of the Department's critics in the Senate.

First, the Justice Department's demand in the summer of 1997 for additional investigative work by the FBI has been misconstrued as a ''rejection'' of a FISA application for electronic surveillance. FBI officials first consulted attorneys at DOJ on June 30, 1997, about receiving authorization to conduct FISA surveillance against Lee. The request was assigned to a line attorney in the Office of Intelligence and Policy Review (OIPR), who, appreciating the seriousness of the matter, drafted an application for the court over the holiday weekend. A supervisor

in the OIPR unit then reviewed the draft and decided that further work by the FBI would be needed ''to complete the application and send it forward.'' Further discussions then ensued and two additional draft applications were prepared.

In August 1997, FBI agents met again with OIPR attorneys about the FISA request. The OIPR supervisor testified at a Governmental Affairs Committee hearing on June 9, 1999 that ''[f]ollowing that meeting, the case was put back to the Bureau to further the investigation in order to flesh out and eliminate some of the inconsistencies, to flesh out some of the things that had not been done.'' He testified that the primary concern with the FBI investigation ''had to do with the fact that the DOE and Bureau had [multiple] suspects, and only two were investigated. . . . That is the principal flaw which ha[d] repercussions like dominoes throughout all of the other probable cause.''

This was not a ''rejection.'' The OIPR attorneys expected the FBI to develop their case against Lee further and to return with additional information. This is normal, as most prosecutors know. Working with agents on investigations is a dynamic process, that regularly involves prosecutors pushing agents to get additional information and facts to bolster the strength of a case. Yet, nearly a year and a half passed before the attorneys at OIPR were again contacted by the FBI about Lee.

The report issued by the Governmental Affairs Committee on this issue concludes that although the OIPR attorneys did not view their request for additional investigation as a ''denial'' of the FISA request, the FBI ''took it as such.'' Notwithstanding or even mentioning these apparently differing views as to what had transpired, some have criticized the Justice Department for rejecting the FISA application in 1997. It is far from clear that any rejection took place, and I credit the perspective of the OIPR attorneys that their request to the FBI for additional investigative work was made in an effort to complete—not kill—the FISA application.

Second, the Justice Department correctly concluded that the FBI's initial FISA application failed to establish probable cause. Indeed, even the chief of the FBI's National Security Division, John Lewis, who worked on the FISA application, has admitted that he turned in the application earlier than anticipated and without as much supporting information as he would have liked.

Determining whether probable cause exists is always a matter of judgment and experience, with important individual rights, public safety and law enforcement interests at stake if a mistake is made. From the outset, prosecutors making such a determination must keep a close eye on the applicable legal standard.

Pursuant to the terms of the FISA statute, intelligence surveillance against a United States person may only be authorized upon a showing that there is probable cause to believe: (1) that the targeted United States person is an agent of a foreign power; and (2) that each of the facilities or places to be surveilled is being used, or about to be used by that target. 50 U.S.C. §§1801(b)(2), 1804(a)(4). With regard to the first prong, the statute defines several ways in which a United States person can be shown to be an agent of a foreign power. Most relevant here, a United States person is considered an agent of a foreign power if the person ''knowingly engages in clandestine intelligence gathering activities, for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States.'' 50 U.S.C. §1801(b)(2)(A).

Without dissecting all of the allegations against Lee here, there are several issues that undermined the FBI's evidence that Lee was an ''agent of a foreign power'' and, in 1997, engaged in ''clandestine intelligence gathering activities.'' In the letterhead memorandum by which the FBI first sought DOJ approval for the FISA warrant, the FBI reported that an administrative inquiry conducted by DOE and FBI investigators had identified Wen Ho Lee as a suspect in the loss of information relating to the W–88 nuclear warhead. Most critically, however, the FBI indicated that Lee was one of a group of laboratory employees who: (1) had access to W–88 information; (2) had visited China in the relevant time period; and (3) had contact with visiting Chinese delegations.

The problem with the FBI's reliance on this administrative inquiry and corresponding narrow focus on Lee and his wife as suspects was that the FBI ''did nothing to follow up on the others.'' The Attorney General testified at the June 8, 1999 Judiciary Committee hearing that ''the elimination of other logical suspects, having the same access and opportunity, did not occur.'' Similarly, the OIPR supervisor who testified at the GAC hearing confirmed that ''the DOE and Bureau had [multiple] suspects, and only two [meaning Lee and his wife] were investigated.'' According to him, as noted above, ''[t]hat is the principal flaw which ha[d] repercussions like dominoes throughout all of the other probable cause.'' Quite simply, the failure of the FBI to eliminate, or even investigate, the other potential suspects identified by the DOE administrative inquiry undermined their case for probable cause.

Indeed, this failure to investigate all potential leads identified in the DOE administrative inquiry has prompted the FBI to conduct a thorough re-examination, which is currently underway, of the factual assumptions and investigative conclusions of that initial inquiry.

The other evidence that the FBI had gathered about Lee was stale, inconclusive or speculative, at best and certainly did not tie him to the loss of the W–88 nuclear warhead information. For example, the FBI proffered evidence pertaining to a fifteen-year-old contact between Lee and Taiwanese officials. The FBI's earlier investigation boiled down to this: after the FBI learned in 1983 that Lee had been in contact with a scientist at another nuclear laboratory who was under investigation for espionage, Lee was questioned. He explained, eventually, that he had contacted this scientist because he had thought the scientist had been in trouble for doing similar unclassified consulting work that Lee volunteered that he had been doing for Taiwan. To confirm his veracity, the FBI gave Lee a polygraph examination in January 1984, and he passed. This polygraph included questions as to whether he had ever given classified information to any foreign government. Shortly thereafter, the FBI closed its investigation into Lee and this incident.

Even if viewed as suspicious, Lee's contacts fifteen years earlier with Taiwanese officials did not give rise to probable cause to believe that in 1997 he was currently engaged in intelligence gathering for China.

As a further example, the FBI also relied on evidence that during a trip by Lee to Hong Kong in 1992, there was an unexplained charge incurred by Lee that the FBI speculated could be consistent with Lee having taken a side trip to Beijing. As Attorney General Reno testified at the hearing, the fact that Lee incurred an unexplained travel charge in Hong Kong did not standing alone support an inference that he went to Beijing. It therefore did nothing to support the FBI's claim that Lee was an agent for China.

The OIPR attorneys who pushed the FBI for additional investigative work to bolster the FISA application for electronic surveillance of Wen Ho Lee were right—the evidence of probable cause proffered by the FBI was simply insufficient for the warrant.

Third, the Justice Department was right not to forward a flawed and insufficient FISA application to the FISA court. Some have suggested that the Lee FISA application should have been forwarded to the court even though the Attorney General (through her attorneys) did not believe there was probable cause. To have done so would have violated the law.

The FISA statute specifically states that ''[e]ach application shall require the approval of the Attorney General based upon [her] finding that it satisfies the criteria and requirements. . . .'' 50 U.S.C. §1804 (a). The Attorney General is statutorily required to find that the various requirements of the FISA statute have been met before approving an application and submitting it to the court.

As a former prosecutor, I know that this screening function is very important. Every day we rely on the sound judgement of experienced prosecutors.

They help protect against encroachments on our civil liberties and constitutional rights. Any claim that the Attorney General should submit a FISA application to the court when in her view the statutory requirements have not been satisfied undermines completely the FISA safeguards deliberately included in the statute in the first place.

I appreciate that those who disagree with me that the evidence for the Lee FISA application was insufficient to meet the FISA standard for surveillance against a United States person may urge that this standard be weakened. This would be wrong.

The handling of the Wen Ho Lee FISA application does not suggest a flaw in the definition of probable cause in the FISA statute. Instead, it is an example of how the probable cause standard is applied and demonstrates that effective and complete investigative work is and should be required before extremely invasive surveillance techniques will be authorized against a United States person. The experienced Justice Department prosecutors who reviewed the Lee FISA application understood the law correctly and applied it effectively. They insisted that the FBI do its job of investigating and uncovering evidence sufficient to meet the governing legal standard.

The Counterintelligence Reform Act of 2000 correctly avoids changing this governing probable cause standard. Instead, the bill simply makes clear what is already the case—that a judge can consider evidence of past activities if they are relevant to a finding that the target currently ''engages'' in suspicious behavior. Indeed, the problem in the Lee case was not any failure to consider evidence of past acts. Rather, it was that the evidence of past acts presented regarding Lee's connections to Taiwan did not persuasively bear on whether Lee, in 1997, was engaging in clandestine intelligence gathering activities for another country, China.

Finally, some reforms are needed. The review of the Lee matter so far suggests that internal procedures within the FBI, and between the FBI and the Office of Intelligence Policy and Review, to ensure that follow-up investigation is done to develop probable cause do not always work. I share the concern that it took the FBI an inordinately long time to relay the Justice Department's request for further investigation and to then follow up.

The FBI and the OIPR section within DOJ have already taken important steps to ensure better communication, coordination and follow-up investigation in counterintelligence investigations.

The FBI announced on November 11, 1999, that it has reorganized its intelligence-related divisions to facilitate the sharing of appropriate information and to coordinate international activities, the gathering of its own intelligence and its work with the counter-espionage agencies of other nations.

In addition, I understand that OIPR and the FBI are working to implement a policy under which OIPR attorneys will work directly with FBI field offices to develop probable cause and will maintain relationships with investigating agents. This should ensure better and more direct communication between the attorneys drafting the FISA warrants and the agents conducting the investigation and avoid information bottlenecks that apparently can occur when FBI Headquarters stands in the way of such direct information flow. I encourage the development of such a policy. It should prevent the type of delay in communication that occurred within the FBI from happening again. In addition, the Attorney General advised us at the June 8, 1999 hearing that she has instituted new procedures within DOJ to ensure that she is personally advised if a FISA application is denied or if there is disagreement with the FBI.

Notwithstanding all of these wise changes, the FISA legislation will require formal coordination between the Attorney General and the Director of the FBI, or other head of agency, in those rare cases where disagreements like those in the Lee case arise. I am confident that the Directors of the FBI and CIA and the Secretaries of Defense and State, and the Attorney General, are capable of communicating directly on matters when they so choose, even without legislation. I am concerned that certain of these new requirements will be unduly burdensome on our high-ranking officials due to the clauses that prevent the delegation of certain duties.

For instance, the bill requires that upon the written request of the Director of the FBI or other head of agency, the Attorney General ''shall personally review'' a FISA application. If, upon this review, the Attorney General declines to approve the application, she must personally provide written notice to the head of agency and ''set forth the modifications, if any, of the application that are necessary in order for the Attorney General to approve the application.'' The head of agency then has the option of adopting the proposed modifications, but should he choose to do so he must ''supervise the making of any modification'' personally.

I appreciate that these provisions of this bill are simply designed to ensure that our highest ranking officials are involved when disputes arise over the adequacy of a FISA application. However, we should consider, as we hold hearings on the bill, whether imposing statutory requirements personally on the Attorney General and others is the way to go.

I also support provisions in this bill that require information sharing and consultation between intelligence agencies, so that counterintelligence investigations will be coordinated more effectively in the future. In an area of such national importance, it is critical that our law enforcement and intelligence agencies work together as efficiently and cooperatively as possible. Certain provisions of this bill will facilitate this result.

In addition, Section 5 of the bill would require the adoption of regulations to govern when and under what circumstances information secured pursuant to FISA authority ''shall be disclosed for law enforcement purposes.'' I welcome attention to this important matter, since OIPR attorneys had concerns in April 1999 about the FBI efforts to use the FISA secret search and surveillance procedures as a proxy for criminal search authority.

Whatever our views about who is responsible for the miscommunications and missteps that marred the Wen Ho Lee investigation, S. 2089, the Counterintelligence Reform Act of 2000, stands on its own merits and I commend Senators GRASSLEY, SPECTER, and TORRICELLI for their leadership and hard work in crafting this legislation.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, March 6, 2000, the Federal debt stood at $5,745,099,557,759.64 (Five trillion, seven hundred forty-five billion, ninety-nine million, five hundred fifty-seven thousand, seven hundred fifty-nine dollars and sixty-four cents).

Five years ago, March 6, 1995, the Federal debt stood at $4,840,905,000,000 (Four trillion, eight hundred forty billion, nine hundred five million).

Ten years ago, March 6, 1990, the Federal debt stood at $3,028,453,000,000 (Three trillion, twenty-eight billion, four hundred fifty-three million).

Fifteen years ago, March 6, 1985, the Federal debt stood at $1,713,220,000,000 (One trillion, seven hundred thirteen billion, two hundred twenty million).

Twenty-five years ago, March 6, 1975, the Federal debt stood at $499,255,000,000 (Four hundred ninety-nine billion, two hundred fifty-five million) which reflects a debt increase of more than $5 trillion—$5,245,844,557,759.64 (Five trillion, two hundred forty-five billion, eight hundred forty-four million, five hundred fifty-seven thousand, seven hundred fifty-nine dollars and sixty-four cents) during the past 25 years.

OPEN-MARKET REORGANIZATION FOR THE BETTERMENT OF INTERNATIONAL TELECOMMUNICATIONS ACT

Mr. CLELAND. Mr. President, one of the first issues to come before me as a new member of the Commerce Committee was INTELSAT privatization. Although this was a challenging issue that required balancing the international role of the U.S. in communications technology with the needs of the signatories to INTELSAT, I chose to become an original co-sponsor of the Open-market Reorganization for the Betterment of International Telecommunications Act ''ORBIT'' because

I believed it was important to get behind a bill that can be enacted in to law this Congress to address these challenges.

One provision that was of particular concern to me is that of ''fresh look.'' The conference agreement on S. 376 does eliminate the ''fresh look'' provision that continued to be debated this year. ''Fresh look'' is a policy that, if implemented, would allow the federal government to permit COMSAT's corporate customers to abrogate their current contracts with COMSAT. The conference agreement rejects ''fresh look'' and preserves the ability of the private parties involved to negotiate contracts so that one party cannot simply walk away from its business obligations without any attendant liability.

This conference agreement does not allow the FCC to take any action that would impair lawful, private contracts or agreements. Both chambers in the 106th Congress emphatically rejected ''fresh look'' when they passed their own versions of international satellite privatization legislation, and the conference agreement reflects this consensus.

I commend the conferees for including language in the conference agreement that protects private agreements, contracts, and the like. To read the relevant section otherwise would be to dismiss the clear intent of Congress to preserve existing and binding obligations of parties.

CHILD SAFETY LOCKS

Mr. KOHL. Mr. President, I rise to applaud this morning's bipartisan ''firearm summit'' at the White House. A commitment to find an agreeable compromise on the Juvenile Justice Bill could not be more timely.

A week ago today, Mr. President, a six-year old living in a drug-infested flophouse in Mount Morris Township, Michigan found a gun under a quilt. The six-year old who found that gun wanted to settle a playground quarrel he had the previous day with his classmate, Kayla Rolland.

He was able to grab the gun from under the quilt because blankets are not trigger locks; they are not a sufficient deterrent to curious children who find guns lying around unlocked. He took the gun and hid it in his pants and brought it to school the next day. No one and nothing prevented him from doing so.

When he arrived at Buell Elementary School, the boy announced to Kayla that she was not his friend. He waited for an opportunity to get back at her. He later said he wanted to scare her.

As his classmates were filing out and heading toward the school library, he had his chance. He did not call her names; he did not pull her hair; he did not hit her. Instead, he pulled the gun from his pants and waved it at two other classmates. He then accurately set his sights on Kayla, pulled the trigger, and killed her. She was all of six years old. He shot her dead in their first grade classroom.

He had access to the gun because it was not safely stored, and he was able to fire it because the gun did not have a safety lock. Either would have saved Kayla's life.

