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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. On this day in 1995, Dr. Ogilvie delivered his first prayer as Senate chaplain; today he will lead us in prayer for the last time.

PRAYER

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

O God, our refuge and our strength, a very present help in trouble, we will not fear! In the midst of these perilous times, we hear Your voice saying, ''Be still and know that I am God; I will be exalted among the Nations, I will be exalted in the earth.'' In response we affirm, ''The Lord of hosts is with us; You are our help and hope.''

From the Continental Congress through the formation of our Constitution to the establishment of the first Senate, our leaders have acknowledged You as Sovereign of this land and the source of all our blessings.

Lord I thank You for the privilege of serving as Chaplain of the men and women of this Senate. As You have called them to lead our Nation and the world, You have opened their minds and hearts to receive Your guidance and care. It is with profound gratitude that I reflect on these years with them. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TED STEVENS 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 MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

IN GRATITUDE TO CHAPLAIN LLOYD OGILVIE

Mr. FRIST. Mr. President, while reflecting on Dr. Ogilvie's tenure as Senate Chaplain, I came across a letter of his dated March 31, 1995. He was just 3 weeks on the job. You could already see his devotion not only to his official duties as Senate Chaplain, but his unofficial duties as the spiritual leader of the entire Senate family.

In that letter, he writes about the importance of interceding ''personally'' for Senators—for praying for Members, for our families, and for our staff. He says that he is just as close as a phone call and provides not only his work phone number, but his home phone number, as well. He asks that we keep him up-to-date about the needs of others in the Senate family. And he talks about building a ''caring network of people who support each other.''

Yes, this is a man who knew early on the Senate needs more than one prayer at the start of each day. We needed a lot of support from him, from God, and from each other. And that is exactly the kind of spiritual climate Lloyd Ogilvie fostered for 8 years as Senate Chaplain.

He conducted Bible studies—which Karyn and I and many in this Chamber regularly attended. He hosted weekly prayer breakfasts and small faith groups. He researched theological questions and advised us on the great moral issues of our times. And when he took time to offer his own private thoughts to God, he always forwarded our petitions with his.

He even filled in at the last minute when my office needed a third baseman on our Senate softball team. Now that is going above and beyond the call of duty.

Dr. Ogilvie consoled us during our darkest hours—September 11th, the October anthrax attacks, the loss of two Capitol Police officers and three Senate colleagues come to mind. But he was also there for us every day. To help us cope with the stress of our jobs. To help us overcome struggles in our personal lives. And, most of all, to help us keep things in perspective by reminding us we serve the United States in our offices, but we serve God in our lives.

So I simply want to say thank you to Dr. Ogilvie, for his many prayers on our behalf, for the many hours he dedicated to his position, and for being there—as the spiritual leader of the Senate family—every day in the Chamber and every day in our lives.

And, lastly, I want to thank him for being such a wonderful and supportive friend. I wish him the best in California with Mary Jane. And though Karyn and I will miss them both dearly, we are certain we will hear from them because they will always be family. And there is nothing more precious to the Ogilvies—as they have demonstrated time and again—than family.

The PRESIDING OFFICER (Mr. SUNUNU). The minority leader.

Mr. DASCHLE. Mr. President, in a few moments the Senate will offer a resolution which honors a member of our Senate family who, as the majority leader noted, will be leaving us soon. Lloyd Ogilvie has the appreciation of every one of the Members of this body. I join in expressing my heartfelt appreciation to him and his family as they begin the next chapter in their lives.

A Senate chaplain was once asked: You pray for the Senate? He replied, no, I look at those Senators as I stand on the dais and I pray for the country.

For the last 8 years, Lloyd Ogilvie has done a lot of praying—for our Nation, for the Members of this Senate, and for our families, for our staffs, and all the people who work in this building, and for those who come to visit the Senate from all over the world. He has prayed for us and with us. For many of us, he has been a source of guidance and support. We are grateful to him for his wisdom, for his friendship, and for his service to this Senate and our Nation.

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

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The Senate has been through many challenges these last 8 years, as the majority leader has noted. During those challenges, many of us have found hope and direction in Dr. Ogilvie's words. He comforted us and led us through the deaths of three of our colleagues, our friends John Chafee, Paul Coverdell, and Paul Wellstone. He consoled us when two fine, brave members of the Capitol Police, officers J.J. Chestnut and Detective John Gibson, were murdered guarding this building. He helped us find courage and faith after our Nation was attacked on September 11, and again after the anthrax attack that closed the Hart Building. He has helped many of us grapple with the profound moral and spiritual questions that underscore all questions of public policy.

One lesson Dr. Ogilvie has always stressed is the importance of keeping our priorities straight. In his words: Put God first, then family, then Nation, then career, and things will turn out as they are meant to.

Now Dr. Ogilvie is living that lesson. He is putting his family ahead of his career and returning to California to be with and care for another treasured member of our Senate family, his wife Mary Jane. As much as we will miss him, we respect his decision greatly.

Everyone who knows Lloyd Ogilvie knows he has a special place in his heart for St. Andrew. That seems fitting for two reasons. The first and most obvious reason is that St. Andrew is the patron saint of Scotland, and we all know how proud Dr. Ogilvie is of his family's roots in that beautiful country. The other reason is St. Andrew never got the attention he deserved. In the Bible, it was Andrew's brother, Peter, who got the headlines, even though it was Andrew who first recognized that Jesus was an extraordinary teacher. It was Andrew who told Peter to pay attention to Jesus' words.

Here in the Senate, it is Senators who get most of the headlines. But for many of us for the last 8 years it is Lloyd Ogilvie who has been there to remind us of the important lessons.

Our thanks and our prayers will go to Lloyd Ogilvie as he returns to California. We wish him and Mary Jane, their children, Andrew, Scott and Heather, and their grandchildren, much happiness in the days, months, and years ahead.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I know a vote was scheduled and many wish to speak, but I ask unanimous consent the vote may be delayed so I may speak at this time. I feel compelled to ask for that time so I may speak about our friend, Lloyd Ogilvie.

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

Mr. LOTT. The first time I heard Lloyd Ogilvie speak, it was in a prayer, and I remember looking up because I thought I had just heard what God's voice must sound like. What a magnificent voice he has. What a magnificent prayer he always prayed. But as Benjamin Franklin said:

> Well done is better than well said.

In spite of the magnificent messages he has delivered on this floor, his prayers, and our private counsel sessions with him, what he has done has been even more valuable; the way he has come to us all in times of great celebration and times of stress and times of despair. In the good times and the bad times he has been there for me and for many of us—all of us, at one time or another. In spite of all the good things he said, what he has done will be what will stay with us the longest.

Each morning I get up, the first thing I read is ''One Quiet Moment,'' a passage from the Bible and a brief prayer that Lloyd Ogilvie prepared for all of us. It begins my days in the right way. Many nights, just before I go to sleep, I pray for Lloyd and Mary Jane, I pray for their safety, and for their future.

He has been a magnificent influence on this body and on me personally.

This morning I looked up the definition of ''chaplain,'' and it is not enough to describe what he did. He wasn't just a person who was a counselor to this institution and our whole family. I looked up ''pastor''—maybe that was the right word. That wasn't sufficient either because he was more than just a pastor to a flock in a narrow area.

No, he has been a spiritual counselor in the broadest sense. The Bible says, in Proverbs:

> Where there is no vision the people perish.

That, of course, refers to the way we really should think about the vision. I think it is true for a country, a country that seeks democracy and freedom and liberty. But it also is true in the broader sense. Lloyd has given us a vision of what life is really about. Thank you, Lloyd John Ogilvie. Well done—ay.

COMMENDING THE SERVICE OF DR. LLOYD J. OGILVIE, THE CHAPLAIN OF THE UNITED STATES SENATE

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. I send a resolution to the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

> A resolution (Res. 83) commending the service of Dr. Lloyd J. Ogilvie, the Chaplain of the United States Senate.

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

Mr. MCCONNELL. Mr. President, we had the opportunity this morning to hear the last prayer of our Senate Chaplain, Lloyd Ogilvie, a man who has touched each of our lives in a different and very special way. All of us in here have reached an age where if we took a few moments and tried to list the people outside of our immediate families who really had an impact on us, it would probably be a pretty short list, if we were candid with ourselves.

I have been doing a bit of that the last couple of days, thinking about Lloyd, his contribution here, and the fact he is now going home to take up the challenge of providing care for his wonderful wife Mary Jane.

I have decided my list would be very short, indeed, outside of my immediate family. On that list would, indeed, be Lloyd Ogilvie, who has had a powerful impact on my life. I will never, ever forget him.

We all love him and we care for him. Even though we will not see him as much in the coming years, I hope each of us for whom he has made such a difference will make an extra effort to stay in touch with our dear friend in the coming years.

So, Lloyd Ogilvie, thanks for all you did for all of us. Good luck in the future. Thanks for making a difference.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I join the distinguished Senator from Kentucky in saying a word about the Chaplain, Lloyd Ogilvie.

I am a new Senator, as is the Presiding Officer, and there have been a great many wonderful things about coming to the Senate. But nothing has surpassed the privilege of getting to know Lloyd Ogilvie in these first couple of months. I have watched him and listened, and I have learned from him. I have been comforted by him. I am deeply grateful for that.

This month in Billy Graham's publication, ''Decision,'' Lloyd Ogilvie's picture is on the front, and there is an interview with him about his 8 years in the Senate. It is a clue about why he has been such an inspiration to so many Senators. The questioner notes:

> A current Senator remarked that your prayers often ''make reference to specific turmoil'' in the Senate.

The questioner goes on:

> I understand that sometimes following your opening prayer you sit through the Senate sessions.

And Lloyd's answer was:

> The task of any spiritual leader is to listen. You can't minister to individuals or to a group unless you know what is going on. That is the reason that I have to be there.

Lloyd Ogilvie has been a counselor. He is a minister. He is a listener—maybe a listener above all. I have found in my conversations with him that I suspect he knows more about the Senate than any other individual because he knows the hearts of the Senators.

So I rise to thank him, to wish him the very best with his wife Mary Jane, and to let him know that one more Senator has been touched by his presence here in a very short period of time.

I ask unanimous consent to have printed in the RECORD the interview with Dr. Ogilvie that appears in the March 2003 edition of ''Decision,'' the Billy Graham publication.

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

After serving eight years as U.S. Senate Chaplain, Lloyd John Ogilvie is retiring this month. He has provided spiritual guidance to senators, to Senate staff and to families during some of the most tumultuous events in the history of the United States. Decision recently spoke with Ogilvie about his Senate experiences and about where God is leading him now.

Q: Describe a typical day in the life of Lloyd John Ogilvie.

A: I usually get up around 6 a.m. and walk for my exercise. As I walk around the Capitol, I pray for 20 senators each day. I cover all 100 senators in a week. Often God puts on my mind and heart people who have needs or concerns. Then, during the day, I often have an opportunity to talk with those people.

After walking, I have my own personal Bible study, and then I walk to work. I live on the Hill—it's 10 minutes from my breakfast table to the floor of the Senate. I give the opening prayer for the Senate. I write the prayers in segments, perhaps a month ahead of time, and as crises change in the nation or in the world or in the life of the Senate, I can change the prayers to that they are current and relevant.

The opening prayer is an extremely important part of my day, because it is on the Senate floor that I speak a work about God that is crucial to American history and to our future. That word is sovereign. As I studied the prayers of those who founded this nation, a word they frequently used for God is Sovereign, because they came to this country seeking a land where God could be the Sovereign of the land.

So very often in my prayers, I use the world sovereign in describing God's nature and His lordship over this nation. Then I pray for God's power and direction and specifically for the needs that I know might be coming up that day.

I usually spend the rest of the morning in preparation for my Bible studies. I have five Bible studies during the week: for the senators, for senators' spouses, for the chiefs of staff of the senators' offices, and two studies for the Senate staff. It makes for a busy schedule, but I feel that my task is to lower the plumb line of God's justice and righteousness and mercy on the issues that we are facing in the nation. And I can do that by teaching the Bible.

Q: How do you make the Gospel relevant to the issues that our nation and world face?

A: I believe that the Holy Spirit, who inspired the writing of the Scripture, is present in the room as I teach the Scripture. That's awesome, when you stop and think of it. It forces you to study and pray and get ready, because there is a Word from the Lord, and He will speak through the Scriptures if we are faithful to communicate them.

Q: What is one message that we need to hear today?

A: We need to know that God is the Sovereign of this nation. We have a responsibility to trust Him, to seek His will and to live in accordance with His righteousness and justice.

As you trace U.S. history, it is fascinating to see how our founders were very clear about wanting God to guide them. In the First Continental Congress, Samuel Adams stood up and said, ''I believe we need to pray,'' and they went down and got the pastor of Christ Church Philadelphia to come to Carpenters' Hall to pray. Then, when there were deadlocks in the Constitutional Convention, crucial people stood up and said, ''We cannot make it without God's power.''

Q: You have led the Senate spiritually during some extremely trying times, including the impeachment hearings and the Sept. 11 tragedy. What were those times like?

A: I can't imagine that in eight years we've been through all of this. I think of the impeachment, for example, when it was so important to reaffirm God's sovereignty and His grace. As I was standing outside the Chamber, the senators and leaders would go by and say, ''What are you going to pray today?'' Then Chief Justice William Rehnquist would say, ''What have you got to say to God today?'' Then at the end of the prayer, he would give an ''Amen'' with gusto. But it was a painful time. I'm so thankful that when the Senate leaders got together prior to the impeachment, they opened their meeting with prayer. Trent Lott was majority leader at that time, and he constantly called them back to trust God.

Then, of course, the aftermath of Sept. 11 was a time of helping people to realize that God has not caused that tragedy. He did not send that on America in judgment. But it did bring us to a place of asking what He had to say through all of this.

We had the long process of healing and taking care of people who were traumatized by that event. We had many different services during that period. I remember one in particular, when the senators went over to the National Cathedral to take part in a time of prayer following 9/11. I had the feeling that I should stay here at the Capitol; the staff needed someone to take care of them. So I asked for a large room that seated 300 people, and I made a simple announcement that we would have a prayer time. When I arrived, people were standing in the room, squeezed in shoulder to shoulder. Instead of 300 people, there were 600 in the room and out in the hall. By the end, 1,000 people had come.

Q: A current senator remarked that your prayers often ''Make reference to specific turmoil'' in the Senate.

A: I feel that this is part of my responsibility as chaplain. Answers to unasked questions are foolish, but Biblical answers to the real questions people are asking are powerful. It is our task to listen, to be sensitive to where people are and then to respond to what's going on inside of them and around them.

When the senators are under a great deal of pressure and stress, I'll pray about that and talk about the pressure cooker of politics. When they are at odds with each other, I can ask God to bring understanding and peace for the good of the American people and for His glory, and to help us depend on Him to bring understanding, to break deadlocks.

Q: I understand that sometimes following your opening prayer you sit through the Senate sessions.

A: The task of any spiritual leader is to listen. You can't minister to individuals or to a group unless you know what is going on. That is the reason that I have to be there. When I sense there is great tension or frustration, I go down on the floor, slip into the chair where I sit, and pray for those who are in conflict. Afterwards, I often go to them individually, talk with them about what's happened and see if I can bring them together.

I am pleased when I see greatness emerge in the senators and they reach beyond their parties and their own particular persuasions to have deep communication with each other. I see that in our Bible studies on Thursdays, when members of both parties study the Scriptures together and try to come to grips with what God might be saying.

Q: Our culture is heavily saturated with the message of separation of church and state, but you have often said that there is no separation of God and state. What do you mean?

A: There is no statement in the literature of U.S. history that is more misunderstood than this phrase, ''separation of Church and State.'' It was included in a letter by Thomas Jefferson to the Danbury Baptists in Danbury, Conn. He was trying to protect the church from government and was establishing the fact that he was a different kind of leader than the sovereigns of Europe. The phrase, however, stuck and has been used to diminish the role of God in American life and in politics.

I believe that there is no separation between God and State. We need God in the affairs of government, and those who are involved in leadership desperately need Him and His guidance and direction. If we take God out of the affairs of government, we are left to our human devices without the empowerment that comes through a relationship with God.

I was very gratified when the Senate dealt with the recent question raised about the phrase ''one nation under God.'' All of the Senators were in their seats, and we gave the Pledge of Allegiance together. No one was missing in affirmation of the fact that they all really believe in this historic declaration that we are a ''nation under God.''

Q: How can we pray for the Senators and their families?

A: Pray that they will know God, that they will trust God, that they will depend on supernatural power rather than on human talents, that they will pray for and receive the gift of courage, and that they will speak with boldness and dare to give the leadership that's necessary.

Q: What has led you to retire as Senate Chaplin on March 15?

A: My wife, Mary Jane, contracted a bad case of bacterial pneumonia last April, and it lodged in some scar tissue in her lungs from a previous cancer operation. They had such a hard time getting that dislodged that in the process they had to put her on a respirator. That was eight months ago, and she has been in three different hospitals since then struggling to get off the respirator, to get back to breathing on her own and to get back to health.

I'm so thankful for the way she has trusted God in this dark, dark valley of suffering. I realized that it would be much better for her to be near our family in California. She is in a respiratory hospital there that specializes in just the kind of illness she has. I thought I would go back and forth as frequently as I could and stay as long as I could, but I realized this was not adequate. For eight years, I have asked the senators to put God first, family second, the Senate third and ambition fourth.

It was time for me to live any message. So I told the officers of the Senate that I needed to be with my wife. Just as soon as she's strong enough, I'll be available to preach and to teach and to speak, here and around the world.

Mr. MCCONNELL. Mr. President, if I may before the Senator from Tennessee leaves, he may not have been in the Senate very long—a couple of months—but the Senator from Tennessee has picked up the essence of Lloyd Ogilvie and why he is so widely admired, respected, and loved around here.

I thank the Senator from Tennessee for his contribution.

Mr. ALEXANDER. I thank the Senator.

Mr. COCHRAN. Mr. President, the retirement of our Senate Chaplain, Lloyd Ogilvie, leaves me with a profound sense of loss. He has been a personal friend to me, as well as a wise counselor and adviser. I know I will miss him greatly. He has served the Senate with great distinction. His daily prayers were works of art and poetry, delivered in his deep rich voice, with conviction and a seriousness of purpose.

He has warmed our hearts with his genuine concern for our spiritual well-being and reached out to touch the souls of staff members and Senate employees, as well, who sought his advice and his message of hope and reassurance. We have all been richly blessed by the presence and the ministry of Lloyd Ogilvie. Our thoughts and sincerest best wishes and our love go with him.

Mr. HOLLINGS. Mr. President, I have been in the Senate more than 36 years and there is no question that Dr. Lloyd John Ogilvie has been the best Senate Chaplain I've ever seen, by far. On this his last day, I join my colleagues in thanking him for the spiritual care he has provided to all of us and our families, and especially for his daily prayers as we tackle the monumental responsibilities before us.

My wife, Peatsy, and I pray for the health of his loving wife Mary Jane. And we are confident that as the Chaplain leaves Washington and returns to California good things await him. For in Psalm 92 it is written that the righteous shall flourish like the palm-tree and that in maturity they shall bring forth fruit and be full of vitality and richness. There is no more worthy son of the Creator to flourish in retirement than Dr. Ogilvie.

Mr. BENNETT. Mr. President, I take this opportunity to pay tribute to Lloyd Ogilvie, our Chaplain. I have told him of the deep affection that I and my wife Joyce have for him and Mary Jane. I wish I could reach as deeply into the writings of Robert Burns as he is able to and come up with exactly the right epigram.

I will point out that he and I share the common experience of living in Scotland as young men. He, there while he was studying for the ministry, and I, there while I was serving as a missionary for my church. In that experience, each of us gained deep respect for the Scottish people and Scottish traditions.

That is why you find me today sporting the tartan of my family, the Wallace tartan. My father served in this body as Wallace Bennett, coming from a long line of Wallaces, including one William Wallace. Whether it was the William Wallace who morphed as Mel Gibson onto the silver screen or not, I am not sure.

Lloyd Ogilvie has made his mark here in a tremendous way, and he deserves all of the wonderful things everyone has said about him. I simply quote a hymn that we sing often in our church. I don't think it is unique to our church, but we sing at this time when young men go out in the circumstance I have just described—go off to a foreign land or to a foreign part of the world to preach the gospel. We sing to them:

God be with you till we meet again;
When life's perils thick confound you;
Put His arms unfailing round you;
God be with you till we meet again.

This is what I say to Mary Jane and Lloyd Ogilvie, from all of us. God be with you till we meet again.

Ms. MURKOWSKI. Mr. President, I rise today to speak of the contributions and service to the Nation, the U.S. Senate, to my family and myself made by Dr. Lloyd J. Ogilvie as Chaplain of the U.S. Senate, I joined the U.S. Senate just over three months ago and I am repeatedly impressed and reminded about the history and tradition of this body. The Office of the Chaplain has served the Senate each day with prayer strongly reaffirming this institution's commitment to faith in God and our recognition of God being the ultimate sovereign over this Nation. The daily guidance and reminder of our Maker helps us all keep perspective on our duties and activities as we debate and make decisions of weighty issues confronting our country.

The Chaplain of the Senate has been an integral part of the U.S. Senate since 1789 when the first Senate elected the first Chaplain. The daily prayers of the Chaplains have been published over the years. In times of great turmoil and in times of the mundane the Chaplain reminds us of our obligation to keep the moral compass pointed in the right direction. This body has been brought together in times of conflict with the help of the Chaplain. Dr. Ogilvie has served us well as the sixty-first Chaplain since 1995.

Just last week the U.S. Senate passed a resolution reaffirming that the term ''under God'' was an essential part of the pledge of allegiance. I am confident that Dr. Ogilvie could have contributed to our insight and debate. but there is no dispute that this body and this Nation remain under the graceful guidance of God. We have been helped to understand this grace by the spiritual guidance of Dr. Ogilvie.

I have known of the Chaplain Ogilvie for longer than my service in the U.S. Senate. My parents, Senator Frank Murkowski and Nancy Murkowski, share a warm and special relationship with Dr. Ogilvie and his wife Mary. Through them I learned about Dr. Ogilvie and his compassion and commitment to his faith. They join me in sending their prayers, best wishes and expressions of warmth to him upon his retirement.

Dr. Ogilvie will be missed by all his flock and all who know him in his role as Chaplain in the U.S. Senate. He has served this institution in the tradition of this body with honor and excellence.

Ms. MIKULSKI. Mr. President. Eight years ago today, Dr. Lloyd Ogilvie became our Senate Chaplain. Today, as he leaves the Senate, I wish to thank Dr. Ogilvie for his spiritual guidance and friendship.

Dr. Ogilvie is a greet scholar and preacher. Yet he has been so much more to our Senate family. I am particularly grateful for the hospitality Dr. Ogilvie has shown to all religions. He hosted Jewish seders. He invited Cardinals to the Senate. He made sure that religious leaders of all faiths have led the Senate in prayer.

I also appreciate the creative and energetic way he reached out to the entire Senate family. He has led Bible study groups and prayer meetings for Senators and staff. He has provided individual counseling for anyone who has asked for it.

Since September 11, our Nation and our Senate have faced great stress and uncertainty. On September 11, during the anthrax attacks, and now as our Nation prepares for a possible war, Dr. Ogilvie has helped the Senate family to become stronger through faith and prayer.

I also wish to thank Reverend Ogilvie's wife, Mary Jane, who has been such an important partner to him and such a dear friend to all of us in the Senate. I wish the Ogilvies well as they move to California to begin a new chapter in their lives. They will always be in my thoughts and prayers.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 83) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 83

Whereas Dr. Lloyd J. Ogilvie became the 61st Senate Chaplain on March 13, 1995, and has faithfully served the Senate for 8 years as Senate Chaplain;

Whereas Dr. Ogilvie is the author of 49 books, including ''Facing the Future without Fear''; and

Whereas Dr. Ogilvie graduated from Lake Forest College, Garrett Theological Seminary of Northwestern University and New College, University of Edinburgh, Scotland, and has served as a Presbyterian minister throughout his professional life, including being the senior pastor at First Presbyterian Church, Hollywood, California: Now, therefore, be it

Resolved, That—

(1) the Senate hereby honors Dr. Lloyd J. Ogilvie for his dedicated service as the Chaplain of the United States Senate; and

(2) the Secretary transmit an enrolled copy of this resolution to Dr. Ogilvie.

SCHEDULE

Mr. FRIST. Mr. President, I will be very brief in our opening script this morning. We will have the opportunity during morning business later this morning for further comments to express our appreciation to Dr. Ogilvie for his 8 years of service to this body.

We will have two votes this morning and then we will have that period of morning business. Following some time for a bill introduction, there will be time available for the Senators to express their gratitude.

The next vote, following the two votes which are about to begin, will begin at 12:30, and will be on invoking cloture on the Estrada nomination. Additional votes will occur this afternoon. I will update Members later this morning.

RESERVATION OF LEADER TIME

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

PARTIAL-BIRTH ABORTION BAN ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 3, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 3) to prohibit the procedure commonly known as partial-birth abortion.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I ask unanimous consent to have printed in the RECORD prior to the vote on S. 3, four letters from specialists in maternal fetal medicine in response to the letter the Senator from California had printed in the RECORD yesterday.

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

ROCKFORD HEALTH SYSTEM, DIVISION OF MATERNAL-FETAL MEDICINE,

Rockford, IL, March 12, 2003.

Hon. RICK SANTORUM,
U.S. Senate Office Building,
Washington, DC.

DEAR SENATOR SANTORUM: I am writing to contest the letter submitted to Senator Feinstein by Philip D. Darney, MD supporting the ''medical exemption''; to the proposed restriction of the partial birth abortion (or as abortionists call it ''intact D&E'').

I am a diplomate board certified by the American Board of Obstetrics and Gynecology in general Obstetrics and Gynecology and in the sub-specialty of Maternal-Fetal Medicine. I serve as a Visiting Clinical Professor in Obstetrics and Gynecology, University of Illinois at Chicago, Department of Obstetrics and Gynecology, College of Medicine at Rockford, Rockford, Illinois; as an Adjunct Professor of Obstetrics and Gynecology, at Midwestern University, Chicago College of Osteopathic Medicine, Department of Obstetrics and Gynecology; and as an Adjunct Associate Professor of Obstetrics and Gynecology Uniformed Services University of Health Sciences, F. Edward Herbert School of Medicine, Washington, D.C. I have authored over 50 peer review articles in the obstetrics and gynecologic literature, presented over 100 scientific papers, and have participated in over 40 research projects,

In my over 14 years as a Maternal-Fetal Medicine specialist I have never used or needed the partial birth abortion technique to care for my complicated or life threatening conditions that require the termination of pregnancy. Babies may need to be delivered early and die from prematurity, but there is never a medical need to perform this heinous act.

I have reviewed both cases presented by Dr. Darney, and quite frankly, do not understand why he was performing the abortions he indicates, yet alone the procedure he is using. If the young 25 year old woman has a placenta previa with a clotting disorder, the safest thing to do would be to place her in the hospital, transfuse her to a reasonable hematocrit, adjust her clotting parameters, watch her closely at bed rest, and deliver a live baby. If the patient had a placenta previa, pushing laminaria (sterile sea weed) up into her cervix, and potentially through the previa, is contraindicated. It is no surprise to anyone that the patient went, from stable without bleeding, to heavy bleeding as they forcibly dilated her cervix to 3 centimeters with laminaria. The use of the dangerous procedure of blinding pushing scissors into the baby's skull (as part of the partial birth abortion) with significant bleeding from a previa just appears reckless and totally unnecessary.

Regarding the second case of the 38 year old woman with three cesarean sections with a possible accreta and the risk of massive hemorrhage and hysterectomy due to a placenta previa, it seems puzzling why the physician would recommend doing an abortion with a possible accreta as the indication. Many times, a placenta previa at 22 weeks will move away from the cervix so that there is no placenta previa present and no risk for accreta as the placenta moves away from the old cesarean scar. (virtually 99.5% of time this is the case with early previas). Why the physicians did not simply take the woman to term, do a repeat cesarean section with preparations as noted for a possible hysterectomy, remains a conundrum. Dr. Darney actually increased the woman's risk for bleeding, with a horrible outcome, by tearing through a placenta previa, pulling the baby down, blindly instrumenting the baby's skull, placing the lower uterine segment at risk, and then scraping a metal instrument over an area of placenta accreta. No one I know would do such a foolish procedure in the mistaken belief they would prevent an accreta with a D&E.

Therefore, neither of these cases presented convincing arguments that the partial birth abortion procedure has any legitimate role in the practice of maternal-fetal medicine or obstetrics and gynecology. Rather, they demonstrate how cavalierly abortion practices are used to treat women instead of the second medical practices that result in a live baby and an unharmed mother.

Sincerely,

BYRON C. CALHOUN, MD.

MARCH 13, 2003.

Hon. RICK SANTORUM,
U.S. Senate Office Building,
Washington, DC.

DEAR SENATOR SANTORUM: I have reviewed the letter from Dr. Darney describing two examples of what he believes are high risk pregnancy cases that show the need for an additional ''medical exemption'' for partial birth abortion (also referred to as intact D&E). I am a specialist in maternal-fetal medicine with 23 years of experience in obstetrics. I teach and do research at the University of Minnesota. I am also co-chair of the Program in Human Rights in Medicine at the University. My opinion in this matter is my own.

In the rare circumstances when continuation of pregnancy is life-threatening to a mother I will end the pregnancy. If the fetus is viable (greater than 23 weeks) I will recommend a delivery method that will maximize the chance for survival of the infant, explaining all of the maternal implications of such a course. If an emergent life-threatening situation requires emptying the uterus before fetal viability then I will utilize a medically appropriate method of delivery, including intact D&E.

Though they are certainly complicated, the two cases described by Dr. Darney describe situations that were not initially emergent. This is demonstrated by the use of measures such as dilation of the cervix that required a significant period of time. In addition, the attempt to dilate the cervix with placenta previa and placenta accreta is itself risky and can lead to life-threatening hemorrhage. There may be extenuating circumstances in Dr. Darney's patients but most obstetrical physicians would not attempt dilation of the cervix in the presence of these complications. It is my understanding that the proposed partial birth abortion ban already has an exemption for situations that are a threat to the life of the mother. This would certainly allow all measures to be taken if heavy bleeding, infection, or severe preeclampsia required evacuation of the uterus.

The argument for an additional medical exemption is redundant; furthermore, its inclusion in the legislation would make the ban virtually meaningless. Most physicians and citizens recognize that in rare life-threatening situations this gruesome procedure might be necessary. But it is certainly not a procedure that should be used to accomplish abortion in any other situation.

Passage of a ban on partial birth abortion with an exemption only for life-threatening situations is reasonable and just. It is in keeping with long-standing codes of medical ethics and it is also in keeping with the provision of excellent medical care to pregnant women and their unborn children.

Sincerely,

STEVE CALVIN, MD.

REDMOND, WA,
March 12, 2003.

Hon. RICK SANTORUM:
U.S. Senate Office Building,
Washington, DC.

DEAR SENATOR SANTORUM: The purpose of this letter is to counter the letter of Dr. Philip Darney, M.D. to Senator Diane Feinstein and to refute claims of a need for an exemption based on the health of the mother in the bill to restrict ''partial birth abortion.''

I am board certified in Maternal-Fetal Medicine as well as Obstetrics and Gynecology and have over 20 years of experience, 17 of which have been in maternal-fetal medicine. Those of us in maternal-fetal medicine are asked to provide care for complicated, high-risk pregnancies and often take care of women with medical complications and/or fetal abnormalities.

The procedure under discussion (D&X, or intact dilation and extraction) is similar to a destructive vaginal delivery. Historically such were performed due to the risk of caesarean delivery (also called hysterotomy) prior to the availability of safe anesthetic, antiseptic and antibiotic measures and frequently on a presumably dead baby. Modern medicine has progressed and now provides better medical and surgical options for the obstetrical patient.

The presence of placenta previa (placenta covering the opening of the cervix) in the two cases cited by Dr. Darney placed those mothers at extremely high risk for catastrophic life-threatening hemorrhage with any attempt at vaginal delivery. Bleeding from placenta previa is primarily maternal, not fetal. The physicians are lucky that their interventions in both these cases resulted in living healthy women. I do not

agree that D&X was a necessary option. In fact, a bad outcome would have been indefensible in court. A hysterotomy (caesarean delivery) under controlled non-emergent circumstances with modern anesthesia care would be more certain to avoid disaster when placenta previa occurs in the latter second trimester.

Lastly, but most importantly, there is no excuse for performing the D&X procedure on living fetal patients. Given the time that these physicians spent preparing for their procedures, there is no reason not to have performed a lethal fetal injection which is quickly and easily performed under ultrasound guidance, similar to amniocentesis, and carries minimal maternal risk.

I understand the desire of physicians to keep all therapeutic surgical options open, particularly in life-threatening emergencies. We prefer to discuss the alternatives with our patients and jointly with them develop a plan of care, individualizing techniques, and referring them as necessary to those who will serve the patient with the most skill. Nonetheless I know of no circumstance in my experience and know of no colleague who will state that it is necessary to perform a destructive procedure on a living second trimester fetus when the alternative of intrauterine feticide by injection is available.

Obviously none of this is pleasant. Senator Santorum, I encourage you strongly to work for passage of the bill limiting this barbaric medical procedure, performance of D&X on living fetuses.

Sincerely,

SUSAN E. RUTHERFORD, MD.

UNIVERSITY OF SOUTHERN CALIFORNIA, DEPARTMENT OF OBSTETRICS AND GYNECOLOGY,
Los Angeles, CA, March 12, 2003.

Hon. RICK SANTORUM,
U.S. Senate Office Building,
Washington, DC.

DEAR SENATOR SANTORUM, I am writing in support of the proposed restrictions on the procedure referred to as ''partial birth abortion,'' which the Senate is now considering.

I am chief of the Division of Maternal-Fetal Medicine in the Department of Obstetrics and Gynecology at the University of Southern California in Los Angeles. I have published more than 100 scientific papers and book chapters regarding complications of pregnancy. I direct the obstetrics service at Los Angeles County Women's and Children's Hospital, the major referral center for complicated obstetric cases among indigent and under-served women in Los Angeles.

I have had occasion to review the cases described by Dr. Philip Darney, offered in support of the position that partial birth abortion, or intact D&E, was the best care for the patient in those situations. Mindful of Dr. Darney's broad experience with surgical abortion, I nevertheless disagree strongly that the approach he describes for these two cases was best under the circumstances. Such cases are infrequent, and there is no single standard for management. However, it would certainly be considered atypical, in my experience, to wait 12 hours to dilate the cervix with laminaria while the patient was actively hemorrhaging, as was described in his first case. Similarly, the approach to presumed placenta acreta, described in the second case, is highly unusual. Although the mother survived with significant morbidity, it is not clear that the novel approach to management of these difficult cases is the safest approach. It is my opinion that the vast majority of physicians confronting either of these cases would opt for careful hysterotomy as the safest means to evacuate the uterus.

Although I do not perform abortions, I have been involved in counseling many women who have considered abortion because of a medical complication of pregnancy. I have not encountered a case in which what has been described as partial birth abortion is the only choice, or even the better choice among alternatives, for managing a given complication of pregnancy.

Thank you for your consideration of this opinion.

Sincerely,

T. MURPHY GOODWIN, M.D,
Chief, Division of Maternal-Fetal Medicine.

Mr. SANTORUM. Madam President, I ask unanimous consent that a letter from Dr. Daniel J. Wechter be printed in the RECORD.

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

SYNERGYMEDICAL EDUCATION ALLIANCE,
Saginaw, MI, March 13, 2003.

Hon. RICK SANTORUM,
U.S. Senate Office Building,
Washington, DC.

DEAR SENATOR SANTORUM, I am writing in response to the letter from Dr. Phillip Darney which was introduced by Senator Feinstein.

I have cared for pregnant patient patients for almost 29 years, and have worked exclusively in the field of Maternal-Fetal Medicine (high risk pregnancy) for over 15 years. I am board certified in Obstetrics & Gynecology, and also in the subspecialty of Maternal-Fetal Medicine. I am an assistant professor in Obstetrics & Gynecology for the Michigan State College of Human Medicine, and co-director of Maternal-Fetal Medicine in Saginaw Michigan.

I have never seen a situation in which a partial birth abortion was needed to save a mother's life. I have never had a maternal death, not ever.

I am familiar with Dr. Darney's letter describing two of his cases. My comments are not meant as a criticism of Dr. Darney as a person or as a physician. I have great respect for anyone in our field of medicine, which is a very rewarding specialty but which requires difficult decisions on a daily basis. We are all working to help mothers and their children make it through difficult pregnancies. Still, I do disagree with his stand that the legal freedom to do partial birth abortions is necessary for us to take good care of our patients. For example, in the second case he describes, I believe that patient could have carried the pregnancy much further, and eventually delivered a healthy child by repeat caesarean section followed by hysterectomy. Hemorrhage is always a concern with such patients, but we have many effective ways to handle this problem, which Dr. Darney knows as well as I. Blood vessels can be tied off at surgery, blood vessels can be occluded using small vascular catheters, cell-savers can be used to return the patients own blood to them, blood may be given from donors, pelvic pressure packs can be used for bleeding following hysterectomy, and other blood products (platelets, fresh frozen plasma, etc) can be given to treat coagulation abnormalities (DIC). His approach of placing laminaria to dilate the cervix in a patient with a placenta praevia is not without it's own risk.

If Dr. Darney performed the partial birth abortion on this patient to keep from doing another c-section, or even to preserve her uterus, I'm hopeful he counseled the patient that if she becomes pregnant again, she will once again have a very high risk of having a placenta praevia and placenta accreta.

Lastly, I believe that for some abortionists, the real reason they wish to preserve their ''right'' to do partial birth abortions is that at the end of the procedure they have only a dead child to deal with. If they were to abort these women by either inducing their labor (when there is no placenta praevia present), or by doing a hysterotomy (c-section), they then need to deal with a small, living, struggling child—an uncomfortable situation for someone who's intent was to end the child's life.

Sincerely,

DANIEL J. WECHTER, M.D.,
Co-Director of Maternal-Fetal Medicine,
Synergy Medical Education Alliance.

Mr. BURNS. Mr. President, the Partial-Birth Abortion Ban Act of 2003 is not about a woman's right to choose to have an abortion. Regardless of one's views on abortion in general, the partial-birth abortion procedure should have no place in a civilized society such as ours. Partial-birth abortion is an undeniably abhorrent procedure, and most physicians believe it is never medically necessary. The American Medical Association, the largest association of doctors in the United States, and the medical community at large, has endorsed banning this late-term abortion procedure. It is time for the Congress to follow suit.

Since 1995, at least 31 States have enacted laws banning partial-birth abortion. On June 28, 2000, the U.S. Supreme Court invalidated a Nebraska statute that prohibited the performance of partial-birth abortions. The Supreme Court determined that the Nebraska statute was unconstitutional because it failed to include an exception to protect the health of the mother, and because the language defining the prohibited procedure was too vague. We must not allow the Partial-Birth Abortion Ban Act to be diluted by amendments that would limit the application of this bill to a time after a child is determined to be viable. Such language would allow this procedure to continue being performed as late as the sixth month of pregnancy. Additionally, such amendments would create loopholes allowing this cruel procedure to be used even as late as the third trimester of pregnancy, a time at which many babies can sustain life outside the womb.

Passing the Partial-Birth Abortion Ban Act would prohibit any physician or other individual from knowingly performing a partial-birth abortion, except when necessary to save the life of a mother who is endangered by a physical disorder, illness, or injury. Experts have estimated that the partial-birth abortion procedure is used 3,000–5,000 times annually, and that the vast majority of these procedures are performed on a healthy mother and a healthy fetus. The Physicians' Ad Hoc Coalition on Truth—PHACT—a group of over 600 physicians-specialists—has spoken out to dispute the claims that some women need partial-birth abortions to avoid serious physical injury. In September 1996, former Surgeon General C. Everett Koop and other PHACT members said:

Partial-birth abortion is never medically necessary to protect a mother's health or her

future fertility. On the contrary, this procedure can pose a significant threat to both.

Banning partial-birth abortion has been addressed in every Congress since the 104th session, and banned in both the 104th and 105th sessions. We now have a President in office who has vowed to sign this Partial-Birth Ban Act when it comes before him without hostile amendments that would allow the continuance of this procedure. It is our moral duty to ban this repulsive practice once and for all, and it is my sincere hope that Congress will be able to finally pass the Partial-Birth Abortion Ban Act of 2003.

Mr. GRASSLEY. Mr. President, I rise today in support for the Partial-Birth Abortion Ban Act of 2003.

As a father of five, a grandfather of nine, and a proud great-grandfather, I regard life as a precious gift. During my tenure in the Congress—that is, since 1974—I have long supported policies that stand up for life and protect the unborn.

We made great strides in the 104th, 105th, and 106th Congresses on banning partial-birth abortions. It was unfortunate that President Clinton vetoed the ban. Not once, but twice.

Then, in 2000, the Supreme Court considered and struck down as unconstitutional the Nebraska State law making partial-birth abortion illegal. In Stenberg v. Carhart, the Court believed that the Nebraska law (1) did not contain an exception for the health of a mother, and (2) was too broad and could be construed to cover other types of procedures. The bill before us specifically addresses the Supreme Court's concerns.

I am disappointed and sickened that these abortion procedures are legal in the United States of America. I'm not alone. According to a recent Gallup poll, 70 percent of Americans want a ban.

My constituents want a ban on partial-birth abortions:

A woman from Tabor, IA, wrote, ''I'm horrified that under current law, thousands of partial-birth abortions are committed in America every year.''

A man from Atlantic, IA wrote, ''I believe that when women would see that they would be terminating a life then they would opt 'no' to abortion.''

A woman from Nora Springs wrote, ''Abortions are actually murder because even though the child may not be out of the womb, it's still developing into a person.''

A woman from Waverly, IA, wrote, ''Partial-birth abortions are never medically necessary.''

A young man in the 6th grade from West Union, IA, wrote, ''A child might die, and in the future that small child could grow up to create a cure for a disease, or be a fireman and save many lives. Just think, you could have been aborted.''

It's time for us to stand up against such an extreme medical practice that stops the beating heart of an unborn child.

Most medical professionals would agree that this specific abortion procedure is outrageous. In fact, the American Medical Association supported a ban in 1999.

You will hear many on the other side argue about a woman's health and reproductive rights. As the bill states, the physician credited with developing the partial-birth abortion procedure has testified that he has never encountered a situation where a partial-birth abortion was medically necessary to achieve the desired outcome. His testimony waters down their theory that this procedure is necessary in certain situations to preserve the mother's health.

If we know that the procedure can pose a threat to both a woman's immediate health and future reproductive capacity, why do you want to expose women to the risks?

Condoning partial-birth abortion is bad medicine, and bad policy.

When abortion advocates say that abortion is a matter just between a woman and her doctor, they are rejecting the rights of an innocent human being.

The unborn baby is alive from the moment of fertilization, the unborn baby has a heartbeat at 3 weeks and brain waves at 6 weeks, the unborn baby has 46 chromosomes in the cells of his or her body, the unborn baby is a living human being.

Dr. Seuss said it just right: A person is a person, no matter how small.

Let's pass this bill to protect the innocent and unborn.

Mr. CORZINE. Mr. President, I rise in opposition to this legislation because I believe it is unconstitutional, and because its language is so broad that it effectively would ban standard and safe abortion procedures. I am concerned that, if approved, this bill would not only undermine a woman's right to choose, but it would endanger the lives of thousands of women who no longer would have access to safe abortion procedures when their health or their life is in jeopardy.

Before I go further, let me say that I fully understand the very real and legitimate concerns of those who support this legislation. The issue of abortion raises the most profound of moral and ethical dilemmas. These are emotional issues. They raise many hard questions. And the practical reality of abortion, all types of abortion, is hard for all involved.

Speaking for myself, I support a woman's right to choose. And I support it strongly. As I see it, a decision about abortion generally should be made by a woman and her doctor, not by politicians.

Having said that, I recognize that men and women of good faith can and will reach different conclusions about the difficult ethical questions involved in the debate on this legislation. And, I share concerns raised by many bill proponents about some of the most disturbing examples of procedures conducted post-viability. That's why I intend to support an amendment to restrict such procedures. The legislation I am supporting, however, is much more carefully crafted than the underlying bill, and it complies with the constitution by providing an exception where the health of the woman is at stake.

While I understand the genuine concerns of many advocates for this legislation, the language of the bill actually goes well beyond a ban on late-term abortions. In fact, its real effect would be to deny women's access to some of the safest abortion procedures at all stages of pregnancy. Because the legislation omits any mention of fetal viability, it bans abortions throughout all stages of pregnancy. And it bans one of the safest abortion methods—the ''intact D&E''—that is used when a woman's life and health are in danger and for severe fetal anomalies.

I hope my colleagues will think long and hard about the implications of the legislation before us. We need to be very careful to avoid returning to a period in which abortion was illegal and the only choice women had was to seek an illegal and unsafe abortion. In those days, thousands of women died each year as a direct result of these legal prohibitions. And it would be tragic if this Congress were to forget the lessons of that history.

It also would be unconstitutional. In Roe v. Wade, the Supreme Court held that a woman has the right to choose legal abortion until fetal viability. States have the authority to ban abortion post-viability, so long as exceptions are made to protect a woman's life and health. And, indeed, 41 States have chosen to ban postviability abortions in instances in which a woman's life and health are not at stake. But, under no circumstances do the Congress or the States have the authority to ban medical procedures that are essential to preserving a woman's life or health, nor do they have the authority to completely ban access to abortion previability. This is a constitutionally protected right.

Unfortunately, the majority leader has brought to the Senate floor an abortion ban that has been struck down by courts in 21 States, including my State of New Jersey, and the Supreme Court. Based on that precedent, there is little doubt that, if this bill is enacted, it also will be struck down, and therefore it won't reduce the number of abortions at all. It makes you wonder: Why are we even spending our time debating this legislation?

If we really are interested in reducing the number of abortions in this country, we should ensure that all women have access to the full array of family planning services, including prescription contraception, emergency contraception, and prenatal care. We also should support an expansion of comprehensive sex education. I fully support the amendment offered by Senator MURRAY and REID that would have addressed these issues.

Every week, 8,500 children in our country are born to mothers who lacked access to prenatal care. Too many of these children are born with serious health problems because their mothers lacked adequate care during their pregnancies. As a result, 28,000 infants die each year in the United States. That, Mr. President, is the real tragedy. And we ought to act immediately to address this issue by expanding access to prenatal care, as several of my colleagues and I have proposed.

What we should not do, however, is pass legislation that we know is unconstitutional, that would ban a common and safe form of abortion at all stages of pregnancy, and that would increase maternal mortality—all without improving the health of a single child.

For these reasons, I urge my colleagues to oppose this bill.

I ask unanimous consent to print in the RECORD two letters, one from Physicians for Reproductive Choice and Health, and the other from Mr. Felicia Stewart, Professor of Obstetrics and Gynecology at the University of California. I believe these letters describe better than I the important medical reasons for voting against this bill.

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

PHYSICIANS FOR REPRODUCTIVE CHOICE AND HEALTH,
New York, NY, March 12, 2003.

Hon. JON S. CORZINE,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORZINE: We are writing to urge you to stand in defense of women's reproductive health and vote against S.3, legislation regarding so-called ''partial birth'' abortion.

We are practicing family physicians; obstetrician-gynecologists; academics in obstetrics, gynecology and women's health; and a variety of other specialties in medicine. We believe it is imperative that those who perform terminations and manage the pre- and post-operative care of women receiving abortions are given a voice in a debate that has largely ignored the two groups whose lives would be most affected by this legislation: physicians and patients.

It is misguided and unprincipled for lawmakers to legislate decision-making in medicine. We all want safe and effective medical procedures for women; on that there is no dispute. However, the business of medicine is not always palatable to those who do not practice it on a regular basis. The description of a number of procedures—from liposuction to cardiac surgery—may seem distasteful to some, and even repugnant to others. When physicians analyze and refine surgical techniques, it is always for the best interest of the patient. The risk of death associated with childbirth is about 11 times as high as that associated with abortion. Abortion is proven to be one of the safest procedures in medicine, significantly safer than childbirth, and in fact saves women's lives.

While we can argue as to why this legislation is dangerous, deceptive and unconstitutional—and it is—the fact of the matter is that the text of the bill is so vague and misleading that there is a great need to correct the misconceptions around abortion safety and technique. It is wrong to assume that a specific procedure is never needed; what is required is the safest option for the patient, and that varies from case to case.

THE FACTS

(1) So-called ''partial birth'' abortion does not exist.

There is no mention of term ''partial birth'' abortion in any medical literature. Physicians are never taught a technique called ''partial birth'' abortion and therefore are unable to medically define the procedure.

What is described in the legislation, however, could ban all abortions. ''What this bill describes, albeit in non-medical terms, can be interpreted as any abortion,'' stated one of our physician members. ''Medicine is an art as much as it is a science; although there is a standard of care, each procedure—and indeed each woman—is different. The wording here could apply to any abortion patient.'' The bill's language is too vague to be useful; in fact, it is so vague as to be harmful. It is intentionally unclear and deceptive.

(2) Physicians need to have all medical options available in order to provide the best medical care possible.

Tying the hands of physicians endangers the health of patients. It is unethical and dangerous for legislators to dictate the details of specific surgical procedures. Until a surgeon examines the patient, she does not necessarily know which technique or procedure would be in the patient's best interest. Banning procedures puts women's health at risk.

(3) Politicians should not legislate medical decision-making.

To do so would violate the sanctity and legality of the physician-patient relationship. The right to have an abortion is constitutionally-protected. To falsify scientific evidence in an attempt to deny women that right is unconscionable and dangerous.

The American College of Obstetricians and Gynecologists, representing 45,000 ob-gyns, agrees: ''The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.''

The American Medical Women's Association, representing 10,000 female physicians, is opposed to an abortion ban because it ''represents a serious impingement on the rights of physicians to determine appropriate medical management for individual patients.''

THE SCIENCE

We know that there is no such technique as ''partial birth'' abortion, and we believe this legislation is a thinly-veiled attempt to outlaw all abortions. Those supporting this legislation seem to want to confuse both legislators and the public about which abortion procedures are actually used. Since the greatest confusion seems to center around techniques that are used after the first trimester, we will address those: dilation and evacuation (D&E), dilation and extraction (D&X), instillation, hysterectomy and hysterotomy (commonly known as a c-section).

Dilation and evacuation (D&E) is the standard approach for second-trimester abortions. The D&E is similar to first-trimester vacuum aspiration except that the cervix must be further dilated because surgical instruments are used. Morbidity and mortality studies indicate D&E is preferable to labor induction methods (instillation), hysterotomy and hysterectomy because of issues regarding complications and safety.

From the years 1972–76, labor induction procedures carried a maternal mortality rate of 16.5 (note: all numbers listed are out of 100,000); the corresponding rate for D&E was 10.4. From 1977–82, labor induction fell to 6.8, but D&E dropped to 3.3 From 1983–87, induction methods had a 3.5 mortality rate, while D&E fell to 2.9. Although the difference between the methods shrank by the mid-1980s, the use of D&E had already quickly outpaced induction.

Morbidity trends indicate that dilation and evacuation is much safer than labor induction procedures and for women with certain medical conditions, labor induction can pose serious risks. Rates of major complications from labor induction, including bleeding, infections, and unnecessary surgery, were at least twice as high as those from D&E. There are instances of women who, after having failed inductions, acquired infections necessitating emergency D&Es as a last resort. Hysterotomy and hysterectomy, moreover, carry a mortality rate seven times that of induction techniques and ten times that of D&E.

There is a psychological component which makes D&E preferable to labor induction; undergoing difficult, expensive and painful labor for up to two days can be extremely emotionally and psychologically difficult, much more so than a surgical procedure that can be done in less than an hour under general or local anesthesia. Furthermore, labor induction does not always work: Between 15 and 30 percent or more of cases require surgery to complete the procedure. There is no question that D&E is the safest method of second-trimester abortion.

There is also a technique known as dilation and extraction (D&X). There is a limited medical literature on D&X because it is an uncommonly used variant of D&X. However, it is sometimes a physician's preferred method of termination for a number of reasons: It offers a woman the chance to see the intact outcome of a desired pregnancy, to speed up the grieving process; it provides a greater chance of acquiring valuable information regarding hereditary illness or fetal anomaly; and D&E provides a decreased risk of injury to the woman, as the procedure is quicker than induction and involves less use of sharp instruments in the uterus, providing a decreased chance of uterine perforations or tears and cervical lacerations. The American College of Obstetricians and Gynecologists addressed this in their statement in opposition to so-called ''partial birth'' abortion when they said that D&X ''may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based on the woman's particular circumstances, can make this decision.

It is important to note that these procedures are used at varying gestational ages. both D&E and D&X are options for surgical abortion prior to viability. D&E and D&X are used solely based on the size of the fetus, the health of the woman, and the physician's judgment, and the decision regarding which procedure to use is done on a case-by-case basis.

THE LEGISLATION

Because this legislation is so vague, it would outlaw D&E and D&X (and arguably techniques used in the first trimester). Indeed, the Congressional findings—which go into detail, albeit in non-medical terms—do not remotely correlate with the language of the bill. This legislation is reckless. The outcome of its passage would undoubtedly be countless deaths and irreversible damage to thousands of women and families. We can safely assert that without D&E and D&X, that is, an enactment of S. 3, we will be returning to the days when an unwanted pregnancy led women to death through illegal and unsafe procedures, self-inflected abortions, uncontrollable infections and suicide.

The cadre of physicians who provide abortions should be honored, not vilified. They are heroes to millions of women, offering the opportunity of choice and freedom. We urge you to consider scientific data rather than partisan rhetoric when voting on such far-

reaching public health legislation. We strongly oppose legislation intended to ban so-called ''partial birth'' abortion.

Sincerely,

Nassim Assefi, MD, Attending, Women's Clinic and Adult Medicine, Harborview Medical Center, Seattle, WA.

Jonathan D. Berman, MD, Columbia River Mental Health Services, Vancouver, WA.

Elizabeth Bianchi, MD, Spokane, WA.

Paul D. Blumenthal, MD, MPH, Associate Professor, Department of Gynecology and Obstetrics, Johns Hopkins University, Director, Contraceptive Research and Programs, Johns Hopkins Bayview Medical Center, Baltimore, MD.

Fredrik F. Broekhuizen, MD, Professor Obstetrics and Gynecology, Medical College of Wisconsin, Madison, WI.

Herbert Brown, MD, Clinical Associate Professor, Obstetrics and Gynecology, University of Texas Health Science Center at San Antonio, San Antonio, TX.

Wendy Chavkin, MD, MPH, Professor of Clinical Public Health and Ob-Gyn, Columbia University, School of Public Health.

Philip A. Corfman, MD, Consultant in Reproductive Health, Bethesda, MD.

Anne R. Davis, MD, MPH, Assistant Clinical Professor of Obstetrics and Gynecology, Columbia College of Physicians and Surgeons, Columbia University, New York, NY.

Quentin B. Deming, MD, Jacob A. and Jeanne E. Barkey, Professor of Medince, Emeritus, Albert Einstein College of Medicine, New York, NY.

Paul M. Fine, MD, Medical Director, Planned Parenthood of Houston and Southeast Texas, Houston, TX.

Marilynn C. Frederiksen, MD, Associate Professor of Obstetrics and Gynecology, Northwestern University Medical School, Chicago, IL.

Susan George, MD, Family Physician, Portland, ME.

Richard W. Grady, MD, Assistant Professor, Children's Hospital and Regional Medical Center, Seattle, WA.

Laura J. Hart, MD, Alaska Urological Associates, Seattle, WA

Paula J. Adams Hillard, MD, Professor, OB-Gyn and Pediatrics, University of Cincinnati College of Medicine, Cincinnati, OH.

Sarah Hufbauer, MD, Country Doctor Community Clinic, Seattle, WA.

Robert L. Johnson, MD, FAAP, Pediatrician and Adolescent Medicine Specialist, Orange, NJ.

Harry S. Jonas, MD, Past President, The American College of Obstetricians and Gynecologist, Lee's Summit, MO.

Deborah E. Klein, MD, Swedish Physician Division, Seattle, WA.

Julie Komarow, MD, Covington Primary Care, Covington, WA.

Kim Leatham, MD, Clinical Instructor, University of Washington, Dept. of Family Medicine, Medical Director, Virginia Mason Winslow, Bainbridge Island, WA.

David A. Levine, MD, Associate Professor of Clinical Pediatrics, Morehouse School of Medicine, Atlanta, GA.

Sara Buchdahl Levine, MD, MPH, Resident, Social Pediatrics, Children's Hospital at Montefiore, Bronx, NY.

Scott T. McIntyre, MD, Seattle Family Medicine, Aurora Medical Services, Planned Parenthood of Western Washington Medical Advisory Committee, Seattle, WA.

Catherine P. McKegney, MD, MS, Hennepin Count Medical Director, Department of Family Practice, Minneapolis, MN.

Deborah Oyer, MD, Medical Director, Aurora Medical Services, Clinical Assistant Professor in Family Medicine, University of Washington, Seattle, WA.

Warren H. Pearse, MD, Ob/Gyn, Mitchellville, MD.

Natalie E. Roche, MD, Assistant Professor of Obstetrics and Gynecology, New Jersey Medical College, Newark, NJ.

Roger A. Rosenblatt, MD, MPH, Professor and Vice Chair, Department of Family Medicine, Rural Underserved Opportunity Program Director—School of Medicine University of Washington School of Medicine Seattle, WA.

Courtney Schreiber, MD, Chief Resident, Obstetrics and Gynecology, University of Pennsylvania Health System, Philadelphia, PA.

Jody Steinauer, MD, Clinical Fellow, Dept. of Obstetrics, Gynecology and Reproductive Sciences, University of California, San Francisco, CA.

Steven B. Tamarin, MD, St. Luke's/Roosevelt Medical Center, Attending Assistant, Department of Pediatrics, New York, NY.

Katherine Van Kessel, MD, Attending Physician, Harborview Medical Center, Department of OB/Gyn, University of Washington Medical Center, Seattle, WA.

Gerson Weiss, MD, Professor and Chair, Department of Obstetrics, Gynecology and Women's Health, New Jersey Medical College, Newark, NJ.

Beverly Winikoff, MD, MPH, President, Gynuity Health Projects, New York, NY.

And the board of Physicians for Reproductive Choice and Health.

MARCH 5, 2003.

Hon. BARBARA BOXER,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOXER: I understand that you will be considering Senate S. 3, the ban on abortion procedures, soon and would like to offer some medical information that may assist you in your efforts. Important stakes for women's health are involved: if Congress enacts such a sweeping ban, the result could effectively ban safe and common, pre-viability abortion procedures.

By way of background, I am an adjunct professor in the Department of Obstetrics, Gynecology and Reproductive Sciences at the University of California, San Francisco, where I co-direct the Center for Reproductive Health Research and Policy. Formerly, I directed the Reproductive Health program for the Henry J. Kaiser Family Foundation and served as Deputy Assistant Secretary for Population Affairs for the United States Department of Health and Human Services. I represented the United States at the International Conference on Population and Development (ICPD) in Cairo, Egypt, and currently serve on a number of Boards for organizations that promote emergency contraception and new contraceptive technologies, and support reducing teen pregnancy. My medical and policy areas of expertise are in the family planning and reproductive health, prevention of sexually transmitted infections including HIV/AIDS, and enhancing international and family planning.

The proposed ban on abortion procedures criminalizes abortions in which the provider ''deliberately and intentionally vaginally delivers a living fetus . . . for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus . . .'' The criminal ban being considered is flawed in a number of respects:

It fails to protect women's health by omitting an exception for women's health;

It menaces medical practice with the threat of criminal prosecution;

It encompasses a range of abortion procedures; and

It leaves women in need of second trimester abortions with far less safe medical options: hysterotomy (similar to a caesarean section) and hysterectomy.

The proposed ban would potentially encompass several abortion methods, including dilation and extraction (d&x, sometimes referred to as ''inact d&e), dilation and evacuation (d&e), the most common second-trimester procedure. In addition, such a ban could also apply to induction methods. Even if a physician is using induction as the primary method for abortion, he or she may not be able to assure that the procedure could be effected without running afoul of the proposed ban. A likely outcome if this legislation is enacted and enforced is that physicians will fear criminal prosecution for any second trimester abortion—and women will have no choice but to carry pregnancies to term despite the risks to their health. It would be a sad day for medicine if Congress decides that hysterotomy, hysterectomy, or unsafe continuation of pregnancy are women's only available options. Williams Obstetrics, one of the leading medical texts in Obstetrics and Gynecology, has this to say about the hysterotomy ''option'' that the bill leaves open: ''Nottage and Liston (1975), based on review of 700 hysterotomies, rightfully concluded that the operation is outdated as a routine method for terminating pregnancy.'' (Cunningham and McDonald, et al, Williams Obstetrics, 19th ed., (1993), p. 663.)

Obviously, allowing women to have a hysterectomy means that Congress is authorizing women to have an abortion at the price of their future fertility, and with the added risks and costs of major surgery. In sum, the options left are less safe for women who need an abortion after the first trimester of pregnancy.

I'd like to focus my attention on that subset of the women affected by this bill who face grievous underlying medical conditions. To be sure, these are not the majority of women who will be affected by this legislation, but the grave health conditions that could be worsened by this bill illustrate how sweeping the legislation is.

Take for instance women who face hypertensive disorders such as eclampsia—convulsions precipitated by pregnancy-induced or aggravated hypertension (high blood pressure). This, along with infection and hemorrhage, is one of the most common causes of maternal death. With eclampsia, the kidneys and liver may be affected, and in some cases, if the woman is not provided an abortion, her liver could rupture, she could suffer a stroke, brain damage, or coma. Hypertensive disorders are conditions that can develop over time or spiral out of control in short order, and doctors must be given the latitude to terminate a pregnancy if necessary in the safest possible manner.

If the safest medical procedures are not available to terminate a pregnancy, severe adverse health consequences are possible for some women who have underlying medical conditions necessitating a termination of their pregnancies, including: death (risk of death higher with less safe abortion methods), infertility, paralysis, coma, stroke, hemorrhage, brain damage, infection, liver damage, and kidney damage.

Legislation forcing doctors to forego medically indicated abortions or to use less safe but politically-palatable procedures is simply unacceptable for women's health.

Thank you very much, Senator, for your efforts to educate your colleagues about the implications of the proposed ban on abortion procedures.

Sincerely,

FELICIA H. STEWART, M.D.

Mr. SANTORUM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The bill having been read the third time, the question is, Shall the bill pass? The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) would each vote ''no''.

The PRESIDING OFFICER (Ms. MURKOWSKI). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 33, as follows:

[Rollcall Vote No. 51 Leg.]

YEAS—64

Alexander	Dole	McCain
Allard	Domenici	McConnell
Allen	Dorgan	Miller
Bayh	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (SC)	Reid
Bunning	Grassley	Roberts
Burns	Gregg	Santorum
Byrd	Hagel	Sessions
Campbell	Hatch	Shelby
Carper	Hollings	Smith
Chambliss	Hutchison	Specter
Cochran	Inhofe	Stevens
Coleman	Johnson	Sununu
Conrad	Kyl	Talent
Cornyn	Landrieu	Thomas
Craig	Leahy	Voinovich
Crapo	Lincoln	Warner
Daschle	Lott	
DeWine	Lugar	

NAYS—33

Akaka	Durbin	Lieberman
Baucus	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Nelson (FL)
Cantwell	Harkin	Reed
Chafee	Inouye	Rockefeller
Clinton	Jeffords	Sarbanes
Collins	Kennedy	Schumer
Corzine	Kohl	Snowe
Dayton	Lautenberg	Stabenow
Dodd	Levin	Wyden

NOT VOTING—3

Biden	Edwards	Kerry

CHANGE OF VOTE

Mr. DURBIN. Madam President, on the previous rollcall vote on S. 3, I inadvertently cast a vote I did not intend to cast. On rollcall vote No. 51, I voted yea. It was my intention to vote nay. Therefore, I ask unanimous consent that I be permitted to change my vote since it will not affect the outcome.

The PRESIDING OFFICER. Without objection, it is ordered.

(The foregoing tally has been changed to reflect the above order.)

The bill (S. 3), as amended, was passed, as follows:

S. 3

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Partial-Birth Abortion Ban Act of 2003''.

SEC. 2. FINDINGS.

The Congress finds and declares the following:

(1) A moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion—an abortion in which a physician delivers an unborn child's body until only the head remains inside the womb, punctures the back of the child's skull with a Sharp instrument, and sucks the child's brains out before completing delivery of the dead infant—is a gruesome and inhumane procedure that is never medically necessary and should be prohibited.

(2) Rather than being an abortion procedure that is embraced by the medical community, particularly among physicians who routinely perform other abortion procedures, partial-birth abortion remains a disfavored procedure that is not only unnecessary to preserve the health of the mother, but in fact poses serious risks to the long-term health of women and in some circumstances, their lives. As a result, at least 27 States banned the procedure as did the United States Congress which voted to ban the procedure during the 104th, 105th, and 106th Congresses.

(3) In Stenberg v. Carhart (530 U.S. 914, 932 (2000)), the United States Supreme Court opined ''that significant medical authority supports the proposition that in some circumstances, [partial birth abortion] would be the safest procedure'' for pregnant women who wish to undergo an abortion. Thus, the Court struck down the State of Nebraska's ban on partial-birth abortion procedures, concluding that it placed an ''undue burden'' on women seeking abortions because it failed to include an exception for partial-birth abortions deemed necessary to preserve the ''health'' of the mother.

(4) In reaching this conclusion, the Court deferred to the Federal district court's factual findings that the partial-birth abortion procedure was statistically and medically as safe as, and in many circumstances safer than, alternative abortion procedures.

(5) However, the great weight of evidence presented at the Stenberg trial and other trials challenging partial-birth abortion bans, as well as at extensive Congressional hearings, demonstrates that a partial-birth abortion is never necessary to preserve the health of a woman, poses significant health risks to a woman upon whom the procedure is performed, and is outside of the standard of medical care.

(6) Despite the dearth of evidence in the Stenberg trial court record supporting the district court's findings, the United States Court of Appeals for the Eighth Circuit and the Supreme Court refused to set aside the district court's factual findings because, under the applicable standard of appellate review, they were not ''clearly erroneous''. A finding of fact is clearly erroneous ''when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed''. Anderson v. City of Bessemer City, North Carolina (470 U.S. 564, 573 (1985)). Under this standard, ''if the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently'' (Id. at 574).

(7) Thus, in Stenberg, the United States Supreme Court was required to accept the very questionable findings issued by the district court judge—the effect of which was to render null and void the reasoned factual findings and policy determinations of the United States Congress and at least 27 State legislatures.

(8) However, under well-settled Supreme Court jurisprudence, the United States Congress is not bound to accept the same factual findings that the Supreme Court was bound to accept in Stenberg under the ''clearly erroneous'' standard. Rather, the United States Congress is entitled to reach its own factual findings—findings that the Supreme Court accords great deference—and to enact legislation based upon these findings so long as it seeks to pursue a legitimate interest that is within the scope of the Constitution, and draws reasonable inferences based upon substantial evidence.

(9) In Katzenbach v. Morgan (384 U.S. 641 (1966)), the Supreme Court articulated its highly deferential review of Congressional factual findings when it addressed the constitutionality of section 4(e) of the Voting Rights Act of 1965. Regarding Congress' factual determination that section 4(e) would assist the Puerto Rican community in ''gaining nondiscriminatory treatment in public services,'' the Court stated that ''[i]t was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations. . . . It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did. There plainly was such a basis to support section 4(e) in the application in question in this case.'' (Id. at 653).

(10) Katzenbach's highly deferential review of Congress's factual conclusions was relied upon by the United States District Court for the District of Columbia when it upheld the ''bail-out'' provisions of the Voting Rights Act of 1965, (42 U.S.C. 1973c), stating that ''congressional fact finding, to which we are inclined to pay great deference, strengthens the inference that, in those jurisdictions covered by the Act, state actions discriminatory in effect are discriminatory in purpose''. City of Rome, Georgia v. U.S. (472 F. Supp. 221 (D. D. Col. 1979)) aff'd City of Rome, Georgia v. U.S. (46 U.S. 156 (1980)).

(11) The Court continued its practice of deferring to congressional factual findings in reviewing the constitutionality of the must-carry provisions of the Cable Television Consumer Protection and Competition Act of 1992. See Turner Broadcasting System, Inc. v. Federal Communications Commission (512 U.S. 622 (1994) (Turner I)) and Turner Broadcasting System, Inc. v. Federal Communications Commission (520 U.S. 180 (1997) (Turner II)). At issue in the Turner cases was Congress' legislative finding that, absent mandatory carriage rules, the continued viability of local broadcast television would be ''seriously jeopardized''. The Turner I Court recognized that as an institution, ''Congress is far better equipped than the judiciary to 'amass and evaluate the vast amounts of data' bearing upon an issue as complex and dynamic as that presented here'' (512 U.S. at 665–66). Although the Court recognized that ''the deference afforded to legislative findings does 'not foreclose our independent judgment of the facts bearing on an issue of constitutional law,' '' its ''obligation to exercise independent judgment when First Amendment rights are implicated is not a license to reweigh the evidence de novo, or to replace Congress' factual predictions with our own. Rather, it is to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.'' (Id. at 666).

(12) Three years later in Turner II, the Court upheld the ''must-carry'' provisions based upon Congress' findings, stating the Court's ''sole obligation is 'to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.' '' (520 U.S. at 195). Citing its ruling in Turner I, the Court reiterated that ''[w]e owe Congress' findings deference in part because the institution 'is far better

equipped than the judiciary to ''amass and evaluate the vast amounts of data'' bearing upon' legislative questions,'' (Id. at 195), and added that it ''owe[d] Congress' findings an additional measure of deference out of respect for its authority to exercise the legislative power.'' (Id. at 196).

(13) There exists substantial record evidence upon which Congress has reached its conclusion that a ban on partial-birth abortion is not required to contain a ''health'' exception, because the facts indicate that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care. Congress was informed by extensive hearings held during the 104th, 105th, and 107th Congresses and passed a ban on partial-birth abortion in the 104th, 105th, and 106th Congresses. These findings reflect the very informed judgment of the Congress that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care, and should, therefore, be banned.

(14) Pursuant to the testimony received during extensive legislative hearings during the 104th, 105th, and 107th Congresses, Congress finds and declares that:

(A) Partial-birth abortion poses serious risks to the health of a woman undergoing the procedure. Those risks include, among other things: an increase in a woman's risk of suffering from cervical incompetence, a result of cervical dilation making it difficult or impossible for a woman to successfully carry a subsequent pregnancy to term; an increased risk of uterine rupture, abruption, amniotic fluid embolus, and trauma to the uterus as a result of converting the child to a footling breech position, a procedure which, according to a leading obstetrics textbook, ''there are very few, if any, indications for . . . other than for delivery of a second twin''; and a risk of lacerations and secondary hemorrhaging due to the doctor blindly forcing a sharp instrument into the base of the unborn child's skull while he or she is lodged in the birth canal, an act which could result in severe bleeding, brings with it the threat of shock, and could ultimately result in maternal death.

(B) There is no credible medical evidence that partial-birth abortions are safe or are safer than other abortion procedures. No controlled studies of partial-birth abortions have been conducted nor have any comparative studies been conducted to demonstrate its safety and efficacy compared to other abortion methods. Furthermore, there have been no articles published in peer-reviewed journals that establish that partial-birth abortions are superior in any way to established abortion procedures. Indeed, unlike other more commonly used abortion procedures, there are currently no medical schools that provide instruction on abortions that include the instruction in partial-birth abortions in their curriculum.

(C) A prominent medical association has concluded that partial-birth abortion is ''not an accepted medical practice,'' that it has ''never been subject to even a minimal amount of the normal medical practice development,'' that ''the relative advantages and disadvantages of the procedure in specific circumstances remain unknown,'' and that ''there is no consensus among obstetricians about its use''. The association has further noted that partial-birth abortion is broadly disfavored by both medical experts and the public, is ''ethically wrong,'' and ''is never the only appropriate procedure''.

(D) Neither the plaintiff in Stenberg v. Carhart, nor the experts who testified on his behalf, have identified a single circumstance during which a partial-birth abortion was necessary to preserve the health of a woman.

(E) The physician credited with developing the partial-birth abortion procedure has testified that he has never encountered a situation where a partial-birth abortion was medically necessary to achieve the desired outcome and, thus, is never medically necessary to preserve the health of a woman.

(F) A ban on the partial-birth abortion procedure will therefore advance the health interests of pregnant women seeking to terminate a pregnancy.

(G) In light of this overwhelming evidence, Congress and the States have a compelling interest in prohibiting partial-birth abortions. In addition to promoting maternal health, such a prohibition will draw a bright line that clearly distinguishes abortion and infanticide, that preserves the integrity of the medical profession, and promotes respect for human life.

(H) Based upon Roe v. Wade (410 U.S. 113 (1973)) and Planned Parenthood v. Casey (505 U.S. 833 (1992)), a governmental interest in protecting the life of a child during the delivery process arises by virtue of the fact that during a partial-birth abortion, labor is induced and the birth process has begun. This distinction was recognized in Roe when the Court noted, without comment, that the Texas parturition statute, which prohibited one from killing a child ''in a state of being born and before actual birth,'' was not under attack. This interest becomes compelling as the child emerges from the maternal body. A child that is completely born is a full, legal person entitled to constitutional protections afforded a ''person'' under the United States Constitution. Partial-birth abortions involve the killing of a child that is in the process, in fact mere inches away from, becoming a ''person''. Thus, the government has a heightened interest in protecting the life of the partially-born child.

(I) This, too, has not gone unnoticed in the medical community, where a prominent medical association has recognized that partial-birth abortions are ''ethically different from other destructive abortion techniques because the fetus, normally twenty weeks or longer in gestation, is killed outside of the womb''. According to this medical association, the '' 'partial birth' gives the fetus an autonomy which separates it from the right of the woman to choose treatments for her own body''.

(J) Partial-birth abortion also confuses the medical, legal, and ethical duties of physicians to preserve and promote life, as the physician acts directly against the physical life of a child, whom he or she had just delivered, all but the head, out of the womb, in order to end that life. Partial-birth abortion thus appropriates the terminology and techniques used by obstetricians in the delivery of living children—obstetricians who preserve and protect the life of the mother and the child—and instead uses those techniques to end the life of the partially-born child.

(K) Thus, by aborting a child in the manner that purposefully seeks to kill the child after he or she has begun the process of birth, partial-birth abortion undermines the public's perception of the appropriate role of a physician during the delivery process, and perverts a process during which life is brought into the world, in order to destroy a partially-born child.

(L) The gruesome and inhumane nature of the partial-birth abortion procedure and its disturbing similarity to the killing of a newborn infant promotes a complete disregard for infant human life that can only be countered by a prohibition of the procedure.

(M) The vast majority of babies killed during partial-birth abortions are alive until the end of the procedure. It is a medical fact, however, that unborn infants at this stage can feel pain when subjected to painful stimuli and that their perception of this pain is even more intense than that of newborn infants and older children when subjected to the same stimuli. Thus, during a partial-birth abortion procedure, the child will fully experience the pain associated with piercing his or her skull and sucking out his or her brain.

(N) Implicitly approving such a brutal and inhumane procedure by choosing not to prohibit it will further coarsen society to the humanity of not only newborns, but all vulnerable and innocent human life, making it increasingly difficult to protect such life. Thus, Congress has a compelling interest in acting—indeed it must act—to prohibit this inhumane procedure.

(O) For these reasons, Congress finds that partial-birth abortion is never medically indicated to preserve the health of the mother; is in fact unrecognized as a valid abortion procedure by the mainstream medical community; poses additional health risks to the mother; blurs the line between abortion and infanticide in the killing of a partially-born child just inches from birth; and confuses the role of the physician in childbirth and should, therefore, be banned.

SEC. 3. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 73 the following:

"CHAPTER 74—PARTIAL-BIRTH ABORTIONS

''Sec.
''1531. Partial-birth abortions prohibited.

"§ 1531. Partial-birth abortions prohibited

''(a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both. This subsection does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. This subsection takes effect 1 day after the date of enactment of this chapter.

''(b) As used in this section—

''(1) the term 'partial-birth abortion' means an abortion in which—

''(A) the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

''(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus; and

''(2) the term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions: *Provided, however,* That any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the provisions of this section.

''(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the

fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

''(2) Such relief shall include—

''(A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

''(B) statutory damages equal to three times the cost of the partial-birth abortion.

''(d)(1) A defendant accused of an offense under this section may seek a hearing before the State Medical Board on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

''(2) The findings on that issue are admissible on that issue at the trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit such a hearing to take place.

''(e) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section, for a conspiracy to violate this section, or for an offense under section 2, 3, or 4 of this title based on a violation of this section.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

''74. Partial-birth abortions ..... 1531''.

SEC. 4. SENSE OF THE SENATE CONCERNING ROE V. WADE.

(a) FINDINGS.—The Senate finds that—

(1) abortion has been a legal and constitutionally protected medical procedure throughout the United States since the Supreme Court decision in Roe v. Wade (410 U.S. 113 (1973)); and

(2) the 1973 Supreme Court decision in Roe v. Wade established constitutionally based limits on the power of States to restrict the right of a woman to choose to terminate a pregnancy.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the decision of the Supreme Court in Roe v. Wade (410 U.S. 113 (1973)) was appropriate and secures an important constitutional right; and

(2) such decision should not be overturned.

Mr. SANTORUM. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. HATCH. Madam President, I rise today to applaud this body for passing S. 3, the Partial-Birth Abortion Ban Act of 2003. I know the people of my home State of Utah share my sentiments because they recognize, as I do, that the practice of partial-birth abortion is immoral, offensive and impossible to justify. This procedure is so heinous that even many that consider themselves pro-choice cannot defend it.

While we have passed a similar measure before, it was never certain to be signed into law. Today it is. It saddens me that this legislation was even necessary, and even more that it took 7 years to achieve. I thank the Senator from Pennsylvania for his outstanding leadership in bringing this about. I hope he knows he has my admiration and respect.

Basic human decency has prevailed. I pray that never again will it be legal in this country to perform this barbaric procedure. Unfortunately, I am sure that opponents of this measure will seek to challenge the law in court—where I hope good judgment will ultimately prevail. Even in Stenberg v. Carhart the Supreme Court confirmed, and I quote, ''By no means must physicians [be granted] 'unfettered discretion' in their selection of abortion methods.''

There are those who consider every type of abortion sacrosanct and will oppose any effort to apply commonsense reasoning to the debate. I don't know how to get through to these people, except by forcing them to witness this barbaric procedure. A baby is almost fully delivered with only her head remaining inside the birth canal when the doctor stabs scissors into the base of her skull to open a hole through which he then sucks out her brain and collapses her skull. I honestly don't know how anyone can avoid being truly sickened when they see a baby being killed in this gruesome manner. It is not done on a mass of tissue but to a living baby capable of feeling pain and, at the time this procedure is typically performed, capable of living outside of the womb.

All this bill would do is ban this one procedure. We are not talking about the entire framework of abortion rights here, but just one procedure. The fact is that there is no medical need to allow this type of procedure. It is never medically necessary, it is never the safest procedure available, and it is morally reprehensible and unconscionable.

In recent years, we have heard about teenaged girls giving birth and then dumping their newborns into trash cans. One young woman was criminally charged after giving birth to a child in a bathroom stall during her prom, and then strangling and suffocating her child before leaving the body in the trash. Tragically, there have been several similar incidents around the country in the past few years.

This is what happens, when we continue to devalue human life.

William Raspberry argued in a column in the Washington Post several years ago that ''only a short distance [exists] between what [these teenagers] have been sentenced for doing and what doctors get paid to do.'' How right he is.

When you think about it, it's incredible that there is a mere 3 inches separating a partial-birth abortion from murder.

Partial-birth abortion simply has no place in our society and rightly should be banned. President Bush has described partial-birth abortion as ''an abhorrent procedure that offends human dignity.'' I wholeheartedly agree.

Mr. DASCHLE. Madam President, few issues divide our country more markedly than the issue of abortion. This debate is a difficult one, and I commend those on both sides of the issue who have given their time on the floor to express their very deeply held views on this matter. While the debate has had some unfortunate low points, it has also had some very high ones.

In particular, I commend those on the Democratic side Senators BOXER, MURRAY, DURBIN, HARKIN, and FEINSTEIN—who have helped manage the floor this week. Each of them has worked diligently to ensure these difficult issues were given the honest, constructive attention they deserve. I know very well how thankless that job can be, and I am grateful for their efforts.

I am personally opposed to abortion, and I oppose Federal funding of abortion except in cases of rape, incest, or medical necessity. Far too many abortions are performed in this country, and I want to do everything reasonable to discourage abortion.

That is why I support efforts to facilitate and promote adoption as an alternative to abortion, and that is why I support voluntary family planning, including improved access to contraception and research on improved contraceptive options for both men and women. That is why I supported Senator MURRAY's amendment.

Every abortion is a tragedy. But I recognize that there are extraordinary medical circumstances that make abortion necessary to save the mother's life or prevent grave harm to her health.

I also recognize and respect the Supreme Court's clear message on abortion stated first in the landmark Roe v. Wade decision and later in Planned Parenthood v. Casey.

The Court consistently upheld two basic tenets. First, before the stage of fetal viability—when the fetus is capable of living outside the womb with or without life support—a woman has a constitutional right to choose whether or not to terminate her pregnancy. Second, a woman's health must be protected throughout her pregnancy.

The Court has not, as the junior Senator from Pennsylvania has wrongly suggested, endorsed ''abortion anywhere at any time.'' In Casey, the Court clearly drew a distinction between abortions performed before fetal viability and those performed after viability, clearly allowing the Government to restrict abortion after fetal viability.

While I am deeply troubled by the procedure described in S. 3, and voted again to ban it, I have real concerns that S. 3 is not the most effective means of limiting the late-term abortions the bill's sponsors claim to target.

Like many of my colleagues, I would prefer to ban all post-viability abortions, regardless of the procedure used. In 1997, in an effort to find a constitutional compromise that would actually stop far more abortions than the bill we have been debating today, I offered

a broader ban much like the one offered by the Senator from Illinois yesterday.

The Durbin amendment, like the earlier Daschle amendment, banned all post-viability abortions, allowing an exception only if an abortion is absolutely necessary to protect the mother.

An ironic fact that the sponsors of S. 3 don't readily acknowledge is that, if their statements are accurate, S. 3 will not stop a single abortion. In contrast, the Durbin amendment would stop all post-viability abortions except those that are absolutely medically necessary. This may seem counterintuitive, so let me explain why this is true.

The sponsors of S. 3 answer the Supreme Court's concern that their legislation is too vague to meet constitutional muster by claiming that their legislation bans only one procedure and that it is clearly defined. They also claim that the ban does not restrict a woman's Court-affirmed right to choose because all other abortion procedures are allowed under S. 3. Finally, they claim their legislation avoids the Court's concerns about protecting the life and health of the mother because the procedure described in their legislation is never necessary to protect the mother; thus, other available procedures could be employed interchangeably.

If all those statements are true and I confess I am not confident that they are—then S. 3 will not stop a single abortion; it will merely cause women and doctors to choose a different abortion procedure. While I am deeply disturbed by this procedure, I oppose any unnecessary abortion once a fetus becomes viable.

If our true desire is to protect viable fetuses whenever possible, I think we can do better than S. 3.

An across-the-board ban on all post-viability procedures with a constitutional life and health exception is the only way to achieve that broader goal, and I deeply regret that the Senate has yet again failed to do so. It is a principle that would win the support of the American people and the Supreme Court, and it would actually reduce the number of abortions in this country. Yesterday's outcome is one I will never understand.

There is yet another reason S. 3 may fail to meet its objective. The Supreme Court has struck down what many experts claim is a ''legally identical'' bill, the Nebraska law banning this procedure. In previous Congresses, I have expressed my concern that this legislation may not withstand an inevitable constitutional challenge.

Now that the Court has ruled in the Nebraska case, that concern is even greater. But the sponsors of this bill have chosen to take that gamble, claiming their ''20 word changes'' have resolved the constitutional concerns. Those 20 words, by the way, are allegedly powerful enough to change the outcome in the Supreme Court, but not significant enough to merit a hearing in the Judiciary Committee.

If the sponsors of S. 3 are wrong, then this week's exercise will serve only to delay meaningful progress toward restrictions on not only this procedure, but all post-viability abortions. It will also fuel the unnecessary bitterness surrounding this debate.

At this point, it is my hope that this Senate bill will go quickly to the President so that the Supreme Court can rule on it. If the Court strikes it down, then I hope people on both sides of this issue will be willing to work together to stop all post-viability abortions except those that are absolutely necessary to protect a woman's life and health.

Finally, I want to say a few words about the women whose lives are impacted by our actions this week. One of the saddest aspects of this debate is the suggestion that countless women, for frivolous reasons, are choosing unnecessary abortions in the last few weeks of their pregnancies. That just isn't true.

Anyone willing to listen has heard the tragic stories of women and families who have had to terminate their pregnancies either because their own health was threatened, or their child was the victim of severe fetal anomalies often inconsistent with life outside the womb. These are not unwanted pregnancies, and these are not abortions of convenience.

Regardless of one's ultimate decision on this legislation, I hope that in the future the Senate will show greater respect for these women and the tragic circumstances they have faced. As they have so poignantly said, you or someone you love could face similar circumstances, and you would deserve better than these women and their families have gotten.

Mr. HARKIN. Madam President, I wanted to discuss my votes on S. 3 and its amendments. I have long supported a ban on late term abortions. However, S. 3 would not do that because it would be struck down by the U.S. Supreme Court because it does not contain a health exception. Both in 1973 and in 2001, the Supreme Court ruled that a government may regulate late term abortions with an exception to both life and health of the woman. The Court specifically ruled in the 2001 decision in Carhart—that Nebraska's law was too vague and did not contain the required health exception. Therefore, I supported the amendments offered by Senator FEINSTEIN and Senator DURBIN to ban late term abortions because they both contained the requisite health exceptions, and which I believe the Supreme Court would uphold.

I am also pleased the Senate passed my amendment, 52 to 46, affirming Roe v. Wade. A woman's constitutional right to make a private decision in these matters is no more negotiable than the freedom to speak or the freedom to worship. As a father, I have struggled with this issue. However, I do not believe that it is appropriate to insist that my personal views be the law of the land.

So what should Congress do? Pass a late term abortion ban that the Supreme Court will uphold; increase funding for family planning and abstinence-only education and mandate insurance coverage for contraception. All of these fall within the rules under Roe v. Wade—that established a woman's fundamental right to choose.

Mr. DODD. Mr. President, the Senate had an opportunity this week to find common ground on an issue that has too often been an ideological battleground: abortion.

As the Senate debated the partial Birth Abortion Ban Act of 2003, I cosponsored a bipartisan amendment authored by Senator Durbin that could have actually reduced the number of abortions in our country while at the same time protecting a woman's life, health, and her constitutional right to choose. While the amendment was defeated, I remain hopeful that it will ultimately prevail someday as the most sound and moderate approach to addressing the troubling issue of late-term abortions.

The Durbin amendment struck a reasonable middle-ground approach on an issue that has frequently been dominated by the extremes. There are those who would universally ban all abortions. Others would universally allow all abortions. I respect the views of the people in each camp, but I disagree with them both.

Abortions ought to be legal, safe, and rare. That is my fundamental view, and it's the view that the Supreme Court has affirmed and reaffirmed for the past three decades since its decision in Roe vs. Wade. Abortions have never been—and should not be— available at any time for any reason. As Roe held, once a fetus achieves the point of viability, abortions may be regulated, but States must allow abortions to preserve a woman's life or health.

Forty-one States have already enshrined this standard, or one like it, into their State statutes. The Durbin amendment would have written it into Federal law. It would have respected a woman's constitutional right to choose while appropriately curbing choice after the point of viability where abortions are only necessary to preserve a woman's life or health.

This proposal was reasonable, it was constitutional and sensitive to the wrenching circumstances that families typically face when they must contemplate a late-term abortion. Unfortunately, it was adamantly opposed by those seeking a ban on so-called partial-birth abortions. Their proposal had two serious flaws that made it impossible for me to support.

First, the ban on partial-birth abortions bans just one medical procedure. It will not stop all late-term abortions from being performed, because an alternative procedure might be found. The Durbin amendment, on the other hand, would have limited all constitutionally-unprotected abortions without regard to a specific procedure. Why?

Because the wisdom of using a given medical procedure is best left with medical professionals. We are legislators, not doctors.

Second, the partial-birth ban contained in this legislation will not protect a woman's health. The few women who might require this procedure to protect their health from severe injury will be completely barred from receiving it. A pregnancy gone awry is a tragedy. The partial-birth abortion ban will only compound that tragedy by forcing a woman to forego a safer procedure.

The partial-birth abortion ban, as its supporters readily admit, is intended not to find common ground and reduce unnecessary abortions, but to lead to a ban of any and all abortions in America—regardless of whether they are needed to protect a woman's life and health. I find this argument simply unacceptable and blatantly unconstitutional in light of Roe vs. Wade. Therefore, it is for this reason and the reasons stated above that I voted against final passage of the Partial Birth Abortion Ban Act of 2003.

While the Durbin amendment would not have ended the national debate over abortion, it respected the deeply held views of people on both sides of this issue. It offered the Senate and our country an opportunity—not to debate our differences, but to affirm our similarities. It would have allowed us to come together in a bipartisan fashion, pro-life and pro-choice—and offer something that would have reduced the number of abortions while preserving a woman's life, health and constitutional freedom.

Mr. ROCKEFELLER. Mr. President, I want to talk about the debate in the Senate this week regarding late-term abortion. I am a strong opponent of late-term abortions, and I know many Americans find them as deeply troubling as I do.

As I have done in the past, I voted this week to support a comprehensive ban on late-term abortions. The comprehensive ban I supported—offered as an amendment by Senator DURBIN would have put an end to all late-term post-viability abortions, unlike Senator SANTORUM's proposal, including but not limited to those performed using the procedure known as ''partial birth.'' The Durbin ban also would have included a very narrow exception for the rare case when a woman's life or health is threatened by a troubled pregnancy, as required by the United States Supreme Court and the Constitution.

I want to end unnecessary late-term abortions, and I also agree with the Supreme Court that it is not right for a woman who faces grievous injury, or even death, to have no protection under the law. In those rare cases of a serious threat to a woman's life or health, the Durbin amendment would have allowed the woman, her family and no less than two physicians to pursue the best medical options. Except in an emergency, the two physicians—to include her attending physician and an independent non-treating physician—would have been required to certify in writing that in their medical judgment continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health. Grievous injury was carefully defined as a severely debilitating disease or impairment specifically caused or exacerbated by the pregnancy, or an inability to provide necessary treatment for a life-threatening condition.

I want to emphasize that if we are serious about ending the practice of late-term abortions then we must pass a law that will be upheld by our courts. The U.S. Supreme Court has been quite clear that to be deemed constitutional, any law banning late-term abortions must be narrowly focused and must include an exception for the health of the mother. Several previous bans ignored these tests and were struck down, and consequently there has been no end to this troubling practice. Senator SANTORUM's bill does not adequately meet the Court's requirements for constitutionality and will almost surely meet the same fate.

The Durbin amendment, on the other hand, was a clear and comprehensive ban that does comply with the constitutionality tests set forth by the U.S. Supreme Court. It would have ended the practice of late-term abortions, with a narrow exception for protecting a woman from grievous injury to her life or health. In those rare and extraordinarily difficult situations, the Durbin amendment would have ensured that a woman—not by the dictates of the Congress, but with the private counsel of her family, her doctors, and her clergy—makes the final decision.

I deeply regret that a majority of my Senate colleagues did not recognize the Durbin amendment was a more effective ban than Senator SANTORUM's proposal. I continue to hope that in the end we will find a way to enact a comprehensive ban on late-term abortions that meets the demands of the U.S. Supreme Court and Constitution by protecting the life and physical health of the mother in extreme situations.

EXECUTIVE SESSION

NOMINATION OF THOMAS A. VARLAN, OF TENNESSEE, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TENNESSEE

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to vote on Executive Calendar No. 53, which the clerk will report.

The legislative clerk read the nomination of Thomas A. Varlan, of Tennessee, to be United States District Judge for the Eastern District of Tennessee.

Mr. HATCH. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Thomas A. Varlan, of Tennessee, to be United States District Judge for the Eastern District of Tennessee?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) would each vote ''aye''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 52 Ex.]

YEAS—97

Akaka	Dole	Lugar
Alexander	Domenici	McCain
Allard	Dorgan	McConnell
Allen	Durbin	Mikulski
Baucus	Ensign	Miller
Bayh	Enzi	Murkowski
Bennett	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Bond	Fitzgerald	Nelson (NE)
Boxer	Frist	Nickles
Breaux	Graham (FL)	Pryor
Brownback	Graham (SC)	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Byrd	Hagel	Rockefeller
Campbell	Harkin	Santorum
Cantwell	Hatch	Sarbanes
Carper	Hollings	Schumer
Chafee	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Clinton	Inouye	Smith
Cochran	Jeffords	Snowe
Coleman	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kohl	Stevens
Cornyn	Kyl	Sununu
Corzine	Landrieu	Talent
Craig	Lautenberg	Thomas
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lieberman	Wyden
DeWine	Lincoln	
Dodd	Lott	

NOT VOTING—3

Biden	Edwards	Kerry

The nomination was confirmed.

