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Senate

The Senate met at 10:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Sovereign God, we submit our lives to Your authority. Fill our minds with clear convictions that You are in charge of our lives and our work today. We commit it all to You.

May this commitment result in a new, positive attitude that exudes joy and hope about what You are going to do today and in the future. We leave the results completely in Your hands. Our need is not to get control of our lives, but to commit our lives to Your control. You know what You are doing and will only what is best for us and our Nation.

There is nothing that can happen that You cannot use to deepen our relationship with You. So when success comes, help us to develop an attitude of gratitude. When difficulties arise, help us immediately turn to You and receive from You an attitude of fortitude.

We place our hands in Yours and ask You to lead us. Through our Lord and Savior. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

SCHEDULE

Mr. BENNETT. Mr. President, on behalf of the majority leader, I announce that today the Senate will resume consideration of Senate Joint Resolution 22, the independent counsel resolution. By previous order, from 10:30 a.m. to 11:30 a.m., the Senate will conclude debate on Senate Joint Resolution 22, the independent counsel resolution, and Senate Joint Resolution 23, the Leahy resolution. Following debate on these resolutions, Senators should anticipate stacked rollcall votes at approximately 11:30.

Following disposition of these resolutions, the Senate may proceed to either the certification of Mexico or the nomination of Merrick Garland. Additional votes are, therefore, possible during today's session following the stacked votes.

The majority leader has asked me to remind Senators that this is the last week prior to our adjournment for the 2-week Easter recess, so he would appreciate Senators continuing to cooperate and adjusting their schedules accordingly for the scheduling of legislation and votes.

I thank my colleagues for their attention.

UNANIMOUS-CONSENT AGREEMENT—NOMINATION OF MERRICK B. GARLAND

Mr. BENNETT. Mr. President, as in executive session, I ask unanimous consent that at 3 o'clock today the Senate proceed to executive session to consider the nomination of Merrick B. Garland, to be U.S. circuit judge, and for it to be considered under the following time agreement: 3 hours equally divided in the usual form. I further ask unanimous consent that immediately following the expiration or yielding back of the debate time, the Senate proceed to a vote on the confirmation of the nomination, and immediately following that vote, the President be immediately notified of the Senate's action and the Senate resume legislative business.

It is my understanding this has been cleared on the Democratic side.

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

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. If the Senator will suspend, under the previous order the leadership time is reserved.

APPOINTMENT OF AN INDEPENDENT COUNSEL TO INVESTIGATE ALLEGATIONS OF ILLEGAL FUNDRAISING

Mr. BENNETT. Mr. President, under the previous order, we now have an hour of debate equally divided, and I have been designated as the manager to control the time on this side. I do not see a colleague yet who will control the time on the other side.

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to Senate Joint Resolution 22 for 1 hour, with 30 minutes under the control of the distinguished Senator from Utah, 20 minutes under the control of Senator LEAHY, and 10 minutes under the control of Senator BYRD.

The clerk will report.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 22) to express the sense of the Congress concerning the application by the Attorney General for the appointment of an independent counsel to investigate allegations of illegal fundraising in the 1996 Presidential election campaign.

The Senate resumed consideration of the joint resolution.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, some general observations prior to getting into the details of this resolution, I think, are in order. As this matter has come before the Nation in the form of press reports, television commentary, newspaper analyses, et cetera, something that is very disturbing to me has happened. That is, a single cloak of suspicion regarding illegalities and improprieties has been cast over all aspects of anything relating to campaign financing, campaign fundraising, and campaign expenditures. Somehow, anything related to raising money or

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

spending money in a campaign has now become tainted, and we find people in the press and people in this Chamber casting aspersions that, in my view, are inappropriate and uncalled for.

I would like to set the terms of the discussion in this fashion. I suggest that, of course, the first dividing line is between that which is legal and that which is illegal. Many times in the press reports no one is making this dividing line. They are attacking anything dealing with fundraising as if it were all the same and all in the same pot. We should make it clear, we should understand that many of the things that are done for political fundraising are perfectly legal and, in my view, perfectly appropriate, while there are other things that are clearly illegal, and obviously anything illegal is not appropriate.

If I may, I was disturbed by some of the comments made on this floor with respect to the actions of the majority leader, primarily by the minority leader. The suggestion was left in the minds of some people that the majority leader was being accused of doing something illegal or improper by urging people to attend a Republican fundraiser and urging people to support the Republican Party. Not only was it not illegal nor was it improper, it was perfectly appropriate for the majority leader of the Republican Party to engage in this kind of activity. Just as, to be completely fair about it, in my view it was perfectly appropriate and perfectly proper for the senior Senator from Connecticut [Mr. DODD], in his role as the general chairman of the Democratic National Committee, to engage in fundraising activity on behalf of the Democratic Party in the last campaign. The Senator from Connecticut has not been attacked on the floor, as the majority leader was, but he has been attacked in the press, as people have tried to cast the cloak of impropriety that I described over all fundraising activities.

I will stand here and defend the right of the senior Senator from Connecticut to do what he has done on behalf of the Democratic National Committee as being perfectly appropriate as well as legal, just as I defend the right of the majority leader for what he has done in fundraising activities that are perfectly appropriate as well as legal.

Now, on the legal side of the line there have been activities that have taken place that, in my view, while legal, are not appropriate. It is, perhaps, legal for the President to have had the kind of extensive contact with campaign donors in the White House that we have seen reported in the press. The President has suggested that every President has met donors in the White House, and therefore this is perfectly OK. I will agree, once again, that previous Presidents have on occasion met with donors to their party or to their particular campaigns while in the White House. It is my personal opinion that the scale and the organized effort that went into bringing people into the White House, whether it is for overnights in the Lincoln bedroom, organized and orchestrated by the President's own hand, or for the coffees, as they were called, has reached a level of unprecedented pattern of activity, and I consider it to be inappropriate.

I will stipulate that it apparently was not illegal. That does not mean we should not comment about it, we should not express our opinions about its appropriateness. But, clearly, it does not call for the appointment of an independent counsel. It is something we can talk about in the political arena. It is on the legal side of the line. If we think it is inappropriate, we should say so. If we think the pattern of activity in this area is just overwhelmingly improper, we have the right to say so. But we must recognize, once again, that some of that activity may clearly not have been illegal.

Drawing the line and coming over to the side of that which is illegal, I find, once again, there are degrees of illegality. Let me give you an example that has been heavily reported in the press: the receipt of a $50,000 check by Maggie Williams, the chief of staff to the First Lady, while Ms. Williams was in the White House. That apparently is illegal.

Naturally, we take breaking of the law seriously. I don't think we need an independent counsel, however, to investigate Maggie Williams accepting a $50,000 check while in the White House, and I don't think it is worth some of the furor that has been created in the press. If she broke the law in that instance, I think the Justice Department and the FEC, whoever is the appropriate legal authority, can handle that without any difficulty and does not require an independent counsel and, frankly, in my view, may not even require the tremendous hue and cry that has risen in this area in the press.

Again, I do not mean to minimize someone who violates a regulation or restriction, but there is a difference between violations that are either inadvertent, relatively innocent or springing out of a lack of understanding of the rules to those violations that, in my view, are truly sinister. We should not be talking about an independent counsel unless we have moved from the legal side of campaign funding and those things that are perfectly appropriate, toward those things that are perhaps inappropriate and improper, across the line to those violations that are inadvertent or relatively minor. We still don't have the necessity of calling for an independent counsel until we cross over into the territory of those infractions that are truly sinister and have serious implications about misuse of power in very high places.

It is my opinion that there have been enough violations in very high places in areas that I think are truly sinister that an independent counsel is, indeed, called for. But before I get into the details of that, I want to make my position perfectly clear that I do not think we should appoint an independent counsel because people in the press, or people in this Chamber, get all exercised about activities in the three areas I have just described. None of them is serious enough to justify an independent counsel. Let's focus on the fourth area I have described, which I consider to be the truly sinister areas.

Mr. President, with that general statement and overview, I am prepared now to turn to my colleague from Michigan and yield such time to him as he may require from his 30 minutes so that we keep the time balanced in this debate.

Mr. LEVIN. I thank my friend from Utah.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I thank the Senator for his invariable courtesy. I ask unanimous consent that I be yielded 10 minutes. Senator LEAHY is not yet here, but I ask that, I am sure with his approval.

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

Mr. LEVIN. Mr. President, we will be voting on two resolutions later this morning. The first resolution, that of the majority leader, is a clearly partisan document, for a number of reasons which I will get into in a moment. The second resolution, which Senator LEAHY and I have introduced, intends to carry out the spirit and the purpose of the independent counsel law without prejudging the Attorney General review and, unlike the first resolution of the majority leader, the alternative resolution includes allegations against Members of Congress. The majority leader's resolution, the first resolution we will be voting on, does not in its final clause, its action clause, make reference to congressional campaigns, but only to the Presidential campaign.

The second resolution avoids prejudging the Attorney General's review, urges that the review be carried out without any political favoritism or any political pressure, and, perhaps most important, includes in that review Members of Congress and allegations against Members of Congress.

The first resolution is a partisan document for a number of reasons. First, it mentions Democratic problems exclusively. Second, it omits what it should include, which is a review of activities of Members of Congress. And, third, it includes what it should omit, which is a prejudgment of the process of the law that it seeks to invoke.

The independent counsel law provides that the Attorney General, upon receipt of certain specific information from a credible source against certain groups, including Members of Congress, shall take certain actions. It doesn't prejudge that action. The independent counsel law doesn't say that the Attorney General, in the absence of specific information from a credible source, will seek an independent counsel. It is only when those first two steps are

taken where she determines that there is specific information from a credible source that then the independent counsel law says she shall seek or, in the case of Members of Congress or other than the specific covered officials, she may seek an independent counsel.

The purpose of this law, in which I have been so deeply involved with Senator Cohen as my Republican counterpart in now three reauthorizations, the purpose of this law is to get an independent investigation of top Government officials at either end of Pennsylvania Avenue free from the taint of politics. That is the purpose of this law, to try to remove the allegations which swirl too often in election campaigns, or otherwise, that could involve criminal activities, to remove the consideration of those allegations against certain individuals and groups from partisan politics.

The independent counsel law, as I said, covers really three groups. First, there are covered officials—the President, Vice President, Cabinet officials, a few named others. Where there is specific information from a credible source that a crime may have been committed by one of these covered officials, then the Attorney General, if she finds those things have occurred, she must seek an independent counsel.

The second group is other persons where she might have a conflict of interest.

And the third group is Members of Congress, where, in the case the first steps have been taken and there is specific information from a credible source, then she may, if she determines it is in the public interest, seek an independent counsel. It is that third group which is omitted from the majority leader's resolution.

The law specifically provides for certain congressional participation through the Judiciary Committee. This is very important as the Supreme Court, in upholding this law in the case of Morrison versus Olson, made special reference to the fact that the involvement of the Congress was limited because the Supreme Court ruled under the separation of powers doctrine that the Congress could not control the independent counsel process. And so the Supreme Court, in the Morrison case, pointed out that the involvement of Congress was limited to members of the Judiciary Committee writing a letter to the Attorney General which, in turn, would trigger a report from her within 30 days. That is what the independent counsel law provides.

This resolution goes way beyond that, because it would put the Senate on record, albeit in a nonbinding way, nonetheless the full Senate on record, which is far different than a letter from members of the Judiciary Committee.

I have indicated the partisan nature of the first resolution that we are going to be voting on. Let me just give a few examples of allegations made against Members of Congress or others than those that would be covered by this resolution, particularly in the area of tax-exempt organizations.

Just 2 months ago, the specially appointed investigative subcommittee of the House Ethics Committee released a unanimous bipartisan report relative to Speaker GINGRICH.

Here is what that bipartisan report found. This is a quote:

> The subcommittee found that in regard to two projects, Mr. Gingrich engaged in activity involving 501(c)(3) organizations that was substantially motivated by partisan, political goals.

The subcommittee also found—these are the words of the subcommittee—that ''it was clear that Mr. Gingrich intended''—I emphasize the word ''intended''—''that the [American Opportunities Workshop] and Renewing American Civilization Projects''—those are the 501(c)(3)'s—''have substantial partisan, political purposes.''

The subcommittee said—this is a bipartisan report—that ''In addition, he was aware that political activities in the context of 501(c)(3) organizations were problematic.''

Mr. President, it is illegal for 501(c)(3) organizations to participate in partisan activities. It violates the law. Yet, you have here a bipartisan subcommittee of the House that finds that Mr. GINGRICH, in regard to two projects, engaged in activity that was motivated by partisan goals and that he intended—he intended—that those projects—I am using their words—''have substantial partisan, political purposes'' and ''he was aware that political activities in the context of 501(c)(3) organizations were problematic.''

You talk about specific information from a credible source. Pretty specific, pretty credible, bipartisan subcommittee of the House of Representatives, part of the ethics committee. And yet, in the first resolution that we will be voting on, no suggestion to the Attorney General that she review the possibility that the public interest requires her to seek an independent counsel relative to Members of Congress. Only the Presidential election is in the ''action'' clause in the resolution before us. No reference to anything but Democratic activities in the ''whereas'' clause.

There are other tax exempts that should be considered by the Attorney General as provided for by the independent counsel—$4.5 million went from the Republican National Committee to a tax-exempt group called Americans for Tax Reform.

According to the Washington Post, 20 million pieces of mail were sent out by that organization, millions of phone calls in 150 congressional districts. They even put on television ads in States, and in one State against a colleague of ours, attacking him for not showing up for work. ''That is wrong,'' said the television ad. This is by an organization that is not supposed to engage in partisan activity, putting on television ads attacking somebody who is running for Congress, for the Senate, in this case.

A group using the same offices as Americans for Tax Reform, also a tax-exempt group, puts on an ad on television saying the following: ''When Clinton was running, he promised a middle-class tax cut. Then he raised my taxes. He was just lying to get elected. This year he'll lie some more . . .''

That is a tax-exempt group that is not supposed to be putting on partisan ads, but the resolution of the majority leader does not provide that the Attorney General will look into that kind of activity by tax exempts; only Democrats are mentioned and only the Presidential election is mentioned.

The PRESIDING OFFICER. The Senator's 10 minutes have expired. Do you wish to yield more time?

Mr. LEVIN. I thank the Chair, and I think I better reserve the balance of Senator LEAHY's time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Thank you, Mr. President.

May I inquire how much time I have remaining?

The PRESIDING OFFICER. Nineteen minutes and fifteen seconds.

Mr. BENNETT. I thank the Chair.

Mr. President, I am interested in the comments by my friend from Michigan. He is a distinguished lawyer. I have never had the experience of going to law school. But I must respond out of experience relating to the political circumstance.

He decries at length ''no reference to Members of Congress'' and gives us an example out of the life of NEWT GINGRICH, Speaker of the House, in saying, why does not the resolution call on Janet Reno to investigate the Speaker?

Mr. President, if Janet Reno were to decide that there was further action that needed to be taken with respect to Mr. GINGRICH, I doubt that she would run into any resistance in the White House to that decision. I doubt that the President would think that was not a good idea for her to do that or send her any kind of direction or subtle hints saying, ''Do not pursue Mr. GINGRICH.''

The reason we have an independent counsel operation is because the Attorney General is indeed subject to pressure from the White House. And there is no such pressure with reference to Members of Congress, particularly Members of Congress of the opposing party.

In this body, both the Senator from Michigan and I sat with Dave Durenberger. Dave Durenberger found out directly that there was no problem in the Justice Department coming after a Member of Congress.

There are Members in this body who were here when Harrison Williams, known as ''Pete,'' was pursued by the Justice Department and his own party and ultimately went to jail.

In the structure of our Government, with the separation of powers, there is

no pressure on the Attorney General in the executive branch that would prevent him or her from going after a Member of the legislative branch, but there is clear pressure within the executive branch that could prevent an Attorney General from going after a member of the executive branch. And that is why the independent counsel statute was created.

I think the omission from the majority leader's resolution with respect to Members of Congress is a recognition that the independent counsel was never intended to go after a Member of Congress and it would be inappropriate to go after Members of Congress to put that in. It would fundamentally change the nature of the independent counsel circumstance.

Now, Mr. President——

Mr. LEVIN. Would the Senator yield?

Mr. BENNETT. I would be happy to.

Mr. LEVIN. When the Senator says it was never intended that the independent counsel go after a Member of Congress, I must yield myself 2 minutes to answer that.

The law specifically provides that when the Attorney General determines it would be in the public interest, that indeed she ''may seek''—I am quoting the law—''an independent counsel for or relating to Members of Congress.''

It is very specific in the law. And I just used the exact words, reading. Members of Congress are included in this law. Indeed, it was the current majority in this body that insisted that Members of Congress be included in the law and wanted to make it mandatory, and now they are left out of the resolution of the majority leader.

The ultimate resolution was to make it discretionary where the Attorney General found it in the public interest to do so. But the majority in this body had determined that Members of Congress be included. They were included, left discretionary, but it is very precise.

If I can disagree with my dear friend, it is very precise that Members of the Congress are included in the independent counsel law when it is determined by the Attorney General it would be in the public interest.

I will use 1 more minute.

The pressure that the Senator from Utah talks about, which he presumes comes from the White House—if it does—is wrong. We should not compound any such alleged pressure if, in fact, it exists by putting pressure on her by this legislative body. Pressure from any source is wrong. If the White House pressures her, it is wrong.

By the way, she has shown tremendous independence, tremendous independence when it comes to the selection of a decision to seek an independent counsel. This Attorney General has shown no reluctance to seek the appointment of independent counsel.

So if there is pressure, there should not be pressure from any source, White House or Congress. That is exactly why this first resolution, it seems to me, runs so counter to the spirit of the independent counsel law, because it does explicitly put pressure on her. It jumps to a conclusion as to what she should find at the end of a process. We should not do it. If anybody else is doing it, they should not do it. We should not do it.

Mr. BENNETT. I thank my friend from Michigan for correcting my legal lack of understanding. And I do stand corrected and accept that instruction.

I say to him, and to any who feel, as he apparently does, that Mr. GINGRICH should be included in this, that I would be happy to have Mr. GINGRICH included in the resolution if indeed there were evidence suggesting there was something that had not already come out in the proceedings that have already gone forward.

The reason I am supporting this resolution is that I feel there is information that is being hidden within the executive branch, coming from somewhere. I do not know whether it is coming from the White House. I do not know whether it is coming from the executive office of the President. But from somewhere, there seems to be some kind of pressure being applied to the Attorney General to keep her from proceeding with the appointment of an independent counsel, as Members of this body individually have urged her to do, including Members of the Democratic side of this body, who have urged the Attorney General to proceed with the appointment of the independent counsel.

For example, the senior Senator from New York [Mr. MOYNIHAN] has said it is time for an independent counsel. I am sure my friend from Michigan would not stand to censure the senior Senator from New York for making that expression. He has expressed that freely, openly, and publicly as is his right.

All the resolution does that is offered by the majority leader is give other Members of the Senate the opportunity to make the same expression in a vote for a sense of the Senate—not binding, not with a force of law, simply making public the fact that they agree with Senator MOYNIHAN in his calling for a independent counsel.

Now, why is it that we feel there are things that need to be examined with an independent counsel that have not been? There are many, and our time is limited, but let me go quickly, Mr. President, to one example of something that I think calls out for the attention of an independent counsel. On the 13th of September, 1995, there was a meeting in the Oval Office, not in the Democratic National Committee, not in some other governmental office, in the Oval Office in the White House. President Clinton, of course, was there and with him were four other individuals—James Riady, not a Federal employee, an executive, indeed, an owner of the Lippo Group; Bruce Lindsey, who was a Government Federal employee and is the Deputy White House counsel; Joseph Giroir, Lippo joint venture partner and adviser and a former partner of the Rose Law Firm in Arkansas, again, not a Federal employee; and John Huang, a former executive with Lippo but at the time of the meeting he was a Federal employee. So here you have the President, two non-Federal employees and two Federal employees. The discussion is whether or not John Huang will move from his position at the Department of Commerce to become vice chairman of finance of the Democratic National Committee. So here is the discussion in the Oval Office, including the President, regarding the future role of John Huang, taking place in the presence of two of Mr. Huang's former associates in the private world.

Mr. Huang made that move from the Commerce Department to the Democratic National Committee where he raised, according to the Democratic National Committee, $3.4 million, $1.6 million of which has had to be returned by the Democratic National Committee because they have been determined to be either inappropriate or illegal.

Now, when you ask the question, do we know everything we need to know about Mr. Huang and his activities stemming from that meeting in the Oval Office presided over by the President of the United States, we have Mr. Huang taking the fifth amendment, refusing to tell us anything further on the grounds that it might incriminate him. He joins with Charlie Trie, Pauline Kanchanalak, Mark Middleton, and Webster Hubbell in taking the fifth amendment, saying they will not cooperate with the investigation on the grounds that it might tend to incriminate them. There are others who have not taken the fifth amendment but who have left the country, including John H.K. Lee, Charlie Trie, Pauline Kanchanalak, Arief and Soraya Wiriadinata, Charles DeQueljoe, and Mr. Riady.

Of the four people who were in that meeting along with the President, one has taken the fifth amendment and the other has left the country. Roughly half of the money that Mr. Huang raised has already been returned by the Democratic National Committee on the grounds that it was either illegal or inappropriate. I think this summarizes the fact that we need much further investigation into, (a), what was decided at that meeting, and (b), what was done subsequent to that meeting as a result of those decisions, but of the four non-Presidential participants in that meeting, half of them are unavailable to us to give us a version.

There are many more examples. I see my friend from West Virginia has arrived. I will reserve such additional time as I have to summarize this later, and I yield the floor.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from West Virginia.

Mr. BYRD. Mr. President, on March 11, this body voted 99 to 0 to adopt a resolution that provides more than $4.3

million to the Committee on Governmental Affairs for the sole purpose of investigating any and all improper or illegal activities stemming from the 1996 federal elections. The investigation will cover the presidential and congressional elections, and the results will be made known to the public early next year.

I believe that one of the primary reasons the resolution had the full support of the Senate was because of the various compromises that succeeded in making the scope of the investigation both bipartisan and fair. Absent those accommodations, the resolution would have been seen by the American people as nothing more than an attempt by one party to gain political advantage over the other.

That is why I am deeply concerned with the direction now being taken with this measure. Unlike the resolution that received the full support of the Senate on March 11, this resolution specifically targets for investigation by an independent counsel the President, the Vice President, unnamed White House officials, and the Democratic National Committee, and it does so based on nothing more substantial than ''reports in the media.''

Mr. President, the American people are painfully aware that both parties are guilty of abusing the campaign financing system currently in place. But this resolution would seek to exploit—apparently for paritsan political advantage—the actions of only a Democratic President and the Democratic Party. Now, where is the objectivity? Where is the objectivity in that proposition?

Even if we disregard fairness, there is simply no logical reason why the Senate needs to be spending its time on this resolution. The simple truth is that the law governing the appointment of an independent counsel already provides a process that the Attorney General must follow. That process is clearly laid out in the U.S. Code, and it does not—I repeat, does not—include sense of the Congress resolutions.

The fact is, Mr. President, that this is an unprecedented behest.

Never before has the Congress attempted to dictate the naming of an independent counsel. We have never passed any measure that would tell the Attorney General, as this resolution does, that she ''should'' apply for the appointment of an independent counsel. The reason we haven't done so is because that would unnecessarily politicize a procedure that was expressly designed to restore public confidence after Watergate by taking politics out of our criminal justice system.

Furthermore, I find it ironic that we are debating this resolution at the same time that the Justice Department's Office of Public Integrity is actively engaged in an investigation of the very matters that this resolution seeks to have investigated. Career prosecutors are, as we speak, already working as part of an independent task force looking into fundraising efforts in connection with the 1996 Presidential election. In addition, a Federal grand jury has already begun hearing testimony in connection with campaign contributions to the Democratic National Committee. But under the independent counsel statute, each of those efforts would cease. There would be no further authority for the Attorney General to convene grand juries or to issue subpoenas. Where is the logic? Where is the logic in that, Mr. President?

The decision to invoke the independent counsel process is, by law, a decision for the Attorney General alone to make. Let us let the law work as it was intended. We should not, through some misguided attempt at grandstanding, pass a resolution that serves no legitimate purpose except to score political home runs. Such a course tends to call into question the integrity of the Justice Department and of the entire independent counsel process.

This resolution has not had the benefit of committee examination and has been moved to the calendar by parliamentary device—I suppose through rule XIV. While that may be acceptable for some measures, and is acceptable for some measures, I feel that, on a matter this sensitive, a committee should have certainly had the opportunity to pass some judgment. The Congress is attempting to direct an Attorney General, when the law specifies the decision to invoke the independent counsel is and ought to be, by constitutional necessity, that of the Attorney General alone.

There is a mean spirit alive in this town currently, Mr. President, which is destructive, overly partisan and overtly partisan, and thoroughly regrettable. We seem to have completely forgotten about the mundane necessities of governing, like crafting a budget and dealing with the myriad problems that face the American people.

Instead, we are engaged in a feeding frenzy, like sharks that have tasted a little blood and hunger for more. If you have ever observed sharks being fed red meat, you know that it is not a pretty picture. And I am sure that the excesses of partisanship emanating from Washington these days and being witnessed by the American people are far from appetizing.

No one is suggesting that we turn our backs on corruption or fail to explore wrongdoing. But I implore some in this body to cool off and to try to get a sense of perspective on this entire matter.

Service in the U.S. Senate is a tremendous honor. Each of us has expended great personal effort to get here, including the straining of our personal lives in order to attain a wonderful prize, a seat in this great body. The benefits of winning that prize include the opportunity to participate in governing the greatest country on Earth, the United States of America, and through the quality of that governance, to inspire and to uplift our people.

So I urge each of my colleagues to focus on that opportunity and on the great and long tradition of this body. Let's put aside this and all other unwise techniques for embarrassing each other and do something for the good of the American people. If there are those who want to embarrass themselves by wrongdoing, they will be found out because there are processes already at work to ferret out that information and bring it to the full light of day. So let us leave the investigation of campaign abuses by both political parties in the hands of the very capable people charged with conducting them and avoid the allure of ''piling on'' for political advantage. It is time for us to remember our real duties and our heavy responsibility to legislate and to govern for the common good and, by that example, so encourage our President to do the same.

Mr. President, I yield the floor.

Mr. MOYNIHAN. Mr. President, I will vote against both the Republican and the Democrat resolutions.

I hold that the Attorney General should appoint an independent counsel to investigate alleged improprieties by Democrats and by Republicans in fundraising for the 1996 Presidential and congressional campaigns. I believe the public will only be reassured if an independent counsel looks into what has been happening. The issues must be aired in an independent, nonpartisan setting. And if there have been violations of law, there must be consequences.

Last week, after much debate, the Senate agreed to fund the Governmental Affairs Committee probe into illegal and improper fundraising and spending practices in the 1996 Federal election campaigns. A unanimous Senate believed that a credible investigation requires that we look not only at our President, but also at ourselves. So, too, should an independent counsel.

Senate Joint Resolution 22 suggests that the scope of the independent counsel's investigation should be limited to the allegations of wrong-doing by Democrats in the 1996 Presidential campaign. There is no mention of an investigation of congressional campaigns.

Senate Joint Resolution 23 does not call for the appointment of an independent counsel. To say again, in my view, an independent counsel is the only entity capable of conducting an investigation without dissolving into partisan bias. And it is the only way of proceeding that avoids the appearance of conflict of interest.

Mr. BIDEN. Mr. President, I would like to offer just few comments to indicate why I believe the course chosen by the majority today relating to the independent counsel is unwarranted.

First, the official responsible for initiating the appointment of an independent counsel—Attorney General

Janet Reno—has maintained the highest standards of integrity and professionalism. Second, the Attorney General has proven her willingness to request the appointment of independent counsels in the past when she believed the statutory standard was met. And, third, the Attorney General has already undertaken a serious inquiry into the campaign fundraising issues and continues to consider, as the facts develop, whether to seek an independent counsel.

As we review the facts, we must remember that the independent counsel statute is triggered only upon receipt of specific, credible evidence that high-ranking Government officials listed in the statute may have violated our criminal laws. This is an appropriately high threshold that must be met before the process of appointing an independent counsel can go forward. This standard is not met by vague allegations. The law does not apply to unethical, improper, or unseemly conduct. Rather, the statute is triggered only after the Attorney General determines, after consulting with career Justice Department prosecutors and engaging in a serious, deliberative process, that the statutory test has been satisfied.

The conduct of the 1996 elections are being carefully scrutinized by the Department of Justice. A task force comprised of career prosecutors from the Public Integrity Section of the Criminal Division, supported by over 30 FBI agents, has been assembled to explore fully the range of issues that have been raised. This task force will determine which, if any, of the allegations warrant criminal investigation. Of course, if the task force receives specific evidence from a credible source that a person covered by the Independent Counsel Act may have violated the law, a preliminary investigation under the act would be initiated. But, to date, the Attorney General has determined that the Department has not received such evidence.

In short, we are at the early stages of the task force's operations where the job is best left to career investigators and prosecutors.

What is more, under the independent counsel statute, it is the Judiciary Committee—not the full Senate—which has the most proper oversight role of the independent counsel process. I argued last week that was unnecessary for the Judiciary Committee to make any conclusions at this time as to the propriety of appointing an independent counsel. But, a majority of the committee did exactly that last week. Now, the full Senate has been called on to embark on an even more unnecessary and unwarranted course by asking all Senators to—in effect—substitute their judgement for that of the career investigators and prosecutors. I do not believe that the members of the Judiciary Committee who spend so much of their time overseeing Justice Department activities could make such a judgement now—so, I certainly do not think it possible that all the other Senators who do not sit on the Judiciary Committee can prudently or accurately make this judgement.

Not only do we have a comprehensive task force already reviewing the 1996 campaign fundraising issues, but we also have an Attorney General who has repeatedly shown her independence, integrity, and willingness to call for an independent counsel. Since taking office, Attorney General Reno has requested the appointment of at least four independent counsels—Kenneth Starr, Donald C. Smaltz, David M. Barrett, and Daniel S. Pearson—to investigate wrongdoing of high executive branch officials and other individuals covered by the statute.

In short, the most prudent course today is to wait for the Justice Department's investigation to be completed. Then, and only then, can the need for appointment of an independent counsel can be evaluated based on a complete and full record.

I would also add that this is consistent with how I have proceeded in past cases. For example, in 1992, I, along with several other Democratic Senators on the Judiciary Committee sent a letter to then-Attorney General William Barr requesting that he call for an independent counsel to investigate the possibility that high-ranking officials engaged in obstruction of justice in the prosecution of a particular case. I did so only after Attorney General Barr had appointed a special counsel, indicating that the Attorney General had already concluded that criminal conduct may have taken place. I called for an independent counsel at that point to ensure that this investigation be carried out by someone whose independence was clear, rather than by a special counsel hired by the Attorney General.

Finally, we also need to keep in mind that there are some costs to appointing an independent counsel at this time. An inquiry is already well under way—FBI agents have been assigned to the task force and, according to press reports, subpoenas have been issued and a grand jury has been convened. Once an independent counsel is appointed, that inquiry must be shut down and the independent counsel will have to start from scratch. And as we know from past experience, independent counsel investigations can linger for years. So if we are interested in resolving this matter, and getting answers as soon as possible, we ought to allow the Justice Department to go forward and put our trust in Attorney General Reno to trigger the independent counsel statute only if and when she deems it necessary.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. How much time remains for the Senator from Vermont?

The PRESIDING OFFICER. The Senator from Vermont has 6½ minutes.

Mr. LEAHY. Mr. President, Senate Joint Resolution 22 does not advance the administration of justice and is not authorized by the independent counsel law. I believe it an inappropriate effort to subvert the independent counsel process.

We spent 4 days debating this. We have yet to confirm one single judge. We may possibly have a vote on a nominee to one of the almost 100 Federal judge vacancies before we go on our second vacation. We have not had 1 minute of debate on a budget resolution. We have not had 1 minute of debate on the chemical weapons treaty. We have not had 1 minute of debate on the juvenile crime bill. But we spent 4 days on this.

I would have thought that the day the President leaves for an international summit with the President of Russia would not be an appropriate time for attacking the President. I would have thought it a time for coming together to demonstrate to the rest of the world that Democrats and Republicans can work together and can at least show support for the President of the United States as he pursues the interests of the United States in his meetings with the President of Russia.

That is the way we have always done it. In my 22 years here, under the majority leadership of Mr. Mansfield, Mr. BYRD, Mr. Baker, Mr. Mitchell, and Mr. Dole, we have always, always followed the rule that we do not bring something onto the floor of this Senate attacking the President of the United States as he is about to go into a summit.

Apparently, as the distinguished Senator from West Virginia said, there is a meanness going through this town, and that rule that has always been followed, a bipartisan rule always followed with Democratic and Republican Presidents, always followed with Democratic and Republican leaders, is not going to be followed here today. I think that is unfortunate. I think it gives an unfortunate image to the rest of the world, and it certainly is not in the best traditions of the U.S. Senate.

It is also ironic that we are being asked to take this action today knowing that last Thursday the Republicans and Democrats on the House and Senate Judiciary Committees sent written requests to the Attorney General invoking the statutory provisions that provide a limited role for Congress in the independent counsel process.

And, of course, this resolution would call for an independent counsel only for the President—it is restricted to the 1996 Presidential campaign. This resolution carefully crafted so that it won't touch any of the Republicans or Democrats in the Senate or Republicans or Democrats in the House. In other words, we say we are like Caesar's wife, we are above all this, we are untainted by any scandals. But go after the President and the Vice President; and, incidentally, let's really slam the President as he heads off to negotiate with the only other President of a nuclear superpower. I think the resolution

takes too narrow a view if we are up to making demands upon the Attorney General for an independent counsel. The resolution shields congressional fundraising practices from investigation.

Boy, somebody is not reading the paper. It didn't make sense to try to shield us from an investigation when the same limits were proposed in connection with the funding resolution for the Governmental Affairs Committee, and it does not make sense or increase our credibility with the public now.

Indeed, today, the Washington Post had a front page story reporting that a lobbyist for a foreign government was shaken down last summer by the same Member of the House who now chairs their investigation into alleged campaign fundraising abuses. Incidentally, this was not only the lobbyist but, if this article is accurate, it even went to the ambassador of a foreign power.

We on the Judiciary Committee and in the Congress have done all that the statute allows with respect to the determination by the Attorney General. The 30-day period for the Attorney General's response has begun to run. We do not need to do anything further on this at this time.

We ought to get about the real business of the U.S. Senate and abandon this ill-conceived effort to instruct the Attorney General how to proceed. She doesn't need our guidance and I do not want to derail the investigations that are under way.

But if we have to engage in this kind of sideshow, as the President leaves for an international summit, let us at least restrain ourselves from seeking to pressure the head of our Federal law enforcement agency and instead pass the alternative form of resolution that urges her to resist political pressure and follow the law. Incidentally, unlike the original resolution, the alternative resolution, Senate Joint Resolution 23, does not shield the Congress from any investigation.

I reserve the remainder of my time.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I appreciate the admonition by the senior Senator from West Virginia and repeated by the Senator from Vermont with respect to meanness. I have made every attempt during this presentation to make sure that there is none in any of the things that I have said, and to remind Senators in my opening comments that I think many Members of this body have inappropriately been stigmatized by the press and others for doing that which is perfectly appropriate and perfectly legal.

I must once again make reference to what I consider to be an inappropriate attack on the motives of the majority leader that was mounted by the minority leader earlier during this debate. I think that is inappropriate. The majority leader is acting out his good motives, even though there may be some who disagree with him.

As to the argument that this resolution somehow exempts Members of Congress and somehow exempts members of the Republican Party from any action on the part of the Attorney General, I point out the effective language of the resolution which says, ''It is the sense of Congress that the Attorney General should make application to the Special Division of the United States Court of Appeals to the District of Columbia for the appointment of an independent counsel to investigate allegations of illegal fundraising in the 1996 Presidential election campaign.''

There is nothing in there that says she shall not exercise this right with respect to a Member of Congress, that she shall not go after a Republican nominee, that she shall not do any of the other things that are simply an expression that she should do it with respect to the Presidential campaign, and no reference in that resolve portion of even Democrats rather than Republicans.

With that, Mr. President, I yield the remainder of the time to the majority leader.

The PRESIDING OFFICER. The distinguished majority leader is recognized.

ORDER FOR MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that immediately following the stacked votes today that there be a period of morning business until the hour of 3 p.m. today, with Senators permitted to speak for up to 5 minutes each with the exception of the following: Senator DASCHLE, or his designee, in control of up to 60 minutes; Senator BENNETT, or his designee, in control of up to 30 minutes; Senator BROWNBACK for up to 10 minutes; and, Senator CLELAND for up to 15 minutes.

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

Mr. LOTT. Mr. President, today after months of media exposes and the American people asking questions about exactly what is going on here, I think the question that we are trying to answer today is, ''Why hasn't Attorney General Reno appointed an independent counsel to investigate these matters?'' Members of both parties, Democrats as well as Republicans, have asked that question, and they can't get a satisfactory answer. They have called on the Attorney General under the law involving the independent counsel to appoint an independent counsel. Senator MOYNIHAN, Senator FEINGOLD, and I think others in both parties have said this is the way that we should proceed, and this independent counsel should be appointed.

That is why we brought before the Senate Senate Joint Resesolution 22 to express the sense of this body ''that the Attorney General should make application to the Special Division of the United States Court of Appeals for the District of Columbia for the appointment of an independent counsel to investigate allegations of illegal fundraising in the 1996 Presidential election campaign.''

I cannot understand how anyone who is familiar with the language of the independent counsel statute can disagree with this resolution. And I have gone back and read it and reread it. I have been around when this statute has been passed, and modified and passed again. Frankly, I have always had some reservations about it. But it is on the books, and it is clear when it should be activated.

That statute sets two thresholds for the process of appointing an independent counsel. The first is whether there have been credible and serious allegations of illegal acts by high officials. And it defines who these high officials may be.

That doesn't mean anyone has to be presumed guilty. As long as the allegations are credible and serious, the statute requires the Attorney General to take action.

Clearly, that first threshold has been met by what we already know from news reports about illegal foreign donations and the use of White House facilities for campaign fundraising.

I need not repeat all the instances others have cited during this debate. One expose has followed another. One admission has followed another. One explanation or excuse is followed by another. Without judging anyone involved, it is as clear as can be that the first threshold of the independent counsel statute has already been met.

But if anyone disagrees with that assertion let them consider the second threshold of the law, the second set of circumstances that permits the Attorney General to take action. That second threshold is the existence of a perceived conflict of interest on the part of an Attorney General who is appointed by the President and confronted with possible illegal activities involving the White House.

This provision was put in the independent counsel statute in 1978 in order to extricate Attorneys General from serious situations just like the one in which the Attorney General finds herself now. Confronted by myriad allegations of wrongdoing within the administration, of which she is a part, it is not her role to pass judgment on them, and it should not be. Under the law, it is her responsibility to trigger the court process by which an independent counsel takes over the role and does the job which the law deliberately takes out of her hands.

Listen to the Attorney General herself on this point when she testified, just 4 years ago, on the reenactment of the independent counsel statute:

> It is absolutely essential for the public to have confidence in the system, and you cannot do that when there is a conflict or an appearance of conflict in the person who is, in effect, the chief prosecutor.

In other words, the Attorney General herself.

Who did deny that this second threshold for applying the independent counsel has been more than met? Through no fault of her own, Attorney

General Reno is caught in an excruciating conflict of interest. If she were to aggressively investigate charges of misconduct by senior administration officials, she could be accused of excess zeal to protect her own reputation for integrity. If, on the other hand, she does not uncover wrongdoing, she would be accused of letting the guilty escape because of political considerations.

To shield the Attorney General—any Attorney General—from that predicament, and to protect the integrity of the entire Department of Justice, is the essential and primary purpose of the independent counsel statute.

If that is all so obvious, why then, the question might be asked, is the Senate considering this resolution today? The answer is that we are compelled to take this step, formally expressing the sense of this institution, for two reasons.

First—it is quite common, and, in fact, almost always when there are serious issues being debated that don't necessarily require a law to be passed—the Senate expresses its collective sense on the issue of national import. If we do not do that with regard to this matter, I think we will be slighting our duty.

Second, this resolution is a result of our rising frustration with what seems to be determined inaction on the part of the Attorney General to appoint, or start the process to appoint, an independent counsel. Like the American people, we must wonder what it will take to jar the Department of Justice to activate the independent counsel law. After all, the Department is not dealing with one or two frivolous allegations. It is dealing with a steady drip, drip, drip of revelations over a period of several months that has now become a tainted stream of suspicion.

There is only one way to clean it up, and that is through the appointment of an independent counsel. Let me remind my colleagues that the purpose of such an appointment is not just to prosecute the guilty but to clear the innocent. In neither case should that be seen as a partisan endeavor.

Nonetheless, many of our colleagues on the other side of the aisle find fault with this resolution. They say it ought to apply to the Congress as well. But the independent counsel statute already does apply to Members of Congress.

If the Attorney General has received credible and serious allegations of illegal activity by one or more Members of Congress, she is already fully empowered to ask the Federal court to name an independent counsel. And it has been done in the past. Believe me, it has been done. The conflict is not between the administration and the Congress. The Attorney General can take that action. The perceived conflict of interest is when you have the Attorney General of the same party of the people in control of the White House where allegations are being made.

I respectfully suggest that the effort being made here to include the Congress in this resolution is, once again, just a distraction. That is as polite a term as I can find for something that is irrelevant to the Nation's concern about what we have seen happening.

But what has been the modus operandi? Every time another new, serious allegation comes out, the alternative by the Democrats has been to attack the people who are going to be in critical positions. Senator FRED THOMPSON, who is chairman of Governmental Affairs, his motives were impugned when we were moving through with setting up the investigation for Governmental Affairs. Insinuations, well, this has 2,000 ramifications. And now today DAN BURTON, the chairman of the committee in the House who has a job to do, yes, attack him.

That has been the way it has been done for the last 4 years. Anytime you get accused by somebody or somebody has a job to do, go after them. That is what is at stake here—distraction, obfuscation, say, well, they do it, too. No. So much of what has happened here is not normal; it is not the way it has always been done.

That campaign is the heart of matter. The campaign has been the focus and the forum on other issues whereas what we are trying to get at is a very serious matter here, illegal foreign contributions. I mean even the word espionage has been suggested in all this. We are talking about staggering sums of money that have been raised and in unusual ways.

That campaign continues to generate media allegations about improper—we voted on that last week—as well as illegal conduct.

If anyone is tempted to take the position of a pox on both houses, I have news for them. It is not true that everybody in politics per se behaves alike or ignores the law or pushes the limits of legality. There are clearly things in the law that may be debatable, but they are legal and they are appropriate. If we want to go back and have a debate—and we will have a debate this year on campaign finance reform, but before we start trying to reform the law, I think we need to look at how do we find out what happened. Who did what? What has gone on here?

If anyone is tempted to take that position, I think they need to reconsider. We do not all do it, and I do not think that it is going to work to just try to shove it off by trying to drag the Congress into it. We are trying to get at what has happened.

The independent counsel, by the way, is not necessarily going to be a slap at the President. In fact, that is the way to quiet this thing down, have the process go forward, have an appropriate investigation, find out what happened, who did what, by an independent counsel.

As a matter of fact, I am going to presume that it may not reach to the President. I do not think all of these things involve the President. They may not come to that conclusion in the end. But this is the way to get at the bottom of what really has happened. So I urge my colleagues here today do not be distracted. We have a very clear resolution here that just says it is the sense of the Senate that the thresholds have been met to provide for an independent counsel and that we should do that, make it very clear what our position is and go on with the substantive business that we have to do around here.

Some people say, how are you going to deal with the budget, less taxes, less spending, less Washington, more freedom if you are going to be fighting on these other things? As a matter of fact, maybe now we are in a position to move on. We have a committee that has been funded. They can do their investigation, their hearings. If we have an independent counsel appointed, which clearly I think the law has provided for, and the threshold has been met, then we can go on about our other business.

I urge my colleagues to vote for Senate Joint Resolution 22, I believe it is, and then vote to table the other resolution that is pending, because it is no more than a distraction because the law already provides for that coverage.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, do I not have a minute, 40 seconds remaining?

The PRESIDING OFFICER. The Senator from Vermont has 1 minute, 42 seconds.

Mr. LOTT. Mr. President, if the Senator will yield 1 second.

Mr. LEAHY. On the Senator's time.

Mr. LOTT. On my time. Do I have any time left or has all time on this side expired?

The PRESIDING OFFICER. The leader continues to have leader time.

Mr. LOTT. I thank the Chair.

Mr. LEAHY. Mr. President, I have listened to the soothing words of my good friend from Mississippi, but they do not bring out the fact the Attorney General has already formed a task force of experienced prosecutors to investigate whether criminal conduct took place in the 1996 Federal election campaigns involving, as well, 30 agents from the Federal Bureau of Investigation with subpoena power and testimony reportedly being heard before a grand jury. If a preliminary investigation is begun under the statute and an independent counsel is appointed, all this investigation stops, clang, like that. And to say that we are looking at Congress is interesting. If you read Senate Joint Resolution 22, it speaks only of investigating allegations of illegal fundraising in the 1996 Presidential election campaign. If you look at Senate Joint Resolution 23, which the majority leader wants tabled, it

speaks of Members of Congress as well as Presidential elections. It is very clear they do not want it going to the Members of Congress question.

I still say I am disappointed not to hear why we have broken decades and decades and decades of tradition to bring up something obviously aimed directly at the President of the United States as he leaves for a summit meeting with the President of the only other nuclear superpower. It has never been done, it has never been allowed by majority leaders of either Republicans or Democrats with either Republican or Democratic Presidents. Perhaps at some point in this Congress we will go back to the traditions of comity that we have seen before. But, in the meantime, let us vote on this resolution, but let us also vote on Senate Joint Resolution 23, which would include the Congress. I call on all my colleagues to be courageous enough to speak up and say we will support investigations of ourselves as well as the President.

I yield the floor.

The PRESIDING OFFICER. All time has expired. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is on the passage of the joint resolution. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 32 Leg.]

YEAS—55

Abraham	Frist	McConnell
Allard	Gorton	Murkowski
Ashcroft	Gramm	Nickles
Bennett	Grams	Roberts
Bond	Grassley	Roth
Brownback	Gregg	Santorum
Burns	Hagel	Sessions
Campbell	Hatch	Shelby
Chafee	Helms	Smith, Bob
Coats	Hutchinson	Smith, Gordon H.
Cochran	Hutchison	Snowe
Collins	Inhofe	Specter
Coverdell	Jeffords	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Warner
Enzi	Mack	
Faircloth	McCain	

NAYS—44

Akaka	Feinstein	Levin
Baucus	Ford	Lieberman
Biden	Glenn	Mikulski
Bingaman	Graham	Moseley-Braun
Boxer	Harkin	Moynihan
Breaux	Hollings	Murray
Bryan	Inouye	Reed
Bumpers	Johnson	Reid
Byrd	Kennedy	Robb
Cleland	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Torricelli
Dorgan	Landrieu	Wellstone
Durbin	Lautenberg	Wyden
Feingold	Leahy	

ANSWERED ''PRESENT''—1

Dodd

The joint resolution was passed.

The preamble was agreed to.