I have heard skeptics say that our child safety lock proposal, which 78 Senators supported last year, would not have mattered in this case because this gun was stolen. That is only half-true. Had the legal owner of this gun safely locked it with one of the devices mandated under our bill, then the thief might not have stolen it. Had the legal owner of this gun safely locked it with one of the devices mandated under our bill, the child's uncle might not have been able to leave it loaded within the boy's reach. Had the legal owner of this gun safely locked it with one of the devices mandated under our bill, the first grader could not have picked it up and used it with deadly accuracy.

How do we respond to this tragedy? How do we respond to others like it? There is no simple answer. But without a doubt, enacting our modest legislation to mandate that a child safety lock be sold with every handgun would be a good first step.

The distinguished Chairman of the House Judiciary Committee, HENRY HYDE, said over the weekend about the stalled gun provisions of the Juvenile Justice bill, ''If you can't get dinner, at least get a sandwich.'' I agree.

Chairman HYDE, who has always been committed to reasonable firearms control, would prefer dinner. And I would too: we ought to pass the whole Juvenile Justice bill. We ought to do it soon. Time is of the essence because while the Congressional attention span is short, children die even when Congress isn't watching. We need to do more to protect children from guns and we need to do it now.

It is a regrettable truth that progress in the Juvenile Justice debate lurches forward only in reaction to unspeakable tragedy. A year ago next month, the massacre at Columbine and the shooting in Conyers, Georgia shocked this Senate into passing common sense proposals to get tough on thugs and violent juveniles. Some of those very same measures, including child safety locks, failed to pass the Senate by wide margins just the previous year.

But the overwhelming approval of the child safety lock proposal demonstrates that the Senate ''gets it:'' kids and guns do not mix. The House needs to ''get it'' too. The Center for Disease Control estimates that nearly 1.2 million ''latch-key'' children have access to loaded and unlocked firearms. It should come as no surprise, therefore, that children and teenagers cause over 10,000 unintentional shootings each year in which at least 800 people die. In addition, over 1,900 children and teenagers attempt suicide with a firearm each year. Tragically, over three-fourths of them are successful.

If preventable suicides and accidents are not enough to convince you that guns must be kept out of the hands of children, consider the following: within the next five years, firearms will overtake motor vehicle accidents as the leading cause of death among American children. The rate of firearm death of children under 15 years old is 16 times higher in the U.S. than in the 25 other industrialized nations combined. And the firearm injury ''epidemic,'' due largely to handgun injuries, is ten times larger than the polio epidemic of the first half of the 20th century.

The very same day that young Kayla Rolland was tragically killed in Michigan, a 12 year old middle school student in the Milwaukee area carried a loaded gun to school. A disagreement the previous day led him to seek revenge by scaring his classmates. Thankfully, he never used the gun and school officials safely confiscated it. This scenario is replicated across the country every day.

Requiring child safety locks will drive the number of juvenile gun deaths down—something everyone approves of.

Mr. President, we have the opportunity to reduce what will soon be the number one cause of death among American children. How can we sit idly by when preventing it is so attainable?

We cannot.

So we ought to pass the Kohl-Chafee-Hatch Child Safety Lock Act. Alone or, better yet, as part of a package, it will help prevent the tragic accidents associated with unauthorized, unlocked, unattended firearms. I am pleased that the President called today's summit to try to move on these urgent matters. I am distressed that it seems, at least today, unproductive. And I pledge to work with the President and the bipartisan Leadership to act now so that we do not have to mourn more preventable innocent deaths.

ADDITIONAL STATEMENTS

RESTORATION OF LITHUANIA'S INDEPENDENCE

• Mr. ABRAHAM. Mr. President, on March 18 of this year, at the Lithuanian Cultural Center, in Southfield, Michigan, Lithuanian Americans will gather to mark the tenth anniversary of the reestablishment of Lithuanian independence.

Michigan's Lithuanian-American community also will celebrate the perseverance and sacrifice of their people, which enabled them to achieve the freedom they now enjoy.

I have reviewed the bare facts before: On March 11, 1990, the newly elected Lithuanian Parliament, fulfilling its electoral mandate from the people of Lithuania, declared the restoration of Lithuania's independence and the establishment of a democratic state. This marked a great moment for Lithuania

and for lovers of freedom around the globe.

The people of Lithuania endured 51 years of oppressive foreign occupation. Operating under cover of the infamous Hitler-Stalin Pact of 1939, Soviet troops marched into Lithuania, beginning an occupation characterized by communist dictatorship and cultural genocide.

Even in the face of this oppression, the Lithuanian people were not defeated. The resisted their oppressors and kept their culture, their faith and their dream of independence very much alive even during the hardest times.

The people of Lithuania were even able to mobilize and sustain a non-violent movement for social and political change, a movement which came to be known as Sajudis. This people's movement helped guarantee a peaceful transition to independence through full participation in democratic elections on February 24, 1990.

Unfortunately, as is so often the case, peace and freedom had to be purchased again and again. In January of 1991, ten months after restoration of independence, the people and government of Lithuania faced a bloody assault by foreign troops intent on overthrowing their democratic institutions. Lithuanians withstood this assault, maintaining their independence and their democracy. Their successful use of non-violent resistance to an oppressive regime is an inspiration to all.

Lithuania's integration into the international community has been swift and sure. On September 17, 1991, the reborn nation became a member of the United Nations and is a signatory to a number of its organizations and other international agreements. It also is a member of the Organization for Security and Cooperation in Europe, the North Atlantic Cooperation Council and the Council of Europe.

Lithuania is an associate member of the European Union, has applied for NATO membership and is currently negotiating for membership in the WTO, OECD and other Western organizations.

The United States established diplomatic relations with Lithuania on July 28, 1992. But our nation never really broke with the government and people of Lithuania. The United States never recognized the forcible incorporation of Lithuania into the U.S.S.R., and views the present Government of Lithuania as a legal continuation of the inter-war republic. Indeed, for over fifty years the United States maintained a bipartisan consensus that our nation would refuse to recognize the forcible incorporation of Lithuania into the former Soviet Union.

America's relations with Lithuania continue to be strong, friendly and mutually beneficial. Lithuania has enjoyed most-favored-nation (MFN) treatment with the United States since December, 1991. Through 1996, the United States has committed over $100 million to Lithuania's economic and political transformation and to address humanitarian needs. In 1994, the United States and Lithuania signed an agreement of bilateral trade and intellectual property protection, and in 1997 a bilateral investment treaty.

In 1998 the United States and Lithuania signed the Baltic Charter Partnership. That charter recalls the history of American relations with the area and underscores our ''real, profound, and enduring'' interest in the security and independence of the three Baltic states. As the Charter also notes, our interest in a Europe whole and free will not be ensured until Estonia, Latvia, and Lithuania are secure.

I commend the people of Lithuania for their courage and perseverance in using peaceful means to regain their independence. I pledge to work with my colleagues to continue working to secure the freedom and independence of Lithuania and its Baltic neighbors, and I join with the people of Lithuania as they celebrate their independence.●

NATIONAL EYE DONOR MONTH

● Mr. BREAUX. Mr. President, I'm pleased to rise today to call to the attention of my colleagues and all of our constituents across the nation that March is National Eye Donor Month. For more than 55 years now thousands of Americans have participated in this selfless exercise of helping others.

The purpose of National Eye Donor Month is not only to honor the past donors who have played a pivotal role in restoring the sight of over half a million individuals, but also to raise public awareness of the continuing need for donors. When people decide to become a donor all they need to do is sign a card and announce their intent to their family.

The many recipients of this ''gift of sight'' represent the great diversity of our nation's population. For instance, Judrita Billiot is a young Houma Indian who lives in a small community about 50 miles from New Orleans, Louisiana. This young girl was born with a condition known as congenital opacity, in which the corneas neither transmit nor allow the passage of light. When she was still less than a year old Judrita received corneal transplants in both of her eyes. I'm happy to say that today she is a healthy young girl with normal vision thanks not only to the transplant procedure, but also to the donors who were thoughtful enough to leave behind this extraordinary gift.

The success of Judrita's transplants is not uncommon. The current success rate of corneal transplantation is nearly 90% thanks to a rigorous screening process and the dedication of our nation's eye banks, working in conjunction with the Eye Bank Association of America.

I appreciate this opportunity to highlight National Eye Donor Month and I encourage all of my colleagues to work with their local eye banks to increase public awareness of corneal transplantation and the continuous need for donors.●

RECOGNIZING KUAKINI HEALTH CARE SYSTEM ON ITS 100TH ANNIVERSARY

● Mr. INOUYE. Mr. President, I rise to recognize the Kuakini Medical Health System as it celebrates its 100th anniversary caring for Hawaii's people. Kuakini began as an ethnic charity hospital founded by Japanese immigrants who arrived in Hawaii to labor in the thriving sugar cane fields. Plantation wages were low and many newcomers found themselves unable to afford medical care. The Japanese Benevolent Society provided emergency relief to the immigrants, but a fire destroyed their facilities in January, 1900. Undaunted, the Japanese Benevolent Society started plans to build a charity hospital. Funds were raised through membership dues and community donations. Half an acre of land was purchased in Kapalama and a two-story wooden building housing 38 patient beds was completed by July, 1900. This humble beginning was the start of Kuakini Health System.

As the last existing hospital in the United States established by Japanese immigrants, Kuakini is unique among health institutions in the United States and Hawaii. There have been many changes during the past century, but the commitment of the health professionals and volunteers of Kuakini Health System to meet the health care needs of Hawaii's community has not waivered. Kuakini Health System has expanded to embrace and serve Hawaii's community without regard to ethnicity, disability, age, sex, religious affiliation, or financial status. Kuakini Health System is in the company of only 5 percent of all U.S. hospitals having a heavy Medicare caseload. Sixty-five percent of the hospital's admissions are Medicare patients and Kuakini's hospital cares for the largest composition of elderly patients among Hawaii's hospitals.

Kuakini Health System is a teaching facility, training health professionals in the precepts of compassion and quality in health care. Guests from around the world tour Kuakini to learn American health care and specific methods for health care. Kuakini includes the community in its educational goals with health and wellness fairs, health and prevention education classes, an information hotline, Internet access to information, Speakers Bureau Program and Open House aimed at giving students a first hand look at the different departments and professions within a health care organization. By bringing health awareness to our community, Kuakini contributes to the overall health and well-being of Hawaii's people.

Kuakini Health System strives for excellence. Federal funds support nationally and internationally recognized medical research and health programs

sponsored by Kuakini Medical System, such as the Japan-Hawaii Cancer Study, Women's Health Initiatives, and Honolulu Heart Program. Kuakini is regarded as a leader in the areas of cancer treatment, cardiac services, geriatric care, pulmonary disease treatment, gastroenterology services, health research, orthopedic surgery, telemedicine and cyberhealth. Kuakini Health System performs its health services without a major endowment or an affiliation with a larger organization for financial support.

The Kuakini Health System has met the health needs and challenges of Hawaii's community for the past 100 years. As we start a new century and a new millennium, I am confident that Kuakini Health System will continue to make valuable contributions to the health of Hawaii and the United States through its commitment to benevolence, research, education, and excellence.●

CONGRATULATING KUAKINI MEDICAL CENTER AUXILIARY ON ITS 111TH ANNIVERSARY

● Mr. INOUYE. Mr. President, I congratulate the Kuakini Medical Center Auxiliary on its 111th anniversary of service to Hawaii's community. From a modest beginning in 1889, the Kuakini Medical Center Auxiliary has grown to the largest active group of volunteers of a health care organization in Hawaii. The roots of the Kuakini Medical Center Auxiliary are closely tied to the charitable beginnings of Kuakini Medical Center. They form an indispensable century old team caring for the health of Hawaii's people.

In today's busy world time is at a premium, yet these volunteers manage to provide essential support services to the Kuakini Health System, such as transporting patients, distributing patient meals, errands, sewing, tagging medical supplies, and collating medical research. Volunteers furnish comfort and companionship to patients and residents in need. On holidays and special occasions, volunteers create favors for patients' meal trays to brighten the day.

In addition to the compassionate services provided, the Kuakini Medical Center Auxiliary assists the Kuakini Health System financially. Proceeds from the Gift Shop and numerous fundraising events are donated to Kuakini Foundation. Since 1980, the auxiliary has awarded more than $20,000 in scholarships to Kaukini employees to further their education. More than a million dollars has been raised for Kuakini Health System since 1971 by the Kuakini Auxiliary.

Currently, the Kuakini Medical Center Auxiliary has over 600 active members contributing at least 67,000 hours annually. The savings in labor costs are estimated at more than $860,000 annually, but the selfless sacrifice and caring contribution that these volunteers provide are priceless gifts to Hawaii's community. I compliment and thank the volunteers of the Kaukini Medical Center Auxiliary for the 111 years of concerned meritorious public service they have rendered to Hawaii's community.●

TRIBUTE TO JEFF CLEVENGER

● Mr. ABRAHAM. Mr. President, I rise today to remember Jeff Clevenger, a dear friend who died on December 21, 1999. The illness which led to his death came suddenly and Jeff was taken from us all too soon.

Jeff Clevenger was a great American in that he gave everything of himself to make his community and this country great. He contributed to our economy as Vice President and General Manager of the Wickes Machine Tool Group, Inc., in Saginaw, Michigan. In 1983 he led a team of managers in the buyout of the machine tool group from Wickes. The new company was named SMS Group, Inc. From the formation of this new company until his death, Jeff served as President, Chairman, and Chief Executive Officer of SMS Group, Inc.

Jeff contributed to his community unselfishly. And he was not satisfied to simply be a member of a club or board. In nearly every organization he joined, at some point, Jeff served as chairman. These organizations include: the Saginaw Chamber of Commerce; the Michigan State Chamber of Commerce; the Michigan Manufacturers Association; Saginaw Remanufacturing; Junior Achievement; the Government Relations Committee of the Association for Manufacturing Technology; United Way of Saginaw County; the Michigan Manufacturing Technology Association. In 1994 he became the founding Chairman of the United Way Alexis de Toqueville Society in Saginaw County. Jeff also served as a board member for Saginaw Future, Inc., and the Delta College Foundation. He also devoted his time to Saginaw Valley State University.

Jeff's dedication to his community did not go unnoticed. He has received a number of honors. He was given the ''Spirit of Saginaw'' award; the ''Entrepreneur of the Year'' award; the Junior Achievement Hall of Fame Award; the Robert H. Albert Award for Community Service from the Saginaw Chamber of Commerce; to name a few.

The State of Michigan is a better place because we were lucky enough to have Jeff Clevenger as part of our community. Even those who did not know Jeff will benefit for many years from his dedication to his community. And to those who did know him, myself included, Jeff's life will forever serve as an inspiration.

I would like at this time, on behalf of the United States Senate, to extend my sympathies to Jeff's family: Nell Clevenger, Lori Himes, Robin Vosen, Allana Clevenger, Angela Jennings, and Bradley Weaver. Your loss is shared by many.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–7884. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''14 BLS–LIFO Department Store Indexes-January 2000'' (Rev. Rul. 2000–14), received March 6, 2000; to the Committee on Finance.

EC–7885. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Extension of Time to File and Pay Due to Patriot's Day'' (Notice 2000–17), received March 6, 2000; to the Committee on Finance.

EC–7886. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Major Disaster and Emergency Areas in 1999'' (Rev. Rul. 2000–15), received March 6, 2000; to the Committee on Finance.

EC–7887. A communication from the President of the United States of America, transmitting, pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, Presidential Determination No. 2000–10 certifying that withholding from international financial institutions and other international organizations and programs funds appropriated or otherwise made available pursuant to that Act is contrary to the national interest; to the Committee on Foreign Relations.

EC–7888. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Delaware; Regulation Number 37–NO_X Budget Program'' (FRL # 6547–9), received March 3, 2000; to the Committee on Environment and Public Works.

EC–7889. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plan; Connecticut, New Hampshire, and Rhode Island; Approval of National Low Emission Vehicle Program'' (FRL #6545–9), received March 3, 2000; to the Committee on Environment and Public Works.