Mr. HATCH. Madam President, I am pleased the Senate has confirmed Thomas Varlan for the United States District Court for the Eastern District of Tennessee. Mr. Varlan's distinguished record of service in both the private and public sectors makes him a great addition to the Federal bench.

Mr. Varlan graduated Order of the Coif from Vanderbilt University School of Law, where he served as managing editor for the Vanderbilt Law Review. In his 11 years in private practice, Mr. Varlan has focused on governmental relations, civil litigation, labor and employment law, and representation of quasi-governmental corporations and schools.

Mr. Varlan's impressive accomplishments include serving as law director for the city of Knoxville for a decade. In that capacity, he headed a department of 25 employees who represented the city in a variety of cases and provided legal advice to city officials.

Mr. Varlan's wealth of experience has made him an excellent nominee who is well prepared to handle the rigors of the Federal bench. Clearly, Mr. Varlan is the right choice to be a judge in the Eastern District of Tennessee. I am pleased my colleagues joined me in voting to confirm him.

Mr. FRIST. Mr. President, I am in strong support for the confirmation of Thomas Varlan to be a United States District Judge for the Eastern District of Tennessee.

Tom grew up in Knoxville, TN as a second-generation Greek-American. His parents, Alexander and Constance Varlan, instilled in their son the time-honored ideals of commitment to hard work, involvement in the community, and love for country.

He put those ideals to work in his studies of Political Science and Economics at the University of Tennessee in Knoxville, and at Vanderbilt University's School of Law, where he was the managing editor of the Vanderbilt Law Review. From there, Tom practiced law in Atlanta from 1981 to 1987. In 1988, Tom began ten years of service as Law Director for the City of Knoxville where he was responsible for a wide range of legal issues. In this role, Tom demonstrated his keen legal mind and temperament suited to judicial office.

Tom's current position as a partner at Bass, Berry and Sims has enhanced his solid background in the law. Tom Varlan is a skilled attorney who is known for his fairness, integrity and dedication to the law.

Tom has worn many hats in his professional life, but he has never wavered from the ideals that he grew up with. In fact, his nomination fulfills not only the dreams of his first-generation American parents, I believe it epitomizes the American dream as well.

I am convinced that Mr. Varlan will make an ideal judge, and he has my highest recommendation and unqualified support. I urge my colleagues to vote for his confirmation.

The PRESIDING OFFICER. Under the previous order, the President will be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to a period for the transaction of morning business.

The Senator from Illinois.

CASTING OF 10,000TH VOTE

Mr. FRIST. Madam President, I wish to announce to my colleagues that a truly impressive milestone was just reached with this last vote. Senator LUGAR, on this vote just announced a few moments ago, cast his 10,000th vote as a U.S. Senator. That is a feat accomplished by just 21 other Senators in the history of this institution, the Senate.

Senator LUGAR's vote places him in the company of a distinguished list of Members which includes eight current Senators: Senators BIDEN, BYRD, DOMENICI, HOLLINGS, INOUYE, KENNEDY, LEAHY, and STEVENS.

Most importantly, Senator LUGAR's achievement is a testament of his tremendous service, not only to his home State of Indiana but to the United States of America.

I ask all of my colleagues to join me in congratulating Senator LUGAR for his important milestone.

(Applause.)

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Madam President, I join the distinguished Republican leader in expressing my heartfelt congratulations to the senior Senator from Indiana, our colleague, DICK LUGAR.

He was sworn in on January 3, 1977. Over the course of these 10,000 votes cast, he has served as the chairman of the Senate Agriculture Committee and now serves as the chairman, as we all know, of the Foreign Relations Committee.

With those 10,000 votes, he has made a major impact on American history. I would be willing to bet that for every vote he has cast, he has made at least one more friend over all of these years. He may be a Republican and I may be a Democrat, but I have never been so appreciative of a relationship as a Senator as I have with Senator LUGAR. He has many more than 10,000 friends since he came to the Senate in 1977. So we congratulate him. We tell him of his great service to this country and our appreciation for that service. We hope that there will be many thousands more.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Madam President, I congratulate our dear colleague, Senator DICK LUGAR from Indiana, for his remarkable service to our country in many ways, not just through his leadership and years and votes in the Senate; prior to his time in the Senate, his service to our country in the U.S. Navy and all the other contributions he has made. It is a remarkable morning for our country to recognize this remarkable individual.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Madam President, I am overwhelmed by the thoughtfulness and graciousness of both leaders, my friends BILL FRIST and TOM DASCHLE. I thank both of them for those very wonderful comments.

I will take a moment, if I may, to thank some other people, people of Indiana, who made it possible for me to be in the Senate to cast the 10,000 votes, those who gave me their confidence, their support, and their prayers throughout the years.

I especially thank the Lord above for giving me good health throughout that period of time and who made it possible to do this.

I must pay tribute, as we all are doing today, to Lloyd Ogilvie whose personal counsel and support to me and my family during the past 8 years has meant so much.

Of course, behind all of this is the confidence and love of my wife Charlene, our boys, and their wives, who have really sustained me, who said this is something we ought to be doing, a commitment of our time and our lives in a way that has been exciting for me and I hope for them.

My staff has made it possible for me to get to the Chamber for all of these votes. Wherever we are in the country, in Washington or at the airport, each one of us is indebted to staff who tell us when the votes are going to occur and give us some reasonable idea about what is being voted on. I pay tribute to each one of those persons.

I pay tribute to colleagues who have sustained me each day with their loyal friendship, likewise the sheer vigor of the experience. I feel each day it is an adventure, and I am sure that is shared by each of the colleagues who are present today.

I want to mention specifically Senator ROBERT BYRD, who was the majority leader when I first came. One of the reasons my vote total escalated so rapidly was that in 1977 I think Senator BYRD created an all-time record of rollcall votes. I am certain he will remember exactly how many, but I recall there were at least 650, which was a substantial amount for a freshman Senator to start out with. So we have had some money in the bank ever since, thanks to Senator BYRD.

Finally, I want to thank the pages. They have played a very special role in these votes because, as some of my colleagues know, occasionally I go running out on The Mall. On several occasions I have been caught as far away as 14th Street or the Washington Monument when the beeper went off. I had to run swiftly. Fortunately, my pace is sufficient to get the mile and a half back to the Capitol during the time of the vote to scramble up the back stairs, but in a disheveled condition I have prevailed upon the pages to crack open the door, and the reading clerk has been kind enough to read my name so that I can peak through and keep this voting record alive.

So I thank all of you. I appreciate very much this moment today.

The PRESIDING OFFICER. The assistant minority leader.

Mr. REID. Madam President, while the two leaders are in the Chamber, it is my understanding that the leaders

are going to provide an opportunity for people who wish to give statements regarding Pastor Ogilvie—that the chairman of the Appropriations Committee is going to put that in booklet form. So is it fair to announce to everyone that they need not come now to give speeches regarding Pastor Ogilvie, that they will have an opportunity to give a speech later or insert something in the RECORD so Dr. Ogilvie will have all of these in one book?

Mr. FRIST. Madam President, that is correct. There has been an outpouring of feeling for our Chaplain on this very special day, 8 years after he first gave a prayer in this Chamber. With that outpouring of respect, people will be given the opportunity to provide their written statements. Of course, they are welcome to come and make statements, but we are encouraging people to make their written statements part of a permanent book that we will be giving him. We will have morning business and people can come to the Chamber. There will be other morning business conducted as well, but most of the tributes will be going into written form, and we encourage people to do just that.

The PRESIDING OFFICER. Under the previous order, the first 20 minutes shall be equally divided between the Senator from Nebraska and the Senator from North Dakota, with the rest of the time until 11:30 a.m. to be equally divided between the two leaders or their designees.

The Senator from North Dakota.

Mr. DORGAN. Madam President, I ask unanimous consent that during the 20 minutes I be notified when I have consumed 5, after which the Senator from Nebraska will be recognized for 5 minutes, following which the Senator from South Dakota, Mr. JOHNSON, for 5 minutes, following that Senator BROWNBACK from Kansas for 5 minutes.

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

THE NEW HOMESTEAD ACT

Mr. DORGAN. Madam President, at a time when there is so much discussion about partisanship, let me describe legislation introduced in the Senate yesterday now called S. 602, which is truly bipartisan. We call it the New Homestead Act. Senator HAGEL, Senator JOHNSON, Senator BROWNBACK, I, and many others, Republicans and Democrats, have introduced legislation to address a very serious problem in the heartland of our country.

I will describe this problem by something a Lutheran minister from New England, ND, told me. She said: In this small town in southwestern North Dakota, in my church I officiate at four funerals for every wedding.

What does that describe? It describes a small town in a rural State where the population is getting older, where they have few young people, few marriages and few births, and where they are suffering from the out-migration of people.

I will describe what is happening in the heartland of America with this chart. The red on this chart shows the rural counties across America that have experienced greater than 10-percent net out-migration over the last 20 years. There is a relentless engine of depopulation in the heartland of our country. It is from North Dakota to Texas in an eggshell shaped form.

My home county is right in the southwestern corner of North Dakota. It is slightly larger than the State of Rhode Island. When I left it, there were 5,000 citizens living in that wonderful county. Now there are 2,700 citizens, and the demographers say by the year 2020 it will have 1,800 citizens. Trying to do business in that county and so many others in the heartland is like doing business in a deep recession.

Nearly a century and a half after we populated the heartland of America by something called the Homestead Act, which said, move here, become a part of this land, and we will give you the land, we are seeing this relentless depopulation. In these areas, we have communities that are wonderful places in which to live. In fact, people aspire to recreate what we have in other parts of the country—strong schools, a great place to raise kids, safe streets, and wonderful communities. Yet, these rural areas are being ravaged by the out-migration of people. It is ruining their economy.

The question is: Should we care? Do we care? Well, when our cities were decaying and America's cities were in trouble, as a national policy we rushed to say, let's save America's cities with the Model Cities Program, an urban renewal program. We pumped significant resources into those cities to save them.

The question now is: Will we save the heartland in our country? Does it matter? S. 602, bipartisan legislation called the New Homestead Act, says it matters.

What the heartland contributes to America is very important. We need to give people the tools to help rebuild their economies in the heartland. That is what our legislation does.

We do not have land to give away anymore. But we say to individuals and businesses, if you stay there, if you come there, if you build there, if you invest there, here are financial incentives for you. We can turn this around. That is what S. 602 is about. S. 602 says to people, it is in your interest to help us rebuild the economies of the States in the heartland.

The New Homestead Act offers tax and other financial rewards for individuals who commit to live and work in high out-migration rural areas. It provides help paying college loans, offers tax credits for home purchases, protects home values, and establishes Individual Homestead Accounts, the economic equivalent of giving them free land as we did a century ago.

S. 602 provides tax incentives for businesses to expand or locate in high out-migration areas. Investment tax credits. Micro-enterprise tax credits. Accelerated depreciation.

Finally, a new homestead venture capital fund will help ensure that entrepreneurs and companies in these areas get the capital they need to start and grow their businesses.

We can do one of two things with respect to this problem in the heartland of America. We can sit here and gnash our teeth and wring our hands and say, this is awful. We can watch this depopulation continue for the next 20 or 50 years, and lose a significant and important part of our country's economy, or we can decide we are not going to let this happen, we are not going to be the frog in the pan of water on the stove only to find at this time it is too late to get out.

That is what this is all about. I am proud to work with my colleagues, Republicans and Democrats alike, to offer this legislation.

Mr. HAGEL. Madam President, I rise this morning to join my friend and colleague from North Dakota, Senator DORGAN, in introducing the new Homestead Act. We have heard from Senator DORGAN as to why many believe this issue, this challenge, needs attention. He laid some of those reasons out rather clearly.

Senator DORGAN and I and others introduced this legislation last year. The intent of this legislation is simple. It aims to help reverse the trend of population decline in rural areas and provide growth and opportunities in rural America. Many communities in rural America have not shared in the boom that has brought great prosperity to urban America. Instead, this out-migration of individuals and resources is taking a high toll on rural America. Over the last 50 years, nonmetropolitan counties in the Nation lost more than a third of their population, about 34 percent. Contrast this with the fact that during the same period the number of people living in metropolitan areas grew by over 150 percent.

Today, Nebraska is one of the States hardest hit by out-migration. Of 93 counties in Nebraska, 56 have lost at least 10 percent of residents due to out-migration over the past 2 years. According to the University of Nebraska report, most of these counties will see similar population losses over the next 2 decades without an expansion of non-agriculture industry.

Why are people leaving rural America? It is rather simple: For jobs and opportunities. One of the main provisions of our legislation addresses this issue by providing incentives to small businesses and other enterprises to locate and expand in rural areas. Small businesses are a critical element of the rural economy, as they are to all of America, accounting for nearly two-thirds of all rural jobs.

Our legislation builds upon the same spirit of the Homestead Act of 1862 which gave land to individuals who were willing to live and work in unsettled areas of the country. In fact, the

first claim made under this act was just outside Beatrice, NE.

Our bill targets three different categories: Individuals, businesses, and capital formation. For individuals who live in or move to high out-migration counties, the legislation provides, as Senator DORGAN mentioned, three basic things: The college loan repayments and home tax credits, individual homestead accounts, rural investment tax credits, and a venture capital fund.

Last year, in the Senate Finance Committee, Senators GRASSLEY and BAUCUS called the bill a big idea. Indeed, it is a big idea. But it is the kind of big idea we need to help reverse the decline of rural America—not just the Midwest—but all of rural America.

I am proud of the fact our bill has the bipartisan support of 10 cosponsors and it has the endorsement of a diverse coalition of organizations across this country, all kinds of organizations. I am pleased again to be working with my friend, Senator DORGAN, in reintroducing this legislation. I ask my colleagues in this body to learn more about the aim, the specifics of this legislation, and that they would help and join us in addressing the challenges facing rural areas across our country.

I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I rise today to express my support for the New Homestead Act and I want to thank Senator DORGAN and Senator HAGEL for their leadership on the critically important issue. I am pleased to cosponsor this bipartism legislation.

America was originally a rural place. Many of our citizens lived and worked on farms or in rural towns throughout our country. During the turn of the century, towns and communities sprang up on railroad lines and river crossings. They served as regional trade centers and seats of local government. Opportunity was available for the children of these communities. Too often that is no longer the case. A changing economy from agriculture to technology has reduced opportunity in rural America and certainly rural South Dakota. Out-migration is decimating many communities in my home State of South Dakota. Currently, 63 percent of South Dakota counties are considered high out-migration counties—averaging a 10 percent population loss over the past 20 years. In these counties there is also a 16 percent reduction in youth population, 6 percent increase in the elderly population, and 25 percent of these counties had more deaths than births. Once proud communities that were self sufficient are slowly withering away.

I believe that in order to forestall these trends Congress must now prioritize rural America. That is one reason why I am so supportive of this legislation. The New Homestead Act hopes to address out-migration by offering individuals who make a commitment to live and work in rural areas to get a college degree, buy a home, start a business and build a nest egg for the future. This legislation will also provide incentives for businesses to relocate or develop in high out-migration areas. This comprehensive, approach is needed to address this huge problem. While the bill will not save every community, it will provide communities with the tools they need to survive. Rural communities provide businesses and families many benefits. Good schools, low crime rates, a high level of civic involvement and a talented and committed workforce are just some of the benefits (specifics) that rural America provides this country. It is a way of life worth fighting for, and our Nation's commitment to this lifestyle is long-standing.

In fact, in 1862 our government made a commitment to populate rural America. The original Homestead Act made a deal with settler's willing to travel to the midwest; if you stay and work the land for 5 years we will offer you a quarter-section of land. This was a hugely popular and successful program. I know this first hand because my great-grandfather used this legislation to homestead near Centerville, SD.

Today we can offer tax incentives and financial rewards to individuals to move into out-migration counties. A generation ago the United States used a similar approach addressing the needs of our metropolitan areas. At that time, our country's cities were facing population and job losses, crumbling infrastructure—many of the same problems our rural areas face today. Billions of dollars were committed to housing, transportation, and job creation in urban areas.

As a Senator from a rural area, I was proud to participate and join in that effort. But now many of our metropolitan areas that were struggling thrive. We need this kind of commitment for our rural communities at this point in our history.

While this comprehensive legislation takes aim to remedy many of the problems facing small towns, I believe this forward-thinking bill is also important for farmers and ranchers who make a living from the land. It is critical to understand that prosperity in production agriculture can lead to robust conditions in Main Street rural America. As such, a decline in the farm economy causes economic hurt for rural businesses as well. This downturn in the rural economy is one we know all too well in South Dakota. Volatile market conditions for crops and livestock, unfair foreign trade, and the disastrous forces of Mother Nature, have all taken a toll on our farmers and ranchers in recent years.

Consider the sobering economic damage to South Dakota resulting from the ongoing drought: South Dakota State University, SDSU, economists estimate $1.4 billion has been eroded from the State's economy due to the drought. The impact includes $642 million in direct losses for livestock and crops, which is about one-sixth, or 17 percent of the average annual cash intake for agriculture.

I believe the New Homestead Act provides the kind of commitment and opportunity that our nation must be willing to once again make in order to sustain and grow prosperity for farmers, ranchers, and rural America.

Our entire Nation suffers when rural America suffers. Some of our country's most prized virtues, like good school systems, low crime rates, and high levels of civic participation, are alive and well in these areas, yet many are fighting for their survival. There is no doubt in my mind that these areas are worth saving. I urge my colleagues to support this important legislation.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I am pleased to join colleagues in the introduction of the New Homestead Act. I am very pleased to be a supporter along with my colleagues from North Dakota, Nebraska, and South Dakota.

Alexander Hamilton once made a statement I think is particularly applicable to the current situation we are discussing—what is happening in rural America, particularly in a swath of rural America from Texas north to the Canadian border that includes the State of the Presiding Officer and a number of States throughout the Midwest. He said:

> To cherish and stimulate the activity of the human mind, by multiplying the objects of enterprise, is not among the least considerable of the expedients by which the wealth of a nation may be promoted.

We listen to that and say: What does he mean? In other words, we must encourage and support intellectual activity and enterprise, and the area in which this has been most neglected has been in our rural communities. We must change this before some of these precious entities wither away.

Every year, rural communities become emptier and more desolate as fewer and fewer people remain. This out-migration of youth to more urban areas is due to the simple fact of a lack of economic opportunity within these beautiful settings.

Although America was originally rural, with most of its people living in rural areas and working on farms, that has changed dramatically over the course of the past century. Today, after decades of decline, less than 2 percent of the Nation's population live on farms in rural areas. In my State alone, over half of the counties are suffering from this youth drain and out-migration.

I have a map I want to show to my colleagues. These are counties in Kansas. We have 105 counties. These are the counties that would qualify for the New Homestead Act; that is 10-percent population decline or more over the last 20 years. You can see a huge swath of our State that has extensive out-migration.

You can say a lot of different factors caused this. One has been the concentration and growth in agriculture, where there are fewer farmers farming larger tracts of land. That is certainly accurate.

It is also the fact that a number of people in agriculture have, because of a lack of income, had to get off-farm jobs. There are not major urban areas in a lot of these places, so they have not been able to find that and they have had to move to major urban areas. So you have had this combination of difficulty in agriculture, difficulty of a lack of jobs on an off-farm basis. It has led to this huge out-migration.

If this were just Kansas, it would be problematic enough, but instead of a whole swath, particularly in the Middle West, from Texas sweeping up north all the way to Montana and Minnesota, you have a number of counties like this.

I believe nearly 90 percent of counties in North Dakota qualify because of the same feature: Concentration in agriculture, fewer off-farm job opportunities, and people saying: We simply don't have anyplace to work. We would love to live here. We would love to be able to stay here. We have to have a job. We have to be able to make a reasonable income.

This is the total population. If you look at the school-age population, it is even worse. It is even a more steep decline. I have been in cities in Rawlins County and far Northwest Kansas where the school-age population has declined nearly a fourth over the last 5 years. So while the overall population is going down like this, the school-age population is plummeting. As young people don't move back in the area, there are not the jobs and opportunities. They are saying: I would love to live here, but I can't.

I have been around a lot of rural development efforts that tried to push people back to rural areas. To me, this is a way to pull people back to rural areas, by providing economic incentives, the likes of which we did to populate the region in the first place. This is a region that was populated by the Homestead Act in the first place, telling people, if they will stay there and work 160 acres for 5 years, it is theirs.

We had people self-selected. It wasn't people saying: You are going to go, and we will select you, we won't pick you—it was the great American way. This is the opportunity. If you want to do it, it is your choice. You don't have to do it. People took it and moved out.

The New Homestead Act is recognizing the new economic realities and saying what can we do to pull people into these areas. These are ideas we tried in major urban areas, we tried them in Washington, DC, and a number of other places where we were having the hollowing out of urban areas, and they have attracted people back to the core in these urban areas. We are trying to take those same proven models, proven tests, to another area that has been hollowed out in the United States.

That is why I am excited about this bill. I am hopeful it is something we can move in total, or in part, quickly. We need to do so. We need to move this forward aggressively.

It is providing new hope and new vision in areas where a lot of people were of a mind that: I guess nobody is listening or paying attention, and we are going to have difficulty making it. Our community is not going to make it.

Here we are saying, no, we want to provide this new hope and opportunity with the New Homestead Act. I hope our colleagues, if they have other ideas that could strengthen this bill, will bring those forward as well.

It is a very difficult issue for our State. I am delighted to be supportive of this effort. My colleagues and I are going to push aggressively here and in the House to make it happen.

It is simple: rural America—our history, our founding lifestyle—is suffering and the Congress must not turn our backs. Take, for example, the town of Nicodemus, KS, in Graham County. This town was started more than a century ago when some 350 freed slaves left Kentucky and made a new beginning for themselves on the plains of Kansas. For a while, the town prospered, showing a new life to these newly-freed slaves. Unfortunately though, the railroad never moved in—a devastating lost opportunity that was followed by drought, depression, and, finally, a post-war exodus. Suddenly, the town itself and its population seemed almost ghost-like. Today, Nicodemus is without a school, and there is only one full-time farmer left in the area.

Unfortunately, this story is not an isolated one, as hard times have hit throughout America. In fact, this kind of situation is happening across our heartland, and we are here today to provide the much needed incentives to preserve rural America and the values instilled there.

We must revitalize within our heartland that spirit of creativity and enterprise that has always allowed our nation to grow and adapt. It has long been the key to our success both philosophically and in the wealth of our nation. For example, Americans who once held jobs that relied on the production of natural resources, such as farming, now work in service or technology industries. As a result of new technologies, American industries, including agriculture, have become more profitable with fewer employees. We in the Congress have an obligation to ensure the economic viability of these rural communities, even in light of the major problems and out-migration these areas are suffering.

In 1862, the Homestead Act inspired many to move to places like Kansas with promises of 160 acres of free land to those settlers who would farm and live there for five years. Today, we are introducing the New Homestead Act. While we aren't offering 160 acres, we are rewarding those individuals willing to take a risk and locate in a high out-migration county with the opportunity to get a college degree, buy a home, and build a nest egg for the future. Through loan repayment, small entrepreneurship credits, home tax credits, protecting home values, and individual homestead accounts, this bill reaches out to a new generation of Americans.

And it is this new generation of Americans that will help rejuvenate rural America. Since our founding, a strong and vibrant rural America has been essential to a strong nation—and this principle remains only more true today. Our continued national well-being depends as much, if not more, on the condition of our less populated areas as on our urban areas.

It is my hope that the Senate will take a serious look at this bill and move quickly to implement the provisions we have set forth. I appreciate the work that my colleagues Senators HAGEL and DORGAN have done on this bill. Their vision and drive have brought this bill to where it is today, and I hope that the same spirit will help propel this bill through the Senate so that we can start helping our rural communities as quickly as possible.

For, as we struggle through economic hard times nationwide, it would be wise to remember a comment George Washington made:

> A people . . . who are possessed of the spirit of commerce, who see and who will pursue their advantages may achieve almost anything.

I know our rural communities are not only our history, but still have much to offer our nation today. Therefore, let us enable that spirit of commerce, and put these communities on the path to recovery.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. BROWNBACK. Mr. President, as in executive session, I ask unanimous consent that the cloture vote on the Estrada nomination occur at 2:15 today; provided further the order for debate remain from 11:30 to 12:30; I further ask unanimous consent at 12:30 the Senate begin consideration of Calendar No. 36, the Bybee nomination as under the previous order.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

MEASURE PLACED ON CALENDAR—S. 607

Mr. McCONNELL. Mr. President, I understand that S. 607 is at the desk and due for a second reading.

The PRESIDING OFFICER. The Senator is correct.

The clerk will read the bill for the second time by title.

The senior assistant bill clerk read as follows:

A bill (S. 607) to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

Mr. McCONNELL. Mr. President, I object to further proceedings.

The PRESIDING OFFICER. The bill will be placed on the calendar.

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. TALENT. 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. TALENT. Mr. President, I ask unanimous consent that I be recognized in morning business for a period of up to 15 minutes.

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

COVER THE UNINSURED WEEK

Mr. TALENT. Mr. President, this is ''Cover the Uninsured Week'' and there have been press events—and I guess you can call them rallies—around the country designed to inform America about the problem of the uninsured. I guess I am glad that is happening. It seems as though it happens a lot. We have been talking about the uninsured for a long time.

I think it is time we do something about the uninsured instead of just telling everybody that we have. And we can do that. I would suggest we are on the brink of doing it. We in the Senate just have to choose between the employees of the small businesses around the country, who are most of the uninsured, and the big insurance companies that have them under their thumb currently.

There are about 41 million uninsured people in the country at any given time. About 60 percent of those uninsured people are either owners of small businesses or employees of small businesses, or dependents of somebody who owns or works for a small business. Most of the people who are uninsured are working people. The reason they are uninsured and the reason they are not getting health insurance through their small business is that the small businesspeople are caught. They are stuck on a dysfunctional market. They are caught because all they bring to that market is a unit of 4 or 5 people, or maybe 20 or 30, or maybe 60 or 70. And they have very few choices. They consistently pay higher costs for health insurance premiums, and they get lower quality insurance than people who work for big businesses or people who work for the Federal Government, as we do.

I have seen this all over the State of Missouri and, indeed, all over the country. I chaired the Small Business Committee for two terms in the House. In that capacity and since then, I have visited personally with hundreds and hundreds of small businesspeople and with thousands of their employees. This is their No. 1 issue. It is not fair for them to be laboring under impediments that the rest of us do not have.

I was in Farmington, MO, over the weekend. I stopped by an optometrist's office run by a couple of optometrists, and a couple of their employees were there. They gathered around and told me a very familiar story. In 1999—I think it was—they said, we just felt we had to start providing health insurance to our people, as expensive as it was and as difficult as it was.

They had to spend hours and hours soliciting bids, maneuvering, and trying to get insurance for their people. So they started it.

They said: When we started, it was a little over $200 a month per employee. Now, 4 years later, it is over $500 a month per employee.

They are not able to give wage increases to their people because health insurance costs are increasing so fast.

Everywhere I go, small business health insurance costs are going up 20 or 25 percent a year.

There is a further human side to this story. One of their employees—a really neat lady—I talked with for a while. She is a single mom and a cancer survivor. She is trapped, and the small business is trapped with her, because if they drop the insurance, she will never get reinsured anyplace else. They feel a moral obligation to continue that insurance for her. The other employees are doing without wage increases and dealing with substandard insurance in order to help their fellow employee.

I have seen this story over and over again. And it is not necessary. We can do something about it, and we need to.

Here is what we can do.

The House passed several times in the 1990s—and the President now supports the plan—a plan that would simply allow small businesses to pool through their national trade associations or their professional associations and get health insurance on the same terms and under the same regulatory apparatus as the big businesses, the unions, and the Government currently do.

That is all we need to do, just empower the small businesspeople. It will not cost the taxpayers a dime because it is not a Government program. It is just allowing people to do what is already happening all over the United States.

So here is how it would work: Let's say the National Restaurant Association would sponsor national health insurance plans. They would start an employee benefit side, just like the big companies do. They would contract with national insurance companies. They would have a self-insured side. And then, if you are a restaurant employee, by joining the restaurant association, you would automatically be entitled to get this insurance. They would have to offer it to you. They could not tell you you could not have it. And you would be part of a pool of 20,000 or 30,000 people instead of in a unit by yourself with two or three or five or ten people, like my brother's situation. He has a little tavern kind of restaurant in St. Louis. Actually, it may be more of a saloon. But, in any event, he could join the National Restaurant Association to get coverage. It is just him and my sister-in-law who run this place. Apart from the money, which is impossible for him, he does not have the time and does not want to incur the risk of going out two or three times a year and soliciting bids.

And then, all of a sudden, what often happens to small businesspeople is they get called up because somebody actually filed a claim. The big insurance company tells them their rates went up astronomically. They have no power in this market. They are caught with few choices, with small groups, with high administrative costs. It is not necessary, and it does not even cost anything for us to fix it.

I was talking about this at a dinner the other day with six or seven people who were there to talk about how we could serve the underserved better with health care. This is part of the answer to it. We had a real good dialog with these folks. Many of them are operating a charitable enterprise where they are helping people get health care.

I laid this out for them, and one of the men said to me: Well, who wouldn't support that? Indeed, who wouldn't support it? I will tell you who doesn't support it: the big insurance companies, who control this small group market now. They are operating like monopolists. Monopolists ratchet down their output and raise their prices. That is what is happening. Fewer and fewer people are covered, and prices are going higher and higher. They are making money, and people around this country do not have health insurance. It is wrong, and it ought to stop.

One argument I hear about this is: Look, if we do this, the association health plans will engage in cherry-picking. What that means is, the healthy small business groups will go into the big plans, the sicker small business groups will prefer to stay out there in the small business market. This is actually an argument that the big insurance companies are raising. It is the exact opposite of the truth.

Common sense tells you if you have a history of illness, if you have cancer or had cancer or diabetes or kidney problems, or something similar to that, and somebody says to you, look, you can be

in a small group market, you can work for a small business and be part of a group of 4 or 5 people or 40 or 50 people, or you can work for a big business and be part of a group of 10,000 people, which would you choose?

I have asked that question in small business groups around the country. I have not had a single person say: If I were sick, I would rather be part of the small group. Of course you would rather be part of the bigger group.

This is a haven for small business people who want to help themselves and their employees, and particularly the ones who are sick and need the insurance, such as that lady in the optometrist shop in Farmington. It is a haven for them. And it will cut the cost of their health insurance, on average, 10 to 20 percent and make insurance available to millions of people who currently do not have it. It does not cost the taxpayers anything. It is just like a big co-op.

We have a lot of support in the Senate. I am very pleased about our progress. The chairman of the Small Business Committee, the senior Senator from Maine, Ms. SNOWE, is a strong supporter and is leading the fight. Senator BOND is supportive. The Senator who is presiding over the Senate today is supportive. Senator MCCAIN is supportive. I have been talking with a number of my friends and colleagues on the other side of the aisle. I am hoping to get support there.

In the House, it passed on a strong bipartisan basis. I believe we can do the same. It is just a question of the choices we want to make. We can choose these small businesspeople and their employees who have been telling us, year after year after year: We are working full time; We care about our jobs; We care about our fellow employees; Let us help ourselves, or we can choose the big insurance companies that have a monopoly on this market and are charging higher and higher prices and providing fewer and fewer policies of insurance for people who need it.

I think the choice is clear. I urge the Senate to look at this bill, the association health plans. We can get it passed. We can make a difference, and we can do it now.

I yield back the remainder of my time.

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

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

EXECUTIVE SESSION

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to resume consideration of Executive Calendar No. 21, which the clerk will report.

The legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

The PRESIDING OFFICER. The time until 12:30 p.m. shall be equally divided between the chairman and the ranking member of the Judiciary Committee or their designees.

Mr. REID. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time run equally between both sides.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. The Senate is on the Estrada nomination.

Mr. LEAHY. I thank the distinguished Presiding Officer.

SENATOR GRAHAM'S RETURN

I see the distinguished senior Senator from Florida in the Chamber. First, I will say on a personal basis, I am delighted to see him back. He is looking as healthy as he did before he left. I understand he is even more healthy now. For someone like myself who has probably a couple pounds more than I would like to be carrying, I noticed that he has found a way of losing a little weight. I suspect that what he has gone through is not something that is going to catch on with the various diet fads.

I had a chance to chat with the distinguished senior Senator last night, and he not only sounds even healthier than when he left, but he has the same sense of verve and sense of humor as he had before he left.

I yield to the distinguished Senator from Florida, if he would like to take the floor at this point, such time as he needs.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM of Florida. Mr. President, I extend to you and to my colleagues deep appreciation from me and my family for the many expressions of concern and best wishes which have flowed to us over the past 6 weeks. I report to the Senate that this is my second day back on the job since my operation. I feel increasingly strong and energetic, sufficiently so that I feel this is the time to come to the Senate floor and talk about the issue before us.

Before I do that, I especially extend my appreciation to the Republican leader and our colleague and friend, Senator BILL FRIST. As we know, before becoming a Senator, it was Dr. BILL FRIST. He happened to be a cardiac surgeon. When it was clear to me I was going to have to have cardiac surgery, and when that fact became known by a number of my friends, I had an almost mountain of suggestions as to what I should do, where I should go, who the surgeon should be.

Finally, my friend and former colleague, Connie Mack, called me and suggested I should talk to Senator FRIST, who actually knows something about this, which I did. He gave me excellent advice and a substantial amount of reassurance. Then after the operation, while I was still in the hospital, he came and visited. That was a touching moment for Adele and myself that he would make that effort.

I particularly thank Senator FRIST for his display of humanity during this period.

I am here to discuss my vote on the motion to invoke cloture on the nomination of Miguel Estrada to the District of Columbia Circuit Court of Appeals.

It will be my vote today to not invoke cloture. I want to explain the reasons for this. There are many issues raised by this nomination. I consider the most fundamental issue is the issue of the independence of the judiciary. That has been a matter of concern to thoughtful Americans from before our country was a country.

In the brilliant and Pulitzer Prize-winning book by David McCullough, ''John Adams,'' John Adams is quoted from a paper he wrote called ''Thoughts on Government.'' This was written before the War for Independence, anticipating that after a successful independence, there would be the need to establish a government. And these were some principles John Adams thought government should contain. Let me read one paragraph:

> ''Essential to the stability of government and to enable an impartial administration of justice,'' Adams stressed, ''with separation of judicial power for both legislative and the executive, there must be an independent judiciary, men of experience on the laws, of exemplary morals, invincible patience, unruffled calmness, indefatigable application, and should be subservient to none and appointed for life.''

Those were the characteristics John Adams laid out as crucial to the essential stability of government and to have an able and impartial administration of justice. Those words, written before the war, then became the guiding star for our Founding Fathers at the Constitutional Convention in 1787.

In order to preserve the political independence of judges, the Constitution provides they shall, as John Adams suggested they should, serve a lifetime appointment. In order to protect from economic intrusion into the

judiciary, this Congress is prohibited from reducing the salary of judges, so that they will be free of intimidation. But maybe the most difficult issue the Constitutional Convention faced—and it was one of the last matters to be resolved by that convention—was how should judges secure their place on the bench. Up until the very end of the Constitutional Convention, the idea was that this Senate would directly appoint Federal judges. However, late concern arose that this very principle of the independence of the judiciary might be at risk if one branch were solely responsible for the appointment of Federal judges. And so a compromise was struck. That compromise was that the President would nominate persons to be Federal judges, and that the role of the Senate would be to advise and then consent, through the confirmation process, to those nominations.

So the issue we are debating today—the relative role of the executive and legislative—is not a trivial issue. It goes to the heart, as John Adams said, of the stability of government, because it goes to the independence of the judiciary.

Having said that and having read some words from the 18th century, I would like to read you some words from the 21st century as printed in the New York Times Magazine of last Sunday. It is an article on one of our Federal intermediate appellate courts, a court of almost, but not quite, the same influence as the DC Circuit Court. One of its justices is J. Michael Luttig. It says this:

> Luttig told me that he thinks the politics surrounding judicial appointments makes judges hyperconscious of their political sponsors. ''Judges are told, 'You're appointed by us to do these things.' So then judges start thinking, well, how do I interpret the law to get the result that the people who pushed for me to be here want me to get?''

Judge Luttig continued:

> I believe that there is a natural temptation to line up as political partisans that is reinforced by the political process. And it has to be resisted, by the judiciary and by the politicians.

Mr. President, I believe we are at a time when we are being called upon to resist an effort to inappropriately utilize the executive power to the exclusion of the legislative role in the appointment of Federal judges. I consider myself to be a pragmatist. I find very few things in life that are black and white. I do not think this issue is black and white.

I have been dealing with this issue in another dimension over the past weeks of recuperation. In my State of Florida, we have had for over 20 years a process of nominating Federal judges through a citizen-based judicial nominating commission. Persons who want to be a Federal judge in Florida submit their application to the judicial nominating commission, which reviews their submission and has personal interviews with those candidates that it believes are eligible for Federal judicial consideration. Then that commission used to recommend three people to the Senators. Senator Mack and myself worked for over 12 years in a very collaborative, nonpartisan manner to determine what recommendations should be made to the President. Under the system now, the number of persons to be recommended will be increased from three to six, and the role Senator NELSON and I will play—recognizing the fact that we are Democrats and the administration is Republican—is we will review those six nominations and make a judgment as to whether, in our opinion, any of those nominations would have difficulty being confirmed by the Senate. If that is not the case, then all six will go to the President for his consideration.

I highly commend to my colleagues the article I quoted from in The New York Times Magazine of March 9, 2003, written by Deborah Sontag.

I ask unanimous consent that some materials about this recent agreement that has been reached between the White House, the chairman of the Florida Judicial Commission, and Senator NELSON and myself, which I believe will well serve the Federal judiciary and the people of Florida, be printed in the RECORD.

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

[News From Bob Graham]

WHITE HOUSE COMMITS TO HONOR FLORIDA NOMINATING SYSTEM

GRAHAM SAYS JUDICIARY NEEDS TO MAINTAIN INDEPENDENCE

WASHINGTON (March 12, 2003).—Senator Bob Graham, D-Florida, announced today that the White House has committed to honor Florida's non-partisan process for selecting nominees for federal judgeships, federal prosecutors and U.S. marshals. The agreement culminates months of discussion about the importance of the role of the state's nominating commissions.

''This is an important assurance from Chief of Staff Andy Card that the White House will abide by the nominating process that has allowed the federal court system in Florida to retain public confidence and maintain its independence from political influence,'' Graham said. ''For nearly two decades, this merit-based process has produced judges and other officials of the highest caliber, while allowing our state to outpace the nation in filling vacancies. We need to ensure that this tradition continues.''

Graham released a letter from White House Chief of Staff Andrew H. Card Jr., that reads, in part: ''I want to reiterate that the President is committed to following the commission process in Florida and intends to abide by the rules of procedure of the Florida Federal Nominating Commission, consistent with 'the Constitutional and statutory powers, duties, or prerogatives of the President of the United States or the Senate in the filling of vacancies by nomination and confirmation' (Rule 30).''

Graham said it was agreed that the White House commitment to following the reformed rules of the nomination process will be prospective, meaning that persons already nominated or who are under consideration for a vacancy will not be subject to the new process.

Upon receiving Card's letter, Graham said he would encourage prompt consideration of and support before the Senate Judiciary Committee the pending nominee for a District Court judgeship in the Southern District of Florida, as well as the nominees for U.S. marshal in the three federal judicial districts in Florida.

If confirmed, judicial nominee Cecilia M. Altonaga would be the first Cuban-American woman to sit on the federal bench. The pending nominees for U.S. marshal are Dennis A. Williamson in the Northern District; Thomas Hurlburt Jr., in the Middle District; and Christina Pharo in the Southern District.

''My complaint has never been with the qualifications of these individual nominees, but with the fact that the White House deviated from the nominating process which has so well served Floridians,'' Graham said.

''I am hopeful that, with the White House commitment, we will to return to a selection process that gives assurances of merit-based and non-partisan selection of jurists, expedites non-partisan consideration of those jurists by the Senate and maintains the independence of the judiciary.''

THE WHITE HOUSE,
Washington, March 12, 2003.

DEAR SENATOR GRAHAM: Thank you for the numerous opportunities to discuss our mutual efforts to ensure that Florida's judicial vacancies are filled through an orderly process.

I know that you and Judge Gonzales have communicated previously about the important work and role of Florida's Federal Judicial Nominating Commission. I want to reiterate that the President is committed to following the commission process in Florida and intends to abide by the rules of procedure of the Florida Federal Judicial Nominating Commission, consistent with ''the Constitutional and statutory powers, duties, or prerogatives of the President of the United States or the Senate in the filling of vacancies by nomination and confirmation'' (Rule 30).

The Administration shares your desire to promptly fill the federal judicial and United States Marshals vacancies in Florida.

Sincerely,

ANDREW H. CARD, Jr.
Chief of Staff to the President.

COLSON HICKS EIDSON,
Coral Gables, Florida, March 12, 2003.

Hon. BOB GRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAHAM: I want to thank you for your support of the nomination of Judge Cecilia Altonaga for United States District Court Judge for the Southern District of Florida.

Your substantial personal involvement and leadership in the nomination of Federal Judges, U.S. Attorneys and U.S. Marshals, throughout your years of service in the United States Senate, have been exemplary and have been responsible for the high qualifications of the men and women who serve in the three federal districts in the State of Florida. You have my admiration and respect.

With warm personal regards, I remain,

Sincerely,

ROBERTO MARTÍNEZ.

[From the Miami Herald, Jan. 16, 2003]

FLORIDA'S JUDICIAL-NOMINATION PROCESS UNDER THREAT

(By Bob Graham)

For more than a decade, through both Democratic and Republican presidencies, Florida had an outstanding record of filling federal judicial vacancies through a nonpartisan, merit-based process.

The process was driven by the judicial nominating commissions, which took applications, interviewed candidates and submitted three names for consideration for each judicial vacancy. These commissions, appointed by the two senators, were made up of volunteers who represented a cross-section of our state: lawyers and lay persons, Democrats and Republicans. Both Florida senators interviewed the three finalists and passed their recommendations onto the White House.

The process worked. Over 10 years, we filled 26 District Court vacancies without a single significant controversy. Because of the confidence that the Senate Judiciary Committee vested in the Florida judicial-nominating process, between the 101st and 106th Congress, those vacancies were filled in an average of 108 days. This compares to the average time for all U.S. District Court vacancies of 151 days.

The process attracted highly qualified candidates for federal judicial vacancies. This is sometimes difficult because the open process makes all the information submitted by the candidates publicly available. However, because decisions were made on merit, candidates of the highest quality from private practice as well as the state courts and federal magistrates were attracted to apply.

RAISING CONCERNS

After George W. Bush became president, the process changed. Now the governor, along with the most senior Republicans in our state's congressional delegation, are responsible for naming the nominating commission's members.

While Sen. Bill Nelson and I can interview the candidates, we cannot make recommendations to the White House anymore. We can only indicate whether any of the candidates might encounter difficulty in winning Senate confirmation.

Since this new system has taken effect, there have been two instances that raise concerns about the politicization of the judicial-nominating process, threatening to undermine the credibility of our judiciary.

A year ago, the nominating commission announced groups of three finalists to fill three U.S. marshals positions in Florida, including one in the Southern District of Florida. In March 2002, my office was informed that the three finalists for the position in the Southern District were being put aside in favor of a candidate who had not even applied. This candidate has been renominated in the 108th Congress and is now awaiting action by the Senate Judiciary Committee.

In February 2002, the Judicial Nominating Commission announced that it had selected three finalists for a Southern District court vacancy. The candidates included two state circuit-court judges and the sitting U.S. attorney for the Southern District, who were interviewed by the Judicial Nominating Commission and found to be qualified. Nelson and I informed the White House that, if nominated, any of the three would be expeditiously confirmed.

By April, however, the process took a mystifying turn. The nominating commission's chairman informed the fellow commissioners that the White House had requested three additional names, effectively disregarding the three initial candidates. A month later, at the direction of the governor and two U.S. House members, the commission met again and selected three new finalists. A nominee is expected from the White House any day now.

The qualifications of these three new candidates are not to be questioned. Rather, the concern is the deviation from a process that has been successful for more than a decade. The independence and integrity of our judicial system are at stake.

The legal counsel to the president, Alberto Gonzalez, said that the initial panel had been rejected because of inadequate diversity. I found this surprising because half of the federal court officers nominated in Florida by the Republican-appointed Judicial Nominating Commission and selected by the president were minorities.

With this record, if this recent set of recommendations by the Judicial Nominating Commission was found by the president to be insufficient, what recommendation would Gonzalez make to satisfy the diversity sought by the president?

PROUD TRADITION

We must live up to the words said by former Florida Bar President Herman J. Russamanno about our federal courts: ''Florida has been blessed with competent, experienced, compassionate and highly professional judges. These distinguished individuals bring to the court the highest standards and strong commitments to the administration of justice.''

I am committed to this proud tradition, which is why we must honor a system of nonpartisanship and cooperation in the selection of Florida's federal judges.

Mr. GRAHAM of Florida. Having said that, I believe the standard for the kind of information the Senate has a right and a need for in order to be able to carry out its advise and consent function is not an ideological or even a precedential standard but, rather, a pragmatic standard. If a person has been, for instance, an academic and has written, as they typically do, extensive articles or books, there is some means by which you can get below and beneath the resume and get some feel of the person who is being considered.

Similarly, if a person has been a judge at the State level, or at other levels within the Federal judiciary, it is likely that they have written opinions or other statements of their jurisprudential feelings which, again, would give you means by which to evaluate and cast an informed vote to consent to a Presidential nomination.

I have been away from the Senate most of the time this matter has been under consideration. I do not serve on the Judiciary Committee, but colleagues whose judgment I respect have indicated they do not feel that as of today we have the information to, in an informed manner, provide that consent.

I believe this is an issue upon which honorable men and women can reach agreement, just as after a series of negotiations, Senator NELSON and I have reached an agreement on the means by which the Florida judicial nominating process will be ordered and respected.

I urge those of my colleagues who have been particularly involved in this to not see today's vote as the last chapter but, rather, as a call to find an honorable way to provide us with the information, given the status of this nominee and the dearth of information which might otherwise be available.

Let me say, Mr. President, I find some irony in the issues with which this Senate is currently dealing. We may be at war as early as next week. This Senate has already voted to authorize that war. There have been a number of rationales submitted for the war.

One of the rationales that has been recently advanced with a great deal of intellectual fervor has been the concept that by taking down Saddam Hussein, we could create a new climate throughout the region of the Middle East and that in that new climate could sprout the seeds of democratic institutions which would, in turn, lead to democracy. That would be a very admirable consequence.

The irony is that at the same time we are hoping that our actions of war will lead to democracy in a region of the world thousands of miles away which has little history of democracy, we are today debating a process that, in my judgment, if not carefully balanced between the executive and legislative branches, has the prospect, as John Adams suggested, of destabilizing one of the key institutions of our more than two centuries of democracy.

I return to my hope that people of good will can find a way to provide to this institution the information that it legitimately requires, and which the Constitution imposes upon us, to make an informed consent to the President's nomination.

I offer as an example of that spirit of cooperation the good deeds that were extended to me by Senator FRIST. Maybe some people who observe this debate observe the Senate in other highly partisan conflicts, such as the one we voted on earlier today, to believe that we are warring armies. Yes, we are people who have strong views and opinions, and we will express those views and support them with our votes. But we also are people who have a respect for our colleagues and a humanity towards them. I think this is the time to draw upon that respect and appreciation for humanity, as well as our responsibilities under the Constitution, to see if we can find a means to close this impasse and move on to the other important business of the Senate.

Mr. President, I appreciate this opportunity. I again thank you and my colleagues for all the expressions of good will during my absence.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank my good friend from Florida for his statement. I again welcome him back. I heard in his absence statements from both Republicans and Democrats worried about him. I am glad to see him back. The Senator and his wife are dear and close friends of mine and my wife.

Sometimes people forget the Senate is a family. There are only 100 of us. We tend to know each other and spend time with each other. No matter what political positions we take, we worry about each other's health. We talk about each other's children and where they are going to school.

This is an example of those who were concerned about a very popular Senator. I am glad to see him looking in such great health. I welcome him back.

I thank him, of course, for his very thoughtful statement. I am glad to hear the quotes from a book that I probably enjoyed as much as any in the last 10 years, David McCullough's book on John Adams. I do not own the publishing company or anything else, but I recommend that book to anyone who wants to read it.

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

Mr. LEAHY. Of course.

Mr. REID. Mr. President, this is not a question, but I wish to say, Senator GRAHAM and I came to the Senate together. I have been so impressed with BOB GRAHAM his entire tenure in the Senate because he never does anything halfway; it is always all the way. Whenever he comes to the floor to speak, he is prepared and has thought about what he is going to talk about. Today is no different.

Of course, I am happy to see him back stronger than ever and certainly wish him well in his ambitions politically, even though he may have had a slight setback, but knowing how hard the Senator from Florida works, I am sure he will catch up with the pack.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, it was just 2 days ago we welcomed the Vice President to the Senate for debate scheduled by the majority. I said at that time that I am always glad to see the Vice President here, even though it is a rare appearance for a Vice President of either party.

I wish he had been here for debate about the impending war with Iraq. We are probably the only parliamentary body in the democratic world that has not had a major debate during the past few weeks on Iraq and the war. Or he might have been here for debate on terrorism or homeland defense or the need for action to stimulate the economy and improve the lives of the millions of Americans who have lost jobs over the last 2 years. Actually, there are more Americans losing jobs in a 2-year period than I think has occurred since I have been old enough to vote. Or the Senate might have been acting on a prescription drug benefit for seniors.

Apparently, we are not here to have that debate today nor did the majority schedule debate in the Senate on Tuesday on those important matters. Instead, we are here to hear again the arguments about Mr. Estrada. But not much has changed since last week or since this Tuesday. The administration's obstinacy continues to impede Senate consideration of this nomination.

The distinguished Democratic leader, Senator DASCHLE, pointed a way out of this impasse in a letter to the President on February 11. It is regrettable the President did not respond to that reasonable letter to resolve the issue. Instead, the letter sent this week to the distinguished majority leader, Senator FRIST, was not a response to Senator DASCHLE's realistic approach, but a further effort to minimize the Senate's role in this process by proposing radical changes in Senate rules.

I have great respect for the Office of the Presidency, for whoever holds it. One thing I have learned in 29 years is that Presidents come and Presidents go. The Office of the Presidency exists with its responsibilities, its duties, its rules, its traditions. Just as Senators come and go. No Senator holds a seat for life. No Senator owns a seat in the Senate. But the Senate stays, and the Senate has its rights, and it has its privileges, and it also has its obligations. It has its constitutional duties.

I have been in the Senate with six different Presidents. I have never been in the Senate with a White House that seems to have less understanding of the role of the Senate or more of a desire to overturn well over 200 years of practice and procedures in the Senate. I have never known a White House that thinks more just for the moment and not for the long term.

This may be why we are fast approaching the point where, as some suggest, the White House may get half of its goal of regime change, but they may get it in Great Britain. But I digress.

The real double standard in the matter of the Estrada nomination is that the President selected Mr. Estrada in large part based upon his 4½ years of work in the Solicitor General's Office, as well as for his ideological views. The administration undoubtedly knows what those views are and have seen those work papers. They know what he did. They picked him based on that, but they said even though we picked him based on that, we do not want the Senate to know what it was. We in the Senate cannot read his work, the work papers that would shed the most light on why this 41-year-old should have a lifetime seat on the Nation's second highest court.

We are to a point where the White House simply says, trust us, we know what he wrote and how he thinks and will make decisions, but we do not want you to know what he wrote, just rubberstamp him.

Actually, I would remind them of that made-up quote that President Reagan used to such effect—I happen to agree with President Reagan on it—trust but verify. We would like to verify. President Reagan said, ''Trust but verify.'' They say, trust us. We say, let us verify.

So actually this whole matter is in the hands of the White House. They could move forward with Mr. Estrada easily if they wanted to. Instead, the White House has taken on the attitude that they want to carry out the responsibilities of the Presidency, as awesome as they are, but they also want to carry out the responsibilities of the Senate.

I think they have their hands full carrying out the duties of the White House, with the impending war. We have millions of Americans out of work. We have a stock market that has tanked. We have runaway budget deficits. This is an administration that inherited the largest surpluses in history, and they are about to create the largest deficits in history; an administration that inherited a robust stock market, and we are about to see the stock market go to an all-time low. They have enough to worry about. Let us worry about carrying out the duties of the Senate.

If they would simply cooperate, we could go forward with Mr. Estrada. I mention this because I do not want anybody to make a mistake. The control and the scheduling of whether there will be a vote on Mr. Estrada is in the hands of the White House.

There seems to be a perversion to require the Senate to stumble in the dark about Mr. Estrada's views when he shared these views quite freely with others, and when the administration selected him for this high office based on these views.

Justice Scalia wrote just last year:

> Even if it were possible to select judges who do not have preconceived views on legal issues, it would hardly be desirable to do so. Proof that a Justice's mind at the time he joined the Court was complete tabula rasa in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias.

It was just a week ago that I thanked the Democratic leader and assistant leader and Democratic Senators for speaking and voting in favor of preserving the integrity of the confirmation process. We are acting to safeguard our Constitution and the special role of the Senate in ensuring that our Federal courts have judges who will fairly interpret the Constitution and the statutes we pass for the sake of all Americans.

The administration's obstinacy continues to impede progress to resolve this standoff. The administration remains intent on packing the Federal circuit courts and on insisting that the Senate rubber-stamp its nominees without fulfilling the Senate's constitutional advice and consent role in this most important process. The White House could have long ago helped solved the impasse on the Estrada nomination by honoring the Senate's role in the appointment process and providing the Senate with access to Mr. Estrada's legal work. Past administrations have provided such legal memoranda in connection with the nominations of Robert Bork, William Rehnquist, Brad Reynolds, Stephen Trott and Ben Civiletti, and even this administration did so with a nominee to the EPA. Senator DURBIN noted this week that the administration is giving Mr. Estrada bad advice. Instead, the administration should instruct the nominee to answer questions about his views—consistent with last year's Supreme Court opinion by Justice Scalia—and to stop pretending that he has no views.

The White House is using ideology to select its judicial nominees but is trying to prevent the Senate from knowing the ideology of these nominees when it evaluates them. It was not so long ago when then-Senator Ashcroft was chairing a series of Judicial Committee hearings at which Edwin Meese III testified:

I think that very extensive investigations of each nominee—and I don't worry about the delay that this might cause because, remember, those judges are going to be on the bench for their professional lifetime, so they have got plenty of time ahead once they are confirmed, and there is very little opportunity to pull them out of those benches once they have been confirmed—I think a careful investigation of the background of each judge, including their writings, if they have previously been judges or in public positions, the actions that they have taken, the decisions that they have written, so that we can to the extent possible eliminate people eliminate persons who would turn out to be activist judges from being confirmed.

Timothy E. Flanigan, an official from the administration of the President's father, and who more recently served as Deputy White House Counsel, helping the current President select his judicial nominees, testified strongly in favor of ''the need for the Judiciary Committee and the full Senate to be extraordinarily diligent in examining the judicial philosophy of potential nominees.'' He continued:

In evaluating judicial nominees, the Senate has often been stymied by its inability to obtain evidence of a nominee's judicial philosophy. In the absence of such evidence, the Senate has often confirmed a nominee on the theory that it could find no fault with the nominee.

I would reverse the presumption and place the burden squarely on the shoulders of the judicial nominee to prove that he or she has a well-thought-out judicial philosophy, one that recognizes the limited role for Federal judges. Such a burden is appropriately borne by one seeking life tenure to wield the awesome judicial power of the United States.

Although the Senate Judiciary Committee has long recognized correctly, in my view, that positions taken as an advocate for a client do not necessarily reflect the nominee's own judicial philosophy, a long history of cases in which a nominee has repeatedly urged courts to engage in judicial activism may well be probative of a nominee's own philosophy.

Now that the President is not a popularly elected Democrat but a Republican, these principles seem no longer to have any support within the White House or the Senate Republican majority. Fortunately, our constitutional principles and our Senate traditions, practices and governing rules do not change with the political party that occupies the White House or with a shift in majority in the Senate.

Along with this current impasse, the administration has shown unprecedented disregard for the concerns of Senators in taking other unprecedented actions, including renominating both Judge Charles Pickering, despite his ethical lapses, and Judge Priscilla Owen, despite her record as a conservative ''activist'' judge. Both were rejected by the Senate Judiciary Committee after fair hearings and open debate last year. Sending these re-nominations to the Senate is unprecedented. No judicial nominee who has been voted down has ever been re-nominated to the same position by any President. This morning the Republican majority took another unprecedented step in holding a hearing on the re-nomination of Judge Owen, whose nomination had been rejected earlier by the committee. The White House, in conjunction with the new Republican majority in the Senate, is choosing these battles over nominations purposefully. Dividing rather than uniting has become their modus operandi.

Among the consequences of this partisan strategy is that for the last month, the Senate has been denied by the Republican leadership meaningful debate on the situation in Iraq. I commend Senator BYRD, Senator KENNEDY and the other Senators on both sides of the aisle who have nonetheless sought to make the Senate a forum for debate and careful consideration of our nation's foreign policy. The decision by the Republican Senate majority to focus on controversial nominations rather than the international situation or the economy says much about their mistaken priorities. The Republican majority sets the agenda and they schedule the debate, just as they have again here today.

One of the most disconcerting aspects of the manner in which the Senate is approaching these divisive judicial nominations is what appears to be the Republican majority's willingness to sacrifice the constitutional authority of the Senate as a check on the power of the President in the area of lifetime appointments to our Federal courts. It should concern all of us and the American people that the Republican majority's efforts to re-write Senate history in order to rubber-stamp this White House's Federal judicial nominees will cause long-term damage to this institution, to our courts, to our constitutional form of government, to the rights and protections of the American people and to generations to come. I have served in the Senate for 29 years, and until recently I have never seen such stridency on the part of an administration or such willingness on the part of a Senate majority to cast aside tradition and upset the balances embedded in our Constitution so as to expand Presidential power. What I find unprecedented are the excesses that the Republican majority and this White House are willing to indulge to override the constitutional division of power over appointments and long-standing Senate practices and history. It strikes me that some Republicans seem to think that they are writing on blank slate and that they have been given a blank check to pack the courts. They show a disturbing penchant for reading the Constitution to suit their purposes of the moment rather than as it has functioned for over 200 years to protect all American through checks and balances.

The Democratic Leader pointed the way out of this impasse again in his letter to the President on February 11. It is regrettable that the President did not respond to that reasonable effort to resolve this matter. Indeed, the letter he sent this week to Senator FRIST was not a response to Senator DASCHLE's reasonable and realistic approach, but a further effort to minimize the Senate's role in this process by proposing radical changes in Senate rules and practices to the great benefit of this administration. A distinguished senior Republican Senator saw the reasonableness of the suggestions that the Democratic leader and assistant leader have consistently made during this debate when he agreed on February 14 that they pointed the way out of the impasse. Sadly, his efforts and judgment were also rejected by the administration.

More recently, in its edition for next Monday, March 17, a writer in The Weekly Standard suggests that other Senate Republicans, ''several veteran GOP Senate staffers'' and ''a top GOP leadership aide'' asked the White House to shown some flexibility and to share the legal memoranda with the Senate to resolve this matter, but were rebuffed. I ask unanimous consent that a copy of the article from The Weekly Standard be printed in the RECORD.

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

[From the Weekly Standard, Mar. 17, 2003]

FILIBUSTER SI, ESTRADA NO!—THE GREAT REPUBLICAN DIVIDE OVER HOW TO FIGHT FOR BUSH'S JUDICIAL NOMINEE

(By Major Garrett)

It's not clear whether the constitutional definition of ''advice and consent'' will become a casualty of Miguel Estrada's fight for a seat on the D.C. Circuit Court of Appeals, but the possibility is serious and sobering. In a 55–44 vote, Democrats last week defeated a Republican attempt to break their unprecedented partisan filibuster of Estrada's nomination, opening the way for the simple-majority standard for Senate confirmation of judicial nominees to be replaced with a super-majority requirement. The Republic isn't there yet. But it's close.

''If we go very much further there will be obvious consequences,'' said Sen. Jon Kyl, an Arizona Republican. ''This standard will have to be applied to both parties and by both parties. This is very close to the point where you can't pull it back.''

The strain on the Constitution and Senate precedent is now obvious. Less obvious is the toll the Estrada fight has taken on the relationship between the new Senate GOP leadership team and the Bush White House. While GOP senators are loath to admit it, the Estrada debate has drifted on this long because the White House and the GOP leadership could not fashion a cohesive strategy.

Estrada is not the first fight new majority leader Bill Frist would have chosen—at least not under the restrictions imposed by the White House. Senate Republicans believe the White House has severely limited their room to negotiate.

Early on, several veteran GOP Senate staffers warned the White House and Justice Department to prepare for a brawl. They then gingerly asked two questions: Would Estrada answer more questions from Democrats? And was there any flexibility in the

White House's objection to releasing the working memos Estrada wrote while deputy solicitor general in the Clinton Justice Department?

Senior Senate GOP staff told White House and Justice Department officials that cutting a deal on limited Democratic access to Estrada's working papers could lead to his confirmation. The White House refused. There would be no access to Estrada's working papers. Period. This adamantine posture, in the eyes of some in the Senate GOP leadership circles, handcuffed Frist.

''There's some frustration,'' said a top GOP leadership aide. ''From the very beginning we told them that was the only way out and a face-saver for everyone. But it came down to the fact that no one on the White House or Justice team wanted to walk into the Oval Office and say to the president, 'You might have to give up these memos.' ''

The administration's position on the memos reflects its deeply held ethic of aggressively defending executive branch prerogatives. Though the White House has never characterized the Estrada matter as one of executive privilege (it is more akin to lawyer-client privilege), it falls into the broad category of executive branch muscularity. And while most Republicans generally support this posture, some Bush allies on and off Capitol Hill have come to question the administration's fastidiousness in the Estrada fight.

''I understand the principle, and I support it, but on this one it feels belligerent,'' said a longtime Republican lobbyist and ally of the Bush White House.

When a reporter last week asked Sen. Rick Santorum, the GOP conference chairman, if opposition to divulging Estrada's Justice Department memos was permanent, he snapped, ''Ask the White House.''

Conservatives like Sen. Kyl see the Estrada fight as purely ideological and strongly oppose cutting any deal on access to his working papers.

''It's a phony issue, a manufactured issue,'' said Kyl. ''We want to win this, but you don't win it by breaking a principle that has served this nation well for 200 years. And if we deal on the papers, it will be something else.''

But Sen. Harry Reid, the Senate's No. 2 Democrat, has said he will support Estrada if the papers are turned over and nothing objectionable emerges. Enough Democrats to break the filibuster would surely follow Reid, senior Democratic sources say.

''Their guy's not going to get confirmed without them,'' said a top Democratic lawyer who backs Estrada. ''This is not complicated. The White House is not going to confirm him without paying a price.''

If that price seems too high, the White House may want to reexamine the price of the alternative, an increasingly bitter filibuster fight. While protecting the privacy of internal memos at the Justice Department, the White House may be sacrificing the 50-vote majority as the historic benchmark of constitutional fitness for the federal bench. Some Senate Republicans believe a new 60-vote standard for judicial appointments could severely hamper this president and all future presidents. And some Senate Republicans wonder why it's more important to protect executive privilege than a president's power to have judicial nominees confirmed by simple majority vote.

The White House wants the fight to drag out and political pressure to build on centrist Democrats. The White House likes the Hispanic dimension of the Estrada fight and is counting on the weight of editorial and public opinion to turn the tide.

But numerous Republican senators say the Estrada fight, for all its constitutional implications, has yet to resonate with the public. Democratic senators report no political backlash at home and see it as their duty to defend Daschle.

''This is an ideological fight, and this is a fight for Daschle to be taken seriously,'' said a senior aide to a Democratic senator who has teamed up with the White House on economic policy. ''And my boss is with Daschle. He knows he's taken, and will take, enough flak on fiscal policy. This is a fight he's prepared to stick with.''

Absent a deal on the working memos, all Estrada can bank on is White House and Republican promises to fight until they prevail. But no one in the GOP Senate leadership or the Bush White House can explain how or when that will happen.

Mr. LEAHY. It is too bad that the White House will not listen to reason from Senate Democrats or Senate Republicans. If they had, there would be no need for this cloture vote. The White House is less interested in making progress on the Estrada nomination than in trying to make political points and to divide the Hispanic community.

The Supreme Court, in an opinion authored by none other than Justice Scalia, one of this President's judicial role models, instructs that judicial ethics do not prevent candidates for judicial office or judicial nominees from sharing their judicial philosophy and views.

With respect to ''precedent,'' Republicans not only joined in the filibuster of the of Abe Fortas to be Chief Justice of the United States Supreme Court, they joined in the filibuster Stephen Breyer to the 1st Circuit, Judge Rosemary Barkett to the 11th Circuit, Judge H. Lee Sarokin to the 3rd Circuit, and Judge Richard Paez and Judge Marsha Berzon to the 9th Circuit. The truth is that filibusters on nominations and legislative matters and extended debate on judicial nominations, including circuit court nominations, have become more and more common through Republicans' actions.

Of course, when they are in the majority Republicans have more successfully defeated nominees by refusing to proceed on them and have not publicly explained their actions, preferring to act in secret under the cloak of anonymity. From 1995 through 2001, when Republicans previously controlled the Senate majority, Republican efforts to defeat President Clinton's judicial nominees most often took place through inaction and anonymous holds for which no Republican Senator could be held accountable. Republicans held up almost 80 judicial nominees who were not acted upon during the Congress in which President Clinton first nominated them and eventually defeated more than 50 judicial nominees without a recorded Senate vote of any kind, just by refusing to proceed with hearings and Committee votes.

Beyond judicial nominees, Republicans also filibustered the nomination of Executive Branch nominees. They successfully filibustered the nomination of Dr. Henry Foster to become Surgeon General of the United States in spite of two cloture votes in 1995. Dr. David Satcher's subsequent nomination to be Surgeon General also required cloture but he was successfully confirmed.

Other Executive Branch nominees who were filibustered by Republicans included Walter Dellinger's nomination to be Assistant Attorney General and two cloture petitions were required to be filed and both were rejected by Republicans. In this case we were able finally to obtain a confirmation vote after significant efforts and Mr. Dellinger was confirmed to that position with 34 votes against him. He was never confirmed to his position as Solicitor General because Republicans had made clear their opposition to him. In addition, in 1993, Republicans objected to a number of State Department nominations and even the nomination of Janet Napolitano to serve as the U.S. Attorney for Arizona, resulting in cloture petitions. In 1994, Republicans successfully filibustered the nomination of Sam Brown to be an Ambassador. After three cloture petitions were filed, his nomination was returned to President Clinton without Senate action. Also in 1994, two cloture petitions were required to get a vote on the nomination of Derek Shearer to be an Ambassador. And it likewise took two cloture petitions to get a vote on the nomination of Ricki Tigert to chair the FDIC. So when Republican Senators now talk about the Senate Executive Calendar and presidential nominees, they must be reminded that they recently filibustered many, many qualified nominees.

Nonetheless, in spite of all the intransigence of the White House and all of the doublespeak by some of our colleagues on the other side of the aisle, I can report that I believe the Senate will by the end of this week have moved forward to confirm 111 of President Bush's judicial nominations since July 2001. That total would include 11 judges confirmed so far this year and of those, seven would be confirmed this week. With the time agreement on the controversial nomination of Jay S. Bybee to the United States Court of Appeals for the Ninth Circuit in place for later today, it also includes a circuit judge. Those observing these matters might contrast this progress with the start of the last Congress in which the Republican majority in the Senate was delaying consideration of President Clinton's judicial nominees. In 1999, the first hearing on a judicial nominee was not until mid-June. The Senate did not reach 11 confirmations until the end of July of that year. Accordingly, the facts show that Democratic Senators are being extraordinarily cooperative with a Senate majority and a White House that refuses to cooperate with us. We have made progress in spite of that lack of comity and cooperation.

Indeed, by close of business today, we will have reduced vacancies on the federal courts to under 55, which includes

the 20 judgeships the Democratic-led Senate authorized in the 21st Century Department of Justice Appropriations Authorization Act last year. That is an extremely low vacancy number based on recent history and well below the 67 vacancies that Senator HATCH termed ''full employment'' on the federal bench during the Clinton Administration.

Our D.C. Circuit has special jurisdiction over cases involving the rights of working Americans as well as the laws and regulations intended to protect our environment, safe work places and other important federal regulatory responsibilities. This is a court where privacy rights will either be retained or lost, and where thousands of individuals will have their final appeal in matters that affect their financial future, their health, their lives and their liberty, as well as the lives of their children and generations to come.

If a nominee's record or responses raise doubts or concerns, these are matters for thorough scrutiny by the Senate, which is entrusted to review all of the information and materials relevant to a nominee's fairness and experience. No one should be rewarded for stonewalling the Senate and the American people. Our freedoms are the fruit of too much sacrifice to fail to assure ourselves that the judges we confirm will be fair judges to all people and in all matters.

It is unfortunate that the White House and some Republicans have insisted on this confrontation rather than working with us to provide the needed information so that we could proceed to an up-or-down vote. Some on the Republican side seem to prefer political game playing, seeking to pack our courts with ideologues and leveling baseless charges of bigotry, rather than to work with us to resolve the impasse over this nomination by providing information and proceeding to a fair vote. I was disappointed that Senator BENNETT's straightforward colloquy with Senator REID and me on February 14, which pointed to a solution, was never allowed by hard-liners on the other side to yield results. I am disappointed that all my efforts and those of Senator DASCHLE and Senator REID have been rejected by the White House. The letter that Senator DASCHLE sent to the President on February 11 pointed the way to resolving this matter reasonably and fairly. Republicans would apparently rather engage in politics.

The Republican majority is wedded to partisan talking points that are light on facts but heavy on rhetoric. There has often been an absence of fair and substantive debate and a prevalence of name calling by the other side.

I urge the White House and Senate Republicans to end the political warfare and join with us in good faith to make sure the information that is needed to review this nomination is provided so that the Senate may conclude its consideration of this nomination. I urge the White House, as I have for more than two years, to work with us and, quoting from a recent column by Thomas Mann of The Brookings Institute, to submit ''a more balanced ticket of judicial nominees and engag[e] in genuine negotiations and compromise with both parties in Congress.''

The President promised to be a uniter not a divider, but he has continued to send us judicial nominees that divide our nation and, in this case, he has even managed to divide Hispanics across the country, unlike any of the prior nominees of both Democratic and Republican presidents. The nomination and confirmation process begins with the President, and I urge him to work with us to find a way forward to unite the nation on these issues, instead of to divide the Nation.

The presiding officer. The Senator from Utah.

Mr. HATCH. Mr. President, this is the fifth week of debate on Mr. Estrada's nomination. My Democratic colleagues have had unlimited opportunities to make their case. Some of them oppose him; others support him. But one thing has remained clear through this debate: There is no good reason to continue this route of obstruction by denying Mr. Estrada an up or down vote.

If my count is accurate, we have sought more than 17 times to come to an agreement with the Democratic leadership for a time to vote on Mr. Estrada's nomination. Each time, they rejected our efforts.

Yet, the Democratic leadership has complained that the Senate should move on to consider other important matters. All the while, they have continued to fight voting on Mr. Estrada's nomination—the very thing that would allow the Senate to focus its energies on other matters.

This filibuster of Mr. Estrada's nomination is just another step in a calculated effort to stall action on President Bush's judicial nominees. A few weeks ago, I spoke at length on the Senate floor about the Senate Democrats' weapons of mass obstruction. I mentioned that when the Democrats controlled the Senate, we saw them bottle up nominees in committee despite more than 100 vacancies in the federal judiciary. They have continued to try to inject ideology into the confirmation process by demanding that nominees like Miguel Estrada answer questions that other nominees rightly declined to answer, but were nevertheless confirmed. They have sought production of all unpublished opinions of nominees who are sitting Federal judges—a demand that has resulted in the production of hundreds of opinions and required the expenditure of a significant amount of resources, money, effort, the time. Most recently, they have demanded that a nominee, Mr. Estrada, produce confidential internal memoranda that are not within his control. Although this tactic made its debut with Mr. Estrada, I expect that we will see it repeated with other nominees.

Each of these weapons of obstruction were at their most potent when Democrats controlled the Judiciary Committee. Now things have changed, and Democrats can no longer keep nominees like Miguel Estrada bottled up in committee while they made demands for answers to questions that are unanswerable, and for confidential documents that are not subject to production. Democrats no longer control the committee, and as a result Miguel Estrada nomination has made it to the Senate floor. This means that the obstructionists among the Senate Democrats have turned to their ultimate weapon—the filibuster.

Filibusters of judicial nominees allow a vocal minority to prevent the majority of Senators from voting on the confirmation of a Federal judge—a prospective member of our third, coequal branch of Government. It is tyranny of the minority, and it is unfair to the nominee, to the judiciary, and to the majority of the Members of this body who stand prepared to fulfill their constitutional responsibility by voting on Mr. Estrada's nomination.

I have taken to the floor time and time again, for Democratic and Republican nominees alike, to urge my fellow Senators to end debate by voting to invoke cloture, which requires the vote of 60 Senators. Most, if not all, of these occasions did not represent true filibusters, but were situations in which nominees were nevertheless forced to overcome the procedural obstacle of a cloture vote. And no lower court nominee has ever been defeated through use of a filibuster—all previous lower court nominees who endured a cloture vote were ultimately confirmed.

I am not alone in my disdain for forcing judicial nominees through a cloture vote. I think that it is appropriate at this point to note that many of my Democratic colleagues argued strenuously on the floor of the Senate for an up-or-down vote for President Clinton's judicial nominees.

The distinguished minority leader himself once said:

> As Chief Justice Rehnquist has recognized: ''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.'' An up or down vote, that is all we ask . . . .

The ranking member of the Judiciary Committee echoed these sentiments when he said:

> . . . I, too, do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41.

Another one of my Democratic colleagues, Senator KENNEDY, himself a former chairman of the Judiciary Committee, had this to say:

> Nominees deserve a vote. If our Republican colleagues do not like them, vote against them. But do not just sit on them—that is obstruction of justice.

The distinguished Senator from California, Mrs. FEINSTEIN, who also serves on the Judiciary Committee, likewise said in 1999:

A nominee is entitled to a vote. Vote them up; vote them down.

She continued:

It is our job to confirm these judges. If we do not like them, we can vote against them. That is the honest thing to do. If there are things in their background, in their abilities that do not pass muster, vote no.

My other colleague from California, Senator BOXER, said in 1997:

It is not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees from even being given the opportunity for a vote on the Senate floor.

My colleague from Delaware, Senator BIDEN, also said in 1997:

I . . . respectfully suggest that everyone who is nominated is entitled to have a shot, to have a hearing and to have a shot to be heard on the floor and have a vote on the floor.

I could go on, but I think I have made my point. I had hoped that I could count on each of my Democratic colleagues who made statements supporting an up-or-down vote for President Clinton's judicial nominees to join me in voting for cloture on Miguel Estrada. I had hoped that their remarks in the past were not merely about partisanship, but about the fairness that should be extended to all judicial nominees, regardless of which President nominated them.

Last week, I was wrong. But today, there is a second chance—another chance to set aside partisanship for fairness.

For this cloture vote to succeed, a supermajority of 60 Senators must vote to end the filibuster of Mr. Estrada's nomination. I regret that it has come to this, because forcing a supermajority vote on any judicial nominee is a maneuver that needlessly injects even more politics into the already over-politicized confirmation process. I believe that there are certain areas that should be designated as off-limits from political activity. The Senate's role in confirming lifetime-appointed article III judges—and the underlying principle that the Senate perform that role through the majority vote of its members—are such issues. Nothing less depends on the recognition of these principles than the continued, untarnished respect in which we hold our third branch of Government—the one branch of Government intended to be above political influence.

So I now say once again to my Democratic friends: Vote for Miguel Estrada or vote against him. Do as their conscience dictates you must. But do not prolong the obstruction of the Senate by denying a vote on his nomination. Do not cast their vote against cloture today. Do not continue to treat the third branch of our Federal Government—the one branch intended to be insulated from political pressures—with such disregard that we filibuster its nominees. Do not perpetuate this campaign of unfairness. Vote for him or vote against him, but just vote.

This first filibuster in the history of the Senate on a substantive judgeship for a circuit court of appeals nominee is unprecedented, something that should never happen, that we prevented from happening when I was chairman of the committee during the Clinton administration. My friends on the other side are using a fiction that they know the administration cannot fulfill, and that is demanding a fishing expedition into all of the papers in the Solicitor General's Office pertaining to Mr. Estrada's recommendations on appeals, certiorari, and amicus curiae. They know the administration cannot do that. They knew that when they wrote the letter making that unreasonable demand. This is what we call fiction, a red herring, so they can justify the filibuster they are undergoing and act very pious, that they are really trying to learn more about this man, in spite of the fact that they conducted the hearings.

The hearings went all day. The transcript is almost 300 pages. They have all of his Supreme Court briefs. They have all of his Supreme Court arguments. They know more about Mr. Estrada than they know about any circuit court of appeals judgeship nominee we have had over the last 27 years that I have been in the Senate, as far as I know. There might be one or two they might know as much about as they do Mr. Estrada, but this is a fiction. It is a red herring. We have a letter from seven former Solicitors General, all living former Solicitors General, from Archibald Cox to Seth Waxman, four of the seven Democrat Solicitors General, three of who worked with Miguel Estrada in the Solicitor General's Office, because he worked, I might add, 4 years for the Clinton administration and 1 year for the Bush administration. Those former Solicitors General say these types of documents should never be given, because it would chill the ability of the Solicitor General to get honest and decent opinions on very important matters for the people's business, and the people's business does not make any delineation between Democrats and Republicans. The Solicitor General represents all of the people.

I will now say a few words about Priscilla Owen before I go back to the hearing.

I rise for the purpose of reading a Dear Colleague letter that I have written and distributed today concerning the nomination of Justice Priscilla Owen of Texas to be a judge on the US Court of Appeals for the Fifth Circuit. I have distributed this to every Senator in the Senate.

DEAR COLLEAGUE: On September 4 of last year I took the unusual step of writing to the entire Senate to express my outrage at the untruthful and misleading attacks made against Justice Priscilla Owen of Texas, who was nominated by President Bush to serve on the Fifth Circuit Court of Appeals. As you know, Justice Owen enjoyed the support of both of her home-state Senators last Congress, and again enjoys such support. I am writing today so that you have all information related to this important information.

In September, I expressed my concern that a continued pattern of misinformation about a nominee, like the one generated about Justice Owen, could undermine the integrity both of the judiciary and of the branch of government in which we are privileged to serve. A day later, the Judiciary Committee refused to allow Justice Owen a vote by the whole Senate on a party-line vote of 10 to 9.

Notably, one week later The Washington Post joined scores of other newspapers across the country in expressing support for Justice Owen and severely criticized the Committee's conduct. I have enclosed its editorial. The Post described the Committee's vote as ''a message to the public that the confirmation process is not a principled exercise but an expression of political power.'' The Post also noted that although they disagreed with some of her opinions, ''none seems beyond the range of reasonable argument.''

Despite the independent support of dozens of newspapers, prominent Democrats, and fourteen past Texas bar presidents, critics have portrayed Justice Owen as being ''far from the mainstream.'' Yet Texas voters have twice elected her overwhelmingly to statewide office. The American Bar Association has unanimously rated her well qualified, its highest rating. In fact, Justice Owen was the first judicial nominee with the ABA's highest rating to be voted down by the Judiciary Committee.

In my opinion, Justice Owen is perhaps the best sitting judge I have ever seen nominated. She is brilliant as well as compassionate. Justice Owen's record of applying the law as written is among the very best of any judicial nominee ever presented to the Senate. This is particularly true in her now famous decisions concerning the Texas law requiring parental notification when minor children obtain abortions. In these cases, no one's right to choose was implicated. The only right at stake was the right articulated by the Texas legislature of parents to have knowledge of, and an opportunity for involvement in, one of the most important decisions of their children's lives. In those cases, Justice Owen did exactly what any restrained judge should do: She applied Texas statutory law as directed by Supreme Court's precedent, including Roe v. Wade. Ironically, it is Justice Owen's opponents—the same ones who accuse her of being an ''activist''—who would have her ignore the legislature and the Supreme Court in order to reach a political result.

Justice Owen is also accused of deciding cases against consumers, workers, and the injured and sick. This charge is not only factually without basis, but also belies the accusation of ''activism.'' Only those obsessed with outcomes, rather than the law governing the facts of a particular case, would be compelled by a mere counting up of wins and losses among categories of parties before a judge.

Working as a judge is like being an umpire; Justice Owen cannot be characterized as pro-this or pro-that any more than an umpire can be analyzed as pro-strike or pro-ball. I hope you will agree that a judge's job is to apply the law to the case at hand, not to mechanistically ensure that court victories go 50/50 for plaintiffs and defendants, consumers and corporations.

Justice Owen was also notably assailed by her critics using incorrectly the words of one of her biggest supporters, Alberto Gonzales, President Bush's White House Counsel. Judge Gonzales served with Justice Owen on the Texas Supreme Court and has written publicly that she is ''extraordinarily well

qualified to serve as a judge on the federal appeals court.'' Rather than focus on his ringing endorsement, however, detractors instead sensationalized a disagreement that Judge Gonzales had not with Justice Owen, but with other dissenting judges in a case involving the Texas parental notification law.

Justice Owen is an excellent judge. Her opinions, whether majority, concurrences, or dissents, could be used as a law school text book illustrating exactly how an appellate judge should think, write, and do the people justice by effecting their will through the laws adopted by their elected legislatures. She clearly approaches these tasks with both scholarship and mainstream American common sense.

As a new Congress takes a fresh look at this nomination, I hope you will join me in informing the American people of the truth about Justice Owen and in warning them of the grave danger posed by an uninformed politicization of the federal judiciary. I hope you will urge our colleagues to do the right thing when Justice Owen is again voted on by the Committee and goes to the Senate floor for confirmation.—Signed, ORRIN G. HATCH.

We are holding a hearing today on Justice Owen's nomination. I invite all of my colleagues to attend. In fact, I encourage them to do so. I want everyone to get to know Justice Owen and have the opportunity to hear from her firsthand. This is a very unusual invitation, I know. But these are unusual times in the Senate for judicial nominations, and Justice Owen is a particularly important and impressive nominee. I urge my colleagues to come to the hearing taking place in Dirksen 106 and see for themselves what an extraordinary person and jurist she is.

We are having difficulty with the President's judicial nominees. Every one of these circuit nominees is being contested, some more than others, but all of them are quite rabidly being contested. Miguel Estrada is a perfect illustration of someone who is totally competent, totally equipped to do the job, honest, decent, has earned his stripes, has the highest rating from the American Bar Association, the gold standard, according to our colleagues on the other side. Yet he is being filibustered here now in the fifth or sixth week.

We have a cloture vote today. I hope my colleagues will consider this. I hope we can get some of the more clear thinking colleagues on the other side to start voting for Mr. Estrada, to start voting for cloture, so we can end this outrageous debate and put a qualified person on the court. Let's not hide behind a fishing expedition to get documents they know no self-respecting administration is going to give to them, and using that as a basic shield to say they are not doing something unjust to Miguel Estrada. They are being very unjust, very unfair. It is not right. We ought to stop it.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Let me take this opportunity, first, to express my appreciation and the appreciation of the Senate for the outstanding work that is being done by Senator HATCH as chairman of the Judiciary Committee. That is a tough job. It always has been. It seems to be getting tougher with every passing Congress. I know from personal experience during my tenure as the Republican Leader, both in the majority and the minority, of the diligent work and good work that has been done by Senator HATCH to move judicial nominations through the process.

Quite often, it was very difficult in the committee and on the floor. There have been accusations that, perhaps, he had unfairly delayed judges in the past. But I can tell you this: My knowledge was, and memory is, that he worked very hard to move a lot of judges, several of whom were highly controversial but were eventually confirmed anyway.

Yes, at the end of the last term some judicial nominees of the Clinton administration were not completed, but if you compare the number that were left over to similar situations in the past, it was a smaller number. When you look at the number of judges that have been confirmed under the stewardship and leadership of Senator HATCH, it has to be a record in terms of overall numbers compared with previous chairmen and previous administrations.

I will talk more about specifics, but while Senator HATCH is here I wanted to recognize the untiring and patient and effective efforts of the Senator from Utah on this very worthwhile effort.

Mr. HATCH. Will the Senator yield?

Mr. LOTT. I am happy to yield.

Mr. HATCH. I thank my dear colleague for those kind remarks. As he knows, there have been some on our side that did not want hardly any of the Clinton judges, especially the more liberal ones, some of whom have gone to circuit court of appeals.

Mr. LOTT. If the Senator will allow me to interject, I remember the Senator from Utah received some criticism from this side of the aisle, and so did I, as we tried to move some of these judges through the process. We may have voted against them, which I did in at least a couple of instances, but I thought they deserved a vote. And we made sure that those votes took place.

Mr. HATCH. We did that.

I thank my colleague because as the leader he helped me to do the job for the Clinton administration. The President deserved the best we could do. Do we get everything done? No one has ever gotten everything done at the end of anyone's administration.

He is right. Our record was much superior to when the Democrats controlled the committee.

I thank my colleague.

Mr. LOTT. I again thank Senator HATCH for the effort. I remember even last year at one point I think we had approximately 70 judges on the calendar, a large number, and there was disagreement about how to proceed. There was an indication we would have to have a recorded vote on every one of them, even though many of them could be moved on a voice vote with no problem. It looked like we were not going to be able to move them, but Senator DASCHLE and I kept talking about them and kept working on it, and we began to move them in blocks. We finished the process and we had moved, I think, almost all of them, if not all of them. That was an example of how there can be cooperation in this very important area of confirmation of judges.

Mr. HATCH. Will the Senator yield?

Mr. LOTT. I am happy to yield.

Mr. HATCH. I ask the Senator on our side, when he concludes, Senator KENNEDY has 2 minutes. We yielded our time.

Mr. LOTT. I will be happy to yield to the Senator from Massachusetts when I have finished my remarks.

Mr. LOTT. Let me talk briefly about the situation we find ourselves in, specifically, the nomination of Miguel Estrada to be a DC Circuit Court of Appeals Judge.

I made a brief speech about a month ago saying I thought this was a highly qualified candidate, one who had lived the American dream, having been born in Honduras, coming here when he was 17, and highlighting the phenomenal life he has lived. I thought it was a matter we would do pro forma. I assumed we would have some debate and some disagreement, but since he is a great nominee, I thought he would be confirmed a month ago or more. But here we are still.

I will not go back and recount all of his qualifications. All the Senators know, and most of America knows now, Miguel Estrada is certainly qualified to be a circuit court of appeals judge. He is qualified by education. He went to some of the best schools in America where he was Phi Beta Kappa, a Magna Cum Laude graduate, editor of the Harvard Law Review at that citadel of great conservative legal thinking. Now, he is accused of being conservative; a committed conservative, despite his broad background. He was editor of the Harvard Law Review, if you will. So by education he is qualified.

There are some points and comments from the Federalist Papers, a couple of considerations, that you should look into when you consider a judge. One is whether or not they are fit in the area of character. This is a man that has lived an exemplary life. There is no allegation of impropriety, no allegation of ethical misconduct. None whatsoever. So by education, by character, by ethics, and by experience he is an incredible nominee.

Some say he has not been a lower court judge. That is not always the criteria. We have a lot of people who have gone to the circuit court of appeals, even the Supreme Court, without having earlier been a judge in another court. But he has been involved by working with the Federal judiciary, and by serving as an Assistant to the Solicitor General. He has argued 15 cases before the Supreme Court. I have only been able to witness one case where I sat in the audience and listened to the snail darter case before

the Supreme Court. Listening to the arguments in that one case was enough for me. I left and never returned. But surely, clearly, everyone in this body knows this man is qualified to be a judge on the circuit court of appeals.

So what is the problem? What are they saying?

There is the suggestion that maybe he has a certain philosophy or a certain ideology, and that is a disqualification. If that were a disqualification, there are many judges I voted on during the Clinton years and at other points during my service in this chamber whom I would have voted against. I voted for Justice Ruth Bader Ginsburg even though I didn't agree with her philosophy and knew I probably wouldn't agree with a lot of her decisions, but she was qualified. She was the President's choice.

I think the burden is on the Senate to show why we should not confirm a nominee if they are qualified, have the proper experience, and don't have ethical problems. She met those criteria. I voted for her.

What is the problem here? Some Senators want more questions asked? Alright, that is a legitimate point. It is part of the advice and consent role of the Senate. Let's hear what the nominees have to say.

He had a long hearing before the Judiciary Committee. Every question in the world that could be thought of was asked of this nominee. He was asked hypothetical cases to which I personally would not respond. I thought that on a lot of things he was asked, he was very careful in how he responded. You don't want to prejudice your decision. You don't want to pass judgment on a Supreme Court decision on which your future decisions as a judge may be based. The number one factor for the Senate to keep in mind on this point, however, is that he has offered to meet with any Senator personally who wants to meet with him.

Secondly, Senators on both sides have been told if you want to ask more questions, then submit the questions, and he will answer the questions.

Finally, even a day or so ago, Senator FRIST—against some advice that perhaps this pattern should not be started—said Mr. Estrada would be willing to go back to the Judiciary Committee so that interested Senators could ask him some more questions, with an understanding he would get a vote. Unfortunately, that offer was turned down, too. They say they want to ask him more questions, but when they are given a chance to meet with the nominee or a chance to ask more questions, they don't ask them. When we say he is willing to go back for another hearing under these circumstances—no, they don't want that either. What do they say they want? They want internal memos from the time that he was working as an Assistant to the Solicitor General.

I believe that maybe something can be worked out on that. But you cannot set that precedent. Let me tell you why. If all these internal memos are made public in this instance, I guarantee future young attorneys in the Solicitor's Office, they will not be giving honest advice. No, no, they will pull their punches because they will know, anything I say in this written document may someday be used against me being confirmed as a Federal judge or in some other way. So this is not an insignificant request.

Should we try to find a way to work it out? I think so. But then I have been accused in the past of trying to get things done.

If everybody wants to make a statement around here to make their constituency happy, great. This is the way to do it. The People for the American Way and other liberal organizations—if Estrada is blocked—they will be happy. These political reasons are why many Senators on the other side of the aisle are opposing Mr. Estrada, but I want to point out that there are some notable exceptions, and I hope there will be more.

But on our side, we are able to say: This is an Hispanic nominee, and our core constituency groups are going to be happy. Republicans are happy, with us duking it out for this nominee to be on the Circuit Court of Appeals. Many will say that they are taking a stand, which is great.

How great is it when he is not confirmed? That is the goal here. I am not interested in blaming somebody or appeasing someone on our side. This man is qualified. We have vacancies on this court that should be filled. It is irresponsible for us not to find a way to work this out and get this nominee on the court.

So I say a pox on everybody's house if we are just trying to find a way to score political points with this man's life on hold while we do this thing that we are doing here. I really do think we are setting a dangerous precedent here, one we did not set in the past. We have not filibustered Federal judicial nominees. It is clearly not in the Constitution. I think advice and consent means 51 votes, not two-thirds; not 60—51.

You might say the Constitution doesn't make that clear. In the Constitution, article II, section 2, when the Framers of the Constitution were writing this out, when they intended supermajority votes, they said so. It clearly says in article II, section 2: To make treaties provided two-thirds of the Senators present concur. They specify two-thirds. When they said advice and consent, I believe they intended and expected, unless there were serious problems, that these nominees to the Federal judiciary would be confirmed with a vote, an up-or-down vote of 51.

I think what we are doing here is questionable constitutionally. We have never done this on a district or circuit court nominee before. Now we are about to do it.

Let me tell you what is scary. It may not be just about nominee Estrada. Next it is going to be Priscilla Owen. They are going to filibuster Priscilla Owen, a qualified woman who is a brilliant Supreme Court Justice in the State of Texas. I am sure they will extend it to other nominees, as well—maybe Sutton, maybe Cook, maybe Pickering. Is this a pattern?

Who in this room, and outside this room, believes that this tit-for-tat will not continue? Do they think that once we, Heaven forbid, ever have another Democrat President, that Republicans are not going to return the favor? We are going to filibuster them.

We have to stop this. I think we, the leaders, the Republicans, the Democrats, past and present, have to assume responsibility for how this has continued to escalate.

Did we do some things during the Clinton years with judges that we should not have done? Yes. But did we take up the cause and try to do the right thing on many occasions? Yes. That is why I am here today, because I do believe I have been a part of the solution and part of the problem in the past. I acknowledge it. But when I was the Majority Leader, I called up nominations that were controversial.

