

the conclusions of a bench that is thoroughly unfamiliar with land use and its implications on Montana.

It is worth noting at the outset that many cases never make their way to the Ninth Circuit docket, simply because the parties know the fate of their cause. This is especially true for the Forest Service, which has lost many battles in front of the Ninth Circuit, and Montana is certainly not better off for it.

For example, in *Native Ecosystems Council v. Dombeck*, the Ninth Circuit found that the Forest Service violated the National Environmental Policy Act, NEPA, as well as the Endangered Species Act. *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 890, 9th Cir. 2002. In this case, environmental groups challenged the validity of the Darroch-Eagle timber sale by the Forest Service. At the district court level, the Montana judge felt so strongly that the environmental groups did not have a claim that he granted summary judgment in favor of the Forest Service. This is important given the legal significance of summary judgment. Even if all of the plaintiff's claims are true, there is no legal remedy available. The Ninth Circuit turned this decision on its head, and issued an injunction against the Forest Service so they could not proceed with the sale.

In a similar situation, the Montana district court again granted summary judgment for the Forest Service in 2003, and again, the Ninth Circuit reversed. In *Sierra Club, Inc. v. Austin*, an unreported case, the Ninth Circuit found that the Forest Service's post-burn plan for Lolo National Forest violated NEPA. According to a front-page story carried by the *Missoulian* in December, 2003, the post-burn project would have permitted salvage logging of 2,322 acres and commercial thinning of 2,470, no small undertaking by any means. Even though the court found that the water-quality assessment done by the Forest Service was not arbitrary and capricious, it nonetheless concluded that the actions by the Forest Service in the environmental impact statement, EIS, did not include analysis of the logging effects on unroaded areas, and therefore violated NEPA in that sense.

Also in 2003, the Ninth Circuit found the Forest Service had potentially violated portions of the Montana Wilderness Study Act in *Montana Wilderness Ass'n v. U.S. Forest Serv.*, 314 F.3d 1146, 9th Cir. 2003. This act was passed by Congress in 1977 to allow the study of certain lands, to be called wilderness study areas, so that they could maintain their wilderness character and possibly be included within the National Wilderness Preservation System. Since no final designation of a wilderness area had been given, the Forest Service had been operating under temporary rules for the past 25 years. Apparently, the Ninth Circuit found that there was an issue to be resolved by allowing the trial to proceed,

and remanded the case to go ahead to trial. The case has now been appealed to the Supreme Court.

These three cases highlight recent action of the Ninth Circuit. The last two years have been extremely litigious ones for the Forest Service in Montana, and I regret the time and energy that the Forest Service has had to put forward on this issue, but especially the taxpayers' money involved needed to defend against all of these claims. The Ninth Circuit's sympathy for the claims by various environmental groups has provided an attractive solution to any local Montana court decision they may not like. Unfortunately, the taxpayers end up footing this bill, and the stewards who protect our forests are being second-guessed at every turn.

The Ninth Circuit is also rendered ineffective because of the size of its bench as well as its extensive geographic coverage. There are 47 judges on the bench, and as noted legal scholar Richard A. Posner once explained that the circuit is predisposed to "judicial irresponsibility" because of its size. One Ninth Circuit judge, Andrew Kleinfeld, said the judges do not even have the time to read one another's opinions, which provides little guidance to other judges or those affected by their decisions.

The problems with the Ninth Circuit are due to many factors, whether it be the geographic size of the region, the number of judges, or the impractical decisions issued by those judges. The legislation recently introduced will address this problem, so that Montanans will benefit from a more reasonable bench, which will reflect the opinions of those in our area, rather than those located near San Francisco.

In order to best preserve the common sense that Montanans pride themselves in, I am pleased to support this bill. Let's bring a little common sense back to the judicial system. This is certainly a step in the right direction.

CHARLES F. ALBAUGH'S DEDICATION TO PATRIOTISM

Mr. KENNEDY. Mr. President, today I am proud to pay tribute to the late Charles F. Albaugh, a Vietnam era veteran from Fairhaven, MA. Mr. Albaugh passed away on April 14, 2002, but his love of his country continues to be an inspiration in southeastern Massachusetts.