EC–7890. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and

Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control District'' (FRL # 6546–8), received March 3, 2000; to the Committee on Environment and Public Works.

EC–7891. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District'' (FRL #6546–6), received March 3, 2000; to the Committee on Environment and Public Works.

EC–7892. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''180-Day Accumulation Time Under RCAA for Waste Treatment Sludges from the Metal Finishing Industry'' (FRL # 6547–6), received March 3, 2000; to the Committee on Environment and Public Works.

EC–7893. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Atlantic Intracoastal Waterway, FL (CGD07–00–008)'' (RIN2115–AE47) (2000–0013), received March 2, 2000; to the Committee on Commerce, Science, and Transportation.

EC–7894. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Frequency of Inspection (USCG–1999–4976)'' (RIN2115–AF73) (2000–0002), received March 2, 2000; to the Committee on Commerce, Science, and Transportation.

EC–7895. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Class E Airspace; Iowa City, IA; Direct Final Rule; Confirmation of Effective Date; Docket No. 99–ACE–50 [2–29/3–2]'' (RIN2120–AA66) (2000–0064), received March 2, 2000; to the Committee on Commerce, Science, and Transportation.

EC–7896. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Class E Airspace; Fredrickstown, MO; Direct Final Rule; Confirmation of Effective Date and Confirmation; Docket No. 99–ACE–47 [2–29/3–2]'' (RIN2120–AA66) (2000–0062), received March 2, 2000; to the Committee on Commerce, Science, and Transportation.

EC–7897. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Class E Airspace; Marshalltown, IA; Direct Final Rule; Confirmation of Effective Date; Docket No. 99–ACE–52 [2–29/3–2]'' (RIN2120–AA66) (2000–0063), received March 2, 2000; to the Committee on Commerce, Science, and Transportation.

EC–7898. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Dassault Model Mystere-Falcon Series Airplanes; Docket No. 98–NM–262 [2–29/3–2]'' (RIN2120–AA64) (2000–0122), received March 2, 2000; to the Committee on Commerce, Science, and Transportation.

EC–7899. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes; Docket No. 98–NM–240 [2–28/3–2]'' (RIN2120–AA64) (2000–0121), received March 2, 2000; to the Committee on Commerce, Science, and Transportation.

EC–7900. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, and 230 Helicopters; Request for Comments; Docket No. 98–SW–77 [2–28/3–2]'' (RIN2120–AA64) (2000–0120), received March 2, 2000; to the Committee on Commerce, Science, and Transportation.

EC–7901. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Cessna Model 560 Series Airplanes; Docket No. 98–NM–312 [2–28/3–2]'' (RIN 2120–AA64) (2000–0119), received March 2, 2000; to the Committee on Commerce, Science, and Transportation.

EC–7902. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; McDonnell Douglas Model DC–9, MD–30, 717–200, and MD–88 Airplanes; Docket No. 2000–NM–58 [2–28/3–2]'' (RIN 2120–AA64) (2000–0118), received March 2, 2000; to the Committee on Commerce, Science, and Transportation.

EC–7903. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 757 Series Airplanes; Docket No. 98–NM–354 [2–29/3–2]'' (RIN 2120–AA64) (2000–0123), received March 2, 2000; to the Committee on Commerce, Science, and Transportation.

EC–7904. A communication from the Assistant General Counsel for Regulatory Law, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Transfer of Real Property at Defense Facilities for Economic Development'' (RIN 1901–AA82), received March 2, 2000; to the Committee on Armed Services.

EC–7905. A communication from the Executive Director, Federal Labor Relations Authority transmitting, pursuant to law, the report of a rule entitled ''Amendment of Equal Access to Justice Act Attorney Fees Regulations'', received March 2, 2000; to the Committee on Governmental Affairs.

EC–7906. A communication from the Legislative Liaison, U.S. Trade and Development Agency transmitting, pursuant to Section 520 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 notification of funding obligations under the Act; to the Committee on Appropriations.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–428. A resolution adopted by the Senate of the Legislature of the State of West Virginia designating February 21 as ''Stand Up for Steel'' day; to the Committee on the Judiciary.

SENATE RESOLUTION NO. 17

Whereas, The nation's steel industry has been engaged in a crisis involving illegal dumping and subsidizing of foreign steel which has cost the jobs of thousands of steelworkers in the United States; and

Whereas, America has prided itself on its ability to fairly participate in the global marketplace. However, the illegal dumping of foreign steel at reduced prices has caused financial chaos within the American steel industry; and

Whereas, Although progress has been made through the efforts of America's steelworkers and legislatures across the nation, the matter of illegal dumping of foreign steel remains a major matter of contention in our steel industry; and

Whereas, All West Virginians are urged to rise to the cause for the industry that has built this great nation; and

Whereas, The vigilance of our federal legislators and the President of the United States to enforce our U.S. trade laws and halt the illegal dumping and subsidizing of steel in our nation is requested; therefore, be it

Resolved by the Senate, That the Senate hereby designates February 21 as ''Stand Up for Steel'' day at the Senate and calls upon all West Virginians to maintain a vigilance to ensure that the trade laws of our nation are enforced and the illegal dumping of foreign steel in our country is eliminated; and, be it further

Resolved, That our nation's leaders are called upon to be vigilant of our U.S. trade laws and to ensure that they are enforced so that such practices as the illegal dumping of foreign steel in our nation is eliminated; and, be it further

Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the President of the United States, the United States Senate and the United States House of Representatives.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and second time by unanimous consent, and referred as indicated:

By Mr. MURKOWSKI (for himself, Mr. HATCH, Mr. CRAIG, Mr. CRAPO, Mr. INHOFE, and Mr. SMITH of Oregon):

S. 2184. A bill to amend chapter 3 of title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes; read the first time.

By Mr. EDWARDS (for himself and Mr. HELMS):

S. 2185. A bill to suspend temporarily the duty on Cibacron Red LS–B HC; to the Committee on Finance.

By Mr. EDWARDS (for himself and Mr. HELMS):

S. 2186. A bill to suspend temporarily the duty on Solvent Violet 13; to the Committee on Finance.

By Mr. EDWARDS (for himself and Mr. HELMS):

S. 2187. A bill to suspend temporarily the duty on Cibacron Scarlet LS–26 HC; to the Committee on Finance.

By Mr. EDWARDS (for himself and Mr. HELMS):

S. 2188. A bill to suspend temporarily the duty on Pigment Yellow 191.1; to the Committee on Finance.

By Mr. EDWARDS (for himself and Mr. HELMS):

S. 2189. A bill to suspend temporarily the duty on Pigment Yellow 147; to the Committee on Finance.

By Mr. EDWARDS (for himself and Mr. HELMS):

S. 2190. A bill to suspend temporarily the duty on Solvent Blue 67; to the Committee on Finance.

By Mr. EDWARDS (for himself and Mr. HELMS):

S. 2191. A bill to suspend temporarily the duty on Pigment Yellow 199; to the Committee on Finance.

By Mr. EDWARDS (for himself and Mr. HELMS):

S. 2192. A bill to suspend temporarily the duty on Cibacron Brilliant Blue FN–G; to the Committee on Finance.

By Mr. EDWARDS (for himself and Mr. HELMS):

S. 2193. A bill to suspend temporarily the duty on Pigment Blue 60; to the Committee on Finance.

By Ms. COLLINS (for herself and Ms. SNOWE):

S. 2194. A bill to direct the Secretary of the Interior to provide assistance in planning and developing a regional heritage center in Calais, Maine; to the Committee on Energy and Natural Resources.

By Mr. REID:

S. 2195. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Truckee watershed reclamation project for the reclamation and reuse of water; to the Committee on Energy and Natural Resources.

By Mr. MOYNIHAN (for himself and Mr. SCHUMER):

S. 2196. A bill to reliquidate certain entries of tomato sauce preparation; to the Committee on Finance.

By Mr. MOYNIHAN (for himself and Mr. SCHUMER):

S. 2197. A bill to reliquidate certain entries of tomato sauce preparation; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 2198. A bill to provide for the reliqiudation of certain entries of vanadium carbides and vanadium carbonitride; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 2199. A bill to suspend temporarily the duty on synthetic quartz or synthetic fused silica; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 2200. A bill to suspend temporarily the duty on N-Cyclopropyl-N'-(1, 1-dimethylethyl)-6-(methylthio)-1, 3, 5-triazine-2, 4-diamine; to the Committee on Finance.

By Mr. MOYNIHAN (for himself and Mr. SCHUMER):

S. 2201. A bill to reliquidate certain entries of tomato sauce preparation; to the Committee on Finance.

By Mr. MOYNIHAN (for himself and Mr. SCHUMER):

S. 2202. A bill to reliquidate certain entries of tomato sauce preparation; to the Committee on Finance.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 2203. A bill to amend title 26 of the Taxpayer Relief Act of 1986 to allow income averaging for fishermen without negative Alternative Minimum Tax treatment, for the creation of risk management accounts for fishermen and for other purposes; to the Committee on Finance.

By Mr. THURMOND:

S. 2204. To suspend temporarily the duty on high molecular, very high molecular, homopolymer, natural color, virgin polymerized powders; to the Committee on Finance.

By Mr. THURMOND:

S. 2205. To suspend temporarily the duty on Cyclooctene (COE); to the Committee on Finance.

By Mr. THURMOND:

S. 2206. To suspend temporarily the duty on Cyclohexadecadlenel,9 (CHDD); to the Committee on Finance.

By Mr. THURMOND:

S. 2207. To suspend temporarily the duty on Cyclohexadec-8-en-1-one (CHD); to the Committee on Finance.

By Mr. THURMOND:

S. 2208. To suspend temporarily the duty on Neo Heliopan MA (Menthyl Anthranilate); to the Committee on Finance.

By Mr. THURMOND:

S. 2209. To suspend temporarily the duty on 2,6 dichlorotoluene; to the Committee on Finance.

By Mr. THURMOND:

S. 2210. To suspend temporarily the duty on 4-bromo-2-fluoroacetanilide; to the Committee on Finance.

By Mr. THURMOND:

S. 2211. To suspend temporarily the duty on propiophenone; to the Committee on Finance.

By Mr. THURMOND:

S. 2212. To suspend temporarily the duty on metachlorobenzaldehyde; to the Committee on Finance.

By Mr. MACK (for himself and Mr. GRAHAM):

S. 2213. A bill to provide for the liquidation or reliquidation of certain entries in accordance with a final decision of the Department of Commerce under the Tariff Act of 1930; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for Mr. MCCAIN (for himself, Mr. HAGEL, Mr. THOMPSON, and Mr. DEWINE)):

S. Res. 266. A resolution designating the month of May every year for the next 5 years as ''National Military Appreciation Month''; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MURKOWSKI (for himself, Mr. HATCH, Mr. CRAIG, Mr. CRAPO, Mr. INHOFE, and Mr. SMITH of Oregon):

S. 2184. A bill to amend chapter 3 of title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes; read the first time.

THE NINTH CIRCUIT COURT OF APPEALS REORGANIZATION ACT OF 2000

Mr. MURKOWSKI. Mr. President, soon we are going to be debating judicial nominations in this body. I want to take this opportunity to address what I consider a grave problem affecting the administration of justice in our Nation.

I am referring to the unwieldy Ninth Circuit Court of Appeals. Some will prefer the status quo, and I hope after my presentation this morning they will share in the recognition that the Ninth Circuit demands reform. The Ninth Circuit has grown so large and has drifted so far from prudent legal reasoning, that sweeping change is in order.

Congress has already recognized that change is needed. In 1997, we commissioned a report on structural alternatives for the Federal courts of appeals. The Commission, chaired by former Supreme Court Justice Byron White, found numerous faults within the Ninth Circuit. In its conclusion, the Commission recommended major reforms and a drastic reorganization of the Circuit.

For this reason, I, along with my distinguished colleague from Washington, Senator SLADE GORTON, introduced S. 253, the Federal Ninth Circuit Reorganization Act of 1999, which would in effectuate the recommendations of the White commission.

The bill would reorganize the Ninth Circuit into three regional divisions, designed as the northern, middle, and southern divisions, and a nonregional circuit division. Ideally, a more cohesive judicial body would emerge—one that reflects the community it serves, and holds a greater master of applicable, but unique, state law and state issues.

Some in this body were not too happy with the divisional realignment. Perhaps a more direct and simplified solution to the problems of the Ninth Circuit is in order. For this reason, I, along with my colleague, Senator HATCH of Utah, introduced a new bill this morning, the Ninth Circuit Court of Appeals Reorganization Act of 2000. We are joined by Senator CRAIG, Senator CRAPO, Senator INHOFE, and Senator SMITH of Oregon.

This bill will divide the Ninth Circuit into two independent circuits. The new Ninth Circuit would contain Arizona, California, and Nevada. A new Twelfth Circuit would be composed of Alaska, Hawaii, Idaho, Montana, Oregon, Washington, Guam, and the Northern Mariana Islands. Immediately upon enactment, the concerns of the White Commission will be addressed, and a more cohesive, efficient, and predictable judiciary will emerge.

In this debate, let us not forget why change is in order. The Ninth Circuit extends from the Arctic Circle to the Mexican border. It spans the tropics of Hawaii and across the International Dateline to Guam and the Mariana Islands. Encompassing some 14 million square miles, the Ninth Circuit, by any means of measure, is the largest of all our U.S. courts of appeal. It is larger than the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Circuits combined.

Let me refer to chart one because I think it makes the point that the Ninth Circuit serves a population of more than 50 million, almost 60 percent more than are served by the next largest circuit court. By the year 2010, the Census Bureau estimates the Ninth Circuit population will be more than 63 million. Mind you, it is now 50 million—63 million. That is an increase of 26 percent in just 10 years.

I wonder how many people this court has to serve before Congress will realize the court is simply overwhelmed by its population. That is a fact.

I must confess our efforts in this case are not novel. Calls to split the Ninth Circuit Court have been heard since 1891. More to the point, Congress has attempted to reorganize the Ninth Circuit since World War II!

Congressional Members are not alone in advocating a split. In 1973, the Congressional Commission on the Revision of the Federal Court of Appellate System recommended that Congress split the Ninth Circuit. That was 1973. Unfortunately, Congress never effectuated the recommendations. Over the years, many legislative efforts have been made to correct the Ninth Circuit problems. Still, no solution. Now, in a new millennium, the problems of the Ninth Circuit still exist and have even grown worse.

Mr. President, justice bears the price for Congress' inaction. The time for action is long overdue.

Because of the circuit's massive size, there is a natural decrease in the ability of the judges to keep abreast of legal developments within the Ninth Circuit. I encourage my colleagues to contact some of those judges—they will be the first to admit they cannot follow the number of cases pending before the court. It simply is too great a load. Inconsistent decisions and improper constitutional interpretations are not unusual.

Let's look at the next chart. In the 1996–1997 session alone, an astounding 95 percent of the cases reviewed by the Supreme Court were overturned. This number should raise more than a few eyebrows. That is from 1996 and 1997. Again, 95 percent of cases reviewed by the Supreme Court were overturned.

Looking at chart 2, over the past 3 years, 33 percent of all cases reversed by the U.S. Supreme Court arose from this troubled Ninth Circuit. That is three times the number of reversals for the next nearest circuit court, and 33 times higher than the reversal rate for the Tenth Circuit.

There you have it. Compare the courts, caseloads, and the question of promptness in justice.

What are these reversal cases? These are people who had their cases wrongly decided. They are people who had to incur great expense, wait unnecessary lengths of time, and risk adverse legal rulings in order to receive justice. No American should have to receive substandard legal attention based, solely on what State they live in.

But we cannot fault the judges of the Ninth Circuit alone. We, in Congress, have allowed this circuit to grow to staggering proportions. In 1998, there were over 9,450 cases filed. It is this number that makes adjudication of claims unacceptably slow. Consequently justice suffers.