The joint resolution (S.J. Res. 22), with its preamble, reads as follows:

S.J. RES. 22

Whereas 28 U.S.C. §§591 et seq., allows the Attorney General to make application to the Special Division of the United States Court of Appeals for the District of Columbia for the appointment of an independent counsel when there is specific and credible information that there may have been violations of Federal criminal law (other than a class B or C misdemeanor or infraction) and the investigation of such violations by the Department of Justice may result in a political conflict of interest;

Whereas this Attorney General has previously exercised that discretion to apply for the appointment of an independent counsel to investigate the Whitewater matter on the basis of a political conflict of interest;

Whereas there has been specific, credible information reported in the media that officers and agents of the Democratic National Committee and the President's reelection campaign may have violated Federal criminal laws governing political fundraising activities in connection with the 1996 Presidential election campaign;

Whereas, according to reports in the media, the Attorney General has found such allegations of sufficient gravity that she has created a task force within the Department of Justice and convened a grand jury to further investigate them;

Whereas there has been specific, credible information reported in the media that senior White House officials took an active role in and supervised the activities of the President's reelection campaign and the Democratic National Committee in connection with the 1996 Presidential election campaign;

Whereas there is specific, credible information reported in the media that the decision-making structure and implementation of fundraising activities carried out by the Democratic National Committee and the President's reelection campaign were supervised by White House officials, including the President and Vice President; and

Whereas it is apparent that any investigation by the Department of Justice allegations concerning the fundraising activities of the Democratic National Committee and the President's reelection campaign will result in a political conflict of interest because such an investigation will involve those senior White House officials who took an active role in and supervised the activities of the President's reelection campaign and the Democratic National Committee: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of the Congress that the Attorney General should make application to the Special Division of the United States Court of Appeals for the District of Columbia for the appointment of an independent counsel to investigate allegations of illegal fundraising in the 1996 Presidential election campaign.

RELATIVE TO THE DECISION OF THE ATTORNEY GENERAL ON THE INDEPENDENT COUNSEL PROCESS

The PRESIDING OFFICER. The Chair lays before the Senate Senate Joint Resolution 23 for 2 minutes of debate equally divided.

The clerk will report.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 23) expressing the sense of the Congress that the Attorney General should exercise her best professional judgment, without regard to political pressures, on whether to invoke the independent counsel process to investigate alleged criminal misconduct relating to any election campaign.

The Senate resumed consideration of the joint resolution.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, the full scope of fundraising irregularities on both sides of the aisle and on both ends of Pennsylvania Avenue should be the subject of investigation.

Today, we have seen reports that a lobbyist for a foreign government was being shaken down and a foreign ambassador was contacted in this regard by the House Member who chairs the committee charged with investigating allegations of fundraising abuses.

The resolution that many just voted for carefully excludes any attention to congressional conduct. The resolution on which we are now prepared to vote lets the chips fall where they may. It includes congressional election campaign activities.

Having just voted to instruct the Attorney General to apply for an independent counsel to investigate those with the Presidential campaign, let us proceed to support—not dodge by trying to table—a resolution that would allow the Attorney General to proceed with respect to congressional fundraising abuses, as well. Otherwise, the American people are going to see this as a blatant political attack on the President as he goes to Helsinki that excludes any attention to ourselves.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, as my friends on the Democratic side of the aisle have so often reminded us during the debate, there is a mechanism going forward in the Governmental Affairs Committee to investigate all aspects of the 1996 campaign, congressional as well as Presidential. This is clearly not the function of an independent counsel.

The function of an independent counsel is to investigate allegations of the most serious and difficult kinds of lawbreaking. I know of no such allegations that would require a special counsel in the area outside of those that we have talked about during the debate. Therefore, I intend to vote against this resolution because it does not address the problem that we face. Whatever problem is there will be clearly handled, and handled competently, by the Governmental Affairs Committee.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I move to table Senate Joint Resolution 23 and ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table Senate Joint Resolution 23. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, under Federal law, the Attorney General may conduct a preliminary investigation to determine whether to apply to the special division of the Court of Appeals for the D.C. Circuit for appointment of an independent counsel whenever she receives specific information from a credible source constituting grounds for investigating whether a Federal criminal law was violated by a specified category of executive branch officials, or where she determines that there are grounds for investigating whether a criminal law has been violated, and conducting the investigation would create a conflict of interest. If, after conducting a preliminary investigation, the Attorney General determines that further investigation is warranted, she shall apply for the appointment of an independent counsel. The appointment of an independent counsel is a serious matter and one which the Attorney General should only initiate when necessary. That is why I, and many others, had refrained from joining the assortment of calls for Attorney General Reno to appoint an independent counsel in connection with the 1996 Presidential campaign.

Yet, last week, all 10 Republicans on the Judiciary Committee felt the time had come to request such an appointment. We sent a letter to the Attorney General, as we are authorized to do by the independent counsel statute, requesting that she make an application for an independent counsel.

I must confess, as I did then, to a degree of frustration with the Independent Counsel Act. Did I appreciate having to send our letter? Certainly not. However, the law sets forth a specific process by which Congress is to request that the Attorney General begin the process by which an independent counsel is appointed, and this process requires the Judiciary Committee to make what the other party will inevitably characterize as partisan charges in order to trigger the Attorney General's responsibilities. In order for Congress to trigger the most preliminary steps for the Department of Justice to take to consider the need for an independent counsel, the law essentially provides that the party not in control of the executive branch make specific charges when and if the Attorney General fails to act on her own. I would have preferred to have had the Attorney General seek an independent counsel on her own. But she has not done so. At the very least, I would have preferred that she conduct a preliminary investigation on her own. But she has refused to do even this. I would have preferred to have requested that she seek an independent counsel without having to set forth, in such a public manner as the law requires, the specific and credible evidence which warrants such an appointment. But in order for us to require the Attorney General to take certain minimal steps toward investigating whether an independent counsel is warranted, we were required by law to send our letter. In short, the Independent Counsel Act is the law of the land and, notwithstanding its relative flaws, we on the Judiciary Committee have an obligation to abide by it.

I am hopeful that Attorney General Reno, for whom I continue to have great respect, will appreciate the concerns set forth in our letter, and will agree that an independent counsel should be appointed forthwith to investigate these matters. Recent developments have, I believe, made clear that a thorough Justice Department investigation into possible fundraising violations in connection with the 1996 Presidential campaign will raise an inherent conflict of interest, and certainly raises at least the appearance of such a conflict, and that the appointment of an independent counsel is therefore required to ensure public confidence in the integrity of our electoral process and system of justice.

With respect to the proposed alternative resolution proposed by some of my colleagues on the other side of the aisle, Senate Joint Resolution 23, I must oppose this resolution. This resolution comes on the heels of a letter some of my Democrat colleagues have written to the Attorney General urging her, should she decide to apply for an independent counsel, to request an independent counsel who will investigate the ''full scope of fundraising irregularities.'' They argued in that letter that the Attorney General should ''avoid partisanship'' by instructing the independent counsel to investigate Republicans who have ''skirted the spirit'' of the law. I appreciate what my colleagues were doing with their letter and I appreciate what they are doing with this resolution. Their loyalty to their political party is duly noted. But, as I have said repeatedly, the appointment of an independent counsel is a serious matter and partisan proportionality should not be a consideration. Would these Senators have sent this letter had the majority not sent its letter? Would we be debating their resolution had the majority leader not turned to his resolution? I think we all know the answer to that question. Furthermore, neither their letter nor their resolution cite any congressional activities which independently warrant an independent counsel nor do they actually urge the Attorney General to appoint an independent counsel.

The resolution before the Senate expresses the Sense of the Congress that the Attorney General should do only as she pleases. But, it goes on to provide, if she does decide to initiate the independent counsel process, the Attorney General should be sure to include Members of Congress. It seems my colleagues want to have the best of both worlds. It appears from the language of their alternative resolution that they do not want to go on record as having asked for an independent counsel. But, heaven forbid, should an independent counsel be appointed, he or she should be instructed to initiate a partisan fishing expedition of Congress.

The Democrats' proposal that an independent counsel, if appointed, should have jurisdiction to investigate Members of Congress is insupportable under the independent counsel statute.

The entire purpose of the statute is to avoid the existence or appearance of a conflict of interest in Justice Department investigations. This conflict is inherent whenever an investigation involves any of the high-ranking executive branch officials enumerated in 28 U.S.C. 591(a), and may also arise—and indeed has been found by the Attorney General to have arisen—when an investigation involves other executive branch officials. 28 U.S.C. 591(c)(1). Such a conflict plainly does not, however, ordinarily exist with respect to Justice Department investigations of Members of Congress. As the Senate Report on the Independent Counsel Reauthorization Act states:

> . . . no inherent conflict exists in Justice Department investigations and prosecutions of Members of Congress. This conflict does not exist, because the Attorney General is not part of the legislative branch and is not under the control of any Member of Congress. The Department also has a long history of successful prosecutions of Members of Congress. . . . Public perception of a conflict of interest is also not a problem. . . . Also, in 1993, the Department of Justice testified that no inherent conflict of interests in its prosecuting Members of Congress. . . .

The statute does provide that the Attorney General may conduct a preliminary investigation with respect to a Member of Congress where first ''the Attorney General receives information sufficient to constitute grounds to investigate whether a Member of Congress may have violated'' a Federal criminal law, and second the Attorney General ''determines that it would be in the public interest'' to conduct a preliminary investigation. 28 United States Code 591(c)(2). Neither of these two required findings are even suggested by the Democrats' proposed resolution, nor does it appear that they could even arguably be present here.

First, the Democrats have made no specific allegations that a Member of Congress has violated a criminal law, thus warranting further investigation. Whereas the Attorney General has for over 3 months been conducting an extensive investigation into alleged fundraising violations by members of the

Democratic National Committee [DNC] and the executive branch, I am aware of no such investigation pertaining to Members of Congress, and the Democrats' proposed resolution does not even purport to make such allegations. The independent counsel statute plainly does not authorize the appointment of an independent counsel with jurisdiction to go on an undefined fishing expedition to dig up unspecified violations by Members of Congress.

Second, I can imagine no reason—and my Democrat colleagues have suggested none—why it would be in the public interest to initiate independent counsel proceedings with respect to Members of Congress. The legislative history clearly indicates that there are two instances when independent counsel proceedings are in the public interest under section 591(c)(2). The first is where there would be a real or apparent conflict of interest for the Attorney General to investigate a Member of Congress. While we could imagine that there might be instances in which an Attorney General would have a conflict in investigating Members of Congress of the same party, only in the most extraordinary circumstance would an Attorney General have a conflict in investigating Members of the other party. In any event, we are confident that this Attorney General is fully capable of investigating Members of Congress of both parties.

The third reason for initiating independent counsel proceedings with respect to Members of Congress is when ''there is a danger of disparate treatment if the case were handled by the Department of Justice,'' such that ''a Member of Congress were unfairly subjected to a more rigorous application of criminal law than other citizens.'' This danger, however, clearly does not arise with respect to allegations that laws regulating the fundraising activities of public officials have been violated; if the law only applies to public officials, there is no possibility of disparate treatment between Members of Congress and private citizens. In any event, my colleagues on the other side of the aisle have not even attempted to articulate why there would be a danger of disparate treatment if the Justice Department were to investigate Members of Congress.

In closing, Attorney General Reno has appointed four independent counsels to date. It is the sense of a majority of the members of the Judiciary Committee that the need to avoid even the appearance of a conflict of interest, and thereby to ensure the public's confidence in our system of justice, requires an independent counsel in connection with the 1996 Presidential campaign. However, the record does not warrant, nor does the law permit, the appointment of an independent counsel to investigate Congress. Accordingly, I urge my colleagues to oppose Senate Joint Resolution 23.

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 33 Leg.]

YEAS—58

Abraham	Frist	Moynihan
Allard	Gorton	Murkowski
Ashcroft	Gramm	Nickles
Bennett	Grams	Roberts
Bond	Grassley	Roth
Brownback	Gregg	Santorum
Burns	Hagel	Sessions
Campbell	Hatch	Shelby
Chafee	Helms	Smith, Bob
Coats	Hutchinson	Smith, Gordon H.
Cochran	Hutchison	Snowe
Collins	Inhofe	Specter
Coverdell	Jeffords	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Warner
Enzi	Mack	Wellstone
Faircloth	McCain	
Feingold	McConnell	

NAYS—41

Akaka	Feinstein	Leahy
Baucus	Ford	Levin
Biden	Glenn	Lieberman
Bingaman	Graham	Mikulski
Boxer	Harkin	Moseley-Braun
Breaux	Hollings	Murray
Bryan	Inouye	Reed
Bumpers	Johnson	Reid
Byrd	Kennedy	Robb
Cleland	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Torricelli
Dorgan	Landrieu	Wyden
Durbin	Lautenberg	

ANSWERED ''PRESENT''—1

Dodd

The motion to lay on the table the joint resolution (S.J. Res. 23) was agreed to.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, it is my understanding that the Senate will be in a period of morning business now, is that correct?

The PRESIDING OFFICER. The Senator is correct.

MORNING BUSINESS

The PRESIDING OFFICER. There will now be a period for morning business until 3 o'clock.

CHEMICAL WEAPONS CONVENTION TREATY

Mr. KERRY. Mr. President, I rise for a few moments to speak with respect to the Chemical Weapons Convention treaty. I notice the majority leader is here. I wanted to try to get the majority leader's attention for a moment, if I can. Mr. President, I know that Senator BIDEN, who is the ranking member of the committee, has been in discussions and negotiations with a number of parties, and many of us who have been deeply involved in this issue for a long period of time are growing increasingly concerned.

I raised the subject of the Chemical Weapons Convention on the floor a couple weeks ago and signaled that a great many of us were growing sufficiently concerned that we are running out of legislative time on this important treaty that we were poised to consider coming to the floor and exercising whatever rights we have as Senators in order to try to guarantee a debate on it. For years, we have been making an effort to pass this convention or to pass a convention that regulates chemical weapons. The United States of America has made a policy decision not to produce them. So we are watching 161 nations who signed off on this, and 68 of whom have ratified it, come together without the United States to set up the protocol that will govern the verification and regulatory process for chemical weapons and their precursors for years to come. If we are not allowed in the U.S. Senate to debate this and have a vote, we will not have performed our constitutional responsibilities.

I know the majority leader—he and I have had a number of conversations on this personally. I would like to begin now at least to ascertain publicly, and on the record, where we may be going so that we don't lose this critical time. I would like to know if the majority leader can guarantee us that we are going to have an opportunity to vote up or down on this convention, or whether we have to begin to be a little more creative.

Mr. LOTT. Mr. President, if the distinguished Senator from Massachusetts will yield, I would be glad to respond.

Mr. KERRY. I yield, without giving up my right to the floor.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. As the Senator from Massachusetts recalls, this issue was reported by the committee in the last Congress, and I made a commitment in connection with other bills that we would bring it to a vote. In fact, I believe it was scheduled for a vote, or we were moving toward a vote. But for a variety of reasons—and there is no use rehashing the history of it—the Secretary of State called and asked that we pull it back and not force it to a vote last year. We honored that request.

This year, there have been a number of discussions. The President did call and ask that we meet with his Director of the NSC, Sandy Berger, to talk about how we could bring it to a conclusion. At his request, I did meet with him, and Senator HELMS met with him. Other Senators that are interested have been talking with the President's representative. And we continue to work on that. I think some good progress has been made as a result of those meetings. Some conditionalities have been more or less agreed to. Of course, until it is final, it is never final. Some have been agreed to, some are still being discussed, and some probably will have to have amendments or votes on them when it comes to the floor of the Senate.

The Senator is absolutely right. We have made a decision to destroy our chemical weapons. That is a fact. We are doing that. He is also right that a number of countries have ratified that

treaty; some very important ones have not. Not only the United States has not, but neither has Russia. The indications are that they may or may not. Of course, neither has Iran.

There are some real questions that are legitimate questions on both sides of this issue. One of them is, of course, the verification question. How do you verify what some of the rogue countries may or may not be doing? How do you deal with some of the questions about things like the poison gas that we have seen in Japan? How do you deal with an issue like tear gas being used in our country? Also, there are very important questions like constitutional questions with regard to search and seizure in our country. The administration representative indicated, yes, that is an area where there is concern, and we need to work on that. Work has been done, and we continue to work on it.

This week, I met with the chairman of the committee and talked through where we are and how we can continue to proceed on this matter. I have talked to other Senators on both sides of the aisle and both sides of the issue, as to how we can move it forward. I talked to Mr. Berger again and I urged him to do a couple things. One of those things is to seriously address, with the chairman of the Foreign Relations Committee, some very important parallel issues. Although they are not necessarily tied together on a parallel basis, they are related and of great concern. The State Department reauthorization. In the previous year, I think the State Department kind of indicated, no, we don't want to do anything. That is not a tenable position. I don't think that is the administration's position.

I think the new Secretary of State has indicated that she understands and wants to do some of these things and has been talking to the chairman about that. I am hoping that additional conversations are occurring on that today between the Secretary of State and the chairman of the committee. In another parallel issue, for this very afternoon I have been able to call together a meeting of the key players, Democrats and Republicans, House and Senate, on the U.N. reform matters. We met once with the Secretary of State. We are meeting today with the new U.N. Ambassador, and we are getting a process to see how we deal with the United Nations reforms and, of course, the money that the U.N. would like to have from the United States.

So, again, that is a parallel. A lot of people are involved. None of these issues are easily resolved. All of them are very important—what we do about chemical weapons, about the State Department reauthorization, U.N. reform, and with regard to what happens processwise. I know what you are asking there.

It is our hope that we will be able to get this issue up in April. It probably would involve some hearings in the committee. But action early on, when we come back, to get it to the floor in a way where everybody will be comfortable with what amendments will be offered. There is a possibility that a statute may be offered, or a regular bill, to be considered in conjunction with the Chemical Weapons Convention.

I have given a long answer, but I am saying this to make it clear to you that I am working aggressively to address the concerns on all sides of this issue. I will continue to do so. I know you are concerned, and other concerns are concerned. You may feel that you have to do more. But I have learned over the years that as long as everybody is talking, you are probably making progress, and we are talking. I have also learned that when you have a chairman that has legitimate concerns, you have to give that chairman time to deal with those concerns.

We are trying to do that.

Mr. KERRY. Mr. President, let me say to the distinguished majority leader that, first of all, I thank him for taking the time to have this colloquy. I think it is very important.

But let me say to the distinguished majority leader that during the years that I was the ranking member negotiating this with the distinguished chairman of committee, we traveled over all of this ground. We have had these hearings. The Foreign Relations Committee has had them. The Intelligence Committee has had them. The Armed Services Committee has had them. And we all know sort of what the clouds are that are there. There is no new sort of definition with respect to those clouds.

For this Senator—and I know I speak for several other Senators, and I think two or three of them are on the floor right now—we do not want to wind up in the situation which I have seen previously. I negotiated the agreement that brought us to the floor last year with a vote. We all know we got caught up in the politics of the Presidential campaign, and that predicated that it may not have been the best moment.

The problem is that we run out of time. The clock tolls on us automatically on April 29. We do not want to wind up in a situation where there is an ability on the floor to have so little time left that we can't work through the problems. Recognizing the road we have traveled here, I do not want to come back to a situation where we have kind of sat here while the negotiations are going on and then there is no window of opportunity to sufficiently let the legislative process work its will.

Mr. LOTT. Mr. President, will the Senator yield?

Mr. KERRY. I will in just a moment.

I would like to say to the majority leader that we would like to help the majority leader and others to leverage the reality here. What we would like to suggest is that there be sort of an internal date certain within the Senate—we would suggest that date be when we return—that, between now and when we return, the administration, the chairman, and the appropriate parties have to come to cloture. If they can't come to cloture——

Mr. LOTT. Closure.

Mr. KERRY. Come to cloture on these issues, and, if they can't come to that resolution, this should be on the floor of the Senate for us to deal with in a matter of legislative urgency.

I know, Mr. President, that there is a significant group of us prepared to exercise every right available to us with respect to the Senate business in order to try to guarantee that we have the opportunity to act on the Chemical Weapons Convention.

Mr. LOTT. Mr. President, if the Senator will yield, one thing is that I do not want to mislead the Senator with regard to the probability of hearings. I assume that was a possibility. I do not think it needs long hearings. But I think a day or two—and I have not asked for those or called for them, and the chairman may or may not feel that they are needed.

So I may have mislead when I was indicating that we are talking about another whole round of hearings. I agree with the Senator. I do not think a lot of hearings need to be done again.

But I wanted to clarify that point. I didn't mean to infer that we were going through a long list or that a decision has been made. But it is something that I have asked: Is there going to be a need for a hearing on a day or so before action could occur? It could.

There is another point. I want to commend the Senator from Arizona, Senator KYL, who has spent a lot of time and has worked on these issues when he was in the House Armed Services Committee and continues to be very interested in them. He is very knowledgeable when you talk about article X, article XI, and all of the ramifications. He knows what is in this convention. He has very legitimate concerns, some of which have been addressed in a way that I think the Senator from Massachusetts would agree with and find acceptable. Others are still open, and there is time to work on those.

I want to recognize the work of Senator KYL. He may want to respond or comment on some of what has been said here today.

I just wanted to make that one clarification.

Mr. KERRY. I appreciate that, Mr. President. I know that the Senator from Michigan, Senator LEVIN, is equally as versed and has had a long interest. I know that all of us believe very deeply that where there may be a legitimate question, we are and have been—and I think the administration has been—fully prepared to try to suggest legitimacy. But we can't allow an endless series of questions to be an excuse for putting us in the box where the U.S. Senate cannot perform its constitutional responsibility to advise

and consent on a treaty as important as this one.

So we are in the predicament here where we want to offer a good-faith effort to work through every single one of those particular issues. But we have to signal that we can't do so simultaneously taking away from ourselves our own rights to be guaranteed that the Senate ought to be able to have a vote.

Mr. DORGAN. Mr. President, will the Senator yield?

Mr. KERRY. I yield.

Mr. DORGAN. I appreciate the Senator yielding.

To the majority leader I would say the power of the majority in the Congress is a power to schedule. There are a number of us on our side of the aisle who have been patient to the edge of our abilities on this issue. And the question that is being asked is, Will we have an opportunity to consider the chemical weapons treaty on the floor of the Senate? What I heard the Senator from Mississippi say is that he hoped that would be the case. I very much would like to hear a commitment at some point today or tomorrow, before we leave, that we will when we return have an opportunity at a time certain to continue the chemical weapons treaty.

Mr. LOTT. As the distinguished Senator knows, if he will yield, Mr. President, the scheduling does to a large degree rest in the hands of the majority leader. But it is usually done in coordination with both sides of the aisle. Like on the Mexico certification, or decertification, issue, quite often it can be objected to. I mean that, if I today proceeded to call up the House-passed version with the idea of offering a bipartisan substitute to it, we would have to get agreement to do that. The other option is to just call up decertification, which we could do, and start the 10-hour process running.

The point, though, is that you have to work with a lot of different parties. And I intend to do that. I think the decision will come up in April, and we will work in the direction to say that we can get it up by a date certain. Once again, I think it might raise expectations beyond what is achievable.

But we are continuing to work on that, and we are going to do it this very day.

Mr. KERRY. Mr. President, I would like to reiterate.

The PRESIDING OFFICER. The Senator's 5 minutes has expired.

Mr. KERRY. I ask unanimous consent that I be permitted to finish this colloquy.

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

Mr. LOTT. Will the Senator yield?

As further evidence, if I could, I gave the Democratic leader yesterday and members of our conference—and I presume it was given to the Democratic caucus—a list of items that we anticipate we will consider prior to the Memorial Day recess. It includes nuclear waste, supplemental appropriations, the TEAM Act, comptime, flextime, legislation regarding chemical weapons, the Chemical Weapons Convention treaty, and others.

It is on our list of things that we anticipate will be considered before we come back.

Mr. KERRY. Mr. President, the problem is that this particular convention stands in a different place from all of those other things which the majority leader has listed, and for obvious reasons. The other things don't have a drop-dead date on them which runs into the convention processes themselves, which are controlled by other countries—not by us.

So I think everybody understands how it works around here. We could wind up in a situation where we would have a very long debate. And if we need to have a very long debate, we want to make certain that we have the ability to adequately flesh out concerns for all Members and still not run up against that deadline, or drop-dead date.

So I think what we are really trying today to say to the majority leader is that this has to be the first priority when we come back, or clearly stated as to what the date will be with a date certain.

All we are trying to do is help the majority leader convey that message to parties on his side because otherwise, obviously, we are left no choice but to try to do whatever we can to leverage a date. We are not precluding nor predetermining an outcome. But we are asking for the Senate to be able to exercise its rights and privileges.

Mr. LEVIN. Mr. President, will the Senator from Massachusetts yield for a question? I wonder if the majority leader might listen because the drop-dead date issue is a critical issue on this, of course, and the Senate should be allowed to work its will in whatever way in time so that, if we ratify, our ratification will be relevant.

My question to the Senator from Massachusetts is this: We do not know precisely the drop-dead date in terms of Senate ratification, assuming it does ratify the treaty. But will the Senator from Massachusetts agree that it is some number of days in advance of April 29?

Mr. KERRY. Yes.

Mr. LEVIN. I am wondering whether the majority leader, if I could just ask, is aware of that fact. Could I ask the majority leader whether or not, on the time of the Senator from Massachusetts, if the Senate does in fact ratify it, that ratification needs to come some days in advance of the 29th in order to meet the 29th deadline?

Mr. LOTT. I am aware that when you have a treaty issue, there are actions that occur after the treaty that could take time. We will have to—at some point we could have a full debate about what that drop-dead date is. That is the point here. It is not a specific date in terms of having to take up the treaty to get the work done, but it is a fact if you assume some action must be taken, you have to back off that in order to get the work done.

Mr. LEVIN. I thank the Senator.

Mr. KERRY. I thank the majority leader for his time on this. We will obviously be discussing it in the next day or so, and I look forward to our coming forward to some kind of mutual agreement. I thank the Chair.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I just wanted to also comment on this issue and state that I think we are to the point where it is not responsible for the Senate to go on with its other business if we cannot get agreement among Senators to bring up this very important matter on a timely basis. I think clearly we can do other work while we wait for the time certain to bring up the Chemical Weapons Convention, but if we cannot get agreement to bring it up, then I do not think it is responsible for us to go ahead and proceed with business as usual.

Unfortunately, under the rules of the Senate, the only option available to those of us in the minority is to insist that this issue, which is time sensitive, be given attention by the Senate or at least get scheduled for attention by the Senate before we proceed to other matters, and I would expect to do that in the future. I do think the majority leader is trying to move ahead with this, but evidently there are objections being raised by others. I do not question that amendments will be offered. I do not question that real issues will be raised about different portions of the treaty. That is what we are designated to do under the Constitution, to debate those issues and vote on them. We do have a responsibility, though, to have a final vote on this treaty in a timely fashion, and I think until we can get agreement to do that, it is very difficult to proceed with business as usual.

I yield the floor, Mr. President.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The minority whip.

Mr. FORD. Mr. President, let me add my voice to this for just a moment. For many of us who have chemical weapons stored in our State—and there are a good many States—this piece of legislation becomes highly important because certain language we hope to be in this treaty will allow us to look for alternate sources other than burning or destroying by burning. And so particularly in my case, where we have the nerve gas, this treaty becomes vital to us. And to have it timely considered becomes a very important aspect of alternative sources under this international treaty.

So I am here pleading for my constituency to eliminate the so-called chemical weapons. We are being held up for reorganization of the State Department, reorganization of United Nations, this thing or that thing. We are

held up when we have a deadline of April 28 and we have people out there worried about chemical weapons and how you destroy them. We have the answer under this piece of legislation, but we cannot go forward with it.

Mr. President, I hope you will listen to my friend from New Mexico, that there is going to be an effort to bring this piece of legislation up because of the deadline. If we worried about deadlines, we would have a budget. We do not have a budget. But this is an international treaty, and it has a deadline. And for one, I do not want to miss it because of the chemical weapons that need to be destroyed and the way they are to be destroyed so that we might protect your constituents.

I yield the floor.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I seek recognition under the time allocated to Senator DASCHLE in morning business.

The PRESIDING OFFICER. The Senator has up to 60 minutes.

Mr. DURBIN. I thank the Chair.

COMPREHENSIVE CAMPAIGN FINANCE REFORM

Mr. DURBIN. Mr. President, over the last several days of debate in this Chamber we have heard those who favored the appointment of a special counsel say that time is of the essence, and that we should move forward and ask the Attorney General to make this appointment as quickly as possible. In fact, they were so determined to pass this resolution as a bon voyage gift to the President as he heads off to the Helsinki summit that we had to vote today. Today, before the President left, we had to make certain that this gesture was made. Many of us felt this was unnecessary and ill-timed and, frankly, unprecedented, that this type of embarrassment would be directed at the President as he left our shores to head off for a critical summit with the only other superpower with nuclear weapons in the world. And yet those who prevailed on the majority side were convinced that time was of the essence: let us move forward and do it now.

Catching that spirit, I come before the Senate today with the suggestion that we not stop with this resolution but go even further and plumb the depths of the real problem that we are examining here. It goes beyond the 1996 Presidential campaign. It goes beyond the Democratic Party. What we are focusing on is our very campaign finance system itself as used by Presidential candidates, congressional candidates, Democrats and, yes, Republicans.

And so today I am hoping that that same sense of urgency, that same commitment to truth, and that same perseverance that we find changes to win back the confidence of the American people will be demonstrated when I call a resolution before this body in a few moments.

You see, Mr. President, those who follow Federal election campaigns know that there have been some dramatic changes over the last few decades. Federal election campaign costs have increased from an estimated $2.65 billion in the 1996 cycle—that is a threefold increase over campaign spending just 20 years ago even adjusting for inflation—$2.6 billion on our campaigns. In the 1995-96 election cycle, the Democratic Party committees raised $332 million, a 73-percent increase over the $192 million raised just 4 years before. The Republicans outdid us, as usual, raising $549 million, a 74-percent increase over the $316 million that they raised 4 years earlier.

Take a look at congressional races. In 1976, all congressional races in the United States cost $99 million. By 1996, 20 years later, that $99 million had mushroomed to $626 million—more than a sixfold increase.

Soft money. Well, for those who do not follow this closely, it may be a curiosity to use these terms ''hard money'' and ''soft money,'' but politicians know what it is all about. Soft money is kind of the mystery money in politics. And has it grown. Take a look at the fact that since 1992, the amount of soft money in campaigns has tripled, from $86 million to $263 million.

Stepping aside from the whole debate about the nature of campaigns and whether they are too negative, too personal and too nasty, most everyone will concede that we are plowing more and more money into our political campaigns in America.

There is a curious thing that has to be noted, though. As political campaigns have become longer, more expensive, and more negative, voters have apparently decided not to participate in elections. Consider this. Between 1948 and 1968, 60 percent of the electorate showed up to vote in a Presidential election. Then from 1972 to 1992, we saw a 53 percent turnout, a decline after Watergate. Listen to what happened in 1996, the most expensive Federal election in our history for congressional candidates, senatorial candidates and Presidential candidates, heaping dollar upon dollar in this election process. The voters out there listened carefully and a majority of them decided to stay home. So, for the first time since 1948, we had fewer than 50 percent of the electorate turning out to vote in a Presidential election; 49 percent of the electorate turned out. Is it not interesting that the more money we plow into our election campaigns, the fewer voters turn out?

Consider if you had a company and you were designing a marketing program and you went to the owners of the company and said, ''We have just got the statistics and information back. After we spent millions of dollars on advertising, people are buying fewer products.'' It might raise some serious questions. Maybe your advertising campaign is not what it should be—and I think the voters tell us that when they see negative ads. But perhaps the fact that you are spending more on advertising is not helping the low regard people have for your product. In this case, the voters told us, in 1996, in the November election, that they had a pretty low regard for the product, the candidates, all of us.

I think there is a message here, an important message about the future of this democracy. We can talk about special investigations: Did someone violate the law in 1996, Democrat or Republican, and should we hold them accountable if they did? But if we do not get down to the root cause of the problem here, if we do not address what I consider to be the serious issue of campaign finance reform, I can guarantee the cynicism and skepticism among voters will just increase. So, we have heard a lot of talk today about the sense of urgency and the need to deal quickly with this whole question of campaign finance reform. Some of my colleagues have said, ''Oh, don't move too quickly now; let us make sure we make the right changes.''

Let me show a little illustration. How much time have we spent on the issue of campaign finance reform in the last 10 years? Mr. President, 6,742 pages of hearings; 3,361 floor speeches—add one for this one today; 2,748 pages of reports from the Congressional Research Service, 1,063 pages of committee reports; 113 votes in the Senate; 522 witnesses; 49 days of testimony; 29 sets of hearings by 8 different congressional committees; 17 filibusters; 8 cloture votes on one bill; 1 Senator arrested and dragged to the floor—with bodily injury, I might add—and 15 reports issued by 6 different congressional committees. And what do we have to show for it? Nada, zero, zilch, nothing. What we have to show for it is the call for an independent counsel to determine whether someone has violated the laws under the current system. I think there is a lot more to this.

I hope my colleagues join me in believing that if this process of investigation does not lead to reform, the American people will be disappointed. It is one thing to be hyperinflated with moral rectitude about the violations of campaign law. But that is not enough. Just cataloging the sins of the current system, that is not enough. The real test is whether we are prepared to change the system, reform the law, and return public confidence to our democratic process.

There are a lot of options out there. One of those that is frequently spoken of is the McCain-Feingold legislation, I believe the only bipartisan campaign reform bill before us. Two Republican Senators and, I believe, 22 Democratic Senators have come together in an effort to have campaign finance reform. I have cosponsored it. It may not be the best, or the only, but it is a good one. We should consider it as a starting point in the debate.

Yesterday, my colleague from Minnesota, Senator WELLSTONE, Senator

KERRY of Massachusetts, and others announced agreement to introduce a plan modeled after the Maine election law reform. It is a very interesting proposal which would really deflate the money in politics. Senator WELLSTONE is here to join me in this debate and describe that bill and his own thoughts on that subject.

There are lots of ideas, good ideas. We have to really dedicate ourselves with the same sense of urgency and with the same passion to reforming the system that we are dedicated to investigating wrongdoing under the current political finance system.

At this point, I yield to my colleague from Minnesota.

Mr. WELLSTONE. I thank the Senator from Illinois.

The PRESIDING OFFICER. Does the Senator seek recognition in his own right?

Mr. WELLSTONE. Mr. President, I do seek recognition.

The PRESIDING OFFICER. The Senator is speaking within the 60 minutes?

Mr. WELLSTONE. Of course, the Senator will stay within the 60 minutes. And, I say to my colleague from Oklahoma, far less than 60 minutes. I just wanted to add a couple of things to what the Senator from Illinois has just said.

First of all, I really appreciate the emphasis of the Senator from Illinois on representative democracy in our country. I think this is the central issue for this Congress. I think this is the most important issue in American politics. I have spoken before on the floor of the Senate about this. I am not going to repeat what I have said already.

But I really think, if we want to have people engaged in the political process, if we want people to register to vote and vote in elections, if we want people to believe in our political process, if we want people to believe in us, then I think we absolutely have to deal with this awful mix of money and politics. Because regular people—which I use in a positive way—in Illinois and Minnesota and Oklahoma and around the country, know that, No. 1, too much money is spent on these campaigns; No. 2, some people count more than others and there is too much special interest access and influence; No. 3, there is too much of a money chase and Senators from both political parties have to spend entirely too much time raising money.

I just ran for office. I had to raise the money.

And, No. 4, I think people in the country know that it is getting dangerously close to the point where either you are a millionaire yourself, or you have to be very dependent upon those that have the hugest amounts of capital for these expensive capital-intensive TV campaigns. Otherwise, you are disqualified.

In a democracy, people should not be, de facto, disqualified because they are not wealthy or because they do not have access to those people who have the wealth or the economical clout or the political clout in America. That turns the very idea of representative democracy on its head. That takes the very goodness of our country and turns it on its head. That takes the American dream and turns it on its head. I have said it before, but it is worth repeating, that if you believe in the standard that each person ought to count as one and no more than one, then you would be for reform.

My last point, because I could talk about this for a long, long time, my colleague was kind enough to mention the McCain-Feingold bill. He was kind enough to mention the bill that yesterday we agreed to introduce, Senator KERRY and I, and Senator GLENN and Senator REID; and Senator BUMPERS was there as well.

Mr. President, the point today is as follows. I think people—unfortunately, but the proof is going to be in eating the pudding—believe that what is going on in the Congress amounts to little more than symbolic politics. I think people believe we are going to have a committee investigation, an attempt to move some of these issues to the Rules Committee, maybe try and bury this here, maybe have hearings and hearings and hearings, then have a variety of different charges or countercharges made, maybe more polarization, maybe more accusations. Then, after all is said and done, it will be the same moving picture shown over and over and over again, where you have hearings, speeches, reports, witnesses, you name it, followed by the same hearings, the same speeches, the same calls to action, the same kind of investigations, followed by inaction. I do not understand, for the life of me, why we do not move forward. I think the purpose of this resolution is to say, set a date.

A good friend of mine, Jim Hightower, who was great on the Ag Committee, loves to say, ''You don't have to be 'Who's Who' to know what's what.'' People in this country have figured this out. It is time for reform. We know more than enough about what is wrong. We know more than enough about what is wrong with this game, the ways it is broken, and it is time to fix it.

So this resolution calls for a date certain. It is right on mark, and I am proud to support it.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I rise also to support the unanimous-consent request that will be propounded by the Senator from Illinois.

Almost the first question from our constituents that all of us, I suppose, when we reach the airport going back to our States, confront is, ''Well, what are you working on?'' I know what I would like to be working on. A moment ago we talked about the need for this Senate to work on the chemical weapons treaty, a treaty that has been in the works for a number of years, has been signed by many countries, and would end the spread of poisonous gas around our world and make this a safer world. I would like to be working on that, but we cannot get it to the floor of the Senate. I hope it will get here soon. The power of scheduling, of course, is not on this side of the aisle.

The Senator from Illinois raises the other issue that I would like for us to be working on, and that is the issue of campaign finance reform. No one who has been paying attention in this country can fail to understand the need for us to consider campaign finance reform. The Senator from Illinois is simply raising the question, and a recommendation is implicit, to say we would like, by a date certain, to have a commitment to consider campaign finance reform on the floor of the Senate. That is what the Senator from the State of Illinois is saying to the Senate with his resolution, a resolution that I think is timely, one that I support and one that I hope will allow us to reach an agreement with the majority party on a date certain to bring campaign finance reform to the floor of the Senate.

The Senator from Illinois held up a chart that shows the number of hearings that have been held, the number of pages of testimony, the number of witnesses. There doesn't need to be a great deal more discussion about whether we should be considering campaign finance reform. The system is broken, it ought to be fixed, and there isn't just one answer to fix it. There are a number of ideas, probably from both sides of the aisle, that can contribute to an approach that will address this in a way the American people believe we ought to address this issue.

So, this issue is not one that will simply go away. This is not an issue you can bury in the backyard somewhere and forget about it. Every day when you read the newspapers, you see stories, again, about this campaign or that campaign, about this administration or that Member of Congress. The American people, I think soon, will insist to know who in the Congress, in the House and the Senate, contributed to making campaign finance reform a reality and who stood in the way.

I guess the message here is for those who do not want to see any reform of our campaign financing system, our message is to them: Get out of the way, let us at least have a shot on the floor of the Senate in crafting, hopefully, a bipartisan approach, if we can craft it, a campaign finance reform proposal that gives the American people some confidence that the abuses we have read about, the excesses, the exponential growth in campaign spending in this country can come to an end.

I happen to feel very strongly that one of the ingredients that is necessary is spending limits. The Supreme Court had a decision in Buckley versus

Valeo—it was a 5 to 4 decision, I believe —in which they said it is perfectly constitutional to limit political contributions, but it is unconstitutional to limit political expenditures. Far be it for me to speak over the shoulder of the Supreme Court, but, by the same token, I don't understand that logic.

It seems to me, and we have had debate on this on a constitutional amendment just in the last days, it seems to me that part of the answer to this problem is to reasonably limit campaign expenditures for all politicians running for all offices in a fair and thoughtful way. We do not deserve the kind of campaigns that the American people are now getting.

There are other models around the world. I kind of like the British system, where they apparently sound a starting gun, or whatever it is, and for 30 or 45 days, they scramble and wrestle and debate and do whatever you do in campaigns, and the fur flies and the dust is all over, and then the bell goes off and it is over. It is over. Then they vote.

In this country, my Lord, what happens is years in advance of an election now, we have campaign activities cranking up for President and the Senate and Congress, and it never ends. It bores the American people to death, first of all, and second, they have become so long and so expensive, is it any wonder that 50 percent of the American people said when it comes time to casting a vote, they say, ''Count me out, I'm not going to participate''?

There are a lot of things we need to do to reform our political system and make it better. It seems to me job one is this issue of reforming the campaign finance system, the method by which all campaigns are financed in this country. The Senator from Illinois is simply saying today, let us have an opportunity, a commitment, a date by which the Senate will consider campaign finance reform. I am pleased to support him, and I hope others in the Senate will do the same. I yield the floor.

The PRESIDING OFFICER (Mr. ROBERTS). Who seeks time?

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, there have been a lot of headlines in the last several weeks of embarrassment to both political parties. There have been a lot of questions asked about the system by which we raise funds at all levels. Questions were raised about the use of a telephone by the Vice President, and I do not know, frankly, what was legal and what was proper in that situation, but we all know that at least two Members of this body have acknowledged that they used their office telephones in campaigns gone by to raise money. They said they will never do it again, as the Vice President has said. But it raises a bipartisan challenge to us in limiting campaign fundraising activities in any public building.

There was a question raised as to whether or not an employee at the White House was handed a check for the Democratic National Committee which she then turned over to the committee, and whether that was legal or proper. We know 2 years ago a Republican Congressman on the floor of the House walked around handing out campaign checks from tobacco companies to their favorite candidates, and that, of course, raises a bipartisan question about the propriety of receiving or distributing campaign checks in a public building, on the floor of the House or the Senate. These are all legitimate and bipartisan questions.

This morning's Washington Post raised a question on the front page as to whether a Member of Congress was putting some pressure on a certain group to raise money for him in the last campaign, and the pressure went so far as to suggest that the Ambassador from the country involved was saying, ''This is unusual; we have never had this kind of pressure put on us.'' The same charges are made against the White House: Did they go too far in soliciting contributions? Again, a bipartisan problem and one we clearly should address.

For those who have tunnel vision on this and see all of the sins and wrongdoing only on the Democratic side, I think in all honesty, they know better. We are all guilty of this. We are guilty of this at the congressional level, at the Presidential level, Democrats and Republicans, and to merely turn that spotlight on one group or one party really does not get to the real challenge here. And the real challenge is, will we change the system?

The resolution that I am going to offer says to the Senate, let us make a commitment, both sides of the aisle, that by a time certain, we will bring to this floor campaign finance reform legislation and pass it by a time certain. I do not presume what that might include. I do not presume to suggest that any bill pending might be passed. We might come up with a new work product completely, totally, but I do suggest to you that unless and until we make this commitment to reform the system, the skepticism and cynicism will continue and may increase.

So, Mr. President, on behalf of myself and Senators DORGAN and WELLSTONE, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 65, a resolution calling on the Senate to commit to bring comprehensive campaign finance reform legislation to the floor by May 31 and to adopt, as a goal, the enactment of such legislation by July 4 of this year; that the resolution be agreed to and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Did you conclude, I ask my colleague from Illinois?

Mr. DURBIN. Yes.

Mr. NICKLES. I will just make a couple brief comments concerning campaign finance.

One, I share some of the concerns of my colleague from Illinois. I will be happy to work with him. I did object to the resolution saying we wanted to have it done by May 31 or July 4. But I am committed to making campaign reform. And I will work with my colleague and friend from Illinois and others to try and see if we cannot come up with a bipartisan package that would do just that.

It may not include everything that everybody has been talking about, but it will be constitutional, and, hopefully, may be passable through both Houses. It may not include everything. We may have to pass a couple pieces of legislation before we are done. But I have been charged with the responsibility on this side to try to put together a package that is saleable. I will work with my colleague and friend from Illinois to try to make that happen.

Mr. DURBIN. Will the Senator yield?

Mr. NICKLES. I will be happy to.

Mr. DURBIN. I thank my colleague from Oklahoma for his statement. And it may be progress. I hope it is.

Would the Senator be kind enough to tell me his thoughts as to whether or not we should accomplish significant and meaningful campaign finance reform this year so that the 1998 election cycle can be a cleaner, perhaps better managed election with more interest and participation by our voters across the country?

Mr. NICKLES. I will be happy to tell my colleague, if you are asking me what the effective date of the legislation will be, I am not sure. But I do think that we have an interest, and I would say a bipartisan interest, in trying to do some things together: Greater disclosure, trying to make sure that nobody is forced or compelled to contribute to any campaign against their will, maybe making some change in contribution limits, increasing individual limits, maybe reducing other limits. Possibly we can get a bipartisan coalition on that, and doing a few other things that we might be able to get agreement on.

But the effective date, well, that would be one of the things we will have to wrestle with. That is a challenge. Some of those things for disclosure, I expect could be effective certainly for the 1998 election. If you changed individual contributions, which I am contemplating offering as one suggestion, whether that should be effective immediately or effective post the 1998 election is something we will have to discuss.

Mr. DURBIN. Will the Senator yield further?

Mr. NICKLES. Yes.

Mr. DURBIN. Could the Senator give me some assurance by the majority leadership that this issue should come to the floor this calendar year?

Mr. NICKLES. I will just tell my colleague, I have been charged with the responsibility of trying to make sure that we are ready to do that. It is my hope and expectation that we will be ready to do that—not tie this down to a particular timetable—but I hope that we will be able to do it in the not-too-distant future. Maybe we will be able to meet the timeframe as suggested by my colleague from Illinois. I am not ready to give a date. But you are saying for this year. I hope that will be the case.

Mr. DURBIN. If the Senator would further yield.

I will return and my colleagues will return with similar resolutions in the hopes that we can reach a bipartisan agreement for a timetable to consider this issue. Absent that agreement, many of us are afraid that we will once again fall into this morass of hearings and speeches and a lot of jawboning and very little progress on the subject. I hope that my colleague from Oklahoma will join me in that effort.

Mr. NICKLES. I thank my friend.

VICTIM RIGHTS CLARIFICATION ACT OF 1997

Mr. NICKLES. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 924 just received from the House.

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

The clerk will report.

The bill clerk read as follows:

A bill (H.R. 924) to amend title 18, United States Code, to give further assurance to the right of victims of crime to attend and observe the trials of those accused of the crime.

The Senate proceeded to consider the bill.

Mr. NICKLES. Mr. President, I wish to thank my colleague and friend, Senator LEAHY, for his cooperation in bringing this bill to the floor. As I mentioned, the House passed this bill yesterday. It was by a vote of 418 to 9.

I also want to thank my colleagues, Senator HATCH, Senator INHOFE—who is an original cosponsor of this legislation with me—Senator GRASSLEY and Senator KENNEDY and their staffs for working together with our staff to make this bill possible.

And I want to thank the bipartisan and bicameral cooperation that we have had because we have negotiated with the House, came up with similar legislation to correct, I think, a mistake, a problem.

Mr. President, we introduce this legislation on behalf of the victims of the Oklahoma City bombing and other victims of crime. This legislation will clarify the rights of victims to attend and observe the trial of the accused and also testify at the sentencing hearing.

The Victim Rights Clarification Act is necessary because a Federal judge interpreted his sequestration power as authorizing the exclusion of victims of crime from trial who will only be witnesses at sentencing. The district judge presiding over the Oklahoma City bombing case basically gave the victims and their families two choices. They could attend the trial and witness the trial—or in this case we have closed-circuit TV for the families, since the trial is actually in Denver and many of the families are in Oklahoma City. So they have closed-circuit TV. They have two options: They can view the trial in Denver or in Oklahoma City, or they could participate in the sentencing phase of the trial.

Most of the families of the victims wanted to do both—or many wanted to do both. They should not have had to make that decision. This legislation will clarify that.

Such rulings as the judge made extend sequestration far beyond what Congress has intended. The accused has no legitimate basis for excluding a victim who will not testify during the trial. Congress thought it already adopted a provision precluding such sequestration in the victims' bill of rights. This bill clarifies the preexisting law so it is indisputable that district courts cannot deny victims and surviving family members the opportunity to watch the trial merely because they will provide information during the sentencing phase of the proceedings.

This bill also applies to all pending cases and in no way singles out a case for unique or special treatment. Rather, a serious problem has come to light and Congress has responded by clarifying the applicable Federal law across the country from this day forward.

The U.S. Supreme Court has specifically upheld the power of Congress to make ''changes in law'' that apply even in pending cases. In Robertson versus Seattle Audubon Society, a unanimous court explained that Congress can ''modify the provisions at issue'' in pending and other cases. This bill makes it clear that Federal crime victims will not be denied the chance to watch the court proceedings simply because they wish to be heard at sentencing.