I remember on one occasion we did have a threatened filibuster and a cloture vote which was defeated. I made a speech standing right there saying: My colleagues, we don't want to do this. This was a judge nominated by President Clinton, but really it was a judge whom ORRIN HATCH recommended. His name was Brian Theodore Stewart. Unfortunately, though, cloture was defeated. So we started talking about that, and cooler heads prevailed. Shortly thereafter, we confirmed this judge. That was the only time we came close, during the past 7 years, to having a filibuster on a judge. We got right up to it, but we didn't do it, because we knew we couldn't do it and that it was wrong. So, fortunately we backed away from it.

In terms of what was done in the past, again, I resisted filibusters. I didn't want to have filibusters, even though I voted against Judges Paez and Berzon on their up-or-down confirmation votes. But Senator HATCH and I took a lot of grief. We said, no, they have come out of committee, they deserve an up-or-down vote. They got the vote, and they were confirmed. They each got an up-or-down vote, not a filibuster. Some people thought they should have been filibustered. I didn't think they should have been, and they weren't.

My colleagues, I ask us here today: Where do we go from here? What is next?

The argument can be made that you filibuster a lot of different ways. You don't let them out of committee; I know about that approach. The last Congress, I know two judges who were defeated on a straight party-line vote in the Judiciary Committee. They were not allowed to come to the floor to have a vote, and I believe the Constitution requires they should come here

and have a vote, not be killed by 11 Senators in the Judiciary Committee, or 10, or whatever the number may be.

So, I accept part of the blame. I acknowledge that Republicans have not always handled judges in the right way. But I ask the question again, what next? We are going to kill them in committee? We are going to kill them by filibuster? This is wrong, my colleagues. We should not do this.

We are starting down a trail that is unfair, and it is going to come back to haunt this institution, haunt both parties, and damage the lives of innocent men and women.

I urge my colleagues, find a way to move this judicial nominee, Miguel Estrada. He deserves better. He should be confirmed.

Some people say: Wait, if we don't stop him now, he may be on the Supreme Court. Well let's test him. Let's confirm him. Let's see how he does. We might be surprised. We might even be disappointed. I have been surprised at times. I voted for a couple of Supreme Court Justices and wished I could take the vote back because when they got there, they were not what I thought they were going to be. Men and women can do surprising things when they become Federal judges for life.

So I just felt a need to come down and recall some of the things that have happened, admit some of the mistakes, try to sober this institution up. This is a great institution that does pay attention to precedents. It does, sometimes, start in the wrong direction, but most of the time we pull ourselves back from the brink; we find a way to get it done. I hope and I certainly feel down deep we are going to find a way to not set this precedent and not defeat this qualified nominee with a filibuster.

I yield the floor.

Mr. KENNEDY. Mr. President, I want to make a brief response to the points made by our colleagues on the floor and in the press during the past week.

It is not true that majority rule is the only rule in our country. The purpose of the great checks and balances under the Constitution is to protect the country from the tyranny of the majority. As far as shutting off debate in the Senate is concerned, majority rule has not been the rule since 1806. Even in our presidential elections, majority rule is not the rule, or we would have a different President today.

There is nothing even arguably unconstitutional about the Senate Rule providing for unlimited debate unless and until 60 Senators vote to cut off debate. The same Constitution which gave the Senate the power of advice and consent gave the Senate the power to adopt its own rules for the exercise of all of its powers, including the rules for exercising our advice and consent power.

The Constitution does not say that judges shall be appointed by the President as he wishes. It says that they shall be appointed by the President with the advice and consent of the Senate. We are not potted plants decorating one end of Pennsylvania Avenue. We play a very special role under the Constitution. The Founders gave us numerous powers to balance and moderate the powers of the President. They gave us longer terms than the President, and staggered our terms, so we would be less subject to the passions of the time. Clearly, we have the power and the responsibility to oppose the President when he refuses to provide us with the only documentation that can tell us what kind of person he has nominated for a lifetime appointment on the Nation's second highest court.

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of Executive Calendar No. 36, which the clerk will report.

NOMINATION OF JAY S. BYBEE, OF NEVADA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The assistant legislative clerk read the nomination of Jay S. Bybee, of Nevada, to be United States Circuit Judge for the Ninth Circuit.

The PRESIDING OFFICER. Under the previous order, there will now be 6 hours of debate equally divided in the usual form on the nomination.

The Senator from Nevada.

Mr. REID. Mr. President, Senator LEAHY, the manager of this side, requested that I speak now.

Mr. President, I am pleased that we will be moving forward on the nomination of Jay Bybee for U.S. Court of Appeals for the Ninth Circuit. This is an important job which Jay Bybee will have. It is the largest circuit as far as the number of judges that we have.

The chairman of the Judiciary Committee is here. I would be happy to yield to the chairman of the committee.

Mr. President, the Ninth Circuit is the largest circuit, with a full complement of 28 or 29 judges. It is a circuit that certainly is important to my State, the State of Nevada, and the entire western part of the United States. It is a controversial circuit. There have been efforts made in the past to change the makeup of the court and have States divided so we could create another circuit. No one can take away from the importance of this circuit. The State of California alone, with some 35 million people, is under the jurisdiction of the Ninth Circuit Court of Appeals.

The last time I had a conversation with a member of the Bybee family was on an airplane. Mrs. Bybee was on the plane. She is a lovely woman. Certainly Jay Bybee is a proud husband and father, as well he should be. I commented to Mrs. Bybee, Why does he have to write so much? He has written Law Review articles. He has written lots of articles on very controversial subjects. But the good thing about Jay Bybee is that he can explain why he wrote those articles. He is a person—while some may disagree with the conclusions that he reached in his large articles—who has the intellectual capacity to explain his reasoning. He has excellent legal qualifications, not only from an educational perspective but from an experience perspective.

He served as legal adviser during the first Bush administration. He has helped to teach a generation of new lawyers as a former professor at the University of Nevada, Las Vegas Boyd School of Law, and he has taught at other places. He is someone who will bring distinction to the Ninth Circuit.

He was favorably reported by the Senate Judiciary Committee on February 28. The swift pace of this nomination demonstrates how the process can work when both sides of the aisle work together, when the President works with Senators of the other party, and when the advise and consent clause of our Constitution is respected.

Senator JOHN ENSIGN and I work closely on all issues that affect Nevada, and on judges it is certainly no different. JOHN ENSIGN is a class act. The way he handles being in the majority is classic. We know the difference, both having served in the majority. It would be certainly easy for him just to submit a name and not run it past me. But, of course, he didn't. When he came up with the name Bybee, I said of course.

I have a lot of reasons for supporting people named Bybee. One reason is—I don't know the lineage—because there are a lot of Bybees in Utah and Nevada. But when I was in college I fought for a man by the name of ''Spike'' Bybee. He was a police officer in Cedar City, UT. But he devoted long hours of his time training fighters. ''Spike'' moved to Las Vegas where he became a respected probation officer. But my fondest memories of ''Spike'' Bybee were during the time he spent with me taking me in Arizona, Utah, and Nevada as my manager. Anyway, just for no other reason than I traveled around the country with someone who helped me through some difficult times—a fine man. He died at a young age from a very bad disease. I have the name Bybee in my mind from some of the times in my youth.

I indicated Senator ENSIGN and I consulted on Mr. Bybee's nomination when Senator LEAHY chaired the Judiciary Committee for a short time. Mr. Bybee was reported out of the Judiciary Committee in compliance with the committee's rules when Senator HATCH was chairman.

The consultation and respect for the rules is why we are here today, moving forward to fill the Ninth Circuit seat held by Proctor Hug, Jr. since 1977.

I must say a few things about Proctor Hug. He is a fine man and a great athlete. He went to Sparks High School. He was an all-star athlete in football, track, and basketball. He ran track in college, was State debate champion. He was student body president at Sparks High School. He met his

future wife, Barbara Van Meter, at Sparks High School. He became student body president at the University of Nevada.

He served his country honorably in the Navy and then went to one of the most prestigious law schools in the entire country, Stanford Law.

He was appointed by President Carter and became Chief Judge of the Ninth Circuit in 1996. He was a good ''Chief,'' as the other judges called him. He came back here a lot of times lobbying as a judge for issues important to the Ninth Circuit and the Federal judiciary.

Judge Proctor Hug set a fine example of what it means not only to be a judge but to serve your community and your country.

To show what great judgment Proctor Hug has, two of my sons were his law clerks, and one was his administrative assistant when he was chief judge. He signed up with Judge Hug for 2 years. He was a fine administrative assistant.

I expect Jay Bybee will follow in the evenhanded and impartial path set by his predecessor, Judge Proctor Hug.

The point is that where there is consultation, the nominating process works well. When consultation was the rule, where blue slips were issued and made public, the body swiftly confirmed 100 judges, as my friends know.

Talking about the 100 judges, when we were in control of the Senate—even over here in the minority, 11 judges by the end of today will have been approved for the circuit court, the trial court, and the Court of International Trade. In the last 24 hours we will have approved five judges—a circuit court judge, two trial court judges yesterday, and two today. We are moving along quite well.

I am not going to get into we did this and they did that. The fact is whoever did what, we are still filling a lot of judicial vacancies around the country.

I think it is important that we proceed to recognize we have a problem with Mr. Estrada. I know my dear friend, the junior Senator from Mississippi, the majority and minority leader during my time here in the Senate, recognizes that if he is going to get Estrada done, something different has to be done than what we have been doing.

I read in today's New York Times where the junior Senator from Mississippi said—I am paraphrasing, but he basically says: If we—talking about the Republicans—want to get Estrada done, then we are going to have to do something different. And, obviously, what we want done is to have supplied the records when he was in the Solicitor's Office and reconvene the committee and have the hearing.

Now, there are people who may vote for Estrada, if we could get through that process—Democrats. I think there would be a number of them. But until we get that information, and find out if something is being hidden—maybe there has been a perusal of all those documents, and maybe they can't be given to us. Maybe they can't be given to us because he has said things there. Maybe, as Paul Bender said, he is such an ideologue, and maybe he has written about all those things Paul Bender said when he was in the Solicitor General's Office. I don't know. But I would suggest that would be the best way to get over this hump.

The fact is, though, today we should not be dwelling on what we have not been able to do, but we should be talking about what we have done.

Today, we are going to confirm a circuit court judge. We are going to make a man—Uay Bybee—so happy; he was, on more than one occasion during his short tenure at the University of Nevada, Las Vegas—a new law school just accredited—selected as the No. 1 professor, the best professor, at that law school. He was not selected by the other professors. He was selected by the students.

Jay Bybee has a great personality. He has an in-depth knowledge of the law. He comes with a background from a wonderful family. I am so glad we are able today to confirm this man for a lifetime appointment to the Federal judiciary.

We keep talking about the DC Court of Appeals being right under the Supreme Court. So is the Ninth Circuit. It is the highest court you can serve on except for the Supreme Court.

Jay Bybee will serve with distinction and honor, and not only represent the State of Nevada well, and the students he taught at Louisiana and UNLV, but he will also represent the whole country, being a credit to the bar and to the judiciary.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, I yield such time as he needs to the distinguished junior Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I thank the senior Senator from Nevada, my colleague, Mr. REID, for all of the work he has done in helping us shepherd the nomination of Jay Bybee through this nomination process for the Ninth Circuit Court of Appeals. Without his help, with the way things are around here, we know this would not be happening today. That would be a shame because Jay Bybee is incredibly qualified. Everybody who has ever been associated with him understands that.

Mr. President, I rise today to speak to my colleagues about a man of the highest legal distinction, Mr. Jay Bybee. Mr. Bybee's experience and background, and his unquestioned dedication to the fair application of the law, make him an ideal nominee for the Ninth Circuit Court of Appeals.

As many of you know, Mr. Bybee appeared before this body in 2001 as a nominee to serve as Assistant Attorney General in the Office of Legal Counsel at the Department of Justice. He was confirmed unanimously by the Senate on October 23, 2001.

As head of the Office of Legal Counsel, Jay assists the Attorney General in his role as legal advisor to the President and all the executive branch agencies. The Office is also responsible for providing legal advice to the executive branch on all constitutional questions and reviewing pending legislation for constitutionality.

Though a native of the chairman's home State of Utah, Nevada is proud to claim Jay as one of its own. Before his confirmation in the Senate in 2001, Mr. Bybee joined the founding faculty and served as a Professor of Law at the William Boyd School of Law at the University of Nevada, Las Vegas. Mr. Bybee's scholarly interests have focused in the areas of constitutional and administrative law. His dedication to ensuring that young law students learn the highest standards of legal practice resulted in his being named the Professor of the Year in 2000.

Mr. Bybee is known throughout the legal community as one of the foremost constitutional law scholars in the United States. He is regarded as extremely fair minded and adheres to the highest ethical and professional standards. He is admired throughout the legal profession as both a leader and a gentleman. Most importantly, Jay understands the rule of law, and will consistently and carefully consider the arguments on both sides of a legal question with an open mind. Because of Jay's combination of his legal skills along with his commitment to fairness, I have no doubts that he will serve in the best traditions of the federal judiciary.

If confirmed, Mr. Bybee's service will be an invaluable asset to the Ninth Circuit Court of Appeals. As you are aware, the Ninth Circuit is facing an overwhelming caseload, and the seat that Mr. Bybee has been nominated is designated as a ''judicial emergency'' by the Judiciary Conference of the United States.

Caseloads in the entire federal court system, including in the Ninth Circuit, continue to grow dramatically. Filings in the federal appeals court reached an all time high again last year. The Chief Justice recently warned that the alarming number of vacancies, combined with the rising number of caseloads, threatens the proper functioning of the federal courts. The American Bar Association has called the situation an ''emergency.''

There are currently four vacancies in the 28-judge court of the Ninth Circuit Court of Appeals, with one more vacancy already announced effective in November 2003. The Judicial Conference has asked for two new permanent and three temporary seats on the Ninth Circuit, just to cope with the caseload. That brings the total to 33 judges that are needed just to handle the caseload on the Ninth Circuit. Today there are only 24 judges doing the job of 33. This situation has to change.

That is why it is extremely important that the Senate approve the nomination of Jay Bybee today, and that the Senate continue to consider each one of the President's judicial nominations as quickly as possible.

I would like to thank the chairman and the entire Judiciary Committee and their staff for their hard work in shepherding this nominee through the process. I urge my colleagues in the Senate to vote in support of Jay Bybee's appointment to the Ninth Circuit today.

Mr. President, I first met Jay Bybee a few years ago. I had previously heard some great things from people in the community of southern Nevada about this legal scholar out at the new UNLV Boyd School of Law. I wanted to sit down and meet with him, to talk to him, and just pick his brain about the Constitution.

I am a veterinarian by profession, so I am not a lawyer and did not attend law school as many of our colleagues have. I thought, the more I could learn from scholars such as Jay Bybee, the educated I would be and therefore the better Senator I would be.

We sat down for over an hour. I could have stayed there all day. He has a fascinating mind. He has incredible knowledge of the Constitution, of this nation's history and of case law.

When I first was elected to the Senate, because President Bush had been elected I knew it would come upon me to recommend judges for the State of Nevada. I didn't have many ties in the legal community, so I had to look to Nevadans on whom I could count on for advice. One of the people I went to was Jay Bybee. He helped me tremendously in the interview process.

I actually felt sorry for the people who were coming before us because of the difficulty and depth of the questions Jay Bybee would ask them. It was because of that experience, when this process came forward, that I sent his name to the White House.

When the White House began to consider Jay Bybee, they realized immediately what a talent he is. That is why the Attorney General's Office took him away from the Boyd School of Law, to the position he is now in, in the Attorney General's Office. He advises the Attorney General on constitutional matters. That is how much they think of his constitutional expertise.

At the Boyd School of Law, and in the legal community in Nevada, there is nobody more highly thought of as a constitutional expert than Jay Bybee—both liberals and conservatives. They understand his expertise and the way he looks at law. Literally, I have talked to students from the far left end of the political spectrum to the far right end of the political spectrum, and they all talk about him with glowing remarks. It is truly amazing. I think it tells a lot to his character and a lot to his intellect.

I think he has the right tools intellectually, the right temperament and the right character to serve on the 9th Circuit. He has all the qualifications we want for someone to be on the Ninth Circuit—and especially the Ninth Circuit, the most controversial circuit we have in the United States. As you know, this is the circuit that just ruled that the Pledge of Allegiance is unconstitutional, and this body voted unanimously to condemn that and say we do not agree with that interpretation.

The Ninth Circuit needs help. We need qualified judges to give that help. Jay Bybee is exactly the kind of person we need to the 9th Circuit. There are currently four vacancies on the Ninth Circuit, and soon to be a fifth. The Judicial Conference recently also requested two new permanent judges and three temporary judges. They have a huge crisis on the Ninth Circuit because there are so many backlogged cases. It has been said on this floor: Justice delayed is justice denied. That is what is happening in the Ninth Circuit.

So it is important to approve Jay Bybee's nomination today, and to begin our work to appoint other judges to fill those vacancies I mentioned. It is my hope that we can get the new judgeships approved through this body so the Ninth Circuit can catch up on their caseload.

So enthusiastically, Mr. President, I recommend that we vote to confirm this outstanding nominee, Jay Bybee. He is a great family man. He will make a great judge. And he will be there for a long time, God willing, having a positive influence on the Ninth Circuit.

With that, I once again thank the senior Senator from Nevada. I also thank the chairman of the Judiciary Committee for his work in getting Jay Bybee's nomination to the floor. We appreciate all the indulgences. I know the Chairman has to constantly answer to each individual Senator, and we can be kind of a pain sometimes, but we sure appreciate the work done in getting Jay Bybee's nomination to this day when we can finally get him confirmed.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I thank my two colleagues from Nevada. You very seldom see two colleagues from different parties working so well together. They are both excellent people.

We all respect Senator REID. He is one of the moderate voices around here who tries to get things to work. And I personally appreciate it. And the distinguished junior Senator from Nevada, Mr. ENSIGN—I have not seen a better Senator in years. He is certainly making a difference on our side. And I believe, working with his colleague on the other side, he is getting a lot of things done for Nevada and for the Intermountain West, and it is terrific. So I pay tribute to both of them.

I am pleased we are considering the nomination of Jay S. Bybee who has been nominated by President Bush to serve on the United States Court of Appeals for the Ninth Circuit. Professor Bybee has a sterling resume and a record of distinguished public service. I know him personally. I am a personal friend. I know his quality. I know what a good thinker he is. I know what a great teacher he has been. I know what a great job he has done down at Justice. He is a person everybody ought to support because he is a truly wonderful, upright, good, hard-working, intelligent individual.

Professor Bybee is currently on leave from the University of Nevada at Las Vegas William S. Boyd School of Law, where he has served as a professor since the law school's founding in 1999. Since October 2001, he has served as Assistant Attorney General for the Department of Justice Office of Legal Counsel. Notably, this is a post formerly held by two current Supreme Court Justices. As head of the Office of Legal Counsel, Professor Bybee assists the Attorney General in his function as legal advisor to the President and all executive branch agencies. The office also is responsible for providing legal advice to the executive branch on all constitutional questions and reviewing pending legislation for constitutionality.

Professor Bybee, a California native, attended Brigham Young University, where he earned a bachelor's degree in economics, magna cum laude, and a law degree, cum laude. While in law school, he was a member of the BYU Law Review.

Following graduation, Professor Bybee served as a law clerk to Judge Donald Russell of the Fourth Circuit Court of Appeals before joining the firm of Sidley & Austin—one of the great law firms. In 1984, he accepted a position with the Department of Justice, first joining the Office of Legal Policy, and then working with the Appellate Staff of the Civil Division. In that capacity, Professor Bybee prepared briefs and presented oral arguments in the U.S. Courts of Appeals. From 1989 to 1991, Professor Bybee served as Associate Counsel to President George H.W. Bush.

Profeesor Bybee is a leading scholar in the areas of constitutional and administrative law. Before he joined the law faculty at UNLV, he established his scholarly credentials at the Paul M. Hebert Law Center at Louisiana State University, where he taught from 1991 to 1998. His colleagues have described Professor Bybee as a first-rate teacher, a careful and balanced scholar, and a hardworking and open-minded individual with the type of broad legal experience the Federal bench needs.

Professor Bybee comes highly recommended. One of his supporters is Mr. William Marshall, a professor of law at the University of North Carolina. Mr. Marshall served in a number of high-level posts in the Clinton administration including a stint as Deputy White House Counsel and, notably, as a counsel in the Office of Legal Policy at the

Department of Justice, where he participated in the judicial selection process by screening prospective Clinton administrative nominees. In his letter to the committee supporting Professor Bybee, Mr. Marshall said:

The combination of his analytic skills along with his personal commitment to fairness and dispassion lead me to conclude that he will serve in the best traditions of the Federal judiciary. He understands the rule of law and he will follow it completely.

Stuart Green, a law professor at Louisiana State University who describes himself as a ''liberal Democrat and active member of the ACLU,'' said:

I have always found [Jay Bybee] to be an extremely fair-minded and thoughtful person. Indeed, Jay truly has what can best be described as a 'judicious' temperament, and I would fully expect him to be a force for reasonableness and conciliation on a court that has been known for its fractiousness.

This self-described liberal Democrat states that Professor Bybee will bring some balance to the Ninth Circuit. I remind my colleagues that in this court 14 of the 24 active judges, including 14 of the last 15 confirmed, were appointed by President Clinton.

This court was recently in the news with yet another controversial decision. We are all familiar with the Ninth Circuit's recent ruling which held the Pledge of Allegiance to the Flag as unconstitutional under the Establishment Clause because the Pledge contains the phrase ''under God.''

The Ninth Circuit's high reversal rate by the Supreme Court is well documented, but less well known is the Ninth Circuit's propensity for reversing death sentences, with some judges voting to do so almost as a matter of course. No doubt the Ninth Circuit has some of the nation's most intelligent judges, but some cannot seem to follow the law. Just this term, the U.S. Supreme Court summarily reversed the Ninth Circuit three times in one day and vacated an opinion 9–0.

With two judicial emergencies in the Ninth Circuit, Professor Bybee is the type of judge we need. He is committed to applying and upholding the law. He will be a terrific judge. That circuit represents over 9 million people, the largest in the country. It has the most judges on a circuit court of appeals in the Nation. They need him.

Additional letters in support of Professor Bybee illustrate his professional competence and personal characteristics which will serve him well on the bench. Colleagues at UNLV deserve Professor Bybee as ''widely and properly regarded as a leading constitutional law expert, and his expertise extends to many other areas of law as well. . . . Bybee is highly intelligent, industrious, diligent, and responsible. He has outstanding judgment and is a rock of stability. . . . Perhaps above all, he respects and works effectively with persons of diverse perspectives, temperaments, and ideology.''

Another colleague of Professor Bybee wrote, ''I should note that my personal politics are quite different from Bybee's, but Jay's tremendous intelligence, work ethic and, above all, his integrity and desire to complete each and every task not only to the best of his ability, but also to do the right thing with it, convinces me that I would rather have him be a federal judge than many or most who share more closely my own politics.''

The committee has received similar letters in support of Professor Bybee from law professors and administrators throughout the nation, including the Dean of The George Washington University Law School.

I ask unanimous consent that these supporting Professor Bybee's nomination be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is ordered.

(See exhibit 1).

Mr. HATCH. The legal bar's wide regard for Professor Bybee is reflected in his evaluation by the American Bar Association. Based on his professional qualifications, integrity, professional competence, and judicial temperament, the ABA has bestowed upon Professor Bybee a rating of Well Qualified.

This Senate has previously found Professor Bybee worthy of confirmation for a position of high responsibility in the government, and I am confident it will do so again today.

Professor Bybee is providing the Nation with exceptional service in his current position as Assistant Attorney General in charge of the Office of Legal Counsel. This office assists the Attorney General in his function as legal advisor to the President and all the executive branch agencies.

The office drafts legal opinions of the Attorney General and also provides its own written opinions and oral advice in response to requests from the Counsel to the President, the various agencies of the executive branch, and offices within the department. Such requests typically deal with legal issues of particular complexity and importance or issues about which two or more agencies are in disagreement.

The office also is responsible for providing legal advice to the executive branch on all constitutional questions and reviewing pending legislation for constitutionality. All executive orders and proclamations proposed to be issued by the President are reviewed by the Office of Legal Counsel for form and legality, as are various other matters that require the President's formal approval.

In addition to serving as, in effect, outside counsel for the other agencies of the executive branch, the Office of Legal Counsel also functions as general counsel for the Department itself. It reviews all proposed orders of the Attorney General and all regulations requiring the Attorney General's approval. It also performs a variety of special assignments referred by the Attorney General or the Deputy Attorney General. In this position, Professor Bybee has performed in an outstanding manner. He has rendered great service to our Nation, he has earned bipartisan respect and support, and is fully prepared to be a Federal circuit court of appeals judge.

(Ms. MURKOWSKI assumed the chair.)

Mr. HATCH. Madam President, I am confident that as the Senate confirms Professor Bybee, Democrats and Republicans can all share in the pride of a job well done. This Senate will have properly exercised its proper constitutional role of advice and consent. I urge my colleagues to support this nomination.

I yield the floor.

EXHIBIT 1

UNIVERSITY OF NORTH CAROLINA
SCHOOL OF LAW,
Chapel Hill, NC, January 27, 2003.

Re: Jay Bybee.

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

DEAR CHAIRMAN HATCH: I am writing this on behalf of the nomination of Jay Bybee to the Ninth Circuit Court of Appeals.

First let me introduce myself. I am currently the Kenan Professor of Law at the University of North Carolina School of Law and have taught law for almost 20 years. I also worked in the Clinton Administration as the Deputy Counsel to the President under Beth Nolan and previously as an Associate Counsel to the President under Charles Ruff. In addition, I served under Assistant Attorney General Eldie Acheson in the Justice Department during the spring and summer of 1993 during which my task was to begin the processes of judicial selection for Clinton Administration appointments. I am therefore well familiar with the judicial selection process.

I have come to know Jay Bybee in my work as a law professor both through his writings and through the interactions we have had at numerous legal conferences and academic events. He is an extremely impressive person. To begin with, he is a remarkable scholar. His ideas are creative, insightful, and stimulating and his analysis is careful and precise. I believe him to be one of the most learned and respected constitutional law experts in the country.

He is also an individual with exceptional personal qualities. I have always been struck by the balance that he brings to his legal analysis and the sense of respect and deference that he applies to everybody he encounters—including those who may disagree with him. He is someone who truly hears and considers opposing positions. Most importantly he is a person who adheres to the highest of ethical standards. I respect his integrity and trust his judgement.

Needless to say, I believe that Jay Bybee's professional and personal skills make him an outstanding candidate for a federal judgeship. The combination of his analytic skills along with his personal commitment to fairness and dispassion lead me to conclude that he will serve in the best traditions of the federal judiciary. He understands the rule of law and he will follow it completely. He is an exceptional candidate for the Ninth Circuit and I support his nomination without reservation.

I hope these comments are helpful to you. Please feel free to contact me if you have any further questions.

Sincerely,

WILLIAM P. MARSHALL,
Kenan Professor of Law.

UNIVERSITY OF GLASGOW
SCHOOL OF LAW,
Glasgow, Scotland, January 13, 2003.

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

DEAR CHAIRMAN HATCH: I am delighted to have the opportunity to recommend to you my former colleague, Jay Bybee, who has been nominated to a seat on the U.S. Ninth Circuit Court of Appeals. I got to know Jay Bybee during the approximately four years we served together on the Louisiana State University law faculty, where I am a professor of law. (During the 2002–03 academic year, I am on sabbatical, serving as Fulbright Distinguished Scholar to the United Kingdom, in residence at the University of Glasgow.)

Jay is a person of high intelligence, genuine decency, and a strong work ethic. He was an always reliable and generous colleague, a popular and effective teacher, and a creative and insightful scholar. He must surely be regarded as one of the leading constitutional law thinkers in the United States, particularly with respect to questions of separation of powers and the religion clauses of the First Amendment. I have no doubt that he will quickly establish himself as a leading member of the Ninth Circuit Court of Appeals.

Jay and I differ on many issues of politics and law (unlike Jay, I am a liberal Democrat and active member of the ACLU). Yet I have always found him to be an extremely fair-minded and thoughtful person. Indeed, Jay truly has what can best be described as a ''judicious'' temperament, and I would fully expect him to be a force for reasonableness and conciliation on a court that has been known for its fractiousness.

In short, I am pleased to recommend Jay Bybee enthusiastically and without any reservation to be a judge of the U.S. Ninth Circuit Court of Appeals.

Sincerely,

STUART P. GREEN.

UNIVERSITY OF NEVADA LAS VEGAS,
WILLIAM S. BOYD SCHOOL OF LAW,
Las Vegas, NV, January 29, 2003.

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

DEAR CHAIRMAN HATCH: I enthusiastically support the nomination of Jay S. Bybee to the United States Court of Appeals for the Ninth Circuit, and I hope that you and your colleagues will confirm his nomination. Professor Bybee is an outstanding teacher, scholar, lawyer, public servant and human being. He will become a splendid judge, exactly the sort who ought to sit on the appellate courts of our country.

I have known Jay Bybee for about five years, since I began to recruit him for a position on the founding faculty of our new law school here at UNLV. We were very fortunate to recruit a faculty member of Jay's quality—he is a superb teacher, a very well-published scholar and a very productive and collegial faculty member—and he, in turn, helped us to hire other members of what has become an excellent faculty. Moreover, in his years on our faculty, Professor Bybee helped us to build an excellent law school, teaching important courses, chairing key committees, producing excellent scholarship, speaking widely in our community, and serving as an example of an excellent public lawyer and scholar. We had hoped that he would return to our faculty at the conclusion of his service as Assistant Attorney General for the Office of Legal Counsel, but those hopes have now been superceded by the needs of our country, which has called him to the United States Court of Appeals.

Professor Bybee will answer that call excellently. He is very smart, very thorough and very knowledgeable about the demanding legal issues that confront our country and our courts. He is a creative thinker, but one whose creativity is appropriately tempered by rigorous legal analysis. More importantly, he is a compassionate and decent person who will approach his work in humane and very reasonable ways.

While those of us on the Boyd Law School faculty come from many backgrounds and hold a variety of views on important societal issues, I think that we all agree on at least three things: that Jay Bybee is a wonderful colleague who has earned our high esteem; that his departure from our faculty weakens our law school; and that his elevation to the federal judiciary will improve our courts and our country. President Bush has chosen well, and I hope that you will confirm his choice.

Please let me know if you would like further information or comment from me. Thank you for your service to our country.

Best regards.

Very truly yours,

RICHARD J. MORGAN,
Dean.

UNIVERSITY OF NEVADA LAS VEGAS,
WILLIAM S. BOYD SCHOOL OF LAW,
Las Vegas, NV, January 30, 2003.

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

DEAR MR. CHAIRMAN: I write to state my strong support for Jay S. Bybee, who was renominated on January 7 by President George W. Bush to be a judge of the United States Court of Appeals for the Ninth Circuit. I have known Bybee since 2001 when we both were members of the faculty of the William S. Boyd School of Law of the University of Nevada, Las Vegas.

I had the privilege of working directly and substantially with Bybee on Law School committees, in faculty meetings, and in a variety of informal contexts. I also have read much of his published work and have discussed him and his work with numerous other law professors, at the Boyd School of Law and other law schools, and with numerous of his students.

Based on these contacts and associations, I strongly commend Bybee to you. For three reasons, I am confident he would be an outstanding federal appellate judge. First, Bybee clearly has deep and extensive knowledge of the law. He is widely and properly regarded as a leading constitutional law expert, and his expertise extends to many other areas of law as well. By virtue of his private practice, government practice, and academic experience, he is well rounded and superbly knowledgeable in the law.

Second, Bybee's ability to commmunicate and teach are extraordinary. As a teacher, he is held in near legendary status here. His skill as a teacher established a standard that few other law professors can meet. The importance of federal appellate decisions lies not only in correct outcomes but also in the clarity and explanatory force of the opinions that justify the outcomes reached. Bybee's skill as a communicator and teacher will serve the nation well.

Third, Bybee's exemplary personal qualities will enhance his value as a judge. Bybee is highly intelligent, industrious, diligent, and responsible. He has oustanding judgment and is a rock of stability when seas become stormy. Perhaps above all, he respects and works effectively with persons of diverse perspectives, temperaments, and ideology. He is uniformly respected here by faculty, students, and administrators whose views span the political spectrum.

In sum, I have every confidence that Bybee will be an outstanding federal judge. He will contribute positively to the sound application and development of the law and to the wise administration of it. He is exceptionally able and well qualified. I hope that your Committee will act rapidly and positively on his nomination. Please contact me if you have any questions. Thank you.

Sincerely,

STEVE JOHNSON,
E.L. Wiegand Professor of Law.

UNIVERSITY OF NEVADA LAS VEGAS,
WILLIAM S. BOYD SCHOOL OF LAW,
Las Vegas, NV, January 30, 2003.

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

DEAR MR. CHAIRMAN: I write to offer my strongest recommendation that the Senate confirm the nomination of Jay Bybee to be a judge on the Ninth Circuit Court of Appeals. I clerked for a Ninth Circuit Court of Appeals judge in 1979–1980, so I have a pretty strong idea of what is involved in holding this position. I have also known Mr. Bybee since 1987 and have tremendous confidence that he is a person of great legal knowledge and sound judgment. Without question he has the ability and motivation to give cases the careful attention and thought they deserve. I carefully reviewed Jay's legal scholarship when he taught law at Louisiana State University and recommended his promotion and tenure there. His scholarship is very strong and analytical, and it is clear that he brings a careful and thoughtful mind to bear in addressing legal problems.

Jay is also a person of great integrity, and we can be confident that he will represent the nation well in his professional and personal endeavors. In the years I have known Jay, I have felt great confidence that his word was his bond. This is among the reasons why, when in 1999 I reported to join the faculty here at Boyd School of Law at the University of Nevada, Las Vegas, I invited Jay to co-author with me a book on the Ninth and Tenth Amendments—a work we are still working to complete. Jay's interests in legal scholarship reflect the range of interests he has, and he would bring to this position an awareness of the importance of structural issues relating to government powers as well as the fundamental importance of individual rights. Whether I was a member of the executive branch or the legislative branch of government, I would feel greatly reassured in knowing the important issues relating the scope of governmental powers would be addressed by one with Jay's background, expertise, and judgment.

If I could be of any further assistance to the committee or the Senate in deciding whether to confirm the nomination of Mr. Bybee, I would be happy to do so. I have total confidence that he would be a thoughtful, perhaps even brilliant judge.

Sincerely,

THOMAS B. MCAFFEE,
Professor of Law.

THE GEORGE WASHINGTON
UNIVERSITY LAW SCHOOL,
Washington, DC, January 30, 2003.

Re Nomination of the Honorable Jay S. Bybee to the U.S. Court of Appeals for the 9th Circuit.

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

DEAR CHAIRMAN HATCH: I write in support of the nomination of the Honorable Jay S.

Bybee to the United States Court of Appeals for the 9th Circuit. I have known Jay in both his professional and governmental capacities and I have little doubt he will be a superb judge.

In the first place, Jay is, simply put, very smart, a highly useful attribute for a judge, in my opinion. He graduated with honors from both college and law school. But even more to the point, that legal work with which I am familiar is outstanding. He has a remarkable ability to digest an extraordinary amount of material and then, sorting the wheat from the chaff, produce a succinct, cogent analysis of the problem at hand. His law review articles are of the highest quality, thoroughly researched, impressively documented, carefully analyzed and gracefully written, His briefs exhibit a complete—and honest—explication of the relevant authorities and a thoughtful marshaling of the evidence in support of his position. They are all models of legal craftsmanship. He will undoubtedly apply these hightly honed analytical skills to the inescapably difficult problems federal judges face.

Jay also seems to understand well the amount of energy and efforts necessary to solve complex legal problems. He is a tireless worker producing impressive amounts of work at a very high level of quality. He will bear up well under the extraordinary workload our federal judges face.

I am also impressed with the breadth of Jay's legal experience. He has worked for a year on a court. He has practiced in the private sector. He has worked at both a staff and political level in the government. And he has spent time as an academic, reflecting on the broader purposes of the law. He has been exposed to the operation of the law in almost every imaginable setting. All of this experience will undoubtedly inform his judicial deliberations in highly useful ways.

I have also always found Jay enormously balanced, and fair in both his professional judgments and his personal dealings. He has political views, to be sure, but he is no ideologue. I have even seen him change his mind, something incredibly rare in the academy. I think any petitioner will justifiably have great confidence that his pleas will receive a fair, just and sympathetic hearing.

I also think Jay has a happily well-developed sense of the majesty and dignity of the law. He is well attuned to the importance of the law in protecting our rights, redressing our grievances, and protecting us from the pressure of both our neighbors and, on occasions, the government. At the same time, I think he understands—and understands well—the limits of legal redress. The courts are not legislators and I do not think Jay would ever confuse the two. In short, I think he has a sophisticated and appropriate appreciation of the role of the judge and the courts in our political and legal system. Jay will prove a very good judge, someone we will all be proud to claim, whatever our personal view of the appropriate line between courts and legislators.

Finally, I would be remiss if I did not stress just how extraordinarily decent Jay is. Even on first meeting, it is clear he is a thoughtful, considerate, indeed, kind person. But much more importantly, my every contact has also convinced me he is a person of unshakable integrity. He is clear and entirely transparent about his core values. And they are absolutely the right ones. They revolve around family, community and country. They bespeak a fidelity to law as both a device to ensure that all have the opportunity to reach their fullest capacity, as well as a shield against man's least worthy impulses. He is honest, forthright and entirely respectful of the dignity of everyone he meets.

I have gone on at perhaps too much length, but I strongly support this nomination. Jay has all the professional and, more importantly, in my judgment, personal attributes of a great judge. I sincerely hope he will become one.

Thank you for allowing me to submit this letter in support of Jay.

With best regards.

Sincerely yours,

MICHAEL K. YOUNG,
Dean.

BOSTON COLLEGE
LAW SCHOOL,
Newton, MA, January 22, 2003.

Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: I am delighted that Jay Bybee has been nominated for the 9th Circuit. I have known Mr. Bybee for almost two decades. We both served in Washington in the 1980s, overlapping at the Justice Department in 1984. I have had frequent contact with Mr. Bybee since then, because we both have taught constitutional law, and written articles in many of the same areas. Mr. Bybee is, among legal academics, one of the best known and best respected writers on the subjects of federalism and separation of powers. I have been impressed with his calm and approachable demeanor, his ability to explain difficult legal concepts in understandable terms, and his fairness and open-mindedness in dealing with those who have intellectual disagreements with him.

Mr. Bybee has also had a wealth of significant legal experience since his graduation from law school twenty-three years ago. As a private lawyer he has acquired expertise in issues concerning transportation and communication. In the Civil Division of the Justice Department for five years he acquired a wealth of knowledge about the standard business of the agencies of government. He has handled with considerable skill more than three dozen appellate cases for the United States. He served on the White House staff for two years as associated counsel to the first President Bush. And I think he has done a terrific job of running the Office of Legal Counsel for the past few months. I think that he will be a splendid addition to the 9th Circuit.

Sincerely,

JOHN H. GARVEY,
Dean.

Mr. LEAHY. Mr. President, in spite of the intransigence of the White House and the overreaching of the Republican majority here in the Senate, I believe the Senate will, by the end of this week, have moved forward to confirm 111 of President Bush's judicial nominations since July 2001. That total would include 11 judges confirmed so far this year and of those 7 would be confirmed this week. Consideration of this controversial nomination of Jay S. Bybee to the United States Court of Appeals for the Ninth Circuit is the 18th circuit nomination considered for this President since July 2001. The 17 others were each confirmed, some like Judge Shedd and Judge D. Brooks Smith with significant opposition. Nonetheless, Democrats have moved forward almost twice as promptly on this President's circuit nominees as the Republican majority did on President Clinton's circuit nominees. The Republican majority averaged 7 circuit judge confirmations a year over the 6½ years it previously controlled this process. By contrast, the Democratic majority confirmed 17 circuit judges in 17 months for President Bush, in addition to 83 district court judges.

In terms of percentages, which is what Republicans love to cite, the percentage of circuit nominees of President Clinton confirmed under the Republican majority in the 107th Congress was 0; the percentage confirmed in the 106th Congress was 44 percent; the percentage confirmed in the 105th Congress was 66 percent; and the percentage confirmed in the 104th Congress was 55 percent. In fact, despite the percentage for a full Congress, in four of their six full years, they confirmed 33 percent or less of President Clinton's circuit court nominees. In less than a full Congress, after assuming the majority in the summer of 2001 and in spite of the 9/11 attacks and the anthrax attacks and all the disruptions and priorities in those 17 months, the Democratically-led Senate not only held hearings on 20 circuit nominees, the Judiciary Committee voted on 19 and the Senate confirmed 17 for a 53 percent confirmation rate of the President's controversial slate of circuit nominees.

Those considering these matters might contrast the progress in which Democrats are assisting with the start of the last Congress in which the Republican majority in the Senate was delaying consideration of President Clinton's judicial nominees. In 1999, the first hearing on a judicial nominee was not until mid-June. The Senate did not reach 11 confirmations until the end of July of that year whereas we will reach that benchmark this year before St. Patrick's Day. Accordingly, the facts show that Democratic Senators are being extraordinarily cooperative with a Senate majority and a White House that refuses to cooperate with us. We have made progress in spite of them.

Indeed, by close of business today, we will have reduced vacancies on the Federal courts to under 55, which includes the 20 judgeships Democrats newly authorized in the 21st Century Department of Justice Appropriations Authorization Act last year. That is an extremely low vacancy number based on recent history and well below the 67 vacancies that Senator HATCH termed ''full employment'' on the federal bench during the Clinton Administration.

Turning to the nomination now before the Senate, the nomination of Jay S. Bybee for a lifetime appointment to the Ninth Circuit Court of Appeals is a difficult one for me. It is made all the more difficult by the respect I have for the senior Senator from Nevada, who has supported this nomination.

I think that Senator BIDEN made a compelling case against this nomination in his statement to the Judiciary Committee. I know that we intended to and did establish a separate Violence Against Women Office at the Department of Justice and a Director subject

to Senate confirmation when we wrote the Department of Justice authorization legislation and enacted it last year. How Mr. Bybee could misinterpret that measure is beyond me.

Mr. Bybee appeared before the Judiciary Committee in 2001 when he was nominated to serve at the Department of Justice. During that confirmation hearing, Mr. Bybee promised the Judiciary Committee that as Assistant Attorney General, he would ''not trample civil rights in the pursuit of terrorism'' and that he would ''bring additional sensitivity to the rights of all Americans'' to his work at the Justice Department. Given the veil of secrecy imposed by the Administration, I have serious concerns about how the Department of Justice has been operating.

Unfortunately, Mr. Bybee's hearing for judicial office took place on a particularly busy morning when many Senators had other committee obligations and during the Secretary of State's address to the United Nations regarding Iraq. Many of us were unable to attend Mr. Bybee's hearing in person that day. At least five of us submitted detailed sets of written questions to ask about the Justice Department and some controversial views he has taken in his academic writings and speeches before the Federalist Society.

I have given a lot of thought to this nomination. I have concerns that Mr. Bybee was chosen to be another in a long line of circuit court nominees from this President who will prove to be an ideologically driven conservative activist if accorded lifetime tenure on the Court of Appeals.

However, Senator REID knows Mr. Bybee and supports his confirmation. Mr. Bybee is obviously conservative, but we've had a chance to review his articles and speeches and no one has called into question his ability and commitment to setting aside his views as a judge.

On the very day that Democrats cooperated in debating and voting on the Bybee nomination in Committee, our cooperation was rewarded by the Republican majority violating our rights. Republicans violated our longstanding Judiciary Committee rules and unilaterally declared the termination of debate on two other controversial circuit court nominations, John Roberts and Justice Deborah Cook that very morning.

Senator DASCHLE termed this unilateral action deeply troubling and a ''reckless exercise of raw power by a Chairman,'' and he is right. He observed that the work of this Senate has for over 200 years operated on the principle of civil debate, which includes protection of the minority. When a chairman can on his own whim choose to ignore our rules that protect the minority, not only is that protection lost, but so is an irreplaceable piece of our integrity and credibility.

The Democratic leader noted that faithful adherence to longstanding rules is especially important for the Senate and for its Judiciary Committee. He noted ''how ironic that in the Judiciary Committee, a Committee which passes judgment on those who will interpret the rule of law,'' that it acted in conscious disregard of the rules that were established to govern its proceedings. If this is what those who pontificate about ''strict construction'' mean by that term, it translates to winning by any means necessary. If this is how the judges of the judicial nominees act, how can we expect the nominees they support as ''strict constructionists'' to behave any better? Given this action in disrespect of the rights of the minority, how can we expect the Judiciary Committee to place individuals on the bench that respect the rule of law?

In my 29 years in the Senate and in my reading of Senate history, I cannot think of so clear a violation of Senators' rights.

As Chairman of the Agriculture Committee, as Chairman of the Subcommittee on Foreign Operations of the Appropriations Committee and as Chairman of the Judiciary Committee, I strove always to protect the rights of the minority. I did not always agree with what they were saying or doing, I did not always find it convenient, but I protected their rights. It was not always as efficient as I might have liked, but I protected their rights. That is basic to this democracy and fundamental to the Senate of the United States. Senators respect other Senators' rights and hear them out.

There is no question that the Senate majority is in charge and responsible for how we proceed. I understand that and always have—I wish Republicans had shared that view when I chaired the Judiciary Committee last year. But in the Senate, the majority's power is circumscribed by our rules and traditional practices. We protect and respect the rights of the minority in this democratic institution for the same reason we steadfastly adhere to the Bill of Rights.

I, too, am gravely concerned about this abuse of power and breach of our committee rules. When the Judiciary Committee cannot be counted upon to follow its own rules for handling important lifetime appointments to the Federal judiciary, everyone should be concerned. In violation of the rules that have governed that committee's proceedings since 1979, the chairman chose to ignore our longstanding committee rules and short-circuit committee consideration of the nominations of John Roberts and Justice Deborah Cook. Senator DASCHLE spoke to that matter that day. Judiciary Committee members, Senator FEINSTEIN, Senator SCHUMER, Senator DURBIN and Senator FEINGOLD have also spoken to the Senate about this breach of our rules, as well as a number of other liberties that Republicans have been taking with the rules.

Since 1979, the Judiciary Committee has had this particular committee rule to bring debate on a matter to a close while protecting the rights of the minority. It may have been my first meeting as a Senator on the Judiciary Committee in 1979 that Chairman KENNEDY, Senator THURMOND, Senator Dole, Senator COCHRAN and others discussed adding this rule to those of the Judiciary Committee. Senator Thurmond, Senator HATCH and the Republican minority at that time took a position against adding the rule and argued in favor of any individual Senator having a right to unlimited debate—so that even one Senator could filibuster a matter. Senator HATCH said that he would be ''personally upset'' if unlimited debate were not allowed.

Senator HATCH explained:

> There are not a lot of rights that each individual Senator has, but at least two of them are that he can present any amendments which he wants and receive a vote on it and number two, he can talk as long as he wants to as long as he can stand, as long as he feels strongly about an issue. I think those rights are far superior to the right of this Committee to rubber stamp legislation out on the floor.

It was Senator Dole who drew upon his Finance Committee experience to suggest in 1979 that the Committee rule be that ''at least you could require the vote of one minority member to terminate debate.'' Senator COCHRAN likewise supported having a ''requirement that there be an extraordinary majority to shut off debate in our Committee.''

The Judiciary Committee proceeded to refine its consideration of what became Rule IV, which was adopted in 1979 and has been maintained ever since. It struck the balance that Republicans had suggested of at least having the agreement of one member of the minority before allowing the Chairman to cut off debate.

That protection for the minority has been maintained by the Judiciary Committee for the last 24 years under five different chairmen—Chairman KENNEDY, Chairman Thurmond, Chairman BIDEN, under Chairman HATCH previously and during my tenure as chairman.

Rule IV of the Judiciary Committee provides the minority with a right not to have debate terminated and not to be forced to a vote without at least one member of the minority agreeing. That rule and practice had until last month always been observed by the committee, even as we have dealt with the most contentious social issues and nominations that come before the Senate.

Until last month, Democratic and Republican chairmen had always acted to protect the rights of the Senate minority. The rule has been the committee's equivalent to the Senate's cloture rule in Rule 22. It had been honored by all five Democratic and Republican chairman, including Senator HATCH—until last month.

It was rarely utilized but Rule IV set the ground rules and the backdrop against which rank partisanship was

required to give way, in the best tradition of the Senate, to a measure of bipartisanship in order to make progress. That is the other important function of the rule.

Besides protecting minority rights, it enforced a certain level of cooperation between the majority and minority in order to get anything accomplished. That, too, has been lost as the level of partisanship on the Judiciary Committee and within the Senate reached a new level when Republicans chose to override our governing rules of conduct and proceed as if the Senate Judiciary Committee were a minor committee of the House of Representatives.

The premature and unilateral termination of debate in committee last month was apparently a premeditated act. Senator HATCH indicated that he had checked with the parliamentarians in advance, and he apparently concluded that he had the raw power to ignore our committee rule and so long as all Republicans on the committee stuck with him, he would do so. I understand that the parliamentarians advised Senator HATCH that there is no enforcement mechanism for a violation of committee rules and that the parliamentarians view Senate Committees as ''autonomous''. I do not believe that they advised Senator HATCH that he should violate our Committee rules or that they interpreted our Committee rules.

I cannot remember a time when then-Chairman KENNEDY or Chairman THURMOND or Chairman BIDEN would have even considered violating their responsibility to the Senate and to the committee and to our rules. Accordingly, we have never been faced with a need for an ''enforcement mechanism'' or penalty for violation of a fundamental committee rule.

In fact, on the only occasion I can recall when Senator HATCH was faced with implementing Committee Rule IV, he did so. In 1997, Democrats on the committee were seeking a Senate floor vote on President Clinton's nomination of Bill Lann Lee to be the Assistant Attorney General for Civil Rights at the Department of Justice.

Republicans were intent on killing the nomination in committee. The committee rule came into play when in response to an alternative proposal by Chairman HATCH, I outlined the tradition of our Committee. I said:

> This committee has rules, which we have followed assiduously in the past and I do not think we should change them now. The rules also say that 10 Senators, provided one of those 10 is from the minority, can vote to cut off debate. We are also required to have a quorum for a vote.

I intend to insist that the rules be followed. A vote that is done contrary to the rules is not a valid one.

Immediately after my comment, Chairman HATCH abandoned his earlier plan and said:

> I think that is a fair statement. Rule IV of the Judiciary Committee rules effectively establishes a committee filibuster right, as the distinguished Senator said.

With respect to the nomination in 1997, Chairman HATCH acknowledged:

> Absent the consent of a minority member of the Committee, a matter may not be brought to a vote. However, Rule IV also permits the chairman of the Committee to entertain a non-debatable motion to bring any matter to a vote.

The rule also provides as follows: ''The Chairman shall entertain a non-debatable motion to bring a matter before the Committee to a vote. If there is objection to bring the matter to a vote without further debate, a rollcall vote of the Committee shall be taken, and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with ten votes in the affirmative, one of which must be cast by the Minority.''

Thereafter, given the objection, the committee proceeded to a roll call vote whether to end the debate. That was consistent with our longstanding rule. In that case, Chairman HATCH followed the rules of the committee.

At the beginning of our executive business meeting on February 27, I referenced the Committee's rules and during the course of the debate on nominations both Senator KENNEDY and I sought to have the committee follow them. We were overridden.

Last month, the bipartisan tradition and respect for the rights of the minority ended when Chairman HATCH decided to override Rule IV rather than follow it. He did so expressly and intentionally, declaring: ''[Y]ou have no right to continue a filibuster in this committee.''

Chairman HATCH decided, unilaterally, to declare the debate over even though all members of the minority were prepared to continue the debate and it was, in fact, terminated prematurely. I had yet to speak to any of the circuit nominees on the agenda and other Democratic Senators had more to say.

Senator HATCH completely reversed his own position from the Bill Lann Lee nomination and took a step unprecedented in the history of the committee. Contrast the statements of Senator HATCH in 1979 when he supported unlimited debate for a single Senator—with Republicans in the minority—with his action overriding the rights of the Democratic minority and his recent letter to Senator DASCHLE in which, now that Republicans hold the Senate majority, he says that he ''does not believe the Committee filibuster should be allowed and [he] thinks it is a good and healthy thing for the Committee to have a rule that forces a vote.''

But our committee rule, while providing a mechanism for terminating debate and reaching a vote on a matter, does so while providing a minimum of protection for the minority. Even this minimum protection will no longer be respected by Chairman HATCH.

Contrast Senator HATCH's recognition in 1997 that Rule IV establishes a Judiciary Committee ''filibuster right'' and that a ''[a]bsent the consent of a minority member of the Committee, a matter may not be brought to a vote,'' with his declaration last month that there is no right to filibuster in committee.

In his recent letter to Senator DASCHLE, Senator HATCH declares that he ''does not believe that Committee filibusters should be allowed.'' It is Senator HATCH who has ''turned Rule 4 on its head'' last month, after 24 years of consistent interpretation and implementation by five chairmen. Never before his letter to Senator DASCHLE has anyone since the adoption of the rule in 1979 ever suggested that its purpose was to be narrowed and redirected to thwart ''an obstreperous Chairman who refuses to allow a vote on an item on the Agenda.'' After all, as Senator HATCH recognizes in his letter, it is the chairman's prerogative to set the agenda for the mark-up.

This revisionist reading of the rule is not justified by its adoption or its prior use and appears to be nothing other than an after-the-fact attempt to justify the obvious breaches of the longstanding Committee rule and practice that occurred last month. It was not even articulated contemporaneously at the business meeting.

I appreciate the frustrations that accompany chairing the Judiciary Committee. I know the record we achieved during my 17 months of chairing that committee, when we proceeded with hearings on more than 100 of President Bush's judicial nominees and scores of his executive nominees, including extremely controversial nominations, when we proceeded fairly and in accordance with our rules and committee traditions and practices to achieve almost twice as many confirmation for President Bush as the Republicans had allowed for President Clinton, and know how that record was mischaracterized by partisans. Those 100 favorably reported nominations included Michael McConnell, Dennis Shedd, D. Brooks Smith, John Rogers, Michael Melloy and many others.

I know that sometimes a chairman must make difficult decisions about what to include on an agenda and what not to include, what hearings to hold and when. In my time as chairman I tried to maintain the integrity of the committee process and to be bipartisan. I noticed hearings at the request of Republican Senators and allowed Republican Senators to chair hearings. I made sure the committee moved forward fairly on the President's nominees in spite of the Administration's unwillingness to work with us to fill judicial vacancies with consensus nominees and thereby fill those vacancies more quickly.

But I cannot remember a time when Chairman KENNEDY, Chairman THURMOND, Chairman BIDEN, Chairman HATCH previously, or I, ever overrode by fiat the right of the minority to debate a matter in accordance with our longstanding committee rules and practices.

The committee and the Senate have crossed a threshold of partisan overreaching that should never have been crossed. I urge the Republican leadership to recommit the nominations of Justice Deborah Cook and John Roberts to the Judiciary Committee so that they can be considered in accordance with the committee's rules. The action taken last month should be vitiated and order restored to the Senate and to the Judiciary Committee.

I urge the Republican leadership to rethink its missteps and urge the chairman and the committee to disavow the misinterpretation and violations of Rule IV that occurred last month.

We have also worked hard to report a number of important executive and judicial nominees in spite of the continued partisanship by the White House and Senate Republicans. As Senator FEINSTEIN recently noted, we have cooperated by not insisting on our rights to seven days notice or seven days holdover on various matters and we have not insisted on three days' notice of items on the agenda. We have proceeded to debate with less than a quorum present and Democrats have been responsible for making quorum after quorum so that this committee could conduct business. Ironically, we did so even last month while our rights were being violated. Order and comity need to be restored to the Judiciary Committee and to the Senate. An essential step in that process is the restoration of our rights under Rule IV and recognition of our rights thereunder.

There are continuing problems caused by the administration's refusal to work with Democratic Senators to select consensus judicial nominees who could be confirmed relatively quickly by the Senate. Despite the President's lack of cooperation, the Senate in the 17 months I chaired the Judiciary Committee was able to confirm 100 judges and vastly reduce the judicial vacancies that had built up and were prevented by the Republican Senate majority from being filled by President Clinton.

Last year alone the Democratic-led Senate confirmed 72 judicial nominees, more than in any of the prior six years of Republican control. Not once did the Republican-controlled committee consider that many of President Clinton's district and circuit court nominees, even though there were often more judicial nominees than that waiting for a hearing. In our efforts to turn the other cheek and treat this President's nominees better than his predecessor's had fared, we confirmed 100 judges in 17 months. Yet, not a single elected Republican has acknowledged this tremendous bipartisanship and fairness. When Chief Justice Rehnquist thanked the committee for confirming 100 judicial nominees, this was the first time our remarkable record had been acknowledged by anyone from a Republican background.

Almost all of the 100 judges we confirmed last Congress are conservative, quite conservative. And with some, the Senate has taken a significant risk that they will be activist judges with lifetime tenure. We nonetheless moved fairly and expeditiously on as many as we could. We cut the number of vacancies on the courts from 110 to 59, despite an additional 50 new vacancies that arose during my tenure. I recall that Senator HATCH took the position in September of 1997 that 103 vacancies, during the Clinton Administration, did not constitute a ''vacancy crisis.'' He also stated repeatedly that 67 vacancies meant ''full employment'' on the federal courts.

Even with the vacancies that have arisen since we adjourned last year, we remain below the ''full employment'' level that Senator HATCH used to draw for the federal courts with only 60 current vacancies on the District Courts and Courts of Appeals. Unfortunately, the President has not made nominations to almost two dozen of those seats, and on more than one-half of the current vacancies he has missed his self-imposed deadline of a nomination within 180 days. Of course, several of the nominations he has made are controversial.

Last Congress, we worked hard to keep a steady pace of hearings, even though so many of this President's judicial picks proved to be quite divisive and raised serious questions about their willingness to be fair to all parties. We held hearings for 90 percent of his nominees eligible for hearings, a total of 103 nominees, including 20 circuit court nominees. We voted on 102 of them, two of whom were defeated after fair hearings and lengthy debate. The President has taken this unprecedented action of re-nominating candidates voted down in committee in spite of the serious concerns expressed by fair-minded members of this committee.

This year the committee has had a rocky beginning with a hearing that has caused a great many problems that could have been avoided. The committee proceeded to a vote on the Estrada nomination and to a vote on the Sutton nomination and to votes on the Bybee and Tymkovich nominations—all controversial nominations to circuit courts.

The rushed processing of nominees in these past few weeks has led to editorial cartoons showing conveyor belts and assembly lines with Senators just rubber-stamping these important, lifetime appointments without sufficient inquiry or understanding. What we are ending up with is a pile-up of nominees at the end of this rapidly-moving conveyer belt. There is no way that we can meaningfully keep up with our constitutional duty to determine the fitness of these nominees at this pace. The quality of our work must suffer, and slippage in the quality of justice will necessarily follow. I hope we will do all we can to prevent more of these ''I Love Lucy'' moments.

All of the Democratic Senators who serve on the Judiciary Committee have asked the Chairman to reconvene the hearing with Justice Cook and Mr. Roberts because of the circumstances under which it was held and not satisfactorily completed. We have also taken the White House up on its offer to make the nominees available with a joint letter seeking an opportunity to make further inquiries of them. Regrettably, last Wednesday the White House withdrew its offer and now refuses to proceed. That change of position by the White House, on top of the inadequate hearing on these important nominations, has created another impasse and unnecessary complication.

That is why the minority, while prepared to debate and vote on the Bybee nomination to the 9th Circuit and nine other presidential nominations on February 27, wished to continue the debate on the Cook and Roberts nominations.

Let me be specific: On January 29, the Judiciary Committee met in an extraordinary session to consider six important nominees for lifetime appointments to the federal bench, including three controversial nominees to circuit courts: Jeffrey Sutton, Justice Deborah Cook and John Roberts. Several Senators only officially learned the names of the nominees on the agenda for that hearing at 4:45 p.m. on January 28, the day before.

On learning that the chairman intended to include three controversial circuit court nominees on one hearing, something virtually unprecedented in the history of the committee, and absolutely unprecedented in this chairman's tenure, Democrats on the committee wrote to the Chairman to protest. We explained that since 1985, when Chairman Thurmond and Ranking Member BIDEN signed an agreement about the pace of hearings and the number of controversial nominees per hearing, there has been a consensus on the committee that members ought to be given ample time to question nominees, and that controversial nominees in particular deserve more time.

We explained that we were surprised by the chairman's rush to consider these three nominees at the same time, considering the pace at which President Clinton's nominees were scheduled for hearings. During the time Republicans controlled the Senate and Bill Clinton was president, there was never a hearing held to consider three circuit court nominees at once. Never.

Finally, we explained the importance of giving Senators sufficient time to consider each nominee and properly exercise their constitutional duty to give advice and consent to the President's lifetime appointments to the federal bench.

But our request went unanswered, and we were expected to question three nominees in the space of a single day. That proved impossible, as was evident throughout that long day. My colleagues and I asked several rounds of questions of Mr. Sutton, and were only

able to ask very few questions of the other two nominees. We asked, during the hearing itself, that the chairman reconsider and ask the other two nominees to return the next day or the next week, and to give them the time they deserved in front of the committee, but he refused.

We asked the same thing after the hearing, and were told that indeed the nominees would make themselves available to meet with each of us, so we wrote to accept those offers, although as we explained, we would have preferred to meet with them altogether, and in a public session. But again, we were rebuffed. I wonder, though, if they were available for one sort of meeting, why were they not available for another. I regret that the White House refused our request to bring closure to those matters.

During the last 4 years of the Clinton administration, his entire second term in office after being reelected by the American people, the Judiciary Committee refused to hold hearings and committee votes on his qualified nominees to the D.C. Circuit and the Sixth Circuit. Last month, in sharp contrast, this committee was required to proceed on two controversial nominations to those circuit courts in contravention of the rules and practices of the committee. This can only be seen as part of a concerted and partisan effort to pack the courts and tilt them sharply out of balance.

I ask unanimous consent to print a letter in the RECORD.

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

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, February 24, 2002.

Hon. ALBERTO R. GONZALES,
Counsel to the President, The White House, Washington, DC.

DEAR JUDGE GONZALES: As you may know, Democratic Senators on the Judiciary Committee have been offered the opportunity to meet with Justice Deborah Cook and Mr. John Roberts in order to ask questions and discuss issues relevant to their nominations to lifetime appointments to United States Courts of Appeals. We are writing to let you know that some of us would like to accept those offers and meet with both of the nominees together before voting on their nominations.

We are available to meet as early as Wednesday, February 26, 2003, but are amenable to another mutually convenient time. For the purposes of review after the meeting, we will arrange for a stenographer to attend the meeting and record the exchanges with the nominees. We also anticipate that the meeting will be open to the public.

We hope that you and the Department of Justice will work with us to schedule this important meeting. Some of us believe the January 29, 2003, Committee hearing did not provide an adequate opportunity to ask the questions necessary for Senators to effectively carry out their Constitutional duty to advise and consent to judicial nominees. Written questions are not a satisfactory substitute for direct exchanges between Senators and the nominees.

Thank you for your assistance, and we look forward to the meeting we have requested.

Sincerely,

Patrick J. Leahy; Edward M. Kennedy; Joseph R. Biden, Jr.; Dianne Feinstein; Charles E. Schumer; John Edwards; Herbert Kohl; Russell D. Feingold; Richard J. Durbin.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

(The remarks of Mr. BINGAMAN are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Madam President, I am here in the Chamber this afternoon to speak to the nomination of Jay Bybee of Nevada to the Ninth Circuit Court.

I call it the Ninth Circuit Court of Western States. I know the State of the Presiding Officer is part of the Ninth Circuit, as is my State of Idaho. It is a circuit that has caused us great frustration over the last good number of years as many of its cases have been overturned. In fact, just this term, the Supreme Court in one day overturned three cases or reversed three cases of the Ninth Circuit.

Some call it the most dysfunctional court of the land. I believe it to be that. Idahoans are extremely frustrated when a San Francisco-oriented judge makes a decision on an Idaho resource matter that is so totally out of context with our State and the character of our State and her people that Idahoans grow angry. That is why it is not unusual that I and others over the years have offered legislation to divide the Ninth Circuit. That has been spoken to on more than one occasion in this Chamber, and it will be again this year.

I and my colleagues from Idaho are supportive of that kind of legislation, and it is that kind of legislation the Presiding Officer has just introduced: to change the character of this court to be more reflective of the broad scope of its authority than just to have, if you will, California judges making decisions for Idaho, Washington, Oregon, Alaska, and other States.

It is the largest court in the land, and it is a court that clearly needs our attention. It begs for our attention. The outcry in my State and in other States, such as Alaska, demands it. But today we have an opportunity to improve it, and that is to confirm Jay S. Bybee to the U.S. Court of Appeals for the Ninth Circuit.

I am confident the Senate will consent to the appointment of Professor Bybee, who enjoys bipartisan support and, in these current times as we debate judges in this Chamber, bipartisan support is in itself unique. That must speak to the uniqueness of this individual.

A review of Professor Bybee's credentials demonstrates he is, as the American Bar Association has concluded, a highly qualified person for this position. Professor Bybee's education, his private legal career, his work as a law professor, and his extensive Government service, have prepared him well to serve as a circuit judge. Let me briefly review his background.

Professor Bybee received a BA magna cum laude and with highest honors in economics from Brigham Young University. He also attended the J. Reuben Clark Law School at BYU, graduating cum laude. I also note he was an editor of the BYU Law Review. Those are high credentials from a very well-qualified, recognized law school.

Following his graduation from law school, Professor Bybee clerked for Judge Donald Russell of the U.S. Court of Appeals for the Fourth Circuit and then was engaged in private practice of law at the distinguished firm of Sidley & Austin. There he handled regulatory and antitrust matters, including civil litigation in Federal courts and administrative law matters before the Interstate Commerce Commission.

Professor Bybee began his career in public service first as an attorney in the U.S. Department of Justice, Office of Legal Policy, then as an attorney on the appellate staff at the Civil Division. During this period, he worked on a variety of departmental issues and judicial selections, was the principal author of the Government's briefs in more than 25 cases, and argued cases before a number of Federal circuits. Professor Bybee also served as an associate counsel, as the chairman of the Judiciary Committee, Senator HATCH, mentioned, to George H. W. Bush.

Professor Bybee has had an excellent career as a law professor, beginning at the Paul M. Hebert Law Center at Louisiana State University. He is a founding faculty member at the University of Nevada, Las Vegas William S. Boyd School of Law. As an accomplished scholar in the areas of administrative and constitutional law, Professor Bybee has taught courses in civil procedure, constitutional law, administrative law, and seminars on religious liberty and the separation of powers.

My colleague from Nevada was talking about his phenomenal knowledge of the Constitution and its authority and responsibility and our responsibility to it as we craft law.

He has a distinguished record in publications in a phenomenal variety of legal areas.

Professor Bybee presently serves as an Assistant Attorney General, heading the Office of Legal Counsel at the U.S. Department of Justice. Supervising a staff of attorneys, Professor Bybee has the principal responsibility for providing legal advice to the Attorney General on constitutional, statutory, and regulatory questions. In addition, the office reviews orders to be issued by the President or the Attorney General for form and legality. The Office of Legal Counsel also advises the President and the executive branch

agencies on constitutional and statutory matters.

It is clear from his educational record, his private practice, his outstanding credentials as a law professor, and his distinguished career in public service that Professor Bybee is well qualified to serve on the Ninth Circuit and will be an outstanding judge. In fact, I am quite confident he will lift the quality of that court in its decisions substantially.

Professor Bybee comes highly recommended. As a result of that, clearly he brings distinguished service to an area that cries out for the need of astute minds.

As Senator HATCH mentioned, one of his supporters is William Marshall, Professor of Law at the University of North Carolina. I note that Professor Marshall worked in the Clinton administration as Deputy Counsel to the President and in the Justice Department reviewing judicial nominees.

In Professor Marshall's letter in support of Professor Bybee, he writes:

He—

meaning Professor Bybee—

is an extremely impressive person. To begin with, he is a remarkable scholar. . . .

I think what I have said and the record I have spoken to clearly exemplifies that.

I believe him to be one of the most learned and respected constitutional law experts in the country. He is also an individual with exceptional personal qualities. I have always been struck by the balance that he brings to his legal analysis and the sense of respect and deference that he applies to everybody he encounters—including those who may disagree with him. He is someone who truly hears and considers opposing positions. Most importantly, he is a person who adheres to the highest of ethical standards. I respect his integrity and trust his judgment.

That is a quote from the letter of William Marshall, Professor of Law, University of North Carolina.

That endorsement rings loud in these Halls as it speaks well to the person who is before us today. Other letters of support from law professors with whom he worked and associates throughout the Nation speak highly of Professor Bybee. They note his personal integrity, his professional ability, his clear and thoughtful scholarship, and his exemplary personal qualities. Even those who disagree with him politically are impressed with Professor Bybee and strongly support his nomination.

That is the record. The record is clear. I am pleased that we see the kind of bipartisan support that most judicial nominees who come to this floor deserve. I support his nomination. He brings integrity and quality of mind to decisionmaking and judgment to the Ninth Circuit Court, a court of which my State of Idaho is a part. I strongly endorse Professor Bybee.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I thank the distinguished Senator for his statement. I, too, will support Professor Bybee. I have no problem with doing that at all.

May I say that Professor Bybee can be proud that Senator LARRY CRAIG has spoken on his behalf. Senator CRAIG is one of the most articulate Senators not only at this time in this body, but having been in this body for more than 44 years now, I can say that I have seen a lot of articulate speakers but Senator CRAIG is one among the foremost of those. I would treasure his support of my nomination if I were indeed a nominee for any position.

Madam President, has the Pastore rule run its course for today?

The PRESIDING OFFICER. Yes, it has.

Mr. BYRD. Madam President, I believe the Senate is in executive session.

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I ask unanimous consent that I may speak as if in legislative session.

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

Mr. BYRD. Is there any limitation on time?

The PRESIDING OFFICER. No, there is not.

RECONSTRUCTION OF IRAQ

Mr. BYRD. I thank the Chair. I will speak perhaps, as I see it, 40 minutes or less, which is something worthy of commenting on in itself.

There is an axiom in military planning that countries tend to prepare to fight the last war, not the next one. Some historians blamed the incredible death toll of World War I on military commanders who failed to realize that the days of set-piece battles, as in the days of the American Revolution or the Napoleonic Wars, were over. Some have also pointed out that the countries that were overrun in the opening months of World War II were those that were best prepared to engage in trench warfare.

As our own Republic continues to ready for war in Iraq, there has been the alarming tendency to see this next war as a replay of our 1991 campaign to liberate Kuwait. Some have taken to calling the impending conflict ''gulf war II,'' as if we could win this conflict in 2003 by rewinding the tapes of smart bombs dropping on their targets in 1991. I fear that many have succumbed to an intellectual and moral laziness that views the coming war through the lens of our victory in 1991.

This next war in Iraq will not be like the last. Twelve years ago, there was a war in one act with an extensive list of players opposing an aggressive antagonist. Now, the curtain is about to rise on a war with the same lead character, Saddam Hussein, but only one great power opposing him, that great power being the one superpower in the world today, the United States. Many countries that played supporting roles in the last war look as though they will, this time, serve more as extras, seen only in the crowd scenes without supporting roles. Most ominously, we do not know how long this costly drama might last. It may last a month. It may last 2 months. It may last a week. It may last 2 days. Who knows? I do not know. But this conflict will be played out in many acts.

As in the last war, the coming battles will draw heavily on U.S. air power, followed by the use of our ground troops to destroy the Iraqi army. That is where the similarities between 1991 and 2003 begin and end. The ultimate goal in the coming war is not to roll back an invasion of a small, oil-rich corner of desert that borders the Persian Gulf. This time, the goal is to conquer the despotic government of Saddam Hussein.

In the 1991 gulf war, our victory was followed by an orderly withdrawal of our troops, so that they may return to their hometowns to march in ticker-tape parades and be honored with twenty-one gun salutes to acknowledge a resounding American victory on the battlefield.

It may not be the same in 2003. Our forces do not have the straightforward task of pushing the Iraqi military out of Kuwait. The aim is to push Saddam and his associates from power. This could involve house-to-house fighting or laying siege to Baghdad and other urban centers, where seven out of ten Iraqis live. The United States will have to manage religious, ethnic, and tribal rifts that may seek to tear the country apart. According to a declassified CIA estimate, we must contend with the increasing chance that Saddam Hussein will use weapons of mass destruction against our troops as they march toward Baghdad.

After all of this, more work awaits. A U.S. invasion of Iraq with only token support from other countries will leave us with the burden of occupying and rebuilding Iraq. The United States will find itself thrust into the position of undertaking the most radical and ambitious reconstruction of a country since the occupation of Germany and Japan after World War II.

The likely first step in a post-war occupation would be to establish security. No rebuilding mission could possibly occur if the Iraqi army still has fight left in it or if Iraq's cities are in chaos. Establishing security could well prove to be more difficult than defeating Iraq's military. Saddam Hussein could go on the lam, forcing our military into a wild goose chase. Surely Iraq could not be considered secure if its evil dictator were to be on the loose.

Creating a secure environment in Iraq also means dealing with difficult situations. How will our military deal with hungry Iraqis taking to the street in mobs? What are we going to do about civilians exacting revenge on those who had oppressed them for so long? How will we prevent violence within and among Iraq's multitude of tribes, ethnic groups, and religions?

I am not convinced that, right now, the Administration has any idea of how

to deal with these scenarios, or the dozens of other contingencies that might arise while the United States serves as caretaker to a Middle Eastern country.

The United States will then be faced with the task of providing for the humanitarian needs of 23 million Iraqis, 60 percent of whom are fully dependent on international food aid. The United State will have to make sure that roads and bridges are rebuilt so that humanitarian assistance can get through to where it will be needed. That would be largely our responsibility. That would not be the case if we were being attacked, if the United States were being attacked by Iraq, if the United States were confronted with an imminent and direct threat from Iraq. If that were the case, then we would not be so morally responsible for cleaning up the mess, for reconstructing, for rebuilding that which we will have destroyed.

That is not the case. We will have to make sure that roads and bridges are rebuilt so humanitarian assistance can get through to where it will be needed. Electrical systems will have to be repaired. Who knows, some in this country may have to be repaired when that attack is launched. But we are talking about the morning after now, the postwar Iraq.

Electrical systems will have to be repaired so that doctors can operate in their hospitals. Water systems must be maintained to provide drinking water to the country as it enters the scorching summer months and to provide sanitation to prevent the spread of disease. Telephone systems will also be needed to communicate with the distant parts of a country that is the size of France, or a country that is seven times the size of West Virginia.

Protecting or rebuilding this critical infrastructure may become a huge task in itself, as Saddam Hussein is apparently planning a scorched earth defense of his regime. Such a scorched earth defense could involve setting oil fields ablaze. It could involve blowing up dams. It could involve the destruction of bridges over rivers, two of the oldest rivers in the world, the Euphrates and the Tigris, in a country that when I was in school many years ago was referred to as Mesopotamia, the land between the two great rivers. Such a strategy on the part of Saddam Hussein could involve sabotaging water supplies or destroying food sources. U.S. military officers are now reporting that Iraqi troops dressed as U.S. soldiers may seek to attack innocent Iraqi civilians in an effort to blame the West as being responsible for war atrocities.

If we are successful in deposing Saddam Hussein—and I don't have any doubt we will be successful in doing that; there is any number of scenarios by which Saddam may be deposed. He may be assassinated. Assassinations do occur, as we read today in the newspapers about an assassination. Saddam Hussein may turn tail and run. He may want to live and fight another day. He may decide to fight to the death. He may be willing to die himself while others die around him. Who knows. But there is no doubt in my mind that he will be deposed, one way or another.

But in any event if we are successful in deposing Saddam Hussein and limiting the loss of life among our troops and those of Iraqi civilians, the United States will have to reform the government of Iraq. According to an article that appeared in the Washington Post on February 21, the post-Saddam plan crafted by the administration calls for the U.S. military to take complete, unilateral control of Iraq after a war, followed by a transition to an interim administration by an American civilian. This interim administration would purge Iraq of Saddam Hussein's cronies and lay the groundwork for a representative government. General Barry McCaffrey, who commanded ground troops during the 1991 war, estimated in the article that the occupation would take 5 years.

Let us remember that Iraq once had a colonial government under the flag of Great Britain from 1920 to 1932. Iraqis revolted against British troops, leading one of the great men of the 20th century, one of the great men of all time, Winston Churchill to refer to the country as ''these thankless deserts.''

Have you ever been in a sandstorm in the deserts of the Middle East? It is quite an experience.

If the United States is to administer Iraq for a period of years, we will run the risk of being viewed as a new colonial power, no matter how pure our intentions. Those who may greet us as liberators in 2003 may increasingly view us as interlopers in 2004, 2005, 2006, and beyond.

The United States will also face the task of reforming Iraq's military. Fearful that a weak Iraq could fuel the ambitions of other regional powers, the Department of Defense is now considering how to take apart Iraq's million-man army and rebuild it into a smaller, more professional force. While details are still wrapped in secrecy, it appears that the United States will have a major hand in retraining and reequipping the post-Saddam Iraqi army. We are already trying to build an Afghan national army of perhaps 70,000 troops, but a new military for Iraq would have be several times that size. One thing is for sure, the arms industries must be salivating at the profits that could be made from building a new, modern Iraqi army from scratch.

These occupation and reconstruction missions are all difficult risks and difficult tasks. No wonder the ranking general in the British military, Gen. Sir Mike Jackson, said in an interview published in a London newspaper on February 23:

> In my view, the post-conflict situation will be more demanding and challenging than the conflict itself.

We had better hear that. We had better take note of that. Let's hear again what the British military general says. The British general, Sir Mike Jackson—here is what he said in an interview published in a London newspaper on February 23 of this year:

> In my view, the post-conflict situation will be more demanding and challenging than the conflict itself.

In other words, the war we may soon face in the Persian Gulf will be an entirely different campaign than was the war in 1991.

Congress and the American people, the people in the galleries that extend from sea to shining sea, from the Gulf of Mexico to the Canadian border, the people, the American people, those out there who are looking upon this Chamber through that electronic lens, those people, the people need to know how long we can expect to occupy postwar Iraq.

Last month, Under Secretary of State Marc Grossman estimated that a military occupation of Iraq would take 2 years. That estimate is hard to believe. Gen. Douglas MacArthur believed that the occupation of Japan after World War II would take no more than 3 years. It lasted 6 years and 8 months. The first U.S. military governor in Germany, Gen. Dwight Eisenhower, anticipated that the United States military would ''provide a garrison, not a government, except for a few weeks.'' Instead, the first phase of the occupation of Germany lasted 4 years.

These types of missions have their own momentum. We have had United States troops in Bosnia for 7 years and United States soldiers in Kosovo for 3½ years. Let us not forget that Gov. George Bush, as a Presidential candidate in 2000, said he would work to find an end to those peacekeeping missions. But the United States is now looking at a peacekeeping mission in Iraq that dwarfs our deployment to the Balkans in every respect.

I find it utterly confounding that a President so opposed to nation building would then launch into military scenarios that so clearly culminate in that very outcome. I have to wonder—I have to wonder if this President is simply so driven to act that he cannot see that action itself is not the goal. How far along was this administration in planning military action in Afghanistan before the question of what postwar Afghanistan would look like even came up? There seems to be at least some forethought about postwar Iraq, but how thoroughly has it been forethought? How thoroughly has it been thought about? How thoroughly has it been scrutinized?

The information given to Congress—that's that legislative branch up there, the people's representatives. Why, those people down in the White House view the legislative branch with contempt, with disdain. Why should they let those people up there know what they, the people on Mt. Olympus, are thinking? The information given to Congress and to the American people, who pay all of us in public office—we

are the hired hands. I am one of the hired hands. So is the President of the United States. He is just one of the hired hands. Then why should we view those people, who pay us, with such contempt that we don't think we ought to let them in on these secrets?

Oh, we don't have to tell them. We don't have to tell the people's elected representatives in Congress. We don't have to tell them. We'll let them know what we estimate the cost to be when we send up our bill, when we send up a supplemental appropriations bill.

Congress and the American people should also know how much it will cost to occupy Iraq. At least there must be some estimates that have been carefully wrought. The Army Chief of Staff, General Shinseki, is standing by his estimates, given to the Armed Services Committee, that ''several hundred thousand'' troops would be required to occupy Iraq. There is an Army Chief of Staff who doesn't back down. There is an Army Chief of Staff who doesn't break and run. He said this a few days ago. His estimate was disputed by the Defense Department. But General Shinseki didn't cower. He is standing by his estimate, given to the Armed Services Committee, that several hundred thousand troops would be required to occupy Iraq.

The Congressional Budget Office has provided estimates, based on an occupation force of 75,000 to 200,000 American troops, it would cost $1 billion to $4 billion—from $1 billion to $4 billion—per month.

I said that right. The cost of occupying Iraq has been estimated to be $1 billion to $4 billion per month. How much is that money to us peons? Under $4 billion. That is $1 to $4 for every minute since Jesus Christ was born. Perhaps that can give us hillbillies a little better feel of what we are talking about; $1 billion to $4 billion per month. That is $12 billion to $48 billion per year; $33 million to $130 million per day; $23,000 to $93,000 per minute. And these enormous amounts do not include the cost of rebuilding Iraq.

One estimate by the United Nations Development Program says that at least $30 billion will be needed for reconstruction in the first 3 years after a war. The actual cost, of course, could be much higher.

If the United States initiates war against Iraq in the coming days, maybe a week—I find it a little hard to think it will be 2 weeks, but it could be. If the United States initiates war against Iraq in the coming days, we will be hard pressed to share these staggering costs with our allies. We have foolishly engaged in a war of words with some of our most powerful European allies, countries which could have been valuable partners in rebuilding Iraq if war were proven to be inevitable.

Instead, it looks like the American taxpayer—you out there looking in this Chamber—the American taxpayer will be alone, all by himself, in shelling out billions of dollars for new foreign aid spending.

Some have suggested that Iraqi oil might take care of the post-war costs. According to the United Nations, if Iraq's oil production reached all-time highs, about $16 billion in revenue could be generated each year. Right now, Iraq's legitimate oil sales are supposed to buy food and medicine for the starving and ill. After a war, however, those funds could be subject to claims by Iraq's creditors, who are owed at least $60 billion in commercial and official debt. There is also the issue of $170 billion in unpaid reparations to Kuwait.

Mr. President, the big, black, endless pit we will find in Iraq after a war will not be filled with cheap oil for our gas-guzzling cars. The pit—that bottomless pit—that we will find in Iraq will have to be fed with enormous amounts of American dollars.—Courtesy of whom? Courtesy of Uncle Sam.

The irony of investing huge amounts of money to rebuild Iraq when we have urgent needs here at home has not been lost on late-night comedians. One talk-show host commented that if President Bush's plan to provide Iraqis with food, medicine, supplies, housing, and education proves to be a success, it could eventually be tried in the United States, too.

The comedians are on their toes. They are not overlooking any bets.

If the United States leads the charge to war in the Persian Gulf, we may be lucky and achieve a rapid victory. I hope we will be lucky. Perhaps the odds for being lucky are, I guess, 90 to 1. But we may not be lucky. But even if we are lucky, we will then have to face a second war—a war to win the peace in Iraq. That war will not be over in a day, or a week, or a month, or a year. That war will last several years, perhaps many years, and will surely cost hundreds of billions of dollars.

In the light of this enormous task, it would be a great mistake to expect that this will be a replay of the 1991 war. The stakes are much higher in this conflict.

Despite all of these risks and costs, it seems the administration continues to move our country closer and closer and closer to war. It seems we have already lost patience. We have already lost patience. We have stopped listening. This administration, this President, has stopped listening. The superhawks that surround him have stopped listening, if they ever were listening. It seems we have already lost patience for a regime of arms inspections that might take months to play out. But going to war will require our commitment to Iraq to last years—years.

The problems with Iraq are not going to be solved when 700 cruise missiles and 3,000 bombs land on that country in the opening days and the opening nights of war. Assuming victory—and I assume victory—we will be on the hook. You know what that means. We will be on the hook to rehabilitate Iraq. And I fear that the rebuilding of that ancient country with its ancient artifacts—a country that goes back to the mists of biblical years, of Abraham, and Issac, and Jacob, and Joseph—a country, a land of Ur, and a land between the two great rivers—after the rebuilding of that ancient country, there will have to be another act of U.S. unilateralism. There you are—another act of U.S. unilateralism for which the American people are ill prepared.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Madam President, I first pay tribute to my very distinguished colleague and senior Senator from West Virginia, whose eloquence on this subject has been magnificent in the last months and whose leadership in behalf of the wisdom of the Senate and the tradition of the Senate has been recognized by—I believe the Senator said over 20,000 telephone calls from fellow citizens came into his office in response to his outspoken courage.

The Senator said he noticed in last Sunday's New York Times a reprint of one of his famous speeches which he gave here just a short while ago.

I thank the Senator for his gracious leadership on behalf of our country and on behalf of the institution of this Senate. This Senator has learned more about the Constitution and the traditions of this great institution from the Senator from West Virginia than from any other source. I am grateful for that education, which is actually the subject I want to bring up today because in a few moments we will begin voting once again on proceeding to a nomination to the second highest court.

Mr. BYRD. Madam President, if the distinguished Senator will yield briefly—

Mr. DAYTON. I yield to the distinguished Senator from West Virginia.

Mr. BYRD. Madam President, may I thank the distinguished Senator for his overly charitable comments concerning this Senator. And I am indeed grateful. I am grateful for the fact that he on several occasions here during his short career thus far in the Senate—I predict that it will be a long career, if he wishes to make it a long one—has stood with me with regard to several important subjects—subjects that deal with the Constitution, deal with this institution, and that deal with war and peace.

I thank him for standing shoulder to shoulder and toe to toe. I thank him likewise for what he brings to the Senate—vigor and fresh insights, vision that is beyond today's 24 hours, a man whose kinsman served in the Constitutional Convention from the State of New Jersey, and whose signature on that Constitution will be there until kingdom come.

I thank the Senator.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Minnesota.

Mr. DAYTON. Mr. President, I thank the Senator from West Virginia. I

would stand proudly with the Senator on any matter shoulder to shoulder. I believe I am 30-some years younger than the Senator. I wish I had the Senator's vigor and eloquence to carry forward. I thank the Senator for those kind words.

Taking what I have learned from the distinguished senior Senator from West Virginia, I note, with dismay, that while this body has spent over 100 hours on the Senate floor debating this judicial nomination, I compare that 100 hours on one judicial appointment with the number of hours this year this body has spent discussing and debating a declaration of war before commencing a war against Iraq.

And the answer is: Zero, not 1 hour, not 1 minute of formal debate in the 108th session of the Senate on this profound matter of war and peace, life and death—even now, with this Nation poised on the brink of war, a war which the United States is instigating, without direct provocation, without an immediate threat to our national security; the first war under the new doctrine of preemption, a claimed right to attack another country because they might become a future threat; the first war in which the United States is perceived in the eyes of much of the rest of the world as the provocateur, as a threat to world peace.

The Times of London recently surveyed the English people and asked: Who is the greatest threat to world peace today? Forty-five percent named Saddam Hussein, 45 percent named President Bush. In Dublin, Ireland, the poll was 31 percent Saddam Hussein, 68 percent President Bush. In the Arab world, the populations are overwhelmingly against a U.S. invasion of Iraq.

Osama bin Laden, with his most recent tape, is attempting to exploit those emotions, exhorting the members of his al-Qaida terrorist organization and followers to rise up against the invader, the crusader, the United States.

Those sentiments come as a great shock to us, as unwarranted and undeserved as they are. A few, unfortunately, in high levels in this administration believe they don't matter, that they are irrelevant.

Eighteen months ago, we had the sympathy and support of the entire world after the dastardly attacks of 9/11, support and sympathy which has been needlessly squandered and which will not easily be regained.

Here at home our citizens receive color-coded warnings of greater or lesser unspecified threats. They are told to stockpile water, food, plastic sheets, and duct tape, or else they are told nothing at all.

The Secretary of Defense, testifying before the Senate Armed Services Committee, on which I serve, said recently: We are entering what may prove to be the most dangerous security environment the world has known.

In the midst of this ominous, dangerous, fateful time, the 108th session of the Senate has devoted no time for debate or discussion. The last 3 days the debate has been on a bill that purports to ban partial-birth abortions, a matter of importance, a matter of great concern to some, but not one that required the attention of the Senate at this moment in time.

Now we move on to consider, once again, a judicial nomination, then another judge; and before that there was another judge. Does it appear we are avoiding something? Well, we are. We are avoiding our constitutional responsibility, perhaps the most important responsibility placed upon us by the U.S. Constitution: whether to declare war.

As I have learned from the distinguished Senator from West Virginia, the Constitution says—simply, clearly, emphatically—Congress shall declare war, only Congress, no one else—not the President, not the judiciary, not the military—only Congress, only the 435 Representatives and 100 Senators elected by and acting for the people of the United States.

Last October, a majority of the Members of the 107th Congress—a majority of the Members in the House and a majority of the Senate—voted to transfer that authority to the President. Five months before he even made his own final decision regarding war or peace, Congress was asked to give him that authority that the Constitution assigns only to us. And Congress did so. It passed a resolution that said the President may use whatever means necessary, including the use of force, against Iraq.

Oh, we use such clever euphemisms in the Senate, words which disguise the meaning of our intentions. Use ''whatever means necessary.'' And, oh, by the way, lest you forget, it is OK with us if you use force—not the lives of American men and women, not their bodies, their blood, their patriotism—use force—not the deadly, ear-splitting, Earth-shaking, people-maiming, death-dealing bombs, and other weapons of destruction, the most devastating, overwhelming, terrifying, death-dealing force the world has ever known coming from us, the good guys, the protectors, the preservers of world peace, the United States of America.

What incredible foresight the Founders of this great Nation had in not wanting a decision that enormous, that Earth-shaking or ear-shattering to be made by one person—not by this President, not by any President.

Instead, this President asked for—and the 107th Congress acquiesced and gave—complete, unrestricted, unrestrained authority, with no conditions, no restraints to make that decision. Don't tie my hands, the President said.

Don't tie the President's hands? What did the Founders of the country think of that? Thomas Jefferson wrote, in 1798:

> In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.

''Bind him down from mischief by the chains of the Constitution.''

Tie his hands? That was not enough. ''Chain him to the Constitution.''

We, in Congress, are supposed to be chained to the Constitution. We took an oath. When we were sworn in, we promised to support and defend the Constitution of the United States against all enemies, foreign and domestic, bear true faith and allegiance to the same Constitution.

That was our oath and our allegiance written—not to the country, not to our State, not to our Government but to the Constitution of the United States of America.

The Founders of this Nation had other admonitions for the United States regarding the Constitution: Follow it or change it, but don't ignore it or evade it.

George Washington, in his Farewell Address, in 1796, said:

> If, in the opinion of the people, the distribution of constitutional powers be wrong, let it be corrected by amendment in the way which the Constitution designates. But let there be no change by usurpation, for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.

Finally, an admonition from another perspective, that of Edward Gibbon, the author of the ''History of the Decline and Fall of the Roman Empire.'' He said:

> The principles of a free constitution are irrevocably lost when the legislative power is taken over by the executive.

In this sense, the legislative power was not taken over by the Executive. We gave it away. Here, Mr. President, you decide. If you are right, we will try to share the credit. If you are wrong, you take the blame.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. DAYTON. The Senator yields.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Will the Senator from Minnesota yield without losing his right to the floor?

Mr. DAYTON. The Senator yields without losing his right to the floor.

Mr. BYRD. Mr. President, the Senator from Minnesota is making a great speech. It is great because of the quotations the Senator from Minnesota has given to us today about that Constitution.

The Senator was one of the lonely 23 who voted not to give to this President, or any other President—not to attempt to hand over to this President or to any other President—the power to declare war, which is found in the eighth section of article I of the Constitution of the United States.

A nominee for a Federal judgeship came to me the other day. I said: Where in the Constitution is the power to declare war lodged? He didn't remember. I said: Where in the Constitution is the vestment of the power to appropriate moneys? He knew it was there, but he didn't know in what section that was to be found. Of course, I

didn't have any problem in reminding him where both were to be found.

But the Senator from Minnesota today is referring to the Constitution of the United States, written in 1787, signed by 39 individuals, among whom was one kinsman of the distinguished Senator from Minnesota, MARK DAYTON, and his name is found in that illustrious roll of signers from the State of New Jersey, William Livingston, David Brearley, William Paterson, Jonathan Dayton. The Senator from Minnesota, Mr. MARK DAYTON, voted to uphold the Constitution, concerning which he has stood before that desk of the Presiding Officer with his hand on the Bible and swore to support and defend that Constitution.

This Senator who sits in front of me, I now put my hand on his shoulder, Senator KENT CONRAD, he was among the 23, yes. He was on that illustrious roll to which someone in ages hence will point. The Senator from Illinois, Mr. DURBIN, sits here on the floor today. He, too, was one of the 23 who stood for the Constitution on that day, when a majority of the Senate voted to shift the power to declare war to the President of the United States. But 23 Senators voted to leave that authority where the Constitution puts it: namely, in Congress.