Mr. President, we should listen to the voices of the judges who attempt to serve this region. Ninth Circuit Judge Diramuid O'Scannlain 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. . . . As the number of opinions increase, we judges risk losing the ability to keep track of precedent and the ability to know what our circuit's law is.

''The ability to know what our circuit's law is''—that is part of the problem. These judges acknowledge they don't know, and they cannot possibly know, because the caseload is too great.

He said:

> In short, bigger is not necessarily better.

He further stated:

> We [the Ninth Circuit] cannot grow without limit. . . . As the number of opinions increase, we judges risk losing the ability to know what our circuit's law is.

That is the key. It has grown so fast, they don't know what the circuit law is.

> In short, bigger is not necessarily better. The Ninth Circuit will ultimately need to be split. . . .

Judge O'Scannlain is not alone. The very Supreme Court Justices we entrust to guide our Nation's jurisprudence have acknowledged and recommended reform for this troubled court.

Justice Kennedy continued that:

> We have very dedicated judges on that circuit, very scholarly judges . . . but I think institutionally, and from the collegial standpoint, that it is too large to have the discipline and control that is necessary for an effective circuit.

Judge Stevens notes:

> Arguments in favor of dividing the Circuit in either two or three smaller circuits overwhelmingly outweigh the single serious objection to such a change.

But now, with this new bill we can fix the problem. And in turn, we can ensure that all Americans receive swift and fair adjudication of their claims. While I may believe even more sweeping changes are in order, I strongly urge this body address this crisis in our judiciary system.

Mr. President, it is the 50 million residents of the Ninth Circuit who suffer from our inaction. These Americans wait years before their cases are heard. And after these unreasonable delays, justice may not even be served in an overstretched and out-of-touch judiciary.

Mr. President, Congress has known about the problem in the Ninth Circuit for a long time. Justice has been delayed too long. The time for reform has come, and I urge action on this bill.

I yield to my friend who has been recognized.

I yield the floor.

Mr. HATCH. Mr. President, I rise to speak this morning to discuss legislation that I have introduced with Senator MURKOWSKI that would divide the Ninth Circuit into two manageable circuits.

I have been told of a children's song that, with its circular and repetitious melody, is called ''the song without an end.'' And that might be an apt description of our efforts to reach some resolution with the nagging problem of the Ninth Circuit's boundaries.

Indeed, I am told that calls to reexamine the boundaries of what is presently called the Ninth Circuit were first made more than a century ago. In more recent history:

A congressional commission—the Hruska Commission—recommended a split of the Ninth Circuit—not just the Fifth Circuit— in 1973;

In 1995 I held a hearing before the Judiciary Committee to examine a proposal to split the circuit;

In 1997, as part of the Commerce, Justice, State Appropriations bill, the Senate passed a split proposal which was ultimately replaced with a provision creating a commission to report on structural alternatives for the Federal Courts of Appeals—and the Ninth Circuit in particular; and

Last year, Senator MURKOWSKI, and others, introduced legislation to implement the recommendation of that commission, which would have maintained the circuit's structural boundaries, but partitioned its Court of Appeals into three semi-autonomous divisions.

Yet here we stand, like Sisyphus with the boulder at his feet, with nothing to show for years of effort.

All the while, the problems perceived in the Ninth Circuit itself have not disintegrated with the passage of time.

Rather, as we look at that circuit's boundaries, what is immediately apparent is its gargantuan size. That factor, in itself, by no means justifies a remedy in the form of a change in boundaries. But it does serve as a necessary starting point from which to explain many of the criticisms that have been lodged against the circuit.

Stretching across nine States and two territories, and constituting some 14 million square miles, the Ninth Circuit serves the largest U.S. population by far—more than 51 million people. The Ninth Circuit is authorized by statute to maintain 28 active Court of Appeals judges. The next largest circuit—the Fifth—has only 17 active judges, and most other circuits have 12 or fewer judges.

Though the size of the circuit is not in itself a reason to modify its boundaries, the problems resulting from the circuit's size are.

Most notably, the massive size of the circuit's boundaries has confronted the circuit's judges with a real difficulty in maintaining the coherence of its circuit law. This is because there are enormous obstacles both, one, to keeping abreast of the circuit's decisions, and, two, to correcting those decisions that stray from the law of the circuit.

With regard to the first concern, various conscientious judges on the Ninth Circuit have stated they are unable to read the number of published decisions being issued by their colleagues, given the sheer volume of such opinions. They have stated that frequently,

there is no time to do anything more than review the head notes of such decisions.

This is a serious problem from which other problems ensue. Absent the ability of each active judge on the Ninth Circuit to read each such published decision, there can be no assurance that calls will be made for en banc review of those cases which judges believe merit rehearing by a larger component of the court.

With regard to the second concern—the ability to correct decisions that stray from the circuit law—the large size of the Ninth Circuit presents a tremendous impediment. At present, a special exception has been made by Congress to better enable the Ninth Circuit to review 3-judge decisions en banc, and that process—known as limited en banc—involves the empaneling of only 11 judges, rather than the circuit's full complement of 28 judges.

In my view, this system is being utilized with insufficient frequency. And the result is that the stated aim of Federal Rule of Appellate Procedure 35—to secure or maintain uniformity of the court's decisions—is being thwarted.

Moreover, the mechanism is imperfect, and simple math proves the point. It is entirely conceivable that a limited en banc decision could be handed down by an 11-to-0 vote, and yet not reflect the views of a majority of the circuit's judges. Nor is it any answer to say that the Ninth Circuit's rules allow for full en banc hearings with all 28 judges, since no such hearing has ever taken place.

The problems with the lack of internal decisional consistency within the Ninth Circuit have become all too obvious. Three terms ago, the Ninth Circuit's reversal rate before the U.S. Supreme Court exceeded 95 percent. It is no cause for celebration to note that during the last two terms, the Ninth Circuit reversal rate averaged 77 percent, and this term I have noted that the Ninth Circuit is not faring particularly well, with a record of 0 to 7 before the Supreme Court. What is really wrong is there are literally thousands of cases they hear that they are probably making the wrong decisions on that will never go to the Supreme Court because the Court doesn't have time to listen to thousands of cases from the Ninth Circuit Court of Appeals. So we are having all kinds of injustice out there just because of judges who are out of control, who are activist judges ignoring the law itself.

I believe these problems will be corrected when we streamline the circuit, leaving two more manageable circuits in place to more carefully and exactingly do the work currently undertaken by one. I believe the system of error correction and the assurance of coherence of circuit law will be a more manageable task in two circuits where the judges of each will have one-half as many of their colleagues' opinions to read for compliance with and correction of their circuit law.

To this end, Senator MURKOWSKI and I have drafted a measure we believe reflects sound public policy. It would continue to denominate as part of the Ninth Circuit the States of California, Nevada, and Arizona, as well as the island territories currently within the Ninth Circuit. The proposal would place Hawaii and the Northwest States within a new Twelfth Circuit. Such a proposal results in a logical split. Indeed, the contours of this very proposal were set out as an alternative option in the final report of the Commission on Structural Alternatives. And it maintains geographic coherence by avoiding the type of gerrymandered circuit that would have resulted from the split proposal passed by the Senate in 1997, although I could very easily go for that as well.

As a final word, I express for the record my appreciation for the very substantial work performed by the members and staff of the Commission on Structural Alternatives. Its final work product is a most capable report, and the Commission's work under Justice White will truly become part of the history of relations in this country before the Congress and the Judiciary.

With that thanks, I will close my remarks on this by urging my colleagues to act on this sensible proposal to solve a problem that has persisted for far too long. There are some of our colleagues who are very upset at the Ninth Circuit Court of Appeals and its record of reversal by the Supreme Court. I just raised the issue that there may be thousands of cases that need to be reversed, but the Supreme Court doesn't have time to do that. I think they would be much more concerned about voting for and passing this split of the Ninth Circuit than they would attacking some of the judges who are up for nominations.

By Ms. COLLINS (for herself and Ms. SNOWE):

S. 2194. A bill to direct the Secretary of the Interior to provide assistance in planning and developing a regional heritage center in Calais, Maine; to the Committee on Energy and Natural Resources.

ST. CROIX ISLAND HERITAGE ACT

Ms. COLLINS. Mr. President, I rise today to introduce the St. Croix Island Heritage Act, legislation that will help develop a regional heritage center in Calais, ME, in time to commemorate an event of great historical and international significance: the 400th anniversary of one of the earliest settlements in North America, at St. Croix Island. I am pleased to have my senior colleague from Maine, Ms. SNOWE, as a cosponsor of my legislation.

Planning for the regional heritage center is well underway. The residents of the St. Croix River Valley and organizations such as the St. Croix Economic Alliance and the Sunrise County Economic Council have worked hard to move the project forward. They commissioned a consulting firm to evaluate the market potential of the heritage center and to prepare preliminary exhibit and operating plans. They secured planning and seed money from the U.S. Forest Service, the city of Calais, local businesses, and others. And they have hired a full-time project coordinator to oversee development of the heritage center. Now they need assistance from the National Park Service, assistance that this bill would provide.

The regional center will preserve and chronicle the region's cultural, natural, and historical heritage. The Interior Department's role in the planning and development of the heritage center stems from the close proximity of the proposed site to St. Croix Island, the only international historic site in the National Park System.

In 2004, the United States, Canada, and France will celebrate the 400th anniversary of the first settlement at St. Croix Island. We have only 4 more years to prepare for a celebration of this historic event.

I have spoken before on the Senate floor about the historical significance of the settlement of St. Croix Island. It is a remarkable and little-known story that bears retelling. The story dates to the summer of 1604, when a French nobleman, accompanied by a courageous group of adventurers that included Samuel Champlain, landed on St. Croix Island and set about to construct a settlement. They cleared the island, planted crops, dug a well, and built houses, fortifications, and public buildings. In the process, they were aided by Native peoples who made temporary camps on the island. At the same time, Samuel Champlain undertook a number of reconnaissance missions from the island. On one, he found and named Mount Desert Island, now the home to Acadia National Park.

By October of 1604, the settlement was ready. But the Maine winter was more than the seventy-nine settlers had bargained for. By winter's end, nearly half had died, and many others were seriously ill.

The spring brought relief from the harsh weather. The colony was relocated to Port Royal in what is now Nova Scotia and, in 1608, Champlain and his fellow explorers founded Quebec.

According to the National Park Service, the French settlement on St. Croix Island in 1604 and 1605 was the first and ''most ambitious attempt of its time to establish an enduring French presence in the 'New World' '' and ''set a precedent for early French claims in New France.'' Many view the expedition that settled on St. Croix Island in 1604 as the beginning of the Acadian culture in North America. This rich and diverse culture spread across the continent, from Canada to Louisiana, where French-speaking Acadians came to be known as ''Cajuns.''

Mr. President, thousands of people attended the celebration that marked the 300th anniversary of the settlement

of St. Croix Island. The consul general of France and the famous Civil War hero General Joshua Chamberlain were among those who spoke at the event.

In four years, another century will have passed since the last commemoration, and we will celebrate St. Croix Island's 400th anniversary. There is much work to be done. In 1996, the U.S. National Park Service and Parks Canada agreed to ''conduct joint strategic planning for the international commemoration [of the St. Croix Island], with a special focus on the 400th anniversary of settlement in 2004.'' For its part, Parks Canada constructed an exhibit in New Brunswick overlooking St. Croix Island. The exhibit uses Champlain's first-hand accounts, period images, updated research, and custom artwork to tell the compelling story of the settlement.

The U.S. National Park Service, on the other hand, still has a ways to go. In October 1998, the Park Service did complete a general management plan for the St. Croix Island International Historic Site.

From a variety of alternatives, the Park Service settled on a plan that envisions an interpretive trail and ranger station at Red Beach, Maine and exhibits located in the regional heritage center up the road in Calais.

The bill I introduce today directs the National Park Service to facilitate the development of the regional heritage center in time for the 400th anniversary of the St. Croix Island settlement. It empowers the Secretary of Interior to enter into cooperative agreements with State and local agencies and nonprofit organizations to assist in this effort and authorizes $2.5 million for this purpose.

Mr. President, this bill authorizes and commits the National Park Service to follow a plan it has already endorsed to help commemorate a 1604 settlement of enormous historical significance. I believe that the 400th anniversary celebration and the heritage center in Calais will be a source of pride to all Americans of French ancestry.

I am very pleased to see that the distinguished chairman of the Energy Committee is on the floor. It is to his Committee that this legislation, I believe will be referred. I hope that it will be favorably reported and enacted this year.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, I compliment Senator COLLINS for her introduction of the St. Croix heritage bill. I look forward to receiving that in my Energy Committee, and I will attempt to take it up at an early opportunity for a hearing and report it out. I want to commend her and her colleague from Maine, as well.

By Mr. MOYNIHAN (for himself and Mr. SCHUMER):

S. 2196. A bill to reliquidate certain entries of tomato sauce preparation; to the Committee on Finance.

S. 2197. A bill to reliquidate certain entries of tomato sauce preparation; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 2198. A bill to provide for the reliquidation of certain entries of vanadium carbides and vanadium carbonitride; to the Committee on Finance.

S. 2199. A bill to suspend temporarily the duty on synthetic quartz or synthetic fused silica; to the Committee on Finance.

S. 2200. A bill to suspend temporarily the duty on N-Cycloproply-N'-(1, 1-dimethylethyl)-6-(methylthio)-1, 3,5-triazine-2, 4-diamine; to the Committee on Finance.

By Mr. MOYNIHAN (for himself and Mr. SCHUMER):

S. 2201. A bill to reliquidate certain entries of tomato sauce preparation; to the Committee on Finance.

S. 2202. A bill to reliquidate certain entries of tomato sauce preparation; to the Committee on Finance.

MISCELLANEOUS TARIFF BILLS

Mr. MOYNIHAN. Mr. President, I rise today to introduce two bills that temporarily suspend duties on certain imports of goods not produced in the United States and five bills to reliquidate specific entries of vanadium and tomato sauce preparations.

The first bill will temporarily suspend the duty on imports of silica substrate. Silica substrates are produced only in Japan and imported for use in the domestic production of semiconductors. Currently, semiconductors enter the United States duty-free while imports of silica substrate are subject to a 4.9 per cent duty. As a result of this tariff inversion, there is a competitive imbalance which favors foreign production of semiconductors. My bill would extend the current suspension on duties of silica substrates until 2004.

The second bill will temporarily suspend the duty on imports of an environmentally friendly chemical paint additive. The product safely replaces mercury-based chemicals (which were banned a number of years ago) used in ''anti-fouling'' boat paint, intended to prevent fouling of underwater structures. It is also the only EPA-registered algicide for use in the architectural paint market. There is no known production of this chemical in the United States.

The third bill reliquidates thirty-seven entries of vanadium carbide and vanadium carbonitride. Vanadium is used primarily as a strengthening agent in steel and can only be imported from South Africa. The bill seeks to recover duties paid since July 1, 1998, the original date of a competitive need limit waiver by USTR, through December 23, 1999, when the waiver actually took effect.

The final four bills seek to reliquidate entries of canned tomatoes, used to prepare tomato sauce, by four separate companies. The imports were incorrectly subjected to 100 percent ad valorem retaliatory duties beginning in 1989 due to a Harmonized Tariff Schedule misclassification; the retaliation stemmed from a GATT case against the European Union. Treliquidation covers entries not originally included in a decision by the Court of International Trade, which ruled the products had been incorrectly classified and were, therefore, not subject to the retaliatory duties.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 2203. A bill to amend title 26 of the Taxpayer Relief Act of 1986 to allow income averaging for fishermen without negative Alternative Minimum Tax treatment, for the creation of risk management accounts for fishermen and for other purposes; to the Committee on Finance.

FAIR TAX TREATMENT FOR FISHERMAN ACT OF 2000

• Mr. MURKOWSKI. Mr. President, today I am introducing legislation that will ease the financial hardships that fisherman endure because of the uncertainties of their industry. I am very pleased that Senator STEVENS has joined me in co-sponsoring this legislation.