This bill will be enforced through normal legal channels. Federal district courts will make the initial determination of the applicability of the law. In disputed cases, the courts will hear from the Department of Justice, counsel for the affected victims, and counsel for the accused. If the district court persists in denying a victim the right to observe a trial in violation of the law, both the Department of Justice and the victims can seek appellate review through the appropriate pleadings.

Once again, Mr. President, this is an important piece of bipartisan legislation that will clarify the intent of Congress with respect to a victim's right to attend and observe a trial and testify at sentencing.

I very much appreciate the support of my colleagues in both the Senate and the House who have made this bill possible today. I am very grateful for their assistance. I know that I am speaking on behalf of hundreds of victims and the families in Oklahoma City, that they are grateful for this legislation, and a special thank you to my colleagues, Senator INHOFE and Senator LEAHY and Senator KENNEDY and Senator HATCH, for making this bill possible.

I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I am pleased to join my friends, Mr. HATCH, the two Senators from Oklahoma, and Senator GRASSLEY, as an original cosponsor of the Victim Rights Clarification Act of 1997.

I am glad we are considering and passing this important legislation. They are doing this in an expeditious and bipartisan manner.

Two of the most important rights Congress can safeguard for crime victims are the right to witness the trial of the accused and the right to be heard in connection with the sentencing decision. The Victim Rights Clarification Act is not the first time Congress has addressed these two ideas. In 1990, we passed the Victims' Rights and Restitution Act, providing that crime victims shall have the right to be present in all public court proceedings related to the offense, unless the court determines the testimony by the victim would be materially affected.

In the Violent Crime Control Act of 1994, Congress included several victims' rights provisions. For instance, we amended rule 32 of the Federal Rules of Criminal Procedure to require Federal judges at the sentencing for crimes of violence or sexual assault to determine if the victim wishes to make a statement.

Last year, we enacted the Televised Proceedings for Crime Victims Act as part of the Antiterrorism and Effective Death Penalty Act of 1996. That responded to the difficulties created for victims of the Oklahoma City bombing.

Mr. President, I think this is important because so often what we set in the criminal procedures in the Federal court are then adopted by the State courts. During my days as a prosecutor, I felt victims should have complete access to the court during a trial and that victims should be heard upon sentencing. Frankly, I found many times when the person being sentenced had suddenly gotten religion, had suddenly become a model person, usually dressed in a better suit and tie than I wore as a prosecutor and was able to cry copious tears seeking forgiveness and saying how it was all a mistake, sometimes reality came to the courtroom

only when the victim would speak. I remember one such victim had very little to say, with heavy scars on her face that would probably never heal. That said more than she might.

I say that, Mr. President, because in enacting this legislation, we affect not only Federal courts directly, which of course I think is important, but I say to my colleagues in the Senate that after this is experienced in the Federal courts for a couple of years, we are going to find the same procedures followed by State courts all over this country. We saw it in the Federal Rules of Civil Procedure. We see it in the Federal Rules of Criminal Procedure. If they work in the Federal courts, they tend to work in the State courts.

I am glad to join with my friend from Oklahoma, the distinguished senior Senator from Oklahoma and his colleague, Senator INHOFE, in support of this legislation which shows how responsive Congress can be to victims' rights.

The Supreme Court has also spoken to whether victim impact statements are permissible in death penalty cases.

In the 1991 case Payne versus Tennessee, the Supreme Court made clear that a sentencing jury in a capital case may consider victim impact evidence relating to the victim's personal characteristics and the emotional impact of the murder on the victim's family.

The Court observed that it is an affront to the civilized members of the human race to say that at sentencing in a capital case, a parade of witnesses may praise the background, character, and good deeds of the defendant, but nothing may be said that bears upon the character of, or the harm imposed upon, the victims.

Unfortunately, the victims in the Oklahoma City bombing case are being categorically excluded from both watching the trial and providing victim impact testimony. Thus the victims are faced with an excruciating dilemma: If they sit outside the courtroom during the trial, they may never learn the details of how the justice system responded to this horrible crime. On the other hand, if they attend the trial, they will never be able to tell the jury the full extent of the suffering the crime has caused to them and to their families.

I do not believe that current law thrusts this painful choice upon victims in this country. However, recent court rulings reveal the need to clarify and even hone existing law. That is exactly what Congress is doing by passing the Victim Rights Clarification Act of 1997.

This important legislation will:

Clarify that a court shall not exclude a victim from witnessing a trial on the basis that the victim may, during the sentencing phase of the proceedings, make a statement or present information in relation to the sentence.

Specify that a court shall not prohibit a victim from making a statement or presenting information in relation to the sentence during the sentencing phase of the proceedings solely because the victim has witnessed the trial.

Just as importantly, the Victim Rights Clarification Act will not:

Apply to victims who testify during the guilt phase of a trial.

Eliminate a judge's discretion to exclude a victim's testimony during the sentencing phase that will unfairly prejudice the jury. Specifically, the legislation allows for a judge to exclude a victim if he or she finds basis—independent of the sole fact that the victim witnessed the trial—that the victim's testimony during the sentencing phase will create unfair prejudice.

Attempt to strip a defendant of his or her constitutional rights.

Overturn any final court judgments.

My cosponsors and I worked together to pass this legislation within a timeframe that could benefit the victims in the Oklahoma City bombing cases.

Our final legislative product, however, will not only assist the victims in the Oklahoma City bombing case, but crime victims throughout the United States.

In response to real people, real problems and real pain, Congress has demonstrated its ability to find a real solution—the Victim Rights Clarification Act of 1997.

Mr. HATCH. Mr. President, I rise today to speak briefly in support of H.R. 924, the Victims' Rights Clarification Act of 1997. A companion to this bill was introduced this past Friday by Senator NICKLES as S. 447, which is cosponsored by Senator INHOFE, myself, Senator LEAHY, and Senator GRASSLEY. I was proud to be an original cosponsor of this vital bill because it advances the rights of crime victims in the criminal justice process. This bill will ensure that victims of a crime who may be victim-impact witnesses at the sentencing phase of a trial are able to attend that trial and still testify at sentencing.

Mr. President, too often the victims of crime seem to be forgotten as the wheels of justice turn. In a sense, they are victimized twice—first by the criminal, and then by a justice system that too frequently treats them as irrelevant to the administration of justice.

This legislation clarifies that the victims and survivors of crime who might present testimony at sentencing about the effects of the defendant's act should not be prevented from observing the trial. It also clarifies that, conversely, observing the trial is not grounds for excluding a victim or survivor from presenting impact testimony at sentencing. In 1991, the Supreme Court ruled in *Payne* v. *Tennessee* [501 U.S. 808] ruled that victims and survivors may be given the right to provide testimony at sentencing about the victim and the impact of the crime on the victim's family. Since then, Congress has ensured that the Federal Rules of Criminal Procedure provide this right to victims of violent crimes when the defendant is tried in federal court.

Recent court decisions have made it evident that some clarification of this right is badly needed. These decisions have excluded from trials victims and survivors who might give impact testimony at sentencing.

Generally, witnesses may be excluded from viewing a trial until they have testified. The rationale for this rule, known as the rule on witnesses and embodied in rule 615 of the Federal Rules of Evidence, is the need to prevent witnesses from collaborating on their testimony, as well as the need to prevent each witness from shaping his or her testimony to the testimony that already has been presented. Those rationales do not apply, however, when victims testify at sentencing about the effect of the crime on their own lives. As a result of this bill, victims and survivors will be permitted to observe the trial and still testify about the effect of the crime on their lives, without running afoul of the policy underpinnings for excluding witnesses from viewing a trial.

Another rationale for application of the rule on witnesses, and one that has been advanced to prevent victims from both observing the trial and presenting impact testimony, holds that a victim may testify only about the effect of the crime on his or her life, not about the effect of the trial on his life. But, Mr. President, for the victim the trial is one of the effects of the crime and becomes forever a part of the victim's life.

Remember, this amendment deals only with victim impact testimony. By that point in the process, the defendant already has been convicted. In my view, it is not unfair for the law to treat the effect on a victim of viewing a trial as part of the effect of the crime, since the trial is a proximate, reasonably foreseeable consequence of the commission of a crime. As the result, a victim should be free to see the trial and still give victim-impact testimony at sentencing.

This bill will ensure that victims of crimes have an opportunity to alleviate some of their suffering through witnessing the operation of the criminal justice system. Moreover, this bill will accomplish this salutary result without having forced upon them the cruel choice of observing the trial or giving impact testimony at sentencing. Indeed, the bill before the Senate is a significant improvement over the legislation originally introduced in the other body because, unlike the original House bill, it specifically ensures that victims have the right both to attend the trial and provide impact testimony at sentencing. The opportunity to do both is critical to providing closure to victims and ensuring justice for victims, as well as defendants and society.

Mr. President, this provision is not controversial. I hope that it can be

passed by the Senate and sent to the President for his approval without delay.

Mr. INHOFE. Mr. President, I am pleased to join my colleagues, Senators NICKLES and LEAHY in getting through the Senate H.R. 924, the Victim Allocution Clarification Act. This is an important issue for victims and their families of the Murrah Federal Building bombing. Clearly, we would not have been able to get this through unless there was widespread support for clarifying congressional intent with respect to the rights of victims and their families.

Although the Victims Rights and Resolution Act of 1990 provided that victims have the right to be present at all public court proceedings, it conditioned that on a court determination that the testimony by the victim would not be materially affected if the victim heard other testimony at the trial. Recent courts decisions have held that victims cannot attend the trial and submit a victim's impact statement. H.R. 924 clarifies congressional intent by allowing the victim and their family to both attend the trial and submit a statement during the sentencing phase.

I believe this language has reached a delicate balance between protecting the rights of the victims while maintaining the constitutional protections of the defendant. As noted by Senator NICKLES, it is critical that we pass H.R. 924 before the trial in the Oklahoma City bombing case begins on March 31. I appreciate the efforts of all involved in getting through the Senate and House expeditiously.

Mr. NICKLES. Mr. President, I ask unanimous consent that the bill be deemed read a third time and passed, and the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at the appropriate place in the RECORD.

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

The bill (H.R. 924) was deemed read a third time and passed.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank my friend and colleague, Senator LEAHY from Vermont. We have done something rather unusual. We worked together in a very bipartisan fashion to do some good work, and we did it very quickly. It is not often that Congress passes legislation this quickly, and we did so.

Also, I want to thank Senator DASCHLE and Senator LOTT because we wanted to expedite this. We would like to get it to the President before he leaves the country today. This trial happens to start on the 31st of this month.

I might mention that this is the third piece of legislation that we have passed that deals directly, or has had some impact, I guess, as a result of the Oklahoma City bombing. Last Congress, we passed legislation dealing with habeas corpus reform, one of the most significant improvements, I think, in our statutes dealing with criminal law in a long time. We wanted to have an end to endless appeals. I think the Oklahoma City tragedy gave us great momentum to make that happen. I remember several of the victims coming to testify, urging Congress to enact a crime bill, but also urging Congress to enact habeas reform because they wanted to see justice soon rather than later.

We also passed legislation to allow closed-circuit TV so victims would not have to go all the way to Denver. I was disappointed the decision was made that the trial would be held in Denver. Originally, the judge said the people would have to attend to witness the trial. This trial could last for months. We passed legislation basically mandating that closed-circuit TV would be allowed in this case and, hopefully, other cases. Hopefully, we will not have other cases, but if we have another case that might be identical to this, the victims and their families would not have to travel several hundred miles just to be able to witness the trial.

Finally, we passed this legislation, this important legislation, to allow victims and their families to be able to witness a trial and also, if they desire, to be able to testify during the sentencing phase. This would not have happened if we did not have bipartisan support.

Again, I thank my colleagues for making it happen. I am delighted. On behalf of hundreds of Oklahoma City families who are directly impacted, we say thank you to both our colleagues in the House and the Senate for passing this legislation today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

CAMPAIGN FINANCE REFORM NEEDED

Mr. CLELAND. Mr. President, I rise to speak on the floor of the U.S. Senate for the first time. I do so with mixed emotions. Following in the great tradition of this seat once held by such notables as Dick Russell and Sam Nunn, I am poignantly aware that freshman Senators should be seen and not heard. However, there is an issue building in this country which I feel obligated to comment on and regarding which I can no longer remain silent. This is the issue of reforming the way we finance our political campaigns at the Federal level, particulary seats in the U.S. Congress, and especially seats in the U.S. Senate.

There are many other issues facing our Nation to which we are all compelled to pay time and attention: issues such as eliminating the Federal deficit, taking care of those who have served this Nation in the Armed Forces, caring for our elderly and our young, improving our environment, and recommitting our educational system to excellence. However, as important as these issues are, in my opinion, they are all secondary to the basic issue before us—the need to recapture the public's faith in our democratic processes and our democratic institutions. Without that faith, all of these other endeavors will be undermined.

Confucius, the noted Chinese sage, once wrote that there were three things that make up a great nation: First, a strong defense; second a vigorous economy; and third, the faith of people in their government. Confucius noted that a great nation might do without a strong defense, or that a great nation might be able to do without a vigorous economy, but, Confucius noted that a great nation could not remain great without the faith of the people in their government.

Mr. President, I am committed to supporting programs and plans for a strong defense for our Nation. I serve on the Senate Armed Services Committee with great pride and a sense of awesome responsibility in this regard. I also am committed to a vigorous economy, and to upgrading the quality of education in America, in particular to creating hope for all of our qualified youngsters that they will have an opportunity to go to college or to receive vocational training. In furtherance of this objective, I am a cosponsor of S. 12, a program designed to provide a $1,500 tax credit and a $10,000 tax deduction to working families so they can see their children achieve the American dream. But I am especially committed to doing those things which we need to do to enhance the faith of people in this country in their own Government by cleaning up the campaign finance mess.

When I first came to Washington as a young college student in the fall of 1963, I was inspired by President Kennedy to get involved in public service. I especially enjoyed meeting and learning from Members of the Senate. I can vividly recall personal meetings with Senators Russell and Talmadge from Georgia, and a young Senator from West Virginia named ROBERT C. BYRD. In those days, my heart was stirred to devote my life to politics.

Many of us in this Chamber today got our first taste of politics in the early sixties. For me, that introduction was a positive one.

However, when I was sworn in here on the Senate floor on January 7 of this year, I could not help but think how differently our current leaders and our current institutions are perceived by today's public, especially our young people. I do not believe that our leaders or our institutions are of lesser caliber that those of my youth, but something has obviously gone wrong. We in public

office today face a hostile and cynical public, quite willing to take the worst possible reports about us and believe them instantly. One of the reasons for this attitude toward our public officials, I think, is the constant money chase that U.S. House and U.S. Senate campaigns have become. Additionally, when this money is spent on 30-second character assassination ads which have become the staple of American politics, can we expect our public to truly speak highly of us?

I believe the single most important step we can take in the Congress this year in restoring public confidence and faith in our democracy is to enact meaningful campaign finance reform. This is not a problem for Democrats. This is not a problem for Republicans. It is a problem for us all. We must act together in a bipartisan manner to clean up a system which has gotten completely out of control and which undermines both the operation and reputation of our entire national Government.

Throughout my early days in this body, I and all of my colleagues have been under a constant barrage of reports of campaign financing improprieties in the 1996 elections. I feel very strongly that our current campaign system has become a national embarrassment.

Will Rogers said back in the 1930's that, ''Politics has got so expensive that it takes lots of money to even get beat with.'' How true that is, especially today. In the 1960's a Georgia politician remarked, ''The only thing tainted about political money is that it 'taint mine and 'taint enough.''

The American public isn't laughing anymore. They are demanding a change in the attitudes of politicians on the question of campaign fundraising. We currently have a political system which is drowning in money and rife with real and potential conflicts of interest. Simply stated, we have too many dollars chasing and being chased by too many politicians too much of the time.

This unseemly money chase has taken its toll in terms of public confidence. The election year of 1996 witnessed both a record high in the amount of money spent in pursuit of Federal office—a staggering $800 million—and the second worst voter turnout in American history! In 1996, 10 million fewer voters went to the polls to cast their ballots in that Presidential year than went to the polls 2 years earlier. What's wrong with this picture? Some $220 million was spent on Senate races alone. In my Senate race in Georgia, I raised and spent some $3.5 million, but was outspent by a multimillionaire who spent over $10 million running for the Senate seat—$7 million of which was his own money. Is it any wonder that more and more of our citizens see that there is a for sale sign on more and more public offices in America? If we don't bring about reform of this process, limit expenditures, and establish rules for everyone to play by, the average citizen will have less and less chance to serve in this body or run for public office. Senator DASCHLE predicts that at the current pace of the money chase, in only 29 years the average Senate race will cost $143 million.

This is insanity.

We cannot allow the Congress of the United States, especially the U.S. Senate, to become a millionaires' club dominated by the rich and run by the powerful special interests. This system continues to take its toll on this body as the money chase continues. The exodus of distinguished, veteran legislators who have voluntarily departed from the U.S. Senate in the last 2 years is at an historic level. Even in my first 2 months in the Senate, I have seen noted Republican and Democratic legislators like DAN COATS, JOHN GLENN, and WENDELL FORD announce their retirement from this body partially because of the frustration of spending the next 2 years doing nothing but raising money for their upcoming campaign. Senator FORD spoke the thoughts of many when he said on his retirement:

> The job of being a U.S. Senator today has unfortunately become a job of raising money to be reelected instead of a job doing the people's business. Traveling to New York, California, Texas, or basically any State in the country, weekend after weekend for the next 2 years is what candidates must do if they hope to raise the money necessary to compete in a Senatorial election. Democracy as we know it will be lost if we continue to allow government to become one bought by the highest bidder, for the highest bidder. Candidates will simply become bit players and pawns in a campaign managed and manipulated by paid consultants and hired guns.

The essential first step in repairing the current system is passage this year of S. 25, the bipartisan McCain-Feingold campaign finance reform bill. I am very proud to be an original cosponsor of this proposal. It was the very first piece of legislation I attached my name to as a U.S. Senator. Briefly outlined, the bill would: ban soft money contributions to national political parties; ban contributions by political action committees to Federal candidates; establish voluntary spending limits, including limits on personal spending, and require that at least 60 percent of funds be raised from home State individuals for Senate candidates; provide candidates who abide by these spending limits with limited free and discounted television time and a discount on postage rates; require greater disclosure of independent expenditures; and prohibit contributions from those who are ineligible to vote in Federal elections, including non-American citizens.

Mr. President, the best endorsement I can think of for this measure is that had McCain-Feingold been in effect for the 1996 elections, we would not now need to divert our attention away from the many serious problems facing our country in order to devote time and energy toward the investigation of campaign finance abuses. I serve on the Governmental Affairs Committee which will be conducting this investigation. I fully support the purposes for which this investigation is intended, but I'm saddened it has to be undertaken in the first place. I only hope that this effort will result in meaningful campaign finance reform this year.

After we pass McCain-Feingold, we will need to turn to additional reforms in order to further improve our electoral process. I am working on legislation which would strengthen the Federal Election Commission. The proposal would do several things: Alter the Commission structure to remove the possibility of partisan gridlock; eliminate current restrictions on the Commission's ability to launch criminal investigations, and to impose timely, and effective penalties against violations of campaign law; and mandate electronic filing of all reports.

In addition, my proposal would expand the free air time provisions of McCain-Feingold in order to help level the playing field for challengers, and attack the single biggest factor in driving up campaign expenditures—expensive television costs. Finally, I am looking for methods to effectively enforce a shorter timeframe for the conduct of campaign-related activities.

Strengthening enforcement, expanding public access to information about candidates and their ideas, and reducing the length of the campaign season will, in my judgment, build upon the solid foundation which I hope we will create when we enact S. 25.

We have important work ahead, and often times there will be legitimate partisan, philosophical, and regional differences of opinion which should be voiced and acted upon. However, we have a shared interest, as Senators, but more importantly, as American citizens, in always acting to enhance the respect our citizens have for our great country and our democratic institutions, especially this body.

In that spirit, and with that commitment, I urge my colleagues to join in the cause of mending our broken campaign finance system. Let us create a new campaign finance system which instills public confidence rather than undermines it, and aids the governing process rather than hinders it.

President Grover Cleveland was right: ''A public office is a public trust.'' The current money chase we all engage in is severely eroding that trust. We must act to change a campaign finance system that is broken, or continue to see good men and women from all walks of life and from all political persuasions broken by it.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. FEINGOLD. Will the Senator yield for a brief comment?

Mr. BROWNBACK. Just for a brief comment. I have a limited period of time.

CONGRATULATIONS TO SENATOR CLELAND ON HIS MAIDEN SPEECH

Mr. FEINGOLD. I thank the Senator. All I wanted to do is be the first to congratulate the Senator from Georgia on his first speech as a Member of this body. I can't tell you how delighted we all are to have the Senator from Georgia here. The Senator from Georgia ran a tough race. I know the Senator from Georgia has run other races before.

The people of Georgia know well that the Senator from Georgia did not come to this campaign finance reform issue in the last few weeks, or just after the revelations of the last election. The Senator from Georgia has been a leader in Georgia and in the country for years in authoring and considering and moving forward the issue of campaign finance reform. I can't think of anything that made me happier than when the Senator from Georgia said his first bill would be to cosponsor our bipartisan effort. On behalf of my colleagues and myself, it is a great moment in the Senate to have the Senator from Georgia join us and to hear his first speech.

Mr. WELLSTONE. Mr. President, I wonder if I may have 30 seconds.

Mr. BROWNBACK. Yes.

Mr. WELLSTONE. Mr. President, I echo what my colleague from Wisconsin has said. I believe, I say to the Senator from Georgia, that when we pass the reform bill in this Congress—and we must and we will—the words uttered in the Senator's first speech on the floor of the Senate will be remembered and will be part of a good piece of history in this country. I thank my colleague from Georgia, and I thank the people from Georgia for sending him here.

Mr. BYRD. Mr. President, will the Senator yield for a brief comment? I ask unanimous consent that he retain his right to the floor and that the time consumed by me and by the two Senators preceding me not come out of the Senator's time.

Mr. BROWNBACK. I am happy to yield for a minute, if I could please, sir.

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

Mr. BYRD. Mr. President, I join with others of my colleagues in complimenting the distinguished Senator from Georgia on his maiden speech.

It used to be, Mr. President, that when a new Senator came to this body, he waited several months before he spoke. Then when he made his maiden speech, other Senators who had been notified that he was going to make a speech would come to the floor and gather around him and listen to his speech. In those days we did not have the public address system. So Senators generally moved toward the desk of the Senator who was speaking so they could hear him better.

I have enjoyed listening to the distinguished Senator. He comes here today as someone who is fresh off the campaign trail. I am sure that what he has had to say is something of importance, and I hope it will be read by our colleagues. He comes in the great tradition of Senators from Georgia. When I first came to Washington as a new Member of the Congress, we had Senator Walter George in the U.S. Senate, and Senator Richard Russell, who was my mentor in many ways, and it was I who introduced the resolution to name the old Senate Office Building in honor of Senator Richard Russell. Of course, there was also Sam Nunn, who followed in Senator Russell's footsteps.

I congratulate the distinguished Senator. He is a true American hero. I know that he will be an outstanding Member of this institution. I congratulate him.

I hope that all Senators will take note of what Senator CLELAND has said in his speech today. It will be well worth their time to read that speech.

I thank him.

And I thank the distinguished Senator from Kansas.

Mr. BROWNBACK addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I want to recognize and congratulate the Senator from Georgia for joining the body. I am joining him on his first maiden speech.

I also thank the Senator from West Virginia for educating and sharing with us some of the culture and the history of the U.S. Senate, which I think is always beneficial for us to have and to be able to share with the American people the history, the ability, and the nature of this body as it was set up by the Founding Fathers and which has been maintained with most of its integrity since that time and age of what they set forward.

I think it is always positive for us to know the history and the nature and why we serve and how we should serve.

Mr. BYRD. Mr. President, I thank the distinguished Senator for his very kind and overly charitable remarks.

Mr. BROWNBACK. They are not overly charitable at all.

(The remarks of Mr. BROWNBACK pertaining to the introduction of S. 471 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Florida.

Mr. GRAHAM. Mr. President, first, I wish to add to the remarks that have been made this afternoon in recognition of the first speech given as a Member of the U.S. Senate by our new colleague, the Senator from Georgia. He has represented this Nation with great distinction throughout his life, and we are gratified that he has now joined us in the Senate. I am confident that the remarks he made a few minutes ago will be illustrative of the contributions he will make throughout his Senate career. I am proud to call him a friend and colleague.

PRIVILEGE OF THE FLOOR

Mr. GRAHAM. Mr. President, I ask unanimous consent that Ms. Delia Lasanta, a fellow in our office, be allowed privileges of the floor during consideration of the legislation that I will be introducing this afternoon with my friend and colleague, the Senator from Idaho [Mr. CRAIG].

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

(The remarks of Mr. GRAHAM and Mr. CRAIG pertaining to the introduction of S. 472 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Missouri.

COMMUNICATIONS DECENCY ACT

Mr. BOND. Mr. President, I rise today to join with a number of my colleagues to say there was a very important argument in the Supreme Court today over the constitutionality of the Communications Decency Act, which we passed last year. You will recall that we passed a bill to make it difficult to communicate pornography to children. The day it was passed and signed, the American Civil Liberties Union jumped in to say it was unconstitutional. I'm sorry, but I think the ACLU has it all wrong. I was very pleased to be one of a group of Senators, including the occupant of the Chair, who signed a brief in support of Congress' effort to impose reasonable regulations and restrictions to prevent the worst form of pornography from reaching our children.

Congress can regulate speech when there is a compelling reason. That has been clear. That has been held constitutional in many instances, and I suggest that there is no more compelling need than to protect our children and future generations from exposure to explicit pornographic pictures and messages, and from the people who send them.

The government, both the Federal Government and State and local governments, have engaged in efforts to regulate pornography. We regulate media available to children such as the sale of books and magazines, the viewing and sale of films, the use of telephone services to communicate adult messages, and the broadcast media. So, this has been done and it has been done for a very good and I believe a very compelling reason. The standard put forth in the Communications Decency Act is even more stringent than that, in terms of the limitations of it. The constraints are more severely limited than the constraints on the broadcast media. We have tightened up the definitions and made the ban much narrower.

The Internet is clearly the latest means of communications. Any of us

who have children knows how readily accessible the Internet is. If you are like I am, when you have a computer problem you ask your child how to fix it, because the children know how to make it work. My forehead still breaks out in perspiration and my hands shake when I try to send e-mail. But the kids can not only send the e-mail for you, they can tell you how to send it, fix the problems on it, and make things happen. We want to make sure that what they do not make happen is that they get access to things that are now banned to them through adult book stores, through broadcast media, through telephone communications. They should not be subject to the deviants, the pornographers, the child molesters who want to use the Internet in an interactive way to get access to our children.

There are, unfortunately, an abundance of examples of where perverts have used Internet communications to communicate with and to lure young children to locations away from their homes. They have used pornography as a tool. Not only have they polluted children's minds with this pornography, but they have used it as a tool for their own, very sick purposes.

In Louisville, I know there was a 12-year-old girl who was sent a bus ticket and left home without her parents knowing about it. These examples have happened time and time again. I believe this Congress had every right to say it is OK for adults to communicate anything they want but you cannot be sending material to children that is pornographic. You cannot be putting pornographic information on the kiddie chat rooms.

Contrary to what the ACLU will tell you, the Communications Decency Act does not ban speech or interrupt the free exchange of ideas. There is technology available that can keep children from gaining access to it. And if it takes a pornographer a little more difficulty to communicate pornographic materials to another consenting adult, so they do not get the information before children, I am not going to lose any sleep over it.

There is every reason that we can, under the Communications Decency Act, continue to use the Communications Decency Act for communicating medical information, discussing literature—these are not banned. If the purpose is getting pornography, for pornographic purposes or even personal whims of those who communicate it, to children, that the Communications Decency Act bans.

I think this should be upheld. I am proud to be one of the signers of the brief and we will all be watching to see this very important case resolved by the U.S. Supreme Court.

I yield the floor.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

THE BUCK MUST REST SOMEWHERE ELSE

Mr. COATS. Mr. President, yesterday, I took the floor to detail what I thought was an extremely disturbing and very potentially abuse of Executive power of the White House to improperly influence the outcome of the American Presidential election. As part of that chronology of events of information that we now know that has been printed and that we are aware of, I detailed the situation relative to the latest scandal that has been reported in the press, and that involves Mr. Lake, former National Security Adviser to the President, an individual nominated for the job as Director of the CIA.

Mr. Lake, as we all now know, withdrew his name from consideration the day after a major story broke about a problem involving the Democratic National Committee, the Central Intelligence Agency, the National Security Council, and the fundraising operation of the White House. I think this is probably the most damaging, or at least one of the most damaging allegations relative to the entire fundraising efforts by the Democratic Party for this last election. We now know that the Central Intelligence Agency was used by the Democratic National Committee to encourage access to the President by an individual who is an international fugitive and was a major donor to the Democratic Party.

The administration, in response to Mr. Lake's withdrawal, indicated that it was the confirmation process by members of the Intelligence Committee that is at fault in the withdrawal of the Lake nomination. The fault, Mr. President, I suggest, lies elsewhere. The Lake nomination was eventually undermined because Mr. Lake was forced to operate, or at least chose to operate or was forced to operate, in the very center, the very heart of a political fundraising machine whose abuses are revealed to us each day as we pick up the paper in the morning.

The White House blames partisan Republicans, and yet a major story in the New York Times today, titled ''Leading Democrat Tells of Doubt of CIA Nominee, White House Was Warned, Senator KERREY's Reservations May Have Persuaded Lake Not To Fight the GOP,'' hardly speaks to a partisan effort to dethrone Mr. Lake.

Legitimate questions were asked of Mr. Lake of what his role was as National Security Adviser to the President in terms of clearing certain individuals to come to the White House for various favors, coffees, Lincoln Bedroom stays, et cetera, and, on several occasions—at least two that we know of—the National Security Council issued very direct reservations and, in fact, warnings about certain individuals who, nevertheless, attended more than one meeting at the White House.

Mr. Lake's response was that he essentially was out of the loop; he did not know what was going on. Legitimate questions were raised: If you did not know what was going on with a 150-member staff that went to the very essence of the Presidency, of who sees the President, of what the involvement of these individuals is relative to fundraising for the election, if you are not aware of that going on, how are you possibly going to manage a multithousand-member agency with 12 separate divisions as important to the security of the United States as the Central Intelligence Agency?

So even though the White House blamed partisan Republicans, we now know that the vice chairman of the Intelligence Committee had raised his own concerns about Mr. Lake's qualifications and what his role was and the role of the National Security Council in terms of all this fundraising morass that the administration is caught up in.

Mr. President, fortunately, publications that are following the story are not buying the White House response. The New York Times editorial today states:

> In the end, Mr. Lake was undone by Mr. Clinton's reckless 1996 election campaign and the failure of top White House officials, including Mr. Lake, to insulate American foreign policy from fundraising efforts.

That is an extraordinary statement, Mr. President, and I want to repeat it. The New York Times editorial today refuting the White House response to Mr. Lake's withdrawal from nomination to be CIA Director, states:

> In the end, Mr. Lake was undone by Mr. Clinton's reckless 1996 election campaign and the failure of top White House officials, including Mr. Lake, to insulate American foreign policy from fundraising efforts.

Jim Hoagland, in today's Washington Post, states:

> [Lake] is not a victim of the system but of the President he served. His angry words try to obscure an embarrassment and the true dimension of one more political fiasco at the Clinton White House. One more close Clinton associate is badly damaged while the President cruises on with high but flagging approval ratings.

To continue:

> The system that did in Tony Lake is the one that allowed the fundraisers to trump Lake's staff repeatedly over access to the White House.
>
> In Washington the system is people—people who are supremely attuned to the wishes, needs, and whims of the boss. If Roger Tamraz, Chinese arms supplier Wang Jun, Thai trade lobbyist Pauline Kanchanalak and the others made it into the White House, it is ultimately because Bill Clinton communicated, in one form or another, that he did not want tight screening of campaign contributors. In the end, Tony Lake paid the price for Clinton's need not to know.

That from today's Washington Post. Then, finally, Maureen Dowd in the New York Times states:

> Although Mr. Lake's ''haywire'' line got all the attention—

That is referring to a process ''gone haywire'' that Mr. Lake stated—

> it was another sentence in his letter that provided the real reason for his withdrawal.

Quoting Ms. Dowd:

In addition, the story today about the activities of Mr. Roger Tamraz is likely to lead to further delay as an investigation proceeds.

Maureen Dowd goes on to state:

Mr. Lake would have had a tough time explaining why he was missing in action while the Democratic Party tried to use the CIA to pressure Mr. Lake's office to help get an accused embezzler and big donor access to the White House. The cold war might be over, but don't these agencies have something better to do than vet global hustlers and fat cats?

Sheila Heslin, an NSC Asia expert with a regard for ethics unusually high for the Clinton White House, offered to shield the President from the notorious Roger Tamraz. But like the ubiquitous Johnny Chung, who also got into the White House despite tepid NSC warnings, Mr. Tamraz had his run of the people's house.

So that's why Tony Lake pulled out:

She concludes—

He was not Borked. He was Tamrazzed.

Mr. President, former President Harry Truman had on his desk a sign that said, ''The buck stops here.'' Unfortunately, it seems that the sign posted throughout the White House and throughout this administration is ''The Buck Must Rest Somewhere Else; It Sure Doesn't Stop Here.''

Mr. President, we have a very serious situation before us. We have allegations, backed by substantial evidence, that the executive power of the White House was abused to improperly influence the outcome of an American Presidential election. We have serious questions about foreign governments' involvement at invitation by the Democratic Party and the Clinton administration, involvement in helping corrupt American elections. We have serious allegations, backed by considerable evidence, that the privilege of American citizenship has been distorted and undermined to serve the President's reelection. And now we are forced to ask, were American intelligence services manipulated by this administration as part of this fundraising machine?

All of this, Mr. President, speaks for the need for independent counsel, speaks for the need to move this process outside of the Congress because clearly the administration has taken the position that whatever is said by this Member or any other Member of the Republican Party is simply partisan politics, that everything that happens is directed from a partisan basis.

What we are trying to get at here, Mr. President, is the truth. What we are trying to do is examine what statutes were violated, trying to examine what ethics rulings were violated, trying to impose some standards on the way in which we conduct elections in this country and the way in which the White House is viewed and held by occupants of that White House and what its purpose should be.

Mr. President, for that reason, I supported the resolution to call for an independent counsel. I would hope that the Attorney General would pay close attention to the recently passed Senate resolution in that regard. I think these are serious issues and they must be addressed.

Finally, let me just say that the practice of this administration and this President of simply saying, the process is corrupt, that the Congress is partisan, that all of this has to do with politics and none of this has to do with ethics and legal violations, that that is a lame excuse and removal from accountability and responsibility that we expect in the leadership of this country.

Mr. President, I yield the floor.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, let me thank the Senator from Indiana for bringing together for us what is a perplexing issue.

I had watched from afar, because I am not a Member of the Intelligence Committee, the process of the interviewing of the nominee, Tony Lake. While I know there was considerable controversy and an unwillingness on the part of this administration to send forth the full FBI file, that was really the only argument I ever heard. Finally some of that file came, but certainly not all of it did, nor was there ever full disclosure.

Yet on the evening news last night I watched a very indignant President talking about the corruption of the procedure. And nowhere during all of this did I understand that there was any corruption, only a request for knowledge, for information to decide whether the No. 1 intelligence officer of this country was eligible to serve in that position.

The Senator from Indiana has told us the rest of the story. And the rest of the story is that Tony Lake is a refugee of this administration's mispractices, if not illegal acts. He is not a refugee of this Congress' failure to act, because we were doing what is our constitutional responsibility.

I, too, today voted for an independent counsel. Two weeks ago I called for an independent counsel, as I think most of us were growing to believe that anything we did here would be either tainted by the opposition or tainted by the media as somehow a partisan act.

What the Intelligence Committee of the Senate did was not partisan. It was constitutional. It was responsible. What the President did in his ''mea culpa, mea culpa'' last night was the first to the altar of the sinners to say ''not I'' when in fact the stories are now pouring out that somehow the process was corrupted and that Tony Lake, as an instrument of that process, grew corrupt along with it.

Just because the great Soviet empire and communism as a sweeping rave of ''isms'' around the world seems to be on the rapid decline, is foreign policy and the integrity of foreign policy in our country any less important? I would suggest that it is not.

When foreign countries wish to influence the most economically powerful country in the world for purposes of commerce or access to its decisionmaking, that in itself is of concern. And it has to be this Congress that understands that and this President that understands that and in no way allows foreign policy, decisionmaking, or any part of that process to be biased by undue influence. And yet day after day, now almost hourly, the stories pile up. Tony Lake is now part of that story.

Janet Reno must step aside from what appears to be at this moment a gross conflict of interest and do what is her statutory responsibility, and that is to appoint an independent counsel. Then let the chips fall where they may. And I do not know where they will fall. And I do not think the Senator from Indiana knows.

We are talking about allegations, allegations that were first launched, not by a politician, but by the media itself. It was an article in the Los Angeles Times back in the latter days of the last campaign that argued that somehow there appeared to be an issue of corruption or an issue of compromise or an issue of illegality as it relates to how this administration, most importantly, this President and his Presidential campaign had raised money.

Now Janet Reno, do your job. Call the independent counsel. Get on with the business of ferreting out whether there were illegal acts involved in the corruption of or the compromise of this President and this President's foreign policymaking.

And, thank goodness, through all of the winnowing process Tony Lake is now out of the picture and we can get on with the business of reviewing nominees who can meet the test of integrity and legitimacy in conducting what is still a very important part of this country's affairs, and that is our intelligence-gathering network, the eyes and ears of a government who is responsible for conducting the foreign policy of a nation that still remains critical to the security of our country and our financial and economic well-being.

I thank my colleague from Indiana for so clearly pointing these issues out. I yield back my time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. 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. BYRD. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. We are in morning business until 3 o'clock, with a 5-minute limitation.

Mr. BYRD. Mr. President, I will need more than 5 minutes. May I ask the distinguished Senator from Nevada, does he wish to speak?

Mr. BRYAN. Mr. President, if I might respond, the Senator from Nevada needs about 5 to 6 minutes, but if that inconveniences the Senator from West Virginia, I am happy to wait. Whatever the Senator wishes.

Mr. BYRD. Mr. President, I ask unanimous consent I may speak for not to exceed 20 minutes.

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

Mr. BYRD. Mr. President, I ask unanimous consent I may yield to the Senator from Nevada for not to exceed 5 minutes, without losing my right to the floor.

Mr. BRYAN. I appreciate that. That would accommodate the Senator from Nevada.

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

Mr. BRYAN. Mr. President, let me preface my remarks by acknowledging the courtesy from the senior Senator from West Virginia. I appreciate his courtesy in allowing me to make a floor statement for a period not to exceed 5 minutes.

HOMEOWNERS' PROTECTION ACT OF 1997

Mr. BRYAN. Mr. President, yesterday in the Senate Banking Committee American consumers were dealt a major setback. The committee was expected to vote out legislation that would have ended a practice that costs hundreds of thousands of homeowners millions of dollars per year.

The Banking Committee was scheduled to vote out S. 318, the Homeowners' Protection Act of 1997 which is sponsored by Senators D'AMATO, DODD, DOMENICI, and myself. This bill would outlaw the practice of overcharging homeowners for private mortgage insurance they no longer need.

Unfortunately, Chairman D'AMATO was forced to cancel the markup because a number of Members put the interest of a small, yet highly profitable, industry over the public's interest. To make matters worse, this industry is clearly taking advantage of millions of Americans in an unconscionable manner.

The opponents of Chairman D'AMATO's legislation argue that the bill places too heavy a burden on this one industry. I do not share their opinion and believe the interests of millions of American homeowners should be put ahead of an industry that is clearly taking advantage of these same homeowners.

Those protecting the industry need to heed the advice of one of their colleagues, Congressman JAMES HANSEN. Let me share from Congressman HANSEN's observations:

> As a small businessman for most of my life . . . I have learned that if an industry polices itself, the government should not interfere. I firmly believe that the government should stay out of the private marketplace. However, when an industry does not follow even its own guidelines, I believe it is our responsibility to draw that line.

Now that comes, Mr. President, from one of our more conservative colleagues who serves in the other body.

I commend Chairman D'AMATO for his leadership in introducing this important legislation that will affect millions of homeowners. Let me indicate how important that is and how many people are affected.

In 1996, of the 2.1 million home mortgages that were insured, more than 1 million required private mortgage insurance. One industry group has estimated that at least 250,000 homeowners are either overpaying for this insurance or paying when it is totally unnecessary. At an average monthly cost of $30 to $100, unnecessary insurance premiums are costing homeowners thousands of dollars every year.

Now, clearly, private mortgage insurance serves a useful purpose in the initial mortgage lending process. It enables many home buyers who cannot afford the standard 20-percent downpayment on a home mortgage to achieve a dream of home ownership. While private mortgage insurance protects lenders against default on a loan, there comes a time when that protection afforded to the lender becomes unnecessary, and the point, it seems to me, is reached when the homeowner's equity investment in the residence gives the lender sufficient assurance against default.

The comfort level generally within the industry has been 20 percent. So it stands to reason that PMI is not necessary for risk management and prudent underwriting procedures once the homeowner has reached the 20-percent equity mark. Therefore, borrowers who amass equity equal to 20 percent of their homes' original value should be treated in the same way as borrowers who are able to make a 20-percent downpayment or more at the outset of the loan.

The Homeowners' Protection Act of 1997 would ensure that existing and future homeowners would not continue to pay for private insurance when it is no longer necessary. Specifically, this legislation would inform the borrower at closing about private mortgage insurance and outline how the servicer of the loan will automatically cancel the mortgage insurance, assuming the transaction is not exempt from cancellation when the loan balance reaches 80 percent of the original value.

Mr. President, there is no doubt that private mortgage insurance is an important tool in the American system of mortgage finance. However, retaining private mortgage insurance beyond its usefulness to the homeowner is a practice that should be ended. The Homeowners' Protection Act will prevent present and future homeowners from paying for private mortgage insurance that is no longer needed. This proposal will end the unfair practice and protect the consumer.

This legislation is supported by almost every consumer group, but also leading industry groups such as the American Bankers Association, the National Association of Realtors, and the National Association of Homebuilders.

I urge my colleagues to move forward on this important piece of consumer legislation and put the industry's objections below the overriding public interest. We must lift this unfair burden from American homeowners.

I thank the Chair. I thank my senior colleague from West Virginia for his courtesy. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

COMMISSION TO ELIMINATE THE TRADE DEFICIT

Mr. BYRD. Mr. President, I am pleased to join with the distinguished Senator from North Dakota, Senator DORGAN, in introducing an ambitious new effort on the matter of our nation's persistent and growing trade deficit. This legislation would establish a Commission to take a broad, thorough look at all important aspects of, and solutions to the growing U.S. trade deficit, with particular attention to the manufacturing sector.

The trade deficit, as my colleagues know, is a relatively recent phenomenon, with large deficits only occurring within the last 15 years. In the 1980's, the U.S. merchandise trade balance ballooned from a deficit of $19 billion in 1980 to $53 billion in 1983, and then doubled in a year, to $106 billion in 1984. Last year it stood at $188 billion, setting a new high record for the third consecutive year. Projections by econometric forecasting firms indicate long term trends which will bring this figure to over $350 billion by 2007. No one is predicting a decline in the near future. If we do nothing, within 2 years the merchandise trade deficit will equal the annual budget for national defense.

To reiterate, in 1996 the United States had the largest negative merchandise trade balance in our history, some $188 billion, and it is the third consecutive year in which the deficit has reached a new record high.

This legislation is committed to a goal of reversing that trend of the next decade. The goal of the commission is to ''develop a national economic plan to systematically reduce the U.S. trade deficit and to achieve a merchandise trade balance by the year 2007.

While it is not clear what the particular reasons for this growing trade deficit may be, nor what the long term impacts of a persistently growing deficit may be, the time is overdue for a detailed examination of the factors causing the deficit. We need to understand the impacts of it on specific U.S. industrial and manufacturing sectors. Furthermore, we need to identify the gaps that exist in our data bases and economic measurements to adequately understand the specific nature of the

impacts of the deficit on such important things as our manufacturing capacity and the integrity of our industrial base, on productivity, jobs and wages in specific sectors.

Throughout the 1980's, my own State of West Virginia literally bled manufacturing jobs. We saw the jobs of hardworking, honest West Virginians in the glass, steel, pottery, shoe manufacturing and leather goods industries—and other so-called smokestack industries—hemorrhage across our borders and shipped overseas. While economic development efforts in my State have commendably encouraged our businesses to refocus to help recover from those losses, the lack of knowledge about the causes and impact of our trade deficit leaves West Virginia, and the nation as a whole, at a disadvantage in the arena of global competition.

We debate the trade deficit from time to time. We moan about it. We complain about it. But, if we do not understand the nature, of the long-term vulnerabilities that such manufacturing imbalances create in our economy and standard of living, we are surely in the dark. It appears to me that debate over trade matters too often takes on the form of rhetorical bombast regarding so-called protectionists versus so-called free traders. This is hardly a debate worthy of the name, given the problems we are facing. It is not an informed debate. We are talking past each other, and in far too general terms. It has been more of an ideological exchange than a real debate, primarily because we have not had sufficient analytical work done on the data bearing on this problem. Neither side knows enough about what is really transpiring in our economy, given the very recent nature of these persistent deficits.

Certainly we know that the deficit reflects on the ability of American business to compete abroad. We want to be competitive. Certainly we know that specific deficits with specific trading partners cause frictions between the United States and our friends and allies. This is particularly the case with the Japanese, and is quickly becoming the case with China. It is clear that the trade deficit has contributed to the depreciation of the dollar and the ability of Americans to afford foreign products. Less clear, but of vital importance, is the relationship of the trade deficit to other important policy questions on the table between the United States and our foreign trading partners.

Attempts by the United States to reduce tariff and nontariff barriers in the Japan and China markets, which clearly restrict access of U.S. goods to those markets, have been crippled by the intervention of other, more important policy goals. During the cold war, the United States-Japan security relationship had a severe dampening effect on our efforts to reduce these myriad barriers in Japan to United States exports. The same effect appears to have resulted from our need for the Japanese to participate in our treasury bill auctions. This becomes a closed cycle—the need to finance the trade deficit with foreign capital, resulting in regular involvement of the Japanese Government in our treasury bill auctions, seems to dampen our efforts to push the Japanese on market-opening arrangements. Naturally, without reciprocal open markets, the trade imbalance remains exaggerated between the United States and Japan, prompting further need for Japanese financial support to fund the national debt. Of course, this is a vicious circle. Thus, some argue that the need for Japanese involvement in financing our national debt hurt the ability of our trade negotiators to get stronger provisions in the dispute settled last year over the Japanese market for auto parts.

Similar considerations appear to prevail in negotiating market access with the Chinese in the area of intellectual property. While our trade negotiator managed a laudable, very specific agreement with the Chinese in 1995 in this area, the Chinese were derelict in implementing it, leading to another high-wire negotiation last year to avoid sanctions on the Chinese, and to get the Chinese to implement the accord as they had promised. Again, it is unclear whether the Chinese will now follow through in a consistent manner with the implementing mechanisms for the intellectual property agreement belatedly agreed to in the latest negotiation. The highly trumpeted mantra about how the U.S.-China relationship will be one of, if not the most important, U.S. bilateral relationship for the next half century, has a chilling effect on insisting on fair, reciprocal treatment, and good faith implementation of agreements signed with the Chinese government.

The Chinese government has again recently reiterated its desire to become a member of the World Trade Organization and certainly her interest in joining that organization is a commendable indication of her willingness to submit to the rules of that organization regarding her trading practices. There is legitimate concern however, that insufficient progress has been made by the Chinese on removing a wide variety of non tariff discriminatory barriers to U.S. goods and services, as she committed to do in the 1992 bilateral Market Access Memorandum of Understanding [MOU]. Indeed, in the 1996 report by the United States Trade Representative entitled foreign trade barriers, the amount of material devoted to the range of such barriers on the part of China is exceeded only by the material on Japan, indicating that we have a continued persistent problem that needs serious attention along these lines.