What would Jonathan Dayton have said could he have spoken on the day that those 23 Members stood up for the Constitution—21 Democrats, one Independent and one Republican—what would Jonathan Dayton of New Jersey have said if he could have spoken to the Senate that day? What would his advice to us have been?

Mr. DAYTON. I think he would have said it was a good thing we added West Virginia to the United States of America so we could have the distinguished Senator from West Virginia to give us the guidance he did that day.

Since the hour is approaching for the vote under the rules, I will conclude my remarks.

Mr. BYRD. I thank the distinguished Senator for yielding.

Mr. DAYTON. I thank the Senator for his kind words.

I respectfully urge the majority leader and all of my colleagues to turn their attention to this fateful decision when we return next week. A decision whether or not to vote a declaration of war is one that would be a very difficult vote, one that would be a career-shaping or career-shattering vote, but it would be one the Constitution requires of us, as do our fellow citizens who elected us. And it is one that only we can and must do, to vote on whether or not to declare war.

I urge the Senate to turn its attention to that matter when it resumes next week.

I yield the floor.

Mr. FEINGOLD. Mr. President, I will oppose the nomination of Jay Bybee to the Ninth Circuit Court of Appeals. I was not able to attend the hearing that was held on Mr. Bybee because of Secretary Powell's presentation that morning to the United Nations. So I submitted written questions, as did a number of my colleagues. Unfortunately, I have to say after reviewing Mr. Bybee's response to those questions that his unwillingness to provide information in response to our inquiries is striking. On more than 20 occasions, Mr. Bybee refused to answer a question, claiming over and over again that as an attorney in the Department of Justice he could not comment on any advice that he gave at any time. This is unfortunately becoming a very familiar refrain of nominees before the Judiciary Committee.

I say unfortunate because it puts many of us in the position of having to oppose nominees because they have not been forthcoming. This was not the approach taken by at least some Bush nominees in the last Congress. Michael McConnell, for example, was forthcoming in his testimony and answers to written questions. He convinced me that he would put aside his personal views if he were confirmed to the bench.

There is an extensive body of legal work both written by or at least signed off on by this nominee, in this case unpublished Office of Legal Counsel opinions. The administration and the nominee are acting as if they are irrelevant to the confirmation process. A nominee cannot simply claim that he or she will follow Supreme Court precedent and ask us to take that assurance on faith, when there are written records that may help us evaluate that pledge, but the nominee refuses to make those records available.

Only three OLC opinions had been made publicly available since Mr. Bybee's confirmation to head that office. That is extraordinary, given that 1,187 OLC opinions dating back to 1996 are publicly available. This is a dramatic change in the Department's practice, a change that did not occur until this nominee was confirmed to be Assistant Attorney General for the office. While there may be some justification for releasing fewer opinions since 9/11, the wholesale refusal to share with the public and Congress important OLC decisions affecting a wide range of legal matters is, to say the least, troublesome.

But the failure to make OLC opinions available to the Judiciary Committee during the consideration of a nominee for a seat on a circuit court is unacceptable. Even White House Counsel Alberto Gonzalez, in a letter Mr. Bybee cites in his written responses, agrees that there is no universal bar to disclosure of OLC opinions. Gonzalez wrote that:

> No bright-line rule historically has governed, or now governs, responses to congressional requests for the general category of Executive Branch ''deliberative documents.''

The administration should be able to agree to an acceptable procedure to allow the Judiciary Committee to review Mr. Bybee's OLC opinions. Given the recent history of many OLC opinions being made public, it is hard to believe that there are no opinions authored by Mr. Bybee that could be disclosed without damaging the deliberative process. Indeed, it is very hard to give credence to the idea that OLC's independence would be compromised by the release of some selection of the opinions of interest to members of the Judiciary Committee or the Senate.

Without the OLC memos, important questions about the nominee's views on how far the Government can go in the war on terrorism, enforcing the rights of women, enforcing the rights of gays and lesbians, and other important issues do not just remain unanswered, they apparently remain off-limits.

One of Mr. Bybee's responses may explain the reluctance to make any OLC materials available. In his response to a question from Senator BIDEN about why DOJ did not create an independent Violence Against Women Office at DOJ as required by Congress in a bill passed last year, Mr. Bybee left the impression that OLC may have either intentionally omitted or ignored the key portions of the legislative history in crafting its opinion.

In a series of questions from Senator BIDEN about his involvement in DOJ's decision on the VAWO, Mr. Bybee was given the opportunity to clarify his view of the law and correct what appears to be a clearly erroneous interpretation of the legislative history. Instead he seems to try to downplay the importance of his office's legal analysis on the decision. He states at one point:

> The structure of the letter would thus indicate that legislative history had no significant bearing on its analysis or conclusion.

The members of the Judiciary Committee are entitled to better. How can we be confident that Mr. Bybee will put aside his personal policy views and fairly interpret and apply the law as passed by this body, when it seems that his office crafted a legal opinion designed to allow the Department of Justice to willfully ignore clear legislative intent? Perhaps the legal opinion itself will shed some light on this question, but we are not being permitted to see it.

Mr. Bybee also mischaracterized many of his own writings and speeches and failed to directly answer most of the questions put to him about them, claiming he would simply follow existing Supreme Court precedent. As we all know, the Supreme Court has not answered every legal question. It is our circuit court judges that are routinely in the position of having to address novel legal issues, not the Supreme Court.

For example, I asked Mr. Bybee about his views, published in a law review article, that we should consider repealing the 17th Amendment which provides for the direct election of Senators. The nominee now simply states that Senators should be popularly elected, almost claiming he had never argued to the contrary in his article.

His answers to my questions about this article were evasive, not forthcoming.

Another telling example is his response to a series of questions from Senator EDWARDS about a 1982 article in which he criticized the IRS decision to deny tax exempt status to Bob Jones University because of its racially discriminatory practices. The article is full of statements revealing a disdain for anti-discrimination policies and warned of a parade of horribles should the government continue to use its spending power to advance such policies.

Yet, in his written responses, Mr. Bybee seems to deny the very clear meaning of his written words. He goes so far as to claim that he was only commenting on the Government's change in position in the case and not the very important public policy issue at the heart of the case. That, it seems to me, is an adventurous reading of the article, at best.

Based on Mr. Bybee's unwillingness to answer any question about his views on a wide range of issues, his distortion of his own limited but telling written record, and the failure of the administration to provide any of his numerous OLC opinions to the Judiciary Committee for review, I must vote no on his nomination to the Ninth Circuit Court of Appeals.

Mr. DURBIN. Mr. President, I rise today in opposition to the nomination of Jay Bybee for the Ninth Circuit Court of Appeals. Mr. Bybee recently passed out of the Judiciary Committee by a vote of 12 to 6.

Mr. Bybee is a smart person and a talented attorney—there is no argument about that. But he is one of the most strident voices in the country in advocating states' rights over Federal rights.

For example—and I think members of the Senate here should take special note of this—he wrote a law review article arguing that the 17th amendment was a bad idea. The 17th amendment, of course, is the amendment that allowed for direct election of United States Senators.

Mr. Bybee believes that ratification of the 17th amendment has resulted in too much power for the Federal government, and too little for the States. Here is what he said in his law review article:

> If we are genuinely interested in federalism as a check on the excesses of the national government and therefore, as a means of protecting individuals, we should consider repealing the 17th Amendment.

I, for one, disagree.

On behalf of a conservative foundation, Mr. Bybee wrote a successful amicus brief in the 2000 case United States v. Morrison, in which the Supreme Court struck down part of the Violence Against Women Act. Mr. Bybee wrote that Congress had no power under either the Commerce Clause or the 14th amendment to pass crucial provisions of this law. I thought this was settled law 75 years ago. Mr. Bybee thinks it is time to revisit this notion.

In addition, I am troubled by Mr. Bybee's positions regarding gay rights. He has been very critical of the Supreme Court's 1996 decision, Romer v. Evans, that struck down a Colorado constitutional amendment that prohibited local governments from passing laws to protect gay people. He called such laws that protect gay people from discrimination ''preferences for homosexuals.''

In another gay rights case, he wrote a brief defending the Defense Department's policy of subjecting gay and lesbian defense contractors to heightened review before deciding whether to give them security clearances. He argued that this policy was not a violation of the Equal Protection Clause and argued that such reviews were justified, in part, because some gays and lesbians experienced ''emotional instability.''

I am also concerned that Mr. Bybee—as head of the Justice Department's Office of Legal Counsel—has been involved in shaping some of the most controversial policies of the Ashcroft Justice Department. For example, he may have been involved in the new interpretation of the second amendment.

He may have been involved in the TIPS program, in which people in the United States are encouraged to spy on their neighbors and coworkers and report any conduct they find to be ''unusual.''

He may have been involved in the decision to declare the al Qaeda and Taliban detainees at Guantanamo Bay as prisoners of war under the Geneva Convention.

I say ''may have been involved'' because he refused to tell us. In written responses to 20 different questions we posed to him, he gave the following answer:

> As an attorney at the Department of Justice, I am obligated to keep confidential the legal advice that I provide to others in the executive branch. I cannot comment on whether or not I have provided any such advice and, if so, the substance of that advice.

Mr. Bybee is the most recent example of an appellate court nominee who has stonewalled the Senate Judiciary Committee. I do not believe that such conduct should be rewarded.

I oppose the nomination of Mr. Bybee to the Ninth Circuit.

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT—CONTINUED

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant 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. 21, the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin Hatch, Trent Lott, Robert F. Bennett, Peter Fitzgerald, Jeff Sessions, John Ensign, Kay Bailey Hutchison, Rick Santorum, Don Nickles, Jim Talent, Lindsey Graham of South Carolina, Lisa Murkowski, Conrad Burns, John Warner, John Sununu, Gordon Smith, Elizabeth Dole, Saxby Chambliss, Christopher Bond, Susan Collins, Wayne Allard, Lamar Alexander, Norm Coleman, Pat Roberts, Craig Thomas, Larry E. Craig, Olympia Snowe, John McCain, James Inhofe, Jon Kyl, Lincoln Chafee, Judd Gregg, Richard G. Lugar, George Allen, Chuck Grassley, George V. Voinovich, Mike Crapo, Michael B. Enzi, Thad Cochran, Mike DeWine, Arlen Specter, Sam Brownback, Ben Nighthorse Campbell, Richard Shelby, Ted Stevens, Chuck Hagel, John Cornyn, Pete Domenici, Mitch McConnell, Jim Bunning.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) would each vote ''No.''

The PRESIDING OFFICER (Mr. SUNUNU). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 55, nays 42, as follows:

[Rollcall Vote No. 53 Ex.]

YEAS—55

Alexander	Dole	Murkowski
Allard	Domenici	Nelson (FL)
Allen	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Breaux	Frist	Santorum
Brownback	Graham (SC)	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Campbell	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Cochran	Inhofe	Sununu
Coleman	Kyl	Talent
Collins	Lott	Thomas
Cornyn	Lugar	Voinovich
Craig	McCain	Warner
Crapo	McConnell	
DeWine	Miller	

NAYS—42

Akaka	Clinton	Feingold
Baucus	Conrad	Feinstein
Bayh	Corzine	Graham (FL)
Bingaman	Daschle	Harkin
Boxer	Dayton	Hollings
Byrd	Dodd	Inouye
Cantwell	Dorgan	Jeffords
Carper	Durbin	Johnson

Kennedy	Lieberman	Reid
Kohl	Lincoln	Rockefeller
Landrieu	Mikulski	Sarbanes
Lautenberg	Murray	Schumer
Leahy	Pryor	Stabenow
Levin	Reed	Wyden

NOT VOTING—3

Biden	Edwards	Kerry

The PRESIDING OFFICER. On this vote, the yeas are 55, the nays are 42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

JAY S. BYBEE, OF NEVADA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT—Continued

The PRESIDING OFFICER. The Senate will resume consideration of the Bybee nomination.

Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

Ms. COLLINS. Mr. President, I ask unanimous consent that I be recognized as in morning business for up to 10 minutes for the purpose of introducing a bill.

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

The Senator from Maine is recognized.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 616 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Ms. COLLINS. 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. REID. 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. REID. Mr. President, the two leaders have agreed that the vote on the circuit judge would occur at 3:45. I am sure there will be a unanimous consent brought here soon.

Mr. SESSIONS. Mr. President, I ask unanimous consent that at 3:45 all time be yielded and the Senate proceed to the first vote, which is on the confirmation of Mr. Bybee.

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

The Senator from Connecticut.

Mr. DODD. Mr. President, might I inquire, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is the nomination of Jay S. Bybee.

Mr. DODD. Mr. President, I ask unanimous consent to proceed as in morning business so as not to interrupt the debate on the nomination.

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

(The remarks of Mr. DODD are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I want to speak for 3 minutes on the nominee. I can do it before or after my leader on the Judiciary Committee.

Mr. LEAHY. I tell my friend from New York, I have allowed others to go, but one more doesn't bother me, especially someone as good as the Senator from New York. I certainly have no objection.

Mr. SCHUMER. I thank my colleague. I will try to be brief and leave the majority of the remaining time for him.

I rise in support of the nomination of Jay Bybee for the Ninth Circuit Court of Appeals. I realize that my support—I was one of two Democrats on the Judiciary Committee to be for Mr. Bybee—may surprise some people, so I wanted to explain for a few moments why I will be voting to confirm him.

As most of my colleagues know, I use three criteria to evaluate judicial nominees: Excellence, moderation, diversity.

Excellence, legal excellence, Mr. Bybee meets that criteria. Diversity, you can't judge that by one individual, but the Bush administration has been pretty good, certainly not terrible, in terms of diversity.

It is moderation where I have had the greatest problem with some of the President's nominees. I don't believe in judicial nominees too far left or too far right because in each case, they tend to make law, not interpret law, as the Founding Fathers said they should. I believe there has to be balance, balance on the courts. And I have said this many times, but there is nothing wrong with a Justice Scalia on the court if he is balanced by a Justice Marshall. I wouldn't want five Scalias, but one might make a good and interesting and thoughtful court with one Brennan. A Rehnquist should be balanced by a Marshall.

Jay Bybee, make no mistake about it, is a very conservative nominee. It is fair to put him in a similar category with many of the more conservative nominees we have had. If Mr. Bybee were nominated to another court that is hanging in the balance or where most of the nominees were conservative, I probably wouldn't vote for him. If he were nominated for the Supreme Court, for example, there would be a different calculus. But Mr. Bybee is nominated to the Ninth Circuit. The Ninth Circuit is by far the most liberal court in the country. Most of the nominees are Democratic from Democratic Presidents. It is the court that gave us the Pledge of Allegiance case which is way out of the mainstream on the left side. Therefore, I think Jay Bybee will provide some balance.

Let me repeat, if he were nominated to another court, I might have evaluated this differently. But when it comes to nominations, I mean what I say and I say what I mean. There has to be balance. Standards cannot only apply when they help achieve the desired outcome.

I want to be as fair and honest as I can be in this process. I have developed a set of criteria for evaluating nominees. I don't pretend to change them when after applying those criteria the scales tip in favor of supporting a nominee many of my friends oppose.

I respect those who arrive at a different conclusion. I understand their reasoning. I intend to vote yes on Mr. Bybee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, we have moved the time up, I realize, in the next 6 minutes for the first vote. That is something I have agreed to accommodate a number of Senators on both sides of the aisle who have commitments. As a result, also as a result of yielding time to the distinguished Senator from Alabama, who had one of the nominees and, of course, appropriately should be speaking, and others, I will not be able to say all the things I wanted to.

I ask unanimous consent that I be recognized for 20 minutes after the conclusion of the final rollcall vote today.

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

Mr. LEAHY. Obviously, as usual, should the leaders have other plans for that, I will do my usual courtesy of yielding to them.

(The remarks of Mr. LEAHY are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The question is, Will the Senate advise and consent on the nomination of Jay S. Bybee, of Nevada, to be United States Circuit Judge for the Ninth Circuit? On this question, the yeas and nays are required.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, parliamentary inquiry: Who is the next judge after this?

The PRESIDING OFFICER. That would be Judge Steele from the State of Alabama.

Mr. LEAHY. Mr. President, I understand we also have J. Daniel Breen, of Tennessee, on the list. I ask unanimous consent that it be in order to ask for the yeas and nays on his nomination.

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

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

The PRESIDING OFFICER. Is there sufficient second.

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. I thank the Chair.

The PRESIDING OFFICER. The clerk will call the roll with respect to the Bybee nomination.

The bill clerk called the roll.

Mr. FRIST. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from Texas (Ms. HUTCHISON), the Senator from Arizona (Mr. KYL), and the Senator from Kentucky (Mr. MCCONNELL) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. EDWARDS) would vote ''no.''

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''aye.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 74, nays 19, as follows:

[Rollcall Vote No. 54 Ex.]

YEAS—74

Akaka	DeWine	Lugar
Alexander	Dodd	McCain
Allard	Dole	Miller
Allen	Domenici	Murkowski
Baucus	Dorgan	Nelson (FL)
Bayh	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bingaman	Fitzgerald	Pryor
Bond	Frist	Reid
Breaux	Graham (FL)	Roberts
Brownback	Graham (SC)	Rockefeller
Bunning	Grassley	Santorum
Burns	Gregg	Schumer
Cantwell	Hagel	Sessions
Carper	Hatch	Shelby
Chafee	Hollings	Smith
Chambliss	Inhofe	Snowe
Cochran	Jeffords	Specter
Coleman	Johnson	Stevens
Collins	Kohl	Sununu
Conrad	Landrieu	Talent
Cornyn	Leahy	Thomas
Craig	Lieberman	Voinovich
Crapo	Lincoln	Warner
Daschle	Lott	

NAYS—19

Boxer	Feinstein	Murray
Byrd	Harkin	Reed
Clinton	Inouye	Sarbanes
Corzine	Kennedy	Stabenow
Dayton	Lautenberg	Wyden
Durbin	Levin	
Feingold	Mikulski	

NOT VOTING—7

Biden	Hutchison	McConnell
Campbell	Kerry	
Edwards	Kyl	

The nomination was confirmed.

CHANGE OF VOTE

Mr. DAYTON. Mr. President, on rollcall vote No. 54, I voted aye. It was my intention to vote no. Therefore, I ask unanimous consent that I be permitted to change my vote since it will not affect the outcome of the vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, following this vote, I ask that the majority leader be recognized; following that, that Senator LEAHY be recognized; following that, Senator KENNEDY.

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

NOMINATION OF WILLIAM H. STEELE, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of William H. Steele, of Alabama, to be the United States District Judge for the Southern District of Alabama?

The nomination was confirmed.

Mr. HATCH. Mr. President, I support the nomination of Judge William Steele to the United States District Court for the Southern District of Alabama.

Judge's Steele's professional record indicates that he is eminently qualified for the federal trial bench. Upon graduation from the University of Alabama School of Law, Judge Steele clerked for the Tuscaloosa County district court. As an Assistant District Attorney in Mobile, he handled hundreds of criminal matters, including more than 75 jury trials. Upon being promoted to Chief Assistant District Attorney, he was significantly involved in the creation of the Child Advocacy Center for physically and sexually abused children. He then served as an Assistant United States Attorney prosecuting mail fraud, public corruption, drug violations, firearms violations, and tax code violations.

In addition to his broad federal and state criminal experience, Judge Steele has considerable civil experience. In the private sector, while continuing to maintain a viable state and federal criminal trial and appellate practice, he also handled domestic relations matters, civil litigation in State and Federal court, representation of claimants in social security matters, and representation of the Alabama Department of Human Resources in child custody matters.

Since 1990, Judge Steele has served as a Federal magistrate judge. In this capacity, he has handled a wide range of civil matters, preliminary criminal matters, prisoner cases, and social security appeals.

I know that Judge Steele will be a credit to the Federal bench and will honorably serve the citizens of south Alabama. I thank my colleagues for voting for his confirmation.

Mr. SESSIONS. Mr. President, I am pleased to be able to make some remarks in support of the nomination of Judge William H. Steele to be U.S. district judge for the Southern District of Alabama. He is one of America's finest magistrate judges—a magistrate judge who does a lot of the kind of legal work that goes on in every Federal courthouse in America. Magistrate judges are not title III Federal judges, but they do much the same work day after day that Federal judges do.

During his time as a magistrate judge, Judge Steele has had firsthand experience in the work, and he has won the respect of the bench and the bar in southern Alabama.

He has been in training now for 12 years for this position. In the Southern District of Alabama the magistrates are used to an extraordinary degree by the Federal judges who allow the magistrates to do as much work as possible. And they frequently preside over civil cases with the consent of the parties involved.

I have talked with other lawyers and judges in Alabama. They are very excited about his nomination and look forward to his confirmation.

Some people talk about public service, but throughout his life, Bill Steele has done more than just talk. Judge Steele has dedicated the better part of his life to public service and has served both this country and the State of Alabama well. After graduating summa cum laude from the University of Southern Mississippi in 1972, Judge Steele served in the U.S. Marine Corps as an officer, pilot, and instructor pilot. During his service in the Marine Corps, Judge Steele participated in the operation to evacuate American citizens from Lebanon in 1976. He also served in the Alabama National Guard as a pilot and as commanding officer of an assault helicopter company.

After serving his country in the Marine Corps, Judge Steele attended the University of Alabama School of Law. After law school, he was employed as an assistant district attorney in Mobile, AL, and worked for 6 years in the office of a Democrat district attorney.

I was U.S. attorney during that time. That is where I got to know Bill. Our staff worked closely with the district attorney's office, and they always came back with the most glowing opinions of Bill Steele and his integrity, his judgment, and his fidelity to truth and justice.

Later, Judge Steele became chief assistant district attorney in Mobile. I got to know him well during that time and developed great respect for him. I think he tried 100 or more trials as an assistant district attorney. Then, in 1987, given his reputation for excellence, I hired him as an assistant attorney in the U.S. Attorney's Office. I can say without reservation that during his service, while I was a U.S. Attorney in the Southern District of Alabama, Judge Steele did not disappoint. Judge Steele tried a number of cases while he was in the U.S. Attorney's Office, which is the Federal system in which he will now be a district court judge. He held that position for 2 years and

then went into private practice and did an excellent job there.

He was instrumental as a private practitioner and chief assistant district attorney, in the establishment of the Child Advocacy Center, an agency devoted to identifying and providing assistance to child victims of physical and sexual violence.

In 1990, the Federal court in the Southern District of Alabama commenced its search process for a U.S. magistrate. They usually have 60 or more applications. It is a very competitive process. The judges want the very finest lawyer—someone who would make a superb judge because the better work that magistrate does, the more relief the Federal district judges get. After all that competition, he won and was hired.

For 13 years now he has served as a magistrate judge. He has done so many different cases.

Bill Steele is one of Alabama's most outstanding magistrate judges, and I am confident that he will be an even better district court judge. I have followed Judge Steele's career since the time I worked with him at the U.S. Attorneys Office in the Southern district of Alabama, so I know from firsthand experience what kind of individual Judge Steele is. This statement will not do him justice. He is a nominee of the highest order, and it is an understatement when I say that I am pleased that President Bush has chosen to nominate Magistrate Judge William H. Steele for elevation to the Southern District of Alabama.

As a magistrate judge, Judge Steele has been training for a district court position for the last 12 years, and because the Southern District of Alabama utilizes magistrate judges to a greater extent than most other districts, he will be able to hit the ground running in his new position. I have had conversations with the other judges in the Southern district and I know that they are as excited about Judge Steele's nomination as I am, so I am glad that we can move forward with his confirmation.

Some people talk about public service, but throughout his life, Judge Steele has done more than just talk. Judge Steele has dedicated the better part of his life to public service and has served both this country and the great state of Alabama well. After graduating summa cum laude, from the University of Southern Mississippi in 1972, Judge Steele served in the United States Marine Corps as on officer, pilot, and instructor pilot. During his service in the Marine Corps, Judge Steele participated in the operation to evacuate American citizens from Lebanon in 1976. Judge Steele also served in the Alabama National Guard as a pilot and as the commanding officer of an assault helicopter company.

After serving his country in the Marine Corps, Judge Steele attended the University of Alabama School of Law, graduating in 1980. After law school, Judge Steele was employed as an Assistant District Attorney in Mobile, Alabama, and worked for six years for a democrat District Attorney. At the District Attorney's Office, Judge Steele distinguished himself as an outstanding advocate, litigating close to, if not more, than 100 jury trials. In recognition of his legal skills and leadership qualities in the District Attorney's Office, Judge Steele was appointed as Chief Assistant District Attorney in 1985. As the Chief Assistant, Judge Steele was instrumental in establishing, the Child Advocacy Center, an agency devoted to identifying and providing assistance to, child victims of physical and sexual violence.

In 1987, given his reputation in the community for excellent legal abilities and personal skills, I was proud to hire Judge Steele as an Assistant U.S. Attorney in the Southern District of Alabama. I can say without reservation, that during his service, while I was the U.S. Attorney in that office, Judge Steele did not disappoint. I found him to be a first-rate lawyer who set the standard for integrity by treating all parties with respect.

In 1990, Judge Steele was appointed to the position, which he currently holds, as a United States Magistrate Judge. He has served in this position with distintion, handling a full array of criminal and civil matters in federal court. The Southern District of Alabama has a heavy caseload, and the judges there depend on magistrate judges to go beyond preliminary criminal matters and social security cases. The magistrate judges in the Southern District are in rotation to receive 25 percent of the civil docket, where the parties consent. So Judge Steele has been doing the job of a district judge, including presiding over civil jury trials in many instances. It is my understanding, from talking to lawyers who practice in the Southern District, that Judge Steele has managed his docket well and the numbers show it. This is simply an outstanding nominee.

Judge Steele has not only been a leader in the workforce, but has been a leader and a active participant in his community as well, serving on the board of the Child Advocacy Center that he helped establish. And for the record, Judge Steele does not shy away from the arts. Judge Steele often volunteers his time to support First Night Mobile, a family-oriented, New Year's Eve, alcohol-free celebration of the arts, and he regularly performs with the Mobile Symphonic Pops as a saxophone player.

I acknowledge, that all of these accolades would be futile, if Judge Steele had not demonstrated commitment to the rule of law and to the Constitution, during his service as a magistrate judge. In my view, this is the first and foremost requirement for a federal judge. This is what our democracy hinges upon, and I know that Judge Steele is committed to that requirement. Judge Steele has a reputation for being eminently fair and impartial throughout the bar association. And having worked with him personally, I know that he is an individual with unquestioned integrity and the utmost character.

I will just say this: when it comes to serving with the distinction, it is the lawyers in the community who know a judge the best. Here is what Fred Gray, former counsel to the late Reverend Dr. Martin Luther King, Jr., had to say about Judge Steele in a letter to the Senate Judiciary Committee supporting his confirmation:

> I have practiced law in the State of Alabama and before all the federal district courts . . . I realize that it is important that all the judges who serve on the courts . . . are one[s] who possess the necessary personal characteristics, experience, practical knowledge, legal skills and professional background, so they will administer justice in a fair and impartial manner.
>
> I have discussed [Judge Steele's] qualifications generally and specifically with reference to intelligence, honesty, morality, integrity, maturity, stability, demeanor and temperament with members of the bar who know him and have practiced before him and other judges who sit on some of the courts in Mobile. Based upon their representations to me, Judge Steele possess all the necessary qualities for a [federal judgeship].
>
> I have had the opportunity to meet with Judge Steele personally . . . I believe he will be fair to all litigants who appear before him . . . regardless of color or national origin or the type of litigation. I believe he will administer justice tempered with mercy.

I do not believe that you could receive a better endorsement than this one.

The lawyers and individuals who know Judge Steele best, because they have worked with him and practiced in front of him, have all voiced support. Since his nomination has been pending, Judge Steele has been endorsed by a number of individuals including the current President and 16 former presidents of the Mobile Bar Association, several former president of the Birmingham Bar, and several former presidents of the Alabama Bar Association.

The Vernon Z. Crawford Bay Area—African-American—Bar Association of Mobile, AL gave its unanimous endorsement:

> The . . . Association strongly recommends Magistrate Bill Steele for this position because he recognizes and is sensitive to the issues facing African American lawyers and the African American community. . . . We give Magistrate Steele our highest recommendation.

Major General Gary Cooper, USMC—Ret., former Ambassador to Jamaica, president of a Commonwealth National Bank in Mobile, AL, and an African American:

> As an African American citizen of Mobile and as a retired Marine, I appreciate what William Steele has done for his community as a county and federal prosecutor and federal magistrate, and what he has done for his country as a Marine helicopter pilot. His record indicates that he will make a fine . . . Judge.

Joy Williams, former law clerk to Magistrate Judge Steele and an African American:

[W]hile I was the only person of color clerking on the court at the time, I truly felt comfortable and accepted from the moment I interviewed with Judge Steele. He has never given me a reason to question the sincerity of his support of me and my endeavors both professionally and personally.

Merceria Ludgood, Assistant County Attorney for Mobile County, former Director of Program Services for Legal Services Corporation in Washington, D.C., and former Executive Director of Legal Services Corporation of Alabama:

Magistrate Judge Steele is one of the finest men I have ever known. Never once have I believed his actions to be motivated by politics or ambition. He simply wants to do the right thing for the right reasons.

Robert D. Segall, attorney for the American Civil Liberties Union in the case opposing the display of the Ten Commandments in an Alabama courtroom:

Judge Steele is an outstanding selection, is very highly qualified, and I respectfully urge his prompt confirmation.

Carlos A. William, Southern District of Alabama Federal Defenders Organization:

During the years I have practiced in [Judge Steele's] court, I have come to know a jurist of integrity, professionalism and compassion, and I have grown to respect his judgement. . . . [I] note that every lawyer in my office, Kristen Gartman Rogers, K. Lyn Hillman Campbell and Christopher Knight, in unsolicited comments, have expressed their support for Magistrate Steele's nomination. It is therefore without hesitation that I send this letter in support of Magistrate William Steele's nomination.

Larry C. Moorer, long time practitioner in Mobile, Alabama and an African American:

Over the years, I have handled several legal matters before Magistrate Judge Steele . . . He has shown over the years that he is fair and impartial, and will rule according to the law regardless of public opinion or possibly his own personal feelings. . . . Magistrate Judge Steele provides a level playing field . . . [and] he possesses the attributes for being an outstanding appellate judge.

Larry Sims, President of the Mobile Bar Association and 16 former presidents.

Numerous officers and members of the Women of the Mobile Bar Association.

Hodge Alves, President of the Mobile Chapter of the Federal Bar Association.

Several former presidents of the Montgomery Bar Association.

Bruce Rogers, incoming president of the Birmingham Bar Association, and a number of former presidents.

Warren Lightfoot, former president of the Alabama Bar Association, and managing partner of one of the most respected litigation firms in Birmingham, AL.

Jim North, a prominent Democrat in Birmingham, former clerk for Justice Hugo Black, and former President of the Alabama Bar Association.

Rosemary Chambers, Circuit Judge of Mobile County.

Chris Galanos, a Democrat and former District Attorney of Mobile County who employed Steele as a prosecutor for several years.

Alex Bunin, Federal Public Defender, Districts of Northern New York and Vermont.

Greg Breedlove, on behalf of the unanimous firm of Cunningham, Bounds, Yance, Crowder and Brown, L.L.C. in Mobile, Alabama—prominent Democratic, plaintiffs' firm.

John Morrow, former president of the Birmingham Bar Association and long-time practicing attorney with one of the largest firm's in Birmingham, AL.

Ed Allen, 38-year practitioner with one of the largest firms in Birmingham, Alabama, and former member of the Executive Committee of the Birmingham Bar Association, and the Labor and Employment sections of the American Bar Association and the Alabama Bar Association.

Henry Brewster, Mobile, AL, Democrat plaintiff's lawyer whose practice focuses on employment discrimination cases.

Jerry McDowell, long-time practitioner from Mobile, AL.

This support, in my view, confirms that President Bush made the right decision in nominating Judge Steele.

Judge Steele has the professional qualifications, integrity, professional competence and judicial temperament to serve on the federal bench in the Southern District of Alabama. The ABA has acknowledged such, rating him unanimously qualified. As a magistrate judge in the Southern District of Alabama, he is practically already doing the job. Judge Steele will make an excellent addition to the federal bench, and deserves to be confirmed by this Senate. I look forward to supporting Judge Steele and to casting my vote in favor of his confirmation. I urge my colleagues to support Judge Steele.

I yield the floor.

I want to say I don't know that I have met a finer individual, a more dedicated patriot than Judge Bill Steele. He is someone I admire and someone who is admired by people I admire. People who have good judgment of character think he is first rate.

The Bar Association in the Southern District of Alabama has unanimously told me time and again how much they appreciate him and how well they think he will do as a Federal judge. And I am very pleased for him.

He has received support from a large number of different sources. Of course, the established bar in the Southern District of Alabama speaks very highly of him.

You ask what about others? What do they say about him? The President of the Alabama Bar Association for the State is Mr. Fred Gray. He was former counsel for the late Rev. Dr. Martin Luther King, Jr., and has tried some of the most historic cases in the history of the United States.

He was involved in New York Times v. Sullivan and Chameleon v. Light Foot and was the attorney on the Rosa Parks bus boycott case. He worked directly with Dr. Martin Luther King, Jr., at that time. He has written an excellent book describing the bus ride to justice.

He writes to me his strong support for Judge Steele. He realizes he said it is important that all judges who serve on the courts possess the necessary personal character, experience, knowledge, legal skills, and professional background so they will administer justice in a fair and impartial way.

He went on to explain his meeting with Judge Steele—his knowledge of him, and his support for him. Group after group has written on Judge Steele's behalf.

I believe this Senate will make a wise decision if Judge Steele is confirmed. I have absolutely no doubt that this fine nominee will serve with distinction. He will serve and treat every party before the court with courtesy. He will control his court with firmness but fairness. He will demonstrate integrity. And, most of all, every day that he goes to work, Bill Steele will sit there and try to do what he can to produce justice.

I am delighted he has been able to move through the process. I thank my colleagues in the Senate for their help. I saw Senator LEAHY earlier. I congratulated him and thanked him for allowing this nomination to move forward.

I thank Senator HATCH for his determination to move nominees, who are qualified, forward to confirmation.

As I said, I am confident in Judge Bill Steele. The courts of the United States will have a superstar who will do a superb job.

NOMINATION OF J. DANIEL BREEN, OF TENNESSEE, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TENNESSEE

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of J. Daniel Breen, of Tennessee, to be United States District Judge for the Western District of Tennessee?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FRIST. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from Texas (Ms. HUTCHISON), the Senator from Arizona (Mr. KYL), and the Senator from Kentucky (Mr. MCCONNELL) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announced that, if present and voting, the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) would each vote ''aye''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 92, nays 0, as follows:

[Rollcall Vote No. 55 Ex.]

YEAS—92

Akaka	Dodd	Lott
Alexander	Dole	Lugar
Allard	Domenici	McCain
Allen	Dorgan	Mikulski
Baucus	Durbin	Murkowski
Bayh	Ensign	Murray
Bennett	Enzi	Nelson (FL)
Bingaman	Feingold	Nelson (NE)
Bond	Feinstein	Nickles
Boxer	Fitzgerald	Pryor
Breaux	Frist	Reed
Brownback	Graham (FL)	Reid
Bunning	Graham (SC)	Roberts
Burns	Grassley	Rockefeller
Byrd	Gregg	Santorum
Cantwell	Hagel	Sarbanes
Carper	Harkin	Schumer
Chafee	Hatch	Sessions
Chambliss	Hollings	Shelby
Clinton	Inhofe	Smith
Cochran	Inouye	Snowe
Coleman	Jeffords	Specter
Collins	Johnson	Stabenow
Conrad	Kennedy	Stevens
Cornyn	Kohl	Sununu
Corzine	Landrieu	Talent
Craig	Lautenberg	Thomas
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lieberman	Wyden
DeWine	Lincoln	

NOT VOTING—8

Biden	Hutchison	McConnell
Campbell	Kerry	Miller
Edwards	Kyl	

The nomination was confirmed.

THE CONFIRMATION OF DANIEL BREEN TO BE A UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE

Mr. FRIST. Mr. President, I am in strong support of Judge Daniel Breen to be United States District Judge for the Western District of Tennessee.

For more than a decade Judge Breen has admirably served the state of Tennessee's Western District as a United States Magistrate Judge. Before assuming this position in the Jackson and Memphis area, he practiced law in most of the surrounding West Tennessee counties for sixteen years.

Judge Breen graduated first in his class from Spring Hill College and later graduated from the University of Tennessee College of Law. His list of bar-related and civic activities is long and distinguished: President of the Tennessee Bar Association, Subcommittee Chair in the American Bar Association, Executive Committee member of the West Tennessee Council Boy Scouts of America, and a Lifetime Board Member of the West Tennessee Cerebral Palsy Center. As you can tell, his roots are deep with the people he serves.

In addition to an active civil trial docket, Judge Breen is also recognized as an effective mediator, and an instructor and author on alternative dispute resolution. He has made a broad range of contributions to the bar, as well as the State and Federal courts. This work has earned him the respect of the local legal community. I have heard from many in the Tennessee bar praising Judge Breen's thoughtfulness and judicial temperament. Judge Breen is a dedicated, hard working and even-handed jurist.

Judge Breen's record has prepared him to be ready for this job beginning on day one. I am honored to support his confirmation, and I know he will serve the Western District of Tennessee as a U.S. District Judge with distinction. I thank my colleagues for voting for his confirmation.

Mr. HATCH. Mr. President, I am pleased today to support Judge John Breen, who has been nominated to the U.S. District Court for the Western District of Tennessee.

Judge Breen has served on both sides of the bench with distinction. Upon graduating from the University of Tennessee Law School in 1975, he entered private practice by joining the Jackson firm of Waldrop & Hall. He is one of the few lawyers these days who spent his entire litigating career with a single firm. His area of expertise was general civil litigation. In addition to representing insurance companies and self-insured businesses, he also represented individual clients in real estate, commercial, corporate and estate planning matters.

Judge Breen has made a broad range of contributions to the bar. He served as the President of the Tennessee Bar Association, which reflects the high esteem in which his colleagues hold him. He also served on the Board of Directors for the Tennessee Bar Foundation. In the course of his career, he has accepted many appointments to represent indigent criminal defendants in State and Federal court. Judge Breen also provided many hours of pro bono service for West Tennessee Legal Services.

Since 1991, Judge Breen has served as a Federal magistrate judge, where he has handled a broad array of evidentiary hearings and issued many reports and recommendations. In addition, Judge Breen is also recognized as an effective mediator, as well as an instructor and author on alternative dispute resolution.

The American Bar Association rated Judge Breen unanimously well qualified, its highest rating. I am confident that he will serve on the bench with integrity, intelligence and fairness.

Mr. ALEXANDER. Mr. President, I support the nomination of John Daniel Breen to be a United States District Judge for the Western District of Tennessee. I am pleased that the Senate has moved so expeditiously to confirm this exceptional nominee.

Mr. Breen is currently a United States Judge in the Western District of Tennessee. Judge Breen was recommended last year by the current Senate Majority Leader, my colleague, Senator FRIST, and former Senator Thompson. I am pleased to add my voice in support of his nomination. As someone who, as Governor of Tennessee appointed some 50 judges, I am confident that Judge Breen will continue to be an able Federal judge when he is confirmed as a United States District Judge for the Western District of Tennessee.

Judge Breen was born and raised in Jackson, TN. He was a summa cum laude graduate of Spring Hill College in Mobile, AL in 1972, and was valedictorian of his class. He received his Juris Doctorate from the University of Tennessee College of Law in 1975, where he served as a member of the law review.

After receiving his law degree, Judge Breen worked for sixteen years with the law firm of Waldrop and Hall, P.A. in Jackson, TN. Judge Breen has been a United States Judge for the Western District of Tennessee since 1991 and has an excellent reputation in this position.

Judge Breen has vast litigation experience. As a practicing attorney, he practiced general civil litigation primarily in the areas of tort law and workers' compensation. Judge Breen was involved in litigating one of the premier lawsuits in Tennessee in the 1990's, which resulted in the adoption of comparative negligence.

Judge Breen has been actively involved and held leadership positions in local, State and national bar associations throughout his legal career. He has also been extremely active in his community by, among other things, providing pro bono legal services to disadvantaged persons and serving as a member on a variety of community organizations.

I am confident that Judge Breen will be a fine United States District Judge for the Western District of Tennessee, and I thank all my colleagues who supported this nomination.

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now continue in executive session with the consideration of the Estrada nomination.

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

The clerk will report.

The assistant legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

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. 21, the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin G. Hatch, Robert F. Bennett, James M. Inhofe, John Ensign, Sam Brownback, Michael B. Enzi, Wayne Allard, Michael D. Crapo, Susan M. Collins, Pete V. Domenici, Conrad R. Burns, Kay Bailey Hutchison, John E. Sununu, Norm Coleman, Charles E. Grassley.

Mr. FRIST. Mr. President, I ask unanimous consent that the live quorum as provided for under rule XXII be waived.

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

Mr. FRIST. For the information of all Senators, this cloture motion, which will be the third vote in relation to the Estrada nomination, will occur on Tuesday. I regret that it has been necessary for me to file this motion once again. With Tuesday's vote, the Senate will have matched the most cloture votes relative to executive nominations. That is certainly not a record or milestone I think this Senate should be proud of achieving.

LEGISLATIVE SESSION

Mr. FRIST. Mr. President, I now ask unanimous consent that the Senate resume legislative session.

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

UNANIMOUS CONSENT AGREEMENT—BUDGET RESOLUTION

Mr. FRIST. Mr. President, I ask unanimous consent that at 2 p.m., on Monday, March 17, the Senate proceed to the consideration of the first concurrent budget resolution, if it has been properly reported by that time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. FRIST. Mr. President, for the information of all Senators, there will be no further votes during today's session.

We have had a productive, full week. I thank the managers on both sides of the aisle for today's work and the previous days' work.

Earlier today, by a vote of 64 to 33, the Senate passed S. 3, the partial-birth abortion ban bill. I thank all Members on both sides of the aisle for their debate and their courtesies throughout the consideration of that bill.

In addition, this week, we have been able to confirm five district judges and one circuit judge. Unfortunately, we were unable to reach a conclusion with respect to the Estrada nomination and, therefore, we will have the cloture vote, once again, on Tuesday.

Next week, the Senate will proceed to the budget resolution. The Budget Act provides for 50 hours of consideration and, therefore, all Members should expect late sessions next week. Although we will begin the budget resolution on Monday, no votes will occur that day. Therefore, the next vote, on cloture, will occur Tuesday morning.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators allowed to speak for up to 10 minutes each.

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

Mr. REID. Mr. President, just a unanimous consent request: Senator LEAHY wishes to speak for 20 minutes, and Senator KENNEDY for 30 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Vermont.

Mr. LEAHY. Mr. President, what was the previous unanimous consent agreement of the time for the Senator from Vermont?

The PRESIDING OFFICER. The previous order had Senator KENNEDY receiving 30 minutes.

Mr. LEAHY. But prior to the votes, wasn't there—

The PRESIDING OFFICER. The Senator from Vermont already had 20 minutes.

Mr. LEAHY. I thank the distinguished Presiding Officer.

Does the distinguished majority leader have other matters?

Mr. FRIST. No.

THE COUNTDOWN TO WAR

Mr. LEAHY. Mr. President, last Thursday, at his press conference, the President of the United States gave his reasons to justify the use of military force to remove Saddam Hussein from power.

The President said again that he has not made up his mind to go to war, but his own advisers are saying that even if Iraq fully complies with U.N. Security Council Resolution 1441, Saddam Hussein must be removed from power.

The President said his goal is protecting the American people from terrorism. That is a goal we all share. But he offered no evidence that Iraq had anything to do with the September 11 attacks or any details of Iraq's links to al-Qaida.

He offered no new information about the potential costs of a war, either in American and Iraqi lives, or in dollars. Both Republicans and Democrats have urged the President to be more forthcoming with the American people, to tell us what sacrifices may be involved—not to have Cabinet members come to the Senate and the House, and when asked how much they estimate a war and its aftermath may cost, say: We have no idea.

We know the administration has estimated the costs, yet the President dismissively says ''ask the spenders'' in Congress, knowing full well that Congress appropriates funds, it is the President who spends them.

It is disingenuous, at best, to refuse to level with the American people at a time of rapidly escalating deficits. We know it has already cost billions of dollars just to send our troops over there, but how many more tens or hundreds of billions of dollars, may be added to the deficit? The President is apparently ready to send hundreds of thousands of America's sons and daughters into battle without saying anything about the costs and risks.

The President repeatedly spoke of the danger of ''doing nothing,'' as if doing nothing is what those who urge patience and caution—with war only as a last resort—are recommending. In fact, virtually no one is saying we should do nothing about Saddam Hussein.

Even most of the millions of people who have joined protests and demonstrations against the use of force without U.N. Security Council authorization are not saying the world should ignore Saddam Hussein.

Yet that is the President's answer to those who oppose a preemptive U.S. invasion, and who, contrary to wanting to do nothing, want to give the United Nations more time to try to solve this crisis without war.

The President also failed to address a key concern that divides Americans, that divides us from many of our closest European allies, that divides our allies from each other, and that divides the U.N. Security Council. That issue is not whether or not Saddam Hussein is a deceptive, despicable, dangerous despot who should be disarmed. There is little, if any, disagreement about that.

Nor is it whether or not force should ever be used. Most people accept that the United States, like any country, has a right of self-defense if it is faced with an imminent threat. If the U.N. inspectors fail to disarm Iraq, force may become the only option.

Most people also agree that a United States-led invasion would quickly overwhelm and defeat Iraq's ill-equipped, demoralized army.

Rather, the President said almost nothing about the concern shared by so many people, that by attacking Iraq to enforce Security Council Resolution 1441 without the support of key allies on the U.N. Security Council, we risk weakening the Security Council's future effectiveness and our own ability to rally international support not only to prevent this war and future wars, but to deal with other global threats like terrorism. This concern is exacerbated by the increasing resentment throughout the world of the administration's domineering and simplistic ''you are either with us or against us'' approach. It has damaged longstanding relationships, relationships that have taken decades of trust and diplomacy to build, both with our neighbors in this hemisphere and our friends across the Atlantic.

The President says that if the Security Council does not support the use of force today, it risks becoming irrelevant. The President has it backward. The Security Council would not become irrelevant because it refuses to obey the President of the United States. Rather, the Security Council's effectiveness is threatened if the United States ignores the will of key allies on the Security Council regarding the enforcement of a Security Council resolution.

The President was also asked by several members of the press why there is such fervent opposition to his policy among Americans and some of our oldest allies when only a year and a half ago, after the September 11 attacks, the whole world was united in sympathy with the United States. He had no answer.

The President should heed the words of former National Security Adviser Brent Scowcroft, who was an architect of the 1991 Gulf War. General Scowcroft has strongly criticized the administration's ad hoc approach based on a ''coalition of the willing'' which the general calls ''fundamentally, fatally flawed.'' General Scowcroft said:

> As we've seen in the debate about Iraq, it's already given us an image of arrogance and unilateralism, and we're paying a high price for that image. If we get to the point where everyone secretly hopes the United States gets a black eye because we're so obnoxious, then we'll be totally hamstrung in the war on terror. We'll be like Gulliver with the Lilliputians.

For 200 years, people around the world have looked up to the United States because of our values, our integrity, our tolerance, and our respect for others. These are the qualities that have set the United States apart. Today, while most countries share our goal of disarming Saddam Hussein, we are being vilified for our arrogance, for our disdain for international law, and our intolerance of opposing views.

A distinguished American career diplomat, John Brady Kiesling, echoed General Scowcroft's concerns about the practical harm done to U.S. interests and influence abroad. He recently wrote to Secretary of State Colin Powell, proffering his resignation as an act of protest about the administration's policy toward Iraq. I suspect Mr. Kiesling's eloquent and heartfelt explanation of how he reached the difficult decision to give up his career expresses the feelings and concerns of some other American diplomats who are representing the United States at our embassies and missions around the world.

I ask unanimous consent that Mr. Kiesling's letter to the Secretary be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. LEAHY. While I was disappointed by President Bush's remarks last week, the Bush administration and the Pakistani Government should be commended for the capture of Khalid Shaikh Mohammed, one of al-Qaida's top leaders who was reportedly the mastermind of the September 11 attacks. Whether others within al-Qaida will quickly fill Mr. Mohammed's shoes remains to be seen, but the fact that the U.S. Government and other governments are methodically tracking these people down sends an important message and should give some comfort to the American people. This is encouraging. Let's hope we can soon celebrate the capture of Osama bin Laden, because capturing the leaders of al-Qaida should be our highest priority.

But the world is increasingly apprehensive as the United States appears to be marching inexorably towards war with Iraq. Today, there are more than 250,000 American men and women in uniform in the Persian Gulf preparing for the order to attack. We hear that the decision must be made within a matter of days because it is too costly to keep so many troops deployed overseas. In other words, now that we have spent billions of dollars to ship all those soldiers over there, we need to use them because we cannot back down now, as I have heard some people say. Frankly, this is one of the worst reasons possible to rush into war.

We should not back down. Saddam Hussein must be disarmed. Doing nothing—I agree with the President about this—would mean the United Nations is unwilling to enforce its own resolutions concerning perhaps the most serious threat the world faces today, the proliferation of weapons of mass destruction. That would be unacceptable. The U.N. Security Council ordered Iraq to fully disclose its weapons of mass destruction. Iraq has not yet done so.

I agree with those who say the only reason Saddam Hussein is even grudgingly cooperating with the U.N. inspectors is the buildup of U.S. troops on Iraq's border. I have commended the President for refocusing the world's attention on Saddam Hussein's failure to disarm. I also recognize the time may come when the use of force to enforce the U.N. Security Council resolution is the only option. But are proposals to give the U.N. inspectors more time unreasonable, when it could solidify support for the use of force if that becomes the only option?

Despite the President's assertion that Iraq poses an imminent threat to the United States, that assertion begs credulity when the U.N. inspectors are making some progress and a quarter of a million American soldiers are poised on Iraq's border. Absent a credible, imminent threat, a decision to enforce Resolution 1441 should only be made by the Security Council—not by the United States or any other government alone.

The President says war is a last resort. If he feels that way, why do he and his advisors want so desperately to short-circuit the inspection process?

Why is he so anxious to spend billions of dollars to buy the cooperation of other countries, other countries that do not yet believe war is necessary?

Why is he so unconcerned about the predictably hostile reaction in the Muslim world to the occupation of Iraq, perhaps for years, by the United States military?

Why is the President so determined to run roughshod over our traditional alliances and partnerships which have served us well and whose support we need both today and in the future?

I cannot pretend to understand the thinking of those in the administration who for months or even longer have seemed possessed with a kind of messianic zeal in favor of war. A preemptive, U.S. attack against Iraq without a declaration of war by Congress or the U.N. Security Council's support may be easy to win, but it could violate international law and cause lasting damage to our alliances and to our ability to obtain the cooperation of other nations in meeting so many other global challenges.

Just recently, Homeland Security Secretary Tom Ridge warned that a war with Iraq could bring more threats and more terrorist attacks within the United States. The CIA Director has testified that Saddam Hussein is more likely to use chemical or biological weapons if he is attacked. Yet we are marching ahead as though these warnings don't matter.

I have said before, this war is not inevitable. I still believe it can be avoided. But I fear that the President, despite opposition among the American people, in the U.N., and around the world, is no longer listening to anyone except those within his inner circle who are eager to fight.

The President says we must overthrow Saddam Hussein to protect the American people. Saddam Hussein is a threat, but North Korea, on the verge of acquiring half a dozen nuclear weapons, poses a far more serious and immediate threat to the United States and the world. Yet the administration is too preoccupied with Saddam Hussein to be distracted by North Korea, even though North Korea has shown no qualms about selling ballistic missiles and anything else that will earn them money. It makes no sense.

I hope the Iraqi government comes to its senses. I hope we do not walk away from the U.N. I hope we don't decide that just because our troops are there, we cannot afford to wait.

EXHIBIT 1

FEBRUARY 27, 2003.

DEAR MR. SECRETARY: I am writing you to submit my resignation from the Foreign Service of the United States and from my position as Political Counselor in U.S. Embassy Athens, effective March 7. I do so with a heavy heart.

The baggage of my upbringing included a felt obligation to give something back to my country. Service as a U.S. diplomat was a dream job. I was paid to understand foreign languages and cultures, to seek out diplomats, politicians, scholars and journalists, and to persuade them that U.S. interests and theirs fundamentally coincided. My faith in my country and its values was the most powerful weapon in my diplomatic arsenal.

It is inevitable that during twenty years with the State Department I would become

more sophisticated and cynical about the narrow and selfish bureaucratic motives that sometimes shaped our policies. Human nature is what it is, and I was rewarded and promoted for understanding human nature. But until this Administration it had been possible to believe that by upholding the policies of my president I was also upholding the interests of the American people and the world. I believe it no longer.

The policies we are now asked to advance are incompatible not only with American values but also with American interests. Our fervent pursuit of war with Iraq is driving us to squander the international legitimacy that has been America's most potent weapon of both offense and defense since the days of Woodrow Wilson. We have begun to dismantle the largest and most effective web of international relationships the world has ever known. Our current course will bring instability and danger, not security.

The sacrifice of global interests to domestic politics and to bureaucratic self-interest is nothing new, and it is certainly not a uniquely American problem. Still, we have not seen such systematic distortion of intelligence, such systematic manipulation of American opinion, since the war in Vietnam. The September 11 tragedy left us stronger than before, rallying around us a vast international coalition to cooperate for the first time in a systematic way against the threat of terrorism. But rather than take credit for those successes and build on them, this Administration has chosen to make terrorism a domestic political tool, enlisting a scattered and largely defeated Al Qaeda as its bureaucratic ally. We spread disproportionate terror and confusion in the public mind, arbitrarily linking the unrelated problems of terrorism and Iraq. The result, and perhaps the motive, is to justify a vast misallocation of shrinking public wealth to the military and to weaken the safeguards that protect American citizens from the heavy hand of government. September 11 did not do as much damage to the fabric of American society as we seem determined to do to ourselves. Is the Russia of the late Romanovs really our model, a selfish, superstitious empire thrashing toward self-destruction in the name of a doomed status quo?

We should ask ourselves why we have failed to persuade more of the world that a war with Iraq is necessary. We have over the past two years done too much to asset to our world partners that narrow and mercenary U.S. interests override the cherished values of our partners. Even where our aims were not in question, our consistency is at issue. The model of Afghanistan is little comfort to allies wondering on what basis we plan to rebuild the Middle East, and in whose image and interests. Have we indeed become blind, as Russia is blind in Chechnya, as Israel is blind in the Occupied Territories, to our own advice, that overwhelming military power is not the answer to terrorism? After the shambles of post-war Iraq joins the shambles in Grozny and Ramallah, it will be a brave foreigner who forms ranks with Micronesia to follow where we lead.

We have a coalition still, a good one. The loyalty of many of our friends is impressive, a tribute to American moral capital built up over a century. But our closest allies are persuaded less that was is justified than that it would be perilous to allow the U.S. to drift into complete solipsism. Loyalty should be reciprocal. Why does our President condone the swaggering and contemptuous approach to our friends and allies this Administration is fostering, including among its most senior officials. Has oderint dum metuant [Ed. note: Latin for ''Let them hate so long as they fear,'' thought to be a favorite saying of Caligula] really become our motto?

I urge you to listen to America's friends around the world. Even here in Greece, purported hotbed of European anti-Americanism, we have more and closer friends than the American newspaper reader can possibly imagine. Even when they complain about American arrogance, Greeks know that the world is a difficult and dangerous place, and they want a strong international system, with the U.S. and EU in close partnership. When our friends are afraid of us rather than for us, it is time to worry. And now they are afraid. Who will tell them convincingly that the United States is as it was, a beacon of liberty, security and justice for the planet?

Mr. Secretary, I have enormous respect for your character and ability. You have preserved more international credibility for us than our policy deserves, and salvaged something positive from the excesses of an ideological and self-serving Administration. But your loyalty to the President goes too far. We are straining beyond its limits an international system we built with such toil and treasure, a web of laws, treaties, organizations and shared values that sets limits on our foes far more effectively than it ever constrained America's ability to defend its interests.

I am resigning because I have tried and failed to reconcile my conscience with my ability to represent the current U.S. Administration. I have confidence that our democratic process if ultimately self-correcting, and hope that in a small way I can contribute from outside to shaping policies that better serve the security and prosperity of the American people and the world we share.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

AMERICAN VALUES AND WAR WITH IRAQ

Mr. KENNEDY. Madam President, the true greatness of America lies in the values we share as a nation.

From America's beginning, we shared a passionate concern for the rights and the well-being of each individual—a concern stated eloquently in our founding documents, the Declaration of Independence, the Constitution and the Bill of Rights.

From our immigrant roots, we learned not only to tolerate others whose appearance, religion, and culture are different from our own, but to respect and welcome them, and to recognize our diversity as a source of great strength.

From our religious faith and our sense of community, we gained an understanding of the importance of fairness and compassion for the less fortunate.

In the same way that parents try to build a better life for their children, each generation of Americans has tried to leave a more just society to the next. We all know that our history includes periods when grave injustices were tolerated. Those dark periods in our national history teach us lessons we must never forget. But we have battled fiercely to overcome injustice, and we are a better nation for our willingness to fight those battles.

Our most deeply held national values are rooted in our pursuit of justice for all. It urges us to ensure fair treatment for each person, to extend help to those in need, and to create opportunity for each individual to advance. Those are among the most important yardsticks by which we measure our success in building ''a more perfect union.''

Now as we consider the prospect of war with Iraq, many of us have serious questions about whether current national policy reflects America's values.

We owe it to the brave men and women of our armed forces to ensure that we are embarked on a just war—that the sacrifice we ask of them is for a cause that reflects America's basic values.

Our men and women in uniform are working and training hard for the serious challenges before them. They are living in the desert, enduring harsh conditions, and contemplating the horrors of the approaching war.

Their families left behind are sacrificing, too, each and every day here at home, wondering if their loved ones in uniform will return unharmed. Many—especially the families of our reservists—are struggling to make ends meet as their spouses are called up for months of duty abroad. Wives are separated from husbands. Children are separated from fathers and mother. Businesses and communities are struggling to go forward without valued employees now serving in the gulf.

More than 150,000 National Guard and Reserve soldiers have been mobilized. Of these, 13,000 have been on active duty for at least a year. Others return home from deployments, only to turn around and head back overseas for a new tour of duty. For many of these soldiers, ''the expected one weekend a month, two weeks a year'' is merely a slogan, and does not reflect their new reality. In fact, today's reservists are spending thirteen times longer on active duty than they did a decade ago.

A recall to active duty brings financial hardship as well. Many give up larger civilian salaries when they go on active duty. The law requires employers to take back reservists after their deployments. But for those who work in small firms or are self-employed, there are no such guarantees unless their firms are still in business.

The families of our men and women in uniform pay a price for this deployment. During the Vietnam War, only 20 percent of all Army military personnel were married. Today over 50 percent of the military are married, which means enormous strain on the families who are left behind to worry and cope with the sudden new demands of running a household alone, never knowing how long their loved ones will be away.

Among those on active duty, we are demanding more from our troops for longer periods of time. One of our aircraft carriers, the USS Abraham Lincoln, has been away from home port for 233 days. The crew expected to return for Christmas, and had made it half way home across the Pacific Ocean when they were given orders to turn around and head for the Persian Gulf. These men and women are forced to put their lives on hold, missing births, delaying weddings, and dealing with family crises by phone and e-mail.

These men and women are well-prepared to serve their country. But in calling them up, we also pay the price here at home with increased vulnerability in our police and fire departments. A recent survey of 8,500 fire departments by the International Association of Fire Chiefs showed that nearly three-fourths of them have staff in the Reserves. A similar survey of more than 2,100 law enforcement agencies by the Police Executive Research Forum found that 44 percent have lost personnel to call ups.

These are Americans who love their country. They proudly wave the Stars and Stripes on our national holidays. They honor and pray for past veterans on Memorial Day. Their children are in our schools. They attend our churches, our synagogues, and our mosques. We see them in the grocery store or at PTA meetings. They are a part of our communities—and a part of us. And they are willing to give their lives for their country. So we owe it to these men and women and their families—these brave Americans—to get it right.

I am concerned that as we rush to war with Iraq, we are becoming more divided at home and more isolated in the world community. Instead of persuading the dissenters at home and abroad, the Administration by its harsh rhetoric is driving the wedge deeper. Never before, even in the Vietnam war, has America taken such bold military action with so little international support. It is far from clear that the United Nations Security Council will pass any new resolution that we can use as authorization for military action in Iraq. Even some strategically important allies, such as Turkey, who were expected to be with us, have backed away. The administration continues to turn a deaf ear to all of these voices, and single-mindedly pursues its course to war.

Within the rising chorus of dissent have been the voices of much of the organized religious community in this country—Christian, Jewish and Muslim. Within the Christian community, opposition to war against Iraq includes the Roman Catholic Church, to which I belong, and many mainline Protestant and Orthodox churches. These are not pacifist groups who oppose war under all circumstances. They are religious leaders who say the moral case has not been made for this war at this time.

War is not just another means to achieving our goals. More than any other option, it is dangerous, it is deadly, it is irreversible. That is why, whenever we resort to force in the world, there is an urgent need to ensure that we remain true to our values as Americans.

Saddam Hussein is one of the most brutal tyrants on the world stage today. He has murdered thousands of his own people—many with chemical and biological weapons. He has attempted to wipe out entire communities. He has attacked neighboring countries. He supports terrorism against innocent civilians throughout the Middle East. Undeniably, the world would be a better place without Saddam Hussein. That fact, however, should not be the end of the inquiry, but only the beginning.

From the perspective of our shared values, the fundamental question is whether this is a ''just war.'' That is not an easy question to answer, because some elements of a just war are clearly present.

There are six principles that guide the determination of ''just war.'' They were first developed by St. Augustine in the Fifth Century and expanded upon by St. Thomas Aquinas in the Thirteenth Century. To be just a war must have a just cause, confronting a danger that is beyond question; it must be declared by a legitimate authority acting on behalf of the people; it must be driven by the right intention, not ulterior, self-interested motives; it must be a last resort; it must be proportional, so that the harm inflicted does not outweigh the good achieved; and it must have a reasonable chance of success.

These are sound criteria by which to judge our impending war in Iraq.

First, does Iraq pose a danger to us that is beyond question?

Clearly, Iraq does pose a considerable danger, principally because of Saddam Hussein's biological and chemical weapons and his history of attempts to develop nuclear weapons. But it is not at all clear that the only way to protect ourselves from that threat is war. In fact, many of us are deeply concerned that initiating a war to remove Saddam Hussein will actually increase the danger to the American people.

The biological and chemical weapons Saddam has are not new. He has possessed them for more than a decade. He did not use them against us in the gulf war and he did not use them against us in the years since then, because he understands that any use of them would lead to his certain destruction. As CIA Director George Tenet stated last year in testimony before Congress, the greatest danger of their use occurs if Saddam knows he is about to be removed from power and therefore perceives he has nothing left to lose.

Iraq, to the best of our knowledge, has no nuclear weapon. If nuclear weapons in the hands of a rogue state are our principal concern, then certainly North Korea poses a much more imminent threat. And Iran—not Iraq—is close behind.

The President must explain why war with Iraq will not distract us from the more immediate and graver danger posed by North Korea. Something is wrong at 1600 Pennsylvania Avenue if we rush to war with a country that poses no nuclear threat, but will not even talk to a country that brandishes its nuclear power right now. Any nuclear threat from Iraq, we are told, is probably 5 years into the future. But the threat from North Korea exists today.

Desperate and strapped for cash, North Korea is the greatest current nuclear danger to the United States, and it is clearly taking advantage of the situation in Iraq. It is the country most likely to sell nuclear material to terrorists. It may well have a long-range missile that can strike our soil.

War with Iraq will clearly undermine our ability to deal with this rapidly escalating danger. But our options are not limited to invading Iraq or ignoring Iraq. No responsible person suggests that we ignore the Iraqi threat.

The presence of U.N. inspectors on the ground in Iraq, coupled with our own significant surveillance capacity, make it extremely unlikely that Iraq can pursue any substantial weapons development program without detection. If we can effectively immobilize Saddam's activity, the danger his regime poses can be minimized without war.

Above all, we cannot allow differences over Iraq to shatter the very coalition we depend upon in order to effectively combat the far greater and more imminent threat posed by the al-Qaida terrorists. Close international cooperation is what led to the recent arrest in Pakistan of the planner of the 9/11 attack.

Second, has the war been declared by a legitimate authority acting on behalf of the people?

When Congress voted last October, most Members believed that the use of force by America would have United Nations backing. Such backing is now highly unlikely. Last October, no international inspectors had been in Iraq for 5 years. Now, U.N. inspectors are on the ground engaged in disarming Saddam.

No war by America can be successfully waged if it lacks the strong support of our people. And America remains divided on an invasion of Iraq without United Nations approval. The reason for that lack of support today is clear. The administration has not made a convincing case that war is necessary, nor have they credibly answered crucial questions about the cost of the war in lives and dollars, how long American troops will remain in Iraq, and what type of Iraqi government will replace Saddam.

In his address last week on a post-war Iraq, President Bush failed to give adequate answers to the key questions on the minds of the American people about the war and its aftermath. He painted a simplistic picture of the

brightest possible future—with democracy flourishing in Iraq, peace emerging among all nations in the Middle East, and the terrorists with no base of support there. In a dangerous world, the fundamental decision on war or peace cannot be made on rosy and unrealistic scenarios.

Third, any war must be driven by the right intention.

I do not question the President's motive in pursuing this policy, but I seriously question his judgment.

The Bush administration was wrong to allow the anti-Iraq zealots in its ranks to exploit the 9/11 tragedy by using it to make war against Iraq a higher priority than the war against terrorism.

Al-Qaida—not Iraq—is the most imminent threat to our national security. Our citizens are asked to protect themselves from al-Qaida with plastic sheeting and duct tape, while the administration prepares to send our armed forces to war against Iraq. Those priorities are wrong.

In a desperate effort to justify its focus on Iraq, the administration has long asserted that there are ties between Osama and Saddam—a theory with no proof that is widely doubted by intelligence experts. Two weeks after 9/11, Secretary Rumsfeld claimed that we had ''bulletproof'' evidence of the link. But a year later, CIA Director Tenet conceded in a letter to the Senate Intelligence Committee that the Administration's understanding of the link was still ''evolving'' and was based on ''sources of varying reliability.'' In fact, the link is so widely doubted that intelligence experts have expressed their concern that intelligence is being politicized to support the rush to war.

Fourth, war must always be a last resort.

That is why all options must be pursued. Inspections still have a chance to work in Iraq. Progress is difficult. No one said it would be easy. But as long as inspectors are on the ground and making progress, we must give peace a chance.

But before resorting to war, it is extremely important to reach agreement that there is no alternative. Nations that have been among our closest allies oppose us now because they do not believe that the alternatives to war have been exhausted. Many of them believe that an invasion of Iraq could destabilize the entire Middle East.

Many of them believe that instead of subduing terrorism, war with Iraq will increase support and sympathy in the Islamic world for terrorism against the West. We cannot cavalierly dismiss these concerns of our allies.

War with Iraq runs the very serious risk of inflaming the Middle East and provoking a massive new wave of anti-Americanism that may well strengthen the terrorists, especially if we act without the support of the world community.

A year ago, The Wall Street Journal quoted a dissident in Saudi Arabia who has turned his focus from his own government to the U.S. Government. He said: [The main enemy of the Muslims and the Arabs is America—and we don't want it to impose things on us. We would rather tolerate dictatorship in our countries than import reforms from America.]

The war against al-Qaida is far from over, and the war against Iraq may make it worse.

After 9/11 we witnessed an unprecedented rallying of the world community to our side. That international unity was our strongest weapon against terrorism. It denied terrorists sanctuary, it led to a vital sharing of intelligence, and it helped to cut off the flow of financial resources to al-Qaida. We cannot allow that international cooperation to shatter over our differences on Iraq. We cannot be a bully in the world school yard and still expect friendship and support from the rest of the world.

Fifth, any war must be proportional, so that the harm inflicted does not outweigh the good achieved.

If there is a war, we all pray that it will be brief, and that casualties will be few. But there is no assurance of that. Certainly, we have the military power to occupy Iraq. But that may only be the beginning. Our troops may be confronted by urban guerilla warfare from forces still loyal to Saddam or simply anti-Western. The war may be far more brutal than we anticipate.

In such a conflict, innocent civilian casualties could also be high. We cannot let Saddam hide behind innocent human shields if there is a war. But that large risk makes it all the more imperative for war to be only a last resort.

We have been told that an attack on Iraq will begin with an enormous cruise missile assault to destroy their infrastructure, strike fear and awe in the hearts of the enemy, and undermine their will to resist. We know that thousands of cruise missiles will be fired in the first 48 hours of the war, more than were launched in the entire 40 days of the gulf war. Such a massive assault will unavoidably produce a very substantial number of civilian casualties. That harsh reality adds greatly to the burden that must be overcome by those who argue that war is the proper response now. It is a burden they have not met.

One of the highest and worst costs of war may be the humanitarian costs. Sixty percent of Iraq's people rely on the United Nations' Oil-for-Food Program for their daily survival. Food is distributed through 46,000 government distributors supplied by a network of food storage barns. A war with Iraq will disrupt this network. Many Iraqis, especially poor families, have no other source of food. Women and children will be the most vulnerable victims. According to recent reports, 500,000 Iraqi children already suffer from malnutrition.

And what are the costs to America? We all know there is an increased risk of another domestic terrorist attack. The war will make it a more dangerous time on the American homefront.

There will also be a very substantial financial cost to the war The short-term cost is likely to exceed $100 billion. The long-term cost, depending on how long our troops must remain in Iraq, will be far more. If our national security were at stake, we would spare no expense to protect American lives. But the administration owes the nation a more honest discussion about the war costs we are about to face, especially if America has to remain in Iraq for many years, with little support from other nations.

The sixth element of a just war is that it must have a reasonable chance of success.

I have no doubt that we will prevail on the battlefield but what of the consequences for our own national security and the peace and security of the Middle East?

We know that a stable government will be essential in a post-war Iraq. But the administration refuses to discuss in any real detail how it will be achieved and how long our troops will need to stay. President Bush assumes everything will go perfectly. But war and it's consequences hold enormous risks and uncertainties.

As retired General Anthony Zinni has asked, will we do what we did in Afghanistan in the 1970s—drive the old Soviet Union out and let something arguably worse emerge in it's place?

The vast majority of the Iraqi people may well want the end of Saddam's rule, but they may not welcome the United States to create a government in our own image. Regardless of their own internal disagreements, the Iraqi people still feel a strong sense of national identity, and could quickly reject an American occupation force that tramples on local cultures.

We must recognize that from the day we occupy Iraq, we shoulder the responsibility to protect and care for its citizens. We are accountable under the Geneva Conventions for public safety in neighborhoods, for schools, and for meeting the basic necessities of life for 23 million Iraqi civilians.

This daunting challenge has received very little attention from the administration. As the dust settles, the repressed tribal and religious differenced of the past may come to the fore—as they did in the brutal civil wars in the former Yugoslavia, in Rwanda, and other countries. As our troops bypass Basra and other Iraqi cities on their way to Baghdad, how will we prevent the revenge bloodletting that occurred after the last Gulf War, in which thousands of civilians lost their lives?

What do we do if Kurds in northern Iraq proclaim an independent Kurdistan? Or the Shia in southern Iraq move toward an alliance with Iran, from which they have long drawn their inspiration?

We have told the government of Turkey that we will not support an independent Kurdistan, despite the fact that the Kurdish people in Iraq already have a high degree of US-supported autonomy and have even completed work on their own constitution. Do we send in our troops again to keep Iraq united?

Post-War Afghanistan is not exactly the best precedent for building democracy in Iraq. Sixteen months after the fall of the Taliban government in Afghanistan, President Hamid Karzai is still referred to as ''the Mayor of Kabul''—because of the weak and fragile hold of his government on the rest of the nation. Warlords are in control of much of the countryside. The Afghan-Pakistani border is an area of anarchy—and ominous al-Qaida cells.

The U.S. military is far from equipped to handle the challenge of meeting the needs of a post-Saddam Iraq. Our government must have a plan in place to care for the population. Yet we have heard little from the administration on how they intend to meet this obligation. To succeed in winning the peace, we will need the help and support of the international community. That is afar less likely to happen if we do not have the international community with us the start.

Before the President makes the final fateful decision to go to war in Iraq, his administration must answer each of these just war questions much more convincingly than they have so far. The American people are waiting for the answers. The entire world is waiting for the answers.

We are no at a major cross-road in our history. The 9/11 attrocities has forced us all to think profoundly about what is great in America. All through our shock and grief, the people's courage never failed. 9/11 was one of the Nation's saddest hours, but the response was one of our finest hours.

That hour must not be lost. It can mark the beginning of a new era of common purpose—a return to policies which truly reflect America's values, a return to the genuine pursuit of justice. The unselfishness we saw in 2001 must not give way to selfishness in 2003. The noble caring for one another that we celebrated then must not be succeeded now by a retreat from our ideals.

Yes, our country is strong but it can be stronger—not just in the power we hold, but in the promise we fulfill of a nation that truly does make better the life of the world. If we rededicate ourselves to that great goal, our achievements will reverberate around the globe, and America will be admired anew for what it must be now, in this new time, more than ever—''the last, best hope of earth.''

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.

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

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

TRIBUTE TO INTELLIGENCE SERVICES

Mrs. DOLE. Madam President, I rise to pay tribute to the excellent work of our intelligence services in capturing Khalid Shaikh Mohammed. This is a major triumph in the war on terror. Our officers from the Central Intelligence Agency and Federal Bureau of Investigation, the National Security Agency, and their counterparts in the Pakistani and intelligence services are to be highly commended.

Let there be no doubt, capturing Mohammed is a big deal. He has a long and bloody history. He has been implicated in the 1993 bombing of the Twin Towers. He played a major role in plans to hijack airliners in Asia and crash them into the sea. He may well have been a leader in the attack on the USS *Cole*, an attack that killed 17 United States sailors and wounded 39 others. He has been implicated in the attacks on the United States embassies in Kenya and Tanzania which killed hundreds and wounded thousands. And he planned the attacks of September 11.

It is not just attacks against Americans. He is now wanted by our friends, the Australians, for questioning in connection with the recent bombings in Bali which killed hundreds of those citizens. There has even been a warrant issued by our reluctant allies in France for his role in the bombing of a synagogue that killed a French citizen.

Those are the horrible acts of his past that we know about. By capturing Mohammed, what devastating plots have our intelligence services prevented? Hopefully, as they start to learn more from Mohammed, they will also be able to thwart future attacks.

Another possibility is that those who would engage in such acts will realize their secrets may now be compromised and, hopefully, they will abandon their plans.

Not only did we get Mohammed, their operations planner, we also got Hawsawi, their chief financier. The 9/11 terrorists sent their left-over money to Hawsawi. By taking him out of the al-Qaida operations, we have damaged their ability to move money into terrorists' hands. This should hamper their ability to launch any currently planned operations.

I want to thank our intelligence services for the work they do. Yes, there have been mistakes in the past, and there will be human failures in the future. But when we learn of their victories, they should be thanked. That thanks comes with the knowledge that there must be many more instances where we have been protected and there was no public acclaim for these servants of the public. Frankly, without the publicity surrounding this case, we might never have known all the agencies that contributed to the captures.

The Central Intelligence Agency and the Federal Bureau of Investigation do not watch after us alone. We should be thankful for the hard work of the men and women of the Defense Intelligence Agency, the National Security Agency, and the National Reconnaissance Office. They and others are working around the clock to defend us in the war on terror.

It is not just our intelligence agencies that should be thanked. It was our friends in Pakistan who discovered Mohammed, who arrested him, who turned him over. President Musharraf has continued his strong support for the war on terror, and we must continue to work with allies such as Pakistan to eradicate terrorism.

Yes, this is a great win in the war on terror, but it was not a victory. We may never actually realize when we have achieved victory; for the men and women who make our intelligence system work will have to continue their vigilance, that quiet and all too often unheralded vigilance.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold her suggestion of the absence of a quorum?

Mrs. DOLE. I withhold.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I ask consent to speak in morning business.

The PRESIDING OFFICER. We are in morning business.

IRAQ

Mr. DURBIN. Madam President, there is an interesting turn of events. Those who were looking for a debate on the war in Iraq had best turn to C-SPAN and witness the question period in London before the British House of Commons. I have been watching it. It is a fascinating debate.

Tony Blair is defending his position in support of the United States. His own party is divided. The conservatives support him. The questioning is very tough. In the course of defending his position, some important questions are being asked and answered in the British House of Commons.

If you would expect the same thing here in the U.S. Congress, you might be surprised or disappointed to learn it is not taking place. What is taking place is speeches on the floor by individual Senators. Today, I have seen Senator BYRD of West Virginia, Senator DAYTON of Minnesota, Senator KENNEDY of Massachusetts. Others have come to the floor to speak about the war in Iraq. But there has literally been no active debate on this issue on Capitol Hill, in the United States of America, since last October.

The reason, of course, is that last October we enacted a use of force resolution which virtually gave to the President of the United States the authority

to declare war and execute it against Iraq at the time and place of his choosing. I was one of 23 Senators who voted against that resolution, believing that there were better ways to achieve our goals, and that if Congress did that, we would be giving to this President the greatest delegation of authority to wage war ever given to a President.

The time that has intervened since the passage of that resolution has proven me right. Congress has had no voice. Oh, we have had moments of criticism, moments of comment, but we are not a serious part of this national concern and national conversation over what will happen in Iraq. That is indeed unfortunate.

There are several facts I think everyone concedes, virtually everyone, on either side of the issue. The first and most obvious is that Saddam Hussein is a ruthless dictator. His continued domination over the nation of Iraq will continue to pose a threat to the region and a concern for peace-loving nations around the world. The sooner his regime changes, the better. The sooner we control his weapons of mass destruction, the better for the region and for the whole world. No one argues that point, not even the nations in the U.N. Security Council that are arguing with the United States about the best approach.

The second thing I think should be said at the outset is no one questions the fact that the U.S. military, the men and women who make it the best military in the world, deserve our support and our praise. They deserve our continued devotion to their success, whatever our debate about the policy in the Middle East or even in Iraq. As far as those 250,000 American servicemen now stationed around Iraq, and many others on the way, whatever our position on the President's policy, that is irrelevant. We are totally committed to their safety and their safe return. That is exactly the way it should be.

Having said that, though, I think it is still important for us to step back and ask how we have possibly reached this state that we are in today. The United States finds itself in a period of anti-Americanism around the world that is almost unprecedented. I traveled abroad a few weeks ago. I was stunned to find in countries that have traditionally been our friends and allies that, although they are saying little, in private they are very critical of the United States and what we have done.

What happened between September 11, 2001, and March 13, 2003? Remember that date, after the September 11 tragedy, when nations all around the world, including some of our historic enemies, came forward and said they would stand with the United States in fighting the war on terrorism? It was an amazing moment in history. It is a moment we will never forget as Americans.

For the first time since the British came into this building in the War of 1812, the United States was invaded by an enemy. Of course, Pearl Harbor was an attack on the territories as well, but that attack on the continental United States on September 11, 2001, was one that stunned us, saddened us, shocked us as a nation, and we looked for friends and we found them in every corner of the world. They joined us in a war on terrorism, sharing intelligence resources, working together, making real progress. It was a good feeling, a feeling that many of these countries now understood how important a friendship with the United States would be for their future and for the world.

Look where we are today. We are at a point now where we are trying to win enough friends to show that we have a multilateral coalition that is going to wage this war against Iraq.

I ask unanimous consent to have printed in the RECORD an article that was published in Business Week. The edition was March 10, 2003.

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

[From Business Week, Mar. 10, 2003]

DOLLAR DIPLOMACY

Money, it is often said, is the mother's milk of politics. It's also turning out to be the nectar of superpower diplomacy.

As George W. Bush approaches the diplomatic climax of his arduous drive to win backing for war with Iraq, U.S. diplomats increasingly find themselves tempted to brandish Uncle Sam's checkbook—and with it, the suggestion that sticking with America now might mean rewards later. Much of this bid to win friends is playing out in the U.N. Security Council, which is grappling with a U.S.-backed resolution that could trigger military action against Saddam Hussein. But in broader terms, pressure on the White House to dangle inducements transcends the U.N. debate and goes to the heart of Washington's current dilemma—America's poverty of friendship.

For two years, Administration diplomacy has been marked by a brash Texas swagger that Bush partisans consider a refreshing exercise in plain-speaking—and which some traditional allies consider arrogance. But the differences go beyond style. In walking away from global treaties and disdaining the views of traditional allies, Bush foreign policy has also been marked by an in-your-face unilateralism that has set much of the world on edge.

Now, with the Administration struggling to round up allies and hosting the leaders of such nations as Latvia and Bulgaria to demonstrate the depth of its coalition, the price of that disdain is coming into focus. ''We've made it harder than it had to be by taking a high-handed approach,'' says Samuel R. Berger, National Security Adviser during the Clinton Administration.

Indeed, the bill for the Administration's approach is just starting to come due—and the bottom line is breathtaking. On Feb. 25, Bush aides revealed that the cost of a military campaign could top $95 billion. That's a far cry from what happened during the first Gulf War, when coalition partners paid some $70 billion of the $75 billion war tab. ''Rebuilding Iraq will require a sustained commitment from many nations including our own.'' Bush said in speech to the American Enterprise Institute on Feb. 26. But the fact is, the U.S. will likely find itself shouldering peacekeeping duties and much of Iraq reconstruction on its own—meaning beleaguered American taxpayers may bear the brunt of the costs.

True, a broad coalition never in the cards. Unlike Operation Desert Storm, which was a response to Iraq's invasion of Kuwait, this showdown looms as a exercise in preemptive action. Still, while Bush talks of a ''coalition of the willing'' backing a U.S. invasion of Iraq, in reality the America finds itself with precious few allies as the hour of decision approaches. And buying allegiances one country at a time is a far cry from building a cohesive group committed to a common cause.

Another consequence of the Bush Administration's Iraq policy is that it could unintentionally undermine the President's broader goal of implanting the seeds of reform in the region. If the intervention comes to be seen by Iraq's neighbors as illegitimate, the result could be more radicalism, not less. The Administration's lofty goals in the Mideast could be much harder to achieve if ''Americans are seen less as a partner than as a foreign power,'' says Jon B. Alterman, who recently left the Bush State Department.

In a sense, the current bargaining round was heralded by the September 11 terror strike on America. In the subsequent war on the Taliban regime in Afghanistan, the White House decided it had to shore up friendship and showered largesse on new allies ranging from Tajikistan to impoverished African nations. None fared better than Pakistan, a desperately poor country that was pivotal in the anti-terror war. President Pervez Musharraf's regime suddenly found itself freed of sanctions imposed for its nuclear testing and the beneficiary of a $12.5 billion debt restructuring from the U.S. and other nations. That helped lift Pakistan from a debtor nation to one that now runs a modest current-account surplus.

Now, the Bush team faces a far more formidable chore in mustering global support for disarming Iraq by force. With skepticism rampant, France and a big bloc of nations fear the consequences of the U.S. making preemptive attacks an acceptable policy tool. Just as important, they fear that the risks of a destabilized Mideast far outweigh the danger Saddam poses. And in the region, where Saddam has been weakened and contained since the 1991 war, resistance to a U.S. invasion has led some countries to limit the American military's rights to nearby bases.

With allies scarce, small wonder that the Bushies may be tempted to float aid promises—or be hit with a raft of ''impact payment'' requests from countries such as Egypt, Israel, Turkey, and Jordan, who claim their economies will be damaged by the fallout of any conflict. ''When somebody knows they're necessary for your game plan, they raise the price,'' says former top State Dept. official Chester A. Crocker.

The Bush Administration stoutly denies it's buying U.N. support or military access. ''The President is not offering quid pro quos,'' insists White House Press Secretary Ari Fleischer. In fairness, the practice of cementing an entente with aid is hardly limited to the Bushies. The Clintonites, who currently assail Bush's need to reach for his wallet, threw billions at North Korea to keep its nuclear program shuttered. They also were forced to shrug when U.S. contributions to the International Monetary Fund were squandered by Russian kleptocrats. ''Checkbook diplomacy,'' says former State Dept. official Helmut Sonnenfeldt, ''is as old as checkbooks.''

The most naked example of haggling came in the U.S.-Turkey base talks. With Turkish public opinion strongly antiwar and an economy on the ropes, the Turks sought upwards of $35 billion in U.S. assistance for the right

to station American troops on Turkish soil for use in a pincer move against Saddam. After bitter negotiations, Ankara came away with a package that includes up to $20 billion in cash and loans, some NATO military gear, and assurances that Iraq's Kurdish nationalists will be kept in check. Says Mehmet Simsek, A London-based analyst with Merrill Lynch & Co.: ''The bottom line is, it will give Turkey some breathing room.''

One reason the talks were so tough is Turkey's history with Desert Storm. After that war, the U.S. backed out of promises to compensate the country for the loss of trade with Iraq and aid to refugees. Now the Turks want money up front.

Jordan may actually be the hardest hit of Iraq's neighbors this time, so Washington is also receptive to Amman's calls for help. ''Nearly a quarter of our GDP could be knocked out as a result [of a new war],'' frets Fahed Fanek, a Jordanian economist. The Administration is expected to ask Congress for $150 million in aid on top of the $300 million a year Jordan now receives. The U.S. already has started to deliver on a deal for F–16 fighters and Patriot II missiles, likely at a discount.

Other neighbors have their hands out, too. Israel wants $4 billion in additional military aid and $8 billion in loan guarantees. Egypt, which sees war losses of $1.6 billion to its tourist-dependent economy, wants faster delivery of as much as $415 million earmarked for Cairo.

Much of the dickering has been more subtle. Key swing votes on the Security Council—Chile, Guinea, Cameroon, Angola, Mexico, and Pakistan—have growing trade ties with the U.S. that could be jeopardized by a vote against the U.S. resolution. Both France and the U.S. are vying for those votes, the U.S. by noting that the America drive to ease agriculture subsidies among rich nations could open markets to Third World farmers.

What will be most telling is how Pakistan votes. After all, U.S.-backed debt restructuring allowed the country to adopt reforms that have helped revive the economy. And President Musharraf left Washington in late 2001 with a 15% increase in clothing and textile exports to the U.S., worth $500 million to Pakistani manufacturers. But Pakistani officials insist money won't sway their vote. ''This is a matter of much greater importance than just a question of incentives,'' says Munir Akram, Pakistan's U.N. ambassador.

It's still far from clear whether dollar diplomacy will give Uncle Sam a clearcut victory in the U.N. But even without an affirmative vote, Bush seems intent on going ahead with plans to attack Saddam by late March. Then the questions become: What kind of alliance will Bush be heading, and how durable will such a coalition of convenience be?

If all goes swimmingly on the battle-field, some of today's qualms will surely fade—replaced by radiant TV images of liberated Iraqis and new-wave technocrats who vow to build a new nation. But if the intervention turns into the oft-predicted miasma of Middle Eastern intrigue and dashed hopes, America could find itself standing far more alone than it is today. Fast friends may be hard to come by in the self-centered world of diplomacy. Still, the kind you make because of truly shared interests seem preferable to the kind you rent.

Mr. DURBIN. Let me quote several lines from this article in Business Week, not known as a liberal publication:

But in broader terms, pressure on the White House to dangle inducements transcends the U.N. debate and goes to the heart of Washington's current dilemma—America's poverty of friendship.

It goes on to say:

And buying allegiances one country at a time is a far cry from building a cohesive group committed to a common cause. Another consequence of the Bush Administration's Iraq Policy is that it could unintentionally undermine the President's broader goal of implanting the seeds of reform in the region. If the intervention comes to be seen by Iraq's neighbors as illegitimate, the result could be more radicalism, not less.

The Administration's lofty goals in the Mideast could be much harder to achieve if ''Americans are seen less as a partner than as a foreign power,'' says Jon B. Alterman, who recently left the Bush State Dept.

What a dramatic turn of events, and from the spirit of international cooperation, fighting the war on terrorism, for the United States to be in a bidding war to try to bring the Turks into the position where they will allow us to use their country, it is just such a change from where we were. It reflects a sad decline in our diplomatic skills.

Consider at the same time what is happening in North Korea. Here we have a country which has decided to test the United States. Why they have decided is anyone's guess. But let me hazard one. They see what is happening in Iraq. Iraq is waiting for the United Nations and others to protect them from a United States invasion, and they are not being successful. North Koreans decided to take a much different course. They are confronting the United States in the crudest and most dangerous way—suggesting that they are going to build nuclear weapons; they are going to fire missiles; they are going to harass our aircraft; and they are going to defy us. They believe that is the way to hold the United States back. The process they are building up could potentially proliferate nuclear weapons around the world.

Our response there, unlike with Iraq where we are full bore with a quarter million troops and billions of dollars committed, is to not even speak to the North Koreans. I don't understand that level of diplomacy. I don't understand how that will make this a safer world.

Let us reflect for a moment, though, on what is happening in the United Nations. I have read the critics from the right who basically said we should go right over the United Nations; we no longer need them; we have the power; we don't need to wait around for small nations with populations that are a fraction of the United States to decide whether they will support us. In a way, in the world of realpolitik, that is true. But the United States, in informing the United Nations, had something else in mind. It is not just a matter of whether we have the power and a show of more strength than the United Nations as a member but whether the United States is stronger with collective security engaging other countries around the world to join us in efforts such as containing Iraq and its danger.

I happen to believe that collective security is not old fashioned and outmoded. It is critically important for us to consider building alliances to achieve important goals for the United States and the world because in building those alliances through the collective security of the United Nations, we bring together common values, a consensus on strategy, and a world vision that will serve all of us well.

To walk away from the United Nations and say, once having engaged them in a resolution, that we may not be able to pass a use-of-force resolution and that we will do it ourselves is to walk away from an important concept which has been fostered by the United States and supported by the United States and which has been critically important to us as recently as our effort in the Persian Gulf and in Afghanistan.

But, by tomorrow, the decision may be made. If the United Nations Security Council does not support us, it is indeed possible that we will have unilateral action by the United States, with the possible support of the British.

I asked the Secretary of Defense, Secretary Rumsfeld, several weeks ago: Who are our allies in this coalition against Iraq? He said: Certainly the United States with about 250,000 troops, and the British with about 26,000 troops, and others. I said: Of the others, who would rank third? At that point, he said: The Turks.

We know what is happening. Their Parliament will not allow us to use their country as a base of operation. That may change. But it shows, when it comes to this effort, that it is by and large a bilateral effort by the United States and the British against the Iraqis. I think that is not the best approach. I think it is far better for us to acknowledge what I think is the real effective approach, and that is to engage our allies in the United Nations and in the Security Council to put meaningful deadlines on Saddam Hussein; for the inspectors to reach their goals; to let Saddam Hussein know that every step of the way, his failure to cooperate could result in the United Nations taking action against him. That does not call for an invasion, but it puts him on a tight timetable that he has to live by.

To abandon the inspections, to abandon the role of the United Nations, and to launch a unilateral invasion of this country is going to be something that I think we may regret. Will we be successful militarily? I believe we will. I can't tell you the cost in terms of American lives or in terms of Iraqis killed. But I trust our military to succeed in this mission.

Having succeeded militarily, though, what will we then face? We will face, of course, the devastation in Iraq.

This week, we learned that the United States was now soliciting bids from companies in the United States for the reconstruction of Iraq before

the bombs have even fallen. That could be momentous in terms of cost. We will face it.

As Tom Friedman of the New York Times has written, when we go into a gift shop and see the sign, ''If you break it, you own it,'' the fact is when we invade Iraq and remove its leadership and occupy that country, it is then our responsibility. Others may help us, but it is primarily our responsibility.

The same thing is true in terms of the long-term vision of Iraq. This is a country with no history of self-government, this is a country with no history of democracy, and we want to bring certain values there. We have to concede the fact that it will take some time before they arrive at that point. We will be there in an occupational way with others perhaps, but we will have the responsibility of making that transformation a permanent or semipermanent presence of American troops in the Middle East and all that that entails.

At the same time, it is bound to enrage our enemies around the world—those who think the United States is acting unilaterally and not acting in concert with other nations, peace-loving nations that would share our ultimate goals. That, too, may complicate the war on terrorism. That has been conceded by intelligence agencies and others. Our efforts in Iraq may spread the seeds of terrorism on new ground, and maybe even here in the United States. We will have to work that much harder to protect ourselves.

I want to enter into the RECORD a letter sent to Secretary of State Colin Powell from John Brady Kiesling, who is with the United States Embassy in Athens, Greece.

I ask unanimous consent that this letter be printed in the RECORD.

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

Hon. COLIN POWELL,
Secretary of State,
Washington, DC.

DEAR MR. SECRETARY: I am writing you to submit my resignation from the Foreign Service of the United States and from my position as Political Counselor in U.S. Embassy Athens, effective March 7. I do so with a heavy heart. The baggage of my upbringing included a felt obligation to give something back to my country. Service as a U.S. diplomat was a dream job. I was paid to understand foreign languages and cultures, to seek out diplomats, politicians, scholars and journalists, and to persuade them that U.S. interests and theirs fundamentally coincided. My faith in my country and its values was the most powerful weapon in my diplomatic arsenal.