Mr. President, in 1986 when Congress rewrote the tax law and cut the number of tax brackets from 11 to two, one of the provisions of prior law that was repealed was income averaging. The purpose of income averaging was to ameliorate the tax burden on individuals whose incomes varied from year to year. It ensured that an individual whose income increased significantly in one year and then dropped significantly in the next year could average the tax brackets for the two years. With only two brackets, many believed that income averaging was no longer needed.

However, in the 14 years since the 1986 tax reform, we have added three additional brackets to the tax code. And with five brackets there is a clear need for income averaging, especially for individuals who are in occupations where the predictability of income is uncertain. In 1997, we adopted income averaging for farmers because we recognized that weather conditions can significantly impact what a farming family earns in any particular year.

In this legislation we are introducing today, we are adding fishermen to the category eligible for income averaging. Just as farmers cannot predict the weather, fisherman are unable to predict how large or small their catch will be.

Let me give you an example of how the fishermen in Bristol Bay in my home state of Alaska have fared in recent years. Between 1995 and 1998, the fish run dropped from 244 million to barely 58 million last year. At the same time their income has dropped from $188 million to $69 million.

Quite frankly, income averaging is fair for farmers and is equally justified for fishermen.

In addition, our legislation establishes risk management savings accounts which fishermen will be able to draw down when fishing runs are low. Under this proposal, fishermen could set aside up to 20 percent of their income in special savings accounts. Interest earned in the account would be taxable, but withdrawals would only be taxable in the year of the withdrawal.

Mr. President, a recent fishery failure in Alaska resulted in the federal government allocate $50 million to assist the fishermen and their local communities. With these special risk management accounts, fishermen will be less dependent on federal assistance and will be able to more easily survive fishing downturns.

Mr. President, it is my hope that when we consider a tax bill later this year, these modest proposals will be included in that bill.

I ask unanimous consent that the full text of the bill be printed in the RECORD.●

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

S. 2203

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be referred to as the ''Fair Tax Treatment for Fishermen Act of 2000''.

SEC. 2. INCOME AVERAGING FOR FISHERMEN WITHOUT INCREASING ALTERNATIVE MINIMUM TAX LIABILITY.

(a) IN GENERAL.—Section 55(c) (defining regular tax) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following:

''(2) COORDINATION WITH INCOME AVERAGING FOR FISHERMEN.—Solely for purposes of this section, section 1301 (relating to averaging of fishing income) shall not apply in computing the regular tax.''.

(b) ALLOWING INCOME AVERAGING FOR FISHERMEN.—

(1) IN GENERAL.—Section 1301(a) is amended by striking ''farming business'' and inserting ''farming business or fishing business,''.

(2) DEFINITION OF ELECTED FARM INCOME.—

(A) IN GENERAL.—Clause (i) of section 1301(b)(1)(A) is amended by inserting ''or fishing business'' before the semicolon.

(B) CONFORMING AMENDMENT.—Subparagraph (B) of section 1301(b)(1) is amended by inserting ''or fishing business'' after ''farming business'' both places it occurs.

(3) DEFINITION OF FISHING BUSINESS.—Section 1301(b) is amended by adding at the end the following new paragraph:

''(4) FISHING BUSINESS.—The term 'fishing business' means the conduct of commercial fishing (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802, P.L. 94–265 as amended).)''.

SEC. 3. FISHING RISK MANAGEMENT ACCOUNTS.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deductions taken) is amended by inserting after section 468B the following:

''SEC. 468C. FISHING RISK MANAGEMENT ACCOUNTS.

''(a) DEDUCTION ALLOWED.—In the case of an individual engaged in an eligible commercial fishing activity, there shall be allowed as a deduction for any taxable year the amount paid in cash by the taxpayer during the taxable year Fishing Risk Management Account (hereinafter referred to as the 'FisheRMen Account').

''(b) LIMITATION.—

''(1) CONTRIBUTIONS.—The amount which a taxpayer may pay into the FisheRMen Account for any taxable year shall not exceed 20 percent of so much of the taxable income of the taxpayer (determined without regard to this section) which is attributable (determined in the manner applicable under section 1301) to any eligible commercial fishing activity.

''(2) DISTRIBUTION.—Distributions from a FisheRMen Account may not be used to purchase, lease, or finance any new fishing vessel, add capacity to any fishery, or otherwise contribute to the overcapitalization of any fishery. The Secretary of Commerce shall implement regulations to enforce this paragraph.

''(c) ELIGIBLE BUSINESSES.—For purposes of this section—

''(1) COMMERCIAL FISHING ACTIVITY.—The term 'commercial fishing activity' has the meaning given the term 'commercial fishing' by section (3) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802, P.L. 94–265 as amended) but only if such fishing is not a passive activity (within the meaning of section 469(c)) of the taxpayer.

''(d) FISHERMEN ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—The term 'FisheRMen Account' means a trust created or organized in the United States for the exclusive benefit of the taxpayer, but only if the written governing instrument creating the trust meets the following requirements:

''(A) No contribution will be accepted for any taxable year in excess of the amount allowed as a deduction under subsection (a) for such year.

''(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

''(C) The assets of the trust consist entirely of cash or of obligations which have adequate stated interest (as defined in section 1274(c)(2)) and which pay such interest not less often than annually.

''(D) All income of the trust is distributed currently to the grantor.

''(E) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

''(2) ACCOUNT TAXED AS GRANTOR TRUST.—The grantor of a FisheRMen Account shall be treated for purposes of this title as the owner of such Account and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grantors and others treated as substantial owners).

''(e) INCLUSION OF AMOUNTS DISTRIBUTED.—

''(1) IN GENERAL.—Except as provided in paragraph (2), there shall be includable in the gross income of the taxpayer for any taxable year—

''(A) any amount distributed from a FisheRMen Account of the taxpayer during such taxable year, and

''(B) any deemed distribution under—

''(i) subsection (f)(1) (relating to deposits not distributed within 5 years),

''(ii) subsection (f)(2) (relating to cessation in eligible commercial fishing activities), and

''(iii) subparagraph (A) or (B) of subsection (f)(3) (relating to prohibited transactions and pledging account as security).

''(2) EXCEPTIONS.—Paragraph (1)(A) shall not apply to—

''(A) any distribution to the extent attributable to income of the Account, and

''(B) the distribution of any contribution paid during a taxable year to a FisheRMen Account to the extent that such contribution exceeds the limitation applicable under subsection (b) if requirements similar to the requirements of section 408(d)(4) are met.

For purposes of subparagraph (A), distributions shall be treated as first attributable to income and then to other amounts.

''(f) SPECIAL RULES.—

''(1) TAX ON DEPOSITS IN ACCOUNT WHICH ARE NOT DISTRIBUTED WITHIN 5 YEARS.—

''(A) IN GENERAL.—If, at the close of any taxable year, there is a nonqualified balance in any FisheRMen Account—

''(i) there shall be deemed distributed from such Account during such taxable year an amount equal to such balance, and

''(ii) the taxpayer's tax imposed by this chapter for such taxable year shall be increased by 10 percent of such deemed distribution.

The preceding sentence shall not apply if an amount equal to such nonqualified balance is distributed from such Account to the taxpayer before the due date (including extensions) for filing the return of tax imposed by this chapter for such year (or, if earlier, the date the taxpayer files such return for such year).

''(B) NONQUALIFIED BALANCE.—For purposes of subparagraph (A), the term 'nonqualified balance' means any balance in the Account on the last day of the taxable year which is attributable to amounts deposited in such Account before the 4th preceding taxable year.

''(C) ORDERING RULE.—For purposes of this paragraph, distributions from FisheRMen Account (other than distributions of current income) shall be treated as made from deposits in the order in which such deposits were made, beginning with the earliest deposits.

''(2) CESSATION IN ELIGIBLE BUSINESS.—At the close of the first disqualification period after a period for which the taxpayer was engaged in an eligible commercial fishing activity, there shall be deemed distributed from the FisheRMen Account of the taxpayer an amount equal to the balance in such Account (if any) at the close of such disqualification period. For purposes of the preceding sentence, the term 'disqualification period' means any period of 2 consecutive taxable years for which the taxpayer is not engaged in an eligible commercial fishing activity.

''(3) CERTAIN RULES TO APPLY.—Rules similar to the following rules shall apply for purposes of this section:

''(A) Section 220(f)(8) (relating to treatment on death).

''(B) Section 408(e)(2) (relating to loss of exemption of account where individual engages in prohibited transaction).

''(C) Section 408(e)(4) (relating to effect of pledging account as security).

''(D) Section 408(g) (relating to community property laws).

''(E) Section 408(h) (relating to custodial accounts).

''(4) TIME WHEN PAYMENTS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment to a FisheRMen Account on the last day of a taxable year if such payment is made on account of such taxable year and is made on or before the due date (without regard to extensions) for filing the return of tax for such taxable year.

''(5) INDIVIDUAL.—For purpose of this section, the term 'individual' shall not include an estate or trust.

''(6) DEDUCTION NOT ALLOWED FOR SELF-EMPLOYMENT TAX.—The deduction allowable by reason of subsection (a) shall not be taken into account in determining an individual's net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2.

''(g) REPORTS.—The trustee of a FisheRMen Account shall make such reports regarding such Account to the Secretary and to the person for whose benefit the Account is maintained with respect to contributions, distributions, and such other matters as the Secretary may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such persons at such time and in such manner as may be required by such regulations.'.

(b) TAX ON EXCESS CONTRIBUTIONS.—

(1) Subsection (a) of section 4973 (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended by striking ''or'' at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following:

''(4) a FisheRMen Account (within the meaning of section 468C(d)), or''.

(2) Section 4973 is amended by adding at the end the following:

''(g) EXCESS CONTRIBUTIONS TO FISHERMEN ACCOUNTS.—For purposes of this section, in the case of a FisheRMen Account (within the meaning of section 468C(d)), the term 'excess contributions' means the amount by which the amount contributed for the taxable year to the Account exceeds the amount which may be contributed to the Account under section 468C(b) for such taxable year. For purposes of this subsection, any contribution which is distributed out of the FisheRMen Account in a distribution to which section 468C(e)(2)(B) applies shall be treated as an amount not contributed.''.

(e) The section heading for section 4973 is amended to read as follows:

''SEC. 4973. EXCESS CONTRIBUTIONS TO CERTAIN ACCOUNTS, ANNUITIES, ETC.''.

(4) The table of sections or chapter 43 is amended by striking the item relating to section 4973 and inserting the following:

''Sec. 4973. Excess contributions to certain accounts, annuities, etc.''.

(c) TAX ON PROHIBITED TRANSACTIONS.—

(1) Subsection (c) of section 4975 (relating to tax on prohibited transactions) is amended by adding at the end the following:

''(6) SPECIAL RULE FOR FISHERMEN ACCOUNTS.—A person for whose benefit a FisheRMen Account (within the meaning of section 468C(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a FisheRMen Account by reason of the application of section 468C(f)(3)(A) to such account.''

(2) Paragraph (1) of section 4975(e) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and by inserting after subparagraph (D) the following.

''(E) a FisheRMen Account described in section 468C(d).''.

(d) FAILURE TO PROVIDE REPORTS ON FISHERMEN ACCOUNTS.—Paragraph (2) of section 6693(a) (relating to failure to provide reports on certain tax-favored accounts or annuities) is amended by redesignating subparagraph (C) and (D) and (E), respectively, and by inserting after subparagraph (B) the following:

''(C) section 468C(g) (relating to FisheRMen Accounts),''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by inserting after the item relating to section 468B the following:

''Sec. 468C. Fishing Risk Management Accounts.''.

SECTION 4. EFFECTIVE DATE.

(a) The changes made by this Act shall apply to taxable years beginning after December 31, 2000.●

● Mr. STEVENS. Mr. President, I am pleased to join my colleague from Alaska in introducing this important piece of legislation. As a member of the Senate Finance Committee he is all too aware of the need for equity in our tax system and simplicity in our Tax Code.

The first portion of the bill we introduce today would allow fishermen to average income and would not penalize that election with the alternative minimum tax. Up until 1986, individuals, including farmers and fishermen, could elect to average income under section 1301. That choice was no longer available after Congress repealed section 1301 in 1986. Later, in 1997, Congress inserted a new version of section 1301 with a modified form of income averaging for farmers. Section 1301 currently allows farmers engaged in an eligible farming business to average income for tax purposes. This allows farmers to take the fluctuations of their markets, prices and crop conditions into account when calculating income taxes. Fishermen should be afforded the same opportunities as farmers—they are the farmers of the sea and should be treated as such under the Tax Code.

A provision similar to this was included in the Taxpayer Refund Act of 1999 that was vetoed by the President last year. It is not a controversial measure, and its impact on the Treasury is minimal. The Joint Committee on Tax estimated last summer that this provision would cost approximately $5 million over the next ten years. This is a small price to pay to create equity and fairness in our Tax Code and to ensure fishermen receive the same benefits as farmers. While this is one step toward equal treatment for our fishermen, it is an important part of ensuring the long-term sustainability of our fishing industry.

The second portion of the bill we introduce today would allow fishermen to establish tax deferred risk management savings accounts to help them through downturns in the market. The Taxpayer Refund Act of 1999 included similar language. These new risk management accounts would be used to let fishermen set aside up to 20 percent of their income on a tax deferred basis. The money could be held for up to five years, then it would have to be withdrawn from the individual's account. Once the money is withdrawn from the account, the fishermen would pay tax on the amount that was originally deferred. Any interest earned on the money in the account would be taxed in the year that it was earned.

This approach to encouraging fishermen to set some money aside for downturns in the market makes sense. The Joint Committee on Taxation estimated last year that allowing fishermen to set aside 20 percent of their income into these tax deferred accounts would cost only $18 million over 10 years. This is a small price to pay to encourage fishermen to be pro-active in planning for downturns rather than having to be reactive when markets collapse or fishing stocks are weak.

In previous years we have had to bail out fishing areas that have been hit hard by fishery failures. A recent fishery failure in Alaska, and the impact of that failure on families and communities, is still being felt today. We were forced to allocate $50 million to bail out those fishermen and the local communities. This provision, at a cost of $18 million over ten years, is a far-sighted way to let fishermen play a part in a disaster recovery and preserve the proud self-reliance that marks their industry.

I thank my colleague from Alaska, Senator MURKOWSKI, for his support of this bill and I encourage all Senators to support these provisions.●

By Mr. THURMOND:

S. 2204. To suspend temporarily the duty on high molecular, very high molecular, homopolymer, natural color, virgin polymerized powders; to the Committee on Finance.

S. 2205. To suspend temporarily the duty on Cyclooctene (COE); to the Committee on Finance.

S. 2206. To suspend temporarily the duty on Cyclohexadecadlenel,9 (CHDD); to the Committee on Finance.

S. 2207. To suspend temporarily the duty on Cyclohexadec-8-en-1-one (CHD); to the Committee on Finance.

S. 2208. To suspend temporarily the duty on Neo Heliopan MA (Menthyl Anthranilate); to the Committee on Finance.

S. 2209. To suspend temporarily the duty on 2,6 dichlorotoluene; to the Committee on Finance.

S. 2210. To suspend temporarily the duty on 4-bromo-2-fluoroacetanilide; to the Committee on Finance.

S. 2211. To suspend temporarily the duty on propiophenone; to the Committee on Finance.

S. 2212. To suspend temporarily the duty on metachlorobenzaldehyde; to the Committee on Finance.

BILLS TO SUSPEND THE DUTY ON CERTAIN CHEMICALS USED IN THE MANUFACTURING INDUSTRY

Mr. THURMOND. Mr. President, I rise today to introduce nine bills which will suspend the duties imposed on certain chemicals that are important components for a wide array of applications. Currently, these chemicals are imported for use in the United States because there are no known domestic producers or readily available substitutes. Therefore, suspending the duties on these chemicals would not adversely affect domestic industries.