It will only be when we truly understand the specific impacts of these large deficits on our economy, particularly our industrial and manufacturing base, that the importance of insisting on fair play in the matter of trade will become clear.

Finally, the legislation requires the Commission to examine alternative strategies which we can pursue to achieve the systematic reduction of the deficit, particularly how to retard the migration of our manufacturing base abroad, and the changes that might be needed to our basic trade agreements and practices.

These are the purposes of the Commission that Senator DORGAN and I have proposed in this legislation.

I commend the distinguished Senator from North Dakota for his studious approach to this question. He is as knowledgeable, if not more so, than certainly most other Senators, and perhaps any other Senators, as far as I am concerned, on this subject. I am pleased to join him in offering this proposal for the consideration of the Senate.

I hope that many of our colleagues will join us, and that we can secure passage of the proposal in the near future.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF MERRICK B. GARLAND, OF MARYLAND, TO BE U.S. CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA

The PRESIDING OFFICER. The Senate will proceed to executive session.

The clerk will report the nomination.

The assistant legislative clerk read the nomination of Merrick B. Garland, of Maryland, to be U.S. circuit judge for the District of Columbia Circuit.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Madam President, before we get to the specific discussion of the merits of Merrick B. Garland, let me make an important point. There have been some suggestions made that this Republican Congress is not moving as rapidly or as well as it should on judges, or at least last year did not move as well or as rapidly as it should have on judges.

With regard to judicial vacancies, the important point I would like to make before getting into factual distortions that are being made about the judiciary confirmation process is this. Federal judges should not be confirmed simply as part of a numbers game to reduce the vacancy rate to a particular level.

While I plan to oversee a fair and principled confirmation process, as I

always have, I want to emphasize that the primary criteria in this process is not how many vacancies need to be filled but whether President Clinton's nominees are qualified to serve on the bench and will not, upon receiving their judicial commission, spend a lifetime career rendering politically motivated, activist decisions. The Senate has an obligation to the American people to thoroughly review the records of the nominees it receives to ensure that they are qualified and capable to serve as Federal judges. Frankly, the need to do that is imperative, and the record of activism demonstrated by so many of President Clinton's nominees calls for all the more vigilance in reviewing his nominees.

So I have no problem with those who want to review these nominees with great specificity. The recent allegations by my colleagues on the other side of the aisle and in the media that there is a Republican stall of judges is nothing short of disingenuous.

The fact is that last Congress under Republican leadership the Federal courts had 65 vacancies—as you see, the Federal courts had 65 vacancies—which is virtually identical to the number of vacancies—63—there were at the end of the previous Congress when the Democrat-controlled Congress was processing Clinton judges.

Historically speaking, this is a very low vacancy rate. In contrast, at the end of the 102d Congress, when Senator BIDEN chaired the Judiciary Committee and President Bush was at the White House, there were 97 vacancies—as you can see, back in the 102d Congress, 97 vacancies—in the Federal system for an 11.46 percent vacancy rate, nearly twice the vacancy rate than at the adjournment of the 104th or last Congress. That rate was, of course, 7.7 percent at that time.

The vacancies have risen since the end of Congress so that there are now 95 vacancies, or a vacancy rate of just over 11 percent. But a little perspective reveals that this is by no means a high level for the beginning of a Congress. In fact, it is far lower than the vacancy rates at the beginning of Democrat-controlled Congresses, like the 102d when the vacancy rate at the beginning of that Congress was 14.89 percent, and the 103d Congress at 12.88 percent. In the 104th, it was down to 8.27 and now it is 10.07.

Moreover, we just reported two judges out of the committee this past Thursday—Merrick Garland for the DC circuit and Colleen Kollar-Kotelly for the DC district court. We had a hearing on four judicial nominees just yesterday. I hope that will put to rest any of the partisan allegations that have been seen deployed about delaying tactics to hold up nominees.

In fact, this is the most prompt reporting of judges to the floor in recent Congresses. When the Senate was under the control of the other party, the first hearing on judicial nominees in the new Congress was typically not held until mid-March or April and candidates were not reported to the floor until after these hearings.

In the 100th Congress, the first hearing was not held until March 4, 1987. In the 101st Congress, the first judges hearing was not held until April 5, 1989. And in the 102d Congress, when there was a vacancy rate of 15 percent in the courts, the first hearing was not held until March 13, 1991.

So I think some of the arguments made against what we have been doing are just fallacious and I think done for partisan reasons. We ought to get rid of the partisanship when it comes to judges and go ahead and do what is right. I have tried to do that.

Now let us talk about the number of judges confirmed last year. Democrats have been critical of the fact that only 17 judges were confirmed last year. The fact is that President Clinton had already had so many judges confirmed that he only nominated 21 judges last year. During President Clinton's first term, he had 202 judges confirmed—more than President Bush, 194; President Reagan, 164 in his first term; President Ford, 65 in his term. I might say that as a result there were very few vacancies to fill at the end of the 104th Congress, and the courts were virtually at full capacity.

In fact, at the close of the last Congress, there were only 65 vacancies in the entire system, which is a vacancy rate of 7.7 percent. In fact, the number of vacancies under my chairmanship at the close of the 104th Congress, 65 vacancies—when a Republican Senate was processing Clinton's nominees—was virtually identical to the number of vacancies at the end of the 103d Congress, 63, when a Democrat-controlled Senate was processing President Clinton's nominees. At that point the Department of Justice proclaimed that they had nearly reached full employment in the 837-member Federal judiciary. That is in an October 12, 1994, Department of Justice press release.

When the Democrats left open 7.44 percent of Federal judgeships after President Clinton's first 2 years, we had approached ''full employment'' of the Federal judiciary. But, when Republicans are in control, a virtually identical vacancy level becomes an ''unprecedented situation,'' the ''worst kind of politicizing of the Federal judiciary.'' Those are comments that were made by my friend, Senator LEAHY. And ''partisan tactics by Senate Republicans,'' according to the New York Times. This is nothing short of disingenuous.

In contrast, at the end of the 102d Congress when Senator BIDEN chaired the Judiciary Committee and President Bush was in the White House, there were 97 vacancies in the Federal system for an 11.46 percent vacancy rate—nearly twice the vacancy rate than at adjournment of the 104th Congress, which was 65 vacancies at a 7.7 percent vacancy rate.

What about the judges who were left unconfirmed at the end of last August?

It is true, 28 nominees did not get confirmed last Congress. There is no use kidding about it. We had 28 who did not make it through. But this was at a point where there were only 65 vacancies in the court, or, in other words, a full Federal judiciary. There is some extra consideration here. Compare this to the end of the 102d Congress when, notwithstanding 97 vacancies in the Federal system, the Democratic Senate left 55 Bush nominees unconfirmed.

Let us talk about the present vacancies. Due to an unprecedented number of retirements since Congress adjourned, there are currently 95 vacancies in our Federal system or a vacancy rate of 11.25 percent as of March 1 of this year. That is the most recent report from the Administrative Office of the Courts. Notice that when the 105th Congress convened on January 7, 1997, there were 85 vacancies, or a 10.7 percent vacancy rate. But a little perspective reveals that this is by no means a high level for the beginning of the Congress. In fact, it is lower than the vacancy rates at the beginning of the Democratically controlled 102d and 103d Congresses, where the vacancy rates were 126 vacancies in the 102d, at a 14.89 percent vacancy rate, with 109 vacancies in the 103d, for a 12.88 vacancy rate.

So, there is little or no reason to be this critical or this irritated with what has gone on. I pledge to the Senate to do the very best that I can to try to confirm President Clinton's judges, if they are not superlegislators, if they are people who will uphold the law and interpret the law and the laws made by those who are elected to make them. Judges have no reason on Earth to be making laws from the bench or to act as superlegislators from the bench and to overrule the will of the majority of the people in this country when the laws are very explicitly written—or at any other time, I might add.

Having said all that, we are bringing our first two nominees this year to the floor, one of whom is in contention. I think unjustifiably so.

Madam President, I rise to speak on behalf of the nomination of Merrick B. Garland for a seat on the U.S. Court of Appeals for the District of Columbia Circuit. On March 6, 1997, the Judiciary Committee, including a majority of Republican members, by a vote of 14 to 4, favorably reported to the full Senate Mr. Clinton's nomination of Merrick B. Garland. Based solely on his qualifications, I support the nomination of Mr. Garland and I encourage my colleagues to do the same.

To my knowledge, no one, absolutely no one disputes the following: Merrick B. Garland is highly qualified to sit on the D.C. circuit. His intelligence and his scholarship cannot be questioned. He is a magna cum laude graduate of the Harvard Law School. Mr. Garland was articles editor of the law review, one of the most important positions for any law student at any university, but in particular at Harvard; a very difficult position to earn. And he has

written articles in the Harvard Law Review and the Yale Law Journal, two of the most prestigious journals in the country, on issues such as administrative law and antitrust policy.

His legal experience is equally impressive. Mr. Garland has been a Supreme Court law clerk, a Federal criminal prosecutor, a partner in one of the most prestigious Washington firms, Arnold & Porter, Deputy Assistant Attorney General in the Justice Department's Criminal Division, and, since April of 1994, Principal Associate Deputy Attorney General to Jamie Gorelick, at the Justice Department, where he has directed the Department's investigation and prosecution of the Oklahoma City bombing case. And he has done a superb job there.

Mr. Garland's experience, legal skills, and handling of the Oklahoma City bombing case have earned him the support of officials who served in the Justice Department during the Reagan and Bush administrations, including former Deputy Attorney General George Terwilliger, former Deputy Attorney General Donald Ayer, former head of the Office of Legal Counsel, Charles Cooper, and former U.S. attorneys Jay Stephens and Dan Webb—all Republicans, I might add, who are strong supporters of Mr. Garland, as I believe they should be, as I believe we all should be.

Oklahoma Governor Frank Keating, who himself was denied one of those judgeships by our friends on the other side—even though I think most all of them admitted he would have made a tremendous judge, but has since done well for himself in becoming the Governor of Oklahoma and has distinguished himself. I might add his nomination, back in 1992, for the 10th Circuit Court of Appeals in the 102d Congress, was never voted on by the Judiciary Committee. He languished in the committee for quite a length of time. But Governor Keating has endorsed Mr. Garland's nomination, praising in particular his leadership in the Oklahoma City bombing case. As he should be praised.

Mr. Garland was originally nominated in September 1995. His nomination was favorably reported by the Judiciary Committee but not acted on by the Senate during the 104th Congress, much to my chagrin, because I think he should have passed in that last Congress. But to my colleagues' credit, and certainly to the leader's credit, the new majority leader, he has cooperated with the Judiciary Committee in bringing this nomination to the floor.

At the time of Mr. Garland's original nomination to fill the seat vacated by Judge Abner Mikva, who went on to become White House Counsel, concerns were raised by several, including several distinguished judges here in Washington, as to whether the D.C. circuit needed its full complement of 12 judges due to a declining workload on the Court. I support Senator GRASSLEY's efforts to study the systemwide caseloads of the Federal judiciary and am fully prepared to work with Senator GRASSLEY as chairman of that Subcommittee on the Courts, on legislation to authorize or deauthorize seats wherever such adjustments on the allocation of Federal judges are warranted, based upon court caseloads.

With respect to the D.C. circuit, however, the retirement of Judge James Buckley, in August 1996, last year, now leaves only 10 active judges on the 12-seat court. Accordingly, the Garland confirmation does not present the Senate with a question whether the 12th seat on the D.C. Circuit should be filled, and I have made it clear to the administration that I do not intend to fill that seat unless and until they can show, and I believe it will take quite a bit of time before they could show it, that there is a need for the filling of that seat. In fact, I would be, right now, for doing away with that seat. If at some future time we need that extra, 12th seat, fine, we will pass a bill to grant it again. But right now it is not needed.

I would just say, rather, with the two current vacancies, Garland will be filling only the 11th seat. So the 12th seat is not in play anymore, which was the critical seat.

The confirmation of Merrick B. Garland to fill the court's now vacant 11th seat is supported by D.C. Circuit Judge Laurence Silberman, a Reagan appointee who himself testified against creating and/or preserving unneeded judicial seats on his circuit, meaning the 12th seat, and who has stated that, ''it would be a mistake, a serious mistake, for Congress to reduce''—that is, the Circuit Court of Appeals for the District of Columbia—''down below 11 judges.''

I am aware that there may be some who take the position that the D.C. circuit's workload statistics do not even warrant 11 judges. With all due respect, I think these arguments completely miss the mark, and caution my colleagues to appreciate that certain statistics can, if not properly understood, be misleading.

The position that the D.C. circuit should have fewer than 11 judges is belied not just by the statements of Judge Silberman, who himself wanted to get rid of the 12th seat, but also by the fact that comparing workloads in the D.C. circuit to that of other circuits is, to a large extent, a pointless exercise.

There is little dispute that the D.C. circuit's docket is, by far, the most complex and time consuming in the Nation. Justice Department statistics show that whereas in a typical circuit, 5.9 percent of all cases filed are administrative appeals, which are generally far more time consuming than other appeals, and 26.7 percent are prisoner petitions which tend to be disposed of far more quickly than other appeals. While that is true in other circuit courts, 45.3 percent of the cases filed in the D.C. circuit over the past 3 years have been complex administrative appeals and only 7 percent easily disposed of prisoner petitions.

Moreover, most of the administrative appeals heard in the D.C. circuit involved the Federal Energy Regulatory Commission, the Federal Communications Commission and the Environmental Protection Agency and are much more complex and time consuming than even the immigration and labor appeals, which comprise most of the administrative agency cases filed in other circuits.

In short, simply comparing the number of cases filed in the D.C. circuit to the number filed in other circuits, and even comparing the number of agency appeals, is not a reliable indicator of the courts' comparative workloads.

As Senators, we have a responsibility to the public to ensure that candidates for the Federal bench are scrutinized for political activists. A judge who does not appreciate the inherent limits on judicial authority under the Constitution and would seek to legislate from the bench rather than interpret the law is a judicial activist, and nominees who will be judicial activists are simply not qualified to sit on any Federal bench, let alone the Federal circuit court of appeals or any Federal circuit court of appeals.

As chairman of the Judiciary Committee, I will continue to carefully scrutinize the records involved in cases of judicial nominees and to exercise the Senate's advise-and-consent power to ensure we keep activists off the bench. In addition, I will continue to speak out both in the Senate and in other forums to increase public awareness of harm to our society posed by such activists. Although we can never guarantee what the future actions of any judicial nominee will be or any judge, for that matter, and it may be difficult to discern whether a particular candidate will be an activist, I do not believe there is anything in Mr. Garland's record to indicate that, if confirmed, he could amount to an activist judge or might ultimately be an activist judge.

Accordingly, I believe Mr. Garland is a fine nominee. I know him personally, I know of his integrity, I know of his legal ability, I know of his honesty, I know of his acumen, and he belongs on the court. I believe he is not only a fine nominee, but is as good as Republicans can expect from this administration. In fact, I would place him at the top of the list. There are some other very good people, so I don't mean to put them down, but this man deserves to be at the top of the list. Opposition to this nomination will only serve to undermine the credibility of our legitimate goal of keeping proven activists off the bench.

I fully support his nomination, and I urge my colleagues to strongly consider voting in favor of confirmation.

I hope that we will also confirm the nominee Colleen Kollar-Kotelly, although we will only be voting on

Merrick Garland today, that is my understanding. I hope we will put both these judges through. I do not know of any opposition to the nominee Colleen Kollar-Kotelly, and I know very limited opposition at this point to Mr. Garland. Like I say, I do not think there is a legitimate argument against Mr. Garland's nomination, and I hope that our colleagues will vote to confirm him today.

I reserve the remainder of my time.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, I am delighted the Senate is finally considering the nomination of Merrick Garland to the U.S. Court of Appeals, the District of Columbia Circuit. I compliment my good friend, the senior Senator from Utah, for his kind remarks about Mr. Garland.

Like the distinguished chairman of the Senate Judiciary Committee, I too believe that Merrick Garland is highly qualified for this appointment and would make an outstanding Federal judge.

My concern that I have expressed before is that this is the first and only judicial nomination scheduled for consideration in these first 3 months of the 105th Congress. The Senate is about to go on vacation for a couple of weeks. It will be the only judgeship considered, as I understand it. In the past, the Senate has not had to wait the Ides of March for the first judicial confirmation. The Federal judiciary has almost 100 vacancies now and, with the Ides of March, we are getting only one vacancy filled.

I, too, am sorry we have not proceeded to confirm and schedule the nomination of Judge Colleen Kollar-Kotelly to the district court bench. Here is one nominee we could go with, and we ought to be able to do that today, too.

The Senate first received Merrick Garland's nomination from the President on September 5, 1995. We are now way into March of 1997. So we have this nomination that has been here since 1995. All but the most cynical say this man is highly qualified, a decent person, a brilliant lawyer, a public servant who will make an outstanding judge, but his nomination sat here from 1995 until today.

This is a man who has broad bipartisan support. Governor Keating of Oklahoma; Governor Branstad of Iowa; William Coleman, Jr., a former member of a Republican President's Cabinet, former Reagan and Bush administration officials, Robert Mueller, Jay Stephens, Dan Webb, Charles Cooper—all have supported Merrick Garland. So this is not a case of somebody out of the pale. In fact, the Legal Times titled him, ''Garland: A Centrist Choice.'' I will put those recommendation letters in the RECORD later on.

So why, when you have somebody who, in my 22 years here, is one of the most outstanding nominees for the court of appeals, has that person been held up? What fatal flaw in his character has been uncovered? None, there is no fatal flaw. There was not a person who spoke against, credibly spoke against, his qualifications to be a judge, but he was one of the unlucky victims of the Republican shutdown of the confirmation process last year. I liken it to pulling the wings off a fly. This is what happened.

The Judiciary Committee reported his nomination to the Senate in 1995—in 1995. But here we are in 1997, and we finally get to vote on it.

Madam President, we have 100 vacancies on the Federal bench. At this rate, by the end of this Congress, with normal attrition, we will probably have 130 or 140. We had an abysmal record last session dealing with Federal judicial vacancies.

We ought to show what we have here. Here, Madam President, are the number of judges confirmed during the second Senate session in Presidential election years:

In 1980, 9 appeals court judges, 55 district court judges.

In 1984, 10 appeals court judges, 33 district court judges.

In 1988, 7 Court of Appeals judges, 35 district court judges.

In 1992—incidentally, 1992, Democrats were in charge with a Republican President—11 appeals court judges, 55 district court judges.

So what happens when you switch it over, put in a Republican Senate and Democratic President? Do you see the same sense of bipartisanship? Not on your life.

It is 11 appeals court judges, 55 district court judges with a Republican President and a Democratic Congress. Switch it to a Democratic President and a Republican Congress—zero, nada, zip, goose egg for the court of appeals judges and only 17 for the district court judges. Not too good.

We have some other charts here. Chief Justice Rehnquist spoke on this. A Chief Justice speaks only in a restrained fashion, when he does. But look what he said. Look at what Chief Justice William Rehnquist said about the pace we have seen in this Senate:

> The number of judicial vacancies can have a profound impact on a court's ability to manage its caseload effectively. Because the number of judges confirmed in 1996 was low in comparison to the number confirmed in preceding years, the vacancy rate is beginning to climb . . . It is hoped that the administration and Congress will continue to recognize that filling judicial vacancies is crucial to the fair and effective administration of justice.

The administration is sending up judges, but it is like tossing them down into a black hole in space. Nothing comes back out.

In fact, 25 percent of the current vacancies have persisted for more than 18 months. They are considered a judicial emergency jurisdiction.

There are 69 current vacancies in our Nation's district courts. Almost one in six district court judgeships is or soon will become vacant.

I compliment the distinguished majority leader and my good friend from Utah, the chairman of the Senate Judiciary Committee, in scheduling this one nominee to the Federal Court of Appeals, but there are still 24 current vacancies on the Federal courts of appeals. That number is rising.

We are way behind the pace of confirming the judges we have seen in our past Congresses. In fact, let us take a look at—I just happen to have a chart on that, Madam President. I know Senators were anxiously hoping I might.

Number of judges confirmed in past Congresses: 102d Congress, 124; 103d Congress, 129; 104th Congress, 75. So far in the 105th Congress, none. I assume that is going to change later this afternoon when we finally do confirm one judge. But look at this: 102d Congress, 124; 103d Congress, 129 confirmed; 104th Congress, 75 confirmed. The 105th Congress, zippo.

I think we ought to take a look at this next chart. We have 94 judicial vacancies. Just put the old magnifying glass—I used to be in law enforcement, Madam President. We actually used these things. Of course, we were kind of a small jurisdiction and I am just a small-town lawyer from Vermont. We do the best we can. But the magnifying glass shows zero. I am pleased by the end of this afternoon I can put a ''1'' in there, and let us hope that maybe we will get some more. Let us hope maybe we will get some more.

We can joke about it, but it is not a joking matter. We have people with their lives on hold. When the President asks some man or woman to take a Federal courtship, their entire practice is put on hold—it is kind of a good news/bad news situation. The President calls up and says, ''I've got good news for you. I'm going to nominate you for the Federal bench. Now I have bad news for you. I'm going to nominate you for the Federal bench.'' He or she finds their law practice basically stops on the date of that nomination. They cannot bring on new clients. Their partners give him or her a big party and say, ''Please move out of your office,'' because they know it is going to take a year or 2 or 3 to get through the confirmation process.

This is partisanship of an unprecedented nature. I have spoken twice on this floor today on what happens when we forget the normal traditions of the Senate. Traditionally—certainly not in my lifetime—no Democratic majority leader or Republican majority leader of the Senate would bring up a resolution for a vote directly attacking the President of the United States—directly or indirectly attacking the President of the United States—on a day when the President is heading off to a summit with other world leaders, especially with the leader of the other nuclear superpower, Russia. Yet, that tradition, which, as I said, has existed my whole lifetime, was broken today.

The other thing is that no matter which party controls the Senate, no

matter what party controls the Presidency, we have always worked together so that the President, having been elected, can, subject to normal—normal—advise and consent, can appoint the judges he wants. And that tradition has been broken.

If we are going to go against these basic tenets of bipartisanship, then the Senate will not be the conscience of the Nation that it should be. The Senate will suffer. And if the Senate suffers, the country suffers.

I withhold the balance of my time.

PRIVILEGE OF THE FLOOR

Madam President, if I might just for a moment, I ask unanimous consent that Tom Perez of Senator KENNEDY's staff be granted floor privileges.

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

Mr. LEAHY. Madam President, I ask unanimous consent that a number of letters I referred to be printed in the RECORD.

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

STATE OF OKLAHOMA,
OFFICE OF THE GOVERNOR,
Oklahoma City, OK, February 19, 1996.

Senator BOB DOLE,
U.S. Senate, Washington, DC.

SENATOR DOLE: I endorse Merrick Garland for confirmation to the United States Court of Appeals for the D.C. Circuit. Merrick will be a solid addition to this esteemed court.

A Harvard Law School graduate in 1977, a former Assistant United States Attorney and a former partner in Washington's Arnold and Porter Law Firm, Merrick will bring an array of skills and experience to this judgeship. Merrick is further developing his talents and enhancing his reputation as the Principle Associate Deputy Attorney General.

Last April, in Oklahoma City, Merrick was at the helm of the Justice Department's investigation following the bombing of the Oklahoma City Federal Building, the bloodiest and most tragic act of terrorism on American soil. During the investigation, Merrick distinguished himself in a situation where he had to lead a highly complicated investigation and make quick decisions during critical times.

Merrick Garland is an intelligent, experienced and evenhanded individual. I hope you give him full consideration for confirmation to the United States Court of Appeals for the D.C. Circuit.

Sincerely,

FRANK KEATING,
Governor.

OFFICE OF THE GOVERNOR,
Des Moines, IA, October 10, 1995.

Senator CHARLES E. GRASSLEY,
Hart Senate Office Building, Washington, DC.

DEAR CHUCK: I am writing to ask your support and assistance in the confirmation process for a second cousin, Merrick Garland, who has been nominated to be a judge on the U.S. Court of Appeals for the District of Columbia.

Merrick Garland has had a distinguished legal career. He was a partner for many years in the Washington law firm of Arnold and Porter. During the Bush Administration, Merrick was asked by Jay Stephens, the U.S. Attorney for the District of Columbia, to take on a three year stint as an Assistant U.S. Attorney. As I'm sure you know, Jay Stephens is the son of Lyle Stephens, the Representative from Plymouth County that we served with in the Iowa Legislature.

Recently, he has been overseeing the federal investigation and prosecution efforts in the Oklahoma City bombing, having been sent there the second day after the blast occurred. He was serving in the position as principal Associate Deputy Attorney General.

I am enclosing a number of news clippings about Merrick Garland. I would especially encourage you to review the Legal Times and article entitled: Garland, A Centrist Choice.

As always, I appreciate all of your efforts. Hope all is going well for you.

Sincerely,

TERRY E. BRANSTAD,
Governor of Iowa.

O'MELVENY & MYERS,
Washington, DC, October 11, 1995.

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

DEAR ORRIN: As you know, President Clinton has nominated Merrick B. Garland, Esquire, to fill the judicial vacancy on the United States Court of Appeals for the District of Columbia Circuit caused by the retirement of Chief Judge Mikva.

I write this letter to indicate my full support and admiration of Mr. Garland and urge that you soon have a hearing of the Senate Committee on the Judiciary and thereafter support him to fill the vacancy.

Mr. Garland has a first-rate legal mind, took magna cum laude and summa cum laude advantages of education at Harvard College and Harvard Law School. In private practice, he became and has the reputation of being an outstanding courtroom lawyer. In addition, on several occasions, he satisfied his urge to be a public servant by two law clerkships, one for Mr. Justice William J. Brennan and the other for the late Judge Henry J. Friendly. He has also served in the Justice Department on several occasions. I have known Merrick Garland as a lawyer and as a friend and greatly admire his personal integrity, learning in the law and his desire to be a great public servant. His legal, social and political views are those most Americans admire and are well within the fine hopes and principles of this country, which you have often expressed in conversations with me as to the type of person you would like to see on the federal judiciary, particularly on the appellate courts.

I first got to know Mr. Garland when he was Special Assistant to Deputy and then Attorney General Civiletti, as my daughter, Lovida, Jr., was the other Special Assistant. I still see him and his wife from time to time and they are the type of Americans whom I greatly admire.

As is stated at the outset of this letter, I hope you will see to it that Mr. Garland soon has his hearing and that you, at and after the hearing, will actively support him for confirmation. If you have any questions, please give me a call and I will walk over to see you.

Take care.

Sincerely,

WILLIAM T. COLEMAN, Jr.

VENABLE, BAETJER AND HOWARD, LLP,
Baltimore, MD, September 7, 1995.

Re Merrick B. Garland.

Hon. BARBARA A. MIKULSKI,
U.S. Senate, Hart Senate Office Bldg., Washington, DC.

DEAR SENATOR MIKULSKI: I just wanted to call your attention to the fact that Merrick B. Garland has been nominated by President Clinton for appointment to the United States Court of Appeals for the DC Circuit.

Merrick is an outstanding lawyer with a very distinguished career both in private practice at Arnold & Porter and in government service, first as a special assistant to me when I was Attorney General and then later as an Assistant United States Attorney for the District and, most recently, as Chief Associate Deputy Attorney General to Jamie Gorelick. Additionally, his academic background was outstanding, culminating in his clerkship to Supreme Court Justice Brennan. In every way, he is a superb candidate for that bench, and I just wanted you to know of my personal admiration for him.

Kindest regards.

Sincerely,

BENJAMIN R. CIVILETTI.

MCGUIRE WOODS, BATTLE & BOOTHE, III,
Washington, DC, October 16, 1995.

Re Nomination of Merrick B. Garland to the U.S. Court of Appeals for the District of Columbia Circuit.

Hon. ORIN G. HATCH,
Chairman, United States Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: I have been asked to express my views to you on Merrick Garland's nomination to sit on the Federal Court of appeals in the District of Columbia. First, I believe Mr. Garland is an accomplished and learned lawyer and is most certainly qualified for a seat on this important bench. Second, my experience with Mr. Garland leads me to the conclusion that he would decide cases on the law based on an objective and fair analysis of the positions of the parties in any dispute. Third, I perceive Mr. Garland as a man who believes and follows certain principles, but not one whose philosophical beliefs would overpower his objective analysis of legal issues.

I know of no reason to suggest that the President's choice for his vacancy on the Court of Appeals should not be confirmed. As you, of course, have demonstrated during your tenure as Chairman, the President's nominees are his choices and are entitled to be confirmed where it is clear that th4e nominee would be a capable and fair jurist. I believe Mr. Garland meets that criteria and support favorable consideration of his nomination.

Sincerely yours,

GEORGE J. TERWILLIGER, III.

JONES, DAY, REAVIS & POGUE,
Washington, DC, October 10, 1995.

Re Merrick B. Garland.

Senator ORRIN G. HATCH,
U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR SENATOR HATCH: I first met Merrick Garland in the mid–1970's, when we overlapped as students at the Harvard Law School. While I have not known him well, I have been well aware that his academic background is impeccable, and that he is reputed to be a very bright, highly effective and understated lawyer.

During January of 1994, while he was serving in the Department of Justice, I had occasion to deal with him directly on a matter of some public moment and sensitivity. I was struck by the thoroughness of his preparation, the depth of his understanding of the matters in issue, both factural and legal, and his ability to express himself simply and convincingly. I was still more impressed with his comments, from obvious personal conviction, on the essential role of honesty, integrity, and forthrightness in government.

Our discussions at that time were followed by further conversations on several later occasions. I have also had an opportunity to

observe from a distance his performance in the Department and to discuss that performance with people closer to the scene. I am left with a distinct impression of him as a person of great skill, diligence, and sound judgment, who is driven more by a sense of public service than of personal aggrandizement.

My own service in the Justice Department during the last two Republican Administrations convinced me that government suffers greatly from a shortage of people combining such exceptional abilities with a primary drive to serve interests beyond their own. Merrick Garland's nomination affords the Senate chance to place one such person in a position where such impulses can be harnessed to the maximum public good. I hope that the Senate will seize that opportunity.

Very Truly Yours,

DONALD B. AYER.

SHAW, PITTMAN, POTTS & TROWBRIDGE,
Washington DC, November 9, 1995.

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

DEAR SENATOR HATCH: I write to express my support for President Clinton's nomination of Merrick Garland to the position of circuit Judge of the United States Court of Appeals for the District of Columbia. I've known Merrick since 1978, when we served as law clerks to Supreme Court Justices—he for Justice Brennan and I for Justice (now Chief Justice) Rehnquist. Like our respective bosses, Merrick and I disagreed on many legal issues. Still, I believe that Merrick possesses the qualities of a fine judge.

You are no doubt well aware of the details of Merrick's background as a practicing lawyer, a federal prosecutor, a law teacher, and now a high-ranking official of the Department of Justice. This varied background has given Merrick a breadth and depth of legal experience that few lawyers his age can rival, and he has distinguished himself in all of his professional pursuits. He is a man of great learning, not just in the law, but also in other disciplines. Not only is Merrick enormously gifted intellectually, but he is thoughtful as well, for he respects other points of view and fairly and honestly assesses the merits of all sides of an issue. And he has a stable, even-tempered, and courteous manner. He would comport himself on the bench with dignity and fairness. In short, I believe that Merrick Garland will be among President Clinton's very best judicial appointments.

Sincerely,

CHARLES J. COOPER.

Washington, DC, November 25, 1995.

Hon. ORRIN G. HATCH,
Chairman, Senate Judiciary Committee, Senate Dirksen Building, Washington, DC.

DEAR MR. CHAIRMAN: I write with regard to the nomination of Merrick Garland to the Court of Appeals for the District of Columbia.

I have known Mr. Garland since 1990 when he was an Assistant United States Attorney and I was the Assistant Attorney General for the Criminal Division in the Department of Justice. Over the Years I have had occasion to see his work in several cases.

Based both on my own observations and on his reputation in the legal community, I believe him to be exceptionally qualified for a Circuit Court appointment. Throughout my association with him I have always been impressed by his judgment. Most importantly, Mr. Garland exemplifies the qualifies of fairness, integrity and scholarship which are so important for those who sit on the bench.

If I can be of any further assistance, please do not hesitate to call me.

Sincerely,

ROBERT S. MUELLER, III.

PILLSBURY MADISON & SUTRO,
Washington, DC, November 28, 1995.

Hon. ORRIN G. HATCH,
Chairman, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

Hon. CHARLES E. GRASSLEY,
Chairman, Senate Judiciary Subcommittee on Administrative Oversight and the Courts, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATCH AND GRASSLEY: I am writing with respect to the nomination of Merrick Garland to serve as a judge on the United States Court of Appeals for the District of Columbia Circuit. I understand you have significant reservations about filling the existing vacancy on the District of Columbia Circuit at this time. In the event you consider filling the vacancy at this time, I commend Merrick Garland for your consideration.

I have known Mr. Garland for nearly ten years. We met initially during my service as Deputy Counsel to the President while Mr. Garland was assisting in an Independent Counsel investigation. During the course of that contact, I was impressed with Mr. Garland's professionalism and judgment. After I was appointed United State Attorney for the District of Columbia, Mr. Garland expressed to me an interest in gaining additional prosecutorial experience, and applied for a position as an Assistant United States Attorney. I hired Mr. Garland for my staff, and initially assigned him to a narcotics unit where he had an opportunity to assist in investigating a number of significant cases and to gain valuable trial experience. Mr. Garland quickly established himself as a dedicated prosecutor who was willing to handle the tough cases. He conducted thorough investigations, and became a skilled trial attorney.

Subsequently, after gaining significant trial experience, Mr. Garland was assigned to the Public Corruption section of the U.S. Attorney's Office. There he had an opportunity to investigate and try a number of complex, sensitive cases. In the Public Corruption section, Mr. Garland demonstrated an excellent capacity to investigate complex transactions, and approached these important cases with maturity and balanced judgment. He was thorough and thoughtful in exercising his responsibility, and he always acted in accord with the highest ethical and professional standards.

During his service as an Assistant United State Attorney, Mr. Garland distinguished himself as one of the most capable prosecutors in the Office. He brought to bear a number of outstanding talents. He was bright. He had the intellectual capacity to parse complex transactions. He built sound working relationships with agents and staff based on mutual respect. He was willing to work hard to get the job done. He was dedicated to his job. He exercised sound judgment, and approached his work with professionalism and thoughtfulness. He exhibited excellent interpersonal skills, and was delightful to work with. In sum, his service as an Assistant United States Attorney was market by dedication, sound judgment, excellent legal ability, a balanced temperament, and the highest ethical and professional standards. These are qualities which I believe he would bring to the bench as well.

I appreciate the opportunity to provide these comments for your consideration.

Sincerely,

JAY B. STEPHENS.

WINSTON & STRAWN,
Chicago, IL, October 10, 1995.

Hon. ORRIN G. HATCH,
Chairman of the Judiciary Committee, Russell Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: It is my understanding that Merrick Garland's name has been submitted to the Senate Judiciary Committee to fill a vacancy on the D.C. Circuit Court of Appeals. Merrick is a very talented lawyer, who has had an outstanding career in both the private and public sectors.

In particular, he has exhibited exceptional legal abilities during his recent term of office in the U.S. Department of Justice. Throughout the United States, Merrick has been recognized as a person within the Clinton Department of Justice who is fair, thoughtful and reasonable. He clearly possesses the ability to address legal issues and resolve them in a fair and equitable manner.

Accordingly, in my opinion, Merrick will be an outstanding addition to the D.C. Circuit Court of Appeals, and I strongly recommend his confirmation by your committee. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

DAN K. WEBB.

AMERICAN BAR ASSOCIATION, STANDING COMMITTEE ON FEDERAL JUDICIARY,
Washington, DC, September 21, 1995.

Re Merrick Brian Garland, United States Court of Appeals for the District of Columbia Circuit.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Merrick Brian Garland for appointment as Judge of the United States Court of Appeals for the District of Columbia Circuit.

Our Committee is of the unanimous opinion that Mr. Garland is Well Qualified for this appointment.

A copy of this letter has been sent to Mr. Garland for his information.

Sincerely,

CAROLYN B. LAMM,
Chair.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Thank you very much.

I am here today to speak on a subject that is most important to all of us in America, the Federal judiciary.

I had the honor for 12 years to serve as a U.S. attorney, and during that time I practiced in Federal court before Federal judges. All of our cases that were appealed were appealed to Federal circuit courts of appeals. And that is where those final judgments of appeal were ruled on. I think an efficient and effective and capable Federal judiciary is a bulwark for freedom in America. It is a cornerstone of the rule of law, and it is something that we must protect at all costs. We need to be professional and expeditious in dealing with those problems.

I must say, however, I do not agree that there has been a stall in the handling of judges. As Senator HATCH has so ably pointed out, there were 22 nominations last year, and 17 of those were confirmed. We are moving rapidly

on the nominations that are now before the Judiciary Committee.

There is one today I want to talk about, Merrick Garland, because really I do not believe that that judgeship should be filled based on the caseload in that circuit, and for no other reason.

But I think it is important to say that there is not a stall, that I or other Senators could have delayed the vote on Merrick Garland for longer periods of time had we chosen to do so. We want to have a vote on it. We want to have a debate on it. We want this Senate to consider whether or not this vacancy should be filled. And I think it should not.

Senator HATCH brilliantly led, recently, an effort to pass a balanced budget amendment on the floor of this Senate. For days and hours he stood here and battled for what would really be a global settlement of our financial crisis in this United States. We failed by one vote to accomplish that goal. But it was a noble goal.

That having slipped beyond us, I think it is incumbent upon those of us who have been sent here by the taxpayers of America to marshal our courage and to look at every single expenditure this Nation expends and to decide whether or not it is justified. And if it is not justified, to say so. And if it is not justified, to not spend it.

In this country today a circuit court of appeals judge costs the taxpayers of America $1 million a year. That includes their library, their office space, law clerks, secretaries, and all the other expenses that go with operating a major judicial office in America. That is a significant and important expenditure that we are asking the citizens of the United States to bear. And I think we ought to ask ourselves, is it needed?

I want to point out a number of things at this time that make it clear to me that this judgeship, more than any other judgeship in America, is not needed. Let me show this chart behind me which I think fundamentally tells the story. We have 11 circuit courts of appeal in America. Every trial that is tried in a Federal court that is appealed goes to one of these circuit courts of appeal. From there, the only other appeal is to the U.S. Supreme Court. Most cases are not decided by the Supreme Court. The vast majority of appeals are decided in one of these 11 circuit courts of appeal.

Senator GRASSLEY, who chairs the Subcommittee on Court Administration, earlier this year had hearings on the caseloads of the circuit courts of appeals. He had at that hearing the just recently former chief judge of the Eleventh Circuit Court of Appeals, which has the highest caseload per judge in America. Total appeals filed per judge for the year ending September 30, 1996, was 575 cases per judge. He also had testifying before that committee Chief Judge Harvey Wilkinson from the Fourth Circuit Court of Appeals. They are the third most busy circuit in America. They have 378 cases filed per judge in a year's time. Both of those judges talked to us and talked to our committee about their concerns for the Federal judiciary and gave some observations they had learned.

First of all, Judge Tjoflat, former chief judge of the eleventh circuit, testified how when the courts of appeals get larger and those numbers of judges go up from 8, 10, 12, to 15, the collegiality breaks down. It is harder to have a unified court. It takes more time to get a ruling on a case. It has more panels of judges meeting, and they are more often in conflict with one another. It is difficult to have the kind of cohesiveness that he felt was desirable in a court. Judge Wilkinson agreed with that.

I think what is most important with regard to our decision today, however, is what they said about their need for more judges. Judge Tjoflat, of the eleventh circuit, said even though they have 575 filings per judge in the Eleventh Circuit Court of Appeals, they do not need another judge. Even Judge Harvey Wilkinson said even though they have 378 filings per judge in the fourth circuit, they do not need another judge. He also noted, and the records will bear it out, that the Fourth Circuit Court of Appeals has the fastest disposition rate, the shortest time between filing and decision, of any circuit in America, and they are the third busiest circuit in America. That is good judging. That is good administration. That is fidelity to the taxpayers' money, and they ought to be commended for that.

When you look at that and compare it to the situation we are talking about today with 11 judges in the D.C. circuit, they now have only 124 cases per judge, less than one-fourth the number of cases per judge as the eleventh circuit has. What that says to me, Madam President, is that we are spending money on positions that are not necessary.

The former chief judge of the D.C. circuit, with just 123 cases per judge, back in 1995 said he did believe the 11th judgeship should be filled but he did not believe the 12th should be filled. As recently as March of this year, just a few weeks ago, he wrote another letter discussing that situation. This is what he said in a letter addressed to Senator HATCH:

> You asked me yesterday for my view as to whether the court needs 11 active judges and whether I would be willing to communicate that view to other Senators of your committee. As I told you, my opinion on this matter has not changed since I testified before Senator GRASSLEY's committee in 1995. I said then and still believe that we should have 11 active judges. On the other hand, I then testified and still believe that we do not need and should not have 12 judges. Indeed, given the continued decline in our caseload since I last testified, I believe the case for the 12th judge at any time in the foreseeable future is almost frivolous, and, as you know, since I testified, Judge Buckley has taken senior status and sits part time, and I will be eligible to take senior status in 3 years. That is why I continue to advocate the elimination of the 12th judgeship.

So that is the former chief judge of the D.C. circuit saying that to fill the 12th judgeship would be frivolous, and he noted that there is a continuing decline in the caseload in the circuit.

Madam President, let me point out something that I think is significant. Judge Buckley, who is a distinguished member of that court has taken senior status. But that does not mean that he will not be working. At a minimum, he would be required as a senior-status judge to carry one-third of his normal caseload. Many senior judges take much more than one-third of their caseload. They are relieved of administrative obligations, and they can handle almost a full judicial caseload. It does not indicate, because Judge Buckley announced he would be taking senior status, that he would not be doing any work. He would still be handling a significant portion of his former caseload. I think that is another argument we ought to think about.

Finally, the numbers are very interesting with regard to the eleventh circuit in terms of the declining caseload mentioned by Judge Silberman in his letter to Senator HATCH. We have examined the numbers of this circuit and discovered that there has been a 15 percent decline in filings in the D.C. circuit last year. That is the largest decline of any circuit in America. It apparently will continue to decline. At least there is no indication that it will not. If that is so, that is an additional reason that this judgeship should not be filled.

I think Senator LEAHY, the most able advocate for Mr. Garland, indicated in committee that it would be unwise to use these kinds of numbers not to fill a judgeship, but it seems to me we have to recognize that, if you fill a judgeship, that is an appointment for life. If that judgeship position needs to be abolished, the first thing we ought to do is not fill it. That is just good public policy. That is common sense. That is the way it has always been done in this country, I think. We ought to look at that.

So what we have is the lowest caseload per judge in America, declining by as much as 15 percent last year, and it may continue to decline this year. The numbers are clear. The taxpayer should not be burdened with the responsibility of paying for a Federal judge sitting in a D.C. circuit without a full caseload of cases to manage.

Let me say this about Mr. Garland. I have had occasion to talk with him on the phone. I told him I was not here to delay his appointment, his hearing on his case. I think it is time for this Senate to consider it. I think it is time for us to vote on it. Based on what I see, that judgeship should not be filled. He has a high position with the Department of Justice and, by all accounts, does a good job there. There will be a number of judgeship vacancies in the D.C. trial judges. He has been a trial

lawyer. He would be a good person to fill one of those. I would feel comfortable supporting him for another judgeship.

Based on my commitment to frugal management of the money of this Nation, I feel this position should not be filled at this time. I oppose it, and I urge my colleagues to do so.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Thank you, Madam President. First, let me associate myself with the remarks of my distinguished colleague from Alabama who has just spoken. My position is quite the same as his with respect to this nominee. Certainly, I must begin by saying that I believe Mr. Garland is well qualified for the court of appeals. He earned degrees from Harvard College and Harvard Law School and clerked for Judge Friendly on the U.S. Court of Appeals for the Second Circuit and for Justice Brennan on the Supreme Court and, since 1993, he has worked for the Department of Justice. So there is no question, he is qualified to serve on the court.

Like my colleague from Alabama, my colleague from Iowa, and others, I believe that the 12th seat on this circuit does not need to be filled and am quite skeptical that the 11th seat, the seat to which Mr. Garland has been nominated, needs to be filled either. The case against filling the 12th seat is very compelling, and it also makes me question the need to fill the 11th seat.

In the fall of 1995, the Courts Subcommittee of the Judiciary Committee held a hearing on the caseloads of the D.C. circuit. Judge Silberman, who has served on the D.C. circuit for the past 11 years, testified that most members of the D.C. circuit have come to think of the D.C. circuit as a de facto court of 11. In other words, even though there are 12 seats, theoretically, it is really being thought of as an 11-member court by its members. In fact, in response to written questions, Judge Silberman pointed out that the courtroom, normally used for en banc hearings, seats only 11 judges. In other words, that is what they can accommodate.

When Congress created the 12th judgeship in 1984, Congress may have thought that the D.C. circuit's caseload would continue to rise, as it had for the previous decade. But, in fact, as my colleague from Alabama has pointed out, exactly the opposite has occurred; the caseload has dropped. It is the only circuit in the Nation with fewer new cases filed now than in 1985. During the entire period, the D.C. circuit has had a full complement of 12 judges for only 1 year.

In a letter to Senator GRASSLEY, Judge Silberman wrote that the D.C. circuit can easily schedule its upcoming arguments with 11 judges and remain quite current. Further, Judge Silberman noted that while the D.C. circuit, unlike most others, has not had any senior judges available to sit with it, the court has invited visiting judges only on those occasions when it was down to 10 active judges.

Additionally, according to the Administrative Office of the U.S. Courts, it costs more than $800,000 a year to pay for a circuit judge and the elements associated with that judge's work. In light of recent efforts to curtail Federal spending, again, I agree with my colleague from Alabama that it is imprudent to spend such a sum of money unless the need is very clear.

Senators GRASSLEY and SESSIONS have made sound arguments that the D.C. circuit does not need to fill the 11th seat. Their arguments are reasonable and not based upon partisan considerations. Similarly, my concerns with the Garland nomination are based strictly on the caseload requirements of the circuit, not on partisanship or the qualifications of the nominee.

I would not want the opposition to the nomination, therefore, to be considered partisan in any way. Thus, although I do not believe that the administration has met its burden of showing that the 11th seat needs to be filled, in the spirit of cooperation, and to get the nominee to the floor of the Senate, I voted to favorably report the nomination of Merrick Garland from the Judiciary Committee when we voted on that a couple of weeks ago. But, at the time, I reserved the right to oppose filling that 11th vacancy when the full Senate considered the nomination. That time has now come, and being fully persuaded by the arguments made by Senator SESSIONS and Senator GRASSLEY, I reluctantly will vote against the confirmation of this nominee.

Based on the hearing of the Courts Subcommittee, caseload statistics, and other information, as I said, I have concluded that the D.C. circuit does not need 12 judges and does not, at this point, need 11 judges. Therefore, I will vote against the nomination of Merrick Garland.

If Mr. Garland is confirmed and another vacancy occurs, thereby opening up the 11th seat again, I plan to vote against filling the seat—and, of course, the 12th seat—unless there is a significant increase in the caseload or some other extraordinary circumstance.

Madam President, I want to thank Senator GRASSLEY for his leadership in this area, as chairman of the subcommittee, and for allowing me to speak prior to his comments, which I gather will be delivered next.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Madam President, I rise today to express my views of the pending nomination. As chairman of the Subcommittee on Administrative Oversight and the Courts, I have closely studied the D.C. circuit for over a year now. And I can confidently conclude that the D.C. circuit does not need 12 judges or even 11 judges. Filling either of these two seats would just be a waste of taxpayer money—to the tune of about $1 million per year for each seat. The total price tag for funding an article III judge over the life of that judges is an average of $18 million.