Shortly after September 11, 2001, Mr. Albaugh was determined to express the emotions we all shared on that terrible day. Although confined to a wheelchair, he went to the interstate overpass running through his town of Fairhaven, MA, and placed American flags on it as a constant reminder to the thousands who passed by each day of the strength and unity of the American people.

Despite his physical limitations, he and his wife Mary Ann tended those flags every day on the Main Street

overpass, no matter the weather. At its peak, this man's monument totaled 175 flags. And each night at dusk, he returned to the overpass with a lit votive candle to pray for the victims of 9/11. His presence was an inspiration to the community and soon drew volunteers to help maintain the flags.

Although Charles Albaugh has left us, his inspiration will be remembered permanently on the Main Street overpass in Fairhaven. On Memorial Day this year, a flagpole and plaque will be dedicated to his memory and to the patriotism and love of country we all share. A light will shine on the flag each night to remind us of Charles Albaugh's inspiration and dedication, and of the candle he lit in prayer each evening on that overpass.

I am pleased to join with those honoring Charles Albaugh and I know that my colleagues in the Senate join in commending their efforts to mark the difference he made in Southeastern Massachusetts.

NATIONAL SUICIDE PREVENTION WEEK

Mr. LEVIN. Mr. President, earlier this month, the Nation marked National Suicide Prevention Week. Suicide takes the lives of more than 30,000 Americans each year and is the eighth leading cause of death in the United States.

According to a 2001 Centers for Disease Control and Prevention study, suicide is the fourth-leading cause of death among children aged 7 to 17. Between 1981 and 1998, the period of the study, 20,775 people in that age group committed suicide, compared with 24,000 in that age group who died of cancer.

Suicide has long been considered an individual mental health issue, but experts are starting to view suicide as a broad public health issue. In 2001, the U.S. Surgeon General released a report citing suicide as a "national public health problem," and announced a national strategy for suicide prevention. Central to that strategy is promoting awareness that suicide is, indeed, preventable.

The same CDC study also highlighted the role of guns in both youth suicide and homicides. During the study period, youth suicides increased by 44 percent, with gun-related suicides making up 80 percent of that increase. At the same time, the number of youths who committed murder with a firearm tripled, even as the total number of murders remained constant. This shows, according to the CDC, that suicide is linked to other social ills, like gun violence.

One of the Surgeon General's recommendations for preventing suicide is to reduce access to guns or other lethal means of suicide. His national suicide prevention strategy recommends not only a public campaign to reduce gun accessibility, but also urges the gun industry to improve firearm safety design.

Suicide is a national problem that demands our attention. Congress should do its part to help prevent suicide by encouraging the manufacture of safer handguns and by closing the loopholes that allow young people easy access to handguns.

50TH ANNIVERSARY OF BROWN v. BOARD OF EDUCATION

Mr. LAUTENBERG. Mr. President, I rise to commemorate the 50th anniversary of the landmark 1954 civil rights decision of *Brown v. Board of Education*. In its decision, the Supreme Court held that the Equal Protection Clause of the fourteenth amendment prohibits States from maintaining racially segregated public schools.

In *Brown*, the Court upheld the principle that America is a land of laws, not men.

In *Brown*, the Court affirmed that equality, fairness, and justice are for all Americans, irrespective of race, ethnicity, color, or creed.

The Supreme Court found that the segregation of white and black children in public schools denied black children the equal protection of the laws guaranteed by the fourteenth amendment.

The Court reached this decision even if the physical facilities and other "tangible" factors of white and black schools were equal.

Of course, we all know that the facilities and resources were far from being equal.

It took courage on the part of the nine Justices of the U.S. Supreme Court to reverse the so-called "separate but equal" precedent that the Court had created in the 1896 case of *Plessy v. Ferguson*.

The *Plessy* decision concerned a 30-year-old shoemaker named Homer Plessy who had been jailed for sitting in the "White" car of the East Louisiana Railroad. Plessy was only one-eighth black and seven-eighth white, but under Louisiana law, he was considered black and therefore required to sit in the "Colored" car.

In *Plessy*, the Supreme Court found that laws requiring separate black and white railroad cars did not conflict with the thirteenth amendment which abolished slavery.

The Court held that "a statute which implies merely a legal distinction between the white and colored races has no tendency to destroy the legal equality of the two races." Consequently, the noxious notion of "separate but equal" took root in America.