This bill would temporarily suspend the duty on meta-chlorobenzaldehyde; propiophenone; 4-bromo-2-

fluoroacetanilide; 2, 6-dichlorotoluene; menthyl anthranilate; cyclooctene; cyclohexadeca-1, 9-diene; cyclohexadec-8-en-1-one; and high molecular weight polymerized powders, which are used as intermediate chemicals in the manufacturing of a number of products including, but not limited to, fragrances, agricultural inputs, pharmaceuticals, water filters elements, surgical orthopedic hip and knee implants, and fibers used to make bullet-proof vests.

Mr. President, suspending the duty on these chemicals will benefit the consumer by stabilizing the costs of manufacturing the end-use products. Further, these suspensions will allow domestic producers to maintain or improve their ability to compete internationally. I hope the Senate will consider these measures expeditiously.

I ask unanimous consent that the text of these bills be printed in the RECORD.

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

S. 2204

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

SECTION 1. HIGH MOLECULAR, VERY HIGH MOLECULAR, HOMOPOLYMER, NATURAL COLOR, VIRGIN POLYMERIZED POWDERS.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.38.00	High molecular, very high molecular, or ultra high molecular weight, homopolymer, natural color, virgin polymerized powders with a specific gravity of < 940 g/liter and molecular weight of 500,000-6,000,000 (as defined by ASTM D4020) containing a maximum nominal 500 ppm calcium stearate with low bulk densities (200–350 g/l) and/or complying with ASTM F648, Types 1,2, and ISO 5834, Types 1, 2, and/or extremely fine or coarse particle sizes (<70 or >250 microns) and/or special dissolution properties. (CAS No. 9002-88-4) (provided for in subheading 3901.20.00)	Free	Free	No change	On or before 12/31/2002	".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment of this Act.

S. 2205

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

SECTION 1. CYCLOOCTENE (COE).

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.28.11	Cyclooctene (COE) (provided for in subheading 2902.90.80)	Free	Free	No change	On or before 12/31/2003	".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 2206

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

SECTION 1. CYCLOHEXADECADLENEL,9 (CHDD).

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.28.12	Cyclohexadecadlenel,9 (CHDD) (provided for in subheading 2902.90.80)	Free	Free	No change	On or before 12/31/2003	".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 2207

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

SECTION 1. CYCLOHEXADEC-8-EN-1-ONE (CHD).

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.28.13	Cyclohexadec-8-en-1-one (CHD) (provided for in subheading 2914.29.00)	Free	Free	No change	On or before 12/31/2003	".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 2208

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

SECTION 1. NEO HELIOPAN MA (MENTHYL ANTHRANILATE).

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.08.10	Neo Heliopan MA (Menthyl Anthranilate) (CAS No. 134-09.8) (provided for in subheading 2922.49.27)	Free	Free	No change	On or before 12/31/2003	".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 2209

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

SECTION 1. 2,6 DICHLOROTOLUENE.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.28.08	2,6 Dichlorotoluene (CAS No. 118-69-4) (provided for in subheading 2903.69.70)	Free	No change	No change	On or before 12/31/2003	".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 2210

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

SECTION 1. 4-BROMO-2-FLUOROACETANILIDE.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.28.08	4-Bromo-2-Fluoroacetanilide (CAS No. 326-66-9) (provided for in subheading 2924.21.50) ..	Free	No change	No change	On or before 12/31/2003	".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 2211

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

SECTION 1. PROPIOPHENONE.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.28.08	Propiophenone (CAS No. 93-55-0) (provided for in subheading 2914.39.90)	Free	No change	No change	On or before 12/31/2003	".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 2212

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

SECTION 1. META-CHLOROBENZALDEHYDE.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.28.08	Meta-Chlorobenzaldehyde (CAS No. 587-04-2) (provided for in subheading 2913.00.40)	Free	No change	No change	On or before 12/31/2003	".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

ADDITIONAL COSPONSORS

S. 484

At the request of Mr. CAMPBELLL, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 484, a bill to provide for the granting of refugee status in the United States to nationals of certain foreign countries in which American Vietnam War POW/MIAs or American Korean War POW/MIAs may be present, if those nationals assist in the return to the United States of those POW/MIAs alive.

S. 622

At the request of Mr. KENNEDY, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 622, a bill to enhance Federal enforcement of hate crimes, and for other purposes.

S. 717

At the request of Ms. MIKULSKI, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of S. 717, a bill to amend title II of the Social Security Act to provide that the reductions in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. 1109

At the request of Mr. MCCONNELL, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1109, a bill to conserve global bear populations by prohibiting the importation, exportation, and interstate trade of bear viscera and items, products, or substances containing, or labeled or advertised as containing, bear viscera, and for other purposes.

S. 1128

At the request of Mr. KYL, the names of the Senator from Georgia (Mr. CLELAND) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 1128, a bill to amend the Internal Revenue Code of 1986 to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers, to provide for a carryover basis at death, and to establish a partial capital gains exclusion for inherited assets.

S. 1133

At the request of Mr. GRAMS, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 1133, a bill to amend the Poultry Products Inspection Act to cover birds of the order Ratitae that are raised for use as human food.

S. 1333

At the request of Mr. WYDEN, the names of the Senator from Georgia (Mr. CLELAND) and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of S. 1333, a bill to expand homeownership in the United States.

S. 1361

At the request of Mr. STEVENS, the name of the Senator from Tennessee (Mr. FRIST) was added as a cosponsor of S. 1361, a bill to amend the Earthquake Hazards Reduction Act of 1977 to provide for an expanded Federal program of hazard mitigation, relief, and insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions, and for other purposes.

S. 1630

At the request of Mr. REID, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 1630, a bill to amend title III of the Public Health Service Act to include each year of fellowship training in geriatric medicine or geriatric psychiatry as a year of obligated service under the National Health Corps Loan Repayment Program.

S. 1755

At the request of Mr. DORGAN, the names of the Senator from Oregon (Mr. WYDEN), the Senator from Georgia (Mr. CLELAND), and the Senator from Louisiana (Mr. BREAUX) were added as cosponsors of S. 1755, a bill to amend the Communications Act of 1934 to regulate interstate commerce in the use of mobile telephones.

S. 1756

At the request of Mr. BINGAMAN, the name of the Senator from Washington (Mr. GORTON) was added as a cosponsor of S. 1756, a bill to enhance the ability of the National Laboratories to meet Department of Energy missions and for other purposes.

S. 1837

At the request of Mr. BAUCUS, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1837, a bill to amend title XIX of the Social Security Act to provide low-income medicare beneficiaries with medical assistance for out-of-pocket expenditures for outpatient prescription drugs.

S. 1874

At the request of Mr. GRAHAM, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1874, a bill to improve academic and social outcomes for youth and reduce both juvenile crime and the risk that youth will become victims of crime by providing productive activities conducted by law enforcement personnel during non-school hours.

S. 1898

At the request of Mr. DORGAN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1898, a bill to provide protection against the risks to the public that are inherent in the interstate transportation of violent prisoners.

S. 1900

At the request of Mr. LAUTENBERG, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1900, a bill to amend the Internal Revenue Code of 1986 to allow a credit to holders of qualified bonds issued by Amtrak, and for other purposes.

S. 1921

At the request of Mr. CAMPBELL, the names of the Senator from New Mexico (Mr. DOMENICI) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 1921, a bill to authorize the placement within the site of the Vietnam Veterans Memorial of a plaque to honor Vietnam veterans who died after their service in the Vietnam war, but as a direct result of that service.

S. 1934

At the request of Mr. DODD, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1934, a bill to amend the Internal Revenue Code of 1986 to allow a tax credit for business-provided student education and training.

S. 1940

At the request of Mr. LEAHY, the name of the Senator from Minnesota (Mr. GRAMS) was withdrawn as a cosponsor of S. 1940, a bill to amend the Immigration and Nationality Act to reaffirm the United States' historic commitment to protecting refugees who are fleeing persecution or torture.

S. 2003

At the request of Mr. JOHNSON, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2003, a bill to restore health care coverage to retired members of the uniformed services.

S. 2018

At the request of Mr. HUTCHINSON, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 2018, a bill to amend title XVIII of the Social Security Act to revise the update factor used in making payments to PPS hospitals under the medicare program.

S. 2029

At the request of Mr. FRIST, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 2029, a bill to amend the Communications Act of 1934 to prohibit telemarketers from interfering with the caller identification service of any person to whom a telephone solicitation is made, and for other purposes.

S. 2037

At the request of Ms. SNOWE, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2037, a bill to amend title XVIII of the Social Security Act to extend the option to use rebased target amounts to all sole community hospitals.

S. 2068

At the request of Mr. GREGG, the names of the Senator from Texas (Mr. GRAMM), the Senator from North Carolina (Mr. HELMS), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Massachusetts (Mr. KERRY), and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 2068, a bill to prohibit the Federal Communications Commission from establishing rules authorizing the operation of new, low power FM radio stations.

S. 2070

At the request of Mr. FITZGERALD, the names of the Senator from Louisiana (Ms. LANDRIEU), the Senator from Wisconsin (Mr. FEINGOLD), and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 2070, a bill to improve safety standards for child restraints in motor vehicles.

S. 2074

At the request of Mr. ASHCROFT, the names of the Senator from Alaska (Mr. STEVENS), the Senator from South Carolina (Mr. THURMOND), and the Senator from Illinois (Mr. FITZGERALD) were added as cosponsors of S. 2074, a bill to amend title II of the Social Security Act to eliminate the social security earnings test for individuals who have attained retirement age.

S. 2089

At the request of Mr. SPECTER, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2089, a bill to amend the Foreign Intelligence Surveillance Act of 1978 to modify procedures relating to orders for surveillance and searches for foreign intelligence purposes, and for other purposes.

S. 2090

At the request of Mr. CONRAD, his name was withdrawn as a cosponsor of S. 2090, a bill to amend the Internal Revenue Code of 1986 to impose a 1 year moratorium on certain diesel fuel excise taxes.

S. 2097

At the request of Mr. GRAMM, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 2097, a bill to authorize loan guarantees in order to facilitate access to local television broadcast signals in unserved and underserved areas, and for other purposes.

S. 2107

At the request of Mr. GRAMM, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 2107, a bill to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to reduce securities fees in excess of those required to fund the operations of the Securities and Exchange Commission, to adjust compensation provisions for employees of the Commission, and for other purposes.

S. CON. RES. 60

At the request of Mr. FEINGOLD, the names of the Senator from Alabama (Mr. SESSIONS) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. Con. Res. 60, a concurrent resolution expressing the sense of Congress that a commemorative postage stamp should be issued in honor of the U.S.S. *Wisconsin* and all those who served aboard her.

S. CON. RES. 84

At the request of Mr. WARNER, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. Con. Res. 84, a concurrent resolution expressing the sense of Congress regarding the naming of aircraft carrier CVN–77, the last vessel of the historic *Nimitz* class of aircraft carriers, as the U.S.S. *Lexington*.

S. RES. 87

At the request of Mr. HELMS, his name was added as a cosponsor of S. Res. 87, a resolution commemorating the 60th Anniversary of the International Visitors Program.

At the request of Mr. DURBIN, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. Res. 87, supra.

S. RES. 115

At the request of Mr. ASHCROFT, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. Res. 115, a resolution expressing the sense of the Senate regarding United States citizens killed in terrorist attacks in Israel.

S. RES. 128

At the request of Mr. COCHRAN, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. Res. 128, a resolution designating March 2000, as ''Arts Education Month.''

S. RES. 237

At the request of Mrs. BOXER, the names of the Senator from Florida (Mr. GRAHAM), the Senator from Pennsylvania (Mr. SPECTER), and the Senator

from Rhode Island (Mr. REED) were added as cosponsors of S. Res. 237, a resolution expressing the sense of the Senate that the United States Senate Committee on Foreign Relations should hold hearings and the Senate should act on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

S. RES. 258

At the request of Mr. CRAIG, the names of the Senator from Missouri (Mr. ASHCROFT), the Senator from Indiana (Mr. BAYH), the Senator from Utah (Mr. BENNETT), the Senator from California (Mrs. BOXER), the Senator from Kentucky (Mr. BUNNING), the Senator from Rhode Island (Mr. CHAFEE, L.), the Senator from Georgia (Mr. COVERDELL), the Senator from Idaho (Mr. CRAPO), the Senator from Illinois (Mr. DURBIN), the Senator from North Carolina (Mr. EDWARDS), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Illinois (Mr. FITZGERALD), the Senator from Tennessee (Mr. FRIST), the Senator from Florida (Mr. GRAHAM), the Senator from Texas (Mr. GRAMM), the Senator from North Carolina (Mr. HELMS), the Senator from Oklahoma (Mr. INHOFE), the Senator from Wisconsin (Mr. KOHL), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Indiana (Mr. LUGAR), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Kansas (Mr. ROBERTS), the Senator from Alabama (Mr. SESSIONS), the Senator from Alabama (Mr. SHELBY), the Senator from Tennessee (Mr. THOMPSON), the Senator from New Jersey (Mr. TORRICELLI), and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. Res. 258, a resolution designating the week beginning March 12, 2000 as ''National Safe Place Week.''

S. RES. 263

At the request of Mr. CHAFEE, L., his name was added as a cosponsor of S. Res. 263, a resolution expressing the sense of the Senate that the President should communicate to the members of the Organization of Petroleum Exporting Countries (''OPEC'') cartel and non-OPEC countries that participate in the cartel of crude oil producing countries, before the meeting of the OPEC nations in March 2000, the position of the United States in favor of increasing world crude oil supplies so as to achieve stable crude oil prices.

SENATE RESOLUTION 266—DESIGNATING THE MONTH OF MAY EVERY YEAR FOR THE NEXT 5 YEARS AS ''NATIONAL MILITARY APPRECIATION MONTH''

Mr. LOTT (for Mr. MCCAIN (for himself, Mr. HAGEL, Mr. THOMPSON, and Mr. DEWINE)) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 266

Whereas the freedom and security that citizens of the United States enjoy today are direct results of the vigilance of the United States Armed Forces;

Whereas recognizing contributions made by members of the United States Armed Forces will increase national awareness of the sacrifices that such members have made to preserve the freedoms and liberties that enrich this Nation;

Whereas it is important to preserve and foster admiration and respect for the service provided by members of the United States Armed Forces;

Whereas it is vital for youth in the United States to understand that the service provided by members of the United States Armed Forces has secured and protected the freedoms that United States citizens enjoy today;

Whereas it is important to recognize the unfailing support that families of members of the United States Armed Forces have provided to such members during their service and how such support strengthens the vitality of our Nation;

Whereas recognizing the role that the United States Armed Forces plays in maintaining the superiority of the United States as a nation and in contributing to world peace will increase awareness of all contributions made by such Forces;

Whereas it is appropriate to recognize the importance of maintaining a strong, equipped, well-educated, well-trained military for the United States to safeguard freedoms, humanitarianism, and peacekeeping efforts around the world;

Whereas it is proper to foster and cultivate the honor and pride that citizens of the United States feel towards members of the United States Armed Forces for the protection and service that such members provide;

Whereas recognizing the many sacrifices made by members of the United States Armed Forces is important; and

Whereas it is proper to recognize and honor the dedication and commitment of members of the United States Armed Forces, and to show appreciation for all contributions made by such members since the inception of the Armed Forces: Now, therefore, be it

Resolved, That the Senate—

(1) designates the month of May every year for the next 5 years as ''National Military Appreciation Month''; and

(2) requests that the President issue a proclamation calling upon the people of the United States and interested groups to observe such month with appropriate ceremonies and activities.

Mr. MCCAIN. Mr. President, I rise today to submit along with Senators HAGEL, DEWINE, and THOMPSON a resolution to designate the month of May as National Military Appreciation Month. As my colleagues may recall, I had sponsored a resolution earlier in the year, cosponsored by 61 senators, designating May 1999 as National Military Appreciation Month. That resolution, S. Res. 33, passed by a vote of 93–0 on March 30.