Madam President, $18 million is a whole lot of money that we would be wasting if we fill the vacancies on the D.C. circuit.

In 1995, I chaired a hearing before the Judiciary Subcommittee on Administrative Oversight and the Courts on the D.C. circuit. At the hearing, Judge Lawrence Silberman—who sits on that court—testified that 12 judges were just too many. According to Judge Silberman, when the D.C. circuit has too many judges there just isn't enough work to go around.

In fact, as for the 12th seat, the main courtroom in the D.C. courthouse does not even fit 12 judges. When there are 12 judges, special arrangements have to be made when the court sits in an en banc capacity.

I would ask my colleagues to consider the steady decrease in new cases filed in the D.C. circuit. Since 1985, the number of new case filings in the D.C. circuit has declined precipitously. And it continues to decline, even those who support filling the vacancies have to admit this. At most, the D.C. circuit is only entitled to a maximum of 10 judges under the judicial conference's formula for determining how many judges should be allotted to each court.

Judge Silberman recently wrote to the entire Judiciary Committee to say that filling the 12th seat would be—in his words—''frivolous.'' According to the latest statistics, complex cases in the D.C. circuit declined by another 23 percent, continuing the steady decline in cases in the D.C. circuit. With fewer and fewer cases per year, it doesn't make sense to put more and more judges on the D.C. circuit. That would be throwing taxpayer dollars down a rat hole.

So the case against filling the current vacancies is compelling. I believe that Congress has a unique opportunity here. I believe that we should abolish the 12th seat and at least the 11th seat should not be filled at this time. I believe that a majority of the Juidicary Committee agrees the case has been made against filling the 12th seat and Chairman HATCH has agreed not to fill it. So, no matter what happens today, at least we know that the totally unnecessary 12th seat will not be filled. At least the taxpayers can rest a little easier on that score.

Abolishing judicial seats is completely nonpartisan. If a judicial seat is abolished, no President— Democrat or Republican—could fill it. As long as any judgeship exists, the temptation to nominate someone to fill the seat will be overwhelming—even with the outrageous cost to the American taxpayer.

Again, according to the Federal judges themselves, the total cost to the American taxpayer for a single article III judge is about $18 million. That's not chump change. That's something to look at. That's real money we can save.

Here in Congress, we have downsized committees and eliminated important support agencies like the Office of Technology Assessment. The same is true of the executive branch. Congress has considered the elimination of whole Cabinet posts. It is against this backdrop that we need to consider abolishing judgeships where appropriate—like in the D.C. circuit or elsewhere.

While some may incorrectly question Congress' authority to look into these matters, we are in fact on firm constitutional ground. Article III of the Constitution gives Congress broad authority over the lower Federal courts. Also, the Constitution gives Congress the ''power of the purse.'' Throughout my career, I have taken this responsibility very seriously. I, too, am a taxpayer, and I want to make sure that taxpayer funds aren't wasted.

Some may say that Congress should simply let judges decide how many judgeships should exist and how they should be allocated. I agree that we should defer to the judicial conference to some degree. However, there have been numerous occasions in the past where Congress has added judgeships without the approval of the Judicial Conference in 1990, the last time we created judgeships, the Congress created judgeships in Delaware, the District of Columbia and Washington State without the approval of the Judicial Conference. In 1984, when the 12th judgeship at issue in this hearing was created—Congress created 10 judgeships without the prior approval of the Judicial Conference. It is clear that if Congress can create judgeships without judicial approval, then Congress can leave existing judgeships vacant or abolish judgeships without judicial approval. It would be illogical for the Constitution to give Congress broad authority over the lower Federal courts and yet constrain Congress from acting unless the lower Federal courts first gave prior approval.

Madam President, I ask my colleagues to vote ''no'' on the current nomination and strike a blow for fiscal responsibility. Spending $18 million on an unnecessary judge is wrong. I have nothing against the nominee. Mr. Garland seems to be well qualified and would probably make a good judge—in some other court. Now, I've been around here long enough to know where the votes are. I assume Mr. Garland will be confirmed. But, I hope that by having this vote—and we've only had four judicial votes in the last 4 years—a clear message will be sent that these nominations will no longer be taken for granted.

Let's be honest—filling the current vacancies in the D.C. circuit is about political patronage and not about improving the quality of judicial decision making. And who gets stuck with the tab for this? The American taxpayer. I think it's time that we stand up for hardworking Americans and say no to this nomination.

I would like to make a few comments about the Judicial nomination process in general. Just about every day or so we hear the political hue and cry about how slow the process has been. This is even though we confirmed a record number of 202 judges in President Clinton's first term—more than we did in either President Reagan's or President Bush's first term.

I have heard the other side try to make the argument that not filling vacancies is the same as delaying justice. Well, when you have Clinton nominees or judges who are lenient on murderers because their female victim did not suffer enough, or you have a judge that tries to exclude bags of drug evidence against drug dealers, or a judge that says a bomb is not really a bomb because it did not go off and kill somebody—then I think that's when justice is denied.

The American people have caught on to this. And, I think the American people would just as soon leave some of these seats unfilled rather than filling them with judges who are soft on criminals or who want to create their own laws.

We have heard repeatedly from the other side that a number of judicial emergency vacancies exist. We are told that not filling these vacancies is causing terrible strife across the country. Now, to hear the term ''judicial emergency'' sounds like we are in dire straits. But, in fact, a judicial emergency not only means that the seat has been open for 18 months. It does not mean anything more than that, despite the rhetoric we hear.

In fact, it is more than interesting to note that out of the 24 so-called judicial emergencies, the administration has not even bothered to make a nomination to half them. That is right, Mr. President. After all we have heard about Republicans not filling these so-called judicial emergencies which are not really emergencies, we find that the administration has not even sent up nominees for half of them after having over a year and a half to do so.

But, we continue to hear about this so-called caseload crisis. My office even got a timely fax from the judicial conference yesterday bemoaning the increase in caseload. Well, Mr. President, I sent out the first time ever national survey to article III judges last year. I learned many things from the responses. Among them, I learned that while caseloads are rising in many jurisdictions, the majority of judges believed the caseloads were manageable with the current number of judges. A number of judges would even like to see a reduction in their ranks.

We know that much of the increased caseload is due to prisoner petitions, which are dealt with very quickly and easily, despite the hue and cry we hear. As a matter of fact the judicial conference even admits some of the increase is due to prisoners filing in order to beat the deadline for the new filing fees we imposed. So, there may be isolated problems, but there is no national crisis—period.

On February 5, I had the opportunity to chair a judiciary subcommittee hearing on judicial resources, concentrating on the fourth circuit. My efforts in regard to judgeship allocations are based upon need and whether the taxpayers should be paying for judgeships that just are not needed. We heard from the chief judge that filling the current two vacancies would actually make the court's work more difficult for a number of reasons. He argued that justice can actually be delayed with more judges because of the added uncertainty in the law with the increased number of differing panel decisions. I am sorry that only three Senators were there to hear this very enlightening testimony.

We in the majority have been criticized for not moving fast enough on nominations. However, we know there was a higher vacancy rate in the judiciary at the end of the 103d Democrat Congress than there was at the end of the 104th Republican Congress. Even though there were 65 vacancies at the end of last year, there were only 28 nominees that were not confirmed. All of them had some kind of problem or concern attached to them. The big story here is how the administration sat on its rights and responsibilities and did not make nominations for more than half of the vacancies. And some of the 28 nominations that were not confirmed were only sent to us near the end of the Congress. Yet, the administration has the gall to blame others for their failings.

I think it is also important to remember the great deal of deference we on this side gave to the President in his first term. As I said, we have confirmed over 200 nominees. All but four, including two Supreme Court nominees, were approved by voice vote. That is a great deal of cooperation. Some would say too much cooperation.

But now, after 4 years of a checkered track record, it is clear to me that we need to start paying a lot more attention to whom we're confirming. Because like it or not, we are being held responsible for them.

I cannot help but remember last year when some of us criticized a ridiculous decision by a Federal judge in New York who tried to exclude overwhelming evidence in a drug case. What was one of the first things we heard from the administration? After they also attacked the decision, they turned around and attacked the Republican Members who criticized the decision. They said, you Republicans voted for the nominee, so you share any of the blame.

Well, the vote on Judge Baer was a voice vote. But, I think many of us woke up to the fact that the American people are going to hold us accountable for some of these judges and their bad decisions. So, there is no question the scrutiny is going to increase, thanks to this administration, and more time and

effort is going to be put into these nominees. And, yes, we will continue to criticize bad decisions. If a judge that has life tenure cannot withstand criticism, then maybe he or she should not be on the bench.

Now, having said all of this, we have before us a nominee who we're ready to vote on. I had been one of those holding up the nominee for the D.C. circuit, the nomination before us. I believe I have made the case that the 12th seat should not be filled because there is not enough work for 12 judges, or even 11 judges for that matter. My argument has always been with filling the seat—not the nominee. Now that we have two open seats—even though the caseload continues to decline—I'm willing to make a good faith effort in allowing the Garland nomination to move forward.

But, given the continued caseload decline, and the judicial conference's own formula giving the circuit only 9.5 judges, I cannot support filling even the 11th seat. So, I will vote ''no.'' I assume I will be in the minority here and the nominee will be confirmed, but I think the point has to be made. I very much appreciate Chairman HATCH's efforts in regard to my concerns, and his decision to not fill the unnecessary 12th seat.

So, there have been a lot of personal attacks lately. Motives are questioned and misrepresented. This is really beneath the Senate. And I hope it will not continue.

Despite the attacks that have been launched against those of us who want to be responsible, all we are saying is send us qualified nominees who will interpret the law and not try to create it. Send us nominees who will not favor defendants over victims, and who will be tough on crime. Send us nominees who will uphold the Constitution and not try to change it. As long as the judgeships are actually needed, if the administration sends us these kinds of nominees, they will be confirmed.

I thank the Chair.

The PRESIDING OFFICER (Mr. FAIRCLOTH). The Chair recognizes the Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise today in opposition to the nomination of Merrick B. Garland to be a judge on the U.S. Court of Appeals for the District of Columbia Circuit. I commend Senators SESSIONS, KYL, and GRASSLEY for taking this course.

Let me state from the outset that my opposition has nothing to do with the nominee himself. I have no reservations about Mr. Garland's qualifications or character to serve in this capacity. He had an excellent academic record at both Harvard College and Harvard Law School before serving as a law clerk on the U.S. Court of Appeals for the Second Circuit and the U.S. Supreme Court. Also, he has served in distinguished positions in private law practice and with the Department of Justice. Moreover, I have no doubt that Mr. Garland is a man of character and integrity.

However, qualifications and character are not the only factors we must consider in deciding whether to confirm someone for a Federal judgeship. A more fundamental question is whether we should fill the position itself. Mr. Garland was nominated for the 11th seat on the D.C. circuit. I do not feel that this vacancy needs to be filled. Thus, I cannot vote in favor of this nomination.

The caseload of the D.C. circuit is considerably lower than any other circuit court in the Nation. In 1996, the eleventh circuit had almost five times the number of cases per judge as the D.C. circuit. The fourth circuit had over three times as many cases filed. Specifically, about 378 appeals were filed per judge in the fourth circuit in 1996, compared to only about 123 in the D.C. circuit.

Moreover, the caseload of the D.C. circuit is falling, not rising. Statistics from the Administrative Office show a decline in filings in the D.C. circuit over the past year.

I am well aware of the argument that the cases in the D.C. circuit are more complex and take more time to handle, and therefore we should not expect the D.C. circuit to have the same caseload per judge as other circuits. However, this fact cannot justify the great disparity in the caseload that exists today between the D.C. circuit and any other circuit. This is especially true since the D.C. circuit caseload is declining. In short, it is my view that the existing membership of the D.C. circuit is capable of handling that court's caseload.

Mr. President, one of the core duties of a Member of this great Body is to determine how to spend, and whether to spend, the hard-earned money of the taxpayers of this Nation. We must exercise our duty prudently and conservatively because it is not our money or the Government's money we are spending; it is the taxpayers' money. Today, the Republican Congress is working diligently to find spending cuts that will permit us to finally achieve a balanced budget. In making these hard choices, no area should be overlooked, including the judicial branch. Under the Constitution, the Congress has the power of the purse, and it has broad authority over the lower Federal courts. This body has the power to eliminate or decide not to fund vacant lower Federal judgeships, just as it had the power to create them in the first place.

The cost of funding a Federal judgeship has been estimated at about $1 million per year. This is a substantial sum of money, and a vastly greater sum if we consider the lifetime service of a judge. We must take a close look at vacant judgeships to determine whether they are needed.

In this regard, Senator GRASSLEY, the chairman of the Judiciary Subcommittee on the Courts and Administrative Oversight, has been holding hearings regarding the proper allocation of Federal judgeships. I would like to take this opportunity to commend Senator GRASSLEY for the fine leadership he is providing in this important area. Through Senator GRASSLEY's hard work, we have learned and continue to learn much about the needs of the Federal courts.

During one such subcommittee hearing this year, the Chief Judge of the Court of Appeals for the Fourth Circuit, J. Harvie Wilkinson III, explained that having more judges on the circuit court does not always mean fewer cases and a faster disposition of existing ones. He indicated it may mean just the opposite. More judges can mean less collegial decisionmaking and more intracircuit conflicts. As a result of such differences, more en banc hearings are necessary to resolve the disputes. More fundamentally, a large Federal judiciary is an invitation for the Congress to expand Federal jurisdiction and further interfere in areas that have been traditionally reserved for the States.

In summary, I oppose this nomination only because I do not believe that the caseload of the D.C. circuit warrants an additional judge. Mr. Garland is a fine man, but I believe that my first obligation must be to the taxpayers of this Nation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Vermont.

Mr. LEAHY. Mr. President, how much time is remaining to the distinguished senior Senator from Utah and myself?

The PRESIDING OFFICER. The Senators have 54 minutes.

Mr. LEAHY. I thank the Chair.

Mr. President, I am concerned when I hear attempts to tie Mr. Garland's nomination to the number of judges in the D.C. circuit. Let us remember that Mr. Garland is there to fill the 11th seat on the D.C. circuit, not the 12th seat. Even Judge Silberman, who has argued for abolishing the 12th seat for this court, has testified that ''it would be a mistake, a serious mistake, for Congress to reduce down below 11 judges.'' That is a verbatim quote from Judge Silberman.

But we should also remember that when we just put numbers here, numbers do not tell the whole story. The D.C. circuit's docket is by far the most complex and difficult in the Nation. You can have a dozen routine matters in another circuit and one highly complex issue involving the U.S. Government in the D.C. circuit, brought because it is the D.C. circuit, that one would go on and equal the dozen or more anywhere else.

We can debate later on the size of the D.C. circuit, whether it should be 11 or 12. But we are talking about the 11th seat. And what Senators ought to be talking about is the fact that Merrick Garland is a superb nominee. He has been seen as a superb nominee by Republicans and Democrats alike, by all writers in this field. At a time when some seem to want people who are not

qualified, here is a person with qualifications that are among the best I have ever seen.

So, let us not get too carried away with the debate on what size the court should be. We can have legislation on that. The fact is, we have a judge who is needed, a judge who was nominated, and whose nomination was accepted and voted on by the Senate Judiciary Committee in 1995. It is now 1997. Let us stop the dillydallying. I suppose, as we are not doing anything else—we do not have any votes on budgets or chemical weapons treaties or any of these other things we can do—I suppose we can spend time on this. We ought to just vote this through, because at the rate we are currently going we are falling further and further behind, and more and more vacancies are continuing to mount over longer and longer times, to the detriment of greater numbers of Americans and the national cause of prompt justice.

Frankly, I fear these delays are going to persist. In fact, the debate on what should be in the courts took an especially ugly turn over the last 2 weeks. Some Republicans have started calling for the impeachment of Federal judges who decide a case in a way they do not like. A Member of the House Republican leadership called for the impeachment of a Federal judge in Texas because he disagreed with his decision in the voting rights case, a decision that, whichever way he went, was going to be appealed by the other side. If he ruled for the plaintiffs, the defendants were going to appeal; if he ruled for the defendants, the plaintiffs would have appealed. But this Member of the other body decided, forget the appeals, he disagrees, so impeach the judge. He is quoted in the Associated Press as saying, ''I am instituting the checks and balances. For too long we have let the judiciary branch act on its own, unimpeded and unchallenged, and Congress' duty is to challenge the judicial branch.''

The suggestion of using impeachment as a way to challenge the independence of the Federal judiciary, an independence of the judiciary that is admired throughout the world, the independence of a judiciary that has been the hallmark of our Constitution and our democracy, the independence of a Federal judiciary that has made it possible for this country to become the wealthiest, most powerful democracy known in history and still remain a democracy—to talk of using impeachment to challenge that independence demeans our Constitution, and it certainly demeans the Congress when Members of Congress speak that way. It is also the height of arrogance. It ignores the basic principle of a free and independent judicial branch of Government. We would not have the democracy we have today without that independence.

I wonder if some have taken time to reread the Constitution. Maybe I give them too much benefit of the doubt. I will ask them to read the Constitution. Article II, section 4, of the Constitution states:

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

The Founders of this country did not consider disagreement with a Member of the House of Representatives as an impeachable offense. In fact, the Founders of this country would have laughed that one right out. Can you imagine? I suggested some read the Constitution and, I must admit, in a moment of exasperation, I suggested perhaps some who were making these claims had never read a book at all. But, of course, they have. There is one by Lewis Carroll. It is called Alice in Wonderland. The queen had a couple different points she made. One, of course, if all else failed was, ''Off with their heads.'' The other is, ''The law is what I say the law is.''

We all lift our hands at the beginning of our term in office and swear allegiance to that Constitution, but all of a sudden there is something found in there that none of us knew about. Impeach a judge because you disagree with a judge's decision? I tried an awful lot of cases before I came here. I was fortunate in that, a chance to try cases at the trial level and the appellate level. Sometimes I won, sometimes I lost, but there was always an appeal. In fact, I found in the cases I won as a prosecutor, the person on the way to jail would invariably file an appeal. I just knew the appeal would be made. That is the way the courts go.

You do not suddenly say because I won the case, the judge was to be impeached.

I think back to about 40 years ago and those who wanted to impeach the U.S. Supreme Court. Why? Because they refused to uphold segregation—let's impeach the Court. In fact, I made my first trip here to the U.S. Capitol in Washington, DC, when I was in my late teens. At that time, for the first time, I saw the billboards and demonstrations against the Chief Justice after the landmark Brown versus Board of Education decision. I wondered what was going on.

In the 1950's, it was not uncommon to see billboards and bumper stickers saying, ''Impeach Earl Warren.'' These signs were so prevalent, Mr. President, that a young man from Georgia at that time once remarked that his most vivid childhood memory of the Supreme Court was the ''Impeach Earl Warren'' signs that lined Highway 17 near Savannah. He said: ''I didn't understand who this Earl Warren fellow was, but I knew he was in some kind of trouble.''

That young man from Georgia is now a Supreme Court Justice himself, Justice Clarence Thomas.

In hindsight, it seems laughable, as in hindsight the current calls of impeachment of current judges will also be laughable. At that time, the call to impeach was popular within a narrow and intolerant group which did not understand how our democracy works or what was its strength. Apparently, it is fashionable in some quarters to sloganeer about impeaching Federal judges again.

It was wrong in the 1950's to have somebody who wanted to protect the sin and stain of segregation to call for the impeachment of Earl Warren. It is wrong for some today to call for the impeachment of a Federal judge because of a disagreement with a single decision.

So I hope all of us—all of us—stop acting as though we can go to something way beyond our Constitution because a judge comes out with a decision that we may disagree with. That is not a high crime or misdemeanor; it is not an impeachable offense. Maybe it is an appealable question, but not an impeachable offense.

We in the Congress cannot act as some super court of appeals. Good Lord, we even had a suggestion over the weekend that maybe even the Congress should have the power to vote to override any decision. In fact, it would be a super court of appeals. Good Lord, Mr. President, look at the pace of this Congress. We have almost 100 vacancies on the Federal court and certainly by the end of business yesterday, we had not filled a single one of them. We have not had a minute of debate on the budget. We have done nothing about bringing up campaign finance reform.

Cooler heads are prevailing. I commend the distinguished majority leader, Senator LOTT, for his remarks on these impeachment threats. He is quoted as saying that impeachment should be based on improper conduct of a judge, not on his or her decisions or appeals. I think that is the way it should be. I think perhaps we should step back before we go down this dark road.

I understand, Mr. President, that the distinguished senior Senator from Maryland wishes 5 minutes; is that correct?

Mr. SARBANES. If the Senator can yield me 5 minutes, I would appreciate it.

Mr. LEAHY. Mr. President, I yield 5 minutes to the distinguished senior Senator from Maryland.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Maryland.

Mr. SARBANES. I thank the Chair.

I would like to ask the distinguished Senator from Vermont a couple of questions, if I can, about the charts he was referring to earlier. I want to make sure I understand them fully.

This one, as I understand, shows the number of judges that have been confirmed in the last three Congresses—we are now in the 105th Congress. There are currently 94 vacancies in the Federal court system?

Mr. LEAHY. There are. There will very soon be 100.

Mr. SARBANES. As yet, no judges have been confirmed in this Congress?

Mr. LEAHY. That's right.

Mr. SARBANES. This is the first judge that has come before us?

Mr. LEAHY. That is right.

Mr. SARBANES. Although I gather there are some 25 judges pending in the Judiciary Committee.

Mr. LEAHY. Between 23 and 25, enough to fill a quarter of the vacancies that are pending. Of course, on Mr. Garland, he came before the committee in 1995 and was approved by the committee the first time in 1995. We are now in 1997. It is not moving with alacrity.

Mr. SARBANES. It is not even moving with the speed of a glacier, one might observe.

Mr. LEAHY. I was going to say, there is a certain glacier connotation to the speed of confirming judges.

Mr. SARBANES. In the previous Congress, the 104th Congress, 75 judges were confirmed?

Mr. LEAHY. That's right.

Mr. SARBANES. The previous Congress, the 103d, 129, and the one before that, the 102d, 124; is that correct?

Mr. LEAHY. The Senator is correct.

Mr. SARBANES. There is a significant falloff in the number of judges being confirmed.

Mr. LEAHY. In the 104th Congress, I tell my friend from Maryland, there was an unprecedented slowdown in the confirmation of judges to the extent that I think the only year that we could find, certainly in recent memory, where no court of appeals judges were confirmed at all was in the second session of the 104th Congress. The slowdown was so dramatic in the second session of the 104th Congress that it dropped the number down to certainly an unprecedented low, considering the vacancies.

Mr. SARBANES. I am quite concerned with these developments. The Congress has become much more political and partisan by any judgment. I think that is regrettable, but it has happened, and we have to try to contend with it here as best we can. But I think it is a dire mistake if this attitude carries over into our decisions regarding the judiciary, the third, independent branch of our Government and the one that, in order to maintain public confidence in our justice system, ought to have politics removed from it as much as is humanly possible.

Would the Senator from Vermont agree with that observation?

Mr. LEAHY. I absolutely agree. It has been my experience in the past that Republicans and Democrats have worked closely together with both Republican and Democratic Presidents to keep the judiciary out of politics, knowing that all Americans would go to court not asking whether a judge is Republican or Democrat, but asking whether this is a place they will get justice. If we politicize it, they may not be able to answer that question the way they have in the past.

Mr. SARBANES. Therefore, I am very interested in this chart you have prepared: The number of judges confirmed during the second Senate session in the Presidential election years.

Now, what has happened? What happened in 1996 is dramatic. No appeals court judges were confirmed and only 17 district court judges.

Mr. LEAHY. If my friend from Maryland will yield on that, I will point out the contrast. In 1992 we had a Republican President and a Democratic Senate; we confirmed 11 appellate court judges and 55 district court judges. Four years later you have a Democratic President and a Republican Senate and look at the vast difference: zero appellate court judges and only 17 district court judges, notwithstanding an enormous vacancy rate.

I think what it shows is that, if you want something to demonstrate partisanship, when the Democrats controlled the Senate with a Republican President, they still cooperated to give that Republican President a significant number of judges in the second session, in a Presidential election year, the time it normally slows down, as contrasted to the absolute opposite, the unprecedented opposite, of what happened when you have a Democratic President and a Republican Senate.

Mr. SARBANES. Let me take the Senator's——

Mr. CHAFEE. Could I ask a question in here at the proper time? I do not want to interrupt the flow. I had a question of the manager?

Mr. LEAHY. The Senator from Maryland has the floor.

Mr. SARBANES. I yield for the inquiry.

Mr. CHAFEE. My question is this. As I understand it, there are 3 hours on this bill, so presumably that would take us up to around 6 o'clock, as I understand.

Mr. LEAHY. Unless time is yielded back.

Mr. CHAFEE. I wonder if there appeared to be much of a chance that some time might be yielded back? It would be very helpful to me, but I do not want to stop any pearls of wisdom.

Mr. LEAHY. I have a member of the Leahy family to whom I have had the privilege of being married nearly 35 years who hopes time will be yielded back. As her husband, I hope time will be yielded back. I am about to just give the floor back to the Senator from Maryland. I do not know how much more time is going to be taken in opposition to Mr. Garland. I know of very little time that is going to be taken further here.

So the long way around, to answer my good friend from Rhode Island, I hope time will be yielded back fairly soon.

Mr. CHAFEE. Put me down as a firm supporter of Mrs. Leahy.

Mr. LEAHY. I am sure she would be delighted to know that.

Mr. SARBANES. If the Senator would yield for one further question, just to take your analysis a step further, in 1992 and 1988, in each of those years, you had a Republican President and a Democratic Senate, is that not correct?

Mr. LEAHY. Right.

Mr. SARBANES. It is in both these years, not just the contrast of the last year of the Bush Presidency. But in the last year of the second Reagan administration, we confirmed 7 appeals judges, then 11 for the last year of the Bush administration, and last year the number was zero. For district court judges in those years it was 35, 55 and 17. That is a dramatic difference. An element has intruded itself in this confirmation process that was not heretofore present.

Mr. LEAHY. If the Senator would yield a moment.

In 1984, there was a Republican Senate and Republican President, and you see 10 and 33. In 1992, there is a Republican President and Democratic Senate, and the Democratic Senate actually did better for the Republican President than the Republican Senate for the Republican President.

Mr. SARBANES. Exactly.

Let me say I am very deeply concerned about this development. I want to commend the Senator from Vermont because he has been speaking out on this very important matter for some time now.

Moving to the pending nomination, I want to speak first to Merrick Garland's merits, although let me say that I do not understand any of my colleagues to be questioning his capabilities and qualifications to serve on the bench. In fact, Members on both sides have spoken very highly of Merrick Garland and noted his outstanding character.

I was privileged, since he is a resident of my State, to have the honor to introduce him at his confirmation hearing before the Senate Judiciary Committee. That was on November 30, 1995, almost 18 months ago. I believed then and continue to believe now that he will make an outstanding addition to the D.C. circuit.

His career exemplifies his strong commitment to the law and to public service.

He is a magna cum laude graduate from Harvard Law School. He clerked for Judge Henry Friendly on the second circuit and for Justice William Brennan at the Supreme Court.

He has had a long association with the Justice Department, first as a special assistant to then Att. Gen. Benjamin Civiletti. He then became a partner at Arnold & Porter when he left the Justice Department to go into private practice.

Upon returning to public service, he has served as an assistant U.S. attorney for the District of Columbia, dealing with public corruption and Government fraud cases. He has also served as Deputy Assistant Attorney General in the Justice Department's Criminal Division and as Principal Associate Deputy Attorney General, both very high ranking positions within the Department.

In all of these positions he has served our country with great distinction.

He has published extensively in several areas of the law and has remained active in bar association activities.

In every respect, in his intellect, his character, and his experience, he would make an outstanding addition to the bench.

Let me now just briefly talk about this new line of attack, so to speak, that has arisen about whether vacancies on the D.C. circuit should be filled.

First of all, I think any analysis of the courts' need to fill vacancies cannot be based simply on caseload statistics—this is a benchmark that one needs to analyze carefully in order to determine what lies behind the cases. In fact, the D.C. circuit's situation in particular makes clear that mere case filing numbers do not tell the whole story with respect to the burdens that the court faces. The D.C. circuit receives, in complexity and importance, cases that do not come as a general rule before the other circuits across the country. It has had major, major cases that it has had to deal with as a routine matter, cases of great weight and importance to the nation.

The D.C. circuit also handles numerous appeals from administrative agency decisions that are characterized by voluminous records and complex fact patterns. In fact, almost half of the D.C. circuit's cases are these kinds of administrative appeals—46 percent. The next highest circuit in this respect is the ninth circuit with 9.6 percent of their cases being of this kind.

The D.C. circuit also handles fewer of the least complex and time-consuming cases, criminal and diversity cases, than any of its sister circuits. Only 11 percent of its cases are diversity cases. No other circuit has less than 24 percent.

In testimony before the Judiciary Committee's Courts Subcommittee, D.C. Circuit Judge Harry Edwards—the Chief Judge of the circuit—gave one example of the kind of complex administrative cases that are a routine part of the D.C. circuit's caseload. He talked about a case to review a FERC order, an order of the Federal Energy Regulatory Commission. This order produced, at the time of appeal, 287 separate petitions for review by 163 separate parties, and a briefing schedule that provided for the filing of 27 briefs, totaling over 900 pages.

I am simply making the point that they get very complex matters to deal with in the D.C. circuit, and that the case filing numbers relied on by other side do not tell the whole story.

Recall also that the vacancy we are talking about filling here is the 11th out of 12 slots on the D.C. circuit. Originally, Merrick Garland was being opposed on the basis that the 12th spot on the circuit court ought not to be filled. Now, with the taking of senior status by one of the D.C. circuit's judges, we are talking about filling the 11th spot, not the 12th spot, on that court and yet Members have come forward opposing the Garland nomination, a fact which I very much regret.

Now I want to address just very briefly the fact that the fourth circuit was raised earlier by one of my colleagues in this debate. He cited the view of Fourth Circuit Chief Judge Wilkinson, presented at a February 1997 Judiciary Subcommittee hearing, that the President and Senate do not need to fill the two vacancies that exist on that court.

It is interesting that at that same hearing, testimony that I do not think has been cited, by Judge Sam Ervin, the very able and distinguished circuit judge of the Court of Appeals for the Fourth Circuit, and the son of our former distinguished colleague, was presented before the panel in support of filling the vacancies.

Mr. President, I ask unanimous consent that the very thoughtful statement by Judge Ervin be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. SARBANES. It is very important to note that with respect to the fourth circuit, there is a nominee pending before the Judiciary Committee, whose nomination was submitted in the last Congress—two nominations, as a matter of fact, were submitted to the Committee last year—and one has been resubmitted by the administration right at the beginning of this session.

The PRESIDING OFFICER. The Senator from Maryland has spoken for considerably more than 5 minutes.

Mr. SARBANES. Would the Senator give me 2 minutes to close up?

Mr. LEAHY. I yield 2 additional minutes.

Mr. SARBANES. There is no way with a nominee having been sent to the Senate by the President, that an argument for not approving the nominee based on not needing the judgeship can be made without it carrying with it an ad hominem argument against the nominee.

If people are really serious about reducing vacancies on the courts, they need to scrub down the number of places before the nominees are submitted, by legislation. Once the nominees come here, you cannot divorce the attack on the individual from the attack on the need for the seat on the bench. We have the chief judge of the fourth circuit coming in against filling spots when nominees are pending.

Now, how can that position be taken and considered separate from opposition to the nominee? They say, ''Well, I am not against this nominee, but I just do not think this spot ought to be filled.'' Of course, that is small comfort to the nominee whose nomination is pending and has been put forward in order to fill the vacancy.

Now, Judge Ervin, in his testimony, sets forth, I think, a very persuasive case why the fourth circuit needs to have those vacancies filled. I commend that statement to my colleagues. I will not go through it in detail here, given the fact that this debate is coming to a close.

I do encourage my colleagues to consider carefully the political cloud with which we are now surrounding the judgeships.

I say to my colleagues on the other side, we did not behave this way at a time when the Senate Democrats were in control of the Senate and we were dealing with the nominations of Republican Presidents. I will be very frank. I think the judiciary deserves better than that from us. I hope that game will come to an end and we will be able to move ahead with the confirmation of judges in an orderly fashion.

In closing, let me again state that I am very supportive of the judicial nominee who is before the Senate today. I think he is a person of outstanding merit who will make an outstanding judge, and I urge his confirmation.

EXHIBIT 1

STATEMENT OF THE HONORABLE SAM J. ERVIN III

Mr. Chairman and members of the Subcommittee, my name is Sam J. Ervin, III, of Morganton, North Carolina. I am an active United States Circuit Judge for the Fourth Circuit, having been appointed in May, 1980. I had the honor of serving as the Chief Judge of that Circuit from February, 1989 until February, 1996. I appreciate the Subcommittee's willingness to hear my views.

I support the actions of the Judicial Conference of the United States in its efforts to address the important issue of judgeship needs. I commend Chief Judge Julia Gibbons and the other members of the Judicial Resources Committee for establishing a principled method for evaluating these needs.

I am in agreement with my good friend and colleague, Chief Judge J. Harvie Wilkinson, III, that the federal judiciary should remain of limited size and jurisdiction. Should anyone present doubt my commitment to those principles, I quote from a resolution that I introduced on June 24, 1993: (which was unanimously adopted by the Article III Judges of the Fourth Circuit)

''Chief Judge ERVIN. If I may, I would like to submit for consideration a resolution reading as follows:

'' 'Resolved that the future role of the federal courts should remain complementary to the role of the state courts in our society. They should not usurp the role of state courts.

'' 'To achieve that goal, it is the consensus of the Conference that the Congress might consider such issues as the federal courts remaining an institution of limited size and jurisdiction. The ability of the federal courts to fulfill their historical limited and specialized role is dependent on the willingness of Congress to maintain jurisdictional balance and curtail the federalization of traditional state crimes and causes of action.' ''

My appearance here today, however, is necessitated by Chief Judge Wilkinson's proposal that we do not need to fill the two judicial vacancies that presently exist in our circuit. It is my conviction that our failure to do so would be a serious mistake.

First, a brief history leading up to the subject of whether these two existing vacancies should or should not be filled;

On October 9, 1985, when the late Harrison Winter was our Chief Judge, the circuit judges, with a single dissent, voted to ask for

four additional active judges for the Fourth Circuit.

On October 4, 1989, we again indicated by another formal action that while we did not desire a court of more than 15 active judges, we unanimously reaffirmed our earlier request for four additional judges.

Legislation was passed in 1990 authorizing a number of additional judgeships, including four new circuit court judges for the Fourth Circuit. Thereafter, three of these so-called Omnibus Bill judges were nominated and subsequently confirmed: Judge Hamilton (S.C.) in July, 1991; Judge Luttig (V.A.) in August, 1991; and Judge Motz (M.D.) in June, 1994.

The fourth (and final) Omnibus Bill judgeship has remained unfilled since it was created in December, 1990. As of this date, there is no pending nomination for this vacancy, and I believe that this is the only 1990 circuit judgeship that remains unfilled.

The second Fourth Circuit vacancy was created when Judge J. Dickson Phillips, Jr., of North Carolina, took senior status, effective July 31, 1994. More than two and one-half years later, the Honorable James M. Beaty, Jr., a District Court Judge in the Middle District of North Carolina, was nominated to succeed Judge Phillips, but no action has been taken on that nomination by the Senate Judiciary Committee.

To my knowledge, the judges of the Fourth Circuit have never taken any formal action to indicate an unwillingness to stand by our requests that these two vacancies be filled.

In order to evaluate the Circuit's needs for these two judgeships, I suggest that we must realistically assess our present situation:

Present Active Judges: At this time, the Fourth Circuit has 13 active judges. Five of these judges are 70 years of age or older. Their present ages are: 90, 78, 76, 73, and 70. Is it realistic to expect that all of these judges will be able to continue to serve indefinitely?

Present Senior Judges: The last printed report from the Administrative Office is outdated in reflecting that we have 4 senior judges. One of the four retired on July 31, 1995, and is no longer eligible to sit.

Another has indicated that he does not plan to sit any more. The remaining two, whose current ages are 79 and 74, have each been sitting 2 days per court week, thereby constituting 4/5 of one judge.

Necessary Panels: For the past several years, we have been averaging 5 panels of judges each court week. With our present complement of active and senior judges, we lack a sufficient number of judges to fill 5 panels without bringing in district judges from our own circuit or senior judges from other circuits.

Current Statistics: Rather than burden you with more numbers, I will simply refer to the latest figures published by the Administrative Office. I am confident that those statistics fully justify the filling of the two existing vacancies. In fact, as I understand it, if the numerical portion of the existing formula were applied (the 500 filings per panel with pro se appeals weighted as one-third of the cases) the Fourth Circuit would be eligible to receive 20 judgeships. We have never requested more than 15.

North Carolina: I note that Judge Gibbon's Judicial Resource Committee has listed as a factor to be considered in allocating judgeships, geographical considerations within a circuit. At the risk of being thought provincial, I emphasize the special impact that a failure to fill the two presently unfilled seats on the Fourth Circuit will have on North Carolina. The expectation has been that these seats would be assigned to that state. I, of course, recognize that there is no law which requires that this allocation be made—actually this is a matter for the executive and legislative branches to determine—but it seems to be the fair thing to do for the following reasons:

a. North Carolina is the most populous state in the circuit.

b. North Carolina has one of the highest numbers of filings in the district courts in the circuit.

c. North Carolina, like West Virginia, has had only two seats, while both Virginia and Maryland have three each, and South Carolina has four. Filling the two existing vacancies from North Carolina would do no more than to restore that state to parity with our sister states. I point out that should I decide to take senior status—as I am eligible to do—North Carolina would have no active judge. That situation would create some insurmountable problems for both the bar and litigants of that state.

d. While it has been suggested to me that this imbalance could be remedied by assigning seats now held by judges from other states to North Carolina as they are opened by death or retirement, that seems an unpredictable solution—especially in the present political climate.

Above all else, I seek to be as sure as it is humanly possible to be that our circuit has a sufficient number of judges to enable us to render swift and certain justice in all of the cases that come before us. Some recent legislation and our adoption of new internal operating procedures may well reduce our caseload to some degree but countervailing circumstances, including the continuation of the federalization of numerous state crimes, the creation of new private rights of action, the rapid population growth of the region, and the increased complexity of both the criminal and civil cases now coming to the federal courts (to mention only a few of the relevant factors) will, I fear, more than offset any decreases in our workloads. I do believe that we would have sufficient personnel to enable us to do the work that is assigned to us in a fashion acceptable to all if these two vacancies are filled—at least for the foreseeable future.

Mr. Chairman, in the Questionnaire which you sent to the members of the judiciary some time ago, you raised the legitimate question of whether we as judges were being required by our respective workloads to delegate more of our judicial functions than was ideal—or even healthy—to elbow law clerks, staff law clerks or other non-judicial employees. I was not privy to the answers my colleagues returned to those questions, but I strongly suspect that many of us would admit that the degree of delegation required in the courts of appeals is greater than is ideal. Speaking only for myself, I would like to be able to devote greater personal attention to every matter that comes before me than I am now able to do.

I sincerely believe that our present ability to carry out our duties in a manner pleasing to this Subcommittee, to the public, and to ourselves would be enhanced by the filling of these two long vacant positions.

Mr. BIDEN. Mr. President, 2 of the 12 seats on the District of Columbia Court of Appeals are currently vacant. Some have argued that the vacancy to which Merrick Garland has been nominated should not be filled because the D.C. circuit is overstaffed. But the reasons Congress gave for approving 12 seats for the D.C. circuit remain compelling today and justify filling this vacancy.

Further, to propose eliminating a circuit court judgeship within the context of a particular nomination, rather than through the deliberative process we normally follow in addressing judgeship needs, jeopardizes the impartiality and independence of the judiciary.

Merrick Garland's nomination was first delivered to the Senate on September 6, 1995—more than 18 months ago. The Judiciary Committee held a confirmation hearing on the nomination on November 30, 1995, and forwarded the nomination for consideration by the full Senate 2 weeks later. The full Senate failed to act on Garland's nomination for 9½ more months, however, returning it to the President at the close of the 104th Congress.

In fact, the Senate refused to confirm a single circuit court judge during the entire second session of the last Congress. This was the first time in more than 20 years that an entire session of Congress had passed without a single circuit court confirmation. Nonetheless, some argued that shutting down the confirmation process is par for the course in an election year. They are wrong. And let me set the record straight.

George Bush made nearly one-third of his 253 judicial nominations in 1992, a Presidential election year. As chairman of the Judiciary Committee, I held 15 nomination hearings that year, including 3 in July, 2 in August, and 1 in September. In 1992—the last Presidential election year—the Senate continued to confirm judges through the waning days of the 102d Congress. We even confirmed 7 judges on October 8—the last day of the second session. As a result, the Senate confirmed all 66 nominees the Judiciary Committee reported out that year—55 for the district courts and 11 for the circuit courts. Let me repeat: last session, only 17 district judges were confirmed and no circuit judges were confirmed.

Now that the election is over and Merrick Garland has been renominated, Republicans argue that we should not vote to confirm him because the District of Columbia circuit needs only 10 judges. They are wrong. And let me set the record straight.

Congress has previously recognized the need for 12 judges. Twelve years ago, based on the recommendation of the Judicial Conference of the United States, Congress concluded that the D.C. circuit's caseload warranted 12 judgeships. The Senate report to the 1984 legislation creating an additional judgeship states:

> Located at the seat of the Federal government, the Court of Appeals for the District of Columbia inevitably receives a significant amount of its caseload from federal administrative agencies headquartered in that area. Administrative appeals filed in this court numbered 504 in 1982 and represented 34.8 percent of the incoming caseload. Due to the nature of the caseload which includes many unique cases involving complex legal, economic and social issues of national importance and a large backlog of pending appeals, this court requires one additional judgeship.

The D.C. circuit needs 12 judges to handle its complex caseload. A large portion of the D.C. Circuit caseload consists of complex administrative appeals which generally consume a larger

amount of judicial resources than other appellate cases. Therefore, comparison of raw caseload data between the D.C. circuit, with its high percentage of complex administrative cases, and the other circuits is misleading. According to the statistics provided by the Administrative Office of U.S. Courts for the period from September 30, 1995 to September 30, 1996, 1,347 cases were filed in the D.C. circuit, 474 of which—or 35.2 percent—were administrative appeals. In contrast, in the remaining 11 circuits, of the 51,991 cases filed, only 2,827—or 5.4 percent—were administrative appeals.

The D.C. circuit has a long time interval between filing a notice of appeal and final disposition. Because the D.C. circuit has this incredibly high percentage of administrative appeals relative to the other circuits and because these types of cases require tremendous amounts of judicial resources, litigants in the D.C. circuit must wait an average of 12 months between the filing of the notice of appeal and final disposition. Only 3 of the 12 circuits have a longer average for this time frame.

The fact that the D.C. circuit has a long time interval between filing and disposition is indicative of the complex cases that the circuit handles. Other circuits have more criminal appeals and garden-variety diversity cases that often are amenable to summary disposition without oral argument.

The D.C. circuit has fewer pro se appeals than other circuits. In addition to having fewer criminal appeals and diversity cases, the D.C. circuit has a lower percentage of pro se mandamus cases than all other circuits. Chief Judge Edwards has noted that pro se appeals are often frivolous, easily identified as lacking merit, or otherwise amenable to disposition without significant expenditure of judicial resources.

The D.C. circuit has more cases of national importance than other circuits. Not only are complex administrative appeals commonly heard in the D.C. circuit, but as a result of its location at the seat of the Federal Government, the D.C. circuit also hears a disproportionate number of the high-profile cases of national importance that reach the U.S. Courts of Appeals. The D.C. circuit decided in 1996 alone National Treasury Employees Union versus United States of America, a challenge to the constitutionality of the Line-Item Veto Act, as well as Perot versus Federal Election Commission, an appeal from a district court's rejection of Ross Perot's attempt to participate in last year's Presidential debates.

The same reasons that supported the creation of a 12 judgeship for the D.C. circuit in 1984 justify its existence now. If reasoned deliberation and study of this circuit leads to the conclusion that a future vacancy should not be filled, then we should address that issue, but not within the context of this nomination. If ad hoc analysis becomes our mode of operation, we will give the appearance of a politicized judiciary.

I congratulate Merrick Garland for his distinguished career and commend President Clinton for making this nomination. I hope that the Senate will act to confirm him as expeditiously as possible.

Mr. BURNS. Mr. President, I rise today to express my opposition to the confirmation of Merrick Garland to the D.C. circuit.

Even though the nominee has the character and is highly qualified for the position, there is a larger question that must be examined. Does this seat really need to be filled? Especially since it has remained empty for 1½ years?

The answer is that the D.C. circuit does not need another seat, especially when there are many other problems in the other district circuits that have not been focused on yet. I base my opinion on the fact that the D.C. circuit had 4,359 cases as of October 1996. The ninth circuit, the circuit in which Montana is housed, had 71,462 cases. That is almost 20 times the number of cases. The D.C. circuit ranked last in the total number of cases as compared to each of the other district circuits in the Nation. If we examine these numbers, it does not seem as if the D.C. judges are handling any cases at all.

This is also a very expensive seat. It will cost the American taxpayers an extra $1 million to fill this seat. This will not be money well spent.

There are adequate numbers of judges on the circuit, why are we confirming this seat? I urge my colleagues to examine the numbers and vote against the filling of this unneeded seat.

Ms. MIKULSKI. Mr. President, I rise today in support of the nomination of Merrick Garland to the U.S. Court of Appeals for the D.C. circuit. Mr. Garland is a resident of my State of Maryland.

I am pleased that his nomination is finally on the Senate floor for a vote. It is critical that vacancies on the Federal bench are filled, especially at the appellate level.

Mr. Garland has a distinguished legal record in the public and private sectors. He has specialized in criminal, civil, and appellate litigation, as well as administrative and antitrust law. I believe his experience will serve him well on the Federal bench once he is confirmed.

Mr. Garland is a magna cum laude graduate of Harvard Law School and a summa cum laude graduate of Harvard College. While at Harvard Law School, he was the articles editor of the Harvard Law Review and a member of the prestigious Phi Beta Kappa, while he attended Harvard College.

When I decide whether to support a judicial nominee, I look at whether the nominee is competent; whether the nominee possesses the appropriate judicial temperament; whether the nominee possesses the highest personal and professional integrity, and whether the nominee will protect our core constitutional values.

I believe that Mr. Garland possesses all of these qualifications. His legal and academic record are exemplary. I am impressed that he has devoted part of his career to public service. He served as the Principal Associate Deputy Attorney General in the Department of Justice. And he clerked after law school for one of the most distinguished Supreme Court Justices, Justice William J. Brennan, Jr.

He's also done extensive pro-bono legal work on behalf of disadvantaged individuals. He has represented an African-American employee in a claim of racial discrimination, a mother in a custody dispute, and court-requested representation of a prisoner.

I urge my colleagues to support Mr. Garland's nomination to the U.S. Court of Appeals D.C. Circuit. I hope that once Mr. Garland is confirmed, we can move forward to a vote on the other pending Federal judicial nominees.

Mr. FAIRCLOTH. Mr. President, I rise today to vote ''no'' on the nomination of Merrick Garland to the U.S. Court of Appeals for the District of Columbia Circuit.

In so voting, I take no position on the personal qualifications of Mr. Garland to be a Federal appeals court judge. What I do take a position on is that the vacant 12th seat on the U.S. Court of Appeals for the District of Columbia Circuit does not need to be filled. Senator CHUCK GRASSLEY, Chairman of the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts, has examined this issue thoroughly, and has determined that the court's workload does not justify the existence of the 12th seat. Last Congress, Senator GRASSLEY introduced legislation to abolish this unneeded seat. By proceeding to renominate Mr. Garland, President Clinton has flatly ignored this uncontradicted factual record.

I commend Senator GRASSLEY for his important work on this matter, as well as Senator JEFF SESSIONS, who has also emphasized the importance of this matter. With the Federal deficit at an all time high, we should always be vigilant in looking for all opportunities to cut wasteful Government spending; this is one such opportunity. After all, each unnecessary circuit judge and his or her staff cost the taxpayer at least $1 million a year.

Lastly, our vote today is an important precedent, since it marks the beginning of the Senate's new commitment to hold rollcall votes on all judicial nominees. This is a policy change which I had urged on my Republican colleagues by letter of January 8, 1997, to the Republican Conference. Voting on Federal judges, who serve for life and who exert dramatic—mostly unchecked—influence over society, should be one of the most important aspects of serving as a U.S. Senator.

Rollcall votes will, I believe, impress upon the individual judge, the individual Senator, and the public the importance of just what we are voting on. I hope that my colleagues will regard this vote, and every vote they take on a Federal judge, as being among the most important votes they will ever take.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Utah.

Mr. HATCH. Mr. President, we should inform the Senate that our intent is to yield back the time if we can by 5:15 so people can vote at that time. It could be just a wee bit longer than that. That is our intention. Those who want to come over and use the time need to come now.

I yield 10 minutes to the distinguished Senator from Pennsylvania, who is a distinguished member of the Judiciary Committee.

Mr. LEAHY. Will the Senator yield for a moment?

Mr. HATCH. I yield.

PRIVILEGE OF THE FLOOR

Mr. LEAHY. Mr. President, I ask unanimous consent that Victoria Bassetti of Senator DURBIN's staff be allowed the privilege of the floor during this debate.

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

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank my colleague, the distinguished chairman of the Judiciary Committee, for yielding me time.

I have sought recognition to voice my very strong support for the nomination of Merrick Garland for the Court of Appeals for the District of Columbia. Mr. President, a great deal has been said today on this floor which is of great importance but not really tremendously related to Merrick Garland's nomination. I hope we have a chance to analyze the entire process of confirmation of judges and the respective roles of the President and the Senate, because the President has the nominating authority and the Senate has the constitutional authority for confirmation. There are a great many things that ought to be done on both sides to expedite the nomination and confirmation of judges.

In my own State, Pennsylvania has quite a number of vacancies now, and I have been in discussions with the President's representatives at the White House about trying to get these nominations filled. There is something to be said on many sides of this issue. The matter confronting the Senate now is, what are we going to do with Merrick Garland? His record is extraordinary. I have been on the Judiciary Committee going into my 17th year and I do not believe I have seen a nominee with the qualifications that this man has.

He graduated from Harvard College, summa cum laude, was Phi Beta Kappa, and graduated from Harvard Law School, magna cum laude. He was on the Harvard Law Review and was the Articles Editor there. He has an extraordinary record of publications, on the issue of Antitrust, in the Yale Law Journal. And I might say, Mr. President, that this nominee exhibited perhaps his best judgment in associating himself with Yale Law School on the article, then going on into FTC investigations, the controversial veto issue, professional responsibility and commercial speech. It is really an extraordinary, extraordinary record. This man, at the age of 45, coming into the court of appeals, may well be a distinguished prospect for the Supreme Court of the United States.

Beyond his record in school and his writings, he was law clerk to a very distinguished circuit judge, Judge Harry Jay Friendly, and he served as law clerk to Supreme Court Justice William Brennan, Jr., and was a partner of distinguished law firms, and worked as a prosecuting attorney. He now serves as Deputy Assistant Attorney General of the United States in the U.S. Department of Justice, in the Criminal Law Division, where I have had occasion to work with him on a professional basis. He just is an extraordinary prospect for the court of appeals.

He has not been treated very gently in the confirmation process, having been nominated in September 1995. He passed through the Judiciary Committee in the 104th Congress and was kept off the agenda by a single hold. That is when a Senator voices an objection without stating a reason, or perhaps multiple holds, but I know a single hold stood in his way.

I compliment the majority leader, Senator LOTT, for bringing his nomination to the floor at this time so that he may be acted upon, yes or no. He really is extraordinary, and I think he has a remarkable career ahead. I am delighted to offer my voice of strong support for his confirmation.

I thank the Chair. I thank my colleague from Utah. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I also want to thank the distinguished senior Senator from Pennsylvania because he was also the decisive Senator who came in and made the quorum at the time we voted Mr. Garland out of committee. Sometimes we forget those little procedural things we have to do just to get here on the floor.

Mr. SPECTER. I thank my colleague from Vermont for making that comment. I had presided over Merrick Garland's confirmation proceedings in the 104th Congress. It was hard to find a Senator when I came in that afternoon. I found out Merrick Garland was there and five other people. It was an interesting afternoon. We had a great many responsibilities.

I went to law school not too long ago and I know what it is like to be on the law review. They call it the Law Journal at Yale. It is remarkable to have the kind of record that Merrick Garland has. Those writings are just extraordinary. It takes long hours and extraordinary study to turn one of those articles out, and there is a wide array of issues that he has written on. He could be making a lot of money. He is currently in public service and he is prepared to go to the court of appeals at the age of 45. We need judges in America with real intellectual abilities. We need judges like Holmes and Brandeis and Cardozo on the courts of the United States. We need them on the Supreme Court of the United States. This is a real prospect. We ought to get him up and out.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Massachusetts.

Mr. KENNEDY. Will the Senator yield me 5 minutes?

Mr. LEAHY. Yes.

Mr. KENNEDY. Mr. President, I support the nomination of Merrick Garland for the vacancy on the D.C. circuit, and I am concerned that it has taken more than 18 months for the nomination to reach the Senate floor.

No one can question Mr. Garland's qualifications and fitness to serve on the D.C. circuit. He is a respected lawyer, a former Supreme Court law clerk, a partner at a prestigious law firm, and since 1989, has served with distinction in the Department of Justice under both Republican and Democratic administrations.

Support for him is bipartisan. We have received letters of support from numerous Reagan and Bush Justice Department officials, including former Deputy Attorneys General George Terwilliger and Donald Ayers, former Office of Legal Counsel Chief Charles Cooper and former U.S. Attorneys Jay Stephens, Joe Whitley, and Dan Webb. Jay Stephens, who was U.S. attorney when Garland served at that office in the District of Columbia, called Garland a person of ''dedication, sound judgment, excellent legal ability, a balanced temperament, and the highest ethical and professional standards.'' The National District Attorney's Office supports his nomination, calling Garland an excellent lawyer, brilliant scholar, and a man of high integrity.'' There can be no serious doubt about his ability to serve as a fair and impartial judge on the D.C. circuit.

Why then, has it taken 18 months to bring this nomination before the U.S. Senate? And why is it that no other judicial nominees have been brought before the Senate?

In fact, only 17 judges—all for district court appointments—were confirmed during all of 1996. Obviously, that was a Presidential election year. But the slow-down in acting on judicial nominations was unprecedented. In 1992, when President Bush was seeking reelection, the Senate, under control of the Democratic Party, still confirmed 66 district court and appellate court judges.

Justice delayed is justice denied. Thousands of Americans with legitimate grievances cannot get their day in court, because judicial vacancies are not being filled and current Federal judges don't have the time to hear their cases. It's hard to crack down on crime when there are not enough judges to enforce the laws that Congress passes.

Many of us are concerned about the harsh partisanship that is being applied to the judicial nomination process. Republicans in the Senate have organized an ad hoc Republican task force to develop procedures for screening judges. They have rejected a formal role for the American Bar Association in assessing candidates. Republicans are seeking to force the President to conduct the real debate with them behind closed doors—nominee by nominee—to make sure each person the President names meets an ideological litmus test. In fact, some have suggested a quota system, in which half of all judicial nominations come from Republicans in Congress and half from President Clinton.

If the Federal courts were a business, they would be in bankruptcy. There are over 90 vacancies in judgeships today. In his 1996 annual report, Chief Justice Rehnquist criticized Congress failure last year to create additional Federal judgeships and called it a shortcoming. The Administrative Office of the U.S. Courts has requested an additional 20 temporary positions on the courts of appeals and 21 permanent and 12 temporary positions in the district courts to address the heavy backlogs that are piling up.

In the case of Merrick Garland, some Republicans argue that we do not need to fill either of the two current vacancies in the D.C. circuit, because the caseload is too light. Many nonpartisan observers regard the D.C. circuit as the second most important court in the United States, after the Supreme Court. There currently is only one senior judge to assist the other 10 members of the Court.

In terms of both quantity and quality of its caseload, the D.C. circuit ranks among the Nation's busiest. It handles a disproportionately high proportion of cases of national significance involving intricate legal issues. Complex administrative appeals were 38 percent of the caseload of the D.C. circuit during fiscal year 1995, as compared with only 5.5 percent in other circuits.

By contrast, pro se appeals, which are generally the easiest to resolve, constituted only 11.8 percent of the D.C. circuit's caseload in 1995, by far the lowest percentage of any circuit in the country.

Diversity cases, which less often raise complex and time-consuming issues, constituted only 13.6 percent of the D.C. circuit's caseload in 1995, compared with 30 percent in the other circuits. So the charts and graphs that some of our Republican colleagues are using do not tell the whole story.

The court's backlog is also growing. In 1984, when the 12th seat was added, the court had a backlog of 1,200 cases. Today, that backlog exceeds 2,000 cases, despite a bench that is highly respected for its intellect and dedication. As former Republican Senator Charles Mathias stated on behalf of the nonpartisan Council for Court Excellence, ''It is in the public interest for the D.C. Circuit to have its full complement of twelve active judges.''

It is time to end the excessive partisanship over judicial nominations. I hope very much that our action on Merrick Garland is a sign that the unacceptable log jam is breaking and that the Senate is now returning to its proper role of advise and consent, not partisan obstruction, in the consideration of judicial nominations.

So, again, Mr. President, I join with those that are urging the Senate's favorable consideration of this extraordinary nominee. This is an individual who has been willing to be put forward now for over some 18 months. He has appeared before the committee and, as has been pointed out, his record is one of special recognition, a brilliant academic record, a strong commitment to public service. He has served under both Democrats and Republicans. He has been an extraordinary success in the private sector, as well.

I don't think I have seen, in recent times, the range of different support that this nominee has for this position. It is breathtaking in its scope. And the background of this individual has urged us to move forward with this nomination. We are extremely fortunate in the district circuit court to be able to have someone of this quality. As has been pointed out, it is a special court, really second in special recognition to the Supreme Court of the United States, in terms of the complexity of the cases that we require this court to resolve.

So, Mr. President, I join with all of those and urge a positive vote in favor of this extraordinary nominee. Merrick Garland will be an outstanding jurist, as everything in his life has reflected. He has been an outstanding individual. I remember very clearly the quote of Senator Mathias, who was a very prominent, significant member of the Judiciary Committee, who took great interest in the quality of justice in this country and the quality of individuals. He has joined in urging that we move forward with this nominee and put him on the court, where he will serve this country with great distinction. I join my other colleagues in hoping that the vote for him will be overwhelming. It deserves to be. I think we will all be well served with his continued dedication of public service on the court.

I yield the floor.

Mr. LEAHY. Mr. President, I yield 10 minutes to the distinguished Senator from Illinois.

Mr. DURBIN. Mr. President, I rise today to support the nomination of Merrick Garland to be judge on the D.C. Circuit Court of Appeals. It is interesting today in this debate that many people have spoken and no one has questioned his integrity nor his ability. He was born in Chicago, graduated from Harvard College magna cum laude, Harvard Law School and, as has been said by other speakers, had a distinguished career both as a lecturer at Harvard Law School and partner in a prestigious firm, and then prosecuting cases in the District of Columbia during the past few years, served as well in the Department of Justice.

Despite Mr. Garland's obvious and many qualifications for this job, we must vote on whether he will serve on the D.C. Circuit Court of Appeals. Frankly, we should leap at the opportunity to have him on that court. But we are not here today to consider the significant contribution Mr. Garland's appointment could have to the D.C. circuit. Rather, we are focusing on whether the D.C. circuit needs 11 judges rather than 10 judges.

I submit that this debate is not just about numbers. It is about the administration of justice; the fair, prompt, equitable, and thorough administration of justice is at stake. In all fairness, I must confess that I would rather err on the side of too many judges than too few. I would rather have too many judges doing too thorough and too thoughtful a job than too few judges rushed and careless in frantic efforts to handle their caseload. No one but the most shortsighted argues that the D.C. circuit does not need this 11th judge. Indeed, last year when the debate turned on whether a 12th judge was needed, the Reagan-appointed Judge Silberman was often cited in support of the effort to cut that 12th seat. However, he recently wrote to the Judiciary Committee and said, ''I still believe we should have 11 active judges.'' So why are we arguing about this 11th seat today?

Some argue that D.C. circuit judges handle fewer cases per judge than any other circuit. I won't make an analogy to the Supreme Court in the number of cases that they handle. We know they are cases of great moment, and they should have the time to deliberate them in an appropriate manner. But the smaller number of cases per judge is an inaccurate way of measuring the work of the D.C. circuit judges. Let me say, at the outset, that we cannot overlook the fact that this circuit, more than most—probably more than any—has many administrative appeals to consider. As the Federal appeals court sitting in the Capital, the D.C. circuit handles the lion's share of administrative appeals.

This chart that was prepared gives an idea of the administrative agency appeals filed per judge in all the Federal circuits across the United States. If you will note, D.C. circuit has 56 appeals filed per judge. Most other circuits are in the teens—the eighth circuit, only 8; the ninth circuit is 37. But it is a significantly different caseload that faces the judges in these circuits.

For those who are not familiar with these administrative cases, I suggest that you not dismiss them because of the word ''administrative.'' Let me show you what I mean. This is a file for one administrative law case that a judge must pore through to come to a good conclusion.

Let me show you another thing. This is a pro se petition from a prisoner in jail. There are many of these that are filed across the country. But consider the gravity and the challenge of this administrative appeal, as opposed to this rather smaller appeal in terms of volume. So these judges who serve in this circuit really bear an unusually large responsibility in extremely technical cases. Over the last 3 years, for which data is available, 45.3 percent of the cases filed in the D.C. circuit were administrative appeals of the size and complexity that I have just noted, compared with an average of 5.9 percent outside the D.C. circuit.

Let me also add here that I could go into detail, but I will not because I know it is the intent of the Chair to move this matter to a vote very quickly. I also want to comment for a moment on the period of time that this very able nominee has waited for confirmation. It is unfortunate. In fact, it is sad, and it borders on tragic, that men and women who are prepared to give their lives to public service, who have gone through a withering process of investigation, by the FBI, by the Judiciary Committee, by the White House, by the American Bar Association, and so many others, still must wait over a year, in many cases, for their nominations to be considered by the Judiciary Committee and by this Chamber.

I will tell you, a few days ago it was my good fortune to speak to a group of judges at the Supreme Court Building. As I walked through that building and saw the busts of great jurists who have served this country, I wondered how many of them could pass the test that we now impose on nominees today, how many of them would be willing to endure that test and to say that their family, friends, colleagues, and others that their lives will be on hold waiting for some decision from Capitol Hill. It does a great disservice to this country and to the judiciary for us to create a process that is so demanding that ordinary people would be discouraged from trying.

We have, in this case, an extraordinary individual, Merrick Garland, who has waited patiently now for over a year to be considered by this Judiciary Committee and by this U.S. Senate.

I hope those on the other side will make an effort to overcome the problems that we have seen over the past year. We really have to address the fact that there are so many vacancies on Federal benches across this country—not just in the District of Columbia but almost 100 nationwide—vacancies that need to be filled so that people will be treated fairly. If those vacancies are not filled with honest and competent individuals in a timely manner, it is a great disservice to this country.

I think we should move and move quickly to approve this nomination of Merrick Garland. I hope that his patience will be rewarded today, as it should be. I am certain, based on his background and all that I have come to know of him and my personal meeting with him, that he will make an extraordinary contribution.

We need the 11th judge in the D.C. circuit to handle this mountain of administrative appeals. How many people will come to us and complain, ''Oh, the case is in court, and it is going to take forever. What is going on, Senator? What is going on, Congressman? Why aren't the courts more responsive?'' Part of the problem is that the bench is vacant, the judges aren't appointed, and the caseload that has been imposed on these judges is overwhelming.

We can take care of one circuit today by the appointment of this fine man to fill this seat.

Thank you, Mr. President.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent that an article from the Legal Times of August 1995 regarding Mr. Garland be printed in the RECORD.

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

[From the Legal Times, Aug. 7, 1995]

GARLAND: A CENTRIST CHOICE

(By Eva M. Rodriquez)

He was schooled at Harvard in administrative law by moderate professor-turned-Justice Stephen Breyer, and took his antitrust training from conservative Philip Areeda.

He earned his prosecutorial stripes under Jay Stephens, the hard-charging Republican U.S. attorney in the District and former deputy counsel to President Ronald Reagan. And he cut his teeth in the private sector as a partner at Arnold & Porter, one of the city's wealthiest and most influential firms.

At first blush, Merrick Garland may seem like a solid-judicial pick for a Republican president. But according to two administration sources, the 42-year-old top aide to Deputy Attorney General Jamie Gorelick is almost certain to be President Bill Clinton's third nominee to be the prestigious U.S. Court of Appeals for the D.C. Circuit.

Although Garland has his share of liberal credentials—including a coveted clerkship with retired Supreme Court Justice William Brennan Jr.—he is almost sure to be a much more middle-of-the-road jurist than the man he would replace, former Chief Judge Abner Mikva, who retired from the D.C. Circuit last fall to take the job of White House counsel.

News of Garland's near-lock on the nomination has left a smattering of liberals privately grumbling that he is too conservative. But his nonideological approach and his easy rapport with both liberals and conservatives has earned Garland high praise from people on both sides of the aisle.

''I think he is a very talented lawyer,'' says Garland's former boss Stephens, now a partner at the D.C. office of San Francisco's Pillsbury, Madison & Sutro. ''He's bright, energetic, and he has a very balanced demeanor.''

Garland's current boss also lauds him. ''He has enormous personal and intellectual integrity, impeccable legal credentials, a breadth of experience in both public and private sectors, and the personality and demeanor that you'd expect in a judge,'' says Gorelick, who acknowledges that she is a strong backer of Garland's but declines to discuss whether he is definitely the administration's nominee. ''He is very thoughtful, is good at listening to all points of view, and makes decisions on the merits.'' Attorney General Janet Reno also thinks highly of Garland, Gorelick says.

The widespread praise Garland garnered for his thorough and evenhanded leadership during the critical initial investigation into the Oklahoma City bombing also hasn't hurt his chances for a nomination to the federal bench.

A Republican staffer on the Senate Judiciary Committee declines to discuss Garland's chances for confirmation, other than to say that the committee has received no opposition in anticipation of a Garland nomination.

Garland, a 1977 magna cum laude graduate of Harvard Law School who clerked for famed 2nd Circuit Judge Henry Friendly in addition to Brennan, declines comment. Mikva was out of town and could not be reached for comment.

Garland's reputation as a nonideological thinker may have helped him win the nomination over Peter Edelman, who last fall was reportedly the White House's top pick for the D.C. Circuit vacancy. Edelman, who is currently counselor to Health and Human Services Secretary Donna Shalala, was a favorite of the more liberal ranks in the Democratic Party, but he immediately drew opposition from conservatives—including Sen. Orrin Hatch (R–Utah), chairman of the Senate Judiciary Committee, who believed Edelman to be too radical and too activist in his approach to the law. Opposition to Edelman only intensified after the GOP's sweeping victory in last fall's midterm election.

Edelman, according to two lawyers involved in the judicial-selections process, is likely to be nominated for one of the two vacancies on the U.S. District Court here. But D.C. Del. Eleanor Holmes Norton, whose judicial nominating commission has forwarded names to Clinton for previous D.C. federal court vacancies, may have candidates of her own. The commission will accept applications for the two vacancies until August 11.

The two sources say Clinton is likely to nominate Garland before Congress breaks for the August recess. The two sources also say that the president may decide to submit a package of D.C. nominees, including one for the appeals court vacancy and another for one of the two open seats on the District Court. One trial court vacancy was created in June when Judge Joyce Hens Green took senior status; the other came open when Judge Harold Greene followed suit earlier this month.

Others mentioned as possible contenders for a District Court seat include Brooksley Born, a partner at D.C.'s Arnold & Porter who is said to have very strong support among women's groups, and U.S. Attorney Eric Holder, Jr., who is a former D.C. Superior Court judge and at one time was mentioned as a possible appeals court nominee.

Mr. LEAHY. Mr. President, I thank the distinguished Senator from Illinois. His dramatic showing of the difference between the pro se appeals that many courts handle and the complexity of the administrative issues that the District of Columbia Circuit Court of Appeals handles is very instructive for us. Everybody talks about caseloads. Some

cases are handled in a matter of minutes. Others take months. They each count for one case. He has demonstrated that in the District of Columbia circuit, because of its unique nature, many of them count for a month.

Mr. President, I withhold the remainder of my time.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, my good friend from Illinois, the distinguished Senator, has just spoken. I would just observe that more government isn't necessarily better government, and, also, in the sense of justice more judges do not automatically guarantee better justice.

I can remember from my service, being appointed by the Chief Justice in 1989, I believe it was, to a 2-year study, the only study we have ever had, of the Federal judiciary that we were looking and projecting what number of cases were going to have to be filed over the next couple of decades. The only conclusion you could come to, if those figures were accurate—and, so far, they have been proven to be accurate—is that you could never appoint enough judges to take care of the problems that we are having with the explosion of cases; that you have to look at a lot of other ways. How do you dispense justice in the less-adversarial environment of a courtroom and in the less-costly environment of the courtroom? For instance, what can you do for alternate dispute resolutions? There are a lot of other ways that I as a nonlawyer am not qualified to speak to. But I can tell you that more judges is never going to solve the problem of more cases.

Another area we have to do something about is tort reform, as an example of something that we have to do about the number of cases piling up.

So I just ask my good friend from Illinois to think about those things as well.

I want to respond to some of the comments raised by those who feel that the caseload statistics indicate that filling the 11th seat is necessary. In my view, this is not a fair reading of the caseload numbers.

I point my colleagues' attention to a Washington Times editorial which appeared on October 30, 1995. That editorial considered the question of whether or not the administrative type of cases in the D.C. circuit are really as complicated and so complicated that caseload statistics can be misleading. I would like to quote from that editorial.

> Per panel the District of Columbia circuit averages at best half the dispositions of other circuits. To make a perfectly reasonable comparison that takes account of the greater complexity of the cases in the D.C. circuit, then we should be asking, Is each case in the D.C. circuit on average twice as complicated as the average case in the other circuits? That seems unlikely in the extreme.

It seems to me that this point is exactly correct. Granted, the caseload of the circuit is a little different. I grant that.

I agree with the point made in a hearing I held on the District of Columbia circuit in my subcommittee. The point is that other circuits—the second circuit in particular—have a large percentage of complicated cases. In the second circuit, those cases are complex, commercial litigations coming out of New York City. But you do not hear people complaining that the total staffing level of the second circuit should not be determined according to those statistics.

So I believe that complexity of cases in the D.C. circuit is overstated. It really is a nonargument when the number of agency cases has declined by 23 percent in the last year. Moreover, now the District of Columbia circuit has a senior judge. That happens to be a former member of this body, Judge Buckley. Since senior judges must carry at least a one-third caseload, and they typically carry a one-half caseload, it is fair to consider the District of Columbia circuit as having 10½ judges right now when the ratio says 9½ judges.

So let's see if what we have works because what we have right now won't cost the taxpayers any more money.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Thank you, Mr. President.

I am pleased to be able to comment on this judicial vacancy. I certainly respect Senator GRASSLEY and his comments. I agree with him very, very much.

I think it is an important point to note that people say that administrative cases are difficult to administer, and that they may have a file that is fairly thick. Well, judges have law clerks. They go through the files. Even if the file is thick, the issue coming up on an administrative appeal may be very simple and may involve nothing more than a simple interpretation of law. Many of those can be disposed of very easily.

Based on my 12 years of experience as a U.S. attorney practicing in Federal court in cases involving all kinds of Federal litigation, I don't at all concede the point that every administrative law case is substantially more difficult than others. As a matter of fact, Judge Silberman testified in 1995 that it is true that the administrative law cases are generally more complicated, and other judges in other circuits, like the second circuit, will tell you that some of their commercial litigation coming out of the Federal district court is terribly complicated, too. I am not in a position to compare the two.

Let me just say this from personal experience. I talked earlier today about the testimony of Chief Judge Tjoflat from the Eleventh Circuit Court of Appeals. He said that they have 575 cases per judge, and that they cannot handle any more cases. I was involved in a 7-week trial of a criminal case that I personally prosecuted. In the course of that trial 18,000 pages of transcript were generated, and when the case was heard on appeal, there were 20 or more issues involving 5 or more defendants. Many of these criminal cases are extremely difficult.

I will also point out that the eleventh circuit includes the southern district of Florida which probably has, outside of New York and California, the largest number of complex criminal cases, in particular international drug smuggling cases, of any circuit in America. Those cases are sent to the eleventh circuit and yet they can manage their caseload in this fashion. I think it is a remarkable accomplishment.

The fourth circuit, with 378 cases per judge, has the fastest turnaround of any circuit in America.

We talk about the need to move cases rapidly, and it is argued that we need more judges to move cases rapidly. How is it that the fourth circuit, with 378 cases per judge, has the fastest disposition rate of any circuit in America? It is because they are managing their caseload well and because they do not have more judges than are necessary. As Judge Tjoflat testified before our committee, too many judges actually slows down the process and makes good judging more difficult. I think that is a matter that we should address.

I would like to note that we have not delayed this matter. We are prepared to have this matter come to a vote. More delays would have been possible if we had wanted simply to delay this process. I feel it is time to vote on this issue. I respect the legal ability of Mr. Garland. He was on the Harvard Law Review. It does not bother me if he was editor in chief of the Harvard Law Review. It would not bother me if he had been editor in chief of the law review at the University of Alabama School of Law. The fact remains that the taxpayers should not be required to pay for a judge we do not need. The taxpayers should not have to pay $1 million per year for a judge that is not needed.

Mischief sometimes gets started. I recall the old saying my mother used to use: an idle mind is the devil's workshop. We need judges with full caseloads, with plenty of work to do, important work to do.

This circuit is showing a serious decline in caseload. In fact, caseload in this circuit declined 15 percent last year. That decline continues. I think it would be very unwise for us to fill a vacancy if there is any possibility that the caseload will continue to decline. We do not need to fill it now, and we certainly do not need to fill it in the face of this declining caseload, because once it is filled, the judge holds that position for life and the taxpayers are

obligated to pay that judge's salary for life. That is an unjust burden on the taxpayers of America.

Fundamentally, this is a question of efficiency and productivity. There are courts in this Nation that are overworked, particularly many of the trial courts. We may not have enough money to fill those vacancies. Let us take the money from this Washington, DC circuit court and use it to fund judges and prosecutors and public defenders in circuits and district courts all over America that are overcrowded and are overworked.

Those are my comments. We have studied the numbers carefully. We are not here to delay. We are not here in any way to impugn the integrity of Mr. Garland. By all accounts, he is a fine person and an able lawyer. He does have a very good job with the U.S. Department of Justice. We probably need some trial judges here in Washington, DC, and if the President nominated him to be one of those trial judges, I would be pleased to support him for that.

That will conclude my remarks at this time.

I ask unanimous consent to have printed in the RECORD a letter from Judge Silberman dated March 4, 1997, in which he said that the filling of the 12th seat would be frivolous and in which he noted the continuing decline in caseload.

I also ask unanimous consent to have printed in the RECORD a letter from the Director of Governmental Affairs for the Christian Coalition written in opposition to the filling of this vacancy, noting that it is not warranted.

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

U.S. COURT OF APPEALS,
DISTRICT OF COLUMBIA CIRCUIT,
Washington, DC, March 4, 1997.

Hon. ORRIN G. HATCH,
Dirksen Senate Office Building,
Washington, DC

DEAR CHAIRMAN HATCH: Your asked me yesterday for my view as to whether this court needs 11 active judges and whether I would be willing to communicate that view to other senators of your committee. As I told you, my opinion on this matter has not changed since I testified before Senator Grassley's subcommittee in 1995. I said then, and I still believe, that we should have 11 active judges.

On the other hand, I then testified and still believe we do not need and should not have 12 judges. Indeed, given the continued decline in our caseload since I testified, I believe that the case for a 12th judge at any time in the foreseeable future is almost frivolous. As you know, since I testified, Judge Buckley has taken senior status and sits part-time, and I will be eligible to take senior status in only three years. That is why I continue to advocate the elimination of the 12th judgeship.

Sincerely,

LAURENCE H. SILBERMAN,
U.S. Circuit Judge.

CHRISTIAN COALITION,
Washington, DC, March 19, 1997.

DEAR SENATOR: I am writing to urge you to vote against confirming judicial candidate Merrick Garland. The workload for the D.C. Circuit does not warrant filling either the 11th or 12th seats on the D.C. Circuit. When one considers that approximately 1 million dollars worth of taxpayer dollars is involved for each judgeship, it is important for the Senate to eliminate unnecessary seats whenever possible. Please vote against confirming Merrick Garland. Thank you for your consideration of our views.

Sincerely,

BRIAN LOPINA,
Director, Governmental Affairs Office.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I am glad to hear that nobody wants to delay Merrick Garland. I would only point out that his nomination first came before us in 1995, and he was voted out of committee, I believe unanimously, by Republicans and Democrats alike, in 1995. We are going to vote, I hope, very soon to confirm him. But if that is not delay, I would hate like heck to see what delay would be around here. He was nominated in 1995, got through the committee in 1995 and will finally get confirmed in 1997.

I understand other members say they would be perfectly willing to help out on the district court; we need help. We have Judge Colleen Killar-Kotelly who is still waiting, nominated very early in 1996, has yet to come through, even though in 1996 alone the criminal case backlog increased by 37 percent. We talk about getting tough on criminals. We certainly will not send the judges that might do it.

I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I would like to make a brief statement to explain my vote that I will cast later on today. I know we are having interesting discussion, and this is one that has been a long time coming, getting this judgeship to the floor of the Senate for a vote.

Obviously, there has been support for this nominee by Senator HATCH and by Senator SPECTER and others. Senator LEAHY has been pushing to get these judges voted on. This is the first one of the year. I presume this is a celebratory event.

Mr. LEAHY. It is showing, if my friend from Mississippi will yield, remarkable speed. As I said, he was nominated in 1995, first got through the committee unanimously, Republicans and Democrats, in 1995. We are now just before our second vacation of the year in 1997. I am glad, whenever it is, to get him through.

Mr. LOTT. But now maybe I can comment just briefly on why it has taken so long. There were a lot of factors involved. I will vote not to confirm Merrick Garland to be a D.C. Circuit Court of Appeals judge. I have no opposition to Mr. Garland himself. I think he is qualified. I think he has experience that would be helpful. And I think his disposition is acceptable, too.

In fact, based on all the reports that I have heard about him, I think he more than likely would be a much more acceptable nominee to this court as compared to many of the other nominees we have considered or may be considering in the future.

It is my belief that this court of appeals is more than adequately staffed based on the number of cases pending on the court's docket, the filings per judge at this court as it is currently staffed for the year ending September, 1996, with the trend of such filings over the last several years, and in comparison to other workloads of circuit courts of appeal around the country. It is very small. I think as compared to others certainly they have more judges than they need.

I am looking at this chart over here. The District of Columbia Court of Appeals is at the bottom end of the caseload, and yet you have other circuit courts across the country—my own circuit, the fifth, is about in the middle. The eleventh circuit obviously has a high caseload as compared to this particular court.

So I really do not think this confirmation is needed. Even if it does get through, I want to say right now that regardless of the next nominee, unless this caseload is dramatically turned around, I hope it would never even be considered regardless of how qualified the nominee may be, he or she, in a Democratic administration.

I recognize that some circuits do have tremendous caseloads, but this is certainly not the case in this circuit, and therefore I will vote against the nomination based on that. In fact, I just do not think an additional judge is needed in this district court of appeals.

I ask unanimous consent to print in the RECORD a list of the filings per judge in 1996 and the total appeals docket in 1995 per judge that shows as compared to other circuits this judge is not needed.

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

Appeals filed per judge in 1996:

D.C. Cir., 123	6th Cir., 341
10th Cir., 216	9th Cir., 360
1st Cir., 227	2nd Cir., 372
3rd Cir., 280	4th Cir., 378
7th Cir., 295	5th Cir., 443
8th Cir., 307	11th Cir., 575

Total appeals on docket for year ending 1995/per judge:

1st Cir., 1339 (4 judges=335)
2nd Cir., 3987 (12 judges=332)
3rd Cir., 3485 (13 judges=268)
4th Cir., 3542 (12 judges=295)
5th Cir., 5696 (15 judges=380)
6th Cir., 3343 (13 judges=257)
7th Cir., 2200 (8 judges=275)
8th Cir., 3176 (10 judges=318)
9th Cir., ?
10th Cir., 2104 (8 judges=263)
11th Cir., 6057 (10 judges=606)
D.C. Cir., 2065 (10 judges=206)

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Missouri.

Mr. ASHCROFT. I yield myself such time from the opposition time as is necessary for me to make a statement.

Mr. President, I rise today to speak, not in opposition to Merrick Garland for filling the seat on the U.S. court of appeals, but in opposition to filling the seat at all. The U.S. Court of Appeals for the District of Columbia Circuit is a judicial circuit which has the lowest caseload of any of the judicial circuits in the country, and I think this is a time when we ought to ask ourselves some serious questions about whether or not we intend to staff circuits in spite of the fact that there are adequate judges in the circuits to handle the caseload which is currently required of the circuit.

First, the amount of judicial work in the circuit raises questions about the necessity of confirming another appellate judge for the D.C. circuit. It appears that filling this vacancy would be an inefficient use of judicial resources. Before filling any vacancy for an appellate judgeship, the U.S. Senate should look at the filings per judgeship compared with other jurisdictions. Of the 12 courts of appeals, the D.C. circuit has the lowest filings per judge of any of the 12 courts of appeals. While the D.C. circuit has had only 123 cases filed per judge, the eighth circuit, the circuit in which I live, handled nearly three times the D.C. circuit's total of appeal filings, with 307 appeals filed per judge. The eleventh circuit court of appeals, in comparison, had 575 appeals filed per judge.

The D.C. Circuit Court of Appeals now has two open seats. But Judge James Buckley, who took senior status last year, which means he is still obligated to handle a caseload equivalent to that of an average judge in active service who would handle a 3-month caseload, is still there. So you have a senior status judge who is handling the equivalent of a quarter of the load that a normal judge in the circuit would handle. So you do not have the loss completely of the second judge in those two vacancies; you have the loss of one judge, and then you have one-quarter judge in the senior status making up for any slack.

Still, the D.C. circuit is the least populated with work. And it is the circuit that does not merit additional judges to conduct the work which simply is not there. If we were to use the formula expressed by the Judicial Conference, between 1986 and 1994 the D.C. circuit court would rate just in the order of nine judges to handle its current caseload. So, in terms of the Judicial Conference's own assessment of how many judges would be needed, the caseload of the D.C. circuit would rate nine judges. It has 10 judges now, and if you start to add the additional caseload that can be handled by senior judges, it seems to me that adds an additional capacity of that court to handle work for which it is already overstaffed.

While appeals filings for all of the Nation's U.S. courts of appeals increased to an all-time high of 4 percent, the number of filings filed in the D.C. circuit actually dropped last year; it dropped 15 percent. So you have an increase of appeals in the system generally of 4 percent, you have a decline in the D.C. circuit of 15 percent, of the 12 additional circuits, the District of Colombia had the largest decline in appeals last year.

Mr. President, ending the era of big Government includes all three branches of government. But if we cannot end big government where we have had declining demand for services, and where we are already overstaffed, where can we end big government? To believe that the judicial branch should be excluded from the exercise of responsibility or should be overstaffed or should ignore the trends in terms of case filings and should be overpopulated with individuals because there are slots available, in spite of the fact that the work or the caseload is not there to justify those slots, would be for us to deny a responsible position in this matter.

Let me just indicate that there are two vacancies and virtually everyone will confess that at least one of them should not be filled. This is not a matter of saying some people think all the vacancies ought to be filled; others think that neither of the two should be filled. There is a general consensus that filling the second of the two would certainly be a waste and surplus. I think if you look carefully and you measure the caseload by what the Judicial Conference had previously stated was an appropriate caseload, and you look at the potential for work by the senior active judges who have taken senior status, you can come but to one conclusion, that it is not an appropriate deployment of the tax dollars of the citizens of this great Nation to add a judge to a court where the workload does not justify it.

Good government is not to fill a vacancy simply because it exists. To fill this vacancy without taking into account the lack of caseload is fiscally irresponsible.

Before I yield the floor, I would like to address the argument that the D.C. court of appeals might be considered to be a different court, unique, one of a kind, because it has a lot of cases that are administrative in nature and they have a certain level of complexity. I think in this regard it is important to cite Judge Silberman, who sits on the D.C. court of appeals. On this point, in 1995, he testified as follows:

It is true that the administrative law cases are generally more complicated. But other judges in other circuits, like the second circuit, will tell you that some of their commercial litigation coming out of the Federal District Court is terribly complicated, too. The truth of the matter is, some of the administrative law cases in the D.C. circuit are complicated. But if you look at the second circuit, the caseload of which is more than twice as much as the D.C. circuit, in the second circuit their caseload is complicated as well.

The fact of the matter is, it is time for the U.S. Senate, which called the circuit courts into creation, which called district courts into creation, to begin to exercise a responsible approach toward staffing those courts and not to staff them when the workload does not justify it. Even if the nature of the cases coming before the D.C. circuit is unique, those cases are not so difficult, or different from the other cases which have their own uniqueness and have their own difficulty, whether they be commercial instead of administrative, so as to mean that we should populate the court with staffing which is not required by the caseload.

Mr. President, I plan to vote against Mr. Garland, not for any reason to impair his standing or his credentials. I do not think this is a question about the qualifications of the judge. But it is a question about the deployment of the public's resource and about the staffing level for courts which do not have caseload to justify it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Vermont.

Mr. LEAHY. Mr. President, there has been a lot of discussion, just now again, quoting Judge Silberman. What is needed—I would note, he wrote to the distinguished chairman, Senator HATCH, and said that we should have 11 active judges. We talk about this as though the nominee was going to be the 12th judge. In fact, the nominee is the 11th judge.

I ask unanimous consent that a letter dated March 4, 1997, by Judge Silberman, in which he said, ''. . . I still believe that we should have 11 active judges,'' be printed in the RECORD at this point.

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

U.S. COURT OF APPEALS,
DISTRICT OF COLUMBIA CIRCUIT,
Washington, DC, March 4, 1997.

Hon. ORRIN G. HATCH,
Dirksen Senate Office Building,
Washington DC.

DEAR CHAIRMAN HATCH: You asked me yesterday for my view as to whether this court needs 11 active judges and whether I would be willing to communicate that view to other senators of your committee. As I told you, my opinion on this matter has not changed since I testified before Senator Grassley's subcommittee in 1995. I said then, and I still believe, that we should have 11 active judges.

On the other hand, I then testified and still believe we do not need and should not have 12 judges. Indeed, given the continued decline in our caseload since I testified, I believe that the case for a 12th judge at any time in the foreseeable future is almost frivolous. As you know, since I testified, Judge Buckley has taken senior status and sits part-time, and I will be eligible to take senior status in only three years. That is why I

continue to advocate the elimination of the 12th judgeship.

Sincerely,

LAURENCE H. SILBERMAN,
U.S. Circuit Judge.

Mr. HATCH. Mr. President, I have been sitting here listening to this. In all honesty, I would like to see one person come to this floor and say one reason why Merrick Garland does not deserve this position. It has been almost a year. In the last Congress, I must have gone on this issue, trying to get him up, for most of that time.

First, there was the 12th seat, he was going to get that. Then, when Buckley retired, everybody that I know of, who knows anything about it, other than some of our outside groups who do not seem to want any judges, said that we need the 11th seat.

As I suspected, nobody in this body is willing to challenge the merit of Merrick Garland's nomination. I have not heard one challenge to him yet. In fact, they openly concede that Mr. Garland is highly qualified to be an appellate judge. Rather, they use arguments that the D.C. circuit does not need 12 judges in order to oppose the confirmation of Mr. Garland for the 11th seat on this court.

There is not a harder-nosed conservative or more decent conservative that I know than Larry Silberman. I talked to him personally. If he said to me they did not need the 10th seat, I could understand this argument, and I could understand this minirebellion that is occurring. But he said they needed the 11th seat. If he had said, ''All we need are 10 seats, we don't need the 11th or 12th,'' I would have been on his side, and it would not be because of partisan politics, it would be because I trust him and I believe in his integrity. But I called him personally and he said, ''Yes, we do need the 11th seat.''

My colleague from Alabama circulated a letter saying confirming Merrick Garland would be a ''ripoff'' of the taxpayers. Having just led the fight for the balanced budget amendment, I do not think that is quite fair. I am never going to rip off the taxpayers. But I will tell you one thing, playing politics with judges is unfair, and I am sick of it, and, frankly, we are going to see what happens around here. A ''ripoff?'' Let's be serious about this, folks. This is a serious matter.

My colleague referred to the testimony of Chief Judge Wilkinson of the fourth circuit. That is a different matter. I have challenged the distinguished chairman of the Subcommittee on Courts to look into that, and I am going to be heavily guided by what Senator GRASSLEY comes up with.

The statements of Judge Tjoflat from the eleventh circuit has also been mentioned. But what do the judges on the D.C. circuit court say? It is one thing for Wilkinson to get up and make a comment, it is another thing for Tjoflat, who has problems in that circuit, but what do the judges on the D.C. circuit say? Both Chief Judge Edwards and Judge Silberman, a respected conservative, agree that, in Judge Silberman's words ''it would be a mistake, a serious mistake for Congress to reduce the D.C. circuit down below 11 judges.''

If I did not believe that, I would not have brought this judgeship nomination to the floor. I have to tell you, if anybody doubts my integrity, I want to see them afterwards.

As for the statistics that have been cited, with all due respect, they are not a fair or accurate characterization of the D.C. circuit's caseload relative to the other circuits' caseloads. I made that case earlier.

I am prepared to yield back the time if the other side is prepared to yield back their time. Is there anybody going to want to speak on the other side?

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I am prepared to yield back time.

The PRESIDING OFFICER. The Senator from Utah has no time to yield back at this point. The Senator from Iowa has approximately 17 minutes remaining on the opposition side.

Mr. SESSIONS. I would like to be recognized.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, there is nobody in this body who has fought harder for a balanced budget amendment and for controlling Federal spending than the distinguished Senator from Utah, Senator HATCH. His leadership has been terrific on that. I respect that. I guess we just have a disagreement.

I think it is really unusual that a judge would cite a 12th seat as frivolous and note in his own letter that it was frivolous because of a declining caseload. Even though Judge Silberman himself said he felt they ought to go ahead and fill the 11th seat, we, after full study of it and in the course of careful deliberations, had the opportunity to hear from two other chief judges from two other circuits that indicated, even though they have much higher caseloads, 575 to 378 cases per judge, that they did not need a new circuit judgeship.

So, therefore, I concluded that a circuit with 124 cases per judgeship did not need to be filled, and that the $1 million per year, if it is not justified, would be a ripoff of the taxpayers. I feel that we can spend that money more efficiently on trial judges in circuits and districts that are already overwhelmed with heavy caseloads and not on the D.C. circuit that is overstaffed already. I yield the floor, Mr. President.

Mr. GRASSLEY. We yield back the time on our side, and I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Merrick B. Garland, of Maryland, to be U.S. circuit judge for the District of Columbia circuit? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio [Mr. GLENN] is necessarily absent.

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

The result was announced—yeas 76, nays 23, as follows:

[Rollcall Vote No. 34 Ex.]

YEAS—76

Abraham	Feingold	Mikulski
Akaka	Feinstein	Moseley-Braun
Baucus	Ford	Moynihan
Bennett	Gorton	Murkowski
Biden	Graham	Murray
Bingaman	Harkin	Reed
Bond	Hatch	Reid
Boxer	Hollings	Robb
Breaux	Hutchison	Roberts
Bryan	Inhofe	Rockefeller
Bumpers	Inouye	Roth
Byrd	Jeffords	Santorum
Campbell	Johnson	Sarbanes
Chafee	Kempthorne	Smith, Bob
Cleland	Kennedy	Smith, Gordon H.
Coats	Kerrey	Snowe
Cochran	Kerry	Specter
Collins	Kohl	Stevens
Conrad	Landrieu	Thomas
D'Amato	Lautenberg	Thompson
Daschle	Leahy	Torricelli
DeWine	Levin	Warner
Dodd	Lieberman	Wellstone
Domenici	Lugar	Wyden
Dorgan	Mack	
Durbin	McCain	

NAYS—23

Allard	Frist	Kyl
Ashcroft	Gramm	Lott
Brownback	Grams	McConnell
Burns	Grassley	Nickles
Coverdell	Gregg	Sessions
Craig	Hagel	Shelby
Enzi	Helms	Thurmond
Faircloth	Hutchinson	

NOT VOTING—1

Glenn

The nomination was confirmed.

Mr. LEAHY. Madam President, I move to reconsider the vote.

Mr. HATCH. I move to lay it on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, this is the first judge confirmed in this Congress. I hope it will be the first of many, many.

I remind my colleagues we have close to 100 vacancies in the Federal court. We have begun with one of the most outstanding nominations any President has sent.

That is the nomination of Merrick Garland—now Judge Garland. I compliment him on that. He was nominated in 1995; it first passed through the Judiciary Committee unanimously in 1995, and it is now 1997. We need to move——

Mrs. BOXER. Madam President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order. The Senator is entitled to be heard.

The Senator from Vermont.

Mr. LEAHY. Madam President, I thank the Chair. I wish also to compliment my friend, the distinguished senior Senator from Utah for his help in doing this. I also wish to compliment Senators who paid attention to his very, very strong statement at the end of this debate on behalf of Judge Garland. I think that the Senator from Utah and I are committed to trying to move, in a bipartisan fashion, to get these judges here. I hope all Senators will join us in doing that. The Federal judiciary should not be held hostage to partisan, petty, or ideological constraints that really reflect only a minority of views.

The Federal judiciary is really a blessing in our democracy in the fact that it is so independent. Our Federal judiciary is the envy of all the rest of the world. The distinguished Senator from Utah and I are committed to keeping it that way. We will work together to keep it that way. I thank him for his help on this nomination.

Mr. DASCHLE. Mr. President, I would like to reiterate what PAT LEAHY has said about how glad we are that Merrick Garland has finally been considered by the Senate for appointment to the U.S. Court of Appeals for the District of Columbia Circuit. We wholeheartedly believe that Mr. Garland is highly qualified for this position and deserves the strong vote we just gave him.

Mr. Garland has been awaiting this day since being nominated by the President on September 5, 1995—1½ years ago. His qualifications are clear. The ABA's standing committee on the Federal judiciary found him well qualified to serve on the Federal bench, and he has received the support of a bipartisan and ideologically diverse group of individuals.

His credentials cannot be challenged. He has worked at the Department of Justice as the Principal Associate Deputy Attorney General, in private practice and served as a law clerk to Justice Brennan on the Supreme Court and a law clerk to Judge Friendly on the U.S. Court of Appeals for the Second Circuit.

I am happy that today, after his long wait, Merrick Garland finally knows that he will serve as a Federal judge.

It is unfortunate, however, that we have not yet voted on any other judges during this session of Congress—at a time when we have almost 100 vacancies on the Federal bench. That is a vacancy rate of over 10 percent.

I hope that voting on Merrick Garland's confirmation today signals that we are going to address this serious problem and begin to fill those long empty seats on the Federal bench.

Mr. President, I am extremely pleased that the Senate has confirmed the nomination of Merrick Garland to the U.S. Court of Appeals for the District of Columbia Circuit. Let us ensure that our Federal bench has a full complement of such qualified judges so that the business of justice can go forward.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Madam President, I want to thank my colleagues who voted for Judge Merrick Garland. I believe they did what was right.

With regard to Federal judgeships, we ought to do what is right. I take this job as seriously as anything I have ever done in the Senate. I want to thank my colleagues who voted with us for supporting the nominee.

Having said that, there have been a serious number of nominees whom we have confirmed in the past who have proven to be activist judges once they got on the bench and who told us when they were before the committee they would not be activist and they would not undermine the role of the judiciary by legislating from the bench. Then they get to the bench and they start legislating from the bench.

I want them to know, and I want to send a warning to the judiciary right now, if they are going to continue to disregard the law, if they are going to continue, in many respects, to bypass the democratic processes of this country, if they are going to start substituting their own policy preferences for what the law really says, then it is going to be a tough time around here. This vote proves it.

I don't feel good about all those who voted against this nomination, but the fact of the matter is that there is some reason for their doing so. Republicans are fed up with these judges who disregard the role of judging once they get to the courts, after having told us and promised that they will abide by the role of judging. Now, I am upset—there is no question about that—because I think the finest nominee that I have seen from this administration is Merrick Garland, and I think he deserved better. But I also understand my colleagues.

I am sending a warning out right now that these judges who are sitting on the bench better start thinking about the role of judging and quit trying to do our jobs. We have to stand for reelection. That is why the buck should stop here—not with some Federal judge who is doing what he or she thinks is better for humanity and mankind.

We have judges on the Ninth Circuit Court of Appeals who could care less about what the Congress says, or what the President says, or what the legislative and executive branches say. That is why they are reversed so routinely by the Supreme Court. It is pathetic. I don't mean to single them out, but it is the most glaring example of activist judges in this country.

Let me just say this. I am sending a message right now that I intend to move forward with judges, and, if this administration will send decent people up here who will abide by the rule of judging and the rule of law and quit substituting their own policy preferences and finding excuses for every criminal that comes before them, they are going to have support from me. I hope they will have more support from the Judiciary Committee in the future. But if they are going to send up more activists, there is going to be war.

I don't think the judiciary has ever had a better friend than ORRIN HATCH; I know they haven't. I will fight for them. I think they ought to be getting more pay. I think we ought to support them in every way we possibly can. They are tough jobs, they are cloistered jobs. They are difficult jobs. They take great intellectual acumen and ability.

Madam President, I am telling you, we have far too many judges on both the left and the right who disregard what the rule of judging is and who legislate from the bench as superlegislators in black robes who disregard the democratic processes in this country and who do whatever they feel like doing. They are undermining the judiciary, and they are putting the judiciary in this country in jeopardy. I am darn sick of it. My colleagues on our side are sick of it. I don't care whether it is activism from the right or from the left; it is wrong. We ought to stop it, and the judiciary is the only place where it can be stopped.

I once had one of the most eminent legal thinkers in the country say that he has never seen anybody on the Supreme Court move to the right; they have always moved to the left as they have grown. I would like to not worry about whether they are moving right or left, but whether they are doing the job that judges should do.

I am serving notice to the Senate, too. I am chairman of the Senate Judiciary Committee, and I take this responsibility seriously. I want everybody in this body to know I take it seriously. It means a lot to me. I have tried a lot of cases in Federal courts. I have tried a lot of cases in State courts. I have a lot of respect for the judiciary. So I take this seriously, and I don't want politics ever to be played with it. I get a little tired of the other side bleating about politics, after the years and years of their mistreatment of Reagan and Bush judges and the glaring, inexcusable examples where they treated Republican nominees in a shamefully unfair way. Nobody could ever forget the Rehnquist nomination, the Bork nomination, and even the Souter nomination, where he wasn't treated quite as well as he should have been—and above all, the Clarence Thomas nomination; it was abysmal. Those were low points in Senate history. So I don't think either side has a right to start bleating about who is righteous on judges.

I intend to do the best I can here. I want my colleagues to know that. I certainly want to place my colleagues on my side, and I certainly want to do

the right thing for all concerned. This is an important nomination. I believe Merrick Garland will go on to distinction. Nobody will be more disappointed than I if he turns out to be an activist judge in the end. If he does, I think he will be one of the principal underminers in the Federal judiciary in the history of this country. But he told me he will not do that, and I trust that he will not. That doesn't mean we have to agree on every case that comes before any of these courts; we are going to have disagreements. And just because you disagree with one judge doesn't mean that judge should be impeached either. To throw around the issue of impeachment because you disagree with a judge here and there is wrong.

There are some lame-brained decisions out there, we all know that. Some of them are occurring primarily in California. Frankly, we have to get rid of the politics with regard to judges and start doing what's right. With every fiber of my body, I am going to try to do right with respect to judges because I respect that branch so much. To me, our freedoms would not have been preserved without that branch. But the way some of these judges are acting, our freedoms are being eroded by some in that branch. It is time for them to wake up and realize that that has to end.

I yield the floor.

SETTING THE RECORD STRAIGHT ON JUDICIAL NOMINATIONS

Mr. BIDEN. Madam President, I have not spoken on judges this year, but having worked on it for so many years with my friend from Utah, having either been the ranking member or chairman of that committee. But let me make one point.

It is one thing to say that we are going to disagree on judges. We did that when we were in control. We did that. And we said that all the judges that have been nominated here by two successive Republican Presidents—we picked seven out of a total of over 500—we said we disagree with these judges. The most celebrated case was Judge Bork, and less celebrated cases were people who have gone beyond being judges. Some are Senators. But the bottom line was that we understand that.

But what I do not understand is this notion and all of the talk about activist judges without any identification of who the activist judges are. It is one thing for the Republicans to say that we are not going to vote for or allow activist judges. We understand that. We are big folks. We understand baseball, hardball. We got that part. No problem.

But what I do not understand is saying we are not going to allow activist judges and then not identifying who those activist judges are. This is kind of what is going on here, and no one wants to say it. But since I have the reputation of saying what no one wants to say, I am going to say it.

Part of what is going on here is, and in the Republican caucus there are some who say, No. We want to change the rules. We want to make sure, of all the people nominated for the Federal bench, that the Republican Senators should be able to nominate half of them, or 40 percent of them, or 30 percent of them. That is malarkey. That is flat-out malarkey. That is blackmail. That has nothing to do with activist judges.

I do not doubt the sincerity of my friend from Utah. We have worked together for 22 years. But here is my challenge. Any judge nominated by the President of the United States, if you have a problem with his or her activism, name it. Tell us what it is. Define it like we did. You disagreed. You disagreed with the definition. But we said straight up, ''Bang. I do not want Bork for the following reasons.'' People understand that. But do not try to change 200 years of precedent and tell us that we are not letting judges up because we want the Republican Senator to be able to name the judge. Don't do that, or else do it and do it in the open. Let's have a little bit of legislating in the sunshine here. Do it flat in the open.

I see my colleagues nodding and smiling. I am sort of breaching the unspoken rule here not to talk about what is really happening. But that is what is really happening. I will not name certain Senators. But I have had Senators come up to me and say, JOE, here is the deal. We will let the following judges through in my State if you agree to get the President to say that I get to name three of them. Now folks, that is a change of a deal. That is changing precedent. That isn't how it works. The President nominates. We dispose one way or another of that nomination. And the historical practice has been—and while I was chairman we never once did that—that never once that I am aware of did we ever say, ''By the way, we are not letting Judge A through unless you give me Judges B and C.''

Now, let me set the record totally straight here. There are States where precedents were set years ago. The Republican and Democratic Senator, when it was a split delegation, have made a deal up front in the open. In New York, Senator Javits and Senator MOYNIHAN said: Look. In the State of New York, the way we are going to do this is that whomever is the Senator representing the party of the President—I believe they broke it down to 60—for every two people that Senator gets to name, the Senator in the party other than the President gets to name one. OK, fine. Jacob Javits did not go to PAT MOYNIHAN and demand that he was going to do that. MOYNIHAN made the offer, as I understand it, to Jacob Javits. That is not a bad way to proceed.

But now to come along and say, ''By the way, in the name of activist judges, we are not going to move judges'' is not what this is about.

I might point out that all the talk last election that started off—it all fizzled because it did not go anywhere—about how there is going to be an issue about activism on the courts, we pointed out that of all the judges that came up in Clinton's first term, almost all of them were voted unanimously out of this body by Democrats and Republicans, including the former majority leader. He only voted against three of all the nominees, then he argued, by the way, that Clinton nominated too many activist judges. And then it kind of fizzled when I held a little press conference, and said, ''By the way. You voted for all of them.'' It kind of made it hard to make this case that they were so activist.

So look. Let me say that I will not take any more time, but I will come back to the floor with all of the numbers and the details. But here is the deal.

If the Republican majority in the Senate says, ''Look, the following 2, 5, 10, 12, 20 judges are activist for the following reasons, and we are against them,'' we understand that. We will fight it. If we disagree, we will fight it. But if they come along and say, ''We are just not letting these judges come up because really what is happening is they are coming to guys like me and saying, 'Hey, I will make you a deal. You give me 50 percent of judges, and I will let these other judges go through.' '' Then that isn't part of the deal.

Look, I have a message to the Court. I know the Court never reads the CONGRESSIONAL RECORD, and Justice Scalia said that we should not consider the RECORD for legislative history because everybody knows that all the CONGRESSIONAL RECORD is is what Senators' staff say and not what Senators know. He is wrong. But that is what he said. Maybe they don't read it. But I want to send a message.

Madam President, when I was chairman of the committee and there was a Republican President named Reagan and a Republican President named Bush, the Judicial Conference on a monthly basis would write to me and say, ''Why aren't you passing more judges?'' They have been strangely silent about the vacancies that exist. Now, I agree that the administration has been slow in pulling the trigger here. They have not sent enough nominees up in a timely fashion. And I have been critical of them for the last 2 years, Madam President. But that is not the case now. All I am saying to you is, as they say in parts of my State, ''I smell a rat here.'' What I think is happening—and I hope I am wrong—is that this is not about activism.

This is about trying to keep the President of the United States of America from being able to appoint judges, particularly as it relates to the courts of appeals.

Now, what is happening is what happened today. Merrick Garland was

around for years. Now, what is going to happen is they are going to say we reported out a circuit court of appeals judge. Aren't we doing something. The truth of the matter is the proof will be in the pudding several months from now when we find out whether or not we are really going to move on these judges.

Let me point out one other thing. And I see my friend from Maryland in the Chamber, and I will yield particularly since I had not intended speaking at this moment.

Mr. SARBANES. I want to ask the Senator a couple questions when he finishes his statement.

Mr. BIDEN. The point I wish to make is this. When I was chairman of the committee and a Republican was President, we held, on average, a hearing for judges once every 2 weeks and had usually five judges, circuit court and district court, who we heard.

Last year we essentially had one hearing every other month and we had to fight to get three to four on the agenda to be heard.

Mr. SARBANES. Will the Senator yield for a question.

Mr. BIDEN. I will be happy to.

Mr. SARBANES. This is a chart that Senator LEAHY, now the ranking member on the Judiciary Committee, used today in the course of the Merrick Garland debate which I think is enormously instructive. It is the number of judges confirmed during second Senate sessions in Presidential election years.

Mr. BIDEN. I got it.

Mr. SARBANES. Now, in 1996, with a Democratic President, President Clinton, and a Republican Senate, the Senate confirmed no judges for the court of appeals, none whatsoever, and 17 judges for the district court. Now, in 1992, the previous election year—that was when Mr. Bush was President——

Mr. BIDEN. And I was chairman.

Mr. SARBANES. And if I am not mistaken, the distinguished Senator from Delaware was the very able chairman of the Judiciary Committee.

Mr. BIDEN. I did not say ''able.'' I was chairman.

Mr. SARBANES. I am suggesting the Senator is able. I am prepared to make that statement. We confirmed 11 court of appeals judges and 55—I repeat, 55—district judges in an election year. Now, that gives you some sense of how the Democratic majority in the Senate, led at the time by the able Judiciary Committee chairman, was dealing with this matter, essentially in a nonpolitical way.

In 1988, when I think, again, the Senator from Delaware was still the chairman of the Committee——

Mr. BIDEN. That is correct.

Mr. SARBANES. With President Reagan, a Republican President—again, in an election year—we confirmed 7 court of appeals judges and 35 district court judges. Actually, the 35 that we confirmed in that election year was better than the Republican Senate did for President Reagan in 1984 when they only confirmed 33 judges. In any event, clearly this performance in these years is in marked contrast to what happened in 1996 and what apparently is continuing now in 1997. Merrick Garland was the first judge approved this year.

Mr. BIDEN. If I may respond to the Senator, obviously the facts are correct, but I think it worth elaborating a little bit more on the facts. I saw my very able colleague, the present chairman of the Judiciary Committee, on television the other day, and he was talking about the number of judges that were ''left hanging,'' who were not confirmed and sent back to the administration at the end of 1992, the Bush administration. And he cited an accurate number. But as my very distinguished friend, who is, as well, a scholar, knows, there is an old expression attributed to Benjamin Disraeli, who said there are three kinds of lies: lies, damn lies, and statistics.

What my able friend from Utah did not mention is that just like President Carter—Carter's judges is a separate charge we can go back to, but just like President Clinton, President Bush did not get his nominees up here until the end of the process.

In other words, they were late getting here. Notwithstanding the fact that he was late in getting his nominees up, the Senator may remember in the caucus over the objection of some Democrats who said the Republicans would never do this, I insisted we confirm judges up to the day we adjourned the Senate. During the last week the Senate was in that year, we confirmed seven judges. I could have easily just sneezed and they would not have been confirmed. And the fact is the reason why we did not confirm more is because we did not have time to hold the hearings and we were holding hearings on 20 or more a month.

Mr. SARBANES. If the Senator will yield, I can recall the Senator was holding hearings right up into the fall of the election year and judges were being brought to the floor of the Senate and being confirmed. And he is absolutely correct; there were some——

Mr. BIDEN. Republican judges.

Mr. SARBANES. Yes, Republican judges. And there were some Members on the Democratic side who said, why are you doing this? We are about to have an election and the result may give us control of the White House. And the Senator from Delaware said, look, we ought not to have politics play a heavy hand in the judicial confirmation process.

One of the worst things that is happening in the Senate is what amounts to a heavy politicizing of the judicial confirmation process that is taking place in this body, and that was reflected in the performance in 1996 as compared with the performance in 1992 when the Senator from Delaware did his very best to keep politics out of the process, to fill judicial posts and to let the judiciary function as an independent branch of our Government. What is happening here is extremely serious. And of course, the Senator, with his candor, came to the floor and sort of stripped away the veneer and laid out what is going on behind the scenes, which is a complete departure from past practices. When there were Republican Presidents, I did not play a role in whom the Presidents sent up to the Senate to be nominated and confirmed in the job——

Mr. BIDEN. If the Senator will yield, I was chairman or ranking member of that committee for 14 years. My distinguished colleague from Delaware is Senator ROTH, who is my close friend. Every single Federal judge in the last 24 years who has been appointed in the district of Delaware or the third circuit has been appointed by Senator ROTH. I did not expect, did not ask, and not once was ever consulted about who he would appoint, and I supported every one that he sent up. Not one single time was I made aware of anything other than after the fact, which is OK. I am not complaining about that.

Mr. SARBANES. That was the system.

Mr. BIDEN. That was the system. Not one single time. And I was chairman of the committee.

Now, I would point out one other thing to my friend. I want to have complete candor. If one considers taking judges based on their ideology and call that political, yes, we Democrats were political, as well. I am not complaining about that. I am not complaining about anybody who stands up and says I do not want Judge Smith, the President's nominee, because I think he will be bad on the court for the following reasons and comes to the floor and makes the case. I do not quarrel with that because I think that is the prerogative of the Senate and any Senator. What I am quarreling with is a different kind of politicizing, and that is drawing the conclusion that because I now control the Senate, I am not going to let the President of the United States have nominees whether or not I have an ideological problem with them.

Mr. SARBANES. Will the Senator yield. It is worse than that. It is not whether you let the President have his nominees confirmed. You will not even let them be considered by the Senate for an up-or-down vote. That is the problem today. In other words, the other side will not let the process work so these nominees can come before the Senate for judgment. Some may come before the Senate for judgment and be rejected by the Senate. That is OK.

Mr. BIDEN. Fair enough.

Mr. SARBANES. But at least let the process work so the nominees have an opportunity and the judiciary has an opportunity to have these vacant positions filled so the court system does not begin to break down because of the failure to confirm new judges.

Mr. BIDEN. If the Senator will yield, let me give an example of what you just said. I know you know, but it is important for the RECORD.

I meet every year—I will not now because I am not the top Democrat on the committee. But every year for, I don't know, 14 or 15 years, I meet with what is called the Judicial Conference—a legislatively organized body where the Congress says the court can have such a function, where we look for recommendations.

I might add, by the way, you may remember when there was a Republican President named Reagan, the Senator from Delaware introduced a bill to increase the number of Federal judgeships by 84. Why did I do that? I did that because the Federal court came to us, the Judicial Conference, and said, ''Here is our problem. We don't have enough judges to administer justice in a timely fashion in this country. And there is a backlog on all these criminal cases.''

I must admit to the Senator, when they came to me with that request, I knew the problem I was going to have. I was going to go into a Democratic caucus and say, by the way, a Republican President, who is a fine man but the most ideological guy we had in a long time, who announced he was going to appoint only very conservative judges, I was now going to give him 84 more than he had.

I realized that was not a politically wise thing for me to do. But, listening to the court, I did just that. My recollection is the Senator from Maryland stood with me and said, ''I don't like it. I admit, I am not crazy about 84 more judges being appointed by Ronald Reagan. But the court needs to be filled.''

Now we have the strange happening, the courts come back to us and say—and they do this in a very scientific way—we not only need the vacancies filled, we need more judges than we have. They cite, as the Senator is very familiar with, they cite the backlog, they give the rationale that cases are being backed up. Guess what? The idea that we will even get a chance to discuss a judgeship bill, I predict to my friend from Maryland, on this floor is zero—zero. Not only that, to further make the point, this is the first time in the 24 years that I have been a Senator, in 24 years, the first time I have ever heard anybody come to the floor and say: You know, we should basically decommission judgeships.

The ninth circuit is the busiest circuit in America, out in California. One of our colleagues, a very wonderful guy, a nice guy, says, ''I am not going to let any other judge be in the ninth circuit''—notwithstanding they have five vacancies, if I am not mistaken, and they are up to their ears in work. This started last year when I was in charge of the Democratic side. He said, ''I am not going to let anybody go through until the ninth circuit splits into two circuits.''

I said, ''Why do you want it to split?''

He said, ''The reason I want it to split is I don't like the fact that California judges are making decisions that affect my State.''

The distinguished Senator from Idaho is shaking his head. He agrees. He is in that circuit. It is painful to point this out, but the reason why there is a Federal court is so there is not Illinois, Indiana, Idaho, California justice. There is one uniform interpretation of the Constitution. That is the reason we have a Federal circuit court of appeals.

Now, this is quite unusual. We have—and I was not referring to the distinguished Senator from Idaho, who is on the floor, when I said, ''there was a Senator.'' That is not to whom I am referring. But another one of our colleagues said he is not going to let anybody go through until there is a split, because he does not like the idea that decisions relating to his State are being made by judges who are not from his State or are not from States of similar size. That is, interestingly, an effectively rewrite of the Constitution of the United States of America. I do not think the Senator thought it in those terms, but that is literally what it is.

Now I am being told, OK, unless we, in fact, split the circuit—and by the way, I am not opposed to splitting the circuit. We split the fifth circuit because when we got to the point where Florida grew so big—Florida and Mississippi and Alabama and Louisiana, they are all in the same circuit—but they got so big, because of population growth, we said—the court recommended, we agreed—that it should be split into two circuits. We understand that. I am not opposed to that. I am not arguing about that. But the idea that someone says, ''Until you do it my way, until you can assure me I am not going to be associated with that State of California, I am not going to let any vacancies be filled''——

Mr. SARBANES. If the Senator will yield, in effect what is happening is the court system is being held hostage, so it is not able to function properly as a court system should. I submit that is an irresponsible tactic to use. As Members of the Congress, the first branch of Government, we have a responsibility to see that the court system can function in a proper fashion.

The Senator from Delaware, when he was chairman of the committee, always measured up to that responsibility, I think often taking a lot of political heat for doing it. But he was out to make sure the system could function. He had Republican Presidents nominating judges. He processed their nominations. He brought them to the floor of the Senate. He gave the Senate a chance to vote on them up or down for those people to get confirmed. That process is breaking down.

Mr. BIDEN. I voted for all of them but seven, I might add. There were only seven times that I voted against any of those nominees.

Mr. SARBANES. That process, I repeat, is now breaking down.

The other thing that is happening, as he says, instead of disagreeing with the qualifications of a nominee, the other side says, ''We don't really need the position.''

Mr. BIDEN. That is right.

Mr. SARBANES. And that is what we heard on Merrick Garland. In fact, when he first came up here, he was nominated for the 12th position on the D.C. circuit. They said, ''We don't need that position. We have nothing against Merrick. He is a wonderful fellow, of course. We just don't think we need that 12th position.'' Of course, that does a lot for Merrick Garland. He's sitting, waiting to join the court. Then someone already on the court took senior status, and then they had two vacant positions, the 11th and 12th. Merrick Garland is nominated. He's now up for the 11th position; not the 12th position, the 11th position. The majority is right back here on the floor and it says, ''We don't need this position.'' This is the 11th position. They never made that argument last year when he was going for the 12th position. Then they said we need the 11th, we don't need the 12th. Now they are back, some, today—fortunately, they did not prevail—saying we do not need either the 11th or the 12th position.

Mr. BIDEN. If the Senator will yield on that point, it is probably going to get him in trouble, but I want to compliment the chairman of the committee. The chairman of the committee did not buy into that argument. The chairman of the committee took the position on this that we should act, and he had been pushing this for some time.

Again, I see my distinguished friend, who now I work with in another capacity, as the minority—the euphemism we use is ranking member—of the Foreign Relations Committee. We have much less disagreement than we have on some issues relating to judges. But, with him here, I can remember that during the last days when the Senator from Delaware was trying to push through judges—on October 8, 1992, the last day of the session, with President Bush as President of the United States, the Senator from Delaware pushed through seven Republican judges—the last day.

I will bet you that has not happened very often in this place with Democrats or Republicans: The last day, seven.

The reason I mention that is one of my distinguished colleagues—we have very different views, but I like him a lot—walked up to me and he was from a State where there were two Republican Senators, and two of those judges were his. He walked up and shook my hand. This will not go in the RECORD—it will go in the RECORD, but his name won't, but my colleagues will know who he is. He shook my hand and said, ''Joe, you're a nice guy. I really appreciated it.'' He says, ''Of course, you know I would never do this for you.''

I like him because he is straightforward and honest. He meant it, and that's why we get along so well. I am

not referring to the Senator from North Carolina. He said, ''I'd never do this for you.'' The point being, not that BIDEN is a good guy or BIDEN is a stupid guy, the point being that the court is in desperate trouble in a number of jurisdictions. In southern California and south Florida, and in a number of places where there are drug cases that are backed up, a number of places where there are significant civil case backlogs, a number of places where population growth is straining the court, they need these vacancies filled.

I respectfully suggest that it is a rare—it is a rare—district court nominee by a Republican President or a Democratic President who, if you first believe they are honest and have integrity, have any reason to vote against them. I voted for Judge Bork, for example, on the circuit court, because Judge Bork I believed to be an honest and decent man, a brilliant constitutional scholar with whom I disagreed, but who stood there and had to, as a circuit court judge, swear to uphold the law of the land, which also meant follow Supreme Court decisions. A circuit court cannot overrule the Supreme Court.

So any member who is nominated for the district or circuit court who, in fact, any Senator believes will be a person of their word and follow stare decisis, it does not matter to me what their ideology is, as long as they are in a position where they are in the general mainstream of American political life and they have not committed crimes of moral turpitude, and have not, in fact, acted in a way that would shed a negative light on the court.

So what I want to say, and I will yield because I see my friend from South Carolina—North Carolina, I beg your pardon. I am used to dealing with our close friend in the Judiciary Committee who is from South Carolina. I seem to have the luck of getting Carolinians to deal with, and I enjoy them. I will yield the floor by saying, I will come back to the floor at an appropriate time in the near term, immediately when we get back from the recess, and I will, as they say, Madam President, fill in the blanks in terms of what the absolute detail and each of the numbers are, because I have tried to recall some of them off the top of my head, not having intended to speak to this issue when I walked across the floor earlier.

Let it suffice to say at the moment, at least for me, that it is totally appropriate for any U.S. Senator to voice his or her opposition to any nominee for the Court, and they have a full right to do that. In my study of and teaching of constitutional law and separation of powers issues, there is nothing in the Constitution that sets the standard any Senator has to apply, whether they vote for or against a judge.

But I also 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.

We had a tie vote in the committee, Madam President, on one of the Supreme Court nominees. I was urged by those who opposed him—and I opposed this particular nominee—to not report it to the floor. My reading of the Constitution, though, is the Judiciary Committee is not mentioned in the Constitution. The Judiciary Committee is not mentioned. The Senate is. We only in the Judiciary Committee have the right to give advice to the Senate, but it is the Senate that gives its advice and consent on judicial nominations.

I sincerely hope, and I have urged the administration to confer with Republican Senators before they nominate anyone from that Senator's State. I think that is totally appropriate. I think it is appropriate, as well, that Republican Senators, with a Democratic President, have some input, which Democrats never had with the last two Republican Presidents. I think that is appropriate.

But I do not think it is appropriate, if this is the case—and I do not know for certain, it just appears to be—if the real hangup here is wanting to reach an informal agreement that for every one person the President of the United States gets to nominate, the Republican Party will get to nominate someone, the Republican Party in the Senate. Or for every two persons that the President nominates, the Republicans get to nominate one.

It is totally appropriate for Republicans to reject every single nominee if they want to. That is within their right. But it is not, I will respectfully request, Madam President, appropriate not to have hearings on them, not to bring them to the floor and not to allow a vote, and it is not appropriate to insist that we, the Senators—we, the Senators—get to tell the President who he must nominate if it is not in line with the last 200 years of tradition.

Again, I did not intend speaking at all on this, other than the fact I walked through and it was brought up, and since I was in that other capacity for so long, I felt obliged to speak up.

I see my friend from North Carolina is here. I do not know if he wishes to speak on judges or foreign policy matters, but whichever he wishes to speak on, I am sure it will be informative. I yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, let me say that I always enjoy my friend, Senator BIDEN—all of it. You have to wait awhile sometimes, but the enjoyment is nonetheless sincere.

CHEMICAL WEAPONS CONVENTION

Mr. HELMS. Mr. President, the remarks I am about to make will probably be the best kept secret in Washington, DC, tomorrow morning in the Washington Post or whatever. Instead, I am sure there will be ample coverage given to the various statements made by several Senators earlier in the day about how they are having trouble getting a treaty through the U.S. Senate. And certain comments were made that just had no basis in fact whatsoever.

So this is a speech that I am going to make to set the record straight so that it will be in the CONGRESSIONAL RECORD tomorrow morning in the hopes that some soul somewhere may decide to look to see what the facts really are.

In any case, I listened with great interest to the—what do we call it—the colloquy this morning regarding the Chemical Weapons Convention, and I think it is important to remind the Senate of some facts about the debate surrounding this controversy and, I believe, this dangerous treaty, which is perilously flawed.

First of all, I am puzzled at the insistence of some of my Democratic colleagues on a date certain for a vote on this treaty. It appears that the supporters of the treaty want only a date certain when it suits their needs, their desires. I remember last year, they wanted a date certain for hearings on this very same subject, the Chemical Weapons Convention Treaty. They wanted a date certain for committee action on the treaty; they insisted on it.

The committee took action on the treaty. Then they wanted a date certain for floor debate and consideration of the treaty —this was last year—and we obliged them in every instance. But hours before the vote on the Chemical Weapons Convention, on their date certain, that was supposed to happen, it was announced by the majority leader the night before, but what happened? The White House called up and said, ''Please withdraw the treaty.''

Now, it was not this Senator from North Carolina or any other Senator who asked it be withdrawn. It was not TRENT LOTT, the majority leader. It was the Clinton administration who asked the Senate not to vote on the Chemical Weapons Convention. Do you know why? Because they didn't have enough votes to ratify the treaty. And why did they not have the votes to ratify the treaty? Because in their zeal to force this treaty down the throats of Senators, they refused flat out to address any of the serious concerns that I had and a growing number of other Senators had about this treaty.

I remember thinking last year, and I am thinking now, about what Sam Ervin said so many times. He said, ''The United States had never lost a war or won a treaty.'' And you think about the treaties that we have gotten into, and Sam Ervin—I think he got that from Will Rogers—but wherever it came from, it is true, and particularly in a document such as the Chemical Weapons Convention.

So the suggestion, whether stated or implied, that we are somehow holding this treaty hostage is not only fraudulent, it is simply untrue. You will not

read about that in the Washington Post in the morning and CBS will not have it. They might say something about JESSE HELMS holding up consideration of this treaty. But the fact is that I met for 4 hours yesterday evening with the distinguished Senator, JOE BIDEN, and we went down a list of many issues in that proposed treaty. And we resolved most of them.

Let me talk a little bit about the suggestion that the committee, the Foreign Relations Committee, of which I am chairman, is failing to fulfill its responsibilities to address the Clinton administration priorities. That simply is not so.

The Foreign Relations Committee was the first to convene a confirmation hearing for a Cabinet-rank official this year. In fact, the Foreign Relations Committee expeditiously considered and reported both of the President's Cabinet-rank nominations by the end of January. Indeed, we have cleared the calendar of nearly all of the administration's appointees, including one Assistant Secretary of State and several Ambassadors.

Let us set the record straight with respect to negotiations concerning the Chemical Weapons Convention.

I personally met with the National Security Adviser in my office on February 5 of this year. In that meeting, I told him that my staff was prepared to begin discussions with his staff immediately. Well, day after day after day passed, and I received not one syllable of reply whatsoever to that offer.

In an effort to get around the impasse, I wrote a seven-page letter to Mr. Berger, dated February 13, reiterating my request to begin staff-level negotiations and proposing concrete solutions for addressing the concerns that I and other Senators have about this treaty.

Another 2 weeks elapsed before I finally received a response from Mr. Berger—four paragraphs long—in which he did not respond to one single proposal contained in my letter. Indeed, he reiterated his refusal to send any of his staff to meet directly with the staff of the Foreign Relations Committee.

Then, on February 27, the chief of staff of the Foreign Relations Committee, Adm. Bud Nance—who, by the way, is recovering nicely from a near-fatal automobile accident that occurred last December, just before Christmas—came from his home in McLean to the Senate for the sole purpose of attempting to bridge this impasse. On that day, Admiral Nance met with the heads of legislative affairs of both the State Department and the NSC.

Well, then, we move forward to March 5. Mr. Berger finally allowed the NSC staff to begin discussion with the staffs of interested Senators. So those Senators who are counting every day from now until April 29 should ask Mr. Berger why he dillied and dallied away the month of February and refused to work with the chairman of the Foreign Relations Committee or the committee staff.

Notwithstanding all of that, since March 5, the staff of the Foreign Relations Committee has participated in more than 50 hours of negotiations with the administration and other proponents of this treaty. And I must add that the distinguished majority leader, to his credit, has already devoted an extraordinary amount of time and energy to this issue.

Last night, the distinguished ranking member of the Foreign Relations Committee and I, as I said earlier, spent 4 hours in my office negotiating specific provisions with some success. So, in light of all those efforts, I am perplexed as to how anyone could conclude that we are not working in good faith to resolve this matter.

Having said that, I think the time has come for the administration to address several key concerns. Thus far, I regret to report we have not had as much success as I would have hoped. Indeed, it is becoming clear that the administration is treating these negotiations as an empty exercise, a perfunctory hurdle over which they must jump so that they can argue that they ''tried to negotiate'' with me and with the Foreign Relations Committee.

As a result of this unfortunate attitude on the part of the White House, very little progress is being made to bridge the wide gap between us on a number of important provisions of the chemical weapons treaty.

Our staffs have been able to reach definitive agreement with the administration on only 8 of 30 provisions. Of those, three are simple reporting requirements and one is a nonbinding sense-of-the-Senate declaration. Not one of the issues that can be regarded as critical has yet been resolved.

But, Mr. President, having said all that, I am still determined to work with the administration and others to see if we can resolve our differences on a chemical weapons treaty. But if we are going to do that, the administration needs to return to the bargaining table and negotiate with my staff and with me in good faith. The way they have been acting, they said, ''Well, we'll work it out.'' ''I'll do what I think is right,'' they say. ''And you do what we think is right.'' So that does not make it a 50–50 proposition, which I am not going to accept.

The administration needs to realize, in no uncertain terms, that unless and until they satisfy the number of concerns that various Senators, including this Senator, have relating to the treaty's universality, verifiability, constitutionality, and crushing impact on business, I am not going, personally, to move on the CWC, period.

The chemical weapons treaty, as it now stands, is not global, as it is claimed to be. It is not verifiable. And it imposes costly and potentially unconstitutional regulatory burdens on American business.

This treaty will do nothing—will do nothing—to reduce the dangers of poison gas.

Almost none of the rogue nations that pose a chemical weapons threat to us—such as Iraq, Syria, Libya, North Korea—are signatories to the treaty. They are free to pursue their chemical weapons programs unimpeded by this treaty. And the intelligence community has made clear—I do know whether it has been reported in the news or not—but the intelligence community says it is not possible to monitor the compliance of signatory nations with a high level of confidence. This is a matter of record. This is a matter of testimony before the Senate.

By the way, Russia is already violating its existing bilateral chemical weapons treaty with the United States. And the Russian military is reportedly working to circumvent the CWC with a new generation of chemical agents that are specifically crafted to evade the treaty's verification regime.

So if the chemical weapons treaty will not do anything to reduce the dangers of chemical weapons, what will it do? Good question.

Well, for one thing, it will, in fact, increase access to dangerous chemical agents to those terrorist states that do sign the treaty. Now, Douglas Feith, a chemical arms control negotiator in the Reagan administration, pointed out last week in the New Republic that the CWC will give the terrorist regimes in Iran and Cuba the right to demand access to the chemical markets of the United States and all other signatory nations and will create a treaty obligation for signatory nations to sell or give them chemical defensive gear, which is essential for any offensive program.

Well, the treaty will also endanger American troops by its forbidding commanders in the field from using tear gas and other ground control agents.

Worst of all, on top of all of these other deficiencies, it will impose dozens of new regulations and unprecedented and unconstitutional inspections on between 3,000 to 8,000 American businesses. Under the chemical weapons treaty, foreign inspectors will be authorized to swoop down on American businesses—without a criminal search warrant or even probable cause—and they can rifle through the records of these businesses, interrogate the employees, and even remove chemical samples. That is not only an infringement on the constitutional rights of Americans, it is an invitation to industrial espionage. Any treaty that gives foreign inspectors greater powers of search and seizure than those granted American law enforcement officials under the U.S. Constitution is a treaty in need of serious modifications.

Last, this treaty has already begun to lull the United States and our allies into a false sense of security by creating the false impression that something is being done about the problem of chemical weapons when, in fact,

nothing, nothing is being done by the treaty. I could come up with no other explanation for why the then-Vice Chairman of the Joint Chiefs of Staff, Admiral Owens, would try to strip more than $800 million in chemical defensive funding from the fiscal years defense plan, or why the Chairman of the Joint Chiefs of Staff, General Shalikashvilli, would recommend that $1.5 billion be taken out of our defense spending.

Do not take my word for it. Listen to constitutional scholars such as Robert Bork, Ed Meese. Listen to foreign policy experts such as Jeanne Kirkpatrick, and Alexander Haig, and former Secretaries of Defense Dick Cheney, Caspar Weinberger, Donald Rumsfeld, and James Schlesinger, or ask Henry Kissinger about it. Defense Secretaries of every Republican administration since Nixon have come out against this treaty, along with literally dozens of generals, admirals and senior officials from the Reagan, Bush, Nixon, FORD, and even the Carter administrations. If the Clinton administration chooses not to address the concerns that these distinguished experts and a number of Senators have enumerated, that is their decision, but they will not get the CWC unless they sit down and talk about the problems that some of us have.

Now, we have already sat down. We have begged to sit down before. We have scheduled. We have written letters, all to no avail.

One other myth about the treaty, the myth of this April 29 deadline. We hear over and over again, ''If we miss this deadline, it will be terrible.'' Now, let me say, Mr. President, there has to be an end to the administration's Chicken Little pretense that the sky is going to fall if an agreement is not reached by April 29. This artificial deadline is a fraud created by the administration when they gave the Hungarian Government the green light to drop its instrument of ratification. The Hungarians had sought U.S. guidance on how to proceed, and the administration expressly told the Hungarians to go right ahead.

The administration has one purpose, and that was to manufacture, to contrive, to pretend, to have a drop-dead date to blackmail the Senate into rubberstamping this dangerously defective treaty. Now, I for one am not going to be blackmailed into permitting a flawed treaty to be approved by such tactics. Further, the administration is disingenuous in arguing that the United States will be ''shut out'' of the Executive Council that implements this chemical weapons treaty, and that the U.S. personnel will be barred from the inspection regime if the United States does not ratify by April 29. Horse feathers.

As former Defense Secretaries James Schlesinger, Caspar Weinberger, and Donald Rumsfeld noted recently in an Op-ed in the Washington Post, ''In the event that the United States does decide to become a party to the CWC at a later date—perhaps after improvements are made to enhance the treaty's effectiveness—it is hard to believe its preferences regarding implementing arrangements would not be given considerable weight. This is particularly true,'' this is what they wrote in the op-ed piece, ''This is particularly true since the United States would then be asked to bear 25 percent of the total cost of the implementing organization's budget.''

Now, Mr. President, it will be a concession of diplomatic incompetence to try to argue that the U.S. Government is incapable of negotiating a seat on the Executive Council and the U.S. participation in the inspection regime of a treaty for which the American taxpayers are footing 25 percent of the bill. In fact, U.S. inspectors will be hired if and when the Congress agrees to fork over millions upon millions of American taxpayers' dollars to finance this new organization.

As for the effects on industry, Secretaries Schlesinger, Weinberger, and Rumsfeld made very clear there will be very few, if any. ''The preponderance of trade in chemicals would be unaffected by the CWC's limitations, making the impact of staying out of the treaty regime, if any, fairly modest on American manufacturers.''

It turns out that the Chemical Manufacturers Association has acknowledged that it will not lose, as it had previously claimed, $600 million in export sales. The Chemical Manufacturers Association now admits that less than one-half of 1 percent of U.S. chemical exports will be affected by this treaty, and even that number, even that number is highly suspect.

Mr. President, it is time that the contrived myth of cataclysmic consequences of April 29 be put to rest once and for all. More important than any artificial deadline is the need to resolve the substantive issues that divide us. Without significant changes governing U.S. participation, agreed to in a resolution of ratification, there is no point in ratifying the CWC. In that case, what happens, if anything, after April 29, is academic.

On the other hand, if the administration does come to agreement with us on these and other matters after April 29, or even before, I am confident that the distinguished Secretary of State Madeleine Albright can and will ensure the United States' interests are protected. Madeleine Albright is a tough lady and a capable negotiator.

Mr. President, if the administration really wants this treaty by the artificial deadline that they deliberately created, they will have to return to the negotiating table and begin working in good faith with the staff of the Foreign Relations Committee and with me. Let me reiterate that I spent 4 hours last evening with the distinguished Senator from Delaware, [Mr. BIDEN]. He operated in good faith and so did I. That is what it is going to take. But there is going to have to be a lot of action going a long way in our direction on a number of substantive issues.

For the information of anybody who may be interested, I remain of the opinion, as I indicated in my January 29 letter of this year to the majority leader, that once we have succeeded in having comprehensive reform of U.S. foreign affairs agencies, reform of the United Nations, and once the modification of the ABM and CFE treaties are submitted to the Senate for advice and consent, I will be more than willing to turn my attention to the matter of the CWC. I might be persuaded to turn to it earlier than that. Even so, any resolution of ratification for the CWC must provide key protections relating to the treaty's verification, lack of applicability to rogue states, constitutionality, and its impact on business.

Now, I am very sincere when I say that I hope we can work out our differences. I am certainly willing to try. I hope I demonstrated that last evening and on occasions earlier than that. But, in the end, whether or not we reach agreement is a decision that only the Clinton administration can make. I think they ought to get about it and let us see what we can work out together on a fair and just basis.

I yield the floor.

Mr. BIDEN. Mr. President, again, I did not anticipate that I would be speaking to this issue. Fortunately, or unfortunately, I am on the floor, and I understand why the Senator from North Carolina came over to speak in light of things that were said earlier today when he was not here and I was not here. I would like to respond, at least in part, to what my distinguished colleague has said.

Let me begin by parcelling this out into three pieces. First, is the issue of whether or not the administration has acted in good faith; second, is not whether or not the substantive issues raised by the distinguished Senator from North Carolina are accurate, but whether or not there is a response to them; I think his concerns are not accurate; and third, whether or not the ultimate condition being laid down by the Senator from North Carolina, as I understand it—and I could be wrong—is appropriate.

Let me begin, first, by talking about the administration. It is true that the distinguished Senator from North Carolina and I spent almost 4½ hours last night addressing, in very specific detail—apparently without sufficient success—the concerns the Senator from North Carolina has about this treaty. I note—and I will come back to this—that the universe of concerns expressed by the Senator from North Carolina were submitted to me in writing some time ago. Although they have expanded slightly, they total 30, possibly 31, concerns.

When I became the ranking member of this committee, I approached the distinguished chairman and said I would very much like to work with

him, I would very much like to cooperate, and I would very much like to work out a forum in which we could settle our differences relating to what is sound foreign policy.

The agreement made by the Senator from North Carolina with regard to the Senator from Delaware was this: I said I am willing to meet with your staff—you need not be there, Mr. Chairman—and discuss in detail every single concern you have. I am even willing to go out to Admiral Nance's home, because he was seriously injured. I am willing to go to his home and conduct these discussions. And to the credit of the chairman, he dispatched his staff to do that with me, my staff included, and I do not know, I will submit for the RECORD, the total number of hours we did this. But I know that I, personally, in addition to meeting with the Senator from North Carolina, have met with the staff for hours and hours. And our staffs have met for a considerably longer period of time—not in a generic discussion of this treaty, but on specific word-by-word analyses, negotiations, and agreement on the detail of proposals made by the distinguished Senator from North Carolina about how he feels the treaty has to be remedied.

So what has the administration been doing? I think, to use an expression my grandmom used to use, ''Sometimes there is something missed between the cup and the lip.'' The administration—as I tried to explain to my friend from North Carolina last night, and his staff on other occasions—was giving conflicting marching orders. The administration, after direct discussions with Majority Leader LOTT prior to January 29, agreed to meet and discuss this in detail with a task force that Senator LOTT named. Senator LOTT named a task force of interested Republicans.

They included the distinguished chairman of the Foreign Relations Committee; the distinguished senior Senator from Alaska, Senator STEVENS; Senator SMITH of New Hampshire; Senator KYL of Arizona; Senator WARNER of Virginia, and others, who were to sit down and discuss with the administration their concerns about this treaty and how they felt the treaty had to be changed. The first meeting of that task force, of which Senator HELMS was a part, appointed by Senator LOTT, occurred on January 29.

Now, my friend from North Carolina—I can understand why there may be confusion here. He said that Sandy Berger, the National Security Adviser, dallied away the month of February. He was dallying with Senator LOTT; he was dallying with Senator WARNER; he was dallying with Senator SHELBY; he was dallying with Senator BOB SMITH; he was dallying with Senator KYL; he was dallying with a task force appointed by the Republican leader.

I can understand why the distinguished Senator from North Carolina, the chairman of the Foreign Relations Committee, might not feel that is an appropriate forum. I can understand that. Those of us who have been chairmen do not like the fact that a majority leader will sometimes come along and say, ''By the way, even though this is within your jurisdiction, we are going to appoint a task force beyond your jurisdiction.''

But the truth of the matter is, picture the quandary of the President of the United States after a discussion with the majority leader of the U.S. Senate, and the majority leader said, ''Here are the folks you are supposed to deal with.'' I challenge anyone on Senator LOTT's staff who are the main players in this to suggest that the administration didn't deal in good faith with them. There were hours and hours and hours of detailed negotiations with this group.

I say to my friend from North Carolina, put the shoe on the other foot. He is the President of the United States. Here is a Democratic majority leader. He wants a treaty passed. The Democratic majority leader goes to him and says, ''I have appointed a committee of Democrats interested in this subject. I would like you to negotiate with them, not with BIDEN, the chairman of the committee. He is part of this group.''

So, beginning on January 29, Sandy Berger, Bob Bell, his chief negotiator, and the administration met for scores of hours. I don't mean 2. I don't mean 10. I don't mean 20. I mean 30 or 40 hours worth of negotiations with the principals, with the Republican Senators, as well as without them. Guess what. They reached an agreement. There is a universe of 30-some amendments. I hold it up now. This is what was presented to the administration by this coalition of Republican Senators concerned about the treaty. It, in fact, lists every known objection, every objection raised by any Republican that we are aware of or that the administration is aware of about the treaty. The number is 30.

This document I have here listing those 30 concerns—not only concerns, 30 specific conditions—which the Republican task force, staffed by Senator LOTT's staff and all other members' staff, listed. And they are listed. The specific proposals are listed that were made by the Republican task force.

No. 1, enhancement to robust chemical and biological defenses. And they propose then two pages of language, three pages that relate to the conditions they would like attached to the treaty. That was repeated 30 times as is appropriate. The administration spent 30 or more hours sitting with these members and/or their staff and coming to an agreement on 17 of them, disagreeing on 13.

So, simultaneously, later Senator HELMS and I began a process that was tracking the same process. I was not part of the Republican group, obviously, and I did not represent the administration in this group. But the administration sat down and in detail responded to every single concern raised by the Republican task force named by the majority leader, and instructed by the majority leader to deal with that group. Simultaneously, I sat for hours and hours with Senator HELMS' staff, and then last night, at the end of the process, with Senator HELMS himself for 4 hours. I will estimate that I sat with the staff and my staff sat with HELMS' staff 20 hours or more.

Again, Senator HELMS was very straightforward with us. He gave us a document listing his 30 concerns, some of which were the same and some of which were different. This is the document presented to me. Over a period of hours and hours and hours of negotiation, I agreed on 21 of the 30 issues raised by Senator HELMS, disagreed on 9, 3 of which I indicated I would not take opposition to but I didn't support.

So with all due respect to my distinguished chairman, he may not have been aware and his staff may not have informed him of the hours and hours and hours and hours of detailed negotiation between the Lott task force, including his staff and the administration. But had he been informed, he would know that those negotiations began at the instruction of Senator LOTT on the 29th of January.

So I am sure when the Senator reads this in the RECORD or is informed by his staff, he will realize that the fact he didn't meet with Sandy Berger until February 15 should not be a surprise. Sandy Berger thought he was meeting with Senator Helms when he met with Senator Lott's task force.

Let me tell you what was the agreed objective of the task force and of my negotiations. It was this, that we would put all of the universe of objections—and I hope those who follow this in the press, watching this now or reading it later, will understand precisely what I am about to say. The objective was—I think the Presiding Officer, who has been involved in and interested in this issue, may be aware of this as well. It was agreed that the Republican objections—legitimate—would be put in writing, which they did. All of them would be laid down, which they were. They said they totaled 30. They would be talked about, fought over, negotiated, to see if there could be a compromise reached, and, at the end of the day, there would be two lists. Every one of those 30 amendments would fall in either column A, where there was agreement between the Lott task force and the administration, and hopefully BIDEN and HELMS. Those things which could not be agreed to in column B. They got this picture.

Thirty written conditions seeking to alter the interpretation of the treaty, or defend the intent of the treaty, put on paper, negotiated between the administration and the Lott group, and at the end of the day, they would be, to use the jargon of the Senate, ''fenced.'' That would be the universe of concerns, because, obviously, you can't address a concern unless you know what it is. They are the universe of concerns

raised about the treaty. And there would be either conditions 1 through 30 placed in column A, where there is agreement to alter the treaty, or to add a condition to the treaty, I should say to be precise, or column B, where there is no agreement.