The lone dissenter in the *Plessy* case, Justice John Harlan, wrote, "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law." Justice Harlan was a half-century ahead of his time.

After years of arguing discrimination cases throughout the Nation, a team of NAACP lawyers, led by Thurgood Marshall, brought five cases from Kansas,

South Carolina, Virginia, Delaware, and Washington DC to the Supreme Court. Thurgood Marshall—one of the giants of American history—stood before the Supreme Court determined to rid this Nation of a "failure of our constitutional system."

In *Brown*, the Court ruled that in the United States and under the U.S. Constitution, "separate" is inherently unequal.

These words were profound then and there are equally profound today because when the Supreme Court struck down school legal segregation, it advanced the cause of human rights in America and set an example for all the world.

I just visited the "Separate and Unequal" exhibit at the Smithsonian. I was struck by how one of the displays put it: the *Brown* decision told Americans and the world that "the American dream of ethnic diversity and racial equality under the law is a dream of justice for all."

Although the *Brown* decision declared the system of legal segregation unconstitutional, the Court ordered only that the States end segregation with "all deliberate speed." One dictionary definition of "deliberate" is "leisurely or slow in manner or motion."

This ambiguity over how to enforce the ruling gave segregationists an opportunity to organize what came to be called "massive resistance." Many State officials in the South responded to the *Brown* decision by promising to use all legal means and resources under their command to prevent integration.

In Prince Edward County, VA, for example—one of the cases decided in the *Brown* decision—the school district's response was to close the public schools in Farmville for 5 years, from 1959 to 1964. White students enrolled in private schools while a generation of black children was denied access to education.

Over the 50 years since *Brown*, this Nation has continued to wrestle with issues of racial and ethnic equality.

As I stand here today to pay homage to the *Brown* decision and the civil rights struggle, I feel compelled to ask, "A half-century after *Brown*, how far have we come? Where we are today, and where are we headed?"

Fifty years after the *Brown* decision, the struggle for equality has come to include not only racial and ethnic minorities, but also women, the disabled, and gays and lesbians. That is a promising development.

We need only remember that it is only this week when the Massachusetts Supreme Court's order recognizing gay marriages is given the full effect of law.

Since the 1954 *Brown* decision, we have made progress in the sense that Americans overwhelmingly repudiate discrimination and segregation.

But while we no longer see the blatant vestiges of the segregationist era such as signs saying "whites only" or

"colored only," our society is still plagued by inequality and injustice.

African Americans have yet to enjoy true racial equality in this Nation. And in the absence of real equality, African Americans are being denied the essence of what it means to be an American.

Statistics are the clearest barometer for measuring our progress and far too many of them reveal that African Americans continue to lag behind whites in important ways.

In April 2004, the Nation's unemployment rate was 4.9 percent for whites; for blacks, it was 9.7 percent.

In 2002, the poverty rate was 12.1 percent nationwide; for blacks, it was 22.7 percent.

In 1999, median income for white families was \$51,244; for black families, it was \$31,778.

Today, black men make up 41 percent of all prisoners, but only 4 percent of all college and university students.

African Americans are 13 percent of the population in my home State of New Jersey, but they constituted a staggering 63 percent of the State's prison population in 2002.

The murder rate for whites is 3.3 per 100,000 people; for blacks, it's six times as high, 20.5 per 100,000 people.

These statistics make it pretty clear that while we have come a long way from the blatant racism of "separate but equal" and the decision to close the Farmville public schools to prevent their integration, we still have a long way to go in making the dream of justice and equality for all Americans a living, breathing reality.

As we commemorate the 50th anniversary of the *Brown* decision, we need to rededicate ourselves to the civil rights struggle. As Teddy Roosevelt said, "This country will not be a really good place for any of us to live in if it is not a really good place for all of us to live in."

Ms. LANDRIEU. Mr. President, 50 years ago, our Nation set out to give every child the chance for excellence and equality in education. In a quote from the *Brown* decision in 1954, the U.S. Supreme Court said, "Today education is perhaps the most important function of State and local governments . . . It is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right, which must be made available to all on equal terms." We have made great progress in the past 50 years but we still have a long way to go.

By fulfilling the promise of *Brown*, school systems have the ability to lay a great foundation for our Nation. Providing children with a high quality education, in a diverse classroom setting, gives our children the educational