Subsequent to passage of S. Res. 33, I introduced S. 1419, which would have made that designation permanent by amending Title 36 of the U.S. Code. To date, S. 1419 has 66 cosponsors. Because of the failure of S. 1419 to pass, I have agreed to submit a revised resolution designating May National Military Appreciation Month for the next five years, and requesting the President issue a proclamation calling for the American people and interested groups to observe such months with appropriate ceremonies and activities. It is my hope that this new resolution will receive the Senate's favorable consideration.

The introduction of an All-Volunteer Army was an outgrowth of the disenchantment many Americans felt in the wake of the Vietnam War. The end of conscription and the transition to the All-Volunteer concept has been criticized by some for not adequately reflecting socioeconomic divisions without our country. In point of fact, however, with the requisite attention and care, it produced the finest armed forces in history. How far we had come since the tumultuous times of the 1970s when military readiness descended to abysmal levels was evident for all the world to see in the overwhelming victory over Iraqi forces during Operation Desert Storm. But that success has been taken for granted too long. Over 15 years of declining military budgets, combined with record high levels of deployments, have stretched the military to precarious levels.

The end of conscription had another, more far-reaching and subtle implication: it diminished the percentage of the public, including its elected officials, with military experience. This is not a criticism of those who did not serve; on the contrary, as a strong supporter of the All-Volunteer Army, I remain committed to its survival and success. This gradual diminishment in the shared experience of having served in uniform, however, makes it increasingly important that the public reflect every year on the enormous role their armed forces have on preserving freedom.

As thousands of American soldiers serve increasingly hazardous duty in Kosovo, while others continue to serve in Bosnia as well as on the demilitarized zone in Korea and around the world, it is imperative that our men and women in uniform know of the strong continuing support of their country for their dedication and service to this country. Whether we individually agree with each and every deployment or not, we have learned to separate our support for the armed forces from our differences over the policies that sent them into harm's way. Dedicating one month every year to express our appreciation for the armed forces, the same month in which we recognize Victory in Europe Day, Military Spouse Day, Armed Forces Day, and, most importantly, Memorial Day, is an appropriate measure that I hope will have the support of all my colleagues in Congress.

Mr. President, I generally take a somewhat dim view of celebratory resolutions. But those who fought on the battlefields of Lexington, Gettysburg, Normandy, in the Ardennes and on Okinawa, in Hue and at Khe Sanh, in the deserts of the Persian Gulf and the dusty streets of Mogadishu, in the skies over Kosovo and who stand a lonely vigil on the DMZ, must not be forgotten. Too much blood has been spilled in defense of liberty. We owe to those who perished and those who survived, to devote one month out of the

year to reflect on the sacrifices of those who have worn their nation's uniform throughout its history.

Mr. President, I request that the attached correspondence in support of S. 1419 from the Military Coalition be made a part of the RECORD.

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

THE MILITARY COALITION,
Alexandria, VA, February 28, 2000.

Hon. JOHN MCCAIN,
Senate Armed Services Committee,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: The Military Coalition, a consortium of nationally-prominent uniformed services and veterans organizations, representing more than 5.5 million members of the uniformed services plus their families and survivors urge you to encourage your colleagues on the Judiciary Committee to render a favorable report on S. 1419, to designate May as National Military Appreciation Month. S. 1419 is a follow-on to S. Res. 33, which the Senate approved last year by a vote of 93–0. That resolution designated May 1999 as National Military Appreciation Month; S. 1419 will make that designation permanent.

Over the three decades since the advent of the All Volunteer Force, a seemingly impossible challenge has been met with spectacular results. Instead of a uniformed service comprised of conscripts, we are blessed with high quality volunteers from all walks of life. Active, Guard and Reserve forces have responded commendably to the increased operations and personnel tempos and in return, deserve this special recognition of a grateful nation.

Another compelling reason for approving this legislation is that the gradual decrease in the shared experience of having served in uniform, makes it increasingly important that the public reflect every year on the enormous role that their armed forces have on preserving freedom. As we commit thousands of servicemembers to missions around the world it is imperative that they know of the strong and enduring support of their country for their dedication and service. We owe it to those who paid the ultimate price and those who survived, to devote one month out of the year to reflect on the sacrifices of those who have worn their nation's uniform throughout its history.

Please demonstrate your commitment to them by acting promptly to bring S. 1419 to the Senate floor for action.

Sincerely,

THE MILITARY COALITION.

NOTICE OF HEARING

SUBCOMMITTEE ON FORESTRY, CONSERVATION, AND RURAL REVITALIZATION

Mr. LUGAR. Mr. President, I would like to announce that the Subcommittee on Forestry, Conservation, And Rural Revitalization of the Senate Committee on Agriculture, Nutrition, and Forestry will meet on March 8, 2000 in SR–328A at 2:30 p.m. The purpose of this meeting will be to discuss the National Rural Development Council.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 9:30 a.m. on Tuesday, March 7, 2000, in open and closed sessions, to receive testimony from the unified and regional commanders on their military strategy and operational requirements in review of the defense authorization request for fiscal year 2001 and the Future Years Defense Program.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SPECTER. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Tuesday, March 7, 2000, at 9:30 a.m. on S. 1755—Mobile Telecommunications Sourcing Act.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in executive session during the session of the Senate on Tuesday, March 7, 2000, at 10 a.m.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in executive session for the consideration of S.2, the Educational Opportunities Act, during the session of the Senate on March 7th, 2000.

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

COMMITTEE ON FINANCE

Mr. SPECTER. Mr. President, I ask unanimous consent that the Senate Committee on Finance be authorized to meet during the session of the Senate on Tuesday, March 7, 2000, to hear testimony regarding Agriculture Negotiations in the WTO After Seattle.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. SPECTER. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a joint hearing with the House Committee on Veterans' Affairs to receive the Legislative presentations of the Retired Enlisted Association, Gold Star Wives of America, Military Order of the Purple Heart, Air Force Sergeants Association, and the Fleet Reserve Association. The hearing will be held on Tuesday, March 7, 2000, at 9:30 a.m., in room 345 of the Cannon House Office Building.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. SPECTER. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, March 7, 2000 at 2:30 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Administrative Oversight and the Courts be authorized to meet to conduct a hearing on Tuesday, March 7, 2000, at 9:30 a.m., in SH216.

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

SUBCOMMITTEE ON READINESS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Readiness and Management Support Subcommittee of the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, March 7, 2000 at 2 p.m., in open session to receive testimony on readiness programs in review of the defense authorization request for fiscal year 2001 and the Future Years Defense Program.

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

SUBCOMMITTEE ON TECHNOLOGY, TERRORISM, AND GOVERNMENT INFORMATION

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Technology, Terrorism and Government Information be authorized to meet to conduct a hearing on Tuesday, March 7, 2000, at 2 p.m., in SD226.

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

SUBCOMMITTEE ON WATER AND POWER

Mr. SPECTER. Mr. President, I ask unanimous consent that the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, March 7 at 2:30 p.m. to conduct an oversight hearing. The subcommittee will consider the President's proposed FY2001 budget for the Bureau of Reclamation (Department of the Interior) and the Bonneville Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration (Department of Energy).

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

ORDERS FOR WEDNESDAY, MARCH 8, 2000

Mr. ENZI. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:30 a.m. on Wednesday, March 8. I further ask consent that on Wednesday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for

their use later in the day, and the Senate then begin consideration of the conference report to accompany H.R. 1000, the FAA bill, under the previous order.

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

Mr. ENZI. I further ask consent that following the debate, the Senate proceed to a period of morning business until 11:30 a.m. with Senators speaking for up to 5 minutes each, with the following exceptions:

Senator DURBIN or his designee, 10:30 to 11:00 a.m.; Senator BROWNBACK or his designee, 11:00 to 11:30 a.m.

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

PROGRAM

Mr. ENZI. The Senate will convene at 9:30 a.m. and begin the 1 hour of debate on the conference report to accompany the FAA bill. Following that debate, the Senate will be in a period of morning business until 11:30 a.m. Following morning business, the Senate will begin consideration of the Export Administration Act which will be debated until 5 p.m. By previous consent there will be three votes scheduled at 5 p.m. tomorrow. The first vote is the conference report to accompany the FAA bill, to be followed by the two cloture votes with respect to the Berzon and Paez nominations. Therefore, Senators can expect the next vote to occur at 5 p.m. tomorrow.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. ENZI. If there is no further business to come before the Senate, I now ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 5:55 p.m., adjourned until Wednesday, March 8, 2000, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate March 7, 2000:

DEPARTMENT OF DEFENSE

RUDY DELEON, OF CALIFORNIA, TO BE DEPUTY SECRETARY OF DEFENSE, VICE JOHN J. HAMRE, RESIGNED.

DOUGLAS A. DWORKIN, OF MARYLAND, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE, VICE JUDITH A. MILLER.

ENVIRONMENTAL PROTECTION AGENCY

JAMES V. AIDALA, OF VIRGINIA, TO BE ASSISTANT ADMINISTRATOR FOR TOXIC SUBSTANCES OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE LYNN R. GOLDMAN.

DEPARTMENT OF STATE

DONALD ARTHUR MAHLEY, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR EXECUTIVE SERVICE, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS SPECIAL NEGOTIATOR FOR CHEMICAL AND BIOLOGICAL ARMS CONTROL ISSUES.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. RONALD E. KEYS, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. GARY A. AMBROSE, 0000
BRIG. GEN. BRIAN A. ARNOLD, 0000
BRIG. GEN. THOMAS L. BAPTISTE, 0000
BRIG. GEN. LEROY BARNIDGE, JR., 0000
BRIG. GEN. JOHN L. BARRY, 0000
BRIG. GEN. WALTER E.L. BUCHANAN III, 0000
BRIG. GEN. RICHARD W. DAVIS, 0000
BRIG. GEN. ROBERT R. DIERKER, 0000
BRIG. GEN. MICHAEL N. FARAGE, 0000
BRIG. GEN. JACK R. HOLBEIN, JR., 0000
BRIG. GEN. CHARLES L. JOHNSON II, 0000
BRIG. GEN. THEODORE W. LAY II, 0000
BRIG. GEN. TEDDIE M. MCFARLAND, 0000
BRIG. GEN. MICHAEL C. MCMAHAN, 0000
BRIG. GEN. TIMOTHY J. MCMAHON, 0000
BRIG. GEN. DUNCAN J. MCNABB, 0000
BRIG. GEN. HOWARD J. MITCHELL, 0000
BRIG. GEN. BENTLEY B. RAYBURN, 0000
BRIG. GEN. JOHN F. REGNI, 0000
BRIG. GEN. VICTOR E. RENUART, JR., 0000
BRIG. GEN. LEE P. RODGERS, 0000
BRIG. GEN. GLEN D. SHAFFER, 0000
BRIG. GEN. CHARLES N. SIMPSON, 0000
BRIG. GEN. JAMES N. SOLIGAN, 0000
BRIG. GEN. MICHAEL P. WIEDEMER, 0000
BRIG. GEN. MICHAEL W. WOOLEY, 0000
BRIG. GEN. BRUCE A. WRIGHT, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE, 10 U.S.C., SECTION 12203:

To be colonel

THOMAS W. ACOSTA, JR., 0000
STEVEN ALAN ADAMS, 0000
AUGUSTUS D. AIKENS, JR., 0000
JEFFREY C. AKAMATSU, 0000
WILLIAM E. ALDRIDGE, 0000
ROBERT F. ALTHERR, JR., 0000
RONALD D. ANDERSON, 0000
STEVEN D. ANDERSON, 0000
WILLIAM V. ANDERSON, 0000
MICHAEL D. ARMOUR, 0000
PHILIP L. ARTHUR, 0000
DEBORAH A. ASHENHURST, 0000
ROBBIE L. ASHER, 0000
JOHN M. ATKINS, 0000
MILTON G. AVERY, 0000
ROBERT A. AVERY, 0000
WILLIAM P. BABCOCK, 0000
STEVEN A. BACKER, 0000
JAMES D. H. BACON, 0000
GREGORY P. BAILEY, 0000
BRUCE H. BAKER, JR., 0000
KENNETH J. BAKER, 0000
ALBERT BARDAYAN, 0000
NEWTON R. BARDWELL III, 0000
ROOSEVELT BARFIELD, 0000
LONNIE L. BARHAM, 0000
RODNEY J. BARHAM, 0000
STEVEN R. BARNER, 0000
JOHN I. BARNES III, 0000
ROBERT L. BARNES, JR., 0000
DANIEL W. BARR, 0000
RICHARD A. BAYLOR, 0000
ROBERT A. BEAN, JR., 0000
MARK D. BECHER, 0000
BRUCE E. BECK, 0000
CARL B. BECKMANN, JR., 0000
TERRENCE W. BELTZ, 0000
DAN A. BERKEBILE, 0000
GERALD R. BETTY, 0000
WARREN K. BEYER, 0000
WILLIAM G. BICKEL, 0000
COURTLAND C. BIVENS III, 0000
ROBERT D. BLOOMQUIST, 0000
TERRY L. BORTZ, 0000
PHILLIP E. BOWEN, 0000
JOHN L. BRACKIN, 0000
THOMAS M. BRADLEY, 0000
GEORGE R. BRADY, 0000
PAUL M. BRADY, 0000
JAMES A. BRATTAIN, 0000
JOHN R. RAULT, 0000
ALLEN E. BREWER, 0000
ROBERT K. BRINSON, 0000
SANS C. BROUSSARD, 0000
HAROLD E. BROWN, 0000
CHARLES R. BRULE, SR., 0000
ROBERT O. BRUNSON, 0000
JOHN A. BUCY, 0000
HAROLD G. BUNCH, 0000
ANDREW C. BURTON, 0000
PHILIP C. CACCESE, 0000
MATTHEW P. CACCIATORE, JR., 0000
ANN MOORE CAMPBELL, 0000
ROLAND L. CANDEE, 0000
JAMES J. CAPORIZO III, 0000
RONALD A. CASSARAS, 0000
CHARLES R. CHADWICK, 0000
CHARLES A. CHAMBERS IV, 0000
ELIZABETH A. CHECCHIA, 0000
PETER PAUL HERELLIA, 0000
JAMES YOUNG CHILTON, 0000
THOMAS R. CHRISTENSEN, 0000
ROBERT M. CHRISTIAN, 0000
JOHN G. CHRISTIANSEN, JR., 0000
BOBBY GUY CHRISTOPHER, 0000
DANNY DEAN CLARK, 0000
JAMES E. COBB, 0000
MCKINLEY COLLINS, JR., 0000
THOMAS PATRICK COLLINS, 0000
DENNIS CONWAY, 0000
LAWRENCE D. COOPER, 0000
APRIL M. CORNIEA, 0000
CALVIN EDWARD COUFAL, 0000
TERRY RAY COUNCIL, 0000
ARDWOOD R. COURTNEY, JR., 0000
HOMER T. COX III, 0000
MARK E. CRAIG, 0000
JOHN V. CRANDALL, 0000
STANLEY E. CROW, 0000
RITA K. CUCCHIARA, 0000
THOMAS W. CURRENT, 0000
THOMAS E. DACAR, 0000
WILLIE D. DAVENPORT, 0000
JACK L. DAVIS, 0000
JOHN T. DAVIS, 0000
MILTON P. DAVIS, 0000
JOHN E. DAVOREN, 0000
GARY W. DAWSON, 0000
THOMAS DAWAYNE DEAN, 0000
PHILIP M. DEHENNIS, 0000
JOSEPH P. DEJOHN, 0000
PAUL MORTON DEKANEL, 0000
SANTIAGO DELVALLE, 0000
JOSEPH G. DEPAUL, 0000
CAROLYN J. DERBY, 0000
RONALD EDGAR DEWITT, 0000
NEIL DIAL, 0000
RICHARD W. DILLON, 0000
DAVID T. DORROUGH, 0000
RAYMOND S. DOYLE, 0000
GILFORD C. DUDLEY, JR., 0000
JOHN FREDERICK DUGGER, 0000
JAMES J. DUNPHY, JR., 0000
WARREN L. DUPUIS, 0000
PAUL W. DVORAK, 0000
WILLIAM THOMAS EGAN, 0000
MICHAEL E. EICHINGER, 0000
GARY F. EISCHEID, 0000
GARY R. ENGEL, 0000
ERNEST T. ERICKSON, 0000
RICHARD M. ETHERIDGE, 0000
ARTHUR DALE EVANS, 0000
PETER FRANK FALCO, 0000
CLARENCE FAUBUS, 0000
CHARLES B. FAULCONER, JR., 0000
DAN W. FAUST III, 0000
SAMUEL L. FERGUSON, 0000
ROBERT MICHAEL FIELD, 0000
WILLIAM H. FINCK, 0000
MICHAEL P. FINN, 0000
ROBERT L. FINN, 0000
LYNN E. FITE, 0000
DENNIS R. FLANERY, 0000
GEORGE M. FLATTLEY, 0000
DALE P. FOSTER, 0000
MICHAEL J. FOY III, 0000
LLOYD J. FRECKLETON, 0000
CLARENCE C. FREELS, 0000
WILLIAM ROLAND FROST, 0000
CHERIE ANNETTE FUCHS, 0000
WESLEY J. FUDGER, JR., 0000
JOE R. GAINES, JR., 0000
JOHN DUANE GAINES, 0000
PAUL VINCENT GAMBINO, 0000
DANIEL MICHAEL GANCI, 0000
ERNEST L. GANDY, 0000
JAMES P. GARDNER, 0000
DENNIS V. GARRISON, JR., 0000
PAUL C. GENEREUX, JR., 0000
ROBERT L. GIACUMO, 0000
JERRY M. GILL, 0000
PAUL D. GOLDEN, 0000
DAVID S. GORDON, 0000
JOHN LEGGETT GRAHAM, 0000
FRANK JOSEPH GRASS, 0000
MELVIN JAKE GRAVES, 0000
BILLY R. GREEN, 0000
LINDA DIANE GREEN, 0000
OSCAR CHARLES GREENLEAF, 0000
DAVID J. GRIFFITH, 0000
JOHN LAWRENCE GRONSKI, 0000
LINDSAY H. GUDRIDGE, 0000
TERRY GLYNN HAMMETT, 0000
RALPH BRYAN HANES, 0000
PHILIP LAWRENCE HANRAHAN, 0000
ERIC A. HANSON, 0000
RUSSELL S. HARGIS, 0000
ROBERT C. HARGREAVES, 0000
JOE LEE HARKEY, 0000
DANIEL JOSEPH HARLAN, 0000
THOMAS WAYNE HARRINGTON, 0000
GEORGE RAY HARRIS, 0000
GEORGE W. HARRIS, 0000
ROBERT ALAN HARRIS, 0000
DONNAN R. HARRISON III, 0000
MICHAEL F. HAU, 0000
SPENCER L. HAWLEY, 0000
DAVID RAYMOND HAYS, 0000
JAMES D. HEAD, 0000
MARK S. HEFFNER, 0000
GERALD M. HEINLE, 0000
JOHN W. S. HELTZEL, 0000
RICHARD EUGENE HENS, 0000
JOHN RAYMOND HENSTRAND, 0000
PATRICK R. HERON, 0000
MICHAEL J. HERSEY, 0000
JOHN B. HERSHMAN, 0000
RUBY LEE HOBBS, 0000
DUDLEY B. HODGES III, 0000
MARY JOSEPHINE HOGAN, 0000
RICHARD EDWARD HOLLAND, 0000
HENRY VANCE HOLT, 0000
HERBERT LEWIS HOLTZ, 0000
THOMAS FRENCH HOPKINS, 0000