Then what was envisioned was at the end of that process, within time, sufficient time to consider this in this Chamber, there would be the following process. The treaty would be brought up from the desk, stripped of any conditions that were reported out of the Foreign Relations Committee last time—this was the hope—and we would have the following procedure. Senator HELMS and Senator BIDEN, as envisioned by the Lott group, would offer on behalf of the Lott group, Democrats and Republicans and the administration, a package in column A.

That package with the administration would number 17, and if I were willing to add to that package with Senator HELMS over the objection of the administration, that could be brought up to 21 out of the 30 concerns that everyone agreed on or 17 of the 21 the administration agreed on and BIDEN would support HELMS on 4 additional ones whether the administration liked it or not, leaving maximum 13, minimum 9, conditions that could not be agreed upon.

That was done. They are the numbers that we were left with. Then it was envisioned that after passing the agreed-to conditions, we would then move to the conditions upon which we did not agree, and the Republicans under the leadership of Senator HELMS would offer those conditions as we do on other treaties. I would be given the right to offer an alternative or to amend them, and we would vote ad seriatim. Then at the end of the day, after having disposed of all 30 of the concerns, we would then vote up or down on the treaty.

Now, I call that a negotiation. I have been here for 24 years. I have been involved in a lot of serious negotiations. I have never been involved in negotiations where more people who were appointed to participate have acted in good faith. Think about this now. Name me a circumstance where a treaty has been presented by a Democrat or Republican President where there have been 19 conditions agreed to on that treaty, or 21 conditions in my case, 17 in the case of the administration, and then we vote on another either 13 or 9 additional changes.

What I think my friend is saying—maybe he does not mean to say it—what I read him to say is, unless you agree with us on the other nine, we are not going to let you vote.

Now, look, I doubt whether my friend from North Carolina would find it appropriate if the American textile workers sat down with Burlington Mills or any other textile owner and said, we are going to negotiate a new collective bargaining agreement and we are going to go on strike unless you agree on every one of our conditions.

How is that a negotiation? That is an ultimatum. That is not a negotiation. So I hope he does not mean it.

I cannot believe, I do not believe Senator HELMS means that if the administration does not come up now and separately negotiate with him after having settled the negotiation with the group called the Lott group, unless the administration agrees to Senator HELMS' version of universality, Senator HELMS' version of verifiability, and Senator HELMS' version of constitutional requirements, et cetera, he will not let the treaty be voted on, because when you cut through everything, that is what it sounded like.

I said at the outset I divided this into three pieces. One, whether or not there was negotiation by the administration in good faith. I will just let the record stand. And I repeat again, Senator LOTT—and I do not know the exact circumstances under which it came about, but I assume it was after discussion with the President of the United States of America, President Clinton—set up a task force that included Senator STEVENS, Senator HELMS, Senator KYL, Senator WARNER, Senator SHELBY, Senator NICKLES, Senator Bob SMITH, and Senator MCCAIN. The President of the United States was told by the distinguished majority leader, Senator LOTT, these are the people I want you to sit down with and try to work out their concerns.

That first meeting took place on January 29. I began my meetings with Senator HELMS on February 11. Again Senator HELMS and his staff were part of the Lott task force.

So although I understand that Senator HELMS might not have liked that arrangement, I ask him to consider the dilemma that the administration was placed in when being told by the majority leader: negotiate with this group. I assure you, I promise you, I commit to you, to every Member of the Senate in my discussions with the President, with the Secretary of State and with the National Security Adviser, they all believed they were negotiating with the appropriate parties in the Senate because that is what the majority leader told them to do.

The second point. They conducted a negotiation which culminated in an agreement that ended last Thursday when Bob Bell, representing the administration, sat down with the principals as well as all the staffers of those eight Senators, including Senator LOTT's staff, and produced the document I have in my hand listing all 30 conditions raised by the Republican task force, including Chairman HELMS, and placing every condition either in column A or column B—column A meaning those conditions where they have been worked out and agreed to, where the Lott task force, representing the Republicans in the Senate, and the administration reached an agreement on a condition they could both accept; and column B, where they could not accept, they could not reach an agreement.

That was the product of hours and hours and hours and hours of detailed negotiation. I say to the Presiding Officer and anyone who is listening to this, I am not talking about general agreement. I am talking word-by-word specific agreement on every comma, whether it should say ''shall'' or ''should,'' every single word of their conditions, the majority of which were agreed to, compromise was reached on; the minority of which there was no compromise.

I then was informed by the administration in the person of Bob Bell and Sandy Berger that to their surprise either Senator HELMS' staff or someone purporting to represent Senator HELMS at last Thursday's meeting, which was supposed to tie this in a knot, define the universe of conditions, place them all in one of two categories, and get about the business of proceeding on the treaty, at the last minute—literally the last minute—as I understand it. I mean, the meeting was over—the administration walked in the meeting, as I understand the Lott group thought they were walking in the meeting, to tie this knot, everything in column A or column B. Someone suggested that the chairman of the full committee did not find that appropriate. So I met with the Democratic leader and the administration. I went in the leader's office. I said I believe Senator HELMS is still operating in good faith, as I believe he still is. I don't want to confuse this negotiation, but why don't you authorize me, Democratic leader, to speak for the Democrats? Why don't you let me go sit down with Senator HELMS and try to get to the bottom of what appears to be a misunderstanding here? Because the understanding by the Lott group and the administration was that this was supposed to be all tied up with a unanimous-consent agreement last Thursday.

So I sought a meeting with Senator HELMS and he graciously agreed. And I kept him very late. He had a very busy day. I sat with him in his office last night until 8:30. The meeting began around 4 o'clock in the afternoon, without any break, without any interruption. I took out a document that his staff had prepared. It is dated March 13, ''To the Honorable TRENT LOTT, majority leader, from JESSE HELMS, Chairman of the Foreign Relations Committee, subject: Status of negotiation over key concerns relating to the CWC.''

And then Senator HELMS, in that memo to Senator LOTT, listed—and they are numbered—listed 30, ''concerns relating to CWC.'' Each of those concerns had, and it was very helpful the way it was organized, listed, No. 1 through 30, and then at the top of each of the numbers it said, ''status,'' status relative to the administration: No agreement with the administration or agreement with the administration.

So I sat down with Senator HELMS, because I am very jealous of the prerogatives of the Senate versus any administration, and feel very strongly

about the role of the Senate in treaties. I sat down with Senator HELMS with the understanding and knowledge on the part of the administration, who knew I might not agree with them on everything, and my Democratic leader, and for 4½ hours went through all 30 issues, point by point. I reached agreement with Senator HELMS, not on eight or 13 or 17, depending on whose number you take as to whether the Lott group and the administration agreed. The administration thinks they agreed on 17. Senator HELMS said they only agreed on eight. I don't want to get into that fight. But I can tell you what I did. I agreed on 21 of the 30. I disagreed with the administration on several points Senator HELMS raised because I think he was right. They relate to the prerogatives of the Senate.

Let me give an example. Under the Constitution, the U.S. Senate has a right to reserve on any treaty. We wanted to restate that right. The administration didn't want that right restated in the treaty as a condition. I agreed with Senator HELMS, it should be restated; notwithstanding the fact we are not reserving on this treaty, we had a right to reserve if we wanted to. That is called preserving the prerogatives of the Senate delegated to the Senate in the Constitution of the United States of America. That is an example of one of the areas where the administration was unwilling to agree with Senator HELMS and I was willing to agree.

So at the end of the day we agreed to 21 items, and I was willing to make the case to my Democratic leadership, to put into column A. So that we would have one vote on 21 conditions to the treaty when it was brought up, leaving only 9 areas where we disagree. Of those nine, we were perilously close to agreement on several. I call that, in the universe of negotiations, good-faith negotiations.

But, if by negotiating one means that the President or those who support the treaty, like Senator LUGAR, a Republican, or Senator BIDEN a Democrat, have to agree to a condition that would kill the treaty, then that is not a negotiation. That is an ultimatum. Now, I am confident the Senator from North Carolina cannot mean that, and I am hopeful that we will continue to talk about the nine that remain unresolved. But at the end of the day, with all due respect, the Senate has a right to work its will.

I am a professor of constitutional law at Widener University law school. I have taught, now, for a half a dozen semesters, a seminar to advanced students in constitutional law on separation of powers. One of the things I expressly teach is the treaty power in the Constitution. That is, for lack of a better shorthand, those powers separated between the executive, the legislative, and judiciary. And among those things, in terms of that horizontal separation, there are areas that have been in dispute for the last 200 years. One of them is appointment powers, second is treaty powers, and the other is war powers.

Then there is the so-called vertical question of the separation of powers: State government versus Federal Government; individuals versus State or Federal Government. On the issue of the treaty power, I would observe what I observed earlier about the appointment power. Nowhere in the Constitution does it say that the Judiciary Committee shall decide who should or should not be a judge. It says, the Senate. Nowhere in the Constitution does it mention the Foreign Relations Committee. It mentions the Senate. So, I do think it is inappropriate, from a constitutional perspective, to deny the Senate, if that were anyone's intention, and I am not convinced it is yet, the right to vote ''yea'' or ''nay'' on ratifying a treaty or any conditions thereto.

So now let me leave the item I mentioned I would speak to first, whether or not there were good-faith negotiations on the part of the administration. I hope I have amply demonstrated that there were. They thought they were supposed to deal with the task force the majority leader of the Senate said deal with, and they did it in good faith. I would be very surprised if any member of that group—I have not spoken to any of them because I am not part of that group, from Senator WARNER to Senator STEVENS to Senator MCCAIN to Senator KYL—would come to the floor and say the administration did not negotiate in good faith to us, tirelessly, hour after hour after hour.

(Mr. SESSIONS assumed the chair.)

Mr. BIDEN. Mr. President, let me move to the next point that relates to the merits of this treaty. That is a legitimate area of disagreement. I will be brief because I am keeping the staff and the pages, who have to go to school tomorrow morning, very late.

UNIVERSALITY

Critics charge that the CWC will be ineffective because rogue states such as Syria, Iraq, North Korea, and Libya—all of whom are suspected of or confirmed to have chemical weapons—have not joined the convention.

Therefore, the argument goes, the United States should withhold its ratification until these states join.

I could not disagree more.

Just think of it. The logic of this argument would lead us to a world where rogue actors—not good international citizens—determine the rules of international conduct.

Such a policy would amount, effectively, to a surrender of U.S. national sovereignty to the actions of a few.

Instead of the United States actively leading international coalitions and setting tough standards on nonproliferation matters, the convention opponents would have us do nothing until every two-bit rogue regime would decide for us when we should act.

This reasoning is contrary to the record of the past 40 years, during which the United States has led the way in nonproliferation initiatives.

From the nuclear nonproliferation treaty, to the missile technology control regime, to the comprehensive test ban treaty, and to the chemical weapons convention itself, we have fought for establishing accepted norms of behavior.

I happen to believe that international norms count.

In a recent article that I coauthored with my distinguished colleague, Senator RICHARD LUGAR, we noted that such norms provide standards of acceptable behavior against which the actions of states can be judged. They also provide a basis for action—harsh action—when rogue states violate the norm.

Suggesting that we should now take a back seat to the likes of North Korea and Libya does a grave injustice to our record of international leadership and leaves such nations free to act as free operators without fear of penalty or retaliation by the nations whose armies and citizens they threaten.

The fact that there is now no international legal prohibition against the development of chemical weapons should not be lost here.

The suspected programs that treaty opponents are so concerned about are right now entirely legitimate according to international law, and we have already had a telling example of what can result from this perverse situation.

The Japanese police were aware, before a cult attacked the Tokyo subway with sarin nerve gas in 1995, that the cult was manufacturing the gas—but they had no basis in Japanese law to do anything about it.

That will change, both internationally and domestically, once the CWC enters into force.

The convention will establish an international norm against the development of chemical weapons. It will provide the legal, political, and moral basis for firm action against those that choose to violate the rules. If the goal of treaty opponents truly is to target the chemical weapons programs of suspect states, then joining the convention is the best way to achieve this objective—and refusing to join is the surest way to protect the world's bad actions.

VERIFIABILITY

A great benefit of the chemical weapons convention is that it increases our ability to detect production of poison gas.

Regardless of whether we ratify this convention, regardless of whether another country has ratified this convention, our intelligence agencies will be monitoring the capabilities of other countries to produce and deploy chemical weapons. The CWC will not change that responsibility.

What this convention does, however, is give our intelligence agencies some additional tools to carry out this task. In short, it will make their job easier.

In addition to onsite inspections, the CWC provides a mechanism to track the movement of sensitive chemicals

around the world, increasing the likelihood of detection. This mechanism consists of data declarations that require chemical companies to report production of those precursor chemicals needed to produce chemical weapons. This information will make it easier for the intelligence community to monitor these chemicals and to learn when a country has chemical weapons capability.

In testimony before the Senate Foreign Relations Committee in 1994, R. James Woolsey, then Director of Central Intelligence, stated: ''In sum, what the chemical weapons convention provides the intelligence community is a new tool to add to our collection tool kit.''

Recently, Acting Director of Central Intelligence, George Tenet, reemphasized this point before the Senate Select Committee on Intelligence. Mr. Tenet stated: ''There are tools in this treaty that as intelligence professionals we believe we need to monitor the proliferation of chemical weapons around the world. * * * I think as intelligence professionals we can only gain.''

No one has ever asserted that this convention is 100 percent verifiable. It simply is not possible with this or any other treaty to detect every case of cheating. But I would respectfully submit that this is not the standard by which we should judge the convention. Instead, we should recognize that the CWC will enhance our ability to detect clandestine chemical weapons programs. The intelligence community has said that we are better off with the CWC than without it—that is the standard by which to judge the CWC.

CONSTITUTIONALITY

One of the issues that should not be contentious, and I hope will not continue to be a focus of attention, is whether the convention, and particularly its inspection regime, is constitutional.

Every scholar that has published on the subject, and virtually every scholar that has considered the issue, has concluded that nothing in the convention conflicts in any way with the fourth amendment or any other provision of the U.S. Constitution.

Indeed, to accommodate our special constitutional concerns, the United States insisted that when parties to the convention provide access to international inspection teams, the government may ''[take] into account any constitutional obligations it may have with regard to proprietary rights or searches and seizures.''

In plain English, this means that inspectors enforcing the Chemical Weapons Convention must comply with our constitution when conducting inspections on U.S. soil.

It also means that the United States will not be in violation of its treaty obligations if it refuses to provide inspectors access to a particular site for legitimate constitutional reasons.

In light of this specific text, inserted at the insistence of U.S. negotiators, I am hard pressed to understand how anyone can seriously contend that the convention conflicts with the Constitution.

There is nothing in the convention that would require the United States to permit a warrantless search or to issue a warrant without probable cause. Nor does the convention give any international body the power to compel the United States to permit an inspection or issue a warrant.

This is the overwhelming consensus among international law scholars that have studied the convention, two of whom have written to me expressing their opinion that the convention is constitutional. I ask unanimous consent that the letters of Harvard law professor, Abram Chayes, and Columbia law professor, Louis Henkin, be included in the RECORD following my statement.

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

(See exhibit 1.)

Mr. BIDEN. So let me make this point absolutely clear, despite what opponents of the convention have said, there will be no involuntary warrantless searches of U.S. facilities by foreign inspectors under this convention.

In light of this, I hope that the constitutionality of this convention will not become an issue in this debate.

Let me conclude that portion by suggesting to my distinguished colleague from Alabama, who is presiding, that I believe, on the merits, this is a good treaty. It is not merely me. The Senator from North Carolina listed people who do not think it is a good treaty. I will submit for the RECORD everyone, from General Schwarzkopf to the Joint Chiefs of Staff to Senator LUGAR, people who believe very, very fervently, as I do, this is clearly in the overwhelming national interest of the United States of America. I ask unanimous consent that a list of supporters of the CWC be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. BIDEN. Now let me move to the third issue. The notion of, as my friend from North Carolina stated, that there is an artificial date of April 29 made up by the administration to put undue pressure on the Senate to act. Let me point out for the Senate that there is nothing artificial about that date. It is real.

What does that mean? It means that our failure to ratify before the 29th will have consequences. First, the chemical weapons treaty mandates trade restrictions that could have a deleterious impact upon the American chemical industry. If the United States has not ratified, as long as they have not ratified, American companies will have to supply end user certificates to purchase certain classes of chemicals from the CWC signatories. After 3 years, they will be subject to trade sanctions that will harm American exports and jobs.

I know that my friend says a lot of chemical companies do not like this. I come from a State that has a little bit of an interest in chemicals, the single most significant State in America that deals with chemicals. A little company called Du Pont; a little company called Hercules; a little company called ICI Americas; a little company called Du Pont Merck—little pharmaceutical outfits who are among the giants in the world. They are not what you call liberal Democratic establishments. They are ardently—I can testify—they are ardently in favor of this treaty. They believe it is desperately in the interest of the United States of America and their interest. This is not a bunch of lib labs out there who are arms controllers running around saying, ''Disarm, ban the bomb.'' These are Fortune, not 500, not 100, 10, Fortune 10 companies that are saying, ''We want this treaty.'' And further, ''We will be harmed if we do not enter this treaty.''

This overall governing body, known as the Conference of State Partners, is going to meet soon after April 29 to draw up the rules governing the implementation of this treaty. If we, to use the vernacular, ''ain't'' in by the 29th, if we are not on by the 29th, we do not get to draw up those rules.

There used to be a distinguished Senator from Louisiana I served with for a long time. My friend, the Presiding Officer, knew him from his days up here. His name was Russell Long. He used to say kiddingly, ''I ain't for no deal I ain't in on.'' But the chemical industry, which is our largest exporter—hear what I just said—the biggest fish in the pond are saying, ''We want to be in on the deal.''

That is why the 29th is important. If we are not a party to the CWC, we will not be a member of that conference. And this body, with no American input, could make rules that have a serious impact upon the United States.

Third, there will be a body called the executive council with 41 members on which we are assured of a permanent seat from the start because of the size of our chemical industry, that is, if we have ratified by the 29th. If we ratify after the council is already constituted, then a decision on whether to order a required surprise inspection on an American facility may be taken without an American representative evaluating the validity of the request and looking out for a facility's interest because we will not be on the standing executive council that makes that decision.

Fourth, there will be a technical secretariat with about 150 inspectors, many of whom would be Americans because of the size and sophistication of our chemical industry. If we fail to ratify the convention by the 29th, there will be no American inspectors.

And finally, and most importantly, in the long term, by failing to ratify, we would align ourselves with those

rogue actors, those rogue states who have chosen to defy the Chemical Weapons Convention. There would be irreparable harm to our global leadership on critical arms control and nonproliferation issues.

I will not take the time now to address other concerns that have been raised, because I said I would limit myself to these three points.

Concluding, Mr. President, first, there has been good-faith, long and serious negotiations resulting in significant movement by the administration on conditions to the Chemical Weapons Convention.

Second, this treaty is in the overwhelming national interest of the United States of America, a topic I am ready, willing, and anxious to debate with my distinguished colleague from North Carolina and others who think it is not. But at a minimum, Mr. President, the Senate should get a chance to hear that debate and vote on whether or not the distinguished Senator from North Carolina is correct or the Senator from Delaware is correct.

Third, Mr. President, April 29 is not an artificial date. Because the triggering mechanism was when we got to 65 signatories, and that 6 months after that date the treaty would enter into force.

Well, 65 have signed on. And 6 months after they got to the No. 65, happens to be April 29. This is not artificial. We did not make up the date. That is what the treaty says.

So, Mr. President, I sincerely hope that my friend from North Carolina, having reflected on the quandary the administration was placed in, which was to negotiate with the Lott group—they thought they were negotiating with Senator HELMS; they thought they were negotiating with every Republican who had an objection, under the auspices of Senator LOTT—if they had known that Senator HELMS did not view that as the appropriate forum for this negotiation, they would have simultaneously met with him.

But now at the end of the process, when we are about to go out on recess, to say that we are not ready to bring this treaty up when we get back unless there is a new negotiation, I find unusual, particularly since I have agreed with the Senator from North Carolina that I will sign on to additional conditions with him.

Let us vote on the only nine outstanding issues that I am aware of that have been raised. None other has been raised that I am aware of, that the administration is aware of, anyone in the Lott group is aware of, to the best of my knowledge.

So, Mr. President, let me conclude by saying, the Senator from North Carolina has dealt with me in good faith. We have negotiated in great detail. He has listed his 30 objections. We have agreed on 21 of the 30. We disagree on nine. We agree on a method to vote on those nine.

I sincerely hope—I sincerely hope—for the interest of the United States of America, after having already decided in the Bush administration that we would do away with the use of chemical weapons regardless of what anybody else did, that we would not now lose our place of leadership in the world and our ability to engage in the moral suasion that relates to nonproliferation and the diminution of weapons of mass destruction, that we would not now forgo that position merely because 1, 2 or 5 or 10 Senators said we should not even bring it on the floor to debate.

I do not believe that will happen. But then again, my wife thinks I am a cockeyed optimist. But I do not think I am being unduly optimistic or a cockeyed optimist. I think having been here this long, that the Senate will get a chance to work its will. That is all I am asking. All I am asking is the Senate get a chance between now and the 29th of April to decide whether it likes this treaty or not. I believe every Member of this Senate has the national interests of the United States of America in mind when they act and when they vote.

Let each of them vote their conscience on this treaty. If it turns out that 66 do not agree with me, then we have spoken, as we did in the League of Nations. The consequences of that vote I think were disastrous. I think the consequence of failure to ratify this treaty would be disastrous. But I think the consequence of not even letting the Senate vote will be catastrophic.

I yield the floor, Mr. President.

EXHIBIT 1

HARVARD LAW SCHOOL,
Cambridge, MA, September 9, 1996.

Hon. JOSEPH R. BIDEN, Jr.,
Ranking Member, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR BIDEN, You have asked me to comment on the suggestion that the Chemical Weapons Convention (the Convention), now before the Senate for its advice and consent, conflicts with the provisions of the Fourth Amendment of the Constitution prohibiting unreasonable searches and seizures. In my view, the suggestion is completely without merit.

The Convention expressly provides that: ''In meeting the requirement to provide access * * * the inspected State Party shall be under the obligation to allow the greatest degree of access *taking into account any constitutional obligations it may have with regard to* proprietary rights or *searches and seizures,*'' (Verification Annex, Part X, par. 41)(emphasis supplied).[1]

As you know, this provision of the Convention was inserted at the insistence of the United States after earlier drafts, which provided insufficient protection in regard to unreasonable searches and seizures, had been criticized by a number of U.S. scholars. The plain meaning of these words, which seems too clear for argument, is that the United States would have no obligation under the Convention to permit access to facilities subject to its jurisdiction in violation of the provisions of the Fourth Amendment. It was the clear understanding of the negotiators that the purpose of the provision was to obviate any possibility of conflict between the obligations of the United States under the Convention and the mandate of the Fourth Amendment. The Convention in its final form is thus fully consistent with U.S. constitutional requirements.

Inspections required by the Convention will be conducted pursuant to implementing legislation to be adopted by Congress that will define the terms, conditions and scope of the inspections to be conducted in the United States by the Technical Staff of the Organization for the Prohibition of Chemical Weapons (OPCW) established by the Convention. I understand that draft implementing legislation entitled the Chemical Weapons Convention Implementation Act, now before the Congress, specifies the procedures that will be followed in the case of both routine and challenge inspections carried out pursuant to the Convention. The Act requires, at a minimum, an administrative search warrant before an inspection can be conducted, and has elaborate provisions for notice and other protections to the owner of the premises to be searched. These provisions of the Act are modeled on similar administrative inspection regimes already authorized by Acts of Congress such as the Toxic Substances Control Act and upheld by the courts. However, if Congress is concerned that these provisions are constitutionally insufficient, it is free under the Convention to revise the Act to include more stringent requirements that conform to constitutional limitations. Finally, a person subject to inspection may challenge the inspection in a U.S. court, which in turn will be bound to invalidate any inspection that fails to comply with constitutional requirements. In view of the provisions of the Verification Annex quoted above, the United States would not be in violation of any international obligation in such an eventuality.

For these reasons I conclude that there is no constitutional objection to the Convention, and that the rights of individuals under the Fourth Amendment will be fully protected under the Convention and implementing legislation of the character presently contemplated.

In addition, I have been involved in the field of arms control as a scholar and practitioner for many years, going back to the Limited Test Ban Treaty in 1963, in connection with which I appeared before the Senate Foreign Relations Committee as Legal Adviser of the State Department. I have also closely followed the negotiations for the Chemical Weapons Convention. The United States has been a prime mover in the development of the Convention under both Republican and Democratic administrations. I am convinced that the prompt ratification of the Chemical Weapons Convention is overwhelmingly in the security interest of the United States and should not be derailed by constitutional objections that are so plainly without substance.

Sincerely,

ABRAM CHAYES,
Felix Frankfurter, Professor of Law Emeritus.

COLUMBIA UNIVERSITY IN THE
CITY OF NEW YORK,
New York, NY, September 11, 1996.

Senator JOSEPH R. BIDEN, Jr.,
U.S. Senate, Washington, DC.

DEAR SENATOR BIDEN: As requested, I have considered whether, if the United States adhered to the Convention on Chemical Weapons, the inspection provisions of the Convention would raise serious issues under the United States Constitution. I have concluded that those provisions would not present important obstacles to U.S. adherence to the Convention.

Like domestic laws, treaties of the United States are subject to constitutional restraints. The Fourth Amendment to the

[1] The Verification Annex is, of course, an integral part of the Convention.

United States constitution provides: ''The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated * * *'' Constitutional jurisprudence has established that the right to be secure applies also to industrial and commercial facilities and to business records, papers and effects.

The Constitution, however, protects the rights of private persons; it does not protect governmental bodies, public officials, public facilities or public papers. As to private persons, the Fourth Amendment protects only against searches and seizures that are ''unreasonable.'' Inspection arrangements, negotiated and approved by the President and consented to by the Senate, designed to give effect to a treaty of major importance to the United States, carry a strong presumption that they are not unreasonable.

The Chemical Convention itself anticipated the constitutional needs of the United States. Part X of the Convention, ''Challenge Inspection pursuant to Article IX,'' provides: ''41. In meeting the requirement to provide access as specified in paragraph 38, the inspected State party shall be under the obligation to allow the greatest degree of access taking into account any constitutional obligation it may have with regard to proprietary rights of searches and seizures.''

As applied to the United States, that provision is properly interpreted to mean that the United States must provide access as required by the Convention, but if the Constitution precludes some access in some circumstances, the United States must provide access to the extent the Constitution permits. And if, because of constitutional limitations, the United States cannot provide full access required by the Convention, the United States is required ''to make every reasonable effort to provide alternative means to clarify the possible noncompliance concern that generated the challenge inspection.'' (Art. 42.)

The United States would be required also to adopt measures to overcome any constitutional obstacles to any inspection or interrogation required by the Convention. If it were determined to be necessary, the United States could satisfy the requirements of the Fourth and Fifth Amendments by arranging for administrative search warrants, by enacting statutes granting immunity from prosecution for crimes revealed by compelled testimony, by providing just compensation for any ''taking'' involved.

Sincerely yours,

LOUIS HENKIN,
University Professor Emeritus.

EXHIBIT 2

DISTINGUISHED INDIVIDUALS AND ORGANIZATIONS SUPPORTING THE CWC

William Jefferson Clinton.
George Bush.
Madeleine Albright.
James A. Baker III.
Warren Christopher.
William Cohen.
John M. Deutch.
Lawrence Eagleburger.
John Holum.
Nancy Kassebaum.
Stephen Ledogar, U.S. Representative to the Conference on Disarmament.
Ronald Lehman, former Director of the Arms Control and Disarmament Agency.
Vil Mirzayanov, whistleblower on the Soviet/Russian novichok program.
Sam Nunn.
William Perry.
Gen. Colin Powell.
William A. Reinsch, Under Secretary of Commerce for Export Administration.
Janet Reno, Attorney General.
Gen. Norman Schwartzkopf, U.S.A. (Ret.).
Gen. Brent Scowcroft.
Gen. John Shalikashvili.
Walter B. Slocombe, Deputy Under Secretary for Policy, Department of Defense.
George Tenet, Acting Director of Central Intelligence.
R. James Woolsey, former Director of Central Intelligence.
Adm. E.R. Zumwalt, former Chief of Naval Operations.
Kenneth Adelman, Columnist, The Washington Times.

INDUSTRY ORGANIZATIONS

The Chemical Manufacturers Association (CMA)—(approximately 200 member companies).
The Synthetic Organic Chemical Manufacturers Associations (SOCMA)—(over 260 member companies).
The Pharmaceutical and Research Manufacturers of America (PhRMA)—(over 100 member companies).
The Biotechnology Industry Organization (BIO)—(over 650 member companies and organizations).
The American Chemical Society (ACS)—(over 150,000 members).
The American Physical Society (APS)—(over 40,000 members).
The Council for Chemical Research (CCR)—(approximately 200 University, business & governmental laboratories).
The American Institute of Chemical Engineers (AIChE)—(approximately 60,000 members).
The Business Executives for National Security (BENS)—(approximately 750 members).

LEADERS OF THE FOLLOWING U.S. BUSINESSES

AEA Investors.
Air Products and Chemicals, Inc.
Akzo Nobel Chemicals, Inc.
ARCO Chemical Company.
Ashland Chemical Company.
Automatic Data Processing.
BASF.
Bayer Corporation.
Bear Stearns & Company, Inc.
Betz Dearborn, Inc.
The BF Goodrich Co.
Borden Chemicals and Plastic, LP.
BP Chemicals, Inc.
Capricorn Management.
Carus Chemical Company.
C.H.O. Enterprises, Inc.
The CIT Group, Inc.
Compton Development.
Crompton & Knowles Corporation.
Dow Chemical Company.
Dow Corning Corporation.
Eastman Chemical Company.
E.I. duPont de Nemours.
Elf Atochem North America.
Enthone-OMI Inc.
Ethyl Corporation.
Eugene M. Grant and Company.
Exxon Chemical Company.
FINA, Inc.
FMC Corporation.
General Investment & Development Co.
Givaudan-Roure Corporation.
Great Lakes Chemical Corporation.
Harman International.
Harris Chemical Group.
HASBRO Inc.
The Hauser Foundation.
Hechinger Company.
Hercules, Inc.
Hoechst Celanese Corporation.
International Financial Group.
International Maritime Systems.
Kansas City Southern Industries.
Lippincott Foundation.
Lonza Inc.
McFarland Dewey & Company.
Mallinckrodt Group, Inc.
Monsanto Chemical.
Morton International, Inc.
Nalco Chemical Company.
National Starch & Chemical Company.
NOVA Corporation.
Occidental Chemical Corporation.
Olin Corporation.
Oxford Venture Corporation.
Perstorp Polyols, Inc.
PPG Industries, Inc.
Quantum Chemical Company.
The R & J Ferst Foundation.
RCM Capital Management.
Reichhold Chemicals, Inc.
Reilly Industries, Inc.
Rhone-Poulenc, Inc.
Rohm and Haas Company.
Rosewood Stone Group.
R.T. Vanderbilt Company, Inc.
The Sagner Companies, Inc.
Sargent Management.
Sartomer Company.
Scott Foresman/Addison Wesley.
Sonesta International.
Stepan Company.
Sterling Chemicals, Inc.
Tennant Company.
Texas Brine Corporation.
Tica Industries, Inc.
Union Carbide Corporation.
Uniroyal Chemical Company, Inc.
United Retail Group, Inc.
Velsicol Chemical Corporation.
Vulcan Chemical: John Wilkinson.
W.R. Grace & Company: Albert J. Costello.

VETERANS ORGANIZATIONS

American Ex-Prisoners of War.
American GI Forum of the United States.
AMVETS.
Jewish War Veterans of the U.S.A.
Korean War Veterans Association.
National Gulf War Resource Center.
Reserve Officers Association.
Veterans for Peace.
Veterans of Foreign Wars.
Vietnam Veterans of America, Inc.

U.S. NOBEL LAUREATES

Julius Adler.
Sidney Altman.
Philip W. Anderson.
Kenneth J. Arrow.
Julius Axelrod.
David Baltimore.
Helmut Beinert.
Konrad Bloch.
Baruch S. Blumberg.
Herbert C. Brown.
Thomas R. Cech.
Stanley Cohen.
Leon N. Cooper.
Johann Deisenhofer.
Renato Dulbecco.
Gertrude B. Elion.
Edmond H. Fischer.
Val L. Fitch.
Walter Gilbert.
Dudley Herschbach.
David Hubel.
Jerome Karl.
Arthur Kornberg.
Edwin G. Krebs.
Joshua Lederberg.
Wassily W. Leontiel.
Edward B. Lewis.
William N. Lipscomb.
Mario J. Molina.
Joseph E. Murray.
Daniel Nathans.
Marshall Nirenberg.
Arno A. Penzias.
Norman F. Ramsey.
Burton Richter.
Richard J. Roberts.
Martin Rodbell.
F. Sherwood Rowland.
Glenn T. Seaborg.

Herbert A. Simon.
Phillip A. Sharp.
R. E. Smalley.
Robert M. Solow.
Jack Steinberger.
Henry Taube.
James Tobin.
Charles H. Townes.
Eric Wieschaus.
Robert R. Wilson.

RELIGIOUS GROUPS

American Friends Service Committee.
The American Jewish Committee.
American-Jewish Congress.
Anti-Defamation League.
B'nai B'rith.
Church of the Brethren, Washington Office.
Church Women United.
Commission on Social Action of Reform Judaism.
The Episcopal Church.
Episcopal Peace Fellowship.
Evangelical Lutheran Church of America.
Friends Committee on National Legislation.
Maryknoll Justice and Peace Office.
Mennonite Central Committee.
Methodists United for Peace with Justice.
National Council of Churches.
National Jewish Community Relations Advisory Council.
NETWORK: A National Catholic Social Justice Lobby.
Presbyterian Church (USA).
Union of American Hebrew Congregations.
Unitarian Universalist Association.
United Church of Christ, Office for Church in Society.
United Methodist Board of Church and Society.
United States Catholic Conference.
The United Synagogue of Conservative Judaism.

PUBLIC INTEREST GROUPS

American Association for the Advancement of Science.
American Bar Association.
Americans for Democratic Action.
American Public Health Association.
Arms Control Association.
Association of the Bar of the City of New York.
Center for Defense Information.
Chemical Weapons Working Group.
Council for a Livable World.
CTA/Bellona Foundation USA.
Demilitarization for Democracy.
Economists Allied for Arms Reductions.
Federation of American Scientists.
Friends of the Earth.
Fund for New Priorities in America.
Greenpeace.
Henry L. Stimson Center.
Human Rights Watch.
International Center.
Lawyer's Alliance for World Security.
League of Women Voters.
National Resources Defense Council.
Peace Action.
Physicians for Social Responsibility.
Plutonium Challenge.
Public Education Center.
Saferworld.
Sierra Club.
Taxpayers for Common Sense.
20/20 Vision National Project.
Union of Concerned Scientists.
Women's Action for New Directions.
Women's International League for Peace and Freedom.
Women Strike for Peace.
World Federalist Association.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. 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. HELMS. I thank the Chair.

Mr. President, I was able to hear part of the brief address by my friend from Delaware. What he apparently does not know is that I was a part of the Lott group to which he referred. I attended the meetings. I participated. That group did accomplish a few things of minor significance, but they could not do anything of importance, not in the really serious issues.

So then they fell back, and there have been no more meetings of the Lott group. My suggestion has been followed about trying to do it on the staff level. But if the Senator from Delaware, or anyone else, thinks they can drive a stake between the majority leader and me, they will have to think again.

I am not going to try to answer the many erroneous statements he has made. And I know he was ad-libbing and he was not hearing his staff whisper to him, and so forth. So he was operating under difficult circumstances.

But I say, again, I want this treaty to be made into an instrument that will be beneficial to the American people and to this country. It is my intent to continue to insist upon that. It is my intent, along with the approval of the distinguished majority leader, inasmuch as we have so many new Senators who were not here last year, the distinguished occupant of the Chair being one of them, and did not have the benefit of the testimony of witnesses, pro and con, who are highly respected in the foreign relations community.

MORNING BUSINESS

(During today's session of the Senate, the following morning business was transacted.)

TRIBUTE TO MAJ. GEN. DONALD EDWARDS

Mr. LEAHY. Mr. President, I rise today to pay tribute to Maj. Gen. Donald Edwards, who has served for the last 16 years as the Adjutant General of the Vermont National Guard. Ever since Ethan Allen and his famous Green Mountain Boys took the British fort at Ticonderoga, Vermonters have had a propensity to serve their nation as citizen-soldiers. That tradition is alive and well today, and thanks to Don Edwards, the Vermont National Guard is stronger today than ever before. Don was instrumental in starting the Army National Guard Mountain and Winter Warfare School, which trains soldiers from around the Nation in the rigors of winter warfare. He also excelled at being an advocate of Vermont's interests within the Pentagon.

I remember the case of the 1–86th artillery battalion, which in 1992 was abruptly threatened with elimination, even though it had one of the highest readiness and retention rates in the entire U.S. Army. It was the kind of short-sighted bureaucratic decision that Don Edwards could not tolerate, and he made a strong case to me. I helped save that battalion, although I had to hold up a defense bill to do it. Don never wavered in his devotion to do what was right for the men and women of the Vermont National Guard.

Recently, the Vermont Air Guard received four first-place awards at the Air Force's premier air combat competition, known as William Tell. Don always stressed to the soldiers and airmen under his command the importance of training hard and as realistically as possible.

During Desert Storm, his philosophy paid off, as several Vermont Guard units deployed to Southwest Asia and performed flawlessly during that conflict. Those were anxious times, and Vermonters saw a side of Don Edwards that they had never seen before. He was a tireless advocate for our deployed soldiers, and he acted with great compassion to do whatever he could to help the families of those who were deployed overseas.

I am sure that some of that attitude was shaped by his own experiences in Vietnam. I know that his tireless devotion to Vermont veterans of all wars has helped Vermonters appreciate the extraordinary sacrifices that were made by ordinary citizens. It seemed like whenever two or three veterans gathered together, Don Edwards was there to lend weight to their cause.

As Don Edwards hangs up his uniform for the last time, I want to give him my personal thanks for all he has done for Vermont, and to wish him good luck and Godspeed in his future endeavors.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, March 18, 1997, the Federal debt stood at $5,367,674,335,377.56.

One year ago, March 18, 1996, the Federal debt stood at $5,055,610,000,000.

Five years ago, March 18, 1992, the Federal debt stood at $3,859,480,000,000.

Ten years ago, March 18, 1987, the Federal debt stood at $2,246,620,000,000.

Fifteen years ago, March 18, 1982, the Federal debt stood at $1,050,784,000,000 which reflects a debt increase of more than $4 trillion ($4,316,890,335,377.56) during the past 15 years.

U.S. FOREIGN OIL CONSUMPTION FOR WEEK ENDING MARCH 14

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending March 14, the U.S. imported 7,849,000 barrels of oil each day, 704,000 barrels more than the 7,145,000 imported during the same week a year ago.

Americans relied on foreign oil for 55 percent of their needs last week, and

there are no signs that the upward spiral will abate. Before the Persian Gulf war, the United States obtained approximately 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970's, foreign oil accounted for only 35 percent of America s oil supply.

Anybody else interested in restoring domestic production of oil—by U.S. producers using American workers? Politicians had better ponder the economic calamity sure to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the U.S.—now 7,849,000 barrels a day.

CPSC LAUNCHES ''RECALL ROUND-UP DAY''

Mr. BRYAN. Mr. President, unintentional injuries are the leading cause of death to persons under 35, and the fifth leading cause of death in the Nation overall. Unintentional injuries kill more children over age one than any disease.

It is astounding that there are an average 21,400 deaths and 29.4 million injuries each year related to consumer products under the jurisdiction of a small, but effective, Federal agency—the U.S. Consumer Product Safety Commission [CPSC]. The CPSC finds that deaths, injuries, and property damage associated with consumer products cost the Nation $200 billion annually.

In 1996, the CPSC negotiated 375 recalls involving over 85 million products that presented a significant risk of injury to the public. However, despite recall notices and public warnings, many old hazardous products such as bean bag chairs, wooden bunk beds, minihammocks and cribs—with the potential to seriously injure or kill a child—remain in homes, flea markets, garage sales or in second hand stores.

To rid consumers' homes of hazardous products, the Consumer Product Safety Commission under the leadership of Chairman Ann Brown, on April 16 of this year, will launch ''Recall Round-Up Day'' by broadcasting a video to television stations across the country. The video will have examples of hazardous products that might be in consumers homes, such as the following:

Bean bag chairs that can present a choking or suffocation hazard to children. Some bean bag chairs can be unzipped and children can then inhale the small pellets of foam filling. The CPSC is aware of at least five deaths and at least 23 other incidents in which children inhaled or ingested bean bag filling. In the past 2 years, CPSC obtained the recall of more than 10 million bean bag chairs.

Wooden bunk beds that can strangle young children. Since 1990, CPSC has received reports of 32 children who died after becoming caught in bunk beds with improper openings in the top bunk structure. Since 1995, CPSC has obtained the recall of approximately half a million hazardous bunk beds.

Mini-hammocks that can strangle children. CPSC has received reports of 12 children, ages 5 to 17 years, who became entangled and died when using mini-hammocks without spreader bars. Last year, CPSC obtained the recall of over three million minihammocks.

Old cribs that can choke or suffocate a small child. Cribs having more than 2⅜ inches between crib slats, corner posts, or cut outs on the headboard or footboard present suffocation and strangulation hazard to babies. Each year, 50 babies die when they become trapped between broken crib parts or in cribs with older, unsafe designs.

CPSC is enlisting the help of State and local officials, as well as national and State health and safety organizations, in connection with State and local governments throughout the Nation, to publicize a safety campaign, distribute information about these and other hazardous products in the home. In some States, recalled products will be rounded up and brought to a central location for disposal.

I commend Chairman Ann Brown and the CPSC for taking this bold action. My State Office in Las Vegas is working with the State chapter of the National SafeKids Campaign, Sunrise Children's Hospital, and the Clark County Health Dept. to organize local events throughout the State for Recall Roundup. We will publicize the campaign through the media to reach the general public. Special efforts will be directed to reach child care providers and especially new parents. The sellers of used articles that could include recalled products will also be alerted to the hazards that used cribs, bunk beds, minihammocks and bean bag chairs could present to prevent the resale of these items.

I encourage my colleagues to join with me in this effort and to encourage organizations in your State to take an active role in this lifesaving effort on April 16. For this reason, I ask unanimous consent to have printed in the RECORD a ''Suggested List of Local Activities'' recommended by the CPSC for this important Recall Round-Up Day on April 16.

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

RECALL ROUNDUP SUGGESTED STATE AND LOCAL ACTIVITIES

1. Organize a news conference. Contact medical professionals in pediatrics, children's hospitals, injury and disease prevention, medical examiners offices, etc., for participation in news conference.

2. Issue state and local news release in conjunction with CPSC video news release.

3. Distribute printed news release information through established networks.

4. Have State Governor, Secretary of Health, or other prominent figures issue a Proclamation to kick off the event.

5. Offer to participate in TV/radio interviews.

6. Prepare media outlets in advance for release and use of the CPSC video news release.

7. Organize local Recall Roundups using list of recalled products.

8. Monitor flea markets and secondhand stores for recalled products and provide recall information.

9. Provide recall lists to community and homeowner associations that sponsor yard sales or that issue local news letters.

10. Work with school systems and PTA groups to promote community service/community awareness activities.

Safety poster campaign
Neighborhood roundups
Display information at schools

11. Distribute recall information to family day care/group day care agencies.

12. Seek involvement of youth clubs, YM and WCA, Scouts, etc.

13. Provide recall information packages to the public upon request.

COMMENDING NATIONAL GUARD FLOOD RELIEF EFFORT

Mr. BYRD. Mr. President, I would like to take a moment to comment on the outstanding job performed by the West Virginia National Guard in response to the recent catastrophic floods that devastated sixteen West Virginia counties.

Aviation, engineer, and troop command personnel have worked diligently and wholeheartedly to deliver potable water, fuel, cleaning supplies, and medicines to their fellow citizens who have been trapped by the flood waters. They have also provided transportation, cleanup assistance, and debris removal in all sixteen counties in the emergency zone.

The approximately five-hundred men and women mobilized in these Guard units carry the double burden of civilian jobs in addition to their military roles. Despite these burdens, they are capable of responding to an emergency at a moment's notice. Thanks to the National Guard's efforts, families in many of the affected counties have been able to return to their homes and begin the repair and rebuilding process. West Virginians in Wayne and Cabell counties are still faced with removing large amounts of debris, but again, thanks to the National Guard's efforts, the cleanup is on the right track.

I would also like to thank all of the employers throughout West Virginia who have supported the National Guard. Their willingness to continue to accommodate the National Guard through all of the flood emergencies suffered by West Virginia communities in recent years is remarkable and is appreciated by every West Virginian who has benefitted from Guard efforts.

I offer my sincere thanks to all of the National Guard personnel involved in helping in West Virginia's recovery from this and every natural disaster. May their efforts to aid West Virginia's flood victims continue, and may they receive the recognition and praise that are so merited. They are, indeed, famous men and women to their fellow citizens.

MESSAGES FROM THE PRESIDENT

REPORT OF A PROPOSED RESCISSION OF BUDGETARY RESOURCES—MESSAGE FROM THE PRESIDENT—PM 23

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, and to the Committee on Energy and Natural Resources.

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one proposed rescission of budgetary resources, totaling $10 million.

The proposed rescission affects the Department of Energy.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 19, 1997.*

REPORT ON ENVIRONMENTAL QUALITY—MESSAGE FROM THE PRESIDENT—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 Environment and Public Works.

To the Congress of the United States:

I am pleased to transmit to the Congress the Twenty-fifth Annual Report on Environmental Quality.

As a nation, the most important thing we can do as we move into the 21st century is to give all our children the chance to live up to their God-given potential and live out their dreams. In order to do that, we must offer more opportunity and demand more responsibility from all our citizens. We must help young people get the education and training they need, make our streets safer from crime, help Americans succeed at home and at work, protect our environment for generations to come, and ensure that America remains the strongest force for peace and freedom in the world. Most of all, we must come together as one community to meet our challenges.

Our Nation's leaders understood this a quarter-century ago when they launched the modern era of environmental protection with the National Environmental Policy Act. NEPA's authors understood that environmental protection, economic opportunity, and social responsibility are interrelated. NEPA determined that the Federal Government should work in concert with State and local governments and citizens ''to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.''

We've made great progress in 25 years as we've sought to live up to that challenge. As we look forward to the next 25 years of environmental progress, we do so with a renewed determination. Maintaining and enhancing our environment, passing on a clean world to future generations, is a sacred obligation of citizenship. We all have an interest in clean air, pure water, safe food, and protected national treasures. Our environment is, literally, our common ground.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 19, 1997.*

MESSAGES FROM THE HOUSE

At 12:00 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 bills, in which it requests the concurrence of the Senate:

H.R. 412. An act to approve a settlement agreement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District.

H.R. 514. An act to permit the waiver of District of Columbia residency requirements for certain employees of the Office of the Inspector General of the District of Columbia.

H.R. 672. An act to make technical amendments to certain provisions of title 17, United States Code.

H.R. 927. An act to amend title 28, United States Code, to provide for appointment of United States marshals by the Attorney General.

The message also announced that the House has passed the following bill, without amendment:

S. 410. A bill to extend the effective date of the Investment Advisers Supervision Coordination Act.

ENROLLED BILLS SIGNED

At 3:46 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 924. An act to amend title 18, United States Code, to give further assurance to the right of the victims to attend and observe the trials of those accused of the crime.

The enrolled bill was signed subsequently by the President pro tempore [Mr. THURMOND].

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 672. An act to make technical amendments to certain provisions of title 17, United States Code; to the Committee on the Judiciary.

H.R. 927. An act to amend title 28, United States Code, to provide for appointment of United States marshals by the Attorney General; to the Committee on the Judiciary.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BROWNBACK (for himself, Mr. LIEBERMAN, Mr. DEWINE, and Mr. KOHL):

S. 471. A bill to amend the Television Program Improvement Act of