It is inevitable that during twenty years with the State Department I would become more sophisticated and cynical about the narrow and selfish bureaucratic motives that sometimes shaped our policies. Human nature is what it is, and I was rewarded and promoted for understanding human nature. But until this Administration it had been possible to believe that by upholding the policies of my president I was also upholding the interests of the American people and the world. I believe it no longer.

The policies we are now asked to advance are incompatible not only with American values but also with American interests. Our fervent pursuit of war with Iraq is driving us to squander the international legitimacy that has been America's most potent weapon of both offense and defense since the days of Woodrow Wilson. We have begun to dismantle the largest and most effective web of international relationships the world has ever known. Our current course will being instability and danger, not security.

The sacrifice of global interests to domestic politics and to bureaucratic self-interest is nothing new, and it is certainly not a uniquely American problem. Still, we have not seen such systematic distortion of intelligence, such systematic manipulation of American opinion, since the war in Vietnam. The September 11 tragedy left us stronger than before, rallying around us a vast international coalition to cooperate for the first time in a systematic way against the threat of terrorism. But rather than take credit for those successes and build on them, this Administration has chosen to make terrorism a domestic political tool, enlisting a scattered and largely defeated al Qaeda as its bureaucratic ally. We spread disproportionate terror and confusion in the public mind, arbitrarily linking the unrelated problems of terrorism and Iraq. The result, and perhaps the motive, is to justify a vast misallocation of shrinking public wealth to the military and to weaken the safeguards that protect American citizens from the heavy hand of government. September 11 did not do as much damage to the fabric of American society as we seem determined to do to ourselves. Is the Russia of the late Romanovs really our model, a selfish, superstitious empire thrashing toward self-destruction in the name of a doomed status quo?

We should ask ourselves why we have failed to persuade more of the world that a war with Iraq is necessary. We have over the past two years done too much to assert to our world partners that narrow and mercenary U.S. interests override the cherished values of our partners. Even where our aims were not in question, our consistency is at issue. The model of Afghanistan is little comfort to allies wondering on what basis we plan to rebuild the Middle East, and in whose image and interests. Have we indeed become blind, as Russia is blind in Chechnya, as Israel is blind in the Occupied Territories, to our own advice, that overwhelming military power is not the answer to terrorism? After the shambles of post-war Iraq joins the shambles in Grozny and Ramallah, it will be a brave foreigner who forms ranks with Micronesia to follow where we lead.

We have a coalition still, a good one. The loyalty of many of our friends is impressive, a tribute to American moral capital built up over a century. But our closest allies are persuaded less that war is justified than that it would be perilous to allow the U.S. to drift into complete solipsism. Loyalty should be reciprocal. Why does our President condone the swaggering and contemptuous approach to our friends and allies this Administration is fostering, including among its most senior officials. Has ''oderint dum metuant'' really become our motto?

I urge you to listen to America's friends around the world. Even here in Greece, purported hotbed of European anti-Americanism, we have more and closer friends than the American newspaper reader can possibly imagine. Even when they complain about American arrogance, Greeks know that the world is a difficult and dangerous place, and they want a strong international system, with the U.S. and EU in close partnership. When our friends are afraid of us rather than for us, it is time to worry. And now they are afraid. Who will tell them convincingly that the United States is as it was, a beacon of liberty, security, and justice for the planet?

Mr. Secretary, I have enormous respect for your character and ability. You have preserved more international credibility for us than our policy deserves, and salvaged something positive from the excesses of an ideological and self-serving Administration. But your loyalty to the President goes too far. We are straining beyond its limits an international system we built with such toil and treasure, a web of laws, treaties, organizations, and shared values that sets limits on our foes far more effectively than it ever constrained America's ability to defend its interests.

I am resigning because I have tried and failed to reconcile my conscience with my ability to represent the current U.S. Administration. I have confidence that our democratic process is ultimately self-correcting, and hope that in a small way I can contribute from outside to shaping policies that better serve the security and prosperity of the American people and the world we share.

Sincerely,

JOHN BRADY KIESLING,
U.S. Embassy Athens.

Mr. DURBIN. Mr. President, this letter is a letter of resignation. Mr. Kiesling, a career diplomat who has served in United States embassies around the world, resigned over our foreign policy in Iraq. I will not read the entire letter. But this I will read. It is the letter from Mr. Kiesling to Secretary Powell:

> The policies we are now asked to advance are incompatible not only with American values but also with American interests. Our fervent pursuit of war with Iraq is driving us to squander the international legitimacy that has been America's most potent weapon of both offense and defense since the days of Woodrow Wilson. We have begun to dismantle the largest and most effective web of international relationships the world has ever known. Our current course will bring instability and danger, not security.

Those are the words of a man who was a career diplomat serving the United States with principle and convictions and who resigned from the diplomatic corps over our policy in Iraq. That is a sad commentary, but it is a reality.

The reality is that we are following a course of foreign policy that is a dramatic departure from what we have followed for almost 50 years. We are making decisions relative to this war in Iraq which are changing the rules the United States has not only lived by but preached for decades. We are confronting the world that has most recently been our allies in the war on terrorism and telling them that, with or without their cooperation and approval, we are going forward with an invasion of Iraq. We are saying to the rest of the world that the United States has the power and will to use it. It is certain that we have the power and the strength. The question is whether or not we have the wisdom—the wisdom to understand that simply having the strength is not enough.

I would like to quote a few words from a statement made on this floor on October 3 last year by a man who used

to sit directly behind me here, Paul Wellstone of Minnesota. I miss him every single day. I pulled out the statement he made relative to this use of force resolution. I can recall now when he said some of these words.

I quote from Senator Wellstone:

> To act now on our own might be a sign of more power. Acting sensibly and in a measured way in concert with our allies with bipartisan congressional support would be a sign of our strength.

It is still true today. It is true so many months later.

I think the President and this administration still have a chance to take what could be a course of action that departs from a tradition in values which we have stood by and preached for so many decades, and return to those values in our efforts in Iraq.

And I hope we do it. I hope we do not discard the United Nations and all of our allies who are part of it. I hope we understand that when some of our best friends around the world question whether we are approaching this sensibly, it does not demonstrate their weakness but really calls into question whether we have the humility to step back and say: Can we do this more effectively for a more peaceful world for generations to come?

Madam President, I close by saying, I return now, in just a few moments, to my home State of Illinois. As I walk the streets of Springfield, of Chicago, and of other cities, people come up to me and say: Why don't I hear a debate in the U.S. Congress about Iraq?

Well, the fact is, that debate was waged and decided last October. I was one of 23 Members who voted against the use of force resolution because I believe there is a better way: a collective approach with the United Nations, that makes certain that the United States has a coalition of nations behind it in suppressing the evil of Saddam Hussein and his dangers to the region, rather than a coalition of nations united against us. That, sadly, is what we face today.

The vote in the United Nations tomorrow is historic. I hope we have the support of that institution. I hope, if we do not, this administration will pause before unleashing the furies of war and consider whether there is a better, more measured and sensible approach to show not only our might but our strength and clarity of purpose.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

THE ECONOMY

Mr. DORGAN. Madam President, my colleague from Illinois has been talking about foreign policy and, more specifically, about Iraq and the use of force. He touched on the issue of North Korea and terrorism.

We do need to have more debate, aggressive and thoughtful debate, about all of these issues. There is no question that North Korea, in my judgment, and in the judgment of many in this country, is an urgent, serious threat to our country. They kicked out the inspectors. And they do have nuclear weapons, at least according to our intelligence officials. They believe North Korea does have nuclear weapons.

The threat of terrorism continues in this country. Homeland security is a top priority. And all of these issues are very important. But I want to speak about an issue here at home; that is, domestic policy, especially this country's economy.

We wake up every morning—for months in this country—hearing the lead story on the news being war with Iraq. It is the lead story every morning, bar none. It is an important story, no question about that. But there are a lot of folks who wake up in this country these days who are out of jobs. Some 8 million people—perhaps more than that, we are told—do not have work.

Madam President, 308,000 additional people lost their jobs last month alone—308,000 people. Do you know who loses their jobs first? Oh, it is not Members of Congress and it is not people who drive big cars. It is the people who know the definition of ''second-hand,'' ''second shift,'' ''second jobs.'' It is the people who struggle at the bottom of the economic ladder. They are the last to be hired and the first to go.

This economy of ours is in trouble. It is time to stop tiptoeing around and pretending about it. We have two Budget Committees meeting now in this Congress. We have a budget submitted by this President that is completely, in my judgment, irresponsible. That is not a partisan criticism, it is just a criticism of a budget that completely ignores what is happening in this country. It is a budget that pretends everything is just fine and all we need to do is keep doing what we have been doing and this country will see its economy come out of the doldrums. That is patently untrue, in my judgment. It is time for us to say that.

Let me talk a bit about this plan and about where we are. There is not a Democrat or Republican way to fix what is wrong with this ship of state with respect to its economy. But there are right ways and wrong ways to do it. And I know that the moment we dare criticize the administration, we have all of these strident voices from the extreme of the political system who say: Well, how dare you criticize the administration or the President.

Look, I think both parties have done plenty wrong in this country's past. But we face an intersection now that is unlike any intersection America has come to in a long time. This intersection is one where we confront both serious, urgent foreign policy problems—Iraq, North Korea, terrorism, and more—and, at the same time, confront very serious problems here at home—an economy that is languishing, without growth, an economy that, last month, saw 308,000 people lose their jobs.

Now just think of one of those. I am not asking you to think about 1,000, 10,000, 100,000 or 300,000—just one, who comes home and says to his or her family: Something happened at work today. I lost my job. It wasn't my fault. I have done the best I could. I am a good worker, but I have lost my job because the economy is not working well. It's soft.

So what happens here in Washington, DC? Well, we act as if none of this is going on. This is a cheering section, to say: Well, things are going to be better. This is not a problem. What are you complaining about?

Let me talk, just a little, about where we are with this economy of ours.

We have a $10 trillion economy in this country. This is the biggest, the best economy in the world. None of us would want to live elsewhere. We are lucky to be Americans, lucky to be Americans alive now. But our responsibility, as Americans, is to nurture, protect, and foster the development of this great country of ours, and that means protecting this economic engine that produces the jobs and the opportunities for the American people.

Now, in May of 2001, we had an economy that economists told us would produce budget surpluses at the Federal level as far as the eye could see. They said: I tell you, we're walking in tall clover here. There are going to be budget surpluses for 10 years, so you all ought to get about the business of providing big, big tax cuts.

President Bush came to town and said: My heavy lifting is to ask the American people to accept big tax cuts. That is the easiest lift in American politics, I guarantee you. I would like to see one politician who works up a sweat asking people to accept tax cuts.

So the President said: $1.7 trillion in tax cuts; that's my plan. I stood at this desk then, and I said: I think we ought be a little conservative. What if something happens? What if we are giving away money we don't get? What if we don't have these surpluses? What if something that we can't predict at this point occurs and these surpluses don't exist? What you are going to do is run into big deficits and have our children shoulder the consequences of this mistake.

Well, I lost that debate. And so a $1.7 trillion tax cut proposed by the President was pushed through this Congress. And guess what. In a matter of months—just a matter of months—we discovered our economy was in a recession. Months after that, September 11, the most devastating terrorist attack against this country in its history; months after that, a series of corporate scandals unlike any we have ever seen in this country; during all of that time, the bursting of the technology bubble and the collapsing and pancaking of the stock market; and during all of that time, the prosecution of a war against terrorism.

You think about that, all of those consequences—a recession, the bursting of the technology bubble, the pancaking of the stock market, corporate scandals, a war against terrorism. All of that combined to create a dramatic difference in this economy. We have far less revenue coming in. And the result is, big deficits.

Here is what we found:

In May of 2001, Mr. Daniels, the head of OMB, said: We are going to have a $5.6 trillion surplus. We had better get about the business of having big tax cuts, he and the President said.

Well, in 2 years, we went from a $5.6 trillion estimated surplus to a $2.1 trillion deficit. That is nearly an $8 trillion change in the economic fortunes of this country. And yet we have people acting as if it is not happening. None of this is happening, according to them.

What is the antidote to this? What do we do? Well, let's ratchet up some more tax cuts. Short of money? Well, then, reduce your revenue stream. So the President proposes more large tax cuts.

I suppose if you don't care about fiscal responsibility, about budget deficits, then you can do that. But the fact is, we have seen this calculation before. I come from a high school of nine. We didn't have higher math, but there is only one way to add one and one that equals two. That is the math book I studied.

The fact is, this administration's budget does not add up. They say increase defense spending, increase homeland security spending, have less revenue, and have a few budget cuts in domestic discretionary programs, and it will all add up. It doesn't add up. They want to pretend that it adds up. The American people know it doesn't add up.

On the domestic discretionary piece, they say let's increase these two big areas of spending: Defense, homeland security. Let's cut taxes. And incidentally, let's cut taxes on average for someone with $1 million a year in income, let's cut their taxes on average nearly $90,000 a year. We can afford that, they say. But, they say, what we will do is take it out of domestic discretionary spending, nondefense. What does that mean? That means what we will do is cut back on title I spending. That is what they talked about in one of the budget resolutions today.

I toured a school about 2 weeks ago. At the library there was a third grader, a young boy, great-looking young kid, looking at a book and pictures. I met him and said hi to him. I came up behind him and tapped him on the shoulder. The principal of the school, after we got out of earshot of the young boy, said: Do you know something about that boy? You can't tell it right now, but that young boy almost died. He was subject to the most severe abuse I have ever seen in a family. He was beaten badly, taken away from his mother because of the beatings. You know he is doing very well now. This little kid has kind of gotten through all of this. He is doing well. This kid is part of the program for the school, the title I funds for disadvantaged kids. That is the kind of investment we make in these kids. And this little boy needed some of that investment. That is what we do with title I, with Head Start. We give these tiny kids who don't have it so good an opportunity to get a head start in education.

With Pell grants, kids who couldn't go to college get an opportunity to go to college. I had a young Native American stand up in a meeting once and say: Mr. Senator, I am an American Indian. I am the first in my family ever to go to college. I am able to be here because I have Pell grants, because we don't have any money. I will graduate from this college, and I will go back to teach school on the Indian reservation which I came from.

He did. That is the value of investing in some of these programs such as education programs for some of these kids. We can just talk about it as if it is some amorphous program that does not mean anything with no names attached, but that is not the case. All of these investments in the lives of young children make a difference. So when we talk about fiscal policy and plans and budgets, it is just too easy for some people who don't understand that there is a constituency out there. They don't have lobbyists in the hallway. There are no 5-year-olds or 6-year-olds or 3-year-olds waiting as we leave the Chamber to say: Please, Mr. Senator, will you help us. They don't have the voices here.

The fact is, just taking one example of what we do that makes a difference in people's lives, in education of children, especially children who haven't had it so good, we have people who just blithely walk around here these days and say: This is not a difficult circumstance to get out of. Give the wealthy some very big tax cuts, spend $675 billion that we don't have, charge it to the kids, cut back on education programs, and cut back on many of the other programs that help people who don't have it so good and call it a day. Have a good night's sleep.

Those who can sleep with those priorities, in my judgment, have a misplaced priority of public service. The priority in this country ought to be, first of all, to have a fiscal plan that adds up so this country's economy has a chance to grow and provide opportunities and jobs for people.

There is no social program we work on that is as important for working people as a good job that pays well. So making this economy work, giving it the opportunity to work, having it add up so people have confidence in the future is critically important. And then at the same time preserving the opportunity for some very important things, whether it is helping family farmers during a disaster, helping young kids get a chance to start in school through the Head Start program—all of those are so important.

We are doing a shadow dance in this Chamber. Everybody here knows this nonsense does not add up, and no one is willing to say it because the minute you say it, people start screaming that you are somehow disloyal to this administration.

I want this administration to succeed. I want this President to succeed. I want him to succeed so this country does well. I want our economy to grow. I want our foreign policy challenges with Iraq and North Korea and others to work out in the right way. I don't come here wanting us to fail. But if we don't stand up and point out the obvious, that we are headed down a path toward deeper and deeper Federal budget deficits with which we will saddle our children, if we don't change course, this country is not going to grow and will not provide opportunities.

I suppose there will be many who will continue this shadow dance that goes on to pretend everything is just fine, but we know better than that. If we were headed towards these deficits with the previous administration, I guarantee you there would be 20 people in this Chamber every night putting blue smoke out the Chamber; they would be so upset about it. But somehow in the shadow of 9/11, we have moved to a circumstance where the most irresponsible fiscal policy I have ever seen proposed is judged to be a yawn by this Chamber.

We have the two Budget Committees meeting, and they are saying: We can fit all this in. We can fit in big tax cuts. In fact, now they say—those so-called conservatives—deficits don't even matter. It is not a big thing to be worried about.

I don't understand what has happened with respect to the relative positions of politicians these days. Conservatives say deficits don't matter? That is a different kind of conservative than I am familiar with. Deficits, of course, matter. Someone has to repay them.

I don't mean to belabor this point, but on top of this fiscal policy that has us now headed towards the largest deficits in the history of our country, take Social Security out of the calculation, and you should. The Social Security surpluses should not be used to reduce the budget deficit. They are trust funds. The President proposes taking all the trust fund and using it, but they ought not. So if you take that out, you have a budget deficit this year of nearly $450 billion. But add to that a trade deficit of over $460 billion this year alone—the highest in human history. This economy is off course. We need to fix it.

We need to stand up for the economic interests of America in trade and begin reducing that trade deficit, because we have to pay that with a lower standard of living in our future. That is not an option. That trade deficit is owed to other countries. You can make an argument as an economist that the budget deficit we owe to ourselves. Nonetheless, we will still have to bear that

burden. But our children will likely bear the burden of a 10-year deficit that is put on their shoulders by a fiscal policy that is irresponsible.

We will have a budget debate next week. I will offer amendments. My colleagues will offer amendments. I don't have any interest in deciding that Republicans have the wrong answer and Democrats have the right answer. There are good answers that come from all parts of the Chamber. But the construct of this fiscal policy is just fundamentally wrong and everybody in this Chamber who knows how to add and subtract ought to know that. It is time for us to start speaking about it.

I am perfectly interested in providing tax cuts to the American people when we have budget surpluses. But the tax cuts should be to working families and should be distributed fairly. But at a time when we have the highest deficits, to say let's ignore them and let's have a political construct that increases spending in the largest areas of spending in the Federal budget and decreases taxes with very large tax cuts and then pulls the rest out of it out of some very important things that invest in people in this country, including veterans and Indian health and education, and a whole series of things, that is wrong.

We need to stand up and talk about it. I will speak about it at greater length next week. I wish I could come to the floor and say this is a wonderful fiscal policy. I just cannot. I feel obligated to say this is wrong; we are headed in the wrong direction. We need to fix it as a country. Our children's future depends on it.

I will make one final point. On September 11, when this country was attacked, we were one country. I was proud of President Bush, and one of the best speeches I ever heard he gave to a joint session of Congress. This country responded as one. But this country does not do a service to its future by believing now—a year and a half following that period of time—that voices still, because they don't want to engage in debate over issues that are important to our future, are somehow disadvantageous to our country. We need a robust debate about the right fiscal policy. We disserve our constituencies if we don't bring this debate to the floor in an aggressive way. What works? What will restore economic health to the country? What do we do to improve economic growth, to provide jobs, to get people back to work, and get the economy moving again? Those are the questions we have to ask as we construct a budget and put this fiscal policy together.

I regret I come to say this fiscal policy makes no sense at all and must be changed. I wish that were not the case, but it is. The result of that is I will be here with amendments, as will others, hoping we can improve this fiscal policy for our country's future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

THE WORDS OF ALISTAIR COOKE

Mr. STEVENS. Madam President, I am glad to see an Alaskan in the chair as I make this statement. This morning, as it usually happens, when I turned on my computer, I found a series of e-mails from friends at home. I do not always have time to read them then, but I saw one from a very close friend, who has been a friend now for over 50 years—Frank Reed, a former neighbor, a person who has helped me in many ways in my life. He asked me to read this article he attached to his e-mail. I get a little disturbed when I see that the testament is a little longer than the e-mail. But I found that he had sent me a verbatim transcript of an article by Alistair Cooke entitled ''Peace For Our Time,'' that was on the BBC News on Monday, February 3 of this year. I want to read that tonight because I think it reflects what I have been trying to say on the floor of the Senate these past several weeks.

The following was written and spoken by Alistair Cooke. He said this:

. . . I promised to lay off topic A—Iraq—until the Security Council makes a judgment on the inspectors' report and I shall keep that promise.

But I must tell you that throughout the past fortnight I've listened to everybody involved in or looking on to a monotonous din of words, like a tide crashing and receding on a beach—making a great noise and saying the same thing over and over. And this ordeal triggered a nightmare—a day-mare, if you like.

Through the ceaseless tide I heard a voice, a very English voice of an old man—Prime Minister Chamberlain saying: ''I believe it is peace for our time''—a sentence that prompted a huge cheer, first from a listening street crowd and then from the House of Commons and next day from every newspaper in the land.

There was a move to urge that Mr. Chamberlain should receive the Nobel Peace Prize. In Parliament there was one unfamiliar old grumbler to growl out: ''I believe we have suffered a total and unmitigated defeat.'' He was, in view of the general sentiment, very properly booed down.

This scene concluded in the autumn of 1938 with the British prime minister's effectual signing away of most of Czechoslovakia to Hitler. The rest of it, within months, Hitler walked in and conquered. ''Oh dear,'' said Mr. Chamberlain, thunderstruck. ''He has betrayed my trust.''

During the last fortnight a simple but startling thought occurred to me—every single official, diplomat, president, prime minister involved in the Iraq debate was in 1938 a toddler, most of them unborn. So the dreadful scene I've just drawn will not have been remembered by most listeners.

Hitler had started betraying our trust not 12 years but only two years before, when he broke the First World War peace treaty by occupying the demilitarized zone of the Rhineland. Only half his troops carried one reload of ammunition because Hitler knew that French morale was too low to confront any war just then and 10 million of 11 million British voters had signed a so-called peace ballot.

It stated no conditions, elaborated no terms, it simply counted the numbers of Britons who were ''for peace.''

The slogan of this movement was ''Against war and fascism''—chanted at the time by every Labour man and Liberal and many moderate Conservatives—a slogan that now sounds as imbecilic as ''against hospitals and disease.'' In blunter words a majority of Britons would do anything, absolutely anything, to get rid of Hitler except fight him.

At that time the word pre-emptive had not been invented, though today it's a catchword. After all the Rhineland was what it said it was—part of Germany. So to march in and throw Hitler out would have been pre-emptive—wouldn't it?

Nobody did anything and Hitler looked forward with confidence to gobbling up the rest of Western Europe country by country—''course by course'', as growler Churchill put it.

I bring up Munich and the mid-30s because I was fully grown, on the verge of 30, and knew we were indeed living in the age of anxiety. And so many of the arguments mounted against each other today, in the last fortnight, are exactly what we heard in the House of Commons debates and read in the French press.

The French especially urged, after every Hitler invasion, ''negotiation, negotiation''. They negotiated so successfully as to have their whole country defeated and occupied. But as one famous French leftist said:

''We did anyway manage to make them declare Paris an open city—no bombs on us!''

In Britain the general response to every Hitler advance was disarmament and collective security. Collective security meant to leave every crisis to the League of Nations. it would put down aggressors, even though, like the United Nations, it had no army, navy or air force.

The League of Nations had its chance to prove itself when Mussolini invaded and conquered Ethiopia (Abyssinia). The League didn't have any shot to fire. But still the cry was chanted in the House of Commons—the League and collective security is the only true guarantee of peace.

But after the Rhineland the maverick Churchill decided there was no collectivity in collective security and started a highly unpopular campaign for rearmament by Britain, warning against the general belief that Hitler had already built an enormous mechanized army and superior air force.

But he's not used them, he's not used them—people protested.

Still for two years before the outbreak of the Second War you could read the debates in the House of Commons and now shiver at the famous Labour men—Major Attlee was one of them—who voted against rearmament and still went on pointing to the League of Nations as the savior.

Now, this memory of mine may be totally irrelevant to the present crisis. It haunts me. I have to say I have written elsewhere with much conviction that most historical analogies are false because, however strikingly similar a new situation may be to an old one, there's usually one element that is different and it turns out to be the crucial one. It may well be so here.

All I know is that all the voices of the 30s are echoing through 2003 . . .

Madam President, I was but 14, not 30. I remember the tension we all felt at that time, as country after country became destroyed by Hitler. Previously on the floor of the Senate, I mentioned Hitler and compared Saddam Hussein to Hitler. I was criticized even by the papers at home in Alaska.

I was delighted to read Alistair Cooke's article that Frank Reed sent to me this morning, and I commend it to the rest of the Senate.

This haunts me. It haunts those of us who lived through the thirties to know

we might go through the thirties again because too many people refuse to listen to the truth, refuse to listen to what some of us see in Saddam Hussein, as being another Hitler.

(The remarks of Mr. STEVENS pertaining to the introduction of S. 628 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

HONORING GENERAL AL LENHARDT

Mr. DASCHLE. Madam President, a little over 18 months ago, I came to this floor to welcome MG Alfonso Lenhardt to the Senate on his first day as this body's Sergeant at Arms.

Tomorrow will be GEN Lenhardt's last day in the Senate.

It is with profound admiration, and more than a little sadness, that I rise today to thank him for his extraordinary service, and to wish him much success and happiness in the years ahead.

Nominating Al Lenhardt to serve as the Senate's Sergeant at Arms was one of the great honors of my time as majority leader. It was also, I think, one of the best decisions I made in more than 30 years of public service.

I did not know Al before we began the search for a Sergeant at Arms in the summer of 2001. He was recommended to me by our former Secretary of the Senate, Jeri Thomson.

Jeri had met Al more than a decade ago when they were both at the Kennedy School of Government at Harvard. She was impressed by his intelligence, knowledge, steady demeanor and commitment to public service, characteristics she correctly noted are highly desirable in a Senate Sergeant at Arms.

Twenty minutes after meeting Al, I knew Jeri had identified the right person for this job.

I also knew, when I nominated Al, that he would make history in this Senate. What I did not realize is what a crucial role he would play, and what a difference he would make, in the history of this Senate.

Al Lenhardt is the first African American ever to serve as the Senate's top law enforcement and administrative officer. In fact, he is the first African American to serve as an elected officer of the Senate or House—ever.

That seems hard to believe, but it is true. And after 212 years, I must say, it was long overdue.

And he was the individual serving as the top law enforcement officer of the Senate when the unimaginable happened—terrorists struck a devastating blow on American soil.

The September 11 attacks occurred less than a week after Al Lenhardt was sworn in as Sergeant at Arms. I do not think he took a day off for over 5 months.

Five weeks after September 11, a letter containing a lethal dose of anthrax was opened in my office.

That incident remains the largest bioterrorism attack ever on U.S. soil, and one of the most dangerous events in Congress' history.

Al Lenhardt's leadership ability, experience and demeanor were instrumental in the Senate's entry into the post-September 11 world. I am not sure that before that terrible day any of us fully appreciated the threat that America's enemies posed to our U.S. Capitol, a majestic and enduring symbol of our democracy.

Al Lenhardt rose to the challenge of protecting against further terrorist attacks on the Capitol complex and protecting the people who work in and visit these buildings—without closing ''The People's House'' to the people themselves.

Al provided calm and steady leadership in the face of danger that reassured us all in an extraordinarily stressful and emotional time.

When deadly anthrax was released in the Hart Building, 50 Senators and their staffs, and 15 committees and their staffs, were displaced for 96 days while the building was remediated.

Never before—not even when the British burned the Capitol in 1814, had so may Senators been uprooted.

Relocating them and their staffs presented an unprecedented logistical challenge. But Al Lenhardt and his staff, and the staffs of the Rules Committee and the Secretary of the Senate, responded quickly and well. The business of democracy never stopped.

Al Lenhardt stood tall in the face of danger. And his steady hand assured that the Senate kept functioning.

Over the past 18 months, Al Lenhardt rose to the occasion, demonstrating to me that he was indeed the right man, with the right skills and experience, in the right place, at the right time.

Al Lenhardt has had a remarkable public career.

He served in the United States Army for 32 years and as a combat veteran wears the Purple Heart earned in Vietnam.

He retired from the Army in 1997.

His last Army position was commanding general of the U.S. Army Recruiting Command at Ft. Knox, KY. From that post, he managed more than 13,000 people in 1,800 separate locations.

Before that, he served as the senior military police officer for all police operations and security matters throughout the Army's worldwide sphere of influence.

In the 1980s, he did counter-terrorism work in Germany against the Baader-Meinhof Gang and other terrorist groups.

He also was the former commander of the Army's Chemical and Military Police Centers at Fort McClellan, AL, which trains the military police who are guarding our bases overseas.

Al Lenhardt was born in Harlem 59 years ago.

He earned a bachelor's degree in criminal justice from the University of Nebraska, a master of arts degree in public administration from Central Michigan University, and a masters of science degree in the administration of justice from Wichita State University. He has also completed post-graduate studies at the Kennedy School of Government at Harvard, and the University of Michigan Executive Business School.

Between the Army and the Senate, he served for 4 years as executive vice president and chief operating officer of the Council on Foundations, where he worked to harness the power of philanthropy to meet some of America's most urgent unmet needs.

He has been active in an array of organizations, from the Boy Scouts of America, to the Boys and Girls Clubs of Washington, DC, the National Office of Philanthropy, and the Black Church Project.

He has been married for 38 years to Jackie Lenhardt, one of the few people I have ever met who has a more commanding presence than Al. Jackie and Al have three daughters—two lawyers and a doctor—and two grandchildren, Olly, who is 4, and Maya, who was born 2 months ago.

The closest thing to a complaint I've ever heard from anyone who knew Al Lenhardt in the Army was from an officer who took a battalion six years after Al had left it.

He said: ''It's tough to go into a unit after Al Lenhardt because he leaves such strong footprints. Six years later, his policies and procedures still stood. He made a lasting impact on soldiers.''

The one consolation in saying goodbye to Al Lenhardt is knowing that the policies and procedures he instituted here in the Senate will continue protecting us in the future.

Al's predecessor, Jim Ziglar, began the effort to modernize security and protect the Capitol in an age of terrorism. And he made a good start.

But I think even Jim would acknowledge that it is Al Lenhardt who deserves the lion's share of the credit for leading the Senate into the modern age of security and law enforcement.

If Congress is ever forced to vacate this building, or even this city, for any length of time, the Senate will be able to move and resume the work of democracy immediately in a new location under a ''continuity of operations'' plan that Jim Ziglar started and Jeri Thomson and Al Lenhardt completed.

While Al would be the first to state that more needs to be done, he has ensured that the Senate will continue operations in the event of any emergency.

The physical security around the Capitol is much stronger and intelligence gathering, analysis and sharing is much better today than it was on September 11th—largely because of Al Lenhardt.

We are better prepared to prevent attacks—and to respond if attacks happen—than we were before Al Lenhardt came here.

Because of Al Lenhardt, we know have an effective crisis communications network that uses state-of-the-art technology.

We have emergency evacuation plans and drills.

We've implemented state-of-the-art mail security to prevent another nightmare like the anthrax attack.

Capitol Police officers are getting new training to deal with the new threats. We are also expanding the police force—so our officers can get some much-deserved rest.

Al Lenhardt has played a leadership role in building stronger working relationships with security and intelligence experts at the departments of Homeland Security, Justice, Defense and other agencies.

That is another way Al Lenhardt made history.

The first Saturday morning after the anthrax letter was opened, Al was at work in the Capitol, surrounded by scientists and investigators. He had been at work until late the night before.

That morning, someone asked him: ''If you had to decide all over again, would you still want this job?''

Al smiled his great, broad smile and—without a moment's hesitation—replied: ''Absolutely. To be in a position to serve your country—what better job could there be?''

To that, Mr. President, I can only add: What better person could there have been in the Senate Sergeant at Arms' position these last 18 months than General Alfonso Lenhardt?

Certainly no one I have ever met.

Al Lenhardt has earned the respect and gratitude of every member of this Senate, and of this nation.

I am proud to have recommended him. I am proud to have served with him. And I am even more proud to call him my friend.

Indeed the entire Senate community is grateful to Al Lenhardt for what he has contributed to us, and we will miss him.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Before the majority leader leaves the floor, I ask to be associated with the remarks he made about General Lenhardt. I add that in the years Senator DASCHLE has been the Democratic leader—he is starting his eighth year—he has done a lot of very good things for the State of South Dakota, our country, and the Senate. But nothing he has done has been more meaningful than selecting this professional, the first time in the history of our country, the Sergeant at Arms was a professional who had experience.

He was in charge of all the military police in the Army, a general in the United States Army, and was called upon for duty by Senator DASCHLE. If there were ever anyone with a vision regarding the problems this country faced and this Senate passed, Senator DASCHLE, in selecting General Lenhardt—because September 11 came during his honeymoon period. He had just gotten here.

We were so well served and have been so well served. I want the RECORD to reflect not only my great admiration and my friendship for General Lenhardt, I want the record to reflect for all Senator DASCHLE has done, nothing has been more important in the Senate than his selecting this good man for this most important job.

Mr. DASCHLE. I thank my dear friend, the Senator from Nevada, for his very kind words.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I walked over to the floor without realizing we were giving a testament to General Lenhardt. But I could not agree more with the words I heard from Senator DASCHLE, as well as the words from Senator REID of Nevada. It is true, as I reflect upon it, that I know of no man who contributed greater service for his country than Al Lenhardt. He is such a professional. He is such a gentleman. He is so good. We trust him so much. We are so lucky that he was our Sergeant at Arms during the tragic times the Capitol family has been through the last couple of years.

I know we are all extremely proud of him and we will have very fond memories of his service here. I say to General Lenhardt, you are a great man, and we appreciate your service.

Mr. President, I rise today to pledge my support for our brave men and women who are on the front lines protecting America as we work to eliminate terrorism. . . . To pledge my support for the United States and all that our country represents: democracy, freedom of speech and religion, independence of thought. . . . And to pledge my support for our leaders and our free and open elections that allow democracy to thrive.

I also rise today to urge and insist that throughout the ongoing situation with Iraq, we remember our underlying goal: To protect our country from weapons of mass destruction and terrorist threats and stop those who provide assistance to terrorist operations. In order to fully accomplish these goals, we need the support and assistance of the broadest possible worldwide coalition of our allies.

It's not in our Nation's interest to establish arbitrary deadlines to force us to act without the support of others. This is not the time to isolate our country by moving into a unilateral war against Iraq.

A war that could result in massive casualties and long term devastation. A war that has the likely potential of increasing terrorist threats against our Nation.

There is no question that the United States has the ability and the right to take necessary action to protect our country. But we should not burn bridges—bridges that we will surely need down the road—in our rush to war with Iraq.

There is no debate that the brutal regime of Saddam Hussein must come to an end. He has a long history of attacking and murdering his own people, employing chemical and biological weapons, and continually defying the limits set forth by the UN. There have been reported links between Iraq and terrorist activity, although no link has been established between Iraq and the events of September 11. The Iraqi people and the global community deserve to be free from a cruel dictator and the threat to safety that he represents. The credibility of the United Nations and of America is on the line.

We must take the time to fully weigh the risks and costs associated with unilateral action against the results we will achieve. The threat Iraq poses is not imminent, at least not so imminent that we can't continue with another week, or another month, of negotiations to garner the support of members of the United Nations Security Council.

The clock is ticking, but the alarm has not yet rung. I encourage the administration to continue inspections beyond their self-imposed March 17 deadline. In these final critical minutes, we have the opportunity to lay out hard and fast, mutually agreed upon benchmarks for Hussein to meet—or not meet—to determine his fate. Britain laid out definitive steps yesterday, such as allowing Iraq scientists to be interviewed abroad, destroying banned weapons and providing documentary evidence of any such destruction in the past.

While support for their resolution has not been overwhelming, it is important to continue along this path. Indeed, it is critical. We must both provide assistance to Britain, our strongest ally, while employing every resource at our command to garner Security Council support.

As the world's superpower, it is not only our responsibility, but it is in our best interest to lead. It's our responsibility to walk with and secure the support of our allies. The decisions we make in the coming days will have global reverberations and I am hopeful we won't have to endure the impacts alone.

In the case that unilateral military action is decided upon, the ramifications, lengthy reconstruction process and costs involved must be addressed. There are numerous reports that a war with Iraq will be a relatively short operation. But what follows in a month, in 6 months, in a year?

If the United States chooses to go it alone in Iraq and forsakes the support of a majority of our allies, the hurdles

and pitfalls will be numerous. And the likelihood of long term success and stability will be diminished. If we are successful in our mission to remove Saddam, a successor will need to be determined. The likelihood of Iraq becoming a democracy in our lifetime is unlikely. Even with the ousting of Saddam, we must be prepared and accepting of a moderate Arab government similar to others in the region.

The cost of rebuilding the country will be enormous, both in terms of money and manpower. From ensuring the Iraqi children can obtain clean water to establishing a forum for a free and open government to thrive. Are we willing to take those costs solely upon ourselves?

We must also be ready to focus our resources on the stability of the entire Middle East region and Muslim world. We need a comprehensive policy of economic engagement, one that includes expanded trade.

We should consider a trade benefits program similar to what we currently do for Africa, the Caribbean, and the Andean countries. In order to achieve long-term stability and reduce the terrorist threat, we will need to engage the entire region. And we will need our allies to assist in this engagement.

It's time to face facts. Our country is facing a troubling economy, unemployment, low growth, large national debt. Interest rates can't go much lower.

If we continue to disregard the concerns of other Security Council members and move forward with only a small band of countries that support immediate military action, the lion's share of the costs and military burden will fall on America's shoulders. Where will this money come from. How long must our troops be away from their families—months, years, decades? We must be fully prepared for this scenario before we move forward.

We are all in agreement that Saddam Hussein is a bad man and the threat he poses cannot be disregarded. While I unequivocally support removing Hussein from power, knowing that he is a peril to the region and the world, I urge that we move forward with a strong coalition of support. The clock is running down, but there is still time to gather our allies. Our long term interests—on every front—will be best achieved by standing together, united behind our common goal of eliminating terrorism and keeping our countries safe.

I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Utah.

MORNING BUSINESS

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to a period for morning business.

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

Mr. BENNETT. Mr. President, I listened with interest to my friend from Montana. While I had not prepared a response, I feel, nonetheless, moved to make a response.

My colleague from Montana made the point that Saddam Hussein must be removed and then suggested that we need more time and we should be willing to grant more time. This is, indeed, the position of many people in the United Nations. They keep saying just another week, just another month if necessary. The Senator from Montana used that same timeframe.

In my opinion, we do not have that option. In my opinion, we have two options, not three. The two options are either to go ahead or to come home. The option of staying in place and allowing the inspections to go on for an indeterminate period of time is not a viable option.

The reason for that is that our troops are not where they are on anything like a permanent status. They are there at the indulgence of foreign governments that have allowed them to come in with the firm understanding that they will be there very briefly. In the countries where they are currently bivouacked, they are simply there, on the edge of moving forward.

If we now say to those countries, the host countries that are harboring our troops, we are going to leave them there for an indefinite period of time while the inspectors continue to poke around Iraq, I expect that country after country will say: No. We did not bargain for American troops in these numbers on our territory for an indefinite period of time.

If you are not moving ahead into Iraq, withdraw your forces and go home. And if we do withdraw our forces and go home, it is clear Saddam Hussein will not be removed until he dies. And he may very well die in his bed, because once the United States has sent the signal to the world that we are prepared to do whatever is necessary to remove this brutal dictator and then we back down and bring our troops home, we can never put them back in those places again. No host government currently allowing American forces on its soil will say OK, now that Saddam Hussein has nuclear weapons, you can come back and be on our soil and make us a target for those nuclear weapons. No. We have two choices. We can either move ahead or we can come home.

It is not the most sympathetic character in Shakespeare. A comment made by Lady Macbeth becomes appropriate here. ''If it were done when 'tis done, then 'twere well it were done quickly.''

If we are going to remove Saddam Hussein, we must do it quickly. And if we are not, we should not leave our troops in their present posture for an indefinite period of time while inspectors poke around on a scavenger hunt in Iraq.

Mr. DODD. Mr. President, obviously, the major conversation today is about how we might successfully disarm Saddam Hussein of the weapons of mass destruction, which many of us still believe are there in Iraq and pose a serious threat, not only to ourselves but to allies and others.

I certainly do not minimize the importance of dealing with this issue. In fact, as my constituents know, I voted for the resolution last fall authorizing the President to use force if that became necessary. I still support that position.

I think the President ought to have that authority from Congress. I am grateful to him for coming to Congress and asking for that kind of backing. When I voted to give him that authority, I did not mean, of course, necessarily that authority would be used regardless of other circumstances. And certainly, over the past several months, we have seen a concerted effort to try to resolve the problem of Iraq short of using military force.

In fact, the President's own words, deserve being repeated; that is, that he did not welcome or look forward to the use of military force to solve this problem. He hoped it would be resolved without using force. I applaud him for making those statements and hope he is still committed to that proposition.

I am concerned, still, as are many Americans, that we may see a military conflict in the coming days, and that every effort to try to resolve this matter, diplomatically and politically, has not yet been exhausted. I know the administration is working on it.

As one Member of this body, I encourage them to continue doing so. I do not mean indefinitely, obviously. There are obviously points at which you have to accept the fact that there is not going to be the kind of cooperation you would like to have. I certainly would not suggest we ought to go on indefinitely here at all, but I do believe our allies and friends—principally Great Britain, which has been remarkably steadfast in their loyalty to the U.S. Government on this issue—need to be listened to, that their advice and counsel have value and weight. And if there are ways in which you can craft resolutions which would build support at the U.N. Security Council, then we ought to try to do that. That does not mean you go on weeks trying to sort that out. But I hope every effort is being made to fashion just such an arrangement that would allow us to deal with Saddam Hussein.

I happen to believe, in the absence of the threat of force, I don't think diplomacy would work alone, nor do I necessarily believe the threat of force, without some effort by diplomacy and politics, would necessarily work as well as we would like.

It is a combination of the threat of force and the use of diplomacy that I think has produced the significant, positive results we have seen in the last number of weeks. And the President deserves credit for that, in my view.

There is almost a sense of victory occurring here. He may be the most critical voice regarding this progress that has been made, but, nonetheless, I think progress is being made.

Mr. President, I want to shift quickly, if I can, however, to the cost of reconstruction. I know the conversation is whether or not there will be a war. Let's assume, for a second, that comes. As regrettable as it is—and we hope it will, obviously, be done at a minimal loss of innocent lives and the lives of the men and women in uniform—I am deeply troubled by the fact this administration has been unwilling to come before Congress to share with us their best and worst-case scenarios in terms of the cost of reconstruction in Iraq.

Certainly, I do not expect, nor should anyone, that the administration would be able to tell you with any great deal of specificity exactly what those costs would be. But you are not going to convince anybody in this Chamber, or most Americans, that the administration has not projected some cost figures on what it is going to cost us to rebuild Iraq, either alone or with the cooperation of others around the globe.

The reason I say that is because I noticed the other day that the administration had solicited bids from four or five major U.S. corporations to bid on an almost $1 billion contract for reconstruction or partial reconstruction in Iraq.

I am convinced that those firms had to have some knowledge of what the bid was all about in order to make it. What concerns me is that there may be people in those corporations who know far more about what the costs may be than the representatives and taxpayers of this country, who will ultimately be asked to pay the bill.

I was stunned, when we had a hearing of the Senate Foreign Relations Committee just a few days ago on this very subject matter, at the cost of reconstruction, that the administration refused to send any witnesses up to share with the committee, under the leadership of the distinguished chairman of that committee, Senator RICHARD LUGAR of Indiana—that the administration refused to even step forward and share with the committee their general thoughts on what may be the costs.

How is it that four or five corporations can apparently have access to information and yet the Congress of the United States does not? The four or five corporations were Bechtel, the Fluor Corporation, Halliburton, owned by Kellogg, Brown and Root, the Lewis Berger Group, the Parson Group. Those, I believe, are the names of the corporations invited to bid on the reconstruction contracts.

If you are telling these corporations about what the costs may be, and what may be involved, and yet you can't let Members of Congress know—particularly the committee charged with the responsibility—ultimately, I think that is a mistake.

There was a report conducted, I think by the Brookings Institution, with such distinguished Americans as James Schlesinger and others, that made an analysis of the post-cost figures on reconstruction. They all made the similar recommendation. You have to step forward.

As our former colleague, John Glenn, used to say: If you want the American public to be supportive of actions like this, they have to be involved in the takeoff as well as the landing.

I think his words, that I heard him repeat on numerous occasions, have particular value in talking about this debate. This is not to suggest that everyone is going to endorse the numbers. But you need to let the American public know what they are in for, so that there is some understanding of what this involvement is going to cost us. I think you are going to do far better at winning support ultimately for these figures if you share your ideas.

Again, no one is expecting you are going to have to be wedded to these numbers. But you are not going to build the kind of domestic support you need for a number of years on the reconstruction of Iraq if you do not begin to share with the American public what sort of cost figures we are talking about.

It is estimated by some groups already that the cost could be at a low figure of $20 billion a year. The cost of the war, of course, we can't get any numbers on. We don't have any numbers on how many of our U.S. military personnel might have to be stationed in Iraq for how long a period of time during the period of occupation.

Let me share with you from the Brookings report. Even assuming, they said, little war-related damage—we hope that is the case—the reconstruction requirements in Iraq will be very substantial. Estimates of the requirement vary considerably from as little as $25 billion over a multiyear period to as much as $300 billion over 10 years. It is estimated that repairing and restoring Iraq's electrical power grid to its pre-1990 level would cost as much as $20 billion and that the short-term repairs for the oil industry would cost about $5 billion. Additional reconstruction requirements involve water, sanitation, transportation, and other infrastructure.

I bring this up not because I am trying to persuade people they ought not to be for using force, if that becomes necessary, but just to suggest that if you don't involve people and share with them what the estimated cost of this may be, you will be in trouble.

Let me tell you what I suspect is really behind a lot of this. As I am speaking on the floor of this Chamber, the budget committees of the Congress are meeting. They are talking about the cost of Government over the next number of years—tax policy, spending policy, what they will be. The estimates now for the deficit are hovering around $400 billion a year. I don't find it merely coincidental that the administration is refusing to share with us how much this war may cost, how much the reconstruction may cost at a time we are also considering the budget. Why is it they won't share these numbers? Is it because they don't want the Budget Committee or this Chamber, which will vote next week on the budget, to have before it some idea of what taxpayers will be asked to shoulder as a result of this involvement? Again, you will not convince me that those numbers don't exist. They do exist.

It is outrageous that the administration won't step forward and say: Here is our best estimate, worst case, best case. Regardless of how you feel about this conflict, potential conflict—again, I voted with the President to support the use of force if necessary—where are the Members of the Senate? Why don't they stand up for the Senate when it comes to the budget—we are the ones being asked to vote on this—and be as demanding as I am about sharing these numbers? I would think every single Member of this body, regardless of how you feel about the war, would want to know what the cost may be, so that when you cast a vote either in the Budget Committee or on the floor of the Senate next week, you would have some idea of what the implications are going to be. Without having that information, I don't know how you will vote for some of these other matters, knowing that the cost could be billions and billions of dollars in the coming 5 or 10 years.

Maybe I am the only one who feels this way. I suspect I am not. I suspect there is a tremendous concern growing that we are digging a very deep hole for ourselves financially with these massive tax cuts and massive spending going on. I find it more than ironic that some of the strongest advocates for this budget only a few short years ago were standing here begging us to vote for a constitutional amendment to balance the budget and, but for one vote, we would have written it into the Constitution. Now they stand before us and tell us deficits don't matter and that we don't even have to share with you the estimated costs of our involvement in Iraq.

My hope is that in these coming days before the end of this week or the first part of next week, the administration might share through some vehicle, if not before a congressional committee then some other forum, what the costs are apt to be so that next week when we vote on the budget, we can include those numbers in the estimated burden the American taxpayer may be asked to shoulder.

I am deeply worried that we are digging a very deep hole for ourselves, and we are not being honest and square with the American public about what those implications will be.

I yield the floor.

TORTURE IS A CRIME

Mr. LEAHY. Mr. President, I want to take a moment today to speak about an issue that has been discussed in the press recently, which is the use of torture to obtain information from persons who are suspected of being terrorists.

It is well-established that torture is a violation of international law, by which our country is bound. It is also a violation of our own laws. Yet commentators have been quoted by the press saying that in certain limited circumstances, when the threat is a possible terrorist attack, the use of torture is justified. Some have even suggested that since torture is used, why not simply admit it and accept it as a fact of life?

These are not easy questions. Who does not want to do everything possible to save innocent lives? We all do. But the United States is a nation of laws, and I reject the view that torture, even in such compelling circumstances, can be justified. I would hope all countries would uphold their obligations under international law, but that is not the case. It is the 21st century, and yet torture is used by government security forces in some 150 countries.

We have often spoken about how important it is not to let the terrorists win. We try not to let ourselves be intimidated. We take precautions, but we go about our daily lives.

The same holds true of the tactics terrorists use. If we don't protect the civil liberties that distinguish us from terrorists, then the terrorists have won.

Torture is among the most heinous crimes, and there is no justification for its use. One need only review history to understand why there can be no exception to torture. The torture of criminal suspects flagrantly violates the presumption of innocence on which our criminal jurisprudence is based, and confessions extracted as a result of torture are notoriously unreliable.

Also, history has shown that once an exception is made for torture, it is impossible to draw the line. If we can justify torture in the United States, then what is to prevent its use in China, Iraq, Chile, or anywhere else? If torture is justified to obtain information from a suspected terrorist, then why not torture the terrorist's wife and children, or his friends and acquaintances who may know about his activities or his whereabouts? In fact, that is what happens in many countries.

There is also the issue of what constitutes torture versus acceptable, albeit harsh, treatment.

Torture is defined in the Convention Against Torture, which the United States ratified, as ''any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted upon a person for such purposes as obtaining from him or a third person information or a confession . . .''.

A March 4 article in the New York Times described the treatment of Afghan prisoners at the Bagram air base. Two former prisoners, both of young age, recently died in U.S. military custody. Other prisoners described being forced to stand naked in a cold room for 10 days without interruption, with their arms raised and chained to the ceiling and their swollen ankles shackled. They also said they were denied sleep for days and forced to wear hoods that cut off the supply of oxygen.

I do not believe that prisoners of war, some of whom are suspected of having killed or attempted to kill Americans, should be rewarded with comforts. Harsh treatment may, at times, be justified.

However, while I cannot say whether the treatment described by these Afghan prisoners amounts to torture under international law, it does sound cruel and inhumane. The inhumane treatment of prisoners, whoever they are, is beneath a great nation. It is also illegal. That is the law whether U.S. military officers engage in such conduct themselves, or they turn over prisoners to the government agents of another country where torture is commonly used, in order to let others do the dirty work.

Some of these Afghan prisoners may be guilty of war crimes. Some may be members of al-Qaida but may have never fired a shot. Others may be completely innocent. But regardless, I was not proud when I read that article, and when I think of how often I and other Members of Congress have criticized other governments for treating prisoners that way. It undermines our reputation as a Nation of laws, it hurts our credibility with other nations, and it invites others to use similar tactics.

I am encouraged that the Department of Defense is conducting a review of the deaths of the two Afghans at Bagram, both of which were ruled homicides by an American pathologist. Those responsible for what happened must be held accountable. But I also urge the Department to review whether the interrogation techniques used there, and at other U.S. military facilities are fully consistent with international law. It should not take a homicide to reveal that prisoners in U.S. custody are being mistreated.

I yield the floor.

WELCOMING THE PRIME MINISTER OF IRELAND

Mr. DODD. Mr. President, I want to take a moment to welcome the Prime Minister of Ireland, who is here today. You will notice, I have a green tie on today. I am fully aware, as most Americans are, that St. Patrick's Day is on the 17th day of March, not the 13th day of March. But when the Prime Minister of Ireland arrives here to celebrate St. Patrick's Day a little earlier this year, those of us who are of Irish descent—and even those who are not but wish they were—generally wear a little green to celebrate this festive holiday.

Prime Minister Ahern was at a lunch a little while ago hosted by the distinguished Speaker of the House, DENNY HASTERT. Vice President CHENEY was also in attendance representing the President, who normally would be attending an event such as this today, but, obviously, events in the Middle East made it difficult for him to get away. All of us understand that. We regret he was not able to be with us, but we fully appreciate there are other matters that require his more immediate attention.

But we thank the Prime Minister, the Taoiseach of Ireland, for him not only being here but for his tremendous work, along with Tony Blair and other political leaders in Northern Ireland, particularly Jerry Adams and David Trimble, in their efforts to try to resolve, once and for all, the political disputes that have been so devastating on the people of Northern Ireland over these last number of years. Based on conversations we have had, it would appear that we are getting very close to, hopefully, a final resolution of those issues.

So I welcome the Prime Minister and other political leaders from Ireland and Northern Ireland who have come, as they traditionally do, to celebrate St. Patrick's Day, but have made this a working holiday, if you will, to engage in further conversations on what we might do to help resolve the matters of Northern Ireland, as well as to listen to their sound advice and observations regarding the turmoil that is brewing in the Middle East.

ELIZABETH SMART AND THE NATIONAL AMBER ALERT NETWORK ACT

Mr. REID. Mr. President, I, like all of America, was elated last night when we heard the news that the young girl from Utah, Elizabeth Smart, who had been missing for more than 9 months, had been found and reunited with her family. Most of the time, the vast majority of these stories about these girls—mostly girls who are kidnapped, abducted, stolen—end in bad news. This ended in good news.

As a father and grandfather, I really don't know the emotion of a parent who has a child stolen. An abducted child must be the worst nightmare of a parent. But this nightmare ended as I have just related.

The Justice Department says the number of children taken by strangers annually is between 3,000 and 4,000—it varies but thousands of children. Every day children are stolen. These children and their parents deserve the assistance of the American people and the helping hand of the Federal Government.

We stand ready and willing to help. We all feel so helpless when a child is kidnapped. What can we do to help? There is not very much because mostly these stories end, not like Elizabeth Smart's, they end in tragedy. For the past 2 years, Senators LEAHY, HATCH, HUTCHISON, FEINSTEIN, and others have

introduced the National Amber Alert Network Act to aid in the recovery of abducted children. Last year, Committee Chairman LEAHY, 1 week after it was introduced, held a hearing on the AMBER plan, and then we passed the bill by unanimous consent in both the Judiciary Committee and the full Senate when it was under the Democrats' control. Such quick and dynamic action on legislation is unheard of around here, but that is proof positive of the overwhelming support that exists for what is really a nonpartisan issue.

Unfortunately, the House of Representatives refused to pass a national AMBER Alert network. They refused to pass this act because they said they didn't like it as a stand-alone bill. They wanted it part of something else—part of something else being part of nothing. It is unknown to me how many children's lives would have been saved if we had had a national AMBER Alert. We know, with the situation we had in California, that it really works.

This year, the Senate again, under the leadership of Senator HATCH, rapidly passed unanimously this bipartisan legislation. But once again the House of Representatives—the leadership of the House of Representatives, Republican leadership of the House of Representatives—is refusing to act quickly on this bipartisan AMBER Alert bill.

I served in the House of Representatives. They could pass this legislation in a matter of hours—not days, hours. Ed Smart, Elizabeth's father, has called upon the House of Representatives to pass this noncontroversial Senate-passed AMBER Alert bill. I agree this is the proper course and the fastest way to protect our children from danger.

In fact, I am confused as to exactly why the House Republican leaders refuse to pass this bill since they agreed to include in the fiscal year 2003 omnibus spending bill $2.5 million for AMBER Alert grants. The House leadership still, however, chooses to ignore the bill that the Senate has twice passed under the bipartisan leadership of Senators HATCH and LEAHY, once when Senator LEAHY was chairman, once when Senator HATCH was chairman. To include AMBER legislation as a provision in an omnibus bill, standing alone, or in any other capacity, it doesn't matter to us.

I hope the successful recovery of Elizabeth Smart and her father's call for passage of the Senate-passed bill today moves the House Republican leadership to not play politics and promptly let this National AMBER Alert Network Act pass as a stand-alone measure—next week. They could do it tonight. I know how the House works.

The AMBER plan has been credited with the recovery of 49 children nationwide, 49 children who have been reunited happily with their parents. Mr. President, 38 States have a statewide plan. Officials in those States that do not yet have AMBER plans are working toward establishing the AMBER Alert system, and one of the aims of this bill is to help towns, counties, and States all over America to build and support systems to broadcast AMBER Alerts.

Our bipartisan legislation creates a national AMBER Alert coordinator at the Justice Department to work with States, broadcasters, and law enforcement agencies to set up AMBER Alert plans, to serve as a point of contact to supplement existing AMBER plans, and facilitate appropriate regional coordination of AMBER Alerts.

As I was eating dinner last night, watching Larry King, I was so impressed with the enthusiasm, hope, and glee demonstrated by the family of Elizabeth Smart. Of course, we all recognize the father in tears, saying how happy he was, why haven't we passed this legislation. Today, when he has learned the real facts, he is saying: Why hasn't the House passed this legislation?

This legislation also directs the coordinator in the Justice Department to establish voluntary guidelines for minimum standards for AMBER Alerts and their dissemination. As a result, the bill helps kidnap victims while preserving flexibility for the States. Developing and enhancing the AMBER Alert system is a costly endeavor for States to take on alone. So to share the burden, the bill establishes two Federal grant programs managed by the Justice and Transportation Departments for such activities as information dissemination on abducted children and suspected kidnappers, and for necessary AMBER Alert equipment.

Our Nation's children, parents, and grandparents deserve our help to stop the disturbing trend of children's abductions—to let everyone know they are helping by their taxpayer dollars going to a national system. Everyone can then say, ''I have done my share.'' I think we have a program here that really helps.

In the State of Israel, which every day faces terrorist threats and activities, 90 percent of the terrorist activities are thwarted as a result of citizens, people of good will, seeing something that doesn't look right and calling law enforcement. If there is something going on next-door, on the block, something in their city that they see, or in their neighborhood, they can complain to authorities, and it helps. That is what happened here.

We had people in Salt Lake City—actually, Sandy, UT—who I am sure said: I don't know if I am doing the right thing, but I think this could be Elizabeth. A little girl with a wig—a little girl? She is a teenager—she has been gone almost a year—with a wig and some kind of mask over her face, a veil, as they call it.

But these people of good will said: You know—I am sure I am thinking what they must have thought—this is going to be humiliating to me, if I stop these people. Maybe they are religious people, maybe this is part of their religious garb and costume. Maybe I'll embarrass them and me. But what if I let them go, walk by, and I haven't done anything about that, and this is Elizabeth?

For whatever reason, they decided to become intervenors. She stepped forward, and said: I think this is Elizabeth. Sure enough, it was. The little girl had a wig on and a veil. She said: I am Elizabeth Smart. As a result of that, she was reunited with her parents.

We don't know. We will never know what that girl has gone through. We don't know all of it. I personally don't know if she was brainwashed, as was Patty Hearst. I don't know anything about it. But I know there are some happy people in Salt Lake City today. Not only the family, not only the family, but all over Salt Lake City, the State of Utah, the neighboring State of Nevada, but the whole country is celebrating a successful conclusion to a kidnapping, an event which doesn't happen that much.

I hope the House of Representatives' conscience will be pricked and they will reach out and do something quickly which they have the capability of doing and allowing the national AMBER Alert program to pass. It should pass not in this congressional session, not this month, but next week, and early in the week. That is my desire. I hope we follow through on it.

THE SAFE RETURN OF ELIZABETH SMART

Mr. HATCH. Mr. President, I express my deep-felt feelings about the answer to all of our prayers in Utah. There has never been a State where virtually everybody got on their knees and prayed for the return of this young woman, Elizabeth Smart.

I have to tell you, we believe in miracles out there. We have seen them time after time after time. But I have to admit, most people had pretty much given up. They were thinking, well, that poor soul undoubtedly had to have been murdered. But her father and her mother never gave up.

They were in my office just a short while ago saying: We are going to find her. We believe she is alive—praying every day, fasting for their daughter. People in Utah fast and pray in these situations.

I have to tell you, I was so thrilled last night to see they finally found her.

I could hardly get to sleep.

I want to pay tribute to that wonderful family and her neighbors. Jake Garn and Kathleen Garn are two of the neighbors. I have to tell you, they both have been of tremendous help and bolsterers, as have all of the neighbors, to the Smart family. Jake has moved heaven and earth for them. He has talked to me, worked with me, worked with others. His wife Kathleen is as good as it gets. She is a wonderful

human being. I know she was over there all the time, giving solace, support, comfort. It is typical of these two, who served in the Senate with us for so many years and did such a great job, to continue to do a great job in our home State. That family really deserves a lot of credit. Not only the immediate family but the extended family exercised their faith and prayers on behalf of this young woman.

I hope everything is OK with her. It is certainly OK compared to what she has gone through. I hope everybody who knows her and knows that family will lend support and solace and comfort to help them to reunite in every way and help this young woman to overcome the terrible experience she has had over the last 9 months.

AMERICA'S COMMITMENT TO INTERNATIONAL LAW

Mr. BINGAMAN. Mr. President, when future generations reflect on the fallout from the terrorist attack of 9/11/2001, I fear they will see our own commitment to international law as a casualty of that event. I do.

For some time now, there has been a contest within the U.S. foreign policy establishment between those who believe our greater security lies with the strengthening of international institutions and agreements, on the one hand, and, on the other, those who believe our security is enhanced if we demonstrate the will and capacity to prevail; that is, to dominate the new world and shape it to our liking.

The election of President Bush and the attack of 9/11 have moved U.S. policy to endorse this second vision—that of U.S. dominance of a world that meets our standards of acceptable conduct.

The result of this shift in U.S. foreign policy is now evident in the statements and actions of the President regarding Iraq. Unless I misread those statements by the President and his foreign policy team, sometime within the next few days, the United States, and possibly British, troops will begin an invasion of Iraq. The mission, according to the President, will be to disarm Saddam Hussein, to capture and destroy his weapons of mass destruction, to liberate the people of Iraq from his despotic rule, to install a new and democratic government, and to hold up Iraq as a model for freedom and democracy that can be emulated by other Middle Eastern countries.

These are noble objectives. My concern is not with the objectives but with the apparent decision the President has made to proceed with an invasion now while many Americans and many of our traditional allies believe that alternatives to war still exist.

In his State of the Union Address, the President spoke about a circumstance where ''war is forced upon us.'' After the President spoke, I came to the Senate floor to make what I considered an obvious point; that is, that war had not been forced upon us. It is still my view today that war with Iraq has not been forced upon us. Our allies who are urging that the U.N. weapons inspectors be given more time to do their work agree with that view.

In the report to the Security Council last Friday, Hans Blix and Mohamed ElBaradai, the heads of the U.N. inspection teams, reported progress toward the goal of ensuring that Iraq has been disarmed. They pointed out that more cooperation by Iraq is needed, but they acknowledged that cooperation has increased.

President Bush and Secretary of State Powell have correctly pointed out that Iraq's increased level of cooperation does not constitute full compliance with Security Council Resolution 1441, in that Iraq has not fully, completely, and immediately disarmed.

The question is whether this failure to fully comply with the U.N. resolution justifies an armed invasion of Iraq at this time. Many Security Council members believe it does not, and, in my view, it does not.

Our Government's position appears to be that we will enforce the U.N. Security Council resolution even though the Security Council itself does not support that action at this time. In other words, we will act in coordination with the views of the world community of nations as long as those views agree with our own. When those views differ from our own, we will use our great military capability to impose our will by force.

I, for one, can support a policy of imposing our will by force, notwithstanding the views of our allies, if there is an imminent threat to our own security and if all options, other than war, have been exhausted. But neither of those circumstances prevails today.

A decision to wage war at this time, absent the support of our traditional allies, contradicts the foreign policy on which this Nation has been grounded for many decades. It undermines the international institution that previous U.S. administrations worked to establish as an instrument for world peace. It clearly signals that even absent an imminent threat to our security, we consider ourselves the ultimate arbiter of acceptable behavior by other governments and that we will act to ''change regimes'' when we determine the actions of other governments to be unacceptable.

Madam President, this is an unwise and dangerous precedent for us to establish. Stripped of its niceties, it is essentially a foreign policy premised on the belief that ''might makes right.'' At this point in world history, we have the might and, therefore, accommodating the views of others seems a low priority. But the day will surely come when others also have the might, and then we may wish we had shown restraint so that we can argue that others should as well.

There is a famous scene from ''A Man For All Seasons,'' the magnificent play Robert Bolt wrote, about the conflict between Sir Thomas More, a man of conscience and the law, and his sovereign, Henry VIII.

More and Roper, his son-in-law, are arguing about the law at this point in the play. Their conversation is instructive. Roper, the son-in-law, exclaims: ''So now you'd give the Devil benefit of law!'' More replies: ''Yes. What would you do? Cut a great road through the law to get after the Devil?'' Roper says: ''I'd cut down every law in England to do that,'' to which More responds: ''. . . And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast . . . and if you cut them down—and you're just the man to do it—d'you really think you could stand upright in the winds that would blow then?'' ''Yes, I'd give the Devil benefit of law, for my own safety's sake.''

I submit that if the United States determines to circumvent the U.N. in this case, the Devil may well turn round on us, and we could reap the whirlwind for years to come.

I yield the floor.

HOUSTON, WE HAVE A PROBLEM

Mr. LEAHY. Mr. President, after years of shortchanging our nation's crime labs, the Administration has unveiled a proposal to spend more than $1 billion over five years on forensic DNA programs. This proposal is overdue, but it is welcome, and it will make a difference.

For two years I have repeatedly urged the Administration and House Republicans to fully fund existing programs aimed at eliminating the DNA backlog crisis and, in particular, the inexcusable backlog of untested rape kits. Until now, the Justice Department has simply refused to make this a high priority. In the meantime, untested critical evidence has been piling up while rapists and killers remain at large, while victims continue to anguish, and while statutes of limitation expire.

I am pleased that the Administration's new commitment to funding DNA programs includes $5 million a year for post-conviction DNA tests that can be used by inmates to prove their innocence. Post-conviction DNA testing has already been used to exonerate more than 120 prisoners nationwide, including 12 awaiting execution. Last year the Justice Department cancelled plans to spend $750,000 on a post-conviction DNA testing initiative, and diverted the money to another program. It is heartening that the Department at last has recognized the importance of ensuring that the power of modern science, in the form of DNA testing, is available to help prosecutors and defendants alike establish the truth about guilt and innocence.

Clearly, DNA testing is critical to the effective administration of justice

in 21st Century America. But like every forensic tool, DNA testing is only as accurate as the labs and technicians that process the evidence. When we shortchange our labs, we shortchange the whole criminal justice system. The appalling situation in Houston, Texas, is only the most recent example.

Last December, a state audit conducted by a team of forensic scientists uncovered widespread problems at the Houston Police Department's crime laboratory. These problems included poorly trained technicians, shoddy recordkeeping, and holes in the roof that allowed rain to possibly contaminate samples. A Houston councilwoman who toured the lab last June described trash buckets and water buckets throughout the facility: ''They were having to move tables around, because some of the leaks were near and sometimes above where the analysis was occurring.''

Elizabeth Johnson, a DNA expert familiar with the Houston police lab, has pointed to serious problems beyond holes in the ceiling problems that suggest widespread incompetence or even corruption. Dr. Johnson has testified that lab technicians often vastly exaggerated the probability of a defendant's guilt, while mischaracterizing evidence that exonerated a defendant as ''inconclusive.'' In many cases, she found, lab technicians' reports, which were used to make critical decisions throughout the criminal justice system, asserted conclusions that were entirely unsupported by their data: not technical errors; not misjudgments; but flat-out fabrications.

I have spoken before about the disastrous consequences of sloppy lab work. Two years ago, an FBI investigation found that a police chemist in Oklahoma City was routinely exaggerating her results. At least one man who was convicted on the basis of the chemist's so-called ''expert'' testimony was later exonerated and released from prison. He had already served 15 years of a 65-year sentence.

There are many other cases in which people have been wrongly convicted because forensic specialists were incompetent, or because they fabricated or overstated test results to support the prosecution's theory of the case. In 1997, we learned about major problems at the FBI's crime labs, ranging from unqualified forensic scientists to contamination of evidence and the doctoring of laboratory reports. Before that, there were similar problems in various state crime labs. Police in Baltimore are currently reviewing 480 cases worked on by a former police chemist who testified at a 1983 rape trial against a defendant who was later exonerated.

While the situation in Houston is not unprecedented, it is particularly alarming. That is because Houston is in Harris County, the execution capital of the United States. Harris County sends more people to death row in a year than many states do in a decade. More defendants from Harris County have been executed than from any other county in the country.

Harris County prosecutors are now busily reviewing their closed cases to determine whether they involved evidence processed by the Houston police lab. They have already ordered new DNA testing in more than 20 cases, including 7 cases in which the defendant was sentenced to death. Ultimately, several hundred cases will need to be retested.

Retesting has already cleared one man, Josiah Sutton. Sutton was only a teenager when he was convicted and sentenced to 25 years for rape, based largely on a bogus DNA match by the Houston police lab. It now appears that he spent the last 4½ years in prison for nothing.

How many Josiah Sutton's has Harris County wrongfully convicted? Probably quite a few. Hundreds of people have been convicted using DNA evidence processed by the Houston police lab. The fact that the very first batch of cases to be retested has exposed a wrongful conviction suggests that Sutton may be just the tip of the iceberg.

How many more people will be cleared through retesting? That is a trickier question. According to the state audit, the Houston police lab routinely consumed most if not all of the evidence available for testing, with little or no regard for the importance of conserving samples. This practice will greatly limit the possibility for retesting in the hundreds of cases now under review.

DNA testing is an extraordinary tool for uncovering the truth, whatever the truth may be. It can show us conclusively, even years after a conviction, where mistakes have been made. But it cannot show us anything if there is no evidence to test. By needlessly consuming entire DNA samples, the Houston police lab may have destroyed the only key to freedom for more than one wrongly convicted person.

The failure to preserve DNA evidence is a problem in many parts of the country, but it seems to be an official policy in Harris County. In 1997, DNA testing exonerated Harris County defendant Kevin Byrd only because, by pure luck, the 12-year rape kit had not been destroyed pursuant to bureaucratic routine. The very week that Byrd was freed, however, Harris County officials systematically destroyed the rape kits from 50 other old cases, citing a lack of storage space.

No doubt many of the rape kits that Harris County destroyed that week and over the years were analyzed under the leaky ceilings of the Houston police lab. But even with the best of intentions, Harris County prosecutors will not be able to resurrect that evidence for retesting. There may well have been another Josiah Sutton or two among those cases—defendants who were wrongfully convicted based on bad lab work—but without the evidence to prove it, we will probably never know.

The essence of law enforcement is seeking the truth, not hiding from it or destroying evidence in a fit of pique or to save face. The disdain for science, truth, and justice we have seen in Houston, at the heart of the nation's capital punishment system, is an utter disgrace.

All of which is to say that I hope my colleagues will join me in supporting the Administration's new DNA initiative. One billion dollars will give States the help they desperately need to improve the quality and credibility of their crime labs, and to eliminate the backlog of untested DNA evidence. Five million dollars a year will go a long way toward ensuring that no deserving inmate is denied post-conviction DNA testing because he or she cannot afford to pay for it.

In his remarks announcing the DNA Initiative, Attorney General Ashcroft said he ''looked forward to working with the Chairmen of the House and Senate Judiciary Committees to develop legislation that provides appropriate post-conviction DNA testing to federal inmates.''

I welcome that, but I have a better idea. With Chairman HATCH's agreement, I would like to issue a bipartisan invitation to Attorney General Ashcroft to come to talk to us in open committee about a legislative proposal that is already written, has already been refined and debated, and has already received overwhelming bipartisan support.

I refer to the Innocence Protection Act, a modest and practical package of reforms that aims at reducing the risk of error in capital cases. The reforms proposed by the IPA are designed to create a fairer system of justice, where the problems that have sent innocent people to death row would not occur, and where victims and their families could be more certain of the accuracy, and finality, of the results.

More specifically, the Innocence Protection Act would ensure that post-conviction DNA testing is available in appropriate cases, where it can help expose wrongful convictions, and that DNA evidence is adequately preserved throughout the country. The bill also addresses one of the root causes of wrongful convictions—inadequate defense representation at trial.

Last year, the IPA won the support of a bipartisan majority of the Senate Judiciary Committee, and more than half the entire House of Representatives. Together with other lead sponsors—Senator GORDON SMITH, Senator SUSAN COLLINS, Representative BILL DELAHUNT, and Representative RAY LAHOOD—I am committed to reintroducing the IPA this year and getting it signed into law.

The path to prompt reform is through legislation that is already written and fine-tuned. The path to consensus is through legislation that has already received broad bipartisan support. And the path to addressing the fundamental problems in our criminal

justice system is through legislation that addresses the most common cause of wrongful convictions—inadequate defense counsel—as well as their most conspicuous solution—DNA testing. The path, in each case, is the Innocence Protection Act.

I look forward to continuing to work with my colleagues on both sides of the aisle to pass the Innocence Protection Act this year.

I ask unanimous consent to have printed in the RECORD 2 articles, one from the Washington Post, the other from the New York Times, which describe the ongoing investigation into the Houston police lab.

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

[From the New York Times, Mar. 11, 2003]

REVIEW OF DNA CLEARS MAN CONVICTED OF RAPE

(By Adam Liptak)

When Josiah Sutton went on trial for rape in 1999, prosecutors in Houston had little to build a case on. The victim was the only witness, and her recollection was faulty. But they did have the rapist's DNA, and technicians from the Houston police crime laboratory told the jury that it was a solid match.

That was enough to persuade the jurors to convict Mr. Sutton and send him to prison for 25 years.

But new testing has conclusively demonstrated that the DNA was not Mr. Sutton's, the Houston Police Department said yesterday.

The retesting is part of a review of the laboratory that began after a scathing state audit of its work led to a suspension of genetic testing in January. Mr. Sutton's apparent exoneration is the first to result from the review.

Legal experts say the laboratory is the worst in the country, but troubles there are also seen in other crime laboratories. Standards are often lax or nonexistent, technicians are poorly trained and defense lawyers often have no money to hire their own experts. Questions about the work of laboratories and their technicians in Oklahoma City, Montana and Washington State and elsewhere have led to similar reviews. But the possible problems in Houston are much greater. More defendants from Harris County, of which Houston is a part, have been executed than from any other county in the country.

''This is an earthquake,'' Mr. Sutton's lawyer, Bob Wicoff, said. ''The ramifications of this for other cases, for death penalty cases, is staggering. Thousands of cases were prosecuted on the basis of this lab's work.

The audit of the Houston laboratory, completed in December, found that technicians had misinterpreted data, were poorly trained and kept shoddy records. In most cases, they used up all available evidence, barring defense experts from refuting or verifying their results. Even the laboratory's building was a mess, with a leaky roof having contaminated evidence.

The police and prosecutors vowed to retest DNA evidence in every case where it was used to obtain a conviction. But they remained confident that the laboratory's problems were primarily matters of documentation and testimony that was not conservative enough.

The Sutton case has changed that.

''It's a comedy of errors, except it's not funny,'' said State Representative Kevin Bailey, a Houston Democrat who is chairman of a committee of the Texas Legislature investigating the laboratory. ''You don't need to be a scientist to know that you have to wear surgical gloves. You have to tag evidence. You need to not have a leaky roof contaminating evidence.''

The Houston police have turned over some 525 case files involving DNA testing to the Harris County district attorney's office, which has said that at least 25 cases warrant retesting, including those of seven people on death row. Both numbers will grow significantly as more files are collected and analyzed, Marie Munier, the assistant district attorney supervising the project, said.

Mr. Bailey said he was troubled that the retesting was being conducted under the supervision of Harris County prosecutors.

''I have lost confidence in the Police Department and the district attorney's office to handle this,'' Mr. Bailey said. ''I'm really bothered by the fact that the review is being done by the same people who allowed the errors to go on and prosecuted these cases and so have a stake in the outcomes of the review.''

Joseph Owmby, who prosecuted Mr. Sutton, said his office had not received a formal report from Identigene Inc. of Houston, the outside laboratory his office hired to perform the retesting.

''If he has been exonerated,'' Mr. Owmby said, ''we also have an eyewitness identification, and we will have to work through that. If he was exonerated, it certainly doesn't make me feel any better.''

Mr. Owmby said his confidence in the police laboratory's work had been shattered. ''We're not scientists,'' he said. ''We were presenting evidence that was presented to us. There is a big problem. We are treating it as a big problem.''

Houston police officials issued a statement yesterday confirming Mr. Sutton's exclusion, but noted that they had not received a formal report from Identigene.

At a hearing on Thursday, Chief C. O. Bradford said his department had shut down its DNA laboratory and begun an internal affairs department investigation on whether there was criminal or other wrongdoing. Chief Bradford added that there should be a ''cease and desist'' on executions in the relevant cases until the retesting is complete.

''There certainly is a fear that people were wrongly accused, wrongly convicted or received longer sentences than they should have,'' he said last week in an interview in Austin.

William C. Thompson, a professor of criminology at the University of California at Irvine who has studied the Houston police laboratory's work, said, ''The likelihood that there are more innocent people convicted because of bad lab work is almost certain.''

Elizabeth A. Johnson, a DNA expert retained by Mr. Sutton's lawyers, has appeared as a defense witness in about 15 cases involving the crime laboratory and is perhaps its most vocal critic.

In one rape case, Dr. Johnson said, a technician testified that a swab of the victim found semen, even though initial laboratory reports said there was no semen present. In other cases evidence that technicians said was inconclusive actually exonerated the defendant. Often, she said, technicians would vastly exaggerated the probability of a defendant's guilt.

There was, she said, ''an overall lack of understanding of how this work is done and what it means.''

She said the laboratory was particularly weak where the sample involved a mixture of DNA from two people.

''They can't do a sperm sample separation to save their lives,'' Dr. Johnson said. ''If you put a gun to their heads and said you have to do this or you will die, you'd just have to kill them.''

There is plenty of blame to go around in the Sutton case, legal experts said, and it suggests a need for an independent investigation and systemic reform.

''The criminal justice system in Houston is completely dysfunctional,'' Professor Thompson said. He examined eight DNA cases processed by the Houston police at the request of KHOU–TV, the television station that first called attention to the laboratory's problems in several reports in November.

In Mr. Sutton's case, there happened to be a small amount of evidence available for retesting. That is seldom the case in Houston, according to the state's audit.

Mr. Sutton's mother, Carol Batie, said her son's main concern on hearing there would be retesting was that so little evidence remained available.

''We were concerned it would come back inconclusive,'' Mr. Batie said.

Mr. Bailey, the state representative, said the Sutton case should change the usual presumptions in cases where retesting is impossible. ''Unless there is other strong corroborative evidence,'' he said, ''those people at the very least deserve retrials.''

The victim in the Sutton case identified him, but her testimony has been questioned. She said she was raped by two men. Both were around 5 feet 7 inches tall, she said; one weighed 135 pounds, the other weighed 120.

Five days later, she saw several men on the street and identified two of them as her attackers. DNA evidence excluded one man at the time, meaning one of her two identifications was demonstrably mistaken from the start. Mr. Sutton, moreover, is 5 foot 10 and weighs more than 200 pounds.

The Sutton case, said David Dow, a University of Houston law professor who represents death row inmates in capital appeals, ''is probably the tip of the iceberg.''

''There were two different problems in the crime lab—scientific incompetence and corruption,'' Professor Dow said. ''That's a deadly combination. Once you have corruption, there is no reason to think that this is limited to DNA cases or cases where there is scientific evidence of any sort.''

''If this were a death penalty case,'' he added, ''Sutton may well have been executed by now.''

[From the Washington Post, Mar. 1, 2003]

TEX. LAWMAKERS PROBE LAB OVER REPORTS OF TAINTED DNA EVIDENCE

(By Karin Brulliard)

AUSTIN, Feb. 28.—The Texas Legislature has launched an inquiry into the operations of the Houston Police crime lab after reports that the lab's shoddy facilities and faulty practices may have led to contamination of DNA evidence in hundreds of cases.

An independent audit by the state in December uncovered the problems. In January, police officials suspended DNA testing at the lab, and the Harris County District Attorney's office began a review of all cases that involved evidence processed there.

So far, the DNA from at least 14 convictions will be retested because of information secured during the reviews, said District Attorney Charles A. Rosenthal Jr. At least three involve death row cases.

Houston is in Harris County, which has sent more people to death row than any other county in Texas.

''It's a serious, serious problem,'' said state Rep. Kevin Bailey, a Democrat from Houston who is chairman of the House General Investigating Committee, which will hold hearings on the lab next week. ''The public has a right to expect a fair and accurate analysis

by a metropolitan crime lab. When we find out that we've not had that, it causes people to question the whole criminal justice system.''

In the December audit, a team of forensic scientists detailed problems that included inadequate recordkeeping, poor maintenance of equipment and a leaky roof that it said could lead to contamination of DNA samples.

City Councilwoman Carol Alvarado, who toured the facility June 11 after receiving complaints from lab employees, said the roof was in poor shape.

''These were not just leaks; these were holes,'' she said. ''There were trash buckets and water buckets throughout the lab. They were having to move tables around, because some of the leaks were near and sometimes above where the analysis was occurring.''

Alvarado said she reported her findings to the council June 19, but funding issues prevented the council from awarding a contract for roof repair until January.

Houston Police Department spokesman Robert Hurst refused to comment on the lab.

Elizabeth Johnson, who directed the Harris County DNA lab until 1996, said water from a leak could taint samples. But she also said the city police lab's problems run deeper than a leaky roof.

''Every single case I ever reviewed of theirs had at least one serious error and sometimes more than one error,'' she said. ''I'm not talking about a typo. I'm talking about things like controls being missing. Most common were that their reports would say one thing, and their data didn't support that at all.''

Rosenthal said any DNA retests that reveal errors will lead to new trials.

Bailey said the use of DNA evidence from a flawed lab reveals the ''win and get a conviction at all costs'' attitude of the district attorney's office. He wants hearings to determine whether an external review is necessary.

''No innocent people should be convicted because of faulty analysis,'' he said. ''At this point, I'm skeptical as to whether the Houston lab can analyze their own mistakes.''

[From the Washington Post, Mar. 13, 2003]

TEX. EXECUTION STAYED AT LAST MINUTE—SUPREME COURT CONSIDERS REVIEW

(By Charles Lane)

The Supreme Court granted a last-minute stay of execution last night to a Texas death-row inmate who says he is innocent of the murder of which he was convicted 23 years ago, setting the stage for another high-profile debate at the court over alleged flaws in the U.S. capital punishment system.

In a brief order issued about 10 minutes before officials were to administer a lethal injection to Delma Banks Jr., the justices said that he should be kept alive at least long enough for them to consider his request for a full-scale hearing on claims that his 1980 trial in Bowie County, Tex., was marred by prosecutorial misconduct, ineffective defense counsel and racially discriminatory jury selection.

Banks, an African American, was convicted of killing a white teenager by an all-white jury. If his execution had proceeded last night, he would have been the 300th person put to death in Texas since the state resumed executions in 1982.

It was unclear when the court might meet to consider Banks' petition. Its next scheduled closed-door conference is March 21. However, the stay may be a favorable sign for Banks because it required the votes of at least five justices, and a decision to hear his case could be made with the assent of just four justices.

Consistent with growing public concern over the possibility of wrongful death sentences, the court has shown interest recently in the issues raised by Banks' appeal, though its rulings have not always come out the way death penalty opponents would have liked.

The court ordered a lower court review of another Texas man's death sentence last month, ruling that a case could be made that jury selection at his trial was racially biased; last year, it abolished capital punishment for the mentally retarded. But also last year, the court rebuffed an effort to seek abolition of the death penalty for juveniles and let Virginia proceed with the execution of a murderer who had been represented at trial by the murder victim's former lawyer.

''Delma Banks Jr., who has maintained his innocence from the beginning, found justice in the courts today, and we are hopeful that this delay will allow a meaningful review of the serious claims in his case,'' Banks' lawyer, George Kendall of the NAACP Legal Defense and Education Fund, said in a prepared statement. ''The court's decision to stay the execution in order to potentially hear the significant claims put before it demonstrates that our tribunals will not turn a blind eye to egregious miscarriages of justice.''

Bobby Lockhart, district attorney of Bowie County, said, ''Factually, [Banks] was guilty, and legally the jury found him guilty. As to the death penalty, that's up to the Supreme Court. I think that the Supreme court will review the case and find that he was guilty, and I think there's no way the stay [of execution] will be extended beyond 30 days.''

Banks' case has attracted attention in part because of the supporters who have rallied to his cause, including former FBI director William S. Sessions and two former federal appeals court judges.

In a brief submitted to the Supreme Court in support of Banks' request for a stay, Sessions and his colleagues said that the Banks case is tainted by ''uncured constitutional errors'' that are ''typical of those that have undermined public confidence in the fairness of our capital punishment system.''

Banks, then 21, was convicted in 1980 of shooting his co-worker Richard Wayne Whitehead, 16, to death with a .25-caliber handgun.

Banks' lawyers argue that prosecutors wrongfully suppressed evidence that one of their key witnesses, who has since recanted, lied on the stand. Banks' attorneys also argue that his inexperienced defense lawyers offered little evidence to counter prosecutors' claims that Banks deserved the death penalty, even though he had no previous criminal record.

Prosecutors kept African Americans off the jury, they contend, producing the all-white panel that convicted Banks and sentenced him to death in the course of two days of legal proceedings.

No physical evidence linked Banks to the crime. But Banks was the last person seen with Whitehead, and prosecutors said their case against him is strong. Last week, the New Orleans-based U.S. Court of Appeals for the 5th Circuit, reversing a federal district judge's ruling in favor of Banks, permitted his execution to proceed, on the grounds that the alleged flaws in his trial were not substantial enough to have changed the outcome.

The Texas Court of Criminal Appeals this week refused to block Banks' execution, and the Texas Board of Pardons and Paroles would not hear his plea because it was filed too late.

Because of the prolonged appeals process in his case, Banks has been on death row while Texas conducted 299 executions, the most of any state since the Supreme Court permitted states to resume capital punishment in 1976.

RULES OF THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MCCAIN. Mr. President, the Committee on Commerce, Science, and Transportation has adopted rules governing its procedures for the 108th Congress. Pursuant to rule XXVI, paragraph 2, of the Standing Rules of the Senate, on behalf of myself and Senator HOLLINGS, I ask unanimous consent that a copy of the Committee Rules be printed in the RECORD.

RULES OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

I. MEETINGS OF THE COMMITTEE

1. The regular meeting dates of the Committee shall be the first and third Tuesdays of each month. Additional meetings may be called by the Chairman as he may deem necessary or pursuant to the provisions of paragraph 3 of rule XXVI of the Standing Rules of the Senate.

2. Meetings of the Committee, or any Subcommittee, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by the Committee, or any Subcommittee, on the same subject for a period of no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in subparagraphs (A) through (F) would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the members of the Committee, or any Subcommittee, when it is determined that the matter to be discussed or the testimony to be taken at such meeting or meetings—

(A) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) will relate solely to matters of Committee staff personnel or internal staff management or procedure;

(C) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(D) will disclose the identify of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(E) will disclose information relating to the trade secrets of, or financial or commercial information pertaining specifically to, a given person if—

(1) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(2) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(F) may divulge matters required to be kept confidential under other provisions of law or Government regulations.

3. Each witness who is to appear before the Committee or any Subcommittee shall file with the Committee, at least 24 hours in advance of the hearing, a written statement of his testimony in as many copies as the Chairman of the Committee or Subcommittee prescribes.

4. Field hearings of the full Committee, and any Subcommittee thereof, shall be

scheduled only when authorized by the Chairman and ranking minority member of the full Committee.

II. QUORUMS

1. A majority of members shall constitute a quorum for official action of the Committee when reporting a bill, resolution, or nomination. Proxies shall not be counted in making a quorum.

2. Eight members shall constitute a quorum for the transaction of all business as may be considered by the Committee, except for the reporting of a bill, resolution, or nomination. Proxies shall not be counted in making a quorum.

3. For the purpose of taking sworn testimony a quorum of the Committee and each Subcommittee thereof, now or hereafter appointed, shall consist of one Senator.

III. PROXIES

When a record vote is taken in the Committee on any bill, resolution, amendment, or any other question, a majority of the members being present, a member who is unable to attend the meeting may submit his or her vote by proxy, in writing or by telephone, or through personal instructions.

IV. BROADCASTING OF HEARINGS

Public hearings of the full Committee, or any Subcommittee thereof, shall be televised or broadcast only when authorized by the Chairman and the ranking minority member of the full Committee.

V. SUBCOMMITTEES

1. Any member of the Subcommittee may sit with any Subcommittee during its hearings or any other meeting but shall not have the authority to vote on any matter before the Subcommittee unless he or she is a Member of such Subcommittee.

2. Subcommittees shall be considered de novo whenever there is a change in the chairmanship, and seniority on the particular Subcommittee shall not necessarily apply.

VI. CONSIDERATION OF BILLS AND RESOLUTIONS

It shall not be in order during a meeting of the Committee to move to proceed to the consideration of any bill or resolution unless the bill or resolution has been filed with the Clerk of the Committee not less than 48 hours in advance of the Committee meeting, in as many copies as the Chairman of the Committee prescribes. This rule may be waived with the concurrence of the Chairman and the ranking minority member of the full Committee.

ARMING CARGO PILOTS AGAINST TERRORISM ACT

Mr. BUNNING. Mr. President, I rise to thank my colleagues on the Senate Commerce Committee for unanimously passing the language of the Arming Cargo Pilots Terrorism Act as an amendment to the Air Cargo Security Act.

As was made so terribly clear on September 11, 2001, we must be ready for terrorist threats in places and times we never before thought we would. Congress has acted deliberately to increase our security and make it harder for terrorists to repeat the destruction of September 11.

One step Congress took was to arm pilots of commercial aircraft who volunteered for a rigorous training program. At the last minute, commercial cargo pilots were left out of the program while their counterparts flying for commercial passenger carriers were armed. That makes no sense because cargo pilots fly the same planes with the same or larger fuel loads as the passenger aircraft that were hijacked on September 11.

Last week, I introduced the Arming Cargo Pilots Against Terrorism Act to close that dangerous loophole. Today, Senator BOXER offered our bill as an amendment in the Commerce Committee and it passed unanimously. I thank her for all her hard work on this issue and I thank the Commerce Committee for acting expeditiously.

I am hopeful this bill soon become law and the loophole will be closed. We need to protect our cargo pilots and the general public from any possible threat.

THE ASSASSINATION OF SERBIAN PRIME MINISTER ZORAN DJINDJIC

Mr. MCCAIN. Mr. President, when Zoran Djindjic was assassinated in Belgrade yesterday, Serbia and the world lost a champion of freedom who gave his life in service to it. We mourn his death and condemn his assassins' attempt to destroy democratic rule in a country that was only recently liberated from Slobodan Milosevic's tyranny, but had already come so far.

I first heard about Zoran Djindjic in 1996 when he took to the streets of Belgrade with hundreds of thousands of Serbs to force Milosevic to accept local election results. He was victorious in that battle. It took him four more years of hard and dangerous work to defeat Milosevic at the polls and in the streets.

The Serbian revolution of 2000 showed the world that democracy can succeed, in the Balkans as elsewhere, if leaders are wise, persistent, and courageous. The Milosevic government was the last Balkan dictatorship to fall. Zoran Djindjic was the person pushing hardest at the pillars of the authoritarian state. Once he became Prime Minister, he made the tough decisions to transform Serbia from dictatorship to democratic republic. He sent Milosevic to The Hague, despite fierce internal opposition; he implemented critical economic and political reforms; and recently he had begun to aggressively fight organized crime. It was one battle too many.

Those who would corrupt and destroy democracy in Serbia presumably hope by their actions to extinguish the Serbian people's aspirations to live under rule of law and in liberty as part of a secure and prosperous Europe. They have failed. Killing one man will not stop reform or diminish the passion of Serbs to be part of the European family of free nations. I hope it will only invigorate Zoran Djindjic's many followers to carry on the struggle they began together in the dark days of Milosevic's rule.

Our prayers are with the Djindjic family, his colleagues in the Democratic Opposition of Serbia, and the Serbian nation. To the people of Serbia, we say: Please continue to fight for those principles your Prime Minister represented with honor, skill, and courage. He will be written into the history of a very difficult time. His name will be known for the freedom he helped bring to a long-suffering people. America salutes a fallen hero.

JACKSON-VANIK

Mr. LEVIN. Mr. President, nearly three decades ago, a small provision was included in the Trade Act of 1974. While relatively small in number of words, this provision, known as the Jackson-Vanik amendment, helped open up an entire society.

Three decades ago, during the height of the Soviet Union's power, Senator Henry ''Scoop'' Jackson and Representative Charles Vanik introduced legislation that exposed the repressive tactics of the Soviet Union. By focusing attention on the emigration restrictions that the Soviet Union placed on its Jewish citizens, the Jackson-Vanik amendment reiterated American concern about the wide-scale human rights abuses occurring in the Soviet Union. In the process, the Jackson-Vanik amendment played a vital role in changing Soviet society.

Now, as the cold war recedes further into the past, it is time for Russia to be ''graduated'' from Jackson-Vanik. Because of the persistence of the Jackson-Vanik requirements, the administration must report semi-annually on the Russian Federation's compliance with the freedom of emigration requirements. This reporting requirement is a source of much frustration and embarrassment to our Russian friends, a fact that is made clear to me whenever I meet with individuals or groups from Russia.

Russia has made great progress in reforming itself. Since 1994, consecutive administrations have noted that the Russian Federation has been found to be in full compliance with the freedom of emigration requirements under Title IV of the Trade Act of 1974. In this time, the United States has signed a bilateral trade agreement with Russia, and the Bush Administration according to its website ''has begun consultations with Congress and interested groups on the possibility of graduating Russia and other countries of the former Soviet Union from the provisions of the Jackson-Vanik amendment.'' Graduating Russia from Jackson-Vanik at this time will improve our relations with Russia while enabling us to reflect upon the courage of Soviet Jewry and the success of this legislation. I ask unanimous consent that a letter from Mr. Leonid Nevzlin, former President of the Russian Jewish Congress and a current member of the Russian Senate, be printed in the RECORD following my statement.

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

(See exhibit 1.)

Mr. LEVIN. This letter states that ''there should be no doubt that the Jewish community believes the Jackson-Vanik requirements have been met in terms of immigration and freedom of movement in today's Russia.''

This bill, which Senator BAUCUS is introducing and which I am pleased to co-sponsor, would enhance relations between the United States and Russia. While recognizing the advances made by Russia, the legislation also ensures that Congress can continue to play a meaningful role in addressing trade disputes with Russia and in setting the terms of World Trade Organization, WTO, accession for Russia.

While this legislation grants Permanent Normal Trade Relations, PNTR, to the Russian Federation, it does not abrogate the rights of Congress to comment on Russia's accession to the WTO nor does it remain silent about the need for continued progress by the Russian Federation with regard to human rights matters.

The Jackson-Vanik amendment was but one part of the Trade Act of 1974 that addressed trade with nonmarket economies. Recognizing the trade policy aspects of ''graduating'' a country from Jackson-Vanik, Congress has traditionally granted PNTR to a country subject to Jackson-Vanik only at the time of its accession to the WTO. This practice has given Congress the ability to voice its approval for the terms by which a nation accedes to the WTO. The terms for Russia's WTO accession are still being discussed, and even though this legislation would provide PNTR for Russia before those terms are final it also provides Congress with the means to comment on those terms and voice its approval or disapproval for them.

This legislation addresses the concerns of the Jackson-Vanik Amendment while preserving Congress' ability to play a key role in discussions about Russia's accession to the WTO. In a piece encouraging the ending of Jackson-Vanik's applicability for Russia, the Israel Policy Forum stated that: ''things change. Old empires disappear. Old enemies become new friends. History's challenge is to anticipate its direction and move along with it.''

This legislation recognizes the profound changes wrought by the Jackson-Vanik Amendment while acknowledging our need to move forward as we continue to engage with Russia on matters of human rights and trade.

EXHIBIT 1

JUNE 27, 2002.

Hon. CARL LEVIN,
United States Senate,
Washington, DC.

DEAR SENATOR LEVIN: I am pleased we had an opportunity to meet when I was in Washington, DC last week. Your long-standing interest to promoting closer working relationships between the U.S. Senate and the Russian parliament is much appreciated.

As promised, I am sending a copy of my letter, as president of the Russian Jewish Congress, to Presidents Bush and Putin expressing support for repeal of the Jackson-Vanik Amendment. I prepared the letter some time ago and it is surprising that more people in the U.S. Senate were unaware that it had been sent. There should be no doubt that the Jewish community believes the Jackson-Vanik requirements have been met in terms of immigration and freedom of movement in today's Russia.

I have also taken note of your concerns about the sale of dual use technology to Iran and Iraq. In this regard, as you recall I proposed in our meeting that our two chambers establish a framework to assess how we can both develop greater cooperation on matters of mutual concern. I am very pleased that both you and Chairman Biden encouraged me to develop such a framework and look forward to working with both of you to see that this is accomplished.

On another matter, I know of your interest in reducing America's dependence on oil shipments from Middle East countries and though you would like to know that Russian oil company YUKOS, will be delivering the first load of Russian oil to Houston, Texas soon. I am confident that Russia could be a reliable supplier and would welcome the opportunity to work with you and others in Congress on initiatives that would encourage this development.

It is my hope to build a closer working relationship with select members of the U.S. Senate in order to take a fresh approach to a new set of challenges that beset both our countries.

In recognition of the upcoming celebration of America's Independence Day on July 4, I extend my best wishes to you, as representative of the people, for your country's remarkable achievement.

Sincerely,

LEONID NEVZLIN,
Senator, Deputy Chairman of the Committee for Foreign Affairs, Council of Federation of Russian Parliament.

COVER THE UNINSURED WEEK

Mr. SMITH. Mr. President, as most of my colleagues know, this week is Cover the Uninsured Week in America. The Robert Wood Johnson Foundation and a host of other organizations, including the U.S. Chamber of Commerce, the AFL–CIO, and AARP, have come together, recognizing that we can delay no longer in addressing this critical issue. Like them, I believe that Congress should seize this opportunity to reaffirm its commitment to bringing high quality, affordable, and stable health coverage within reach of the 41 million Americans who now go without.

Health insurance coverage is the best predictor of access to health care in America today; yet, despite its importance, more than 41 million Americans remain uninsured, and 75 million Americans under 65 years of age—three out of every 10—were uninsured at some point during the past two years. Experts estimate that this number will increase by 1 to 3 million people this year as the economic downturn continues. In our state alone, 436,000 people sought Oregon Health Plan coverage last year—a 14 percent increase since 2000.

I know we can reverse this trend because we have done it in the past. During my first year in the U.S. Senate, I helped create the State Children's Health Insurance Program, SCHIP. That program provides coverage for needy children who do not qualify for the Oregon Health Plan. Today, all 50 States have SCHIP programs providing for 4.6 million children. And in 2001, Oregon's SCHIP program provided health coverage to over 41,000 needy children.

While we in Congress debate the ways in which legislators can help tackle this difficult problem, people all over the country are acting on their own to help bring health services and a better quality of life to countless vulnerable Americans. During Cover the Uninsured Week I would like to tell you about one person from my own state of Oregon whom I consider to be a true ''Health Care Hero.'' Mr. Ian Timm is a man who has truly made a difference to the lives and health of many Oregonians.

Mr. Timm is well known as an effective advocate bringing health services to Oregon's needy. Whether serving on the Oregon Rural Health Association board, chairing the Oregon Statewide Health Coordinating Council, or providing leadership as a Linn County Commissioner, Mr. Timm has dedicated his professional life to making a difference in the lives of others. He is well known for providing both vision and structure to Oregon's efforts to provide quality health services for children and families. Because of his work, young children receive immunizations, mothers have quality pre-natal care, and seniors have the attention of physicians, all regardless of their financial status.

In Oregon, we have a tradition of taking care of those who cannot take care of themselves—Mr. Timm has been a leader in making this value a reality. For instance, Mr. Timm's vision led to the development of Care Oregon, which provides health coverage for thousands of Oregonians as the largest insurer of clients within the Oregon Health Plan. He serves on the Oregon Partnership to Immunize Children, ensuring that Oregon kids receive the preventive care they need. Through his work at the Oregon Primary Care Association, Mr. Timm has increased access to health care by bringing resources to community based health centers. These centers are one of the most effective ways to provide health care to those who often drop through the cracks, preventing disease and saving lives.

But Mr. Timm's service is not limited to our borders. Driven by his faith and concern for others, he has shared his time and talents overseas in the Sudan and in Thailand. During the Ethopian refugee crisis, he supervised the construction of camps and provided medical and sanitation services for 105,000 refugees. In Thailand, he created sanitation programs for 14 refugee camps, and supervised two outpatient clinics, public and school health programs, and the Khmer Health Training Center. Few of us are willing to forsake the comforts of home, yet Mr. Timm

volunteered to bring hope and life to those in the most desperate corners of the globe.

Mr. Timm has built both a local and national reputation as an effective advocate and distinguished public servant who is a true friend to the poor and vulnerable. This year, Mr. Timm will retire from professional service, ending his distinguished career as the Executive Director of the Oregon Primary Care Association. He will be sorely missed. But given his record of valuable service, I'm confident he will continue to make a difference for Oregonians.

I salute Ian Timm for his record of accomplishment and tremendous legacy of healthy Oregon children and families. He is the definition of a Health Care Hero and an example of compassionate service for all of us here in Congress and across America.

We in the U.S. Senate have a moral obligation to follow Ian Timm's example. In so doing, the 108th Congress can leave its own legacy of healthy children and families. Cover the Uninsured week lasts only 7 days, but I urge my colleagues to continue their personal commitment to this issue throughout their time in public office and beyond. Only with this type of dedication can we truly keep America healthy.

UH–60 BLACKHAWK CRASH AT FORT DRUM, NEW YORK

Mr. BURNS. Mr. President, I rise today to mourn the loss of 11 brave soldiers killed in a UH–60 Blackhawk crash on the afternoon of Tuesday, March 11, at Fort Drum, New York. This tragic accident occurred as the unit was conducting a routine training exercise. One of the young men on board, Pfc. Stryder O. Stoutenburg, was from Missoula, MT. He was only 18 and was assigned to Charlie Company, 4th Battalion, 31st Infantry Regiment.

The other 10 young men killed are: Cpt. Christopher E. Britton, 27, from Ohio, assigned to Headquarters and Headquarters Company, 1st Battalion, 10th Aviation Regiment.

Chief Warrant Officer 3 Kenneth L. Miller, 35, from California, assigned to Bravo Company, 2nd Battalion, 10th Aviation Regiment.

Staff Sgt. Brian Pavlich, 25, from Port Jervis, NY. assigned to Charlie Company, 4th Battalion, 31st Infantry Regiment.

Sgt. John L. Eichenlaub, Jr., 24, from South Williamsport, PA, assigned to Charlie Company, 4th Battalion, 31st Infantry Regiment.

Sgt. Joshua M. Harapko, 23, from Peoria, AZ, assigned to Charlie Company, 4th Battalion, 31st Infantry Regiment.

Spc. Lucas V. Tripp, 23, from Aurora, CO, assigned to Bravo Company, 2nd Battalion, 10th Aviation Regiment.

Spc. Barry M. Stephens, 20, from Pinson, AL, assigned to Bravo Company, 2nd Battalion, 10th Aviation Regiment.

Pfc. Shawn A. Mayerscik, 22, from Oil City, PA, assigned to Charlie Company, 4th Battalion, 31st Infantry Regiment.

Pfc. Tommy C. Young, 20, from Knoxville, TN, assigned to Charlie Company, 4th Battalion, 31st Infantry Regiment.

Pfc. Andrew D. Stevens, 20, from Rockingham, NH, assigned to Charlie Company, 4th Battalion, 31st Infantry Regiment.

In addition, two young men were seriously injured—Spc. Dmitri Petrov and Spc. Edwin A. Mejia, both from Charlie Company, 4th Battalion, 31st Infantry Regiment.

Each and every one of these young men was a patriot and served their country bravely. My thoughts and prayers go out to the families of these boys. While the cause of the accident remains under investigation, I have asked to be kept informed of any and all developments and am confident that a thorough examination will be conducted.

Our brave military men and women fully know the risk they take in doing their duty and they meet this risk head on, to ensure that the rest of us continue to live with freedom. Tragic accidents such as this one truly remind us all of the high price of freedom.

I will continue working with my colleagues to make sure our troops have the best equipment, instruction, and supplies to ensure their safety not only on the battlefield, but in training exercises as well. May God bless the young soldiers who died training to defend the values of this great Nation.

MIDDLEBURY COLLEGE PANTHERS' WELL-PRACTICED TRADITION

Mr. LEAHY. Mr. President, today I want to bring to the Senate's attention a group of student athletes in Vermont who have an unusual and admirable tradition. For the past 42 years, Middlebury College freshman have helped a Middlebury man with a disability make it to football and basketball games like clockwork. It is another example where students' education extends far beyond the walls of a college classroom.

In the March 10, 2003, issue of Sports Illustrated, well-known sports columnist Rick Reilly took a moment to explain the tradition to his readers. Middlebury College has long been recognized as one of the Nation's finest institutions of higher education. The quality of its faculty, the rigors of coursework, stunning facilities, and the success of its athletic programs are the foundation for Middlebury's storied history and academic reputation. Yet it also is what goes unnoticed that makes this truly a special place—like a tradition that takes place right before the start of every football and basketball game. It is a tradition that has come to exemplify what it means to be a Middlebury College Panther, a Vermonter, and a person in full.

For the past 42 years, the freshman members of the Middlebury College football and basketball teams have been going to Butch Varno's house before the start of the game and literally giving him a lift. Mr. Varno, who from infancy has contended with cerebral palsy, is confined to a wheelchair and does not drive. On game day, he anticipates the arrival of a small band of Panthers for a ride to the game, which includes lifting Mr. Varno out of bed and getting him to the bleachers.

We in Vermont are proud of the student athletes who make this happen before each game. Whether they know it or not, they represent the very best of our Nation's college students. They are learning, playing hard and, most importantly, caring for others in their community.

I ask unanimous consent that the text of Rick Reilly's column be printed in the RECORD.

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

[From Sports Illustrated, Mar. 10, 2003]

EXTRA CREDIT

(By Rick Reilly)

The best college tradition is not dotting the i at Ohio State. It's not stealing the goat from Navy. Or waving the wheat at Kansas.

It's Picking Up Butch at Middlebury (Vt.) College.

For 42 years Middlebury freshman athletes have been Picking Up Butch for football and basketball games. It's a sign-up sheet thing. Carry the ball bags. Gather all the towels. Pick Up Butch.

Basketball players, men and women, do it during football season. Football players do it during basketball season. Two hours before each home game, two freshmen grab whatever car they can get and drive a mile off campus to the tiny house where 54-year-old Butch Varno lives with his 73-year-old mother, Helen, who never got her driver's license. And they literally Pick Up Butch, 5'3'' and 170 pounds, right off his bed.

They put him in his wheelchair and push him out of the house, or one guy hauls him in a fireman's carry. They pile him into the car, cram the wheelchair into the trunk, take him to the game and roll him to his spot in the mezzanine for football games or at the end of the bench for basketball.

Butch always smiles and says the same thing from the bottom of his heart: ''CP just sucks.'' Cerebral palsy. While his fondest dream has always been to play basketball, it'll never happen. There is little that he can physically do for himself.

''At first, you're a little nervous; you're like, I don't know,'' says freshman wide receiver Ryan Armstrong. ''But the older guys say, 'We did it when we were freshmen. Now you go get him. It's tradition.' So me and my buddy got him the first week. He's pretty heavy. We bumped his head a couple of times getting him into the car. He's like, 'Hey! Be careful!' But he loves getting out so much that afterward you feel good. It's fun to put a smile like that on somebody's face.''

And the kids don't just Pick Up Butch. They also Keep Butch Company. Take Butch to the Bathroom. Feed Butch. ''He always likes a hot dog and a Coke,'' says 6'8'' Clark Read, 19, a power forward. ''It's kind of weird at first, sticking a hot dog in his mouth. The trick is to throw out the last bite so he doesn't get your fingers.''

Thanks to 42 years of freshmen, Butch hardly ever misses a Middlebury game. Not that he hasn't been late.

''One day this year, the two guys were calling me on their cell,'' says Armstrong, ''and

they're going, 'We can't find Butch!' And I'm like, 'You lost Butch? How can you lose Butch?' Turns out they just couldn't find his house.''

Nobody at Middlebury remembers quite how Picking Up Butch got started, but Butch does. It was 1961. He was 13, and his grandmother, a housekeeper at the dorms, wheeled him to a football game. It started snowing halfway through, and afterward she couldn't push him all the way back home. A student named Roger Ralph asked them if they needed a ride. Ever since then, Butch has been buried in the middle of Middlebury sports.

Sometimes he gives the basketball team a pregame speech, which is usually, ''I love you guys.'' He holds the game ball during warmups and at halftime until the refs need it. He is held upright for the national anthem. Once in a while, just before tip-off, they put him in the middle of the players' huddle, where they all touch his head and holler, ''One, two, three, together!'' When the action gets tense, the freshmen hold his hands to keep them from flailing. After the games some of the players come back to the court and help him shuffle a few steps for exercise, until he collapses back in his chair, exhausted. Then it's home again, Butch chirping all the way.

And it's not just the athletes at Middlebury who attend to him. Butch is a campus project. Students come by the house and help him nearly every day. Over the years they taught him to read, and then last year they helped him get his GED. Somebody got him a graduation cap and gown to wear at the party they threw in his honor. During his thank-you speech, Butch wept.

''These kids care what happens to me,'' Butch says. ''They don't have to, but they do. I don't know where I'd be without them. Probably in an institution.''

But that's not the question. The question is, Where would they be without Butch?

''It makes you think,'' says Armstrong. ''We're all young athletes. Going to a game or playing in a game, we take it for granted. But then you go Pick Up Butch, and I don't know, it makes you feel blessed.''

Now comes the worst time of the year—the months between the end of the basketball season, last week, and the start of football in August. ''It stinks,'' Butch says. He sits at home lonely day after day, watching nothing but Boston Red Sox games on TV, waiting for the calendar pages to turn to the days when he can be one, two, three, together again with the students he loves.

On that day the door will swing open, and standing there, young and strong, will be two freshmen. And, really, just seeing them is what Picking Up Butch is all about.

ADDITIONAL STATEMENTS

REGARDING THE RETIREMENT OF TALBERT O. SHAW AS PRESIDENT OF SHAW UNIVERSITY

• Mr. EDWARDS. Mr. President, I am pleased today to pay tribute to a remarkable North Carolinian, Talbert O. Shaw.

Dr. Shaw is retiring this year as president of Shaw University after a groundbreaking 15 years in which he helped this noble institution regain its footing and once again become a beacon of knowledge, opportunity and service for the people of North Carolina and beyond.

Dr. Shaw was born in Jamaica, the ninth of 10 children. He served as a minister in Jamaica and the Bahamas before moving to the U.S. in the 1950s. After earning his master's degree and doctorate in ethics from the University of Chicago, Dr. Shaw taught religion and ethics for 10 years before becoming interim dean of the Howard University Divinity School in Washington D.C. He then served as dean of arts and sciences at Morgan State University for 11 years.

Dr. Shaw left his comfortable position at Morgan to heed an urgent call from Shaw University, the oldest historically black university in the South. The University had fallen on hard times and was in dire financial trouble. The school had no endowment, there was not enough money to pay day-to-day expenses. Enrollment was down. No one would have blamed him if he had passed up this challenge. But he didn't pass it up—he took it on.

Rallying students, faculty, and the community with his slogan ''Strides to Excellence: Why Not the Best,'' Dr. Shaw worked tirelessly to turn around the school's fortunes. And thanks to his leadership, Shaw University is once again a shining light. Enrollment is up, debts are paid and the endowment is now $15 million. Seventy percent of the faculty have Ph.Ds. Because of his belief that ''education of the heart is just as important as the education of the heads and hands,'' he has incorporated values and ethics into the Shaw curriculum. Thanks to the efforts of Dr. Shaw and his outstanding faculty and staff, Shaw students are receiving an education second to none.

Dr. Shaw has also found time to contribute to the community. Among other things, he serves on the board of the Wade Edwards Learning Laboratory, an after-school program that my wife and I started and has offered invaluable service to the young people we serve.

We are sorry to see Dr. Shaw leave but we in North Carolina wish him and his wife, Marlene, many, many years of happiness and health as they take on future challenges together.

In striving for excellence, Dr. Shaw asked, ''why not the best?'' Fortunately, that's just what he gave us. Thank you, Dr. Shaw, for a job well done. You are an inspiration to us all.•

COMMENDING THE HUMANITARIAN WORK OF JOHN VAN HENGEL

• Mr. McCAIN. Mr. President, I rise today to honor a great American, a man whose tireless efforts on behalf of needy people everywhere are an inspiration to us all. February 21 of this year marked the 80th birthday of my constituent, John van Hengel, who has become known as the ''Father of Food Banking.'' His vision for feeding the hungry and his work making that vision a reality has made a tremendous difference in the lives of millions of people.

John van Hengel's work is a testament to the ability of one person to change the world for the better. In 1965, John was a businessman who volunteered some of his spare time to the St. Vincent de Paul Society in Phoenix, AZ. In the course of his volunteer work, John saw there was a need for additional food for the Society's soup kitchen. In the course of his work, John met a woman who had to collect food from grocery store garbage bins to feed her 10 children. That needy mother told John that there should be a place where surplus food could be stored and available to people who needed it, instead of being thrown out and wasted. As he looked around for ways to better serve the needy people he met, John noticed that fruit was being left unpicked on suburban backyard trees around Phoenix. John recruited volunteers to gather fruit that remained in area fields after harvesting. He then delivered these much needed fruits and vegetables to various local churches. With John's leadership, one of the Nation's first ''gleaning'' projects became a reality.

John recruited the local grocery stores and asked them to donate surplus food. John also approached his local church, and the church responded by loaning John $3,000 and an abandoned building. In 1967, John van Hengel founded the world's first food bank, named St. Mary's in honor of the church that housed it. Thus was born the first food bank and the concept of food banking—a central source for food donations and distribution to a wide range of local charitable agencies that feed the hungry.

After the creation of the St. Mary's Food Bank, John founded Second Harvest in 1976. With the help of private donations and State and Federal grants, John helped to set up and develop Second Harvest food banks in other nearby communities in Arizona, California, and other States. The success of these new food banks led to Second Harvest becoming formally incorporated in 1979. Today, it is known as America's Second Harvest, the Nation's largest hunger relief charity and a nationwide network of more than 200 regional food banks and good rescue organizations that provide food and other services to more than 50,000 local charitable agencies.

In 1982, John van Hengel stepped down from his full-time role at Second Harvest to pursue his work of spreading food banking internationally. In 1984, John van Hengel founded Food Banking, Inc., a nonprofit food bank consulting organization. John helped spread the notion of food banking and volunteerism in an international capacity, first in Canada through the creation of the Canadian Association of Food Banks, then to France, and to Belgium. Today, the Federation of European Food Banks meets regularly to discuss experiences and ways to expand the work of its members. Recently, the idea of food banking has spread to Brazil, Israel, Mexico, and Japan. John van Hengel's vision, first articulated

and acted upon in Phoenix in 1967, is the first link in an international chain of food banks and compassion for the neediest among us.

John van Hengel's food banking idea is simple, but like all truly great ideas, it took the efforts of one man working for a lifetime to reach fruition. Because John van Hengel was the need to help hungry people, he created a concept to address that need. Dozens of countries and millions of people now have a powerful weapon against hunger.

In the wake of his 80th birthday, it is a privilege in honor John van Hengel for his noble dedication to feeding the hungry. His vision and leadership continue to greatly impact the lives of millions throughout the United States and the world.●

TRIBUTE TO CRAIG STALKER-TROOPER OF THE YEAR IN SOUTHERN REGION

● Mr. BUNNING. Mr. President, I rise today in the Senate to honor and pay tribute to Kentucky State Police Trooper Craig Stalker for being named the Southern Region Trooper of the Year.

This honor was bestowed upon Trooper Stalker by the International Association of Chiefs of Police. Trooper Stalker was nominated for this prestigious award after he rescued several people from two burning cars in Johnson County, KY, while off duty. After receiving this distinction he was presented with a 35-pound eagle trophy.

The citizens of eastern Kentucky are fortunate to have Trooper Stalker protecting their communities. His example of leadership, hard work, and compassion should be an inspiration to all throughout the Commonwealth.

Congratulations, Trooper Stalker for receiving this award. Trooper Stalker is just one of the many Kentucky State Police officers which put others before themselves by vowing to protect and serve Kentuckians. They have earned our admiration and respect, and for this we will always be grateful.●

IN HONOR OF DR. LLOYD OGILVIE

● Mr. ALLARD. Mr. President, since 1995 Dr. Lloyd Ogilvie has provided exceptional spiritual leadership to the Senate family. Serving as chaplain for 8 years, Dr. Ogilvie daily guided and counseled Members and staff with encouragement, support, and wisdom.

I will miss Dr. Ogilvie. Lloyd Ogilvie has led the Senate family and Nation through difficult situations, including the shooting deaths of Capitol Hill police officers J.J. Chestnut and Detective John Gibson; the impeachment of our President; the deaths of three Senate Members, Paul Wellstone, John Chafee, and Paul Coverdell; the tragic terrorist attack on 9/11; the attack of anthrax on the Senate; and the current possibility of war.

His leadership and counsel have stayed Senate Members, spouses, and staff. I thank Dr. Ogilvie for his daily prayers. He offered us spiritual leadership through his weekly Bible study for Senators, and always made himself available—at any time of the day—as a source of prayer and counsel. Chaplain Ogilvie also hosted a weekly Bible study for Senate spouses.

Chaplain Ogilvie also made himself available to staff. He welcomed staff to his office, responded to electronic mail from staff, and taught an inspirational study every Friday for Senate staff. Dr. Ogilvie also made an effort to stimulate relationship with the Washington community. He made information available to staff about opportunities to serve Washington-based charities, and he made the Senate aware of Senate and community groups to help Senate staff strengthen their lives morally and spiritually. Dr. Ogilvie also offered himself to minister and speak to the local Washington community.

While serving in the Senate, I have been encouraged and blessed by Chaplain Ogilvie and I am pleased the Senate chose him as our Chaplain. His friendship and counsel have served the Senate well and Washington will miss his presence.

My wife Joan and I give you and Mary Jane our warmest thoughts and our prayers as you return home to California. We will continue to pray for you and your family. We thank you for your service and ministry to us and wish you and your family God's best.●

LOCAL LAW ENFORCEMENT ACT OF 2001

● Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred October 20, 2001 in San Diego, CA. An Afghani taxicab driver was attacked by one of his passengers. According to police, after getting in the cab, the passenger asked the cab driver for his nationality. After the driver answered, a heated argument ensued. When the cab stopped, the passenger got out and put his hands around the driver's throat and struck him with his fist.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.●

REAUTHORIZING THE ASSAULT WEAPONS BAN

● Mr. LEVIN. Mr. President, in 1994 President Clinton signed into law a ban on the production of certain semiautomatic assault weapons and high-capacity ammunition magazines. The 1994 law banned a list of 19 specific weapons as well as a number of other weapons incorporating certain design characteristics. This law is scheduled to sunset on September 13, 2004.

Last week before the Senate Judiciary Committee, Attorney General John Ashcroft indicated the Bush administration's support for the current ban on assault weapons, but refused to support reauthorization of the ban. I believe we should not only reauthorize this bill, but strengthen it. I hope the Bush Administration will support reauthorization.

According to National Institute for Justice statistics cited by the Brady Campaign to Prevent Gun Violence, the assault weapons ban has successfully reduced the use of assault weapons in crime. According to the report, crime gun traces for assault weapons declined by 20 percent the first year after the ban took effect from 4,077 in 1994 to 3,268 in 1995. Comparatively, trace requests on all crime guns decreased by only 11 percent over the same period of time.

Even with the success of the ban, assault weapons still pose a threat to community safety. In 1994, every major national law enforcement organization, including the Fraternal Order of Police, the National Sheriff's Association, and the Major City Police Chiefs Association, supported the Federal assault weapons ban. I expect that law enforcement will again support this important piece of gun and community safety legislation.

I urge my colleagues in the Senate and the President to support the reauthorization of this important bill.●

A TRIBUTE TO KENT KRESA

● Mrs. FEINSTEIN. Mr. President, I would like to take this opportunity to recognize an outstanding leader of American industry, Kent Kresa, upon his retirement. For the past 13 years, Mr. Kresa has presided over Northrop Grumman Corporation as its chairman and CEO.

Under his guidance, Northrop Grumman grew from a mid-sized defense company known primarily for aircraft building to a full-spectrum major defense firm. The Northrop Grumman that Mr. Kresa refashioned is home to 120,000 employees located in all 50 States and has operations in 25 foreign countries.

It is my privilege to commend Mr. Kresa for a career that helped modernize our defense industrial base and that significantly bolstered our national security.

Mr. Kresa was born in New York City and raised on Long Island. He received his education at the Massachusetts Institute of Technology, earning a bachelor's degree in 1959 and post-graduate degrees in 1961 and 1966, all in aeronautics and astronautics.

Before joining Northrop Grumman, Mr. Kresa served with the Defense Advanced Research Projects Agency, where he was responsible for applied research and development programs in the tactical and strategic defense arena. From 1961–68 he was associated with the Lincoln Laboratory at M.I.T., where he worked on ballistic missile defense research and re-entry technology.

During his distinguished career, Mr. Kresa received many of industry's and the government's most prestigious honors. In January, Forbes Magazine featured him on their cover and named Northrop Grumman the Company of the Year. In 2002, Mr. Kresa was awarded the Ellis Island Medal of Honor for his significant contributions to our nation's heritage. He received the Navy League's Admiral Chester W. Nimitz Award for outstanding support of the U.S. Navy.

Also last year, he was named president for a 1-year term of the American Institute of Aeronautics and Astronautics. And he was presented the California Institute of Technology's Management Association's Excellence in Management Award for demonstrating extraordinary vision and leadership.

In 2001, BusinessWeek magazine selected Mr. Kresa as one of the Nation's Top 25 managers. That same year he received the Private Sector Council's Leadership Award for his commitment to improving governmental efficiency. In May 2000, the Aerospace Historical Society presented Mr. Kresa with the International von Kμrmμn Wings award for his contributions to the industry. And in March of 2000, the California Manufacturers and Technology Association named Mr. Kresa and Northrop Grumman a Manufacturer of the Century.

Other honors include Honorary Fellow by the American Institute of Aeronautics and Astronautics in 1998; California Industrialist of the Year in 1996, by the California Museum of Science and Industry and the California Museum Foundation; the Navy League of New York's Admiral John J. Bergen Leadership Award in 1995; and the Air Force Association's John R. Alison Award for Industrial Leadership in 1994.

During Mr. Kresa's tenure at DARPA, he received the Arthur D. Flemming Award as one of the top 10 people in the U.S. Government in 1975; the Navy's Meritorious Public Service Citation the same year; and Secretary of Defense Meritorious Civilian Service Medal in 1974.

While impressive, this partial list of honors only begins to tell the story of Mr. Kresa's contributions to the defense industry and this country.

After joining Northrop in 1975, he was responsible for innovations in stealth and surveillance aircraft, such as the revolutionary B–2 stealth bomber. He was named president of the company in 1987, and CEO and chairman of the board in 1990.

Within the next few years, he embarked upon a decade-long effort that would not only transform Northrop Grumman but also make the company a major force in changing the nature of the defense business.

He and his staff foresaw that a post-cold war defense establishment would require a very different array of products and services, that America's military of the future would rely on systems and integrated networks to tremendously enhance the capabilities of its platforms. He worked tirelessly to help the Department of Defense achieve this vision of interconnected platforms working together to greatly increase the situational awareness and speed of engagement of our military forces.

To build a company that could better support the new direction of the Department of Defense, Mr. Kresa and his staff acquired 16 other major firms, many of them legends in their own right. These included Grumman, Westinghouse, Logicon, Litton Industries, Newport News Shipbuilding, and, most recently, TRW.

''This Amalgamation of great companies,'' to quote Mr. Kresa, created a corporate structure that has led to new efficiencies and much creative collaboration. Today, for instance, Navy ships can be built from top to bottom as well as networked with other platforms simply through the joint efforts of Northrop Grumman experts in information technology, avionics, satellite communications and other areas.

Mr. Kresa and was also instrumental in developing and gaining Congressional approval for several key platforms that will help form the backbone of our 21st century military. These include the Joint Strike Fighter, the DDX family of destroyers, cruisers and littoral combat ships, and the new generation of Coast Guard ships and aircraft known as the Deepwater project.

As Mr. Kresa moves on to exciting new challenges I wish him, his wife Joyce, and their daughter Kiren, every success and happiness.

For more than 42 years, Mr. Kresa has worked relentlessly in pushing for greater innovation, efficiency and readiness within our great Nation's defense establishment. My office will remember Mr. Kresa for his loyalty, dedicated service, and accomplishments—and we thank him.●

OUTSTANDING RHODE ISLANDER

● Mr. REED. Mr. President, I rise to pay tribute to an outstanding Rhode Islander, Jimmy McDonnell, who is celebrating his retirement from the Biltmore Hotel after 45 years of dedicated service.

Since his earnest beginnings in 1948 as a busboy in the Town Room Restaurant, Jimmy McDonnell has exemplified great professionalism, boundless enthusiasm, and is today an institution in Rhode Island's hospitality industry. Jimmy McDonnell is synonymous with the Biltmore Hotel, located in the heart of the capital city of Providence.

As a waiter, manager, and director of catering service at the Biltmore Hotel for over five decades, he has become a hallmark of one of Rhode Island's finest institutions. Over his long and industrious career Jimmy McDonnell has attended to the needs of people from all walks of life—from Presidents and foreign heads of state, to CEOs and politicians, to television and movie celebrities and even to rock stars. Jimmy has been in the center of the Rhode Island restaurant and hotel industry and is well known to our community's most distinguished residents and visitors. Synonymous with the finest in service, Jimmy has, through his professionalism, skills and graciousness, always put Rhode Island's best foot forward and illuminated the kindness and generosity of our great State.

In addition to celebrities, he has touched the lives of virtually hundreds of Rhode Islanders and their families. He oversaw countless social events and charitable endeavors and he was ''the person'' to whom you entrusted the details of your son's bar mitzvah or who made sure your daughter's wedding went according to plan. He helped make cherished memories for so many, and his good heart and hard work footnoted many special events in our State and in our lives. His exemplary legacy of service leaves many Rhode Islanders with fond memories and stories of the man they knew as ''Mr. Biltmore.'' His presence at the Biltmore will indeed be sorely missed.

I ask my colleagues to join me in commending Jimmy McDonnell for his many years of service at the Biltmore Hotel, and to the hospitality industry which makes Rhode Island such a special place to live, work, and visit.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, 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.)

6-MONTH PERIODIC REPORT RELATIVE TO THE NATIONAL EMERGENCY WITH RESPECT TO IRAN—PM 23

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

As required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), and section 505(c) of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa–9(c), I am transmitting a 6-month periodic report prepared by my Administration on the national emergency with respect to Iran that was declared in Executive Order 12957 of March 15, 1995.

GEORGE W. BUSH.

THE WHITE HOUSE, *March 12, 2003.*

NOTICE STATING THAT THE EMERGENCY DECLARED WITH RESPECT TO THE GOVERNMENT OF IRAN IS TO CONTINUE BEYOND MARCH 15, 2003—PM 24

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice, stating that the Iran emergency is to continue in effect beyond March 15, 2003, to the *Federal Register* for publication. The most recent notice continuing this emergency was published in the *Federal Register* on March 14, 2002 (67 FR 11553).

The crisis between the United States and Iran constituted by the actions and policies of the Government of Iran, including its support for international terrorism, efforts to undermine Middle East peace, and acquisition of weapons of mass destruction and the means to delivery them, that led to the declaration of a national emergency on March 15, 1995, has not been resolved. These actions and policies are contrary to the interests of the United States in the region and pose a continuing unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For these reasons, I have determined that it is necessary to continue the national emergency declared with respect to Iran and maintain in force comprehensive sanctions against Iran to respond to this threat.

GEORGE W. BUSH.

THE WHITE HOUSE, *March 12, 2003.*

MESSAGES FROM THE HOUSE

At 11:55 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 342. An act to authorize grants through the Centers for Disease Control and Prevention for mosquito control programs to prevent mosquito-borne diseases, and for other purposes.

H.R. 389. An act to authorize the use of certain grant funds to establish an information clearinghouse that provides information to increase public access to defibrillation in schools.

H.R. 399. An act to amend the Public Health Service Act to promote organ donation.

H.R. 659. An act to amend section 242 of the National Housing Act regarding the requirements for mortgage insurance under such Act for hospitals.

H.R. 663. An act to amend title IX of the Public Health Service Act to provide for the improvement of patient safety and to reduce the incidence of events that adversely affect patient safety, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 85. Concurrent resolution expressing the sense of Congress with regard to the need for improved fire safety in nonresidential buildings in the aftermath of the tragic fire on February 20, 2003, at a nightclub in West Warwick, Rhode Island.

The message further announced that pursuant to 15 U.S.C. 1024(a), and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Joint Economic Committee: Mr. STARK of California, Mrs. MALONEY of New York; Mr. WATT of North Carolina; and Mr. HILL of Indiana.

The message also announced that pursuant to section 161(a) of the Trade Act of 1974 (19 U.S.C. 2211), and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives as Congressional Advisors on Trade Policy and Negotiations during the first session of the One Hundred Eighth Congress: Mr. THOMAS of California; Mr. CRANE of Illinois, Mr. SHAW of Florida, Mr. RANGEL of New York; and Mr. LEVIN of Michigan.

At 5:50 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5. An act to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 342. An act to authorize grants through the Centers for Disease Control and Prevention for mosquito control programs to prevent mosquito-borne diseases, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

H.R. 389. An act to authorize the use of certain grant funds to establish an information clearinghouse that provides information to increase public access to defibrillation in schools; to the Committee on Health, Education, Labor, and Pensions.

H.R. 399. An act to amend the Public Health Service Act to promote organ donation; to the Committee on Health, Education, Labor, and Pensions.

H.R. 659. An act to amend section 242 of the National Housing Act regarding the requirements for mortgage insurance under such Act for hospitals; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 663. An act to amend title IX of the Public Health Service Act to provide for the improvement of patient safety and to reduce the incidence of events that adversely affect patient safety, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

MEASURE PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 607. A bill to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

MEASURE HELD AT THE DESK

The following measure was ordered held at the desk until the close of business March 19, 2003, by unanimous consent:

S. 628. A bill to require the construction at Arlington National Cemetery of a memorial to the crew of the Columbia Orbiter.

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–1576. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Unshu Oranges from Honshu Island, Japan (Doc. No. 02–108–1)'' received on March 12, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1577. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, pursuant to law, the Montgomery GI Bill (MGIB) Biennial Report to Congress, received on March 12, 2003; to the Committee on Armed Services.

EC–1578. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report relative to international agreements other than treaties entered into by the United States under the Case-Zablocki Act with Japan, Greece, France and Uzbekistan, received on March 12, 2003; to the Committee on Foreign Relations.

EC–1579. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: General Electric Company CF6–50 and CF6–80C2 Turbofan Engines; Docket No. 2001–NE–19 (2120–

AA64) (2003–0147)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1580. 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 767–00 Series Airplanes Modified by Supplemental Type Certificate STO169AT–D Docket No. 2002–NM–56 [1–13/3–10] (2120–AA64) (2003–0131)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1581. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Raytheon Model Hawker 800 XP Airplanes; Docket no. 2001–NM–315 [1–13/3–10] (2120–AA64) (2003–0132)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1582. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Honey International Inc. ALF5021L–2, –2C, ALF502R–3 and –3 and –3A Series Turbofan Engines; Docket no. 2002–NE–24 [1–15/3–10] (2120–AA64) (2003–0133)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1583. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Hartzell Propeller Inc. Model HC C2YR–4CF Propellers; docket no. 2001–NE–48 [2–4/3–10] (2120–AA64) (2003–0134)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1584. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Dornier Model 328–100 and –300 Series Airplanes; docket no. 2002–NM–140 [2–5/3–10] (2120–AA64) (2003–0135)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1585. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: PIAGGIO AERO INDUSTRIES SpA Model P 180 Airplanes; Docket no. 2002–CE–46 [2–5/3–10] (2120–AA64) (2003–0136)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1586. 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 737–600, 700, 700C, 800, and 900 Series Airplanes; Docket no. 2002–NM–240 (2120–AA64) (2003–0137)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1587. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Hartzell Propeller, INC, Model HD E6C 3B/E13890K Propellers; Docket no. 2000–NE–45 (2120–AA64) (2003–0138)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1588. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Robinson Helicopter Company Model R22 Helicopter; Docket no. 2001–SW–44 (2120–AA64) (2003–0139)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1589. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Robinson Helicopter Company Model R44 Helicopters; Docket no. 2001–SW–45 (2120–AA64) (2003–0140)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1590. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: PIAGGIO AERO Industries SpA Model 180 Airplanes; Docket No. 2002–CE–47 (2120–AA64) (2003–0141)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1591. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: APEX Aircraft Model CAP 10 B Airplanes; Docket no. 2002–CE–04 (2120–AA64) (2003–0142)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1592. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: British Aerospace Model HP 137 Jetstream Mk I Jetstream Series 200, 3101, and 3201 Airplanes; Docket No. 2002–CE–14 (2120–AA64) (2003–0143)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1593. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives SCATA Griyoe AEROSOATUAKE Nideks TB 8m 10, 20, 21, and 200 Airplanes Docket no. 2002–CE–43 (2120–AA64) (2003–0144)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1594. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Various Aircraft Equipped with Honeywell Primus II RNZ 850–851 Intergrated Navigation Unites; Docket No. 2003–NM–41 (2120–AA64) (2003–0145)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1595. A communication from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Shelbyville and Las Vergne, Tennessee (MM Docket No. 01–224)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1596. A communication from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations Shafter and Buttonwillow, California (MM Docket No. 02–58)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1597. A communication from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Junction, Texas; Chino Valley, Arizona; Arkadelphia, Arkansas; Aspermont, Texas; Cotulla Texas) (MM Docket Nos. 01–263, 01–264, 01–265, 01266, 01–267)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1598. A communication from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations Balmorhea, Texas (MB Docket No. 02–15, RM–10463)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1599. A communication from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations Snyder, Littltfield, Wolfforth and Floydada, Texas and Hobbs, New Mexico (MM Docket No. 01–144; RM–10406, RM–10340)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1600. A communication from the Deputy Chief, Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Calling Systems; Petition of City of Richardson, Texas: Order of Reconsideration (FCC 02–318; CC Docket 94–102)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1601. A communication from the Attorney/Advisor, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432—1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Governments Transfer Bands (WT Docket No. 02–8, FCC 02–152)'' received on March 12, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1602. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Virginia: Final Authorization of State Hazardous Waste Management Program Revisions (FRL 7465–8)'' received on March 12, 2003; to the Committee on Environment and Public Works.

EC–1603. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants: Surfact Coating of Metal Coil (FRL 7467–1)'' received on March 12, 2003; to the Committee on Environment and Public Works.

EC–1604. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Mississippi Update, to Materials Incorporated by Reference (FRL 7445–5)'' received on March 12, 2003; to the Committee on Environment and Public Works.

EC–1605. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; State of Missouri (FRL 7467-4)'' received on March 12, 2003; to the Committee on Environment and Public Works.

EC–1606. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Plans for Designated Facilities; New York (FRL 7464-8)'' received on March 12, 2003; to the Committee on Environment and Public Works.

EC–1607. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Historic Area Remediation Site (HARS)-Specific Polychlorinated Bipheny Worm Tissue Criteria (FRL 7467-6)'' received on March 12, 2003; to the Committee on Environment and Public Works.

EC–1608. A communication from the Chairman, Defense Nuclear Facilities Safety Board, transmitting, pursuant to law, the Thirteenth Annual Report to Congress relative to the Health and Safety activities relating to the Department of Energy's Defense nuclear facilities during calendar year 2002, received on March 12, 2003; to the Committee on Governmental Affairs.

EC–1609. A communication from the Director, Office of Federal Housing Enterprise Oversight (OFHEO), transmitting, pursuant to law, the OFHEO's Fiscal Year 2002 Performance Report, received on March 12, 2003; to the Committee on Governmental Affairs.

EC–1610. A communication from the Director, Office of Management, Budget and Evaluation/Chief Financial Officer, transmitting, pursuant to law, the report relative to the Department of Energy's annual list of Government activities that are not inherently governmental in nature, after review and consultation with the Office of Management and Budget (OMB); to the Committee on Governmental Affairs.

EC–1611. A communication from the Special Counsel, Office of the Special Counsel, transmitting, pursuant to law, the Annual Report of the Office of Special Counsel for Fiscal Year 2002, received on March 12, 2003; to the Committee on Governmental Affairs.

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–64. A resolution adopted by the City of Warren, State of Michigan relative to solid waste; to the Committee on Environment and Public Works.

POM–65. A resolution adopted by the Town of New Castle, State of New York relative to the decomissioning of the Indian Point Power Plants; to the Committee on Environment and Public Works.

POM–66. A resolution adopted by Urbana City Council, State of Illinois relative to opposition to a war against Iraq; to the Committee on Foreign Relations.

POM–67. A resolution adopted by the Town of Mansfield, State of Connecticut relative to opposition to the war against Iraq; to the Committee of Foreign Relations.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

Mr. MCCAIN. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination lists which were printed in the RECORD on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Coast Guard nominations beginning Christine K. Alexander and ending Adam M. Ziegler, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2003.

Coast Guard nominations beginning Diane J. Hauser and ending Lisa H. Degroot, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2003.

Coast Guard nomination of Scott Aten.

Coast Guard nominations beginning Paul S. Szwed and ending Darell Singleterry, which nominations were received by the Senate and appeared in the Congressional Record on February 25, 2003.

Coast Guard nomination of John P. Nolan.

Coast Guard nomination of Christy L. Howard.

Coast Guard nominations beginning Bruce E. Graham and ending Bradford W. Youngkin, which nominations were received by the Senate and appeared in the Congressional Record on March 11, 2003.

By Mr. MCCAIN for the Committee on Commerce, Science, and Transportation.

*Ellen G. Engleman, of Indiana, to be Chairman of the National Transportation Safety Board for a term of two years.

*Ellen G. Engleman, of Indiana, to be a Member of the National Transportation Safety Board for a term expiring December 31, 2007.

*Richard F. Healing, of Virginia, to be a Member of the National Transportation Safety Board for a term expiring December 31, 2006.

*Mark V. Rosenker, of Maryland, to be a Member of the National Transportation Safety Board for the remainder of the term expiring December 31, 2005.

*Charles E. McQueary, of North Carolina, to be Under Secretary for Science and Technology, Department of Homeland Security.

*Jeffrey Shane, of the District of Columbia, to be Under Secretary of Transportation for Policy.

*Emil H. Frankel, of Connecticut, to be an Assistant Secretary of Transportation.

*Robert A. Sturgell, of Maryland, to be Deputy Administrator of the Federal Aviation Administration.

Mr. LUGAR. Mr. President, for the Committee on Foreign Relations I report favorably the following nomination list which was printed in the RECORD on the date indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that this nomination lie at the Secretary's desk for the information of Senators.

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

*Foreign Service nominations beginning Lyle J. Sebranek and ending Margaret K. Ting, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2003.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

The following executive reports of treaties were submitted:

By Mr. LUGAR, from the Committee on Foreign Relations:

[Treaty Doc. 107–19 Tax Convention with the United Kingdom (Exec. Rept. No. 108–2)]

TEXT OF COMMITTEE RECOMMENDED RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, signed at London on July 24, 2001, together with an Exchange of Notes, as amended by the Protocol signed at Washington on July 19, 2002 (Treaty Doc. 107–19).

[Treaty Doc. 107–20 Protocol Amending Tax Convention with Australia (Exec. Rept. No. 108–3)]

TEXT OF COMMITTEE RECOMMENDED RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol Amending the Convention Between the Government of the United States of America and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Canberra on September 27, 2001 (Treaty Doc. 107–20).

[Treaty Doc. 108–3 Protocol Amending Tax Convention with Mexico (Exec. Rept. No. 108–4)]

TEXT OF COMMITTEE RECOMMENDED RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Second Additional Protocol That Modifies the Convention Between the Government of the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Mexico City on November 26, 2002 (Treaty Doc. 108–3).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. VOINOVICH:

S. 610. A bill to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes; to the Committee on Governmental Affairs.

By Mr. REID (for himself, Mr. ENSIGN, Mr. ALLARD, Mr. MILLER, and Mr. CRAPO):

S. 611. A bill to amend the Internal Revenue Code of 1986 to treat gold, silver, and platinum, in either coin or bar form, in the same manner as stocks and bonds for purposes of the maximum capital gains rate for individuals; to the Committee on Finance.

By Mr. BENNETT:

S. 612. A bill to revise the boundary of the Glen Canyon National Recreation Area in the States of Utah and Arizona; to the Committee on Energy and Natural Resources.

By Mr. CAMPBELL (for himself and Mr. ALLARD):

S. 613. A bill to authorize the Secretary of Veterans Affairs to construct, lease, or modify major medical facilities at the site of the former Fitzsimons Army Medical Center, Aurora, Colorado; to the Committee on Veterans' Affairs.

By Ms. SNOWE (for herself, Mr. ROCKEFELLER, Mr. DEWINE, Mr. DODD, Ms. COLLINS, Ms. CANTWELL, Ms. LANDRIEU, Mrs. LINCOLN, and Mr. BINGAMAN):

S. 614. A bill to amend part B of title IV of the Social Security Act to create a grant program to promote joint activities among Federal, State, and local public child welfare and alcohol and drug abuse prevention and treatment agencies; to the Committee on Finance.

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

S. 615. A bill to name the Department of Veterans Affairs outpatient clinic in Horsham, Pennsylvania, as the ''Victor J. Saracini Department of Veterans Affairs Outpatient Clinic''; to the Committee on Veterans' Affairs.

By Ms. COLLINS (for herself, Mr. JEFFORDS, Mr. CHAFEE, Mr. KERRY, Mrs. HUTCHISON, Mr. REED, Mr. LIEBERMAN, Mr. VOINOVICH, Mr. DORGAN, and Mr. LEAHY):

S. 616. A bill to amend the Solid Waste Disposal Act to reduce the quantity of mercury in the environment by limiting the use of mercury fever thermometers and improving the collection and proper management of mercury, and for other purposes; to the Committee on Environment and Public Works.

By Mr. LIEBERMAN (for himself, Mr. FEINGOLD, Mr. DASCHLE, Mr. DURBIN, Ms. MIKULSKI, Mr. SCHUMER, Mr. KENNEDY, Mr. DODD, Ms. LANDRIEU, and Mr. KERRY):

S. 617. A bill to provide for full voting representation in Congress for the citizens of the District of Columbia, and for other purposes; to the Committee on Governmental Affairs.

By Mr. REID (for himself and Mr. ENSIGN):

S. 618. A bill to provide for the use and distribution of the funds awarded to the Western Shoshone identifiable group under Indian Claims Commission Docket Numbers 326–A–1, 326–A–3, 326–K, and for other purposes; to the Committee on Indian Affairs.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 619. A bill to provide for the transfer to the Secretary of Energy of title to, and full responsibility for the possession, transportation, and disposal of, radioactive waste associated with the West Valley Demonstration project, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. EDWARDS (for himself, Mr. LAUTENBERG, and Mr. LEVIN):

S. 620. A bill to amend title VII of the Higher Education Act of 1965 to provide for fire sprinkler systems, or other fire suppression or prevention technologies, in public and private college and university housing and dormitories, including fraternity and sorority housing and dormitories; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGAMAN (for himself, Mr. JEFFORDS, Mrs. MURRAY, Mr. LEAHY, and Ms. CANTWELL):

S. 621. A bill to amend title XXI of the Social Security Act to allow qualifying States to use allotments under the State children's health insurance program for expenditures under the medicaid program; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. KENNEDY, Mr. BAUCUS, Ms. SNOWE, Mr. DASCHLE, Mr. SMITH, Mr. KERRY, Mr. THOMAS, Mr. BINGAMAN, Mr. BUNNING, Mr. ROCKEFELLER, Mrs. LINCOLN, Mr. JEFFORDS, Mr. ENZI, Mr. SARBANES, Mr. DOMENICI, Mr. JOHNSON, Mr. ENSIGN, Mrs. MURRAY, Mr. HOLLINGS, Ms. STABENOW, Mr. CORZINE, Mr. BENNETT, Mr. SCHUMER, Mr. WARNER, Mr. REID, Mr. DEWINE, Mr. REED, Ms. COLLINS, Mr. MILLER, Mr. LUGAR, Mr. LIEBERMAN, Mr. LEAHY, Mr. CHAFEE, Mr. KOHL, Mr. GRAHAM of South Carolina, Mr. EDWARDS, Mr. MCCAIN, Mr. DORGAN, Mr. ROBERTS, Mr. DODD, Mr. DAYTON, Ms. CANTWELL, Mr. BREAUX, Mr. BIDEN, Ms. MIKULSKI, Mr. LEVIN, Ms. LANDRIEU, Mr. INOUYE, Mr. HARKIN, Mr. DURBIN, Mrs. CLINTON, Mrs. BOXER, Mr. BAYH, and Mr. AKAKA):

S. 622. A bill to amend title XIX of the Social Security Act to provide families of disabled children with the opportunity to purchase coverage under the medicaid program for such children, and for other purposes; to the Committee on Finance.

By Mr. WARNER (for himself and Ms. COLLINS):

S. 623. A bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums; to the Committee on Finance.

By Mr. BAUCUS (for himself and Mr. LEVIN):

S. 624. A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of the Russian Federation, and for other purposes; to the Committee on Finance.

By Mr. SMITH (for himself and Mr. WYDEN):

S. 625. A bill to authorize the Bureau of Reclamation to conduct certain feasibility studies in the Tualatin River Basin in Oregon, and for other purposes; to the Committee on Energy and Natural Resources.

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

S. 626. A bill to reduce the amount of paperwork for special education teachers, to make mediation mandatory for all legal disputes related to individualized education programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KYL (for himself, Mr. SHELBY, and Mrs. FEINSTEIN):

S. 627. A bill to prevent the use of certain payments instruments, credit cards, and fund transfers for unlawful Internet gambling, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. STEVENS (for himself, Ms. MIKULSKI, Mr. BOND, and Ms. MURKOWSKI):

S. 628. A bill to require the construction at Arlington National Cemetery of a memorial to the crew of the Columbia Orbiter; ordered held at the desk.

By Mr. FEINGOLD:

S.J. Res. 9. A joint resolution requiring the President to report to Congress specific information relating to certain possible consequences of the use of United States Armed Forces against Iraq; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 83. A resolution commending the service of Dr. Lloyd J. Ogilvie, the Chaplain of the United States Senate; considered and agreed to.

By Mr. LOTT (for himself and Mr. DODD):

S. Res. 84. A resolution providing for members on the part of the Senate of the Joint Committee on Printing and the Joint Committee of Congress on the Library; considered and agreed to.

By Mr. MILLER:

S. Res. 85. A resolution to amend paragraph 2 of rule XXII of the Standing Rules of the Senate; to the Committee on Rules and Administration.

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 86. A resolution to authorize testimony and legal representation in W. Curtis Shain v. Hunter Bates, et al; considered and agreed to.

By Mr. NELSON of Florida (for himself, Mr. GRAHAM of Florida, Mr. INHOFE, Mr. JEFFORDS, Mr. DASCHLE, Mr. CRAPO, Mr. KERRY, Ms. CANTWELL, Mr. LIEBERMAN, Mr. BINGAMAN, Mr. WARNER, Mrs. MURRAY, Mrs. HUTCHISON, Ms. MIKULSKI, Mr. SARBANES, Mr. LAUTENBERG, Mr. CHAFEE, Mr. DURBIN, Mr. LEAHY, Mr. LEVIN, Mr. HARKIN, Mr. VOINOVICH, Mr. HOLLINGS, Mrs. BOXER, Mrs. FEINSTEIN, Mr. AKAKA, Mr. CONRAD, Mr. ALLARD, Mr. DODD, and Mr. EDWARDS):

S. Res. 87. A resolution commemorating the Centennial Anniversary of the National Wildlife Refuge System; considered and agreed to.

By Mr. HATCH:

S. Res. 88. A resolution honoring the 80th birthday of James L. Buckley, former United States Senator for the state of New York; considered and agreed to.

By Mr. DAYTON (for himself and Mr. COLEMAN):

S. Res. 89. A resolution honoring the life of former Governor of Minnesota Orville L. Freeman, and expressing the deepest condolences of the Senate to his family on his death; considered and agreed to.

By Mr. LOTT (for himself and Mr. DODD):

S. Con. Res. 20. A concurrent resolution permitting the Chairman of the Committee on Rules and Administration of the Senate to designate another member of the Committee to serve on the Joint Committee on Printing in place of the Chairman; considered and agreed to.

By Mr. BUNNING (for himself and Mrs. LINCOLN):

S. Con. Res. 21. A concurrent resolution expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce; to the Committee on Health, Education, Labor, and Pensions.

By Mr. NICKLES (for himself, Mr. BAYH, Mr. BUNNING, Mr. FITZGERALD, Mr. HAGEL, Mr. INHOFE, Mr. KYL, Mr. LUGAR, Mr. REED, and Mr. ROBERTS):

S. Con. Res. 22. A concurrent resolution expressing the sense of the Congress regarding

housing affordability and urging fair and expeditious review by international trade tribunals to ensure a competitive North American market for softwood lumber; to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LUGAR, from the Committee on Foreign Relations:

Special Report entitled ''Legislative Activities Report, 107th Congress'' (Rept. No. 108–19).

ADDITIONAL COSPONSORS

S. 13

At the request of Mr. KYL, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 13, a bill to provide financial security to family farm and small business owners by ending the unfair practice of taxing someone at death.

S. 68

At the request of Mr. INOUYE, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 68, a bill to amend title 38, United States Code, to improve benefits for Filipino veterans of World War II, and for other purposes.

S. 189

At the request of Mr. WYDEN, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 189, a bill to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes.

S. 204

At the request of Mr. BINGAMAN, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 204, a bill to amend title XIX of the Social Security Act to increase the floor for treatment as an extremely low DSH State to 3 percent in fiscal year 2003.

S. 262

At the request of Mr. BINGAMAN, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 262, a bill to amend the temporary assistance to needy families program under part A of title IV of the Social Security Act to improve the provision of education and job training under that program, and for other purposes.

S. 269

At the request of Mr. JEFFORDS, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 269, a bill to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species.

S. 304

At the request of Mr. DODD, the names of the Senator from South Dakota (Mr. DASCHLE) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 304, a bill to amend the Family and Medical Leave Act of 1993 to expand the scope of the Act, and for other purposes.

S. 319

At the request of Ms. MIKULSKI, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 319, a bill to amend chapter 89 of title 5, United States Code, to increase the Government contribution for Federal employee health insurance.

S. 320

At the request of Mr. GREGG, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 320, a bill to amend the Family and Medical Leave Act of 1993 to clarify the Act, and for other purposes.

S. 321

At the request of Mr. MCCAIN, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 321, a bill to provide for the establishment of a scientific basis for new firefighting technology standards, improve coordination among Federal, State, and local fire officials in training for and responding to terrorist attacks and other national emergencies, and for other purposes.

S. 333

At the request of Mr. BREAUX, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 333, a bill to promote elder justice, and for other purposes.

S. 338

At the request of Mr. LAUTENBERG, the names of the Senator from North Dakota (Mr. DORGAN) and the Senator from South Dakota (Mr. DASCHLE) were added as cosponsors of S. 338, a bill to protect the flying public's safety and security by requiring that the air traffic control system remain a Government function.

S. 349

At the request of Mrs. FEINSTEIN, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 349, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 355

At the request of Mrs. LINCOLN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 355, a bill to amend the Internal Revenue Code of 1986 to allow a credit for biodiesel fuel.

S. 377

At the request of Ms. LANDRIEU, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 377, a bill to require the Secretary of the Treasury to mint coins in commemoration of the contributions of Dr. Martin Luther King, Jr., to the United States.

S. 395

At the request of Mr. GRASSLEY, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 395, a bill to amend the Internal Revenue Code of 1986 to provide a 3-year extension of the credit for producing electricity from wind.

S. 457

At the request of Mr. LEAHY, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 457, a bill to remove the limitation on the use of funds to require a farm to feed livestock with organically produced feed to be certified as an organic farm.

S. 461

At the request of Mr. DORGAN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 461, a bill to establish a program to promote hydrogen fuel cells, and for other purposes.

S. 464

At the request of Mr. REID, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 464, a bill to amend the Internal Revenue Code of 1986 to modify and expand the credit for electricity produced from renewable resources and waste products, and for other purposes.

S. 470

At the request of Mr. SARBANES, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 470, a bill to extend the authority for the construction of a memorial to Martin Luther King, Jr.

S. 499

At the request of Ms. LANDRIEU, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 499, a bill to authorize the American Battle Monuments Commission to establish in the State of Louisiana a memorial to honor the Buffalo Soldiers.

S. 532

At the request of Mrs. HUTCHISON, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 532, a bill to enhance the capacity of organizations working in the United States-Mexico border region to develop affordable housing and infrastructure and to foster economic opportunity in the colonias.

S. 564

At the request of Ms. LANDRIEU, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 564, a bill to facilitate the deployment of wireless telecommunications networks in order to further the availability of the Emergency Alert System, and for other purposes.

S. 582

At the request of Mr. BUNNING, the names of the Senator from Montana (Mr. BURNS) and the Senator from Kentucky (Mr. MCCONNELL) were added as cosponsors of S. 582, a bill to authorize the Department of Energy to develop and implement an accelerated research and development program for advanced clean coal technologies for use in coal-based electricity generating facilities and to amend the Internal Revenue Code of 1986 to provide financial incentives to encourage the retrofitting,

repowering, or replacement of coal-based electricity generating facilities to protect the environment and improve efficiency and encourage the early commercial application of advanced clean coal technologies, so as to allow coal to help meet the growing need of the United States for the generation of reliable and affordable electricity.

S. CON. RES. 6

At the request of Ms. LANDRIEU, the names of the Senator from Michigan (Mr. LEVIN), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Louisiana (Mr. BREAUX), the Senator from Florida (Mr. NELSON), the Senator from Vermont (Mr. LEAHY), the Senator from Connecticut (Mr. DODD), the Senator from Indiana (Mr. BAYH), the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Ms. MIKULSKI), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Massachusetts (Mr. KERRY), the Senator from Arizona (Mr. MCCAIN), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. Con. Res. 6 , A concurrent resolution expressing the sense of Congress that a commemorative postage stamp should be issued in honor of Daniel ''Chappie'' James, the Nation's first African-American four-star general.

S. CON. RES. 7

At the request of Mr. CAMPBELL, the names of the Senator from Alaska (Mr. STEVENS), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Illinois (Mr. DURBIN), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Delaware (Mr. BIDEN), the Senator from Minnesota (Mr. COLEMAN), the Senator from Georgia (Mr. MILLER), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Missouri (Mr. BOND), the Senator from Pennsylvania (Mr. SPECTER), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Kansas (Mr. BROWNBACK), the Senator from Oklahoma (Mr. NICKLES), the Senator from Michigan (Mr. LEVIN), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Illinois (Mr. FITZGERALD) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. Con. Res. 7, A concurrent resolution expressing the sense of Congress that the sharp escalation of anti-Semitic violence within many participating States of the Organization for Security and Cooperation in Europe (OSCE) is of profound concern and efforts should be undertaken to prevent future occurrences.

S. CON. RES. 14

At the request of Mr. SMITH, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. Con. Res. 14, a concurrent resolution expressing the sense of Congress regarding the education curriculum in the Kingdom of Saudi Arabia.

S. RES. 62

At the request of Mr. ENSIGN, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. Res. 62, a resolution calling upon the Organization of American States (OAS) Inter-American Commission on Human Rights, the United Nations High Commissioner for Human Rights, the European Union, and human rights activists throughout the world to take certain actions in regard to the human rights situation in Cuba.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REID (for himself, Mr. ENSIGN, Mr. ALLARD, Mr. MILLER, and Mr. CRAPO):

S. 611. A bill to amend the Internal Revenue Code of 1986 to treat gold, silver, and platinum, in either coin or bar form, in the same manner as stocks and bonds for purposes of the maximum capital gains rate for individuals; to the Committee on Finance.

Mr. REID. Mr. President, last Congress, I introduced the Fair Treatment for Precious Metals Investors Act to correct a flawed capital gains tax definition, which includes precious metals investments as ''collectibles.'' This simple flaw in the tax code has discouraged investments in gold and other precious metals for nearly fifteen years. I rise today to reintroduce the Fair Treatment for Precious Metals Investors Act to correct this problem.

My State, Nevada, is the third largest producer of gold in the world behind Australia and South Africa. Largely because of Nevada's exports, America enjoys a good trade surplus of more than $1 billion. U.S. gold is purchased around the world in financial markets from London to Zurich to Hong Kong.

Historically, precious metals investments derived their value from their rarity. Today, however, precious metals coins and bars are specifically designed and produced by governments to be used as an investment vehicle for those commodities similar to stocks and bonds. My legislation will correct the outdated tax classification of precious metal bullion and apply to precious metals holdings the same capital gains tax treatment as stocks, bonds, and mutual funds.

In 1997 and 1998, The Taxpayer Relief Act and the Internal Revenue Service Restructuring and Reform Act set two basic types of capital gains tax rates: short-term capital gains, which are taxed at between 15 and 39.6 percent, and long-term capital gains which are taxed at a maximum rate of 20 percent. Long-term capital gains attributable to investments defined as ''collectibles'', (vintage wines, rare coins, and the like), however, are taxed at a maximum rate of 28 percent. Although precious metal bullion coins are intended to be used as investments in the precious metals they contain, they are still classified as ''collectibles'', and are taxed at the 28 percent maximum rate. The Taxpayer Relief Act allowed precious metal bullion coins held in IRA accounts to be taxed at the same rate as stocks and other capital assets. The bill I introduce today would treat all precious metal investments with the same tax equity.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 611

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fair Treatment for Precious Metals Investors Act''.

SEC. 2. GOLD, SILVER, AND PLATINUM TREATED IN THE SAME MANNER AS STOCKS AND BONDS FOR MAXIMUM CAPITAL GAINS RATE FOR INDIVIDUALS.

(a) IN GENERAL.—Subparagraph (A) of section 1(h)(6) of the Internal Revenue Code of 1986 (relating to definition of collectibles gain and loss) is amended by striking ''without regard to paragraph (3) thereof'' and inserting ''without regard to so much of paragraph (3) thereof as relates to palladium and the bullion requirement for physical possession by a trustee''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2002.

By Mr. BENNETT:

S. 612. A bill to revise the boundary of the Glen Canyon National Recreation Area in the States of Utah and Arizona; to the Committee on Energy and Natural Resources.

Mr. BENNETT. Mr. President, I rise today to introduce the ''Glen Canyon National Recreation Area Boundary Revision Act.''

This legislation will revise the total acreage within the National Recreation Area's, NRA, boundary to reflect the actual acreage within the NRA, and it will also do much to protect the scenic view of Lake Powell as seen by those traveling along U.S. Highway Route 89.

As enacted into law, the enabling legislation for the Glen Canyon National Recreation Area, inaccurately reflected the acreage within the NRA boundary. This legislation would correct the acreage ceiling by estimating the acreage within the NRA to be 1,256,000 instead of 1,236,880.

Secondly, this bill would authorize the Secretary of the Interior, to exchange 320 NRA acres for 152 acres of privately owned land in Kane County, UT. Currently, Page One L.L.C. owns 152 acres between U.S. Highway 89 and the southwestern shore of Lake Powell. This private land provides a breathtaking view of Lake Powell from Highway 89, which is the main viewshed corridor between the highway and the lake. This land also encompasses three highway access rights-of-way and a developed culinary water well. In an effort to protect this viewshed and better manage its boundaries along its most visited entrance, the National Park

Service, NPS, has been negotiating with Page One to exchange 370 acres of NRA lands for these 152 acres. The approximate value of the NRA lands is $480,000 whereas the private land's appraised value is $856,000. Page One has agreed to donate the balance of appraised value to the NPS.

By authorizing this land exchange, this bill will allow the NPS to preserve and better manage the corridor between the park and Highway 89, which affords such a scenic view of Lake Powell. This boundary change would not add any facilities, increase operating costs, or require additional staff and as such, it will not add to the NPS maintenance backlog.

Because of the common interest in preserving this scenic corridor from development, this legislation has garnered the support of the administration, the Kane County Planning and Zoning Commission, the National Parks Conservation Association, and the Southern Utah Planning Advisory Council. In light of the benefits provided by and community support for this proposal, I look forward to working with my Senate colleagues and the administration to pass this legislation this year.

By Mr. CAMPBELL (for himself and Mr. ALLARD):

S. 613. A bill to authorize the Secretary of Veterans Affairs to construct, lease, or modify major medical facilities at the site of the former Fitzsimons Army Medical Center, Aurora, Colorado; to the Committee on Veterans' Affairs.

Mr. CAMPBELL. Mr. President, today I am introducing a bill to facilitate the move of the Denver Veterans Affairs Medical Center, DVAMC, from its present site in Denver to the former Fitzsimons Army Medical Center in Aurora, Colorado. I am pleased to be joined in this effort by my friend and colleague Senator ALLARD as an original co-sponsor.

The bill would authorize the Secretary of Veterans Affairs to construct, lease or modify major medical facilities at the site of the former Fitzsimons Army Medical Center. It instructs the Secretary to work with the Department of Defense in planning a joint Federal project that would serve the health care needs of active duty Air Force and the VA. It would also require the Secretary to submit a report to the Committees on Appropriations and the Committees on Veterans Affairs of the Senate and the House of Representatives. This report would detail the options selected by the Secretary and any information on further planning needed to carry out the move.

The relocation of the DVAMC to the former Fitzsimons site offers a unique opportunity to provide the highest quality medical care for our veterans and certain members of our military. The University of Colorado Health Sciences Center, UCHSC, is moving its facilities from its overcrowded location near downtown Denver to the Fitzsimons site, a decommissioned Army base. The UCHSC and the DVAMC have long operated on adjacent campuses and have shared faculty, medical residents, and access to equipment. A DVAMC move to the new location in conjunction with the DOD would allow such cost-effective cooperation to continue, for the benefit of our veterans, active duty Air Force members and all taxpayers.

The need to move is pressing. A recent VA study concludes that the Colorado State veterans' population will experience one of the highest percent increases nationally in veterans age 65 and over between 1990 and 2020. The present VA hospital was built in the 1950's. While still able to provide service, the core facilities are approaching the end of their useful lives and many of the patient care units have fallen horribly out of date. Studies indicate that co-location with the University on a state-of-the-art medical campus would be a cost effective way to give veterans and active duty Air Force members in the region the highest quality of care. The move would also provide a tremendous opportunity to showcase a nationwide model of cooperation between the University, the Department of Veterans Affairs, VA, and the Department of Defense.

The VA needs to move quickly. Assisting our veterans with their medical needs is a promise we, as a country, made long ago.

The savings we can realize by approving the timely transfer of our veterans' medical treatment facilities in the Denver region compels me to urge my colleagues to act quickly on this bill. We must not miss out on this opportunity to serve America's veterans and their families by ensuring that they receive the excellent medical care they deserve.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 613

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Veterans' New Fitzsimons Health Care Facilities Act of 2003''.

SEC. 2. AUTHORIZATION OF MAJOR MEDICAL FACILITY PROJECTS, FORMER FITZSIMONS ARMY MEDICAL CENTER, AURORA, COLORADO.

(a) AUTHORIZATION.—The Secretary of Veterans Affairs may carry out major medical facility projects under section 8104 of title 38, United States Code, at the site of the former Fitzsimons Army Medical Center, Aurora, Colorado. Projects to be carried out at such site shall be selected by the Secretary and may include inpatient and outpatient facilities providing acute, sub-acute, primary, and long-term care services. Project costs shall be limited to an amount not to exceed a total of $300,000,000 if a combination of direct construction by the Department of Veterans Affairs and capital leasing is selected under subsection (b) and no more than $30,000,000 per year in capital leasing costs if a leasing option is selected as the sole option under subsection (b).

(b) SELECTION OF CAPITAL OPTION.—The Secretary of Veterans shall select the capital option to carry out the authority provided in subsection (a) of either—

(1) direct construction by the Department of Veterans Affairs or a combination of direct construction and capital leasing; or

(2) capital leasing alone.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Veterans Affairs for fiscal years 2004, 2005, 2006, and 2007 for ''Construction, Major Projects'' for the purposes authorized in subsection (a)—

(1) a total of $300,000,000, if direct construction, or a combination of direct construction and capital leasing, is chosen pursuant to subsection (b) for purposes of the projects authorized in subsection (a); and

(2) $30,000,000 for each such fiscal year, if capital leasing alone is chosen pursuant to subsection (b) for purposes of the projects authorized in subsection (a).

(d) LIMITATION.—The projects authorized in subsection (a) may only be carried out using—

(1) funds appropriated for fiscal year 2004, 2005, 2006, or 2007 pursuant to the authorization of appropriations in subsection (a);

(2) funds appropriated for Construction, Major Projects, for a fiscal year before fiscal year 2004 that remain available for obligation; and

(3) funds appropriated for Construction, Major Projects, for fiscal year 2004, 2005, 2006, or 2007 for a category of activity not specific to a project.

(e) REPORT TO CONGRESSIONAL COMMITTEES.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Appropriations and the Committees on Veterans' Affairs of the Senate and House of Representatives a report on this section. The report shall include notice of the option selected by the Secretary pursuant to subsection (b) to carry out the authority provided by subsection (a), information on any further planning required to carry out the authority provided in subsection (a), and other information of assistance to the committees with respect to such authority.

SEC. 3. JOINT ACTIVITIES TO ADDRESS HEALTH CARE NEEDS OF VETERANS AND MEMBERS OF THE AIR FORCE.

The Secretary of Veterans Affairs and the Secretary of the Air Force shall undertake such joint activities as the Secretaries consider appropriate to address the health care needs of veterans and members of the Air Force on active duty.

By Ms. COLLINS (for herself, Mr. JEFFORDS, Mr. CHAFEE, Mr. KERRY, Mrs. HUTCHISON, Mr. REED, Mr. LIEBERMAN, Mr. VOINOVICH, Mr. DORGAN, and Mr. LEAHY):

S. 616. A bill to amend the Solid Waste Disposal Act to reduce the quantity of mercury in the environment by limiting the use of mercury fever thermometers and improving the collection and proper management of mercury, and for other purposes; to the Committee on Environment and Public Works.

Ms. COLLINS. Mr. President, I rise today to introduce the Mercury Reduction Act of 2003. I am pleased that my colleagues, Senators JEFFORDS,

CHAFEE, KERRY, HUTCHISON, REED, LIEBERMAN, VOINOVICH, DORGAN, and LEAHY have joined me in this initiative. Our legislation addresses the very serious problems of mercury in the environment and mercury disposal. It takes special aim at one of the most common and widely distributed sources of mercury mercury fever thermometers while also for the first time creating a nationwide policy for dealing with surplus mercury.

Mercury is a potent neurotoxin that is widespread in the environment and particularly harmful to developing children. In fact, according to a draft report recently released by the EPA, approximately 5 million American women of childbearing age have mercury levels in their bloodstream above safe levels. Tragically, the children of these women will have an elevated risk of birth defects.

When mercury enters the environment, it takes on a highly toxic organic form known as methylmercury. Methylmercury is almost completely absorbed into the blood and distributed to all tissues including the brain. This organic mercury can accumulate in the food chain and become concentrated in some species of fish, posing a health threat to some people who consume them. For this reason, 40 States have issued freshwater fish advisories that warn certain individuals to restrict or avoid consuming fish from affected bodies of water.

One prevalent source of mercury in the environment is from mercury fever thermometers. Many of us know from personal experience that they are easily broken. In fact, in 1998 the American Poison Control Center received 18,000 phone calls from consumers who had broken mercury thermometers.

One mercury thermometer contains a little under one gram of mercury. Despite its small size, the mercury in one thermometer, if it were released annually into the environment, is enough to contaminate all the fish in a 20-acre lake.

The bill we are introducing today calls for a nationwide ban on the sale of mercury fever thermometers. It would also provide grants for swap programs to help consumers exchange mercury thermometers for digital or other alternatives.

Our legislation would allow millions of consumers across the Nation to receive free digital thermometers in exchange for their mercury thermometers. By bringing mercury thermometers in for proper disposal, consumers will ensure the mercury from their thermometers does not end up polluting our lakes and threatening our health. It will also reduce the risk of breakage and contamination inside the home.

An important component of our bill is the safe disposal of the mercury collected from thermometer exchange programs, which are increasingly popular in communities throughout our country. I want to make sure that we are actually removing surplus mercury from the environment and from commerce, rather than simply recycling it. It obviously does little good to collect all this mercury from thermometer exchange programs if it is going to be recycled into new products and put back into commerce and eventually into our environment. This bill directs the EPA to ensure that the mercury is properly collected and stored in order to keep it out of the environment and out of commerce. Once the mercury is collected, my intention is it will never again be able to pose a threat to the health of our children.

The mercury collected from thermometer exchange programs is only part of the problem. There is a bigger problem, and that is the global circulation of mercury. Let me give an example. When the HoltraChem manufacturing plant in Orrington, ME, shut down a few years ago, the plant was left with over 100 tons of unwanted mercury and no known way to permanently and safely dispose of it. In total, about 3,000 tons of mercury is held at similar plants across the country.

Yet despite this surplus mercury, large amounts of mercury are still being mined around the world. In addition, the Department of Defense currently has a stockpile of over 4,000 tons of surplus mercury it does not know what to do with and for which it does not have any use.

In view of these facts, why are Algeria and other countries still mining huge amounts of an element that is a known neurotoxin, when the United States and other countries are doing their best to remove this extremely toxic element from the environment? How will the United States dispose of the huge amounts of mercury at chlor-alkali plants and other sources that no longer are understood?

Our bill would create an interchange task force to address these very questions. The task force would be chaired by the Administrator of the Environmental Protection Agency and would be comprised of members from other Federal agencies involved with mercury. Our legislation directs this task force to find ways to reduce the mercury threat to humans and to our environment, to identify long-term means of disposing of mercury safely and properly, and to address the excess mercury problems from mines as well as industrial sources. This task force would also be directed to identify comprehensive solutions to the global mercury problem. One year from the creation of this task force, it would be required to submit its recommendations to the Congress for permanently disposing of mercury and for reducing the amount of new mercury mined every year.

In the meantime, this legislation would make significant progress toward reducing one of the most widespread sources of mercury contamination in the environment, a source that is found in many of our homes; that is, the mercury thermometer. Perhaps even more important, this legislation would, for the first time ever, establish a national policy, which is what we need to deal with surplus mercury in order to protect our environment in the long term, as well as our health, and particularly the health of developing children, from this highly toxic element.

I hope many more of my colleagues will join me in cosponsoring this legislation and that it will be signed into law this year.

By Mr. LIEBERMAN (for himself, Mr. FEINGOLD, Mr. DASCHLE, Mr. DURBIN, Ms. MIKULSKI, Mr. SCHUMER, Mr. KENNEDY, Mr. DODD, Ms. LANDRIEU, and Mr. KERRY):

S. 617. A bill to provide for full voting representation in Congress for the citizens of the District of Columbia, and for other purposes; to the Committee on Governmental Affairs.

Mr. LIEBERMAN. Mr. President, I rise today to introduce the No Taxation Without Representation Act of 2003 legislation that will right an ongoing injustice experienced by 600,000 American citizens—the citizens of the District of Columbia—who have historically been denied voting representation in Congress.

This injustice is felt directly by District residents, but it is also a stain on the fabric of our democracy for the Nation as a whole. By now, we should all understand that the vote is a civic entitlement of every American citizen. It is democracy's most essential right, our most useful tool.

I am proud to be the chief Senate sponsor of this bill, which Congresswoman NORTON is also today introducing in the House. I am delighted that Senator FEINGOLD, who has worked with me for two years on this legislation, is joining me again as an original sponsor, as are Senators DASCHLE, DURBIN, MIKULSKI, SCHUMER, KENNEDY, DODD, LANDRIEU and KERRY. The aim of the legislation is simple: It would provide full voting representation in Congress—through two senators and a member of the House—to citizens of the District, providing to them the same rights to participate in our democracy as citizens in the 50 States. Despite this bill's title, it would not exempt residents of the District from paying income taxes.

Last year, the Governmental Affairs Committee, which I then chaired, held a hearing on this issue in May. It was the first time since 1994 that Congress had held a hearing on the issue. Five months later, in October, the Committee reported out legislation identical to the bill we introduce today. I am proud that we progressed as far as we did last year. Unfortunately it was not far enough.

Today, I think it is particularly ironic—though painfully so—that we are introducing this legislation as the Nation stands on the brink of a decision

about war with Iraq to protect our national security. If war does come, citizens of Washington D.C. will serve their fellow Americans with pride, as they have in every previous war. In fact, the District suffered more casualties in Vietnam than the citizens of 10 states. Furthermore, over 1,000 Army and Air National Guardsmen and women from the District have already been called upon to help in the war on terrorism. Yet—to our shame—D.C. citizens cannot choose representatives to the legislature that governs them. There is something wrong with this picture.

The people of this city have also been the direct target of terrorists, and yet citizens of the District have no one who can cast a vote in Congress on policies to protect their homeland security. Citizens of Washington, D.C., pay income taxes just like everyone else. Actually, they pay more. Per capita, District residents have the second highest Federal tax obligation. And yet they have no say in how high those taxes will be or how their tax dollars will be spent.

They fight and die and pay for our democracy, but they cannot participate fully in it. How can we countenance this? How can we promote democracy abroad effectively while denying it to hundreds of thousands of citizens in our Nation's Capital?

The citizens who live in our Nation's Capital deserve more than a nonvoting delegate

in the House. Notwithstanding the strong service of the Honorable Congresswoman ELEANOR HOLMES NORTON and her ability to vote in committee, a representative without the power to vote on the floor of the House simply isn't good enough.

Prior to the District's establishment in 1790, residents of the area who were eligible to vote had full representation in Congress. When the framers of the Constitution placed our Capital under the jurisdiction of the Congress, they placed with Congress the responsibility of ensuring that D.C. citizens' rights would be protected in the future, just as Congress should protect the rights of all citizens throughout the land. For more than 200 years, Congress has failed to meet this obligation. And I, for one, am not prepared to make D.C. citizens wait another 200 years.

Today, no other democratic nation denies the residents of its capital representation in the national legislature. What must visitors from around the world think when they come to see our beautiful landmarks, our monuments, and our Capitol dome—proud symbols of the world's leading democracy—only to learn that the citizens of this city have no voice in Congress? What would we do if the residents of Boston, Nashville, Denver, Seattle, or El Paso had no voting rights? All those cities are roughly the same size as Washington, D.C.—and I know we as a Nation wouldn't let their citizens go voiceless in the Congress.

Incredibly, the vast majority of Americans already believe that D.C. residents have voting representation in the Congress. When they are informed that they don't, 80 percent of Americans, according to one poll, say that they should. That is overwhelming support and by righting this wrong, we will be following the will of the American people.

The people of the District of Columbia have been without this key right for far too long. I urge all of my colleagues to support this legislation.

By Mr. REID (for himself and Mr. ENSIGN):

S. 618. A bill to provide for the use and distribution of the funds awarded to the Western Shoshone identifiable group under Indian Claims Commission Docket Numbers 326–A–1, 326–A–3, 326–K, and for other purposes; to the Committee on Indian Affairs.

Mr. REID. Mr. President, I rise today for myself and Senator ENSIGN to reintroduce the Western Shoshone Claims Distribution Act. Last year the Senate unanimously passed this bill, which will at last release funds the United States has held in trust for the Western Shoshone people for over 24 years. Unfortunately the House was unable to complete its consideration of the bill before the last Congress adjourned.

Historically, the Western Shoshone people have resided on land within the central portion of Nevada and parts of California, Idaho, and Utah. For more than a hundred years, the Western Shoshone have not received a fair compensation for the loss of their tribal land and resources. In 1946 the Indian Claims Commission was established to compensate Indians for lands and resources taken from them by the United States. In 1962 the commission determined that the Western Shoshone land had been taken through ''gradual encroachment.'' In 1977 the commission awarded the tribe in excess of $26 million dollars. The United States Supreme Court has upheld the commission's award. It was not until 1979 that the United States appropriated over $26 million dollars to reimburse the descendents of these tribes for their loss.

The Western Shoshone are not a wealthy people. A third of the tribal members are unemployed; for many of those who do have jobs, it is a struggle to live from paycheck to the next. Wood stoves often provide the only source of heat in their aging homes. Like other American Indians, the Western Shoshone continue to be disproportionately affected by poverty and low educational attainment. The high school completion rate for Indian people between the ages of 20 and 24 is dismally low. American Indians have a drop-out rate that is 12.5 percent higher than the rest of the National. For the Western Shoshone, the money contained in the settlement funds could lead to drastic lifestyle improvements.

After 24 years the judgment funds still remain in the United States Treasury. The Western Shoshone have not received a single penny of this money which is rightfully theirs. In those twenty-four years, the original trust fund has grown to well over $121 million dollars. It is the past time that this money should be delivered into the hands of its owners. The Western Shoshone Steering Committee has officially requested that Congress enact legislation to affect this distribution. It has become increasingly apparent in recent years that the vast majority of those who qualify to receive these funds support an immediate distribution of their money.

This Act will provide payments to eligible Western Shoshone tribal members and ensure that future generations of Western Shoshone will be able to enjoy the benefit of the distribution in perpetuity. Through the establishment of a tribally controlled grant trust fund, individual members of the Western Shoshone will be able to apply for money for education and other needs within limits set by a self-appointed committee of tribal members. I will continue my ongoing work with the members of the Western Shoshone and the Department of Interior to help resolve any current land issues.

It is clear that the Western Shoshone want the funds from their claim distributed without further delay. They have already voted twice to firmly and decisively voice their interests. Members of the Western Shoshone gathered in Fallon and Elko, NV in May of 1998. They cast a vote overwhelmingly in favor of distributing the funds. 1,230 supported the distribution in the statewide vote; only 53 were opposed. Again on June 2002 they cast a vote overwhelmingly in support of the distribution of the judgment funds at a rate of 100 percent per capita. 1,647 Western Shoshone voted in favor of the distribution of the funds; only 156 opposed. I rise today in support and recognition of their decision. The final distribution of this fund has lingered for more than twenty years. During the 107th Congress, the Indian Affairs Committee approved and the full Senate unanimously passed this bill. It is clear that the best interests of the Tribe will not be served by prolonging their wait. Twenty-four years has been more than long enough. 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. 618

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Western Shoshone Claims Distribution Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) COMMITTEE.—The term ''Committee'' means the administrative committee established under section 4(c)(1).

(2) WESTERN SHOSHONE JOINT JUDGMENT FUNDS.—The term ''Western Shoshone joint judgment funds'' means—

(A) the funds appropriated in satisfaction of the judgment awards granted to the Western Shoshone Indians in Docket Numbers 326–A–1 and 326–A–3 before the United States Court of Claims; and

(B) all interest earned on those funds.

(3) WESTERN SHOSHONE JUDGMENT FUNDS.—The term ''Western Shoshone judgment funds'' means—

(A) the funds appropriated in satisfaction of the judgment award granted to the Western Shoshone Indians in Docket Number 326–K before the Indian Claims Commission; and

(B) all interest earned on those funds.

(4) JUDGMENT ROLL.—The term ''judgment roll'' means the Western Shoshone judgment roll established by the Secretary under section 3(b)(1).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(6) TRUST FUND.—The term ''Trust Fund'' means the Western Shoshone Educational Trust Fund established under section 4(b)(1).

(7) WESTERN SHOSHONE MEMBER.—The term ''Western Shoshone member'' means an individual who—

(A)(i) appears on the judgment roll; or

(ii) is the lineal descendant of an individual appearing on the roll; and

(B)(i) satisfies all eligibility criteria established by the Committee under section 4(c)(4)(D)(iii);

(ii) meets any application requirements established by the Committee; and

(iii) agrees to use funds distributed in accordance with section 4(b)(2)(B) for educational purposes approved by the Committee.

SEC. 3. DISTRIBUTION OF WESTERN SHOSHONE JUDGMENT FUNDS.

(a) IN GENERAL.—The Western Shoshone judgment funds shall be distributed in accordance with this section.

(b) JUDGMENT ROLL.—

(1) IN GENERAL.—The Secretary shall establish a Western Shoshone judgment roll consisting of all individuals who—

(A) have at least ¼ degree of Western Shoshone blood;

(B) are citizens of the United States; and

(C) are living on the date of enactment of this Act.

(2) INELIGIBLE INDIVIDUALS.—Any individual that is certified by the Secretary to be eligible to receive a per capita payment from any other judgment fund awarded by the Indian Claims Commission, the United States Claims Court, or the United States Court of Federal Claims, that was appropriated on or before the date of enactment of this Act, shall not be listed on the judgment roll.

(3) REGULATIONS REGARDING JUDGMENT ROLL.—The Secretary shall—

(A) publish in the Federal Register all regulations governing the establishment of the judgment roll; and

(B) use any documents acceptable to the Secretary in establishing proof of eligibility of an individual to—

(i) be listed on the judgment roll; and

(ii) receive a per capita payment under this Act.

(4) FINALITY OF DETERMINATION.—The determination of the Secretary on an application of an individual to be listed on the judgment roll shall be final.

(c) DISTRIBUTION.—

(1) IN GENERAL.—On establishment of the judgment roll, the Secretary shall make a per capita distribution of 100 percent of the Western Shoshone judgment funds, in shares as equal as practicable, to each person listed on the judgment roll.

(2) REQUIREMENTS FOR DISTRIBUTION PAYMENTS.—

(A) LIVING COMPETENT INDIVIDUALS.—The per capita share of a living, competent individual who is 19 years or older on the date of distribution of the Western Shoshone judgment funds under paragraph (1) shall be paid directly to the individual.

(B) LIVING, LEGALLY INCOMPETENT INDIVIDUALS.—The per capita share of a living, legally incompetent individual shall be administered in accordance with regulations promulgated and procedures established by the Secretary under section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)).

(C) DECEASED INDIVIDUALS.—The per capita share of an individual who is deceased as of the date of distribution of the Western Shoshone judgment funds under paragraph (1) shall be paid to the heirs and legatees of the individual in accordance with regulations promulgated by the Secretary.

(D) INDIVIDUALS UNDER THE AGE OF 19.—The per capita share of an individual who is not yet 19 years of age on the date of distribution of the Western Shoshone judgment funds under paragraph (1) shall be—

(i) held by the Secretary in a supervised individual Indian money account; and

(ii) distributed to the individual—

(I) after the individual has reached the age of 18 years; and

(II) in 4 equal payments (including interest earned on the per capita share), to be made—

(aa) with respect to the first payment, on the eighteenth birthday of the individual (or, if the individual is already 18 years of age, as soon as practicable after the date of establishment of the Indian money account of the individual); and

(bb) with respect to the 3 remaining payments, not later than 90 days after each of the 3 subsequent birthdays of the individual.

(3) APPLICABLE LAW.—Notwithstanding section 7 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407), a per capita share (or the availability of that share) paid under this section shall not—

(A) be subject to Federal or State income taxation;

(B) be considered to be income or resources for any purpose; or

(C) be used as a basis for denying or reducing financial assistance or any other benefit to which a household or Western Shoshone member would otherwise be entitled to receive under—

(i) the Social Security Act (42 U.S.C. 301 et seq.); or

(ii) any other Federal or federally-assisted program.

(4) UNPAID FUNDS.—The Secretary shall add to the Western Shoshone joint judgment funds held in the Trust Fund under section 4(b)(1)—

(A) all per capita shares (including interest earned on those shares) of living competent adults listed on the judgment roll that remain unpaid as of the date that is—

(i) 6 years after the date of distribution of the Western Shoshone judgment funds under paragraph (1); or

(ii) in the case of an individual described in paragraph (2)(D), 6 years after the date on which the individual reaches 18 years of age; and

(B) any other residual principal and interest funds remaining after the distribution under paragraph (1) is complete.

SEC. 4. DISTRIBUTION OF WESTERN SHOSHONE JOINT JUDGMENT FUNDS.

(a) IN GENERAL.—The Western Shoshone joint judgment funds shall be distributed in accordance with this section.

(b) WESTERN SHOSHONE EDUCATIONAL TRUST FUND.—

(1) ESTABLISHMENT.—Not later than 120 days after the date of enactment of this Act, the Secretary shall establish in the Treasury of the United States, for the benefit of Western Shoshone members, a trust fund to be known as the ''Western Shoshone Educational Trust Fund'', consisting of—

(A) the Western Shoshone joint judgment funds; and

(B) the funds added under in section 3(b)(4).

(2) AMOUNTS IN TRUST FUND.—With respect to amounts in the Trust fund—

(A) the principal amount—

(i) shall not be expended or disbursed; and

(ii) shall be invested in accordance with section 1 of the Act of June 24, 1938 (25 U.S.C. 162a); and

(B) all interest income earned on the principal amount after the date of establishment of the Trust fund—

(i) shall be distributed by the Committee—

(I) to Western Shoshone members in accordance with this Act, to be used as educational grants or for other forms of educational assistance determined appropriate by the Committee; and

(II) to pay the reasonable and necessary expenses of the Committee (as defined in the written rules and procedures of the Committee); but

(ii) shall not be distributed under this paragraph on a per capita basis.

(c) ADMINISTRATIVE COMMITTEE.—

(1) ESTABLISHMENT.—There is established an administrative committee to oversee the distribution of educational grants and assistance under subsection (b)(2).

(2) MEMBERSHIP.—The Committee shall be composed of 7 members, of which—

(A) 1 member shall represent the Western Shoshone Te-Moak Tribe and be appointed by that Tribe;

(B) 1 member shall represent the Duckwater Shoshone Tribe and be appointed by that Tribe;

(C) 1 member shall represent the Yomba Shoshone Tribe and be appointed by that Tribe;

(D) 1 member shall represent the Ely Shoshone Tribe and be appointed by that Tribe;

(E) 1 member shall represent the Western Shoshone Committee of the Duck Valley Reservation and be appointed by that Committee;

(F) 1 member shall represent the Fallon Band of Western Shoshone and be appointed by that Band; and

(G) 1 member shall represent the general public and be appointed by the Secretary.

(3) TERM.—

(A) IN GENERAL.—Each member of the Committee shall serve a term of 4 years.

(B) VACANCIES.—If a vacancy remains unfilled in the membership of the Committee for a period of more than 60 days—

(i) the Committee shall appoint a temporary replacement from among qualified members of the organization for which the replacement is being made; and

(ii) that member shall serve until such time as the organization (or, in the case of a member described in paragraph (2)(G), the Secretary) designates a permanent replacement.

(4) DUTIES.—The Committee shall—

(A) distribute interest funds from the Trust Fund under subsection (b)(2)(B)(i);

(B) for each fiscal year, compile a list of names of all individuals approved to receive those funds;

(C) ensure that those funds are used in a manner consistent with this Act;

(D) develop written rules and procedures, subject to the approval of the Secretary, that cover such matters as—

(i) operating procedures;

(ii) rules of conduct;

(iii) eligibility criteria for receipt of funds under subsection (b)(2)(B)(i);

(iv) application selection procedures;

(v) procedures for appeals to decisions of the Committee;

(vi) fund disbursement procedures; and

(vii) fund recoupment procedures;

(E) carry out financial management in accordance with paragraph (6); and

(F) in accordance with subsection (b)(2)(C)(ii), use a portion of the interest funds from the Trust Fund to pay the reasonable and necessary expenses of the Committee (including per diem rates for attendance at meetings that are equal to those paid to Federal employees in the same geographic location), except that not more than $100,000 of those funds may be used to develop written rules and procedures described in subparagraph (D).

(5) JURISDICTION OF TRIBAL COURTS.—At the discretion of the Committee and with the approval of the appropriate tribal government, a tribal court, or a court of Indian offenses operated under section 11 of title 25, Code of Federal Regulations (or a successor regulation), shall have jurisdiction to hear an appeal of a decision of the Committee.

(6) FINANCIAL MANAGEMENT.—

(A) FINANCIAL STATEMENT.—The Committee shall employ an independent certified public accountant to prepare a financial statement for each fiscal year that discloses—

(i) the operating expenses of the Committee for the fiscal year; and

(ii) the total amount of funds disbursed under subsection (b)(2)(B)(i) for the fiscal year.

(B) DISTRIBUTION OF INFORMATION.—For each fiscal year, the Committee shall provide to the Secretary, to each organization represented on the Committee, and, on the request of a Western Shoshone member, to the Western Shoshone member, a copy of—

(i) the financial statement prepared under subparagraph (A); and

(ii) the list of names compiled under paragraph (4)(B).

(d) CONSULTATION.—The Secretary shall consult with the Committee on the management and investment of the funds distributed under this section.

SEC. 5. REGULATIONS.

The Secretary may promulgate such regulations as are necessary to carry out this Act.

By Mr. EDWARDS (for himself, Mr. LAUTENBERG, and Mr. LEVIN):

S. 620. A bill to amend title VII of the Higher Education Act of 1965 to provide for fire sprinkler systems, or other fire suppression or prevention technologies, in public and private college and university housing and dormitories, including fraternity and sorority housing and dormitories; to the Committee on Health, Education, Labor, and Pension.

Mr. EDWARDS. Mr. President, I rise today along with my colleagues Mr. LAUTENBURG and Mr. LEVIN to re-introduce the College Fire Prevention Act. This measure would provide Federal matching grants for the installation of fire sprinkler systems in college and university dormitories and fraternity and sorority houses. I believe the time is now to address the sad situation of deadly fires that occur in our children's college living facilities.

The tragic fire that occurred at Seton Hall University on Wednesday, January 19th, 2000, will not be forgotten. Three freshmen, all 18 years old, died. Fifty-four students, two South Orange firefighters and two South Orange police officers were injured. The dormitory, Boland Hall, was a six-story, 350-room structure built in 1952 that housed approximately 600 students. Astonishingly, the fire was contained to the third floor lounge of Boland Hall. This dormitory was equipped with smoke alarms but no sprinkler system.

Unfortunately, the Boland Hall fire was not the first of its kind. And it reminded many people in North Carolina of their own tragic experience with dorm fires. In 1996, on Mother's Day and Graduation Day, a fire in the Phi Gamma Delta fraternity house at the University of North Carolina at Chapel Hill killed five college juniors and injured three others. The three-story fraternity house was 70 years old. The National Fire Protection Association identified several factors that contributed to the tragic fire, including the lack of fire sprinkler protection.

Sadly, dorm fires are not rare. On December 9, 1997, a student died in a dormitory fire at Greenville College in Greenville, IL. The dormitory, Kinney Hall, was built in the 1960s and had no fire sprinkler system. On January 10, 1997, a student died at the University of Tennessee at Martin. The dormitory, Ellington Hall, had no fire sprinkler system. On January 3, 1997, a student died in a dormitory fire at Central Missouri State University in Warrensburg, MO. On October 21, 1994, five students died in a fraternity house fire in Bloomsburg, PA. The list goes on and on. In a typical year between 1980 and 1998, the National Fire Protection Association estimates there were an average of 1,800 fires at dormitories, fraternities, and sororities, involving one death, 70 injuries, and $8 million in property damage.

So now we must ask, what can be done? What can we do to curtail these tragic fires from taking the lives of our children, our young adults? We should focus our attention on the lack of fire sprinklers in college dormitories and fraternity and sorority houses. Sprinklers save lives.

Despite the clear benefits of sprinklers, many college dorms do not have them. New dormitories are generally required to have advanced safety systems such as fire sprinklers. But such requirements are rarely imposed retroactively on existing buildings. In 1998, 93 percent of the campus building fires reported to fire departments occurred in buildings where there were smoke alarms present. However, only 34 percent of them had fire sprinklers present.

At my State's flagship university at Chapel Hill, for example, only 14 of the 33 residence halls have sprinklers. Only 3 of 9 dorms at North Carolina Central University are equipped with the life-saving devices, and there are sprinklers in 4 of the 18 dorms at the University of North Carolina at Greensboro.

The legislation I introduce today authorizes the Secretary of Education, in consultation with the United States Fire Administration, to award grants to States, private or public colleges or universities, fraternities, or sororities to assist them in providing fire sprinkler systems for their student housing and dormitories. These entities would be required to produce matching funds equal to one-half of the cost of the project. This legislation authorizes $80 million for fiscal years 2004 through 2008.

In North Carolina, we decided to initiate a drive to install sprinklers in our public college and university dorms. The overall cost is estimated at $57.5 million. Given how much it is going to cost North Carolina's public colleges and universities to install sprinklers, I think it's clear that the $100 million that this measure authorizes is just a drop in the bucket. But my hope is that by providing this small incentive we can encourage more colleges to institute a comprehensive review of their dorm's fire safety and to install sprinklers. All they need is a helping hand. With this modest measure of prevention, we can help prevent the needless and tragic loss of young lives.

Parents should not have to worry about their children living in fire traps. When we send our children away to college, we are sending them to a home away from home where hundreds of other students eat, sleep, burn candles, use electric appliances and smoke. We must not compromise on their safety. As the Fire Chief from Chapel Hill wrote me: ''Every year, parents send their children off to college seeking an education unaware that one of the greatest dangers facing their children is the fire hazards associated with dormitories, fraternity and sorority houses and other forms of student housing . . . The only complete answer to making student-housing safe is to install fire sprinkler systems.'' In short, the best way to ensure the protection of our college students is to install fire sprinklers in our college dormitories and fraternity and sorority houses. My proposal has been endorsed by the National Fire Protection Association. I ask all of my colleagues to join me in supporting this important legislation. Thank you.

I ask unanimous consent that the text of the legislation and the letters of support be printed in the RECORD.

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

MARCH 4, 2003.

Hon. JOHN EDWARDS,
U.S. Senate,
Washington, DC.

SENATOR EDWARDS: On behalf of the National Fire Prevention Association (NFPA) and our 70,000 members, I want to thank you for introducing the College Fire Prevention Act. We are pleased to support your legislative efforts to provide federal assistance for the installation of fire sprinkler systems in college and university housing and dormitories.

Each year, an estimated 1,800 fires occur in dormitories and fraternity and sorority houses. These fires are responsible for an average of one death, seventy injuries and over $8 million in property damage. Of these fires, only 35% had fire sprinkler systems present.

As you know, in your home state of North Carolina, a tragic fire on Mother's Day in 1996 killed five students in a fraternity house.

Our statistics show that properly installed and maintained fire sprinkler systems have a proven track records of protecting lives and property in all types of occupancies. In particular, the retrofitting of fire sprinkler systems in college and university housing will greatly improve the safety of these public and private institutions.

Thank you for your leadership on this crucial issue. NFPA is ready to assist in any way to see this legislation passed.

Sincerely,

JOHN C. BIECHMAN,
Vice-President, Government Affairs.

Chapel Hill Fire Department, Chapel Hill, NC, March 12, 2003.

Senator JOHN EDWARDS,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR EDWARDS: One of the most under addressed fire safety problems in America today is university and college student housing. Every year, parents send their children off to college seeking an education unaware that one of the greatest dangers facing their children is the fire hazards associated with dormitories, fraternity and sorority houses and other forms of student housing. We in Chapel Hill experienced a worst-case scenario, when in 1996 a fire in a fraternity house on Mother's Day/Graduation Day claimed five young lives and injured three more. We recognized the only complete answer to making student-housing safe is to install fire sprinkler systems.

I had the privilege of reading a draft copy of your proposed legislation amending the Higher Education Act of 1965 to create a matching grants program supporting the lifesaving step of installing fire sprinkler systems in student housing. I strongly urge you to introduce this legislation and I pledge to assist you in promoting this important Bill. Your proposed legislation is the only real solution to the fire threat in student housing. Higher education cannot prepare our young people to contribute to society if they do not survive the experience.

After thirteen years of being responsible for fire protection at the University of North Carolina—Chapel Hill, I am convinced that where students reside, alarms systems are not enough, clear exit ways are not enough, quick fire department response is not enough and educational programs are not enough. The only way you can insure fire safety for college student housing is to place a fire sprinkler system over them. Thank you for recognizing the magnitude of this threat and for proposing a solution to it.

Tell me how we can help.

Sincerely,

DANIEL JONES,
Fire Chief.

S. 620

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

SECTION 1. COLLEGE FIRE PREVENTION ASSISTANCE.

Title VII of the Higher Education Act of 1965 (20 U.S.C. 1133 et seq.) is amended by adding at the end the following:

"PART E—COLLEGE FIRE PREVENTION ASSISTANCE

"SEC. 771. SHORT TITLE.

''This part may be cited as the 'College Fire Prevention Act'.

"SEC 772. FINDINGS.

''Congress makes the following findings:

''(1) On Wednesday, January 19, 2000, a fire occurred at a Seton Hall University dormitory. Three male freshmen, all 18 years of age, died. Fifty-four students, 2 South Orange firefighters, and 2 South Orange police officers were injured. The dormitory was a 6-story, 350-room structure built in 1952, that housed approximately 600 students. It was equipped with smoke alarms but no fire sprinkler system.

''(2) On Mother's Day 1996 in Chapel Hill, North Carolina, a fire in the Phi Gamma Delta Fraternity House killed 5 college juniors and injured 3. The 3-story plus basement fraternity house was 70 years old. The National Fire Protection Association identified several factors that contributed to the tragic fire, including the lack of fire sprinkler protection.

''(3) It is estimated that between 1980 and 1998, an average of 1,800 fires at dormitories, fraternities, and sororities, involving 1 death, 70 injuries, and $8,000,000 in property damage were reported to public fire departments.

''(4) Within dormitories, fraternities, and sororities the number 1 cause of fires is arson or suspected arson. The second leading cause of college building fires is cooking, while the third leading cause is smoking.

''(5) New dormitories are generally required to have advanced safety systems such as fire sprinklers. But such requirements are rarely imposed retroactively on existing buildings.

''(6) In 1998, 93 percent of the campus building fires reported to fire departments occurred in buildings where there were smoke alarms present. However, only 34 percent had fire sprinklers present.

"SEC. 773. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this part $80,000,000 for each of the fiscal years 2004 through 2008.

"SEC. 774. GRANTS AUTHORIZED.

''(a) PROGRAM AUTHORITY.—The Secretary, in consultation with the United States Fire Administration, is authorized to award grants to States, private or public colleges or universities, fraternities, and sororities to assist them in providing fire sprinkler systems, or other fire suppression or prevention technologies, for their student housing and dormitories.

''(b) MATCHING FUNDS REQUIREMENT.—The Secretary may not award a grant under this section unless the entity receiving the grant provides, from State, local, or private sources, matching funds in an amount equal to not less than one-half of the cost of the activities for which assistance is sought.

"SEC. 775. PROGRAM REQUIREMENTS.

''(a) APPLICATION.—Each entity desiring a grant under this part shall submit to the Secretary an application at such time and in such manner as the Secretary may require.

''(b) PRIORITY.—In awarding grants under this part, the Secretary shall give priority to applicants that demonstrate in the application submitted under subsection (a) the inability to fund the sprinkler system, or other fire suppression or prevention technology, from sources other than funds provided under this part.

''(c) LIMITATION ON ADMINISTRATIVE EXPENSES.—An entity that receives a grant under this part shall not use more than 4 percent of the grant funds for administrative expenses.

"SEC. 776. DATA AND REPORT.

''The Comptroller General shall—

''(1) gather data on the number of college and university housing facilities and dormitories that have and do not have fire sprinkler systems and other fire suppression or prevention technologies; and

''(2) report such data to Congress.

"SEC. 777. ADMISSIBILITY.

''Notwithstanding any other provision of law, any application for assistance under this part, any negative determination on the part of the Secretary with respect to such application, or any statement of reasons for the determination, shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity.''.

By Mr. BINGAMAN (for himself, Mr. JEFFORDS, Mrs. MURRAY, Mr. LEAHY, and Ms. CANTWELL):

S. 621. A bill to amend title XXI of the Social Security Act to allow qualifying States to use allotments under the State children's health insurance program for expenditures under the Medicaid program; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today to introduce legislation with Senators JEFFORDS, MURRAY, LEAHY, and CANTWELL entitled the ''Children's Health Equity Act of 2003.'' This bill addresses an inequity that was created during the establishment of the State Children's Health Insurance Program, CHIP, that unfairly penalized certain States that had done the right thing and had expanded Medicaid coverage to children prior to the enactment of the bill.

While the Congress recognized this fact for some States and ''grandfathered'' in their expansions so those States could use the new CHIP funding for the children of their respective States, the legislation failed to do so for others, including New Mexico, Vermont, and Washington, among others. This had the effect of penalizing a certain group of States for having done the right thing.

The ''Children's Health Equity Act of 2003'' addresses this inequity by allowing those States, which had expanded coverage to children up to 185 percent of poverty by April 15, 1997, before the enactment of CHIP, to be allowed to also utilize their CHIP allotments for coverage of those children covered by Medicaid above 133 percent of poverty—putting them on a more level field with all other States in the country.

As you know, in 1997 Congress and President Clinton agreed to establish the State Children's Health Insurance Program, CHIP, and provide $48 billion over ten years as an incentive to States to provide health care coverage to uninsured, low-income children up 200 percent of poverty or beyond.

During the negotiations of the Balanced Budget Act, BBA, of 1997, Congress and the Administration properly recognized that certain States were already undertaking Medicaid or separate State-run expansions of coverage to children up to 185 percent of poverty or above and that they would be allowed to use the new CHIP funding for those purposes. The final bill specifically allowed the States of Florida, New York, and Pennsylvania to convert their separate State-run programs into CHIP expansions and States that had expanded coverage to children through Medicaid after March 31, 1997, were also allowed to use CHIP funding for their expansions.

Unfortunately, New Mexico and other States that had enacted similar expansions prior to March 1997 were denied the use of CHIP funding for their expansions. This created an inequity among the States where some were allowed to have their prior programs ''grandfathered'' into CHIP and others were denied. Therefore, our bill addresses this inequity.

New Mexico has a strong record of attempting to expand coverage to children through the Medicaid program. In 1995, prior to the enactment of CHIP, New Mexico expanded coverage to for all children through age 18 through the Medicaid program up to 185 percent of poverty. After CHIP was passed, New Mexico further expanded its coverage up to 235 percent of poverty—above the level of the vast majority of states across the country.

Due to the inequity caused by CHIP, New Mexico has been allocated $266 million from CHIP between fiscal years 1998 and 2002, and yet, has only been able to spend slightly over $26 million as of the end of last fiscal year. In other words, New Mexico has been allowed to spend less than 10 percent of its federal CHIP allocations.

New Mexico is unable to spend its funding because it had enacted its expansion of coverage to children up to 185 percent of poverty prior to the enactment of CHIP and our State was not ''grandfathered'' into CHIP as other comparable states were.

The consequences for the children of New Mexico are enormous. According to the Census Bureau, New Mexico has an estimated 114,000 uninsured children. In other words, almost 21 percent of all the children in New Mexico are uninsured, despite the fact the State has expanded coverage up to 235 percent of poverty. This is the second highest rate of uninsured children in the country.

This is a result of the fact that an estimated 80 percent of the uninsured children in New Mexico are below 200 percent of poverty. These children are, consequently, often eligible for Medicaid but currently unenrolled. With the exception of those few children between 185 and 200 percent of poverty who are eligible for CHIP funding, all of the remaining uninsured children below 185 percent of poverty in New Mexico are denied CHIP funding despite their need.

Exacerbating this inequity is the fact that many States are accessing their CHIP allotments to cover kids at poverty levels far below New Mexico's current or past eligibility levels. The children in those States are certainly no more worthy of health insurance coverage than the children of New Mexico.

As the health policy statement by the National Governors' Association reads, ''The Governors believe that it is critical that innovative states not be penalized for having expanded coverage to children before the enactment of S–CHIP, which provides enhanced funding to meet these goals. To this end, the Governors support providing additional funding flexibility to states that had already significantly expanded coverage to the majority of uninsured children in their states.''

Consequently, the bill I am introducing today corrects this inequity. The bill reflects a carefully-crated response to the unintended consequences of CHIP and brings much needed assistance to children currently uninsured in my State and other similarly situated States, including Washington and Vermont.

Rather than simply changing the effective date included in the BBA that helped a smaller subset of States, this initiative includes strong maintenance of effort language as well as incentives for our State to conduct outreach and enrollment efforts and program simplification to find and enroll uninsured kids because we feel strongly that they must receive the health coverage for which they are eligible.

The bill does not take money from other States' CHIP allotments. It simply allows our States to spend our States' specific CHIP allotments from the Federal Government on our uninsured children—just as other states across the country are doing.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 621

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Children's Health Equity Act of 2003''.

SEC. 2. AUTHORITY FOR QUALIFYING STATES TO USE SCHIP FUNDS FOR MEDICAID EXPENDITURES.

Section 2105 of the Social Security Act (42 U.S.C. 1397ee) is amended by adding at the end the following:

''(g) AUTHORITY FOR QUALIFYING STATES TO USE CERTAIN FUNDS FOR MEDICAID EXPENDITURES.—

''(1) STATE OPTION.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, with respect to fiscal years in which allotments for a fiscal year under section 2104 (beginning with fiscal year 1998) are available under subsections (e) and (g) of that section, a qualifying State (as defined in paragraph (2)) may elect to use such allotments (instead of for expenditures under this title) for payments for such fiscal year under title XIX in accordance with subparagraph (B).

''(B) PAYMENTS TO STATES.—

''(i) IN GENERAL.—In the case of a qualifying State that has elected the option described in subparagraph (A), subject to the total amount of funds described with respect to the State in subparagraph (A), the Secretary shall pay the State an amount each quarter equal to the additional amount that would have been paid to the State under title XIX for expenditures of the State for the fiscal year described in clause (ii) if the enhanced FMAP (as determined under subsection (b)) had been substituted for the Federal medical assistance percentage (as defined in section 1905(b)) of such expenditures.

''(ii) EXPENDITURES DESCRIBED.—For purposes of clause (i), the expenditures described in this clause are expenditures for such fiscal years for providing medical assistance under title XIX to individuals who have not attained age 19 and whose family income exceeds 133 percent of the poverty line.

''(iii) NO IMPACT ON DETERMINATION OF BUDGET NEUTRALITY FOR WAIVERS.—In the case of a qualifying State that uses amounts paid under this subsection for expenditures described in clause (ii) that are incurred under a waiver approved for the State, any budget neutrality determinations with respect to such waiver shall be determined without regard to such amounts paid.

''(2) QUALIFYING STATE.—In this subsection, the term 'qualifying State' means a State that—

''(A) as of April 15, 1997, has an income eligibility standard with respect to any 1 or more categories of children (other than infants) who are eligible for medical assistance under section 1902(a)(10)(A) or under a waiver under section 1115 implemented on January 1, 1994, that is up to 185 percent of the poverty line or above; and

''(B) satisfies the requirements described in paragraph (3).

''(3) REQUIREMENTS.—The requirements described in this paragraph are the following:

''(A) SCHIP INCOME ELIGIBILITY.—The State has a State child health plan that (whether implemented under title XIX or this title)—

''(i) as of January 1, 2001, has an income eligibility standard that is at least 200 percent of the poverty line or has an income eligibility standard that exceeds 200 percent of the poverty line under a waiver under section 1115 that is based on a child's lack of health insurance;

''(ii) subject to subparagraph (B), does not limit the acceptance of applications for children; and

''(iii) provides benefits to all children in the State who apply for and meet eligibility standards on a statewide basis.

''(B) NO WAITING LIST IMPOSED.—With respect to children whose family income is at or below 200 percent of the poverty line, the State does not impose any numerical limitation, waiting list, or similar limitation on the eligibility of such children for child health assistance under such State plan.

''(C) ADDITIONAL REQUIREMENTS.—The State has implemented at least 3 of the following policies and procedures (relating to coverage of children under title XIX and this title):

''(i) UNIFORM, SIMPLIFIED APPLICATION FORM.—With respect to children who are eligible for medical assistance under section 1902(a)(10)(A), the State uses the same uniform, simplified application form (including, if applicable, permitting application other than in person) for purposes of establishing eligibility for benefits under title XIX and this title.

''(ii) ELIMINATION OF ASSET TEST.—The State does not apply any asset test for eligibility under section 1902(l) or this title with respect to children.

''(iii) ADOPTION OF 12-MONTH CONTINUOUS ENROLLMENT.—The State provides that eligibility shall not be regularly redetermined more often than once every year under this title or for children described in section 1902(a)(10)(A).

''(iv) SAME VERIFICATION AND REDETERMINATION POLICIES; AUTOMATIC REASSESSMENT OF ELIGIBILITY.—With respect to children who are eligible for medical assistance under section 1902(a)(10)(A), the State provides for initial eligibility determinations and redeterminations of eligibility using the same verification policies (including with respect to face-to-face interviews), forms, and frequency as the State uses for such purposes

under this title, and, as part of such redeterminations, provides for the automatic reassessment of the eligibility of such children for assistance under title XIX and this title.

''(v) OUTSTATIONING ENROLLMENT STAFF.—The State provides for the receipt and initial processing of applications for benefits under this title and for children under title XIX at facilities defined as disproportionate share hospitals under section 1923(a)(1)(A) and Federally-qualified health centers described in section 1905(1)(2)(B) consistent with section 1902(a)(55).''.

By Mr. GRASSLEY (for himself, Mr. KENNEDY, Mr. BAUCUS, Ms. SNOWE, Mr. DASCHLE, Mr. SMITH, Mr. KERRY, Mr. THOMAS, Mr. BINGAMAN, Mr. BUNNING, Mr. ROCKEFELLER, Mrs. LINCOLN, Mr. JEFFORDS, Mr. ENZI, Mr. SARBANES, Mr. DOMENICI, Mr. JOHNSON, Mr. ENSIGN, Mrs. MURRAY, Mr. HOLLINGS, Ms. STABENOW, Mr. CORZINE, Mr. BENNETT, Mr. SCHUMER, Mr. WARNER, Mr. REID, Mr. DEWINE, Mr. REED, Ms. COLLINS, Mr. MILLER, Mr. LUGAR, Mr. LIEBERMAN, Mr. LEAHY, Mr. CHAFEE, Mr. KOHL, Mr. GRAHAM of South Carolina, Mr. EDWARDS, Mr. MCCAIN, Mr. DORGAN, Mr. ROBERTS, Mr. DODD, Mr. DAYTON, Ms. CANTWELL, Mr. BREAUX, Mr. BIDEN, Ms. MIKULSKI, Mr. LEVIN, Ms. LANDRIEU, Mr. INOUYE, Mr. HARKIN, Mr. DURBIN, Mrs. CLINTON, Mrs. BOXER, Mr. BAYH, and Mr. AKAKA):

S. 622. A bill to amend title XIX of the Social Security Act to provide families of disabled children with the opportunity to purchase coverage under the medicaid program for such children, and for other purposes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, Senator KENNEDY and I are happy to announce the introduction of the Family Opportunity Act of 2003, a bill to promote family, work, and opportunity. Every day, across the country, thousands of families struggle to obtain affordable and appropriate health care coverage for children with special health care needs, including children with conditions such as autism, mental retardation, cerebral palsy, developmental delays, or mental illness.

Low and middle income parents who have employer sponsored family health care coverage often find that their private insurance doesn't adequately cover the array of services that are critical to their child's well-being, such as mental health services, personal care services, durable medical equipment, special nutritional supplements, and respite care. Because Medicaid, our nation's health care program for low-income individuals, offers the type of comprehensive care that best meets the needs of children with disabilities, it can become a lifeline on which many parents depend.

Yet, Medicaid is a safety net program and one must be impoverished in order to be eligible. This presents a terrible choice for many low and middle income families who have a child with special health care needs: they must choose between work or impoverishment. Or, in the worst cases, parents consider the devastating choice of relinquishing custody for an out-of-home placement so their child can obtain services they so desperately need. Truly, there is nothing more heartbreaking for a parent than to be unable to provide for a child in need.

Consider the following example: Mr. and Mrs. Jones have two daughters, Heather and Hannah. Hannah was born with cerebral palsy. The family earns $29,000 a year and is insured through employer sponsored health insurance. Mr. Jones recently lost his job because of down-sizing. Last year, even with insurance, the family spent nearly $9,000 on out-of-pocket medical expenses. Mr. Jones has found a new job; unfortunately, the family's insurance premium has risen to $200 a month and does not cover essential occupational and physical therapy. The family dipped into their 401K when Hannah was born. The family's earnings minus the health care premiums, minus out of pocket expenses puts this family at an annual income of $17,600. The federal poverty level for a family of four is $18,400. This hard-working family is being impoverished because of their commitment to care for their disabled child.

Over the past three years, I have worked with Senator KENNEDY and Representative PETE SESSIONS to advance this important legislation on behalf of thousands of families who need our help. Each year, more than 70 Senators have signed on as co-sponsors of the legislation. I understand the many pressing challenges facing our nation's health care system, but I urge the Senate to show its support for helping these families and pass the Family Opportunity Act this year.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 622

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

SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECURITY ACT; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Family Opportunity Act of 2003'' or the ''Dylan Lee James Act''.

(b) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; amendments to Social Security Act; table of contents.
Sec. 2. Opportunity for families of disabled children to purchase medicaid coverage for such children.
Sec. 3. Treatment of inpatient psychiatric hospital services for individuals under age 21 in home or community-based services waivers.
Sec. 4. Development and support of family-to-family health information centers.
Sec. 5. Restoration of medicaid eligibility for certain SSI beneficiaries.

SEC. 2. OPPORTUNITY FOR FAMILIES OF DISABLED CHILDREN TO PURCHASE MEDICAID COVERAGE FOR SUCH CHILDREN.

(a) STATE OPTION TO ALLOW FAMILIES OF DISABLED CHILDREN TO PURCHASE MEDICAID COVERAGE FOR SUCH CHILDREN.—

(1) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(10)(A)(ii)—

(i) by striking ''or'' at the end of subclause (XVII);

(ii) by adding ''or'' at the end of subclause (XVIII); and

(iii) by adding at the end the following new subclause:

''(XIX) who are disabled children described in subsection (cc)(1);''; and

(B) by adding at the end the following new subsection:

''(cc)(1) Individuals described in this paragraph are individuals—

''(A) who have not attained 18 years of age;

''(B) who would be considered disabled under section 1614(a)(3)(C) but for having earnings or deemed income or resources (as determined under title XVI for children) that exceed the requirements for receipt of supplemental security income benefits; and

''(C) whose family income does not exceed such income level as the State establishes and does not exceed—

''(i) 250 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved; or

''(ii) such higher percent of such poverty line as a State may establish, except that—

''(I) any medical assistance provided to an individual whose family income exceeds 250 percent of such poverty line may only be provided with State funds; and

''(II) no Federal financial participation shall be provided under section 1903(a) for any medical assistance provided to such an individual.''.

(2) INTERACTION WITH EMPLOYER-SPONSORED FAMILY COVERAGE.—Section 1902(cc) (42 U.S.C. 1396a(cc)), as added by paragraph (1)(B), is amended by adding at the end the following new paragraph:

''(2)(A) If an employer of a parent of an individual described in paragraph (1) offers family coverage under a group health plan (as defined in section 2791(a) of the Public Health Service Act), the State shall—

''(i) require such parent to apply for, enroll in, and pay premiums for, such coverage as a condition of such parent's child being or remaining eligible for medical assistance under subsection (a)(10)(A)(ii)(XIX) if the parent is determined eligible for such coverage and the employer contributes at least 50 percent of the total cost of annual premiums for such coverage; and

''(ii) if such coverage is obtained—

''(I) subject to paragraph (2) of section 1916(h), reduce the premium imposed by the State under that section in an amount that reasonably reflects the premium contribution made by the parent for private coverage on behalf of a child with a disability; and

''(II) treat such coverage as a third party liability under subsection (a)(25).

''(B) In the case of a parent to which subparagraph (A) applies, a State, subject to paragraph (1)(C)(ii), may provide for payment of any portion of the annual premium

for such family coverage that the parent is required to pay. Any payments made by the State under this subparagraph shall be considered, for purposes of section 1903(a), to be payments for medical assistance.''.

(b) STATE OPTION TO IMPOSE INCOME-RELATED PREMIUMS.—Section 1916 (42 U.S.C. 1396o) is amended—

(1) in subsection (a), by striking ''subsection (g)'' and inserting ''subsections (g) and (h)''; and

(2) by adding at the end the following new subsection:

''(h)(1) With respect to disabled children provided medical assistance under section 1902(a)(10)(A)(ii)(XIX), subject to paragraph (2), a State may (in a uniform manner for such children) require the families of such children to pay monthly premiums set on a sliding scale based on family income.

''(2) A premium requirement imposed under paragraph (1) may only apply to the extent that—

''(A) the aggregate amount of such premium and any premium that the parent is required to pay for family coverage under section 1902(cc)(2)(A)(i) does not exceed 5 percent of the family's income; and

''(B) the requirement is imposed consistent with section 1902(cc)(2)(A)(ii)(I).

''(3) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of a child under section 1902(a)(10)(A)(ii)(XIX) for medical assistance under this title on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days from the date on which the premium became past due. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.''.

(c) CONFORMING AMENDMENTS.—Section 1903(f)(4) (42 U.S.C. 1396b(f)(4)) is amended in the matter preceding subparagraph (A), by inserting ''1902(a)(10)(A)(ii)(XIX),'' after ''1902(a)(10)(A)(ii)(XVIII),''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance for items and services furnished on or after October 1, 2005.

SEC. 3. TREATMENT OF INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR INDIVIDUALS UNDER AGE 21 IN HOME OR COMMUNITY-BASED SERVICES WAIVERS.

(a) IN GENERAL.—Section 1915(c) (42 U.S.C. 1396n(c)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by inserting '', or would require inpatient psychiatric hospital services for individuals under age 21,'' after ''intermediate care facility for the mentally retarded''; and

(B) in the second sentence, by inserting '', or would require inpatient psychiatric hospital services for individuals under age 21'' before the period;

(2) in paragraph (2)(B), by striking ''or services in an intermediate care facility for the mentally retarded'' each place it appears and inserting ''services in an intermediate care facility for the mentally retarded, or inpatient psychiatric hospital services for individuals under age 21'';

(3) in paragraph (2)(C)—

(A) by inserting '', or who are determined to be likely to require inpatient psychiatric hospital services for individuals under age 21,'' after '', or intermediate care facility for the mentally retarded''; and

(B) by striking ''or services in an intermediate care facility for the mentally retarded'' and inserting ''services in an intermediate care facility for the mentally retarded, or inpatient psychiatric hospital services for individuals under age 21''; and

(4) in paragraph (7)(A)—

(A) by inserting ''or would require inpatient psychiatric hospital services for individuals under age 21,'' after ''intermediate care facility for the mentally retarded,''; and

(B) by inserting ''or who would require inpatient psychiatric hospital services for individuals under age 21'' before the period.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply with respect to medical assistance provided on or after January 1, 2004.

SEC. 4. DEVELOPMENT AND SUPPORT OF FAMILY-TO-FAMILY HEALTH INFORMATION CENTERS.

Section 501 (42 U.S.C. 701) is amended by adding at the end the following new subsection:

''(c)(1)(A) For the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for special projects of regional and national significance for the development and support of family-to-family health information centers described in paragraph (2)—

''(i) there is appropriated to the Secretary, out of any money in the Treasury not otherwise appropriated—

''(I) $3,000,000 for fiscal year 2004;

''(II) $4,000,000 for fiscal year 2005; and

''(III) $5,000,000 for fiscal year 2006; and

''(ii) there is authorized to be appropriated to the Secretary, $5,000,000 for each of fiscal years 2007 and 2008.

''(B) Funds appropriated or authorized to be appropriated under subparagraph (A) shall—

''(i) be in addition to amounts appropriated under subsection (a) and retained under section 502(a)(1) for the purpose of carrying out activities described in subsection (a)(2); and

''(ii) remain available until expended.

''(2) The family-to-family health information centers described in this paragraph are centers that—

''(A) assist families of children with disabilities or special health care needs to make informed choices about health care in order to promote good treatment decisions, cost-effectiveness, and improved health outcomes for such children;

''(B) provide information regarding the health care needs of, and resources available for, children with disabilities or special health care needs;

''(C) identify successful health delivery models for such children;

''(D) develop with representatives of health care providers, managed care organizations, health care purchasers, and appropriate State agencies a model for collaboration between families of such children and health professionals;

''(E) provide training and guidance regarding caring for such children;

''(F) conduct outreach activities to the families of such children, health professionals, schools, and other appropriate entities and individuals; and

''(G) are staffed by families of children with disabilities or special health care needs who have expertise in Federal and State public and private health care systems and health professionals.

''(3) The Secretary shall develop family-to-family health information centers described in paragraph (2) under this subsection in accordance with the following:

''(A) With respect to fiscal year 2004, such centers shall be developed in not less than 25 States.

''(B) With respect to fiscal year 2005, such centers shall be developed in not less than 40 States.

''(C) With respect to fiscal year 2006, such centers shall be developed in not less than 50 States and the District of Columbia.

''(4) The provisions of this title that are applicable to the funds made available to the Secretary under section 502(a)(1) apply in the same manner to funds made available to the Secretary under paragraph (1)(A).

''(5) For purposes of this subsection, the term 'State' means each of the 50 States and the District of Columbia.''.

SEC. 5. RESTORATION OF MEDICAID ELIGIBILITY FOR CERTAIN SSI BENEFICIARIES.

(a) IN GENERAL.—Section 1902(a)(10)(A)(i)(II) (42 U.S.C. 1396a(a)(10)(A)(i)(II)) is amended—

(1) by inserting ''(aa)'' after ''(II)'';

(2) by striking '') and'' and inserting ''and'';

(3) by striking ''section or who are'' and inserting ''section), (bb) who are''; and

(4) by inserting before the comma at the end the following: '', or (cc) who are under 21 years of age and with respect to whom supplemental security income benefits would be paid under title XVI if subparagraphs (A) and (B) of section 1611(c)(7) were applied without regard to the phrase 'the first day of the month following' ''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to medical assistance for items and services furnished on or after the first day of the first calendar quarter that begins after the date of enactment of this Act.

Mr. KENNEDY. Mr. President, it is an honor to join my colleague Senator GRASSLEY today in re-introducing the Family Opportunity Act of—so that once and for all, we can remove the health care barriers for children with disabilities that so often prevent families from staying together and staying employed, and that so often prevent their children from growing up to live independent lives and become fully contributing members of their communities.

More than 9 percent of children in this country have significant disabilities, many of whom do not have access to the basic health services they need to maintain their health status, let alone prevent its continuing deterioration. To obtain theses health services for their children, families are being forced to become poor, stay poor, put their children in institutions or ever give up custody of their children—all so that their children can qualify for the health coverage available under Medicaid.

In a recent survey of 20 States, families of special needs children report they are turning down jobs, turning down raises, turning down overtime, and unable even to save money for the future of their children and family—all so that their child can stay eligible for Medicaid through the Social Security Income Program. The lack of adequate health care in our country today continues to force these families into poverty in order to obtain the care they need for their disabled children.

The legislation we are reintroducing will close the health care gap for the nation's most vulnerable population, and enable families of disabled children to be equal partners in the American dream.

In the words of President George Bush in his ''New Freedom Initiative,'' ''To many Americans with disabilities remain trapped in bureaucracies of dependence, and are denied the access

necessary for success—and we need to tear down these barriers.

The Family Opportunity. Act will do just that. It will tear down the unfair barriers to needed health care that so many disabled and special needs children are denied. It will make health insurance coverage more widely available for children with significant disabilities, through opportunities to buy-in to Medicaid at an affordable rate. States will have greater flexibility to enable children with metal health disabilities to obtain the health services they need in order to live at home and in their communities. It will establish Family to Family Information Centers in each state to assist families with special needs children.

The passage of Work Incentives Improvement Act in 1999 demonstrated the nation's commitment to give adults with disabilities the right to lead independent and productive lives without giving up their health care. It is time for Congress to show the same commitment to children with disabilities.

We came very close to passing the Family Opportunity Act in the last Congress. I look forward to working members of this new Congress to enact this important legislation, and give disabled children and their families their rightful opportunity to fulfill their dreams and participate fully in the life of our nation.

By Mr. WARNER (for himself and Ms. COLLINS):

S. 623. A bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums; to the Committee on Finance.

Mr. WARNER. Mr. President, today I am introducing legislation to provide some relief for our Nation's retired Federal employees from the severe increases in Federal Employee Health Benefit, FEHB, program premiums. This measure extends premium conversion to federal and military retirees, allowing them to pay their health insurance premiums with pre-tax dollars.

Over 9 million Federal employees, retirees and their families are covered under FEHBP. In 2003 premiums are expected to rise an average of 11 percent, the third year in a row the average increase has exceeded 10 percent.

The increasing cost of health care is a critical issue, especially to retirees living on a fixed income. The 2003 Cost of Living Adjustment, COLA, for Federal civil service annuitants is only 1.4 percent, the lowest since a 1.3 percent increase in 1999. The modest COLA is completely diminished by increased health care costs.

In the fall of 2000 premium conversion became available to current federal employees who participate in the Federal Employees Health Benefits Program. It is a benefit already available to many private sector employees. While premium conversion does not directly affect the amount of the FEHBP premium, it helps to offset some of the increase by reducing an individual's federal tax liability.

Extending this benefit to federal retirees requires a change in the tax law, specifically Section 125 of the Internal Revenue Code. This legislation makes the necessary change in the tax code.

Under the legislation, the benefit is concurrently afforded to our Nation's military retirees as well to assist with increasing health care costs.

A number of organizations representing Federal and military retirees are strongly behind this initiative, including the National Association of Retired Federal Employees, the Military Coalition, the Fleet Reserve Association, and the Association of the U.S. Army.

I encourage my colleagues to support this critical legislation and show their support for our Nation's dedicated Federal civilian and military retirees. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 623

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

SECTION 1. PRETAX PAYMENT OF HEALTH INSURANCE PREMIUMS BY FEDERAL CIVILIAN AND MILITARY RETIREES.

(a) IN GENERAL.—Subsection (g) of section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by adding at the end the following new paragraph:

''(5) HEALTH INSURANCE PREMIUMS OF FEDERAL CIVILIAN AND MILITARY RETIREES.—

''(A) FEHBP PREMIUMS.—Nothing in this section shall prevent the benefits of this section from being allowed to an annuitant, as defined in paragraph (3) of section 8901, title 5, United States Code, with respect to a choice between the annuity or compensation referred to in such paragraph and benefits under the health benefits program established by chapter 89 of such title 5.

''(B) TRICARE PREMIUMS.—Nothing in this section shall prevent the benefits of this section from being allowed to an individual receiving retired or retainer pay by reason of being a member or former member of the uniformed services of the United States with respect to a choice between such pay and benefits under the health benefits programs established by chapter 55 of title 10, United States Code.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 2. DEDUCTION FOR TRICARE SUPPLEMENTAL PREMIUMS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 223 as section 224 and by inserting after section 222 the following new section:

''SEC. 223. TRICARE SUPPLEMENTAL PREMIUMS OR ENROLLMENT FEES.

''(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction the amounts paid during the taxable year by the taxpayer for insurance purchased as supplemental coverage to the health benefits programs established by chapter 55 of title 10, United States Code, for the taxpayer and the taxpayer's spouse and dependents.

''(b) COORDINATION WITH MEDICAL DEDUCTION.—Any amount allowed as a deduction under subsection (a) shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).''

(b) DEDUCTION ALLOWED WHETHER OR NOT INDIVIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 of such Code is amended by inserting after paragraph (18) the following new paragraph:

''(19) TRICARE SUPPLEMENTAL PREMIUMS OR ENROLLMENT FEES.—The deduction allowed by section 223.''

(c) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following new items:

''Sec. 223. TRICARE supplemental premiums or enrollment fees.

''Sec. 224. Cross reference.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 3. IMPLEMENTATION.

(a) FEHBP PREMIUM CONVERSION OPTION FOR FEDERAL CIVILIAN RETIREES.—The Director of the Office of Personnel Management shall take such actions as the Director considers necessary so that the option made possible by section 125(g)(5)(A) of the Internal Revenue Code of 1986 shall be offered beginning with the first open enrollment period, afforded under section 8905(g)(1) of title 5, United States Code, which begins not less than 90 days after the date of the enactment of this Act.

(b) TRICARE PREMIUM CONVERSION OPTION FOR MILITARY RETIREES.—The Secretary of Defense, after consulting with the other administering Secretaries (as specified in section 1073 of title 10, United States Code), shall take such actions as the Secretary considers necessary so that the option made possible by section 125(g)(5)(B) of the Internal Revenue Code of 1986 shall be offered beginning with the first open enrollment period afforded under health benefits programs established under chapter 55 of such title, which begins not less than 90 days after the date of the enactment of this Act.

By Mr. BAUCUS (for himself and Mr. LEVIN):

S. 624. A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of the Russian Federation, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to introduce the U.S.-Russia Trade Act of 2003.

This legislation would grant Permanent Normal Trade Relations to Russia. However—and I want to be very clear about this point—this legislation would also ensure that Congress retains proper oversight of negotiations to bring Russia into the World Trade Organization.

Congress typically grants PNTR to a Jackson-Vanik country only when that country is about to join the WTO. This is, for example, exactly what Congress did when China joined the WTO.

The Administration and some of my colleagues have suggested that Congress should grant PNTR to Russia

prior to their joining the WTO. If we are going to do down this path, we must ensure that there is adequate Congressional oversight.

This legislation would ensure Congressional involvement in the following way: after negotiations are completed, Congress would be guaranteed a vote on a resolution to disapprove of Russia's joining the WTO, if such a resolution is introduced.

Congress has a key role to play in negotiating an agreement on Russia's entering the WTO. China's WTO accession demonstrates this. The Administration was able to obtain a better deal with China because of Congressional involvement.

And there are some real concerns with Russia. The Russian government has announced that it plans to add additional restrictions on imports of U.S. agricultural products, including poultry, pork, and beef. That's unacceptable, and it is behavior that should not be rewarded.

I look forward to working with my colleagues to ensure that Congress continues to have an important role in Russia's accession to the WTO.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 624

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

SECTION 1. FINDINGS.

The Congress finds that—

(1) the Russian Federation has adopted constitutional protections and statutory and administrative procedures that accord its citizens the right and opportunity to emigrate, free of anything more than a nominal tax on emigration or on the visas or other documents required for emigration and free of any tax, levy, fine, fee, or other charge on any citizens as a consequence of the desire of such citizens to emigrate to the country of their choice or to return to the Russian Federation;

(2) the Russian Federation has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 since 1994;

(3) the Russian Federation has taken important steps toward the creation of democratic institutions and a free-market economy and, as a participating state of the Organization for Security and Cooperation in Europe (in this Act referred to as the ''OSCE''), is committed to developing a system of governance in accordance with the principles regarding human rights and humanitarian affairs that are set forth in the Final Act of the Conference on Security and Cooperation in Europe (also known as the ''Helsinki Final Act'') and successive documents;

(4) the Russian Federation is committed to addressing issues relating to its national and religious minorities as a participating state of the OSCE, to adopting measures to ensure that persons belonging to national minorities have full equality both individually and communally, and to respecting the independence of minority religious communities, although problems still exist regarding the registration of religious groups, visa, and immigration requirements, and other laws, regulations, and practices that interfere with the activities or internal affairs of minority religious communities;

(5) the Russian Federation has enacted legislation providing protection against discrimination or incitement to violence against persons or groups based on national, racial, ethnic, or religious discrimination, including anti-Semitism;

(6) the Russian Federation has committed itself, including through exchanges of letters, to ensuring freedom of religion, equal treatment of all religious groups, and combating racial, ethnic, and religious intolerance and hatred, including anti-Semitism;

(7) the Russian Federation has engaged in efforts to combat ethnic and religious intolerance by cooperating with various United States nongovernmental organizations;

(8) the Russian Federation is continuing the restitution of religious properties, including religious and communal properties confiscated from national and religious minorities during the Soviet era, facilitating the reemergence of these minority groups in the national life of the Russian Federation, and has committed itself, including through exchanges of letters, to continue the restitution of such properties;

(9) the Russian Federation has received normal trade relations treatment since concluding a bilateral trade agreement with the United States that entered into force on June 17, 1992;

(10) the Russian Federation is making progress toward accession to the World Trade Organization, recognizing that many central issues remain to be resolved, including removal of unjustified restrictions on agricultural products of the United States, commitments relating to tariff reductions for goods, trade in services, protection of intellectual property rights, reform of the industrial energy sector, elimination of export incentives for industrial goods, reform of customs procedures and technical, sanitary, and phytosanitary measures, and inclusion of trade remedy provisions;

(11) the Russian Federation has enacted some protections reflecting internationally recognized labor rights, but serious gaps remain both in the country's legal regime and its enforcement record;

(12) the Russian Federation has provided constitutional guarantees of freedom of the press, although infringements of this freedom continue to occur; and

(13) the Russian Federation has demonstrated a strong desire to build a friendly and cooperative relationship with the United States.

SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO THE RUSSIAN FEDERATION.

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title should no longer apply to the Russian Federation; and

(2) after making a determination under paragraph (1) with respect to the Russian Federation, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of the Russian Federation, chapter 1 of title IV of the Trade Act of 1974 shall cease to apply to that country.

SEC. 3. POLICY OF THE UNITED STATES.

It is the policy of the United States to remain fully committed to a multifaceted engagement with the Russian Federation, including by—

(1) urging the Russian Federation to ensure that its national, regional, and local laws, regulations, practices, and policies fully, and in conformity with the standards of the OSCE—

(A) provide for the free emigration of its citizens;

(B) safeguard religious liberty throughout the Russian Federation, including by ensuring that the registration of religious groups, visa and immigration requirements, and other laws, regulations, and practices are not used to interfere with the activities or internal affairs of minority religious communities;

(C) enforce and enhance existing Russian laws at the national and local levels to combat ethnic, religious, and racial discrimination and related violence;

(D) expand the restitution of religious and communal properties, including by establishing a legal framework for the timely completion of such restitution; and

(E) respect fully freedom of the press;

(2) working with the Russian Federation, including through the Secretary of Labor and other appropriate executive branch officials, to address the issues described in section 1(11); and

(3) continuing rigorous monitoring by the United States of human rights issues in the Russian Federation, including the issues described in paragraphs (1) and (2), providing assistance to nongovernmental organizations and human rights groups involved in human rights activities in the Russian Federation, and promoting annual discussions and ongoing dialog with the Russian Federation regarding those issues, including the participation of United States and Russian nongovernmental organizations in such discussions.

SEC. 4. REPORTING REQUIREMENT.

The reports required by sections 102(b) and 203 of the International Religious Freedom Act of 1998 (22 U.S.C. 6412(b) and 6433) shall include an assessment of the status of the issues described in subparagraphs (A) through (D) of section 3(1).

SEC. 5. CONTINUED ENJOYMENT OF RIGHTS UNDER THE JUNE 17, 1992, BILATERAL TRADE AGREEMENT.

(a) FINDING.—The Congress finds that the trade agreement between the United States and the Russian Federation that entered into force on June 17, 1992, remains in force between the 2 countries and provides the United States with important rights, including the right to use specific safeguard rules to respond to import surges from the Russian Federation.

(b) APPLICABILITY OF SAFEGUARD.—Section 421 of the Trade Act of 1974 (19 U.S.C. 2451) shall apply to the Russian Federation to the same extent as such section applies to the People's Republic of China.

SEC. 6. EXERCISE OF CONGRESSIONAL OVERSIGHT OVER WTO ACCESSION NEGOTIATIONS.

(a) NOTICE OF AGREEMENT ON ACCESSION TO WTO BY RUSSIAN FEDERATION.—Not later than 5 days after the date on which the United States has entered into a bilateral agreement with the Russian Federation on the terms of accession by the Russian Federation to the World Trade Organization, the President shall so notify the Congress, and the President shall transmit to the Congress, not later than 15 days after that agreement is entered into, a report that sets forth the provisions of that agreement.

(b) RESOLUTION OF DISAPPROVAL.—

(1) INTRODUCTION.—If a resolution of disapproval is introduced in the House of Representatives or the Senate during the 30-day

period (not counting any day which is excluded under section 154(b) of the Trade Act of 1974 (19 U.S.C. 2194(b)), beginning on the date on which the President first notifies the Congress under subsection (a) of the agreement referred to in that subsection, that resolution of disapproval shall be considered in accordance with this subsection.

(2) RESOLUTION OF DISAPPROVAL.—In this subsection, the term ''resolution of disapproval'' means only a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: ''That the Congress does not approve the agreement between the United States and the Russian Federation on the terms of accession by the Russian Federation to the World Trade Organization, of which Congress was notified on ____.'', with the blank space being filled with the appropriate date.

(3) PROCEDURES FOR CONSIDERING RESOLUTIONS.—

(A) INTRODUCTION AND REFERRAL.—Resolutions of disapproval—

(i) in the House of Representatives—

(I) may be introduced by any Member of the House;

(II) shall be referred to the Committee on Ways and Means and, in addition, to the Committee on Rules; and

(III) may not be amended by either Committee; and

(ii) in the Senate—

(I) may be introduced by any Member of the Senate;

(II) shall be referred to the Committee on Finance; and

(III) may not be amended.

(B) COMMITTEE DISCHARGE AND FLOOR CONSIDERATION.—The provisions of subsections (c) through (f) of section 152 of the Trade Act of 1974 (19 U.S.C. 2192(c) through (f)) (relating to committee discharge and floor consideration of certain resolutions in the House and Senate) apply to a resolution of disapproval to the same extent as such subsections apply to resolutions under such section.

(c) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—Subsection (b) is enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such are deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

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

S. 626. A bill to reduce the amount of paperwork for special education teachers, to make mediation mandatory for all legal disputes related to individualized education programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. SANTORUM. Mr. President, today, I am pleased to introduce, along with my colleague Senator MILLER, the bipartisan Teacher Paperwork Reduction Act of 2003. During the 107th Congress, we were successful in legislating sweeping reforms in education with the passage of the No Child Left Behind Act. This year we hope to complete reauthorization of another important federal education initiative—the reauthorization of the Individuals with Disabilities Education Act, IDEA, this year. As we consider this legislation, our greatest responsibility is to improve the quality of the education that students with special needs receive.

One of the problems fostered by the current system, which stands in direct contrast to our purpose, is the excessive paperwork burden imposed on our special education teachers. This burden takes valuable time away from classroom instruction and is a source of ongoing frustration for the special education teachers working on the frontlines. As a result, this undermines the goal of providing the best quality education possible to all children. The Teacher Paperwork Reduction Act addresses this problem and seeks to offer solutions that will benefit special education teachers and most importantly the children they instruct.

This bipartisan legislation includes four main provisions to correct the problem of burdensome paperwork. First, the Department of Education, in cooperation with state and local educational agencies, would be required to reduce the amount of paperwork by 50 percent within 18 months of enactment of the legislation and would be encouraged to make additional reductions. Second, the General Accounting Office, GAO, would conduct a study to determine how much of the paperwork burden is caused by Federal regulations compared to State and local regulations; the number of mediations that have been conducted since mediations were required to be made available under the 1997 IDEA amendments; the use of technology in reducing the paperwork burden; and GAO would make recommendations on steps that Congress, the U.S. Department of Education, and the States and local districts can take to reduce this burden within six months of the passage of this legislation.

Third, mediation would be mandatory for all legal disputes related to Individual Education Programs, IEPs, to better empower parents and schools to focus resources on a quality education for children rather than unnecessary litigation within one year of enactment of this legislation. Fourth, the Department of Education is directed to conduct research to determine best practices for successful mediation, including training practices, that can help contribute to the effort to reduce paperwork, improve student outcomes, and free up teacher resources for teaching. The Department would also provide mediation training support services to support state and local efforts. The resources to fund these requirements would come from money appropriated through Part D of IDEA.

The Council for Exceptional Children, CEO, states, ''No barrier is so irksome to special educators as the paperwork that keeps them from teaching.'' According to a CEC report, concerns about paperwork ranked third among special education teachers, out of a list of 10 issues. The CEC also reports that special education teachers are leaving the profession at almost twice the rate of general educators. Statistics concerning the amount of time special education teachers spend completing paperwork are telling. 53 percent of special education teachers report that routine duties and paperwork interfere with their job to a great extent. They spend an average of five hours per week on paperwork, compared to general education teachers who spend an average of two hours per week. More than 60 percent of special education teachers spend a half to one and a half days a week completing paperwork. One of the biggest sources of paperwork, the individualized education program, IEP, averages between 8 and 16 pages long, and 83 percent of special education teachers report spending from a half to one and a half days each week in IEP-relating meetings.

One special education teacher expressed her frustration with excessive paperwork to me. ''I began my professional career as a lawyer, but found that I had a passion for interacting with and helping students and became a teacher. However, I decided last year that I could no longer work with special education students from my district. I came this decision reluctantly and solely on the basis of the increasing and burdensome amount of paperwork required for special education summer services. As a teacher, your job is to interact, teach, and participate in a student's learning experience, in particular that of a student of special needs. As a result of the paperwork and fear of lawsuits by school districts, I am no longer able to interact with my students.''

There are three primary factors associated with burdensome paperwork. The first factor is federal regulations. The 1997 IDEA regulations set forth the necessary components of the IEP and require teachers to complete an array of paperwork in addition to the IEP. According to the National School Boards Association, NSBA, ''These requirements result in consuming substantial hours per child and cumulatively are having a negative impact on special educators and their function.'' Second, there are misconceptions at the state and local levels regarding Federal regulations that result in additional requirements imposed by the States and local school districts. The U.S. Department of Education compiled a sample IEP with all the necessary components, and it is five pages long. However, most IEPs are much longer. The third factor is litigation and the threat of litigation. In order to be prepared for due process hearings and court proceedings, school district officials often require extensive documentation so that they are able to prove that a free appropriate public education, FAPE, was provided to the special education student.

A key provision of the bill makes mediation mandatory for all legal disputes related to IEPs. There are several benefits to using mediation as an

alternative to due process hearings and court proceedings. According to the Consortium for Appropriate Dispute Resolution in Special Education, CADRE, mediation is a constructive option for children, parents, and teachers and allows families to maintain a positive relationship with teachers and service providers. Parents have the benefit of working together with educator and service providers as partners instead of as adversaries. If an agreement cannot be reached as a result of mediation, parties to the dispute would retain existing due process and legal options.

Mediation is also a much less costly, less time consuming alternative for all parties concerned. Parents do not have to pay for mediation sessions, because under the 1997 IDEA amendments, States are required to bear the cost for mediation. States and local districts save a lot of money as well. According to the Michigan Special Education Mediation Program, MSEMP, the average hearing cost to the state is $40,000; it pays approximately $700 per mediation session. The NSBA reports that attorney fees for school districts average between $10,000 to $25,000. In contrast, the Pennsylvania Bureau of Education says that it pays mediators $250 per session. The cost effectiveness of mediation is apparent. Not only does mediation save money, it saves time as well. According to the Washington State Department of Education, a mediation session may generally be scheduled within 14 days of a parental request, whereas it may take up to a year to secure a court date.

Most importantly, mediation is a successful alternative to due process hearings. At least some form of agreement is reached in 80 percent of sessions nationwide. In Pennsylvania, 85 percent of voluntary special education mediations end in agreement in which both parties are satisfied. According to the New York State Dispute Resolution Association, mediation ending in resolution of the conflict occurs for 75 percent of referrals, and in Wisconsin, approximately 84 percent of those who chose mediation would use it again.

The Teacher Paperwork Reduction Act is meant to alleviate a serious problem that causes frustration and discouragement among dedicated special education teachers who expend energy and countless hours in order to give students with disabilities an equal opportunity to learn. It is only fair and right to find ways to reduce paperwork in order to give teachers more time to spend educating our students and changing their lives, and less time wading through stacks of paper. I would invite my colleagues to join us in cosponsoring this legislation to help teachers, schools, and parents provide a better education for all students so that no child is left behind.

By Mr. KYL (for himself, Mr. SHELBY, and Mrs. FEINSTEIN):

S. 627. A bill to prevent the use of certain payments instruments, credit cards, and fund transfers for unlawful Internet gambling, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

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

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

S. 627

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Unlawful Internet Gambling Funding Prohibition Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) Internet gambling is primarily funded through personal use of payment system instruments, credit cards, and wire transfers;

(2) the National Gambling Impact Study Commission in 1999 recommended the passage of legislation to prohibit wire transfers to Internet gambling sites or the banks which represent them;

(3) Internet gambling is a growing cause of debt collection problems for insured depository institutions and the consumer credit industry;

(4) Internet gambling conducted through offshore jurisdictions has been identified by United States law enforcement officials as a significant money laundering vulnerability;

(5) gambling through the Internet, which has grown rapidly in the half-decade preceding the enactment of this Act, opens up the possibility of immediate, individual, 24-hour access in every home to the full range of wagering opportunities on sporting events or casino-like contests, such as roulette, slot machines, poker, or black-jack; and

(6) the extent to which gambling is permitted and regulated in the United States has been primarily a matter for determination by individual States and, if applicable, Indian tribes, with Federal law serving to prevent interstate or other attempts to evade or avoid such determinations.

SEC. 3. PROHIBITION ON ACCEPTANCE OF ANY PAYMENT SYSTEM INSTRUMENT, CREDIT CARD, OR FUND TRANSFER FOR UNLAWFUL INTERNET GAMBLING.

Chapter 53 of title 31, United States Code, is amended by adding at the end the following:

''SUBCHAPTER IV—FUNDING OF ILLEGAL INTERNET GAMBLING

''§ 5361. Definitions

''For purposes of this subchapter, the following definitions shall apply:

''(1) BET OR WAGER.—The term 'bet or wager'—

''(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;

''(B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

''(C) includes any scheme of a type described in section 3702 of title 28, United States Code;

''(D) includes any instructions or information pertaining to the establishment or movement of funds in, to, or from an account by the bettor or customer with regard to the business of betting or wagering; and

''(E) does not include—

''(i) any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) for the purchase or sale of securities (as that term is defined in section 3(a)(10) of such Act);

''(ii) any transaction conducted on or subject to the rules of a registered entity or exempt board of trade pursuant to the Commodity Exchange Act;

''(iii) any over-the-counter derivative instrument;

''(iv) any other transaction that—

''(I) is excluded or exempt from regulation under the Commodity Exchange Act; or

''(II) is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act or section 28(a) of the Securities Exchange Act of 1934;

''(v) any contract of indemnity or guarantee;

''(vi) any contract for insurance;

''(vii) any deposit or other transaction with an insured institution;

''(viii) any participation in a simulation sports game, or an educational game or contest, that—

''(I) is not dependent solely on the outcome of any single sporting event or nonparticipant's singular individual performance in any single sporting event;

''(II) has an outcome that reflects the relative knowledge and skill of the participants, with such outcome determined predominantly by accumulated statistical results of sporting events; and

''(III) offers a prize or award to a participant that is established in advance of the game or contest and is not determined by the number of participants or the amount of any fees paid by those participants; or

''(ix) any lawful transaction with a business licensed or authorized by a State.

''(2) BUSINESS OF BETTING OR WAGERING.—The term 'business of betting or wagering' does not include, other than for purposes of section 5366, any creditor, credit card issuer, insured institution, or other financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network, or any interactive computer service or telecommunications service.

''(3) DESIGNATED PAYMENT SYSTEM.—The term 'designated payment system' means any system utilized by any creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network, that the Secretary, in consultation with the Board of Governors of the Federal Reserve System and the Attorney General of the United States, determines, by regulation or order, could be utilized in connection with, or to facilitate, any restricted transaction.

''(4) INTERNET.—The term 'Internet' means the international computer network of interoperable packet switched data networks.

''(5) INTERACTIVE COMPUTER SERVICE.—The term 'interactive computer service' has the same meaning as in section 230(f) of the Communications Act of 1934.

''(6) OFFICE.—The term 'Office' means the Office of Electronic Funding Oversight, established under section 5362.

''(7) RESTRICTED TRANSACTION.—The term 'restricted transaction' means any transaction or transmittal involving any credit, funds, instrument, or proceeds described in any paragraph of section 5363 which the recipient is prohibited from accepting under section 5363.

''(8) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(9) UNLAWFUL INTERNET GAMBLING.—The term 'unlawful Internet gambling' means the placing, receipt, or other transmission of a bet or wager by any means which involves the use, at least in part, of the Internet, where such bet or wager is unlawful under any applicable Federal or State law in the State in which the bet or wager is initiated, received, or otherwise made.

''(10) OTHER TERMS.—

''(A) CREDIT; CREDITOR; CREDIT CARD; AND CARD ISSUER.—The terms 'credit', 'creditor', 'credit card', and 'card issuer' have the same meanings as in section 103 of the Truth in Lending Act.

''(B) ELECTRONIC FUND TRANSFER.—The term 'electronic fund transfer'—

''(i) has the same meaning as in section 903 of the Electronic Fund Transfer Act, except that such term includes transfers that would otherwise be excluded under section 903(6)(E) of that Act; and

''(ii) includes any fund transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

''(C) FINANCIAL INSTITUTION.—The term 'financial institution' has the same meaning as in section 903 of the Electronic Fund Transfer Act, except that such term does not include a casino, sports book, or other business at or through which bets or wagers may be placed or received.

''(D) INSURED INSTITUTION.—The term 'insured institution' means—

''(i) an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act; and

''(ii) an insured credit union, as defined in section 101 of the Federal Credit Union Act.

''(E) MONEY TRANSMITTING BUSINESS AND MONEY TRANSMITTING SERVICE.—The terms 'money transmitting business' and 'money transmitting service' have the same meanings as in section 5330(d) (determined without regard to any regulations issued by the Secretary thereunder).

''§ 5362. Office of electronic funding oversight; policies and procedures to identify and prevent restricted transactions

''(a) ESTABLISHMENT OF TREASURY OFFICE.—

''(1) IN GENERAL.—There is established within the Department of the Treasury, the Office of Electronic Funding Oversight, the purposes of which are—

''(A) to coordinate Federal efforts to prohibit restricted transactions; and

''(B) otherwise to carry out the duties of the Office, as specified in this subchapter.

''(2) DIRECTOR.—The Office shall be headed by a Director, appointed by the Secretary. The director of the Office may serve as the designee of the Secretary, at the request of the Secretary, for any purpose under this subchapter.

''(b) REGULATIONS.—Not later than 6 months after the date of enactment of this subchapter, the Office, in consultation with the Board of Governors of the Federal Reserve System and the Attorney General of the United States, shall prescribe regulations requiring any designated payment system, and all participants therein, to establish policies and procedures reasonably designed to identify and prevent restricted transactions through the establishment of policies and procedures that—

''(1) allow the payment system and any person involved in the payment system to identify restricted transactions by means of codes in authorization messages or by other means;

''(2) block restricted transactions identified as a result of the policies and procedures developed pursuant to paragraph (1); and

''(3) prevent the acceptance of the products or services of the payment system in connection with a restricted transaction.

''(c) REQUIREMENTS FOR POLICIES AND PROCEDURES.—In prescribing regulations pursuant to subsection (b), the Office shall—

''(1) identify types of policies and procedures, including nonexclusive examples, which would be deemed to be 'reasonably designed to identify' and 'reasonably designed to block' or to 'prevent the acceptance of the products or services' with respect to each type of transaction, such as, should credit card transactions be so designated, identifying transactions by a code or codes in the authorization message and denying authorization of a credit card transaction in response to an authorization message;

''(2) to the extent practical, permit any participant in a payment system to choose among alternative means of identifying and blocking, or otherwise preventing the acceptance of the products or services of the payment system or participant in connection with, restricted transactions; and

''(3) consider exempting restricted transactions from any requirement imposed under such regulations, if the Office finds that it is not reasonably practical to identify and block, or otherwise prevent, such transactions.

''(d) COMPLIANCE WITH PAYMENT SYSTEM POLICIES AND PROCEDURES.—A creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, shall be considered to be in compliance with the regulations prescribed under subsection (b), if—

''(1) such person relies on and complies with the policies and procedures of a designated payment system of which it is a member or participant—

''(A) to identify and block restricted transactions; or

''(B) to otherwise prevent the acceptance of the products or services of the payment system, member, or participant in connection with restricted transactions; and

''(2) such policies and procedures of the designated payment system comply with the requirements of regulations prescribed under subsection (b).

''(e) NO LIABILITY FOR BLOCKING OR REFUSING TO HONOR RESTRICTED TRANSACTIONS.—A person that is subject to a regulation prescribed or order issued under this subchapter and blocks, or otherwise refuses to honor, a restricted transaction, or as a member of a designated payment system relies on the policies and procedures of the payment system, in an effort to comply with regulations prescribed under this section, shall not be liable to any party for such action.

''(f) REGULATORY ENFORCEMENT.—Regulations issued by the Office under this subchapter shall be enforced by the Federal functional regulators and the Federal Trade Commission, in the manner provided in section 505(a) of the Gramm-Leach-Bliley Act.

''§ 5363. Prohibition on acceptance of any bank instrument for unlawful internet gambling

''No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling—

''(1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

''(2) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person;

''(3) any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution; or

''(4) the proceeds of any other form of financial transaction, as the Secretary may prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.

''§ 5364. Civil remedies

''(a) JURISDICTION.—The district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain violations of this subchapter or the rules or regulations issued under this subchapter by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this subchapter.

''(b) PROCEEDINGS.—

''(1) INSTITUTION BY FEDERAL GOVERNMENT.—

''(A) IN GENERAL.—The United States, acting through the Attorney General, or, in the case of rules or regulations issued under this subchapter, through an agency authorized to enforce such regulations in accordance with this subchapter, may institute proceedings under this section to prevent or restrain a violation or a threatened violation of this subchapter or such rules or regulations.

''(B) RELIEF.—Upon application of the United States under this paragraph, the district court may enter a preliminary injunction or an injunction against any person to prevent or restrain a violation or threatened violation of this subchapter or the rules or regulations issued under this subchapter, in accordance with rule 65 of the Federal Rules of Civil Procedure.

''(2) INSTITUTION BY STATE ATTORNEY GENERAL.—

''(A) IN GENERAL.—The attorney general of a State (or other appropriate State official) in which a violation of this subchapter allegedly has occurred or will occur may institute proceedings under this section to prevent or restrain the violation or threatened violation.

''(B) RELIEF.—Upon application of the attorney general (or other appropriate State official) of an affected State under this paragraph, the district court may enter a preliminary injunction or an injunction against any person to prevent or restrain a violation or threatened violation of this subchapter, in accordance with rule 65 of the Federal Rules of Civil Procedure.

''(3) INDIAN LANDS.—

''(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), for a violation of this subchapter or the rules or regulations issued under this subchapter that is alleged to have occurred, or may occur, on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act)—

''(i) the United States shall have the enforcement authority provided under paragraph (1); and

''(ii) the enforcement authorities specified in an applicable Tribal-State compact negotiated under section 11 of the Indian Gaming Regulatory Act shall be carried out in accordance with that compact.

''(B) RULE OF CONSTRUCTION.—No provision of this subchapter shall be construed as altering, superseding, or otherwise affecting

the application of the Indian Gaming Regulatory Act.

''(c) EXPEDITED PROCEEDINGS.—In addition to any proceeding under subsection (b), a district court may, in exigent circumstances, enter a temporary restraining order against a person alleged to be in violation of this subchapter or the rules or regulations issued under this subchapter, upon application of the United States under subsection (b)(1), or the attorney general (or other appropriate State official) of an affected State under subsection (b)(2), in accordance with rule 65(b) of the Federal Rules of Civil Procedure.

''(d) LIMITATION RELATING TO INTERACTIVE COMPUTER SERVICES.—

''(1) IN GENERAL.—Relief granted under this section against an interactive computer service shall—

''(A) be limited to the removal of, or disabling of access to, an online site violating this subchapter, or a hypertext link to an online site violating this subchapter, that resides on a computer server that such service controls or operates, except that the limitation in this subparagraph shall not apply if the service is subject to liability under this section pursuant to section 5366;

''(B) be available only after notice to the interactive computer service and an opportunity for the service to appear are provided;

''(C) not impose any obligation on an interactive computer service to monitor its service or to affirmatively seek facts indicating activity violating this subchapter;

''(D) specify the interactive computer service to which it applies; and

''(E) specifically identify the location of the online site or hypertext link to be removed or access to which is to be disabled.

''(2) COORDINATION WITH OTHER LAW.—An interactive computer service that does not violate this subchapter shall not be liable under section 1084 of title 18, United States Code, except that the limitation in this paragraph shall not apply if an interactive computer service has actual knowledge and control of bets and wagers and—

''(A) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

''(B) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

''(3) RULE OF CONSTRUCTION.—The provisions of paragraph (2) do not affect any potential liability of an interactive computer service or other person under any provision of title 18, United States Code, other than as specifically provided in paragraph (2).

''(e) FACTORS TO BE CONSIDERED IN CERTAIN CASES.—In considering granting relief under this section against any payment system, or any participant in a payment system that is a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, the court shall consider—

''(1) the extent to which the person extending credit or transmitting funds knew or should have known that the transaction was in connection with unlawful Internet gambling;

''(2) the history of such person in extending credit or transmitting funds when such person knew or should have known that the transaction is in connection with unlawful Internet gambling;

''(3) the extent to which such person has established and is maintaining policies and procedures in compliance with rules and regulations issued under this subchapter;

''(4) the extent to which it is feasible for any specific remedy prescribed as part of such relief to be implemented by such person without substantial deviation from normal business practice; and

''(5) the costs and burdens that the specific remedy will have on such person.

''(f) NOTICE TO REGULATORS AND FINANCIAL INSTITUTIONS.—Before initiating any proceeding under subsection (b) with respect to a violation or potential violation of this subchapter or the rules or regulations issued under this subchapter by any creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network, the Attorney General of the United States, an attorney general of a State (or other appropriate State official), or an agency authorized to initiate such proceeding under this subchapter, shall—

''(1) notify such person, and the appropriate regulatory agency (as determined in accordance with section 5362(f) for such person) of such violation or potential violation and the remedy to be sought in such proceeding; and

''(2) allow such person 30 days to implement a reasonable remedy for the violation or potential violation, consistent with the factors described in subsection (e), and in conjunction with such action as the appropriate regulatory agency may take.

''§ 5365. Criminal penalties

''(a) IN GENERAL.—Whoever violates this subchapter or the rules or regulations issued under this subchapter shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

''(b) PERMANENT INJUNCTION.—Upon conviction of a person under this section, the court may enter a permanent injunction enjoining such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

''§ 5366. Circumventions prohibited

''Notwithstanding section 5361(2), a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network, or any interactive computer service or telecommunications service, may be liable under this subchapter if such creditor, issuer, institution, operator, business, network, or participant has actual knowledge and control of bets and wagers, and—

''(1) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

''(2) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.''.

SEC. 4. INTERNET GAMBLING IN OR THROUGH FOREIGN JURISDICTIONS.

(a) IN GENERAL.—In deliberations between the United States Government and any other country on money laundering, corruption, and crime issues, the United States Government should—

(1) encourage cooperation by foreign governments and relevant international fora in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes;

(2) advance policies that promote the cooperation of foreign governments, through information sharing or other measures, in the enforcement of this Act and the amendments made by this Act; and

(3) encourage the Financial Action Task Force on Money Laundering, in its annual report on money laundering typologies, to study the extent to which Internet gambling operations are being used for money laundering purposes.

(b) REPORT REQUIRED.—The Secretary of the Treasury shall submit an annual report to Congress on any deliberations between the United States and other countries on issues relating to Internet gambling.

SEC. 5. AMENDMENTS TO CRIMINAL GAMBLING PROVISIONS.

(a) AMENDMENT TO DEFINITION.—Section 1081 of title 18, United States Code, is amended—

(1) by designating the five undesignated paragraphs that begin with ''The term'' as paragraphs (1) through (5), respectively; and

(2) in paragraph (5), as so designated—

(A) by striking ''wire communication'' and inserting ''communication'';

(B) by inserting ''satellite, microwave,'' after ''cable,''; and

(C) by inserting ''(whether fixed or mobile)'' after ''connection''.

(b) INCREASE IN PENALTY FOR UNLAWFUL WIRE TRANSFERS OF WAGERING INFORMATION.—Section 1084(a) of title 18, United States Code, is amended by striking ''two years'' and inserting ''5 years''.

By Mr. STEVENS (for himself, Ms. MIKULSKI, Mr. BOND, and Ms. MURKOWSKI):

S. 628. A bill to require the construction at Arlington National Cemetery of a memorial to the crew of the *Columbia* Orbiter; ordered held at the desk.

Mr. STEVENS. Madam President, on February 1, 2003, the Space Shuttle *Columbia* was lost during re-entry into Earth's atmosphere. We all mourn that tragic loss. But although our hearts have been filled with sorrow, we have also taken comfort in the knowledge that there was so much about these heroic astronauts for us to be grateful for.

They were, indeed, remarkable people for they truly represented the best of the human spirit. As such, it is only fitting that we endeavor to remember them for their outstanding contributions.

Today, along with Senators BOND and MIKULSKI, I introduce legislation to construct a memorial to the crew of the *Columbia* Orbiter at Arlington National Cemetery.

This memorial would be located in close proximity to the memorial to the crew of the *Challenger* Orbiter at Arlington Cemetery and that the design

of the Columbia Memorial is intended to be consistent with the artistic sensibilities of the Challenger Memorial.

This legislation would authorize the Secretary of the Army, in consultation with NASA, to place the Columbia Memorial at Arlington and would make available $500,000 from funds already appropriated in the Fiscal Year 2003 DOD Appropriations Act for the Memorial.

The bill also authorizes NASA to collect gifts and donations for the Columbia Memorial at Arlington Cemetery or for another appropriate memorial or monument. This authority to collect donations and gifts expires after 5 years.

We will never forget the wonderful legacy of the *Columbia* astronauts. They have been an inspiration to us all.

Lastly, I take this opportunity to invite any Senator to join with me in cosponsoring this legislation to establish this memorial to these outstanding individuals.

I ask unanimous consent that the bill be held at the desk until the close of business Wednesday, March 19, so that such Senators will be shown as original cosponsors of this legislation. It is my further hope that this bill will be speedily cleared on each side of the aisle so that it may be sent to the House next week, if at all possible. I send the bill to the desk, Madam President.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be held at the desk until the close of business, Wednesday, March 19.

By Mr. FEINGOLD:

S.J. Res. 9. A joint resolution requiring the President to report to Congress specific information relating to certain possible consequences of the use of United States Armed Forces against Iraq; to the Committee on Foreign Relations.

Mr. FEINGOLD. Mr. President, today I introduce a Senate companion to a joint resolution already introduced in the House by Congressman SHERROD BROWN of Ohio.

This resolution is quite simple. It requires the President to report to Congress on the potential costs and consequences of military action in Iraq before ordering the United States Armed Forces to war in Iraq. This is a resolution that simply requires that this country know what it is we are getting into before, not after, war breaks out.

Of course, it is my hope, and I very much believe the President when he asserts that it is his hope, that there will be no war. But judging from the administration's statements and Iraq's behavior, with each passing day it becomes more and more likely that the United States will engage in a major military operation in Iraq. It is entirely possible that we will undertake this operation without a great deal of international support. And while I have no doubt in my mind that our admirable men and women in uniform will be successful in any military engagement, I do have doubts about whether or not the American people truly understand the magnitude of the task the country is setting for itself—not only with regard to the military engagement itself, but with regard to occupation and reconstruction.

I do not believe that Americans have been told much about what the future holds beyond the most optimistic of scenarios, and frankly I do not believe that Congress has heard much about the full range of potential scenarios either.

This resolution would require that the President provide that information before ordering our men and women in uniform to war in Iraq.

The resolution asks for a full accounting of the implications for homeland security of initiating military action against Iraq. It asks for an accounting of the implications for the fight against terrorism. It asks for an accounting of the implications for regional stability in the Middle East, and for an accounting of the implications of war in Iraq for the proliferation of weapons of mass destruction.

This resolution recognizes that there may be positive and negative implications to consider. It does not pre-judge these issues. But it does acknowledge that Members of Congress, the elected representatives of the people, should be privy to the thinking of our experts and leaders in the executive branch about the effect of war in Iraq on all of these issues. It is our responsibility to weigh these questions, to weigh the consequences of starting a war.

And, while I do not doubt for a moment the skills and competence of our brave service men and women, I do know that their efforts alone are not enough to ensure a lasting victory. It is crucial to the ultimate success of U.S. policy, that the American people understand the potential risks and the potential rewards of this national undertaking. We are considering the American military occupation of a major Middle Eastern country, and we are considering this in a very dangerous time. This country must have its eyes open before we move forward.

This resolution also requires that the administration explain to Congress the steps that the United States and our allies will take to ensure that any and all weapons of mass destruction will be safeguarded from dispersal to other rogue states or international terrorist organizations. If the goal is disarmament, then defeating Saddam Hussein's forces is not going to accomplish the mission at hand. Do we know where the WMD sites are? One would assume that we would share that information with the inspectors if we had it. But if we do not, how will we ensure that WMD and the means to make them are not dispersed across Iraq's borders, or sold off to the highest bidder, in the event of invasion. Saddam Huessein's order is despicable and dangerous. But disorder is dangerous too. Again, we need to understand the risks, and we need to understand the plan.

This resolution requires the Administration to explain the plan for stabilization and reconstruction. Earlier this week the Senate Foreign Relations Committee held a hearing on reconstruction in Iraq. We had hoped to get answers to some of the basic questions that senior officials from the State and Defense Departments were utterly unable to respond to as recently as February. But the Administration canceled the appearance of General Jay Garner, the director for the Pentagon's Office of Reconstruction and Humanitarian Assistance, who was slated to come before the committee. And so the Foreign Relations Committee of the United States Senate is left scanning the newspapers to get a sense of Administration plans, extrapolating from tidbits in the press to understand potential costs, and quizzing very capable experts—but experts not privy to Administration planning—about the universe of possibilities. This is simply unacceptable.

This resolution calls for the Administration to clearly report to Congress on the nature and extent of the international support for military action against Iraq and the impact of military action against Iraq on allied support for the broader war on terrorism. I believe that this is the single most important issue before us. I know that I disagree with some of my colleagues on the wisdom of the Administration's policy in Iraq. But I am certain that none of us disagree on the proposition that the first priority of all of us in government must be the fight against terrorism. And we all know that we cannot fight terrorism alone. But I have heard directly from foreign officials who are telling me that it will be more difficult for them to be strong supporters of the fight against terrorism if the U.S. acts in Iraq without the United Nations' approval.

This resolution calls on the Administration to explain clearly the steps that it will take to protect United States soldiers, allied forces, and Iraqi civilians from any known or suspected environmental hazards resulting from military operations. Everyone in this body has heard from veterans of the Gulf War who suffer and struggle even today, long after their period of sacrifice for their country should have ended. Based on what we know from these veterans, it is entirely reasonable to demand a plan now, not after the fact.

The resolution also calls for the Administration to provide estimates of the American and allied military casualties, Iraqi military casualties, and Iraqi civilian casualties resulting from military action against Iraq, and measures that will be taken to prevent civilian casualties and adhere to international humanitarian law. I know that America is a resilient society and a resolute society. But I am not at all

sure that Americans have been prepared for anything but the best-case scenario, and that is a disservice to the American people and a disservice to our military.

This resolution calls for an estimate of the full costs associated with military action against Iraq, including, but not limited to, providing humanitarian aid to the Iraqi people and to neighboring nations in light of possible refugee flows, reconstructing Iraq with or without allied support, and securing long-term political stability in Iraq and the region insofar as it is affected by such military action. I can tell you that right now in the Budget committee, we are flying blind, trying to make fiscally responsible decisions for the future while the Administration remains unwilling to provide an honest accounting of what this war will cost, or what it will cost to meet the humanitarian needs of Iraq, or what the long process of reconstruction will cost. We know that these are not small figures. And unfortunately, it looks as though we will be proceeding without a great deal of international support, meaning less burden-sharing and more shouldering of this cost on our own. And that is why this resolution also calls for an accounting of the anticipated short and long term effects of military action on the United States economy and the Federal budget.

I feel strongly that we should have demanded this information long ago. But we continue to ask, because Congress continues to have constitutional responsibilities. And I continue to hear from a tremendous number of my constituents who are deeply concerned about the prospect of a war with Iraq. The sources of their concern and their views on the issue vary, but in virtually all cases, they want to understand the range of options before us, and they are demanding more information about the costs and commitments they will incur as a result of decisions that we make here. They are right to insist on that information, to insist that we exercise some foresight here and wrestle honestly with the consequences that may follow from taking military action. Without such a discussion, we cannot hope to answer the most important question before us—will a given course of action make the U.S. more or less secure in the end.

I urge my colleagues to support this resolution, and to insist that the Administration provide this information before war breaks out. I voted against the resolution authorizing the use of force in Iraq last fall, because I was uncomfortable with the Administration's shifting justifications for war, dissatisfied with the vague answers available at the time relating to our plans for dealing with weapons of mass destruction and reconstruction in Iraq, and most of all, because I was concerned that this action would actually alienate key allies in the fight against terrorism. But even those who voted differently surely must believe that we have a responsibility to anwser these questions now, and to share the answers with our constituents, so that this great country is operating not on wishful thinking or simple ignorance, but with an understanding of the facts before us, and the awesome task ahead.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 83—COMMENDING THE SERVICE OF DR. LLOYD J. OGILVIE, THE CHAPLAIN OF THE UNITED STATES SENATE

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 83

Whereas Dr. Lloyd J. Ogilvie became the 61st Senate Chaplain on March 13, 1995, and has faithfully served the Senate for 8 years as Senate Chaplain;

Whereas Dr. Ogilvie is the author of 49 books, including ''Facing the Future without Fear''; and

Whereas Dr. Ogilvie graduated from Lake Forest College, Garrett Theological Seminary of Northwestern University and New College, University of Edinburgh, Scotland, and has served as a Presbyterian minister throughout his professional life, including being the senior pastor at First Presbyterian Church, Hollywood, California: Now, therefore, be it

Resolved, That—

(1) the Senate hereby honors Dr. Lloyd J. Ogilvie for his dedicated service as the Chaplain of the United States Senate; and

(2) the Secretary transmit an enrolled copy of this resolution to Dr. Ogilvie.

SENATE RESOLUTION 84—PROVIDING FOR MEMBERS ON THE PART OF THE SENATE OF THE JOINT COMMITTEE ON PRINTING AND THE JOINT COMMITTEE OF CONGRESS ON THE LIBRARY

Mr. LOTT (for himself and Mr. DODD) submitted the following resolution; which was considered and agreed to:

S. RES. 84

Resolved, That the following named Members be, and they are hereby, elected members of the following joint committees of Congress:

JOINT COMMITTEE ON PRINTING: Mr. Chambliss, Mr. Cochran, Mr. Smith, Mr. Inouye, and Mr. Dayton.

JOINT COMMITTEE OF CONGRESS ON THE LIBRARY: Mr. Stevens, Mr. Lott, Mr. Cochran, Mr. Dodd, and Mr. Schumer.

SENATE RESOLUTION 85—TO AMEND PARAGRAPH 2 OF RULE XXII OF THE STANDING RULES OF THE SENATE

Mr. MILLER submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 85

Resolved, That paragraph 2 of rule XXII of the Standing Rules of the Senate is amended to read as follows:

''2. (a)(1) Notwithstanding the provisions of rule II or rule IV or any other rule of the Senate, at any time a motion signed by 16 Senators, to bring to a close the debate upon any measure, motion, other matter pending before the Senate, or the unfinished business, is presented to the Senate, the Presiding Officer, or clerk at the direction of the Presiding Officer, shall at once state the motion to the Senate, and 1 hour after the Senate meets on the following calendar day but 1, he shall lay the motion before the Senate and direct that the clerk call the roll, and upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question: ''Is it the sense of the Senate that the debate shall be brought to a close?''.

''(2) If the question in clause (1) is agreed to by three-fifths of the Senators duly chosen and sworn—except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting—then that measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

''(3) After cloture is invoked, no Senator shall be entitled to speak in all more than 1 hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be proposed after the vote to bring the debate to a close, unless it had been submitted in writing to the Journal Clerk by 1 o'clock p.m. on the day following the filing of the cloture motion if an amendment in the first degree, and unless it had been so submitted at least 1 hour prior to the beginning of the cloture vote if an amendment in the second degree. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

''(4) After no more than 30 hours of consideration of the measure, motion, or other matter on which cloture has been invoked, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof to the exclusion of all amendments not then actually pending before the Senate at that time and to the exclusion of all motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins. The 30 hours may be increased by the adoption of a motion, decided without debate, by a three-fifths affirmative vote of the Senators duly chosen and sworn, and any such time thus agreed upon shall be equally divided between and controlled by the Majority and Minority Leaders or their designees. However, only one motion to extend time, specified above, may be made in any 1 calendar day.

''(5) If, for any reason, a measure or matter is reprinted after cloture has been invoked, amendments which were in order prior to the reprinting of the measure or matter will continue to be in order and may be conformed and reprinted at the request of the amendment's sponsor. The conforming changes must be limited to lineation and pagination.

''(6) No Senator shall call up more than 2 amendments until every other Senator shall have had the opportunity to do likewise.

''(7) Notwithstanding other provisions of this rule, a Senator may yield all or part of

his 1 hour to the majority or minority floor managers of the measure, motion, or matter or to the Majority or Minority Leader, but each Senator specified shall not have more than 2 hours so yielded to him and may in turn yield such time to other Senators.

''(8) Notwithstanding any other provision of this rule, any Senator who has not used or yielded at least 10 minutes, is, if he seeks recognition, guaranteed up to 10 minutes, inclusive, to speak only.

''(9) After cloture is invoked, the reading of any amendment, including House amendments, shall be dispensed with when the proposed amendment has been identified and has been available in printed form at the desk of the Members for not less than 24 hours.

''(b)(1) If, upon a vote taken on a motion presented pursuant to subparagraph (a), the Senate fails to invoke cloture with respect to a measure, motion, or other matter pending before the Senate, or the unfinished business, subsequent motions to bring debate to a close may be made with respect to the same measure, motion, matter, or unfinished business. It shall not be in order to file subsequent cloture motions on any measure, motion, or other matter pending before the Senate, except by unanimous consent, until the previous motion has been disposed of.

''(2) Such subsequent motions shall be made in the manner provided by, and subject to the provisions of, subparagraph (a), except that the affirmative vote required to bring to a close debate upon that measure, motion, or other matter, or unfinished business (other than a measure or motion to amend Senate rules) shall be reduced by 3 votes on the second such motion, and by 3 additional votes on each succeeding motion, until the affirmative vote is reduced to a number equal to or less than an affirmative vote of a majority of the Senators duly chosen and sworn. The required vote shall then be an affirmative vote of a majority of the Senators duly chosen and sworn. The requirement of an affirmative vote of a majority of the Senators duly chosen and sworn shall not be further reduced upon any vote taken on any later motion made pursuant to this subparagraph with respect to that measure, motion, matter, or unfinished business.''.

SENATE RESOLUTION 86—TO AUTHORIZE TESTIMONY AND LEGAL REPRESENTATION IN W. CURTIS SHAIN v. HUNTER BATES, ET AL.

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution, which was considered and agreed to:

S. RES. 86

Whereas, in the case of W. Curtis Shain v. G. Hunter Bates, et al., No. 03–CI–00153, pending in Division II of the Oldham Circuit Court, Twelfth Judicial Circuit, Commonwealth of Kentucky, an affidavit has been requested from Senator Mitch McConnell;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate;

Whereas, by Rule VI of the Standing Rules of the Senate, no Senator shall absent himself from the service of the Senate without leave; and

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That Senator McConnell is authorized to provide testimony in the case of W. Curtis Shain v. G. Hunter Bates, et al., except concerning matters for which a privilege should be asserted and when his attendance at the Senate is necessary for the performance of his legislative duties.

SEC. 2. The Senate Legal Counsel is authorized to represent Senator McConnell in connection with any testimony authorized in section one of this resolution.

SENATE RESOLUTION 87—COMMEMORATING THE CENTENNIAL ANNIVERSARY OF THE NATIONAL WILDLIFE REFUGE SYSTEM

Mr. NELSON of Florida (for himself, Mr. GRAHAM of Florida, Mr. INHOFE, Mr. JEFFORDS, Mr. DASCHLE, Mr. CRAPO, Mr. KERRY, Ms. CANTWELL, Mr. LIEBERMAN, Mr. BINGAMAN, Mr. WARNER, Mrs. MURRAY, Mrs. HUTCHISON, Ms. MIKULSKI, Mr. SARBANES, Mr. LAUTENBERG, Mr. CHAFEE, Mr. DURBIN, Mr. LEAHY, Mr. LEVIN, Mr. HARKIN, Mr. VOINOVICH, Mr. HOLLINGS, Mrs. BOXER, Mrs. FEINSTEIN, Mr. AKAKA, Mr. CONRAD, Mr. ALLARD, Mr. DODD, and Mr. EDWARDS) submitted the following resolution; which was considered and agreed to:

S. RES. 87

Whereas March 14, 2003, will mark the Centennial Anniversary of the National Wildlife Refuge System;

Whereas the United States Senate continues to fully support the mission of the National Wildlife Refuge System, and shares President Theodore Roosevelt's view that: ''Wild beasts and birds are by right not the property merely of the people who are alive today, but the property of unknown generations, whose belongings we have no right to squander'';

Whereas President Theodore Roosevelt's vision in 1903 to conserve wildlife started with the plants and animals on the tiny Pelican Island on Florida's East Coast, and has flourished across the United States and its territories, allowing for the preservation of a vast array of species; and

Whereas the National Wildlife Refuge System of 540 refuges, that now hosts 35,000,000 visitors annually, with the help of 30,000 volunteers, is home to wildlife of almost every variety in every state of the union within an hour's drive of almost every major city: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the National Wildlife Refuge System on its Centennial Anniversary;

(2) expresses strong support for the National Wildlife Refuge System's continued success in the next 100 years and beyond;

(3) encourages the National Wildlife Refuge System in its continued efforts to broaden understanding and appreciation for the Refuge System, to increase partnerships on behalf of the National Wildlife Refuge System to better manage and monitor wildlife, and to continue its support of outdoor recreational activities; and

(4) reaffirms its commitment to continued support for the National Wildlife Refuge System, and the conservation of our Nation's rich natural heritage.

SENATE RESOLUTION 88—HONORING THE 80TH BIRTHDAY OF JAMES L. BUCKLEY, FORMER UNITED STATES SENATOR FOR THE STATE OF NEW YORK

Mr. HATCH submitted the following resolution; which was considered and agreed to:

S. RES. 88

Whereas James Buckley served in the United States Senate with great dedication, integrity, and professionalism as a trusted colleague from the State of New York;

Whereas James Buckley served with distinction for more than a decade as a Circuit Judge on the United States Court of Appeals for the District of Columbia Circuit;

Whereas James Buckley's long and distinguished career in public service also included serving in the U.S. Navy during World War II, as Undersecretary of State for Security Assistance, and as President of Radio Free Europe;

Whereas James Buckley celebrated his 80th birthday earlier this week: Now, therefore, be it

Resolved, That the Senate—

(1) acknowledges and honors the tremendous contributions made by James Buckley during his distinguished career to the executive, legislative, and judicial branches of the United States; and

(2) congratulates and expresses best wishes to James Buckley on the celebration of his 80th birthday.

SENATE RESOLUTION 89—HONORING THE LIFE OF FORMER GOVERNOR OF MINNESOTA ORVILLE L. FREEMAN, AND EXPRESSING THE DEEPEST CONDOLENCE OF THE SENATE TO HIS FAMILY ON HIS DEATH

Mr. DAYTON (for himself and Mr. COLEMAN) submitted the following resolution; which was considered and agreed to:

S. RES. 89

Whereas the Senate has learned with sadness of the death of former Governor of Minnesota Orville L. Freeman;

Whereas Orville L. Freeman, born in Minneapolis, Minnesota, greatly distinguished himself by his long commitment to public service;

Whereas Orville L. Freeman, football star, student council president, and Phi Beta Kappa honors student, graduated magna cum laude from the University of Minnesota;

Whereas Orville L. Freeman, a Major in the Marine Corps, served the United States with honor and distinction during World War II, and was awarded a Purple Heart for wounds associated with his heroism;

Whereas the organizational leadership of Orville L. Freeman helped build the Minnesota Democratic-Farmer-Labor Party into a successful political party;

Whereas, in 1954, Orville L. Freeman became the first Democratic-Farmer-Labor candidate to be elected Governor of Minnesota;

Whereas Orville L. Freeman, elected to 3 consecutive terms as Governor, advanced the concept of governance now known as ''the Minnesota Consensus,'' which views government as a positive force in the lives of citizens, and government programs as investments in Minnesota's future;

Whereas, during his service as Governor of Minnesota, Orville L. Freeman increased State funding for education, improved health and rehabilitation programs, expanded conservation efforts, and achieved many other successes that improved his State and the lives of its citizens;

Whereas Orville L. Freeman served as the Secretary of Agriculture in the administrations of President John F. Kennedy and President Lyndon B. Johnson, during which service he initiated global food assistance programs and developed the domestic food stamp and school breakfast programs;

Whereas, in addition to his outstanding public service, Orville L. Freeman was also a successful international lawyer and business executive;

Whereas Orville L. Freeman was a devoted husband to his wife, Jane, for 62 years, a loving father to two exceptional children, Constance and Michael, and a proud grandfather to three talented grandchildren, Elizabeth, Kathryn, and Matthew; and

Whereas Orville L. Freeman led a life that was remarkable for its breadth of pursuits, multitude of accomplishments, standards of excellence, dedication to public service, and important contributions to the improvement of his country and the lives of his fellow citizens: Now, therefore, be it

Resolved, That the United States Senate—

(1) pays tribute to the outstanding career and devoted work of the great Minnesota and national leader, Orville L. Freeman;

(2) expresses its deepest condolences to the family of Orville L. Freeman on his death; and

(3) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the family of Orville L. Freeman.

SENATE CONCURRENT RESOLUTION 20—PERMITTING THE CHAIRMAN OF THE COMMITTEE ON RULES AND ADMINISTRATION OF THE SENATE TO DESIGNATE ANOTHER MEMBER OF THE COMMITTEE TO SERVE ON THE JOINT COMMITTEE ON PRINTING IN PLACE OF THE CHAIRMAN

Mr. LOTT (for himself and Mr. DODD) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 20

Resolved by the Senate (the House of Representatives concurring), That effective for the One Hundred Eighth Congress, the Chairman of the Committee on Rules and Administration of the Senate may designate another member of the Committee to serve on the Joint Committee on Printing in place of the Chairman.

SENATE CONCURRENT RESOLUTION 21—EXPRESSING THE SENSE OF THE CONGRESS THAT COMMUNITY INCLUSION AND ENHANCED LIVES FOR INDIVIDUALS WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES IS AT SERIOUS RISK BECAUSE OF THE CRISIS IN RECRUITING AND RETAINING DIRECT SUPPORT PROFESSIONALS, WHICH IMPEDES THE AVAILABILITY OF A STABLE, QUALITY DIRECT SUPPORT WORKFORCE.

Mr. BUNNING (for himself and Mrs. LINCOLN) submitted the following concurrent resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. CON. RES. 21

Whereas there are more than 8,000,000 Americans who have mental retardation or other developmental disabilities;

Whereas individuals with developmental disabilities include those with mental retardation, autism, cerebral palsy, Down syndrome, epilepsy, and other related conditions;

Whereas individuals with mental retardation or other developmental disabilities have substantial limitations on their functional capacities, including limitations in two or more of the areas of self-care, receptive and expressive language, learning, mobility, self-direction, independent living, and economic self-sufficiency, as well as the continuous need for individually planned and coordinated services;

Whereas for the past two decades individuals with mental retardation or other developmental disabilities and their families have increasingly expressed their desire to live and work in their communities, joining the mainstream of American life;

Whereas the Supreme Court, in its Olmstead decision, affirmed the right of individuals with mental retardation or other developmental disabilities to receive community-based services as an alternative to institutional care;

Whereas the demand for community supports and services is rapidly growing, as States comply with the Olmstead decision and continue to move more individuals from institutions into the community;

Whereas the demand will also continue to grow as family caregivers age, individuals with mental retardation or other developmental disabilities live longer, waiting lists grow, and services expand;

Whereas our Nation's long-term care delivery system is dependent upon a disparate array of public and private funding sources, and is not a conventional industry, but rather is financed primarily through third-party insurers;

Whereas Medicaid financing of supports and services to individuals with mental retardation or other developmental disabilities varies considerably from State to State, causing significant disparities across geographic regions, among differing groups of consumers, and between community and institutional supports;

Whereas outside of families, private providers that employ direct support professionals deliver the majority of supports and services for individuals with mental retardation or other developmental disabilities in the community;

Whereas direct support professionals provide a wide range of supportive services to individuals with mental retardation or other developmental disabilities on a day-to-day basis, including habilitation, health needs, personal care and hygiene, employment, transportation, recreation, and housekeeping and other home management-related supports and services so that these individuals can live and work in their communities;

Whereas direct support professionals generally assist individuals with mental retardation or other developmental disabilities to lead a self-directed family, community, and social life;

Whereas private providers and the individuals for whom they provide supports and services are in jeopardy as a result of the growing crisis in recruiting and retaining a direct support workforce;

Whereas providers of supports and services to individuals with mental retardation or other developmental disabilities typically draw from a labor market that competes with other entry-level jobs that provide less physically and emotionally demanding work, and higher pay and other benefits, and therefore these direct support jobs are not currently competitive in today's labor market;

Whereas annual turnover rates of direct support workers range from 40 to 75 percent;

Whereas high rates of employee vacancies and turnover threaten the ability of providers to achieve their core mission, which is the provision of safe and high-quality supports to individuals with mental retardation or other developmental disabilities;

Whereas direct support staff turnover is emotionally difficult for the individuals being served;

Whereas many parents are becoming increasingly afraid that there will be no one available to take care of their sons and daughters with mental retardation or other developmental disabilities who are living in the community; and

Whereas this workforce shortage is the most significant barrier to implementing the Olmstead decision and undermines the expansion of community integration as called for by President Bush's New Freedom Initiative, placing the community support infrastructure at risk: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. SHORT TITLE.

This resolution may be cited as the ''Direct Support Professional Recognition Resolution''.

SEC. 2. SENSE OF CONGRESS REGARDING SERVICES OF DIRECT SUPPORT PROFESSIONALS TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.

It is the sense of the Congress that the Federal Government and the States should make it a priority to ensure a stable, quality direct support workforce for individuals with mental retardation or other developmental disabilities that advances our Nation's commitment to community integration for such individuals and to personal security for them and their families.

SENATE CONCURRENT RESOLUTION 22—EXPRESSING THE SENSE OF THE CONGRESS REGARDING HOUSING AFFORDABILITY AND URGING FAIR AND EXPEDITIOUS REVIEW BY INTERNATIONAL TRADE TRIBUNALS TO ENSURE A COMPETITIVE NORTH AMERICAN MARKET FOR SOFTWOOD LUMBER

Mr. NICKLES (for himself, Mr. BAYH, Mr. BUNNING, Mr. FITZGERALD, Mr. HAGEL, Mr. INHOFE, Mr. KYL, Mr. LUGAR, Mr. REED, and Mr. ROBERTS) submitted the following concurrent resolution; which was referred to the Committee on Finance.

S. CON. RES. 22

Whereas the United States and Canada have, since 1989, worked to eliminate tariff and nontariff barriers to trade;

Whereas free trade has greatly benefitted the United States and Canadian economies;

Whereas the U.S. International Trade Commission only found the potential for a Threat of Injury (as opposed to actual injury) to domestic lumber producers but the Department of Commerce imposed a 27 percent duty on U.S. lumber consumers;

Whereas trade restrictions on Canadian lumber exported to the U.S. market have been an exception to the general rule of bilateral free trade;

Whereas the legitimate interests of consumers are often overlooked in trade disputes;

Whereas the availability of affordable housing is important to American home buyers and the need for the availability of such housing, particularly in metropolitan cities across America, is growing faster than it can be met;

Whereas imposition of special duties on U.S. consumers of softwood lumber, essential for construction of on-site and manufactured homes, jeopardizes housing affordability;

Whereas the United States has agreed to abide by dispute settlement procedures in the World Trade Organization and the North American Free Trade Agreement, providing for international review of national remedy actions; and,

Whereas the World Trade Organization and North American Free Trade Agreement dispute panels are reviewing findings by the ITC: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), that it is the sense of the Congress that—

(1) The Department of Commerce and U.S. Trade Representative should work to assure that no delays occur in resolving the current disputes before the NAFTA and WTO panels, supporting a fair and expeditious review;

(2) U.S. anti-dumping and countervail law is a rules-based system that should proceed to conclusion in WTO and NAFTA trade panels;

(3) The President should continue discussions with the Government of Canada to promote open trade between the United States and Canada on softwood lumber free of trade restraints that harm consumers;

(4) The President should consult with all stakeholders, including consumers of lumber products in future discussions regarding any terms of trade in softwood lumber between the United States and Canada.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. LOTT. Mr. President, I wish to announce that the Committee on Rules and Administration will meet at 9:30 a.m., Wednesday, March 19, 2003, in room SR 301, Russell Senate Office Building, to conduct an oversight hearing on the operations of the Secretary of the Senate and the Architect of the Capitol.

For further information concerning this meeting, please contact Susan Wells at 202-224-6352.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, March 13, 2003, at 9:30 a.m., in open and possibly closed session, to receive testimony from unified and regional commanders on their military strategy and operational requirements, in review of the Defense Authorization Request for Fiscal Year 2004 and the future years Defense program.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on March 13, 2003, at 10 a.m., to conduct a hearing on ''The Administration's Proposed Fiscal Year 2004 Budget for the Federal Transit Administration.''

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, March 13, 2003, at 9:30 a.m., in SR–253, for an executive session.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Thursday, March 13 at 10 a.m., to receive testimony on gaining an understanding of the impacts of last year's fires and then looking forward to the potential 2003 fire season.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Thursday, March 13, at 2:30 p.m., is to conduct oversight on the designation and management of national heritage areas, including criteria and procedures for designating heritage areas, the potential impact of heritage areas on private lands and communities, Federal and non-Federal costs of managing heritage areas, and methods of monitoring and measuring the success of heritage areas.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 13, 2003, at 2 p.m., to hold a members briefing on Iraq's political future.

Briefer: The Honorable William Burns, Assistant Secretary for Middle East, Department of State, Washington, DC.

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

COMMITTEE ON THE JUDICIARY

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing entitled ''Setting the Record Straight: The Nomination of Justice Priscilla Owen'' on Thursday, March 13, 2003, at 10 a.m., in the Dirksen Senate Office Building, room 106.

Witness list

Panel I: The Honorable Kay Bailey Hutchison and The Honorable John Cornyn.

Panel II: Priscilla Richmond Owen to be United States Circuit Judge for the Fifth Circuit.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Thursday, March 13, 2003, for a joint hearing with the House of Representatives' Committee on Veterans' Affairs, to hear the legislative presentations of the Retired Enlisted Association, Gold Star Wives of America, the Fleet Reserve Association, and the Air Force Sergeants Association.

The hearing will take place in room 345 of the Cannon House Office Building at 10 a.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, March 13, 2003, at 2:30 p.m., to hold a closed hearing.

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

SUBCOMMITTEE ON CLEAN AIR, CLIMATE CHANGE, AND NUCLEAR SAFETY

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Subcommittee on Clean Air, Climate Change, and Nuclear Safety be authorized to meet on Thursday, March 13, at 9:30 a.m. to conduct an oversight hearing on the implementation of the CMAQ and Conformity programs. This meeting will be held in SD 406.

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

SUBCOMMITTEE ON READINESS AND MANAGEMENT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Subcommittee on Readiness and Management Support of the Committee on Armed Services be authorized to meet during the session on the Senate on Thursday, March 13, 2003, at 2 p.m., in open session to receive testimony on the impacts of environmental laws on readiness and the related administration legislative proposal in review of the Defense Authorization Request for Fiscal Year 2004.

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

PRIVILEGE OF THE FLOOR

Mr. MCCONNELL. Mr. President, I ask unanimous consent that Bruce Artim and Dr. Mark Carlson from Senator HATCH's staff be granted floor privileges for the remainder of the session.

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

GILA RIVER INDIAN COMMUNITY JUDGMENT FUND DISTRIBUTION ACT OF 2003

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Item No. 30, S. 162.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 162) to provide for the use and distribution of certain funds awarded to the Gila River Pima-Maricopa Indian Community, and for other purposes.

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

Mr. BENNETT. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to this bill be printed in the RECORD.

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

The bill (S. 162) was read the third time and passed, as follows:

S. 162

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Gila River Indian Community Judgment Fund Distribution Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.

TITLE I—GILA RIVER JUDGMENT FUND DISTRIBUTION

Sec. 101. Distribution of judgment funds.
Sec. 102. Responsibility of Secretary; applicable law.

TITLE II—CONDITIONS RELATING TO COMMUNITY JUDGMENT FUND PLANS

Sec. 201. Plan for use and distribution of judgment funds awarded in Docket No. 228.
Sec. 202. Plan for use and distribution of judgment funds awarded in Docket No. 236–N.

TITLE III—EXPERT ASSISTANCE LOANS

Sec. 301. Waiver of repayment of expert assistance loans to Gila River Indian Community.

SEC. 2. FINDINGS.

Congress finds that—

(1) on August 8, 1951, the Gila River Indian Community filed a complaint before the Indian Claims Commission in Gila River Pima-Maricopa Indian Community v. United States, Docket No. 236, for the failure of the United States to carry out its obligation to protect the use by the Community of water from the Gila River and the Salt River in the State of Arizona;

(2) except for Docket Nos. 236–C and 236–D, which remain undistributed, all 14 original dockets under Docket No. 236 have been resolved and distributed;

(3) in Gila River Pima-Maricopa Indian Community v. United States, 29 Ind. Cl. Comm. 144 (1972), the Indian Claims Commission held that the United States, as trustee, was liable to the Community with respect to the claims made in Docket No. 236–C;

(4) in Gila River Pima-Maricopa Indian Community v. United States, 684 F.2d 852 (1982), the United States Claims Court held that the United States, as trustee, was liable to the Community with respect to the claims made in Docket No. 236–D;

(5) with the approval of the Community under Community Resolution GR–98–98, the Community entered into a settlement with the United States on April 27, 1999, for claims made under Dockets Nos. 236–C and 236–D for an aggregate total of $7,000,000;

(6) on May 3, 1999, the United States Court of Federal Claims ordered that a final judgment be entered in consolidated Dockets Nos. 236–C and 236–D for $7,000,000 in favor of the Community and against the United States;

(7)(A) on October 6, 1999, the Department of the Treasury certified the payment of $7,000,000, less attorney fees, to be deposited in a trust account on behalf of the Community; and

(B) that payment was deposited in a trust account managed by the Office of Trust Funds Management of the Department of the Interior; and

(8) in accordance with the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary is required to submit an Indian judgment fund use or distribution plan to Congress for approval.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADULT.—The term ''adult'' means an individual who—

(A) is 18 years of age or older as of the date on which the payment roll is approved by the Community; or

(B) will reach 18 years of age not later than 30 days after the date on which the payment roll is approved by the Community.

(2) COMMUNITY.—The term ''Community'' means the Gila River Indian Community.

(3) COMMUNITY-OWNED FUNDS.—The term ''Community-owned funds'' means—

(A) funds held in trust by the Secretary as of the date of enactment of this Act that may be made available to make payments under section 101; or

(B) revenues held by the Community that—

(i) are derived from trust resources; and

(ii) qualify for an exemption under section 7 or 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

(4) IIM ACCOUNT.—The term ''IIM account'' means an individual Indian money account.

(5) JUDGMENT FUNDS.—The term ''judgment funds'' means the aggregate amount awarded to the Community by the Court of Federal Claims in Dockets Nos. 236–C and 236–D.

(6) LEGALLY INCOMPETENT INDIVIDUAL.—The term ''legally incompetent individual'' means an individual who has been determined to be incapable of managing his or her own affairs by a court of competent jurisdiction.

(7) MINOR.—The term ''minor'' means an individual who is not an adult.

(8) PAYMENT ROLL.—The term ''payment roll'' means the list of eligible, enrolled members of the Community who are eligible to receive a payment under section 101(a), as prepared by the Community under section 101(b).

(9) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

TITLE I—GILA RIVER JUDGMENT FUND DISTRIBUTION

SEC. 101. DISTRIBUTION OF JUDGMENT FUNDS.

(a) PER CAPITA PAYMENTS.—Notwithstanding the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.) or any other provision of law (including any regulation promulgated or plan developed under such a law), the amounts paid in satisfaction of an award granted to the Gila River Indian Community in Dockets Nos. 236–C and 236–D before the United States Court of Federal Claims, less attorney fees and litigation expenses and including all accrued interest, shall be distributed in the form of per capita payments (in amounts as equal as practicable) to all eligible enrolled members of the Community.

(b) PREPARATION OF PAYMENT ROLL.—

(1) IN GENERAL.—The Community shall prepare a payment roll of eligible, enrolled members of the Community that are eligible to receive payments under this section in accordance with the criteria described in paragraph (2).

(2) CRITERIA.—

(A) INDIVIDUALS ELIGIBLE TO RECEIVE PAYMENTS.—Subject to subparagraph (B), the following individuals shall be eligible to be listed on the payment roll and eligible to receive a per capita payment under subsection (a):

(i) All enrolled Community members who are eligible to be listed on the per capita payment roll that was approved by the Secretary for the distribution of the funds awarded to the Community in Docket No. 236–N (including any individual who was inadvertently omitted from that roll).

(ii) All enrolled Community members who are living on the date of enactment of this Act.

(iii) All enrolled Community members who died—

(I) after the effective date of the payment plan for Docket No. 236–N; but

(II) on or before the date of enactment of this Act.

(B) INDIVIDUALS INELIGIBLE TO RECEIVE PAYMENTS.—The following individuals shall be ineligible to be listed on the payment roll and ineligible to receive a per capita payment under subsection (a):

(i) Any individual who, before the date on which the Community approves the payment roll, relinquished membership in the Community.

(ii) Any minor who relinquishes membership in the Community, or whose parent or legal guardian relinquishes membership on behalf of the minor, before the date on which the minor reaches 18 years of age.

(iii) Any individual who is disenrolled by the Community for just cause (such as dual enrollment or failure to meet the eligibility requirements for enrollment).

(iv) Any individual who is determined or certified by the Secretary to be eligible to receive a per capita payment of funds relating to a judgment—

(I) awarded to another community, Indian tribe, or tribal entity; and

(II) appropriated on or before the date of enactment of this Act.

(v) Any individual who is not enrolled as a member of the Community on or before the date that is 90 days after the date of enactment of this Act.

(c) NOTICE TO SECRETARY.—On approval by the Community of the payment roll, the Community shall submit to the Secretary a notice that indicates the total number of individuals eligible to share in the per capita distribution under subsection (a), as expressed in subdivisions that reflect—

(1) the number of shares that are attributable to eligible living adult Community members; and

(2) the number of shares that are attributable to deceased individuals, legally incompetent individuals, and minors.

(d) INFORMATION PROVIDED TO SECRETARY.—The Community shall provide to the Secretary enrollment information necessary to allow the Secretary to establish—

(1) estate accounts for deceased individuals described in subsection (c)(2); and

(2) IIM accounts for legally incompetent individuals and minors described in subsection (c)(2).

(e) DISBURSEMENT OF FUNDS.—

(1) IN GENERAL.—Not later than 30 days after the date on which the payment roll is approved by the Community and the Community has reconciled the number of shares that belong in each payment subdivision described in subsection (c), the Secretary shall disburse to the Community the funds necessary to make the per capita distribution under subsection (a) to eligible living adult members of the Community described in subsection (c)(1).

(2) ADMINISTRATION AND DISTRIBUTION.—On disbursement of the funds under paragraph (1), the Community shall bear sole responsibility for administration and distribution of the funds.

(f) SHARES OF DECEASED INDIVIDUALS.—

(1) IN GENERAL.—The Secretary, in accordance with regulations promulgated by the Secretary and in effect as of the date of enactment of this Act, shall distribute to the appropriate heirs and legatees of deceased individuals described in subsection (c)(2) the per capita shares of those deceased individuals.

(2) ABSENCE OF HEIRS AND LEGATEES.—If the Secretary and the Community make a final determination that a deceased individual described in subsection (c)(2) has no heirs or legatees, the per capita share of the deceased individual and the interest earned on that share shall—

(A) revert to the Community; and

(B) be deposited into the general fund of the Community.

(g) SHARES OF LEGALLY INCOMPETENT INDIVIDUALS.—

(1) IN GENERAL.—The Secretary shall deposit the shares of legally incompetent individuals described in subsection (c)(2) in supervised IIM accounts.

(2) ADMINISTRATION.—The IIM accounts described in paragraph (1) shall be administered in accordance with regulations and procedures established by the Secretary and in effect as of the date of enactment of this Act.

(h) SHARES OF MINORS.—

(1) IN GENERAL.—The Secretary shall deposit the shares of minors described in subsection (c)(2) in supervised IIM accounts.

(2) ADMINISTRATION.—

(A) IN GENERAL.—The Secretary shall hold the per capita share of a minor described in subsection (c)(2) in trust until such date as the minor reaches 18 years of age.

(B) NONAPPLICABLE LAW.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held by the Secretary under this Act.

(C) DISBURSEMENT.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in subsection (c)(2) until such date as the minor reaches 18 years of age.

(i) PAYMENT OF ELIGIBLE INDIVIDUALS NOT LISTED ON PAYMENT ROLL.—

(1) IN GENERAL.—An individual who is not listed on the payment roll, but is eligible to receive a payment under this Act, as determined by the Community, may be paid from any remaining judgment funds after the date on which—

(A) the Community makes the per capita distribution under subsection (a); and

(B) all appropriate IIM accounts are established under subsections (g) and (h).

(2) INSUFFICIENT FUNDS.—If insufficient judgment funds remain to cover the cost of a payment described in paragraph (1), the Community may use Community-owned funds to make the payment.

(3) MINORS, LEGALLY INCOMPETENT INDIVIDUALS, AND DECEASED INDIVIDUALS.—In a case in which a payment described in paragraph (2) is to be made to a minor, a legally incompetent individual, or a deceased individual, the Secretary—

(A) is authorized to accept and deposit funds from the payment in an IIM account or estate account established for the minor, legally incompetent individual, or deceased individual; and

(B) shall invest those funds in accordance with applicable law.

(j) USE OF RESIDUAL FUNDS.—On request by the governing body of the Community to the Secretary, and after passage by the governing body of the Community of a tribal council resolution affirming the intention of the governing body to have judgment funds disbursed to, and deposited in the general fund of, the Community, any judgment funds remaining after the date on which the Community completes the per capita distribution under subsection (a) and makes any appropriate payments under subsection (i) shall be disbursed to, and deposited in the general fund of, the Community.

(k) REVERSION OF PER-CAPITA SHARES TO TRIBAL OWNERSHIP.—

(1) IN GENERAL.—In accordance with the first section of Public Law 87–283 (25 U.S.C. 164), the share for an individual eligible to receive a per-capita share under subsection (a) that is held in trust by the Secretary, and any interest earned on that share, shall be restored to Community ownership if, for any reason—

(A) subject to subsection (i), the share cannot be paid to the individual entitled to receive the share; and

(B) the share remains unclaimed for the 6-year period beginning on the date on which the individual became eligible to receive the share.

(2) REQUEST BY COMMUNITY.—In accordance with subsection (j), the Community may request that unclaimed funds described in paragraph (1)(B) be disbursed to, and deposited in the general fund of, the Community.

SEC. 102. RESPONSIBILITY OF SECRETARY; APPLICABLE LAW.

(a) RESPONSIBILITY FOR FUNDS.—After the date on which funds are disbursed to the Community under section 101(e)(1), the United States and the Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the funds disbursed.

(b) DECEASED AND LEGALLY INCOMPETENT INDIVIDUALS.—Funds subject to subsections (f) and (g) of section 101 shall continue to be held in trust by the Secretary until the date on which those funds are disbursed under this Act.

(c) APPLICABILITY OF OTHER LAW.—Except as otherwise provided in this Act, all funds distributed under this Act shall be subject to sections 7 and 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

TITLE II—CONDITIONS RELATING TO COMMUNITY JUDGMENT FUND PLANS

SEC. 201. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 228.

(a) DEFINITION OF PLAN.—In this section, the term ''plan'' means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 228 of the United States Claims Court (52 Fed. Reg. 6887 (March 5, 1987)), as modified in accordance with Public Law 99–493 (100 Stat. 1241).

(b) CONDITIONS.—Notwithstanding any other provision of law, the Community shall modify the plan to include the following conditions with respect to funds distributed under the plan:

(1) APPLICABILITY OF OTHER LAW RELATING TO MINORS.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of this Act, by the Secretary.

(2) SHARE OF MINORS IN TRUST.—The Secretary shall hold a per capita share of a minor described in paragraph (1) in trust until such date as the minor reaches 18 years of age.

(3) DISBURSAL OF FUNDS FOR MINORS.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in paragraph (1) until such date as the minor reaches 18 years of age.

(4) USE OF REMAINING JUDGMENT FUNDS.—On request by the governing body of the Community, as manifested by the appropriate tribal council resolution, any judgment funds remaining after the date of completion of the per capita distribution under section 101(a) shall be disbursed to, and deposited in the general fund of, the Community.

SEC. 202. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 236–N.

(a) DEFINITION OF PLAN.—In this section, the term ''plan'' means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 236–N of the United States Court of Federal Claims (59 Fed. Reg. 31092 (June 16, 1994)).

(b) CONDITIONS.—

(1) PER CAPITA ASPECT.—Notwithstanding any other provision of law, the Community shall modify the last sentence of the paragraph under the heading ''Per Capita Aspect'' in the plan to read as follows: ''Upon request from the Community, any residual principal and interest funds remaining after the Community has declared the per capita distribution complete shall be disbursed to, and deposited in the general fund of, the Community.''.

(2) GENERAL PROVISIONS.—Notwithstanding any other provision of law, the Community shall—

(A) modify the third sentence of the first paragraph under the heading ''General Provisions'' of the plan to strike the word ''minors''; and

(B) insert between the first and second paragraphs under that heading the following:

''Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of the Gila River Indian Community Judgment Fund Distribution Act of 2003, by the Secretary. The Secretary shall hold a per capita share of a minor in trust until such date as the minor reaches 18 years of age. No judgment funds, or any interest earned on judgment funds, shall be disbursed from the account of a minor until such date as the minor reaches 18 years of age.''.

TITLE III—EXPERT ASSISTANCE LOANS

SEC. 301. WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS TO GILA RIVER INDIAN COMMUNITY.

Notwithstanding any other provision of law—

(1) the balance of all outstanding expert assistance loans made to the Community under Public Law 88–168 (77 Stat. 301) and relating to Gila River Indian Community v. United States (United States Court of Federal Claims Docket Nos. 228 and 236 and associated subdockets) are canceled; and

(2) the Secretary shall take such action as is necessary—

(A) to document the cancellation of loans under paragraph (1); and

(B) to release the Community from any liability associated with those loans.

ZUNI INDIAN TRIBE WATER RIGHTS SETTLEMENT ACT OF 2003

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of Calendar Item No. 31, S. 222.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 222) to approve the settlement of water rights claims of the Zuni Indian Tribe in Apache County, Arizona, and for other purposes.

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

Mr. BENNETT. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 222) was read the third time and passed, as follows:

S. 222

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Zuni Indian Tribe Water Rights Settlement Act of 2003''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) It is the policy of the United States, in keeping with its trust responsibility to Indian tribes, to promote Indian self-determination, religious freedom, political and cultural integrity, and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation.

(2) Quantification of rights to water and development of facilities needed to use tribal water supplies effectively is essential to the development of viable Indian reservation communities, particularly in arid western States.

(3) On August 28, 1984, and by actions subsequent thereto, the United States established a reservation for the Zuni Indian Tribe in Apache County, Arizona upstream from the confluence of the Little Colorado and Zuni Rivers for long-standing religious and sustenance activities.

(4) The water rights of all water users in the Little Colorado River basin in Arizona have been in litigation since 1979, in the Superior Court of the State of Arizona in and for the County of Apache in Civil No. 6417, In re The General Adjudication of All Rights to Use Water in the Little Colorado River System and Source.

(5) Recognizing that the final resolution of the Zuni Indian Tribe's water claims through litigation will take many years and entail great expense to all parties, continue to limit the Tribe's access to water with economic, social, and cultural consequences to the Tribe, prolong uncertainty as to the availability of water supplies, and seriously impair the long-term economic planning and development of all parties, the Tribe and neighboring non-Indians have sought to settle their disputes to water and reduce the burdens of litigation.

(6) After more than 4 years of negotiations, which included participation by representatives of the United States, the Zuni Indian Tribe, the State of Arizona, and neighboring non-Indian communities in the Little Colorado River basin, the parties have entered into a Settlement Agreement to resolve all of the Zuni Indian Tribe's water rights claims and to assist the Tribe in acquiring surface water rights, to provide for the Tribe's use of groundwater, and to provide for the wetland restoration of the Tribe's lands in Arizona.

(7) To facilitate the wetland restoration project contemplated under the Settlement Agreement, the Zuni Indian Tribe acquired certain lands along the Little Colorado River near or adjacent to its Reservation that are important for the success of the project and will likely acquire a small amount of similarly situated additional lands. The parties have agreed not to object to the United States taking title to certain of these lands into trust status; other lands shall remain in tribal fee status. The parties have worked extensively to resolve various governmental concerns regarding use of and control over those lands, and to provide a successful model for these types of situations, the State, local, and tribal governments intend to enter into an Intergovernmental Agreement that addresses the parties' governmental concerns.

(8) Pursuant to the Settlement Agreement, the neighboring non-Indian entities will assist in the Tribe's acquisition of surface water rights and development of groundwater, store surface water supplies for the Zuni Indian Tribe, and make substantial additional contributions to carry out the Settlement Agreement's provisions.

(9) To advance the goals of Federal Indian policy and consistent with the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Settlement Agreement and contribute funds for the rehabilitation of religious riparian areas and other purposes to enable the Tribe to use its water entitlement in developing its Reservation.

(b) PURPOSES.—The purposes of this Act are—

(1) to approve, ratify, and confirm the Settlement Agreement entered into by the Tribe and neighboring non-Indians;

(2) to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement and related waivers;

(3) to authorize and direct the United States to take legal title and hold such title to certain lands in trust for the benefit of the Zuni Indian Tribe; and

(4) to authorize the actions, agreements, and appropriations as provided for in the Settlement Agreement and this Act.

SEC. 3. DEFINITIONS.

In this Act:

(1) EASTERN LCR BASIN.—The term ''Eastern LCR basin'' means the portion of the Little Colorado River basin in Arizona upstream of the confluence of Silver Creek and the Little Colorado River, as identified on Exhibit 2.10 of the Settlement Agreement.

(2) FUND.—The term ''Fund'' means the Zuni Indian Tribe Water Rights Development Fund established by section 6(a).

(3) INTERGOVERNMENTAL AGREEMENT.—The term ''Intergovernmental Agreement'' means the intergovernmental agreement between the Zuni Indian Tribe, Apache County, Arizona and the State of Arizona described in article 6 of the Settlement Agreement.

(4) PUMPING PROTECTION AGREEMENT.—The term ''Pumping Protection Agreement'' means an agreement, described in article 5 of the Settlement Agreement, between the Zuni Tribe, the United States on behalf of the Tribe, and a local landowner under which the landowner agrees to limit pumping of groundwater on his lands in exchange for a waiver of certain claims by the Zuni Tribe and the United States on behalf of the Tribe.

(5) RESERVATION; ZUNI HEAVEN RESERVATION.—The term ''Reservation'' or ''Zuni Heaven Reservation'', also referred to as ''Kolhu:wala:wa'', means the following property in Apache County, Arizona: Sections 26, 27, 28, 33, 34, and 35, Township 15 North, Range 26 East, Gila and Salt River Base and Meridian; and Sections 2, 3, 4, 9, 10, 11, 13, 14, 15, 16, 23, 26, and 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(7) SETTLEMENT AGREEMENT.—The term ''Settlement Agreement'' means that agreement dated June 7, 2002, together with all exhibits thereto. The parties to the Settlement Agreement include the Zuni Indian Tribe and its members, the United States on behalf of the Tribe and its members, the State of Arizona, the Arizona Game and Fish Commission, the Arizona State Land Department, the Arizona State Parks Board, the St. Johns Irrigation and Ditch Co., the Lyman Water Co., the Round Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Tucson Electric Power Company, the City of St. Johns, the Town of Eagar, and the Town of Springerville.

(8) SRP.—The term ''SRP'' means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona.

(9) TEP.—The term ''TEP'' means Tucson Electric Power Company.

(10) TRIBE, ZUNI TRIBE, OR ZUNI INDIAN TRIBE.—The terms ''Tribe'', ''Zuni Tribe'', or ''Zuni Indian Tribe'' means the body politic and federally recognized Indian nation, and its members.

(11) ZUNI LANDS.—The term ''Zuni Lands'' means all the following lands, in the State of Arizona, that, on the effective date described in section 9(a), are—

(A) within the Zuni Heaven Reservation;

(B) held in trust by the United States for the benefit of the Tribe or its members; or

(C) held in fee within the Little Colorado River basin by or for the Tribe.

SEC. 4. AUTHORIZATION, RATIFICATIONS, AND CONFIRMATIONS.

(a) SETTLEMENT AGREEMENT.—To the extent the Settlement Agreement does not conflict with the provisions of this Act, such Settlement Agreement is hereby approved, ratified, confirmed, and declared to be valid. The Secretary is authorized and directed to execute the Settlement Agreement and any amendments approved by the parties necessary to make the Settlement Agreement consistent with this Act. The Secretary is further authorized to perform any actions required by the Settlement Agreement and any amendments to the Settlement Agreement that may be mutually agreed upon by the parties to the Settlement Agreement.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Zuni Indian Tribe Water Rights Development Fund established in section 6(a), $19,250,000, to be allocated by the Secretary as follows:

(1) $3,500,000 for fiscal year 2004, to be used for the acquisition of water rights and associated lands, and other activities carried out, by the Zuni Tribe to facilitate the enforceability of the Settlement Agreement, including the acquisition of at least 2,350 acre-feet per year of water rights before the deadline described in section 9(b).

(2) $15,750,000, of which $5,250,000 shall be made available for each of fiscal years 2004, 2005, and 2006, to take actions necessary to restore, rehabilitate, and maintain the Zuni Heaven Reservation, including the Sacred Lake, wetlands, and riparian areas as provided for in the Settlement Agreement and under this Act.

(c) OTHER AGREEMENTS.—Except as provided in section 9, the following 3 separate agreements, together with all amendments thereto, are approved, ratified, confirmed, and declared to be valid:

(1) The agreement between SRP, the Zuni Tribe, and the United States on behalf of the Tribe, dated June 7, 2002.

(2) The agreement between TEP, the Zuni Tribe, and the United States on behalf of the Tribe, dated June 7, 2002.

(3) The agreement between the Arizona State Land Department, the Zuni Tribe, and the United States on behalf of the Tribe, dated June 7, 2002.

SEC. 5. TRUST LANDS.

(a) NEW TRUST LANDS.—Upon satisfaction of the conditions in paragraph 6.2 of the Settlement Agreement, and after the requirements of section 9(a) have been met, the Secretary shall take the legal title of the following lands into trust for the benefit of the Zuni Tribe:

(1) In T. 14 N., R. 27 E., Gila and Salt River Base and Meridian:

(A) Section 13: SW 1/4, S 1/2 NE 1/4 SE 1/4, W 1/2 SE 1/4, SE 1/4 SE 1/4;

(B) Section 23: N 1/2, N 1/2 SW 1/4, N 1/2 SE 1/4, SE 1/4 SE 1/4, N 1/2 SW 1/4 SE 1/4, SE 1/4 SW 1/4 SE 1/4;

(C) Section 24: NW 1/4, SW 1/4, S 1/2 NE 1/4, N 1/2 SE 1/4; and

(D) Section 25: N 1/2 NE 1/4, SE 1/4 NE 1/4, NE 1/4 SE 1/4.

(2) In T. 14 N., R. 28 E., Gila and Salt River Base and Meridian:

(A) Section 19: W 1/2 E 1/2 NW 1/4, W 1/2 NW 1/4, W 1/2 NE 1/4 SW 1/4, NW 1/4 SW 1/4, S 1/2 SW 1/4;

(B) Section 29: SW 1/4 SW 1/4 NW 1/4, NW 1/4 NW 1/4 SW 1/4, S 1/2 N 1/2 SW 1/4, S 1/2 SW 1/4, S 1/2 NW 1/4 SE 1/4, SW 1/4 SE 1/4;

(C) Section 30: W 1/2 , SE 1/4; and

(D) Section 31: N 1/2 NE 1/4, N 1/2 S 1/2 NE 1/4, S 1/2 SE 1/4 NE 1/4, NW 1/4, E 1/2 SW 1/4, N 1/2 NW 1/4 SW 1/4, SE 1/4 NW 1/4 SW 1/4, E 1/2 SW 1/4 SW 1/4, SW 1/4 SW 1/4 SW 1/4.

(b) FUTURE TRUST LANDS.—Upon satisfaction of the conditions in paragraph 6.2 of the Settlement Agreement, after the requirements of section 9(a) have been met, and upon acquisition by the Zuni Tribe, the Secretary shall take the legal title of the following lands into trust for the benefit of the Zuni Tribe:

(1) In T. 14 N., R. 26E., Gila and Salt River Base and Meridian: Section 25: N 1/2 NE 1/4, N 1/2 S 1/2 NE 1/4, NW 1/4, N 1/2 NE 1/4 SW 1/4, NE 1/4 NW 1/4 SW 1/4.

(2) In T. 14 N., R. 27 E., Gila and Salt River Base and Meridian:

(A) Section 14: SE 1/4 SW 1/4, SE 1/4;

(B) Section 16: S 1/2 SW 1/4 SE 1/4;

(C) Section 19: S 1/2 SE 1/4 SE 1/4;

(D) Section 20: S 1/2 SW 1/4 SW 1/4, E 1/2 SE 1/4 SE 1/4;

(E) Section 21: N 1/2 NE 1/4, E 1/2 NE 1/4 NW 1/4, SE 1/4 NW 1/4, W 1/2 SW 1/4 NE 1/4, N 1/2 NE 1/4 SW 1/4, SW 1/4 NE 1/4 SW 1/4, E 1/2 NW 1/4 SW 1/4, SW 1/4 NW 1/4 SW 1/4, W 1/2 SW 1/4 SW 1/4;

(F) Section 22: SW 1/4 NE 1/4 NE 1/4, NW 1/4 NE 1/4, S 1/2 NE 1/4, N 1/2 NW 1/4, SE 1/4 NW1/4, N 1/2 SW 1/4 NW 1/4, SE 1/4 SW 1/4 NW 1/4, N 1/2 N 1/2 SE 1/4, N 1/2 NE 1/4 SW 1/4;

(G) Section 24: N 1/2 NE 1/4, S 1/2 SE 1/4;

(H) Section 29: N 1/2 N 1/2;

(I) Section 30: N 1/2 N 1/2, N 1/2 S 1/2 NW 1/4, N 1/2 SW 1/4 NE 1/4; and

(J) Section 36: SE 1/4 SE 1/4 NE 1/4, NE 1/4 NE 1/4 SE 1/4.

(3) In T. 14 N., R. 28 E., Gila and Salt River Base and Meridian:

(A) Section 18: S 1/2 NE 1/4, NE 1/4 SW 1/4, NE 1/4 NW 1/4 SW 1/4, S 1/2 NW 1/4 SW 1/4, S 1/2 SW 1/4, N 1/2 SE 1/4, N 1/2 SW 1/4 SE 1/4, SE 1/4 SE 1/4;

(B) Section 30: S 1/2 NE 1/4, W 1/2 NW 1/4 NE 1/4; and

(C) Section 32: N 1/2 NW 1/4 NE 1/4, SW 1/4 NE 1/4, S 1/2 SE 1/4 NE 1/4, NW 1/4, SW 1/4, N 1/2 SE 1/4, SW 1/4 SE 1/4, N 1/2 SE 1/4 SE 1/4, SW 1/4 SE 1/4 SE 1/4.

(c) NEW RESERVATION LANDS.—Upon satisfaction of the conditions in paragraph 6.2 of the Settlement Agreement, after the requirements of section 9(a) have been met, and upon acquisition by the Zuni Tribe, the Secretary shall take the legal title of the following lands in Arizona into trust for the benefit of the Zuni Tribe and make such lands part of the Zuni Indian Tribe Reservation in Arizona: Section 34, T. 14 N., R. 26 E., Gila and Salt River Base and Meridian.

(d) LIMITATION ON SECRETARIAL DISCRETION.—The Secretary shall have no discretion regarding the acquisitions described in subsections (a), (b), and (c).

(e) LANDS REMAINING IN FEE STATUS.—The Zuni Tribe may seek to have the legal title to additional lands in Arizona, other than the lands described in subsection (a), (b), or (c), taken into trust by the United States for the benefit of the Zuni Indian Tribe pursuant only to an Act of Congress enacted after the date of enactment of this Act specifically authorizing the transfer for the benefit of the Zuni Tribe.

(f) FINAL AGENCY ACTION.—Any written certification by the Secretary under subparagraph 6.2.B of the Settlement Agreement constitutes final agency action under the Administrative Procedure Act and is reviewable as provided for under chapter 7 of title 5, United States Code.

(g) NO FEDERAL WATER RIGHTS.—Lands taken into trust pursuant to subsection (a), (b), or (c) shall not have Federal reserved rights to surface water or groundwater.

(h) STATE WATER RIGHTS.—The water rights and uses for the lands taken into trust pursuant to subsection (a) or (c) must be determined under subparagraph 4.1.A and article 5 of the Settlement Agreement. With respect to the lands taken into trust pursuant to subsection (b), the Zuni Tribe retains any rights or claims to water associated with these lands under State law, subject to the terms of the Settlement Agreement.

(i) FORFEITURE AND ABANDONMENT.—Water rights that are appurtenant to lands taken into trust pursuant to subsection (a), (b), or (c) shall not be subject to forfeiture and abandonment.

(j) AD VALOREM TAXES.—With respect to lands that are taken into trust pursuant to subsection (a) or (b), the Zuni Tribe shall make payments in lieu of all current and future State, county, and local ad valorem property taxes that would otherwise be applicable to those lands if they were not in trust.

(k) AUTHORITY OF TRIBE.—For purposes of complying with this section and article 6 of the Settlement Agreement, the Tribe is authorized to enter into—

(1) the Intergovernmental Agreement between the Zuni Tribe, Apache County, Arizona, and the State of Arizona; and

(2) any intergovernmental agreement required to be entered into by the Tribe under the terms of the Intergovernmental Agreement.

(l) FEDERAL ACKNOWLEDGEMENT OF INTERGOVERNMENTAL AGREEMENTS.—

(1) IN GENERAL.—The Secretary shall acknowledge the terms of any intergovernmental agreement entered into by the Tribe under this section.

(2) NO ABROGATION.—The Secretary shall not seek to abrogate, in any administrative or judicial action, the terms of any intergovernmental agreement that are consistent with subparagraph 6.2.A of the Settlement Agreement and this Act.

(3) REMOVAL.—

(A) IN GENERAL.—Except as provided in subparagraph (B), if a judicial action is commenced during a dispute over any intergovernmental agreement entered into under this section, and the United States is allowed to intervene in such action, the United States shall not remove such action to the Federal courts.

(B) EXCEPTION.—The United States may seek removal if—

(i) the action concerns the Secretary's decision regarding the issuance of rights-of-way under section 8(c);

(ii) the action concerns the authority of a Federal agency to administer programs or the issuance of a permit under—

(I) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(II) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(III) the Clean Air Act (42 U.S.C. 7401 et seq.); or

(IV) any other Federal law specifically addressed in intergovernmental agreements; or

(iii) the intergovernmental agreement is inconsistent with a Federal law for the protection of civil rights, public health, or welfare.

(m) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to affect the application of the Act of May 25, 1918 (25 U.S.C. 211) within the State of Arizona.

(n) DISCLAIMER.—Nothing in this section repeals, modifies, amends, changes, or otherwise affects the Secretary's obligations to the Zuni Tribe pursuant to the Act entitled ''An Act to convey certain lands to the Zuni Indian Tribe for religious purposes'' approved August 28, 1984 (Public Law 98–408; 98 Stat. 1533) (and as amended by the Zuni Land Conservation Act of 1990 (Public Law 101–486; 104 Stat. 1174)).

SEC. 6. DEVELOPMENT FUND.

(a) ESTABLISHMENT OF THE FUND.—

(1) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the ''Zuni Indian Tribe Water Rights Development Fund'', to be managed and invested by the Secretary, consisting of—

(A) the amounts authorized to be appropriated in section 4(b); and

(B) the appropriation to be contributed by the State of Arizona pursuant to paragraph 7.6 of the Settlement Agreement.

(2) ADDITIONAL DEPOSITS.—The Secretary shall deposit in the Fund any other monies paid to the Secretary on behalf of the Zuni Tribe pursuant to the Settlement Agreement.

(b) MANAGEMENT OF THE FUND.—The Secretary shall manage the Fund, make investments from the Fund, and make monies available from the Fund for distribution to the Zuni Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) (referred to in this section as the ''Trust Fund Reform Act''), this Act, and the Settlement Agreement.

(c) INVESTMENT OF THE FUND.—The Secretary shall invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (21 Stat. 70, ch. 41, 25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

(3) subsection (b).

(d) AVAILABILITY OF AMOUNTS FROM THE FUND.—The funds authorized to be appropriated pursuant to section 3104(b)(2) and funds contributed by the State of Arizona pursuant to paragraph 7.6 of the Settlement Agreement shall be available for expenditure or withdrawal only after the requirements of section 9(a) have been met.

(e) EXPENDITURES AND WITHDRAWAL.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Zuni Tribe may withdraw all or part of the Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) REQUIREMENTS.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Zuni Tribe spend any funds in accordance with the purposes described in section 4(b).

(2) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any monies withdrawn from the Fund under the plan are used in accordance with this Act.

(3) LIABILITY.—If the Zuni Tribe exercises the right to withdraw monies from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

(4) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Zuni Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the funds made available under this Act that the Zuni Tribe does not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, funds of the Zuni Tribe remaining in the Fund will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act.

(5) ANNUAL REPORT.—The Zuni Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(f) FUNDS FOR ACQUISITION OF WATER RIGHTS.—

(1) WATER RIGHTS ACQUISITIONS.—Notwithstanding subsection (e), the funds authorized to be appropriated pursuant to section 4(b)(1)—

(A) shall be available upon appropriation for use in accordance with section 4(b)(1); and

(B) shall be distributed by the Secretary to the Zuni Tribe on receipt by the Secretary from the Zuni Tribe of a written notice and a tribal council resolution that describe the purposes for which the funds will be used.

(2) RIGHT TO SET OFF.—In the event the requirements of section 9(a) have not been met and the Settlement Agreement has become null and void under section 9(b), the United States shall be entitled to set off any funds expended or withdrawn from the amount appropriated pursuant to section 4(b)(1), together with any interest accrued, against any claims asserted by the Zuni Tribe against the United States relating to water rights at the Zuni Heaven Reservation.

(3) WATER RIGHTS.—Any water rights acquired with funds described in paragraph (1) shall be credited against any water rights secured by the Zuni Tribe, or the United States on behalf of the Zuni Tribe, for the Zuni Heaven Reservation in the Little Colorado River General Stream Adjudication or in any future settlement of claims for those water rights.

(g) NO PER CAPITA DISTRIBUTIONS.—No part of the Fund shall be distributed on a per capita basis to members of the Zuni Tribe.

SEC. 7. CLAIMS EXTINGUISHMENT; WAIVERS AND RELEASES.

(a) FULL SATISFACTION OF MEMBERS' CLAIMS.—

(1) IN GENERAL.—The benefits realized by the Tribe and its members under this Act, including retention of any claims and rights, shall constitute full and complete satisfaction of all members' claims for—

(A) water rights under Federal, State, and other laws (including claims for water rights in groundwater, surface water, and effluent) for Zuni Lands from time immemorial through the effective date described in section 9(a) and any time thereafter; and

(B) injuries to water rights under Federal, State, and other laws (including claims for water rights in groundwater, surface water, and effluent, claims for damages for deprivation of water rights, and claims for changes to underground water table levels) for Zuni Lands from time immemorial through the effective date described in section 9(a).

(2) NO RECOGNITION OR ESTABLISHMENT OF INDIVIDUAL WATER RIGHT.—Nothing in this Act recognizes or establishes any right of a member of the Tribe to water on the Reservation.

(b) TRIBE AND UNITED STATES AUTHORIZATION AND WATER QUANTITY WAIVERS.—The Tribe, on behalf of itself and its members and the Secretary on behalf of the United States in its capacity as trustee for the Zuni Tribe and its members, are authorized, as part of the performance of their obligations under the Settlement Agreement, to execute a waiver and release, subject to paragraph 11.4 of the Settlement Agreement, for claims against the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation, under Federal, State, or other law for any and all—

(1) past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands from time immemorial through the effective date described in section 9(a) and any time thereafter, except for claims within the Zuni Protection Area as provided in article 5 of the Settlement Agreement;

(2) past and present claims for injuries to water rights (including water rights in groundwater, surface water, and effluent and including claims for damages for deprivation of water rights and any claims for changes to underground water table levels) for Zuni Lands from time immemorial through the effective date described in section 9(a); and

(3) past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and including any claims for damages for deprivation of water rights and any claims for changes to underground water table levels) from time immemorial through the effective date described in section 9(a), and any time thereafter, for lands outside of Zuni Lands but located within the Little Colorado River basin in Arizona, based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors.

(c) TRIBAL WAIVERS AGAINST THE UNITED STATES.—The Tribe is authorized, as part of the performance of its obligations under the Settlement Agreement, to execute a waiver and release, subject to paragraphs 11.4 and 11.6 of the Settlement Agreement, for claims against the United States (acting in its capacity as trustee for the Zuni Tribe or its members, or otherwise acting on behalf of the Zuni Tribe or its members), including any agencies, officials, or employees thereof, for any and all—

(1) past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands, from time immemorial through the effective date described in section 9(a) and any time thereafter;

(2) past and present claims for injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) for Zuni Lands from time immemorial through the effective date described in section 9(a);

(3) past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) from time immemorial through the effective date described in section 9(a), and any time thereafter, for lands outside of Zuni Lands but located within the Little Colorado River basin in Arizona, based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors;

(4) past and present claims for failure to protect, acquire, or develop water rights of, or failure to protect water quality for, the Zuni Tribe within the Little Colorado River basin in Arizona from time immemorial through the effective date described in section 9(a); and

(5) claims for breach of the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of the Settlement Agreement or this Act.

(d) TRIBAL WAIVER OF WATER QUALITY CLAIMS AND INTERFERENCE WITH TRUST CLAIMS.—

(1) CLAIMS AGAINST THE STATE AND OTHERS.—

(A) INTERFERENCE WITH TRUST RESPONSIBILITY.—The Tribe, on behalf of itself and its members, is authorized, as part of the performance of its obligations under the Settlement Agreement, to waive and release all claims against the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation under Federal, State, or other law, for claims of interference with the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of the Settlement Agreement or this Act.

(B) INJURY OR THREAT OF INJURY TO WATER QUALITY.—The Tribe, on behalf of itself and its members, is authorized, as part of the performance of its obligations under the Settlement Agreement, to waive and release, subject to paragraphs 11.4, 11.6, and 11.7 of the Settlement Agreement, all claims against the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation under Federal, State, or other law, for—

(i) any and all past and present claims, including natural resource damage claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), or any other applicable statute, for injury to water quality accruing from time immemorial through the effective date described in section 9(a), for lands within the Little Colorado River basin in the State of Arizona; and

(ii) any and all future claims, including natural resource damage claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), or any other applicable statute, for injury or threat of injury to water quality, accruing after the effective date described in section 9(a), for any lands within the Eastern LCR basin caused by—

(I) the lawful diversion or use of surface water;

(II) the lawful withdrawal or use of underground water, except within the Zuni Protection Area, as provided in article 5 of the Settlement Agreement;

(III) the Parties' performance of any obligations under the Settlement Agreement;

(IV) the discharge of oil associated with routine physical or mechanical maintenance

of wells or diversion structures not inconsistent with applicable law;

(V) the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or

(VI) any combination of the causes described in subclauses (I) through (V).

(2) CLAIMS OF THE UNITED STATES.—The Tribe, on behalf of itself and its members, is authorized to waive its right to request that the United States bring—

(A) any claims for injuries to water quality under the natural resource damage provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) or any other applicable statute, for lands within the Little Colorado River Basin in the State of Arizona, accruing from time immemorial through the effective date described in section 9(a); and

(B) any future claims for injuries or threat of injury to water quality under the natural resource damage provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), or any other applicable statute, accruing after the effective date described in section 9(a), for any lands within the Eastern LCR basin, caused by—

(i) the lawful diversion or use of surface water;

(ii) the lawful withdrawal or use of underground water, except within the Zuni Protection Area, as provided in article 5 of the Settlement Agreement;

(iii) the Parties' performance of any obligations under the Settlement Agreement;

(iv) the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;

(v) the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or

(vi) any combination of the causes described in clauses (i) through (v).

(3) LIMITATIONS.—Notwithstanding the authorization for the Tribe's waiver of future water quality claims in paragraph (1)(B)(ii) and the waiver in paragraph (2)(B), the Tribe, on behalf of itself and its members, retains any statutory claims for injury or threat of injury to water quality under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), as described in subparagraph 11.4(D)(3) and (4) of the Settlement Agreement, that accrue at least 30 years after the effective date described in section 9(a).

(e) WAIVER OF UNITED STATES WATER QUALITY CLAIMS RELATED TO SETTLEMENT LAND AND WATER.—

(1) PAST AND PRESENT CLAIMS.—As part of the performance of its obligations under the Settlement Agreement, the United States waives and releases, subject to the retentions in paragraphs 11.4, 11.6 and 11.7 of the Settlement Agreement, all claims against the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation for—

(A) all past and present common law claims accruing from time immemorial through the effective date described in section 9(a) arising from or relating to water quality in which the injury asserted is to the Tribe's interest in water, trust land, and natural resources in the Little Colorado River basin in the State of Arizona; and

(B) all past and present natural resource damage claims accruing through the effective date described in section 9(a) arising from or relating to water quality in which the claim is based on injury to natural resources or threat to natural resources in the Little Colorado River basin in Arizona, only for those cases in which the United States, through the Secretary or other designated Federal official, would act on behalf of the Tribe as a natural resource trustee pursuant to the National Contingency Plan, as set forth, as of the date of enactment of this Act, in section 300.600(b)(2) of title 40, Code of Federal Regulations.

(2) FUTURE CLAIMS.—As part of the performance of its obligations under the Settlement Agreement, the United States waives and releases, subject to the retentions in paragraphs 11.4, 11.6 and 11.7 of the Settlement Agreement, the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation for—

(A) all future common law claims arising from or relating to water quality in which the injury or threat of injury asserted is to the Tribe's interest in water, trust land, and natural resources in the Eastern LCR basin in Arizona accruing after the effective date described in section 9(a) caused by—

(i) the lawful diversion or use of surface water;

(ii) the lawful withdrawal or use of underground water, except within the Zuni Protection Area, as provided in article 5 of the Settlement Agreement;

(iii) the Parties' performance of any obligations under the Settlement Agreement;

(iv) the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;

(v) the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or

(vi) any combination of the causes described in clauses (i) through (v); and

(B) all future natural resource damage claims accruing after the effective date described in section 9(a) arising from or relating to water quality in which the claim is based on injury to natural resources or threat to natural resources in the Eastern LCR basin in Arizona, only for those cases in which the United States, through the Secretary or other designated Federal official, would act on behalf of the Tribe as a natural resource trustee pursuant to the National Contingency Plan, as set forth, as of the date of enactment of this Act, in section 300.600(b)(2) of title 40, Code of Federal Regulations, caused by—

(i) the lawful diversion or use of surface water;

(ii) the lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in article 5 of the Settlement Agreement;

(iii) the Parties' performance of their obligations under this Settlement Agreement;

(iv) the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;

(v) the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or

(vi) any combination of the causes described in clauses (i) through (v).

(f) EFFECT.—Subject to subsections (b) and (e), nothing in this Act or the Settlement Agreement affects any right of the United States, or the State of Arizona, to take any actions, including enforcement actions, under any laws (including regulations) relating to human health, safety and the environment.

SEC. 8. MISCELLANEOUS PROVISIONS.

(a) WAIVER OF SOVEREIGN IMMUNITY.—If any party to the Settlement Agreement or a Pumping Protection Agreement files a lawsuit only relating directly to the interpretation or enforcement of this Act, the Settlement Agreement, an agreement described in paragraph (1), (2), or (3) of section 4(c), or a Pumping Protection Agreement, naming the United States or the Tribe as a party, or if any other landowner or water user in the Little Colorado River basin in Arizona files a lawsuit only relating directly to the interpretation or enforcement of Article 11, the rights of de minimis users in subparagraph 4.2.D or the rights of underground water users under Article 5 of the Settlement Agreement, naming the United States or the Tribe as a party—

(1) the United States, the Tribe, or both may be added as a party to any such litigation, and any claim by the United States or the Tribe to sovereign immunity from such suit is hereby waived, other than with respect to claims for monetary awards except as specifically provided for in the Settlement Agreement; and

(2) the Tribe may waive its sovereign immunity from suit in the Superior Court of Apache County, Arizona for the limited purposes of enforcing the terms of the Intergovernmental Agreement, and any intergovernmental agreement required to be entered into by the Tribe under the terms of the Intergovernmental Agreement, other than with respect to claims for monetary awards except as specifically provided in the Intergovernmental Agreement.

(b) TRIBAL USE OF WATER.—

(1) IN GENERAL.—With respect to water rights made available under the Settlement Agreement and used on the Zuni Heaven Reservation—

(A) such water rights shall be held in trust by the United States in perpetuity, and shall not be subject to forfeiture or abandonment;

(B) State law shall not apply to water uses on the Reservation;

(C) the State of Arizona may not regulate or tax such water rights or uses (except that the court with jurisdiction over the decree entered pursuant to the Settlement Agreement or the Norviel Decree Court may assess administrative fees for delivery of this water);

(D) subject to paragraph 7.7 of the Settlement Agreement, the Zuni Tribe shall use water made available to the Zuni Tribe under the Settlement Agreement on the Zuni Heaven Reservation for any use it deems advisable;

(E) water use by the Zuni Tribe or the United States on behalf of the Zuni Tribe for wildlife or instream flow use, or for irrigation to establish or maintain wetland on the Reservation, shall be considered to be consistent with the purposes of the Reservation; and

(F)(i) not later than 3 years after the deadline described in section 9(b), the Zuni Tribe shall adopt a water code to be approved by the Secretary for regulation of water use on the lands identified in subsections (a) and (b) of section 5 that is reasonably equivalent to State water law (including statutes relating to dam safety and groundwater management); and

(ii) until such date as the Zuni Tribe adopts a water code described in clause (i), the Secretary, in consultation with the State of Arizona, shall administer water use and water regulation on lands described in that clause in a manner that is reasonably equivalent to State law (including statutes relating to dam safety and groundwater management).

(2) LIMITATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Zuni Tribe or the United States shall not sell, lease, transfer, or transport water made available for use on

the Zuni Heaven Reservation to any other place.

(B) EXCEPTION.—Water made available to the Zuni Tribe or the United States for use on the Zuni Heaven Reservation may be severed and transferred from the Reservation to other Zuni Lands if the severance and transfer is accomplished in accordance with State law (and once transferred to any lands held in fee, such water shall be subject to State law).

(c) RIGHTS-OF-WAY.—

(1) NEW AND FUTURE TRUST LAND.—The land taken into trust under subsections (a) and (b) of section 5 shall be subject to existing easements and rights-of-way.

(2) ADDITIONAL RIGHTS-OF-WAY.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the Secretary, in consultation with the Tribe, shall grant additional rights-of-way or expansions of existing rights-of-way for roads, utilities, and other accommodations to adjoining landowners if—

(i) the proposed right-of-way is necessary to the needs of the applicant;

(ii) the proposed right-of-way will not cause significant and substantial harm to the Tribe's wetland restoration project or religious practices; and

(iii) the proposed right-of-way acquisition will comply with the procedures in part 169 of title 25, Code of Federal Regulations, not inconsistent with this subsection and other generally applicable Federal laws unrelated to the acquisition of interests across trust lands.

(B) ALTERNATIVES.—If the criteria described in clauses (i) through (iii) of subparagraph (A) are not met, the Secretary may propose an alternative right-of-way, or other accommodation that complies with the criteria.

(d) CERTAIN CLAIMS PROHIBITED.—The United States shall make no claims for reimbursement of costs arising out of the implementation of this Act or the Settlement Agreement against any Indian-owned land within the Tribe's Reservation, and no assessment shall be made in regard to such costs against such lands.

(e) VESTED RIGHTS.—Except as described in paragraph 5.3 of the Settlement Agreement (recognizing the Zuni Tribe's use of 1,500 acre-feet per annum of groundwater) this Act and the Settlement Agreement do not create any vested right to groundwater under Federal or State law, or any priority to the use of groundwater that would be superior to any other right or use of groundwater under Federal or State law, whether through this Act, the Settlement Agreement, or by incorporation of any abstract, agreement, or stipulation prepared under the Settlement Agreement. Notwithstanding the preceding sentence, the rights of parties to the agreements referred to in paragraph (1), (2), or (3) of section 4(c) and paragraph 5.8 of the Settlement Agreement, as among themselves, shall be as stated in those agreements.

(f) OTHER CLAIMS.—Nothing in the Settlement Agreement or this Act quantifies or otherwise affects the water rights, claims, or entitlements to water of any Indian tribe, band, or community, other than the Zuni Indian Tribe.

(g) NO MAJOR FEDERAL ACTION.—

(1) IN GENERAL.—Execution of the Settlement Agreement by the Secretary as provided for in section 4(a) shall not constitute major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

(2) SETTLEMENT AGREEMENT.—In implementing the Settlement Agreement, the Secretary shall comply with all aspects of—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(C) all other applicable environmental laws (including regulations).

SEC. 9. EFFECTIVE DATE FOR WAIVER AND RELEASE AUTHORIZATIONS.

(a) IN GENERAL.—The waiver and release authorizations contained in subsections (b) and (c) of section 7 shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of all the following findings:

(1) This Act has been enacted in a form approved by the parties in paragraph 3.1.A of the Settlement Agreement.

(2) The funds authorized by section 4(b) have been appropriated and deposited into the Fund.

(3) The State of Arizona has appropriated and deposited into the Fund the amount required by paragraph 7.6 of the Settlement Agreement.

(4) The Zuni Indian Tribe has either purchased or acquired the right to purchase at least 2,350 acre-feet per annum of surface water rights, or waived this condition as provided in paragraph 3.2 of the Settlement Agreement.

(5) Pursuant to subparagraph 3.1.D of the Settlement Agreement, the severance and transfer of surface water rights that the Tribe owns or has the right to purchase have been conditionally approved, or the Tribe has waived this condition as provided in paragraph 3.2 of the Settlement Agreement.

(6) Pursuant to subparagraph 3.1.E of the Settlement Agreement, the Tribe and Lyman Water Company have executed an agreement relating to the process of the severance and transfer of surface water rights acquired by the Zuni Tribe or the United States, the pass-through, use, or storage of the Tribe's surface water rights in Lyman Lake, and the operation of Lyman Dam.

(7) Pursuant to subparagraph 3.1.F of the Settlement Agreement, all the parties to the Settlement Agreement have agreed and stipulated to certain Arizona Game and Fish abstracts of water uses.

(8) Pursuant to subparagraph 3.1.G of the Settlement Agreement, all parties to the Settlement Agreement have agreed to the location of an observation well and that well has been installed.

(9) Pursuant to subparagraph 3.1.H of the Settlement Agreement, the Zuni Tribe, Apache County, Arizona and the State of Arizona have executed an Intergovernmental Agreement that satisfies all of the conditions in paragraph 6.2 of the Settlement Agreement.

(10) The Zuni Tribe has acquired title to the section of land adjacent to the Zuni Heaven Reservation described as Section 34, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian.

(11) The Settlement Agreement has been modified if and to the extent it is in conflict with this Act and such modification has been agreed to by all the parties to the Settlement Agreement.

(12) A court of competent jurisdiction has approved the Settlement Agreement by a final judgment and decree.

(b) DEADLINE FOR EFFECTIVE DATE.—If the publication in the Federal Register required under subsection (a) has not occurred by December 31, 2006, sections 4 and 5, and any agreements entered into pursuant to sections 4 and 5 (including the Settlement Agreement and the Intergovernmental Agreement) shall not thereafter be effective and shall be null and void. Any funds and the interest accrued thereon appropriated pursuant to section 4(b)(2) shall revert to the Treasury, and any funds and the interest accrued thereon appropriated pursuant to paragraph 7.6 of the Settlement Agreement shall revert to the State of Arizona.

DESIGNATING SERVICE IN THE JOINT COMMITTEE ON PRINTING

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 20, which was submitted earlier today by Senators LOTT and DODD.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 20) permitting the Chairman of the Committee on Rules and Administration of the Senate to designate another member of the Committee to serve on the Joint Committee on Printing in place of the Chairman.

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

Mr. BENNETT. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, and the motion to reconsider be laid upon the table.

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

The concurrent resolution (S. Con. Res. 20) was agreed to, as follows:

S. CON. RES. 20

Resolved by the Senate (the House of Representatives concurring), That effective for the One Hundred Eighth Congress, the Chairman of the Committee on Rules and Administration of the Senate may designate another member of the Committee to serve on the Joint Committee on Printing in place of the Chairman.

PROVIDING FOR MEMBERS OF THE JOINT COMMITTEE ON PRINTING AND THE JOINT COMMITTEE OF CONGRESS ON THE LIBRARY

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of S. Res. 84, which was submitted earlier today by Senators Lott and Dodd.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 84) providing for members on the part of the Senate of the Joint Committee on Printing and the Joint Committee of Congress on the Library.

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

Mr. BENNETT. Mr. President, I ask unanimous consent that the resolution be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 84) was agreed to, as follows:

S. RES. 84

Resolved, That the following named Members be, and they are hereby, elected members of the following joint committees of Congress:

JOINT COMMITTEE ON PRINTING: Mr. Chambliss, Mr. Cochran, Mr. Smith, Mr. Inouye, and Mr. Dayton.

JOINT COMMITTEE OF CONGRESS ON THE LIBRARY: Mr. Stevens, Mr. Lott, Mr. Cochran, Mr. Dodd, and Mr. Schumer.

IMPROVED FIRE SAFETY IN NONRESIDENTIAL BUILDINGS

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 85, which is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 85) expressing the sense of the Congress with regard to the need for improved fire safety in nonresidential buildings in the aftermath of the tragic fire on February 20, 2003, at a nightclub in West Warwick, Rhode Island.

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

Mr. REED. Mr. President, yesterday the House passed H. Con. Res.85, a resolution paying respect to the victims of the tragic nightclub fire on February 20, 2003 in West Warwick, RI, and expressing the sense of Congress regarding the need for improved fire safety in buildings used by the public. I thank my colleagues for expediting consideration of this important resolution in the Senate today.

The West Warwick fire is a devastating loss that has affected the lives of thousands of Rhode Islanders. Mr. President, 99 people have died, and nearly 190 people were injured, many of whom are still in hospitals in critical condition.

In the first minutes and hours of this tragedy, our firefighters, police, and emergency medical personnel performed heroically under horrific circumstances, as did many of the patrons who were at the scene and helped to save others.

I want to express my heartfelt condolences to the many families of those who perished in the West Warwick fire, and to let them know that our thoughts and prayers are with them and with the survivors who will struggle with the physical and mental toll of this horrible event for the rest of their lives.

This was a catastrophe brought on by a series of bad decisions. Fault will be sorted out in time, but there are already lessons learned.

State and local officials across the country are, and should be, reexamining their fire and building codes and stepping up enforcement of safety practices in public buildings to make sure that a tragedy like this does not happen again. Congress should do everything it can to support this effort and to encourage both state and local governments and federal agencies to adopt and strictly enforce the most current fire and building consensus codes.

In addition, as our nation continues to fight the war on terror, the response to the West Warwick fire provides a good illustration of how far we've come—and how far we have to go—in improving our emergency management capabilities. Local first responders were on the scene within minutes to help rescue victims, treat the injured, and fight the tremendous blaze that consumed the Station nightclub. As casualties continued to mount, the Rhode Island Emergency Management Agency coordinated the massive rescue and recovery efforts by state and local agencies from Rhode Island, Massachusetts, and Connecticut. Several hospitals in Rhode Island and Massachusetts received scores of victims suffering from severe burns and smoke inhalation, many of whom remain in critical condition today.

There is no question that the response to the West Warwick fire was better than it would have been before September 11, 2001, thanks to our state's efforts over the past 18 months to strengthen emergency preparedness. Federal assistance in this regard has helped, including equipment and training grants from the Department of Justice's Office of Domestic Preparedness, FIRE Grants from the Federal Emergency Management Agency, and bioterror preparedness grants from the Department of Health and Human Services, which included funding to create regional hospital plans to respond to terrorism.

But we can do better. As tragic as the West Warwick fire was, it was a localized event involving deaths and injuries in the hundreds rather than thousands, yet it overwhelmed our state's emergency response systems and hospital emergency room capacity. Assistance from surrounding states and Federal agencies was required to manage the immense tasks of emergency response, medical care, and identifying scores of bodies.

Rhode Island and other states, with the support of the Federal Government, will continue our efforts to strengthen the security of our homeland, and we will apply the hard lessons learned in West Warwick about safety in public buildings.

Mr. President, I thank my colleagues for supporting this important resolution to urge state and local officials and owners of entertainment facilities to examine their safety practices, fire codes, and enforcement capabilities to ensure that such a tragedy never befalls any community again.

Mr. CHAFEE. Mr. President, 3 weeks ago—on a cold winter evening—several hundred people gathered at the Station nightclub, a popular venue for live bands in West Warwick, RI. They had come to spend time with friends and to listen to music. Too quickly, this festive occasion turned to horror.

A local television cameraman—who ironically was there to shoot footage for a news story on nightclub safety—captured the scene in an extraordinary piece of video that will haunt Rhode Islanders for many years. A pyrotechnic display on stage ignited nearby soundproofing material, and the flames spread through the nightclub with shocking speed. By most estimates, it took only 2 minutes—2 minutes—from the moment that soundproofing caught fire, until the building was engulfed in flames and filled with superheated, toxic, black smoke.

As this disaster unfolded, heroic emergency personnel rushed to the rescue, placing their own lives in jeopardy. Eyewitness accounts described amazing acts of bravery at the scene. Firefighters saved dozens of men and women, whom they pulled from the doorways and windows of the burning building. Meanwhile, EMTs did their best to stabilize those who were gravely injured and worked with the police to help bring order to the prevailing chaos.

Rhode Island is blessed with a network of fine hospitals, several of which have received national recognition for the quality of their care. On that night, medical teams provided the best treatment for the injured, many of whom have a long recovery ahead. At Rhode Island Hospital—which received 65 fire victims, nearly all at once—an entire floor was converted into a burn unit overnight. Surgeons, nurses, technicians and other support staff must have been overwhelmed by the trauma, but they persevered.

Rhode Island's new Governor, Don Carcieri has been brilliant in managing the State's response to this crisis. Less than 2 months after taking office, Governor Carcieri has demonstrated remarkable leadership abilities in the aftermath of the fire. His efforts came at a critical time and helped ensure that every public official delivered a consistent, productive message.

Whether speaking to all Rhode Islanders at a televised press conference or visiting quietly with grieving families, Governor Carcieri has emerged as a strong, reassuring presence during a very difficult time for Rhode Island. He has expressed our anger at what when wrong, and our compassion for the victims and their loved ones.

Federal agencies also responded immediately to this enormous tragedy. I am grateful for all of the assistance that Rhode Island has received thus far: from the Bureau of Alcohol, Tobacco, and Firearms, the Department of Health and Human Services, and the Small Business Administration.

My family and I extend our heartfelt sympathy to the families at this time of great sadness. I hope they will take some comfort in knowing that even with a population of more than 1 million people, Rhode Island is small enough that its citizens consider one another as neighbors. That sense of closeness—developed over decades of shared experiences, both joyful and sorrowful—binds us together and is part of what makes Rhode Island unique among the States.

Those connections are especially strongly felt in small towns and villages, such as Potowomut, where my

family has made its home for many years. Potowomut is a close-knit community, somewhat isolated from the rest of the city of Warwick and Rhode Island—on a peninsula that juts out into Narragansett Bay. Sadly, a fellow Potowomut resident, Tracy King, was among those who perished in the fire.

Tracy was working at the Station nightclub on the night of the fire, and as least initially, managed to escape the blaze. Once outside, however, he rushed back into the building to help others scramble to safety. Tracy was a tall, powerful man—always bursting with energy—and I am certain that he helped save some lives. I share in the heartbreak that all of Tracy's friends feel, knowing that he did not make it back out in time.

In recent years, Tracy had achieved a measure of fame in Rhode Island, as he had an unusual talent for balancing large, heavy objects on his chin—Christmas trees, ladders, desks—even a refrigerator—all balanced perfectly on his chin.

In 1993, he appeared on ''The Late Show with David Letterman,'' and balanced a 17-foot canoe. Imagine that—a 17-foot canoe, straight up in the air! Tracy was a wonderful entertainer, and he especially enjoyed performing for groups of children. He generously shared his talent at local festivals, schools, and hospitals—everyone delighted in seeing him in action.

Tracy King leaves behind his wife, Evelyn, and three sons—Joshua, Jacob, and Jordan. I ask my colleagues to remember the King family in their prayers.

We also remember that there are many other families in Rhode Island, and across the State line in Massachusetts, that are still coping with this sudden, traumatic loss. In the days following the fire, survivors and family members of those who had died or been injured gathered together to mourn, to ask questions, and to share their stories. May they continue to draw strength from one another, and be sustained by the enduring support of their community.

The Senate is considering this concurrent resolution recently approved in the House, cosponsored by my colleagues in the Rhode Island delegation, expressing the importance of improved fire safety in nonresidential buildings in the aftermath of this tragic fire. I urge adoption of the resolution.

Mr. BENNETT. Mr. President, I ask unanimous consent that the concurrent resolution and preamble be agreed to en bloc, that the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to this measure be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 85) was agreed to.

The preamble was agreed to.

AUTHORIZING TESTIMONY AND LEGAL REPRESENTATION

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of S. Res. 86, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 86) to authorize testimony and legal representation in W. Curtis Shain v. G. Hunter Bates, et al.

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

Mr. BENNETT. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 86) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 86

Whereas, in the case of *W. Curtis Shain* v. *G. Hunter Bates, et al.*, No. 03–CI–00153, pending in Division II of the Oldham Circuit Court, Twelfth Judicial Circuit, Commonwealth of Kentucky, an affidavit has been requested from Senator Mitch McConnell;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate;

Whereas, by Rule VI of the Standing Rules of the Senate, no Senator shall absent himself from the service of the Senate without leave; and

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That Senator McConnell is authorized to provide testimony in the case of *W. Curtis Shain* v. *G. Hunter Bates, et al.*, except concerning matters for which a privilege should be asserted and when his attendance at the Senate is necessary for the performance of his legislative duties.

SEC. 2. The Senate Legal Counsel is authorized to represent Senator McConnell in connection with any testimony authorized in section one of this resolution.

CENTENNIAL ANNIVERSARY OF NATIONAL WILDLIFE REFUGE SYSTEM

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of S. Res. 87, introduced earlier today by Senator NELSON of Florida.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 87) commemorating the Centennial Anniversary of the National Wildlife Refuge System.

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

Mr. GRAHAM of Florida. 100 years ago tomorrow, President Theodore Roosevelt ordered that a small island in Florida's Indian River be forever protected as a ''preserve and breeding ground for native birds.'' With this simple promise of wildlife protection, the National Wildlife Refuge System was born. A century later, the refuge system has grown to include more that 530 refuges on more than 94 million acres with locations in every state.

Florida's National Wildlife Refuges have been fulfilling the promise of protecting wildlife for a full century. Pelican Island, the first refuge, is being restored to its original size so that birds may be able to find refuge there for the next hundred years. Archie Carr National Wildlife Refuge in Titusville protects endangered sea turtles so they have an undisturbed place to lay their eggs. And, Florida Panther National Wildlife Refuge in Naples is protecting our state animal, the Florida Panther, which is on the brink of extinction.

The National Wildlife Refuges in Florida have been protecting more than just animals. As part of the greater Everglades ecosystem, Ten Thousand Islands National Wildlife Refuge and the Arthur R. Marshall Loxahatchee National Wildlife Refuge are protecting both the wildlife and habitats that make up part of America's Everglades.

Florida is a destination for sportsmen and nature lovers throughout the world. Be they avid hunters or fishermen or tourists traveling to visit our unsurpassed beaches or the pristine beauty of Florida's interior, the National Wildlife Refuge System is part of the allure, with facilities and locations to cater to any person who wants to visit nature.

Nationwide, more than 35 million people visit national wildlife refuges to see some of the world's most amazing wildlife spectacles, or to fish, hunt, photograph nature, and learn about our natural and cultural history.

The centennial anniversary of the National Wildlife Refuge System is a time to celebrate these natural treasures and recognize their value to our society. Today there is a celebration of Pelican Island to commemorate this historic day. Throughout the year, there will be other celebrations in honor of 100 years of successful preservation. Because National Wildlife Refuges have been such an important part of the ecological preservation of our nation, I joined with my colleague from Florida, Senator NELSON, in sponsoring a resolution that would reaffirm the strong support that the National Wildlife Refuge System enjoys in this body.

National Wildlife Refuges are a key component of our nation's conservation network. Because of the establishment of the Refuge System, wildlife of all types have a safe place to live and human beings have a place to interact with the wildlife and nature in an ecologically responsible way. The National Wildlife Refuge System has had a successful 100 years and I hope we can continue to support the system so it prospers for the next 100 years.

Mr. JEFFORDS. Mr. President, I join my colleagues from Florida in commemorating the 100th anniversary of the founding of the National Wildlife Refuge System. One hundred years ago, President Teddy Roosevelt established the first wildlife refuge, Florida's 3-acre Pelican Island. This small beginning has given rise to more than 500 National Wildlife Refuges throughout our country, demonstrating that Americans want unique places for wildlife to flourish and allow for recreation.

While Florida is home to the first refuge, my state of Vermont home to two refuges, the Missisquoi National Wildlife Refuge and the Silvio O. Conte National Wildlife Refuge.

The Missisquoi Refuge, founded in 1943, was established to provide a resting feeding area for migratory waterfowl, and as a general wildlife refuge. It spans 6,592 acres on the eastern shore of Lake Champlain. It is a mix of hardwood forests and open fields and home to the largest heron rookery in Vermont. More than 200,000 ducks converge on the refuge each fall and most of Vermont's black terns nest on the refuge. Osprey nest on the refuge and Missisquoi River and the shoreline of Lake Champlain provide outstanding fishing opportunities.

Our Silvio O. Conte Refuge, founded in 1997, is shared with New Hampshire and Massachusetts. It was established to protect the abundance and diversity of native species throughout the 7.2 million-acre Connecticut River watershed. In addition to protecting rare species, native plants and animals and their habitat, managers of this refuge are working with partners throughout New England to help control invasive species.

The wildlife and recreation opportunities provided by our refugees are made possible by the dedication of the Fish and Wildlife Service employees, who I could like to congratulate today. Without their expertise and dedication to providing visitors with hunting, fishing, wildlife observation, photography, interpretation and environmental education opportunities, our refuge system would not be enjoying the success we are celebrating today. They provided this public service to more than 55,000 annual visitors at our 2 refugees and I hope that these classrooms of natural continue to provide children and adult alike a unique educational experience.

In addition, I would like to acknowledge the thousands of volunteers nationwide who give their time and expertise to making the National Wildlife Refuge experience a memorable one for all of us.

Congratulations to all involved in the National Wildlife Refuge System.

Mr. BENNETT. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to this measure be printed in the RECORD.

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

The resolution (S. Res. 87) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 87

Whereas March 14, 2003, will mark the Centennial Anniversary of the National Wildlife Refuge System;

Whereas the United States Senate continues to fully support the mission of the National Wildlife Refuge System, and shares President Theodore Roosevelt's view that: "Wild beasts and birds are by right not the property merely of the people who are alive today, but the property of unknown generations, whose belongings we have no right to squander";

Whereas President Theodore Roosevelt's vision in 1903 to conserve wildlife started with the plants and animals on the tiny Pelican Island on Florida's East Coast, and has flourished across the United States and its territories, allowing for the preservation of a vast array of species; and

Whereas the National Wildlife Refuge System of 540 refuges, that now hosts 35,000,000 visitors annually, with the help of 30,000 volunteers, is home to wildlife of almost every variety in every state of the union within an hour's drive of almost every major city: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the National Wildlife Refuge System on its Centennial Anniversary;

(2) expresses strong support for the National Wildlife Refuge System's continued success in the next 100 years and beyond;

(3) encourages the National Wildlife Refuge System in its continued efforts to broaden understanding and appreciation for the Refuge System, to increase partnerships on behalf of the National Wildlife Refuge System to better manage and monitor wildlife, and to continue its support of outdoor recreational activities; and

(4) reaffirms its commitment to continued support for the National Wildlife Refuge System, and the conservation of our Nation's rich natural heritage.

HONORING THE 80TH BIRTHDAY OF JAMES L. BUCKLEY

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 88 which was submitted earlier today by Senator HATCH.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 88) honoring the 80th birthday of James L. Buckley, former United States Senator for the State of New York.

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

Mr. BENNETT. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 88) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 88

Whereas James Buckley served in the United States Senate with great dedication, integrity, and professionalism as a trusted colleague from the State of New York;

Whereas James Buckley served with distinction for more than a decade as a Circuit Judge on the United States Court of Appeals for the District of Columbia Circuit;

Whereas James Buckley's long and distinguished career in public service also included serving in the U.S. Navy during World War II, as Undersecretary of State for Security Assistance, and as President of Radio Free Europe;

Whereas James Buckley celebrated his 80th birthday earlier this week: Now, therefore, be it

Resolved, That the Senate—

(1) acknowledges and honors the tremendous contributions made by James Buckley during his distinguished career to the executive, legislative, and judicial branches of the United States; and

(2) congratulates and expresses best wishes to James Buckley on the celebration of his 80th birthday.

HONORING FORMER GOVERNOR ORVILLE L. FREEMAN

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 89, which was introduced earlier today by Senators Dayton and Coleman.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 89) honoring the life of former Governor of Minnesota Orville L. Freeman, and expressing the deepest condolences of the Senate to his family on his death.

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

Mr. BENNETT. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to this measure be printed in the RECORD.

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

The resolution (S. Res. 89) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 89

Whereas the Senate has learned with sadness of the death of former Governor of Minnesota Orville L. Freeman;

Whereas Orville L. Freeman, born in Minneapolis, Minnesota, greatly distinguished himself by his long commitment to public service;

Whereas Orville L. Freeman, football star, student council president, and Phi Beta Kappa honors student, graduated magna cum laude from the University of Minnesota;

Whereas Orville L. Freeman, a Major in the Marine Corps, served the United States with honor and distinction during World War II, and was awarded a Purple Heart for wounds associated with his heroism;

Whereas the organizational leadership of Orville L. Freeman helped build the Minnesota Democratic-Farmer-Labor Party into a successful political party;

Whereas, in 1954, Orville L. Freeman became the first Democratic-Farmer-Labor candidate to be elected Governor of Minnesota;

Whereas Orville L. Freeman, elected to 3 consecutive terms as Governor, advanced the concept of governance now known as ''the Minnesota Consensus,'' which views government as a positive force in the lives of citizens, and government programs as investments in Minnesota's future;

Whereas, during his service as Governor of Minnesota, Orville L. Freeman increased State funding for education, improved health and rehabilitation programs, expanded conservation efforts, and achieved many other successes that improved his State and the lives of its citizens;

Whereas Orville L. Freeman served as the Secretary of Agriculture in the administrations of President John F. Kennedy and President Lyndon B. Johnson, during which service he initiated global food assistance programs and developed the domestic food stamp and school breakfast programs;

Whereas, in addition to his outstanding public service, Orville L. Freeman was also a successful international lawyer and business executive;

Whereas Orville L. Freeman was a devoted husband to his wife, Jane, for 62 years, a loving father to two exceptional children, Constance and Michael, and a proud grandfather to three talented grandchildren, Elizabeth, Kathryn, and Matthew; and

Whereas Orville L. Freeman led a life that was remarkable for its breadth of pursuits, multitude of accomplishments, standards of excellence, dedication to public service, and important contributions to the improvement of his country and the lives of his fellow citizens: Now, therefore, be it

Resolved, That the United States Senate—

(1) pays tribute to the outstanding career and devoted work of the great Minnesota and national leader, Orville L. Freeman;

(2) expresses its deepest condolences to the family of Orville L. Freeman on his death; and

(3) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the family of Orville L. Freeman.

PRINTING OF TRIBUTES TO DR. LLOYD OGILVIE

Mr. BENNETT. Mr. President, I ask unanimous consent that the tributes to Dr. Lloyd Ogilvie, the retiring Senate Chaplain, be printed as a Senate document, with the understanding that Members have until 12 noon, Friday, March 21, to submit these tributes.

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

ORDER FOR FILING BY BUDGET COMMITTEE

Mr. BENNETT. Mr. President, I ask unanimous consent that notwithstanding the Senate's adjournment, the Budget Committee have from 11 a.m. until noon on March 14 to report legislative matters.

EXECUTIVE SESSION

TREATIES

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following treaties on today's Executive Calendar: Nos. 2, 3, and 4.

I further ask unanimous consent that the treaties be considered as having passed through their various parliamentary stages up to and including the presentation of the resolutions of ratification; that any statements be inserted in the RECORD as if read; and that the Senate take one vote on the resolutions of ratification to be considered as separate votes; further, that when the resolutions of ratification are voted upon, the motion to reconsider be laid upon the table, the President be notified of the Senate's action, and that following the disposition of the treaties the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered. The treaties will be considered to have passed through their various parliamentary stages up to and including the presentation of the resolutions of ratification.

Mr. BENNETT. Mr. President, I ask for a division vote on the resolutions of ratification.

The PRESIDING OFFICER. A division has been requested.

Senators in favor of the ratification of these treaties, please rise. (After a pause.) Those opposed will rise and stand until counted.

With two-thirds of the Senators present having voted in the affirmative, the resolutions of ratification are agreed to.

The resolutions of ratification are as follows:

CALENDER NO. 2

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, signed at London on July 24, 2001, together with an Exchange of Notes, as amended by the Protocol signed at Washington on July 19, 2002 (Treaty Doc. 107–19).

CALENDAR NO. 3

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol Amending the Convention Between the Government of the United States of America and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Canberra on September 27, 2001 (Treaty Doc. 107–20).

CALENDAR NO. 4

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Second Additional Protocol That Modifies the Convention Between the Government of the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Mexico City on November 26, 2002 (Treaty Doc. 108–3).

ORDERS FOR MONDAY, MARCH 17, 2003

Mr. BENNETT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 1 p.m., Monday, March 17. I further ask that following the prayer and the pledge, the morning hour be deemed to have expired and the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business until the hour of 2 p.m., with the time equally divided between the two leaders or their designee.

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

PROGRAM

Mr. BENNETT. Mr. President, for the information of all Senators, on Monday the Senate will be in a period of morning business until 2 p.m. Under a previous agreement, at 2 p.m. the Senate will begin consideration of the budget resolution. I remind my colleagues that under the budget procedures, there will be up to 50 hours for debate on the resolution. Members, therefore, should anticipate late sessions and numerous rollcall votes next week.

As a reminder, another cloture motion was filed on the Estrada nomination today. That cloture vote will occur on Tuesday morning. As announced earlier, there will be no rollcall votes on Monday. The next rollcall vote will occur on Tuesday morning, and Senators will be notified of the time when that vote will occur.

ADJOURNMENT UNTIL 1 P.M., MONDAY, MARCH 17, 2003

The PRESIDING OFFICER. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:20 p.m., adjourned until Monday, March 17, 2003, at 1 p.m.

NOMINATIONS

Executive nominations received by the Senate March 13, 2003:

DEPARTMENT OF JUSTICE

R. HEWITT PATE, OF VIRGINIA, TO BE AN ASSISTANT ATTORNEY GENERAL, VICE CHARLES A. JAMES, JR.

THE JUDICIARY

DAVID G. CAMPBELL, OF ARIZONA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA, VICE A NEW POSITION CREATED BY PUBLIC LAW 107–273, APPROVED NOVEMBER 5, 2002.

DEPARTMENT OF STATE

HELEN R. MEAGHER LA LIME, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF MOZAMBIQUE.

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIGADIER GENERAL JEFFERY L. ARNOLD, 0000
BRIGADIER GENERAL ROBERT M. CARROTHERS, 0000
BRIGADIER GENERAL MICHAEL G. CORRIGAN, 0000
BRIGADIER GENERAL GEORGE R. FAY, 0000
BRIGADIER GENERAL JOHN R. HAWKINS III, 0000
BRIGADIER GENERAL MICHAEL K. JELINSKY, 0000
BRIGADIER GENERAL TERRILL K. MOFFETT, 0000
BRIGADIER GENERAL PAUL D. PATRICK, 0000
BRIGADIER GENERAL HARRY J. PHILIPS JR., 0000
BRIGADIER GENERAL JERRY W. RESHETAR, 0000
BRIGADIER GENERAL STEPHEN B. THOMPSON, 0000
BRIGADIER GENERAL STEPHEN D. TOM, 0000
BRIGADIER GENERAL GEORGE W. WELLS JR., 0000
BRIGADIER GENERAL ROBERT J. WILLIAMSON, 0000

To be brigadier general

COLONEL CHARLES J. BARR, 0000
COLONEL DAVID N. BLACKLEDGE, 0000
COLONEL BRIAN J. BOWERS, 0000
COLONEL EDWIN S. CASTLE, 0000
COLONEL OSCAR S. DEPRIEST IV, 0000
COLONEL MARI K. EDER, 0000
COLONEL DENNIS P. GEOGHAN, 0000
COLONEL ALAN E. GRICE, 0000
COLONEL PAUL F. HAMM, 0000
COLONEL PHILIP L. HANRAHAN, 0000
COLONEL CHRISTOPHER A. INGRAM, 0000
COLONEL JANIS L. KARPINSKI, 0000
COLONEL JOHN F. MCNEILL, 0000
COLONEL WILLIAM MONK III, 0000
COLONEL GARY M. PROFIT, 0000
COLONEL DOUGLAS G. RICHARDSON, 0000
COLONEL MICHAEL J. SCHWEIGER, 0000
COLONEL RICHARD J. SHERLOCK JR., 0000
COLONEL CHARLES B. SKAGGS, 0000
COLONEL RICHARD M. TABOR, 0000
COLONEL PHILLIP J. THORPE, 0000
COLONEL ENNIS C. WHITEHEAD III, 0000