GARY WAYNE HORNBACK, 0000
DAVID EUGENE HRICZAK, 0000
CHARLES H. HUNT, JR., 0000
PETER V. INGALSBE, 0000
HAROLD D. IRELAND, 0000
CHARLES NATHAN JAY, 0000
LARRY D. JAYNE, 0000
ROY JACK JENSEN, 0000
CALVIN S. JOHNSON, 0000
WILLIAM G. JOHNSON, 0000
WILLIAM J. JOHNSON, JR., 0000
WILLIAM CARLYLE JOHNSTON, 0000
DANIEL LEE JOLING, 0000
CHRISTOPHER REED JONES, 0000
DAVID C. JONES, 0000
DAVID R. JONES, JR., 0000
CHARLES ALFRED JUSTICE, 0000
EDWARD T. KAMARAD, 0000
GREGORY RAY KEECH, 0000
MICHAEL AARON KELLY, 0000
JEFFREY J. KENNEDY, 0000
STANLEY R. KEOLANUI, JR., 0000
RICHARD JOSEPH KIEHART, 0000
CRAIG STEPHEN KING, 0000
RANDY WARREN KING, 0000
BRUCE ERIC KRAMME, 0000
DORIS JEAN KUBIK, 0000
JOHN J. KUHLE, 0000
SUSAN E. KUWANA, 0000
TIMOTHY M. LAMBERT, 0000
GARY S. LANDRITH, 0000
JOSEPH A. LANESKI, 0000
RICHARD FRANK LANGE, 0000
KONRAD B. LANGLIE, 0000
GEORGE D. LANNING, 0000
LAWRENCE M. LARSEN, 0000
THOMAS LEBOVIC, 0000
RALPH L. LEDGEWOOD, 0000
MYRON C. LEPP, 0000
GLENN JEFFREY LESNIAK, 0000
JAMES R. LILE, 0000
STEPHEN DAVID LINDNER, 0000
THOMAS RICHARD LOGEMAN, 0000
RALPH DANIEL LONG, 0000
RODNEY W. LOOS, 0000
WALTER E. LORCHEIM, 0000
VERNON LEE LOWREY, 0000
GILBERT LOZANO, JR., 0000
STEPHEN L. LYNCH, 0000
CHERYL MARIE MACHINA, 0000
DAVID CLARENCE MACKEY, 0000
MICHAEL J. MADISON, 0000
CARLOS A. MALDONADO, 0000
JEFFERY EUGENE MARSHALL, 0000
EUGENE C. MARTIN, 0000
ROBERT A. MARTINEZ, 0000
OLIVER J. MASON, JR., 0000
LARRY W. MASSEY, 0000
BOBBY E. MAYFIELD, 0000
JOHN M. MCAULEY, 0000
KEVIN R. MCBRIDE, 0000
HENRY C. MCCANN, 0000
TIMOTHY G. MCCARTHY, 0000
MORRIS E. MCCOSKEY, 0000
JOHN WILLIAM MCCOY, JR., 0000
JAMES P. MCDERMOTT, 0000
DANIEL J. MCHALE, 0000
DONALD E. MCLEAN, 0000
NOLAN R. MEADOWS, 0000
ROBERT E. MEIER, 0000
ROBERT JAMES MEIER, 0000
TERRENCE JOHN MERKEL, 0000
JAMES RICHARD MESSINGER, 0000
DONALD DEAN MEYER, 0000
NEIL E. MILES, 0000
LONNIE R. MILLER, 0000
SCOTT D. MILLER, JR., 0000
JAMES F. MINOR, 0000
PETER FRANCIS MOHAN, 0000
WILLIAM MONK III, 0000
RAYMOND B. MONTGOMERY, 0000
RANDALL W. MOON, 0000
DAVID FIDEL MORADO, 0000
JANE PHYLLIS MOREY, 0000
JILL E. MORGENTHALER, 0000
GLENN DAVID MUDD, 0000
RICHARD O. MURPHY, 0000
MARGARET E. MYERS, 0000
CHARLES R. NEARHOOD, 0000
DANIEL J. NELAN, 0000
DAVID B. NELSON, 0000
STEPHEN D. NICHOLS, 0000
JOSEPH FRANK NOFERI, 0000
OLIVER L. NORRELL III, 0000
MARK D. NYVOLD, 0000
PAUL F. O'CONNELL, 0000
HERSHELL W. O'DONNELL, 0000
WALTER STEPHEN O'REILLY, 0000
VICTOR M. ORTIZMERCADO, 0000
KARLYNN P. O'SHAUGHNESSY, 0000
HENRY J. OSTERMANN, 0000
JAMES EDWARD OTTO, 0000
CLARENCE H. OVERBAY III, 0000
BENJAMIN F. OVERBEY, 0000
JAN GUENTHER PAPRA, 0000
JOHN HENRY PARO, 0000
DAVID M. PARQUETTE, 0000
GEORGE J. PECHARKA, JR., 0000
LTER STEPHEN PEDIGO, 0000
GEORGE A. B. PEIRCE, 0000
ALAN R. PETERSON, 0000
KARL F. PETERSON, 0000
WILLIAM H. PETTY, 0000
JOSEPH CARL PHILLIPS, 0000
NICKEY WAYNE PHILPOT, 0000
D. DARRELL EUGENE PICKETT, 0000
ROBERT KENT PINKERTON, 0000
ROBERT L. PITTS, 0000
CARL JOE POSEY, 0000
RICK LYNN POWELL, 0000
JAMES FREDERICK PRESTON, 0000
LOUIS P. PREZIOSI, 0000
JOHN M. PRICKETT, 0000
ROBERT M. PUCKETT, 0000
BARNEY PULTZ, 0000
WALTER L. PYRON, 0000
TERRY LEE QUARLES, 0000
PAUL J. RAFFAELI, 0000
THOMAS H. REDFERN, 0000
JOHNNY H. REEDER, 0000
ELDON PHILIP REGUA, 0000
PRICE LEWIS REINERT, 0000
ROBERT REINKE, JR., 0000
JOSEPH WARREN REITER, 0000
BARRY L. REYNOLDS, 0000
JOHN F. REYNOLDS, 0000
JAMES LANCE RICHARDS, 0000
DOUGLAS G. RICHARDSON, 0000
PHILIP A. RICHARDSON, 0000
MARK C. RICKETTS, 0000
RAYNOR J. RICKS, JR., 0000
KENNETH WAYNE RIGBY, 0000
JAMES FRANCIS RILEY, 0000
ISABELO RIVERA, 0000
DAVID LEE ROBERTS, 0000
PAUL EDWIN ROBERTS, 0000
DAVID P. ROBINSON, 0000
STEVEN RAY ROBINSON, 0000
FRANK GERARD ROMANO, 0000
DEBRA C. RONDEM, 0000
TIMOTHY L. ROOTES, 0000
LAWRENCE HENRY ROSS, 0000
THOMAS WARREN ROUND, 0000
JOEL ROSS ROUNTREE, 0000
DAVID H. RUSSELL, 0000
MICHAEL H. RUSSELL, 0000
LARRY D. RUTHERFORD, 0000
LORETTA R. RYAN, 0000
FRANK ALBERT SAMPSON, 0000
STEPHEN M. SARCIONE, 0000
STEVEN D. SAUNDERS, 0000
JOSEPH M. SCATURO, 0000
OTTO BYRON SCHACHT, 0000
HELEN P. SCHENCK, 0000
ROBERT W. SCHERER, 0000
PAUL A. SCHNEIDER, 0000
EDWARD C. SCHRADER, 0000
GORDON W. SCHUKEI, 0000
JAMES D. SCHULTZ, JR., 0000
STEPHEN PETER SCHULTZ, 0000
JOHN THOMAS SCHWENNER, 0000
MARK W. SCOTT, 0000
MICHAEL F. SCOTTO, 0000
GALE HADLEY SEARS, 0000
BERNARD SEIDL, 0000
STEPHEN RIDGELY SEITER, 0000
CHARLES R. SEITZ, 0000
RONALD GEORGE SENEZ, 0000
KENNETH J. SENKYR, 0000
CHRISTOPHER T. SERPA, 0000
WALTER S. SHANKS, 0000
HUGH DUNHAM SHINE, 0000
KENNETH R. SIMMONS, JR., 0000
JAMES L. SIMPSON, 0000
ROBERT G. SKILES, JR., 0000
JAMES A. SLAGEN, 0000
WILLIAM A. SLOTTER, 0000
CARLON L. SMITH, 0000
DAVID B. SMITH, 0000
DAVID C. SMITH, 0000
EDWARD H. SMITH, 0000
JOHN F. SMITH, 0000
KENNETH EUGENE SMITH, 0000
ROY C. SMITH, 0000
SHERWOOD J. SMITH, 0000
STEVEN W. SMITH, 0000
KARL P. SMULLIGAN, 0000
ARNOLD H. SOEDER, 0000
DAVID L. SPENCER, 0000
TERRANCE J. SPOON, 0000
DAVID WILLIAM STARR, 0000
MICHAEL R. STASZAK, 0000
MICHAEL E. STEPHANY, 0000
JAMES MELVIN STEWART, 0000
RICHARD W. STEWART, 0000
JOHN M. STOEN, 0000
GREGORY WAYNE STOKES, 0000
JAMES C. SUTTLE, JR., 0000
RICHARD E. SWAN, 0000
THOMAS B. SWEENEY, 0000
DEREK C. SWOPE, 0000
DORIS P. TACKETT, 0000
MICHAEL GRAHAM TEMME, 0000
LANCE MORELL THAREL, 0000
RANDAL EDWARD THOMAS, 0000
CAREY GARLAND THOMPSON, 0000
FREDERICK T. THURSTON, 0000
JACK THOMAS TOMARCHIO, 0000
STEPHEN CRAIG TRUESDELL, 0000
VERLYN E. TUCKER, 0000
ROBERT J. UDLAND, 0000
ROBERT J. VANDERMALE, 0000
JACOB A. VANGOOR, 0000
LARRY D. VANHORN, 0000
GARY WALLACE VARNEY, 0000
ROBERT WILLARD VAUGHAN, 0000
RUSSELL OWEN VERNON, 0000
BERT F. VIETA, 0000
PEDRO G. VILLARREAL, 0000
WILLIAM G. VINCENT, 0000
JEFFERY R. VOLLMER, 0000
KEITH RICHARD VOTAVA, 0000
WILLIAM D.R. WAFF, 0000
CHARLES M. WAGNER, 0000
GARY F. WAINWRIGHT, 0000
LAYNE J. WALKER, 0000
MARTIN H. WALKER, 0000
SALLY WALLACE, 0000
KENDALL SCOTT WALLIN, 0000
JOSEPH W. WARD III, 0000
KENNETH ROBERT WARNER, 0000
HERBERT R. WATERS III, 0000
MICHAEL K. WEBB, 0000
ROY LANDRUM WEEKS, JR., 0000
FREDERICK H. WELCH, 0000
JAMES M. WELLS, 0000
MICHAEL J. WERSOSKY, 0000
MARY E. LYNCH WESTMORELAND, 0000
GRANT L. WHITE, 0000
FRANCIS B WILLIAMS, 0000
STANLEY O. WILLIAMS, 0000
RICHARD J. WILLINGER, 0000
CECIL MASON WILLIS, 0000
JOEL WILLIAM WILSON, 0000
TONY N. WINGO, 0000
ANTHONY E. WINSTEAD, 0000
LARRY V. WISE, 0000
PAUL K. WOHL, 0000
BRUCE M. WOOD, 0000
GLENN R. WORTHINGTON, 0000
BARRY GENE WRIGHT, 0000
KATHY J. WRIGHT, 0000
NEIL YAMASHIRO, 0000
EARL M. YERRICK, JR., 0000
DAVID KEITH YOUNG, 0000
RICHARD S.W. YOUNG, 0000
SAMUEL R. YOUNG, 0000
VINCENT A. ZIKE, JR., 0000

CONFIRMATIONS

Executive nominations confirmed by the Senate March 7, 2000:

THE JUDICIARY

JULIO M. FUENTES, OF NEW JERSEY, TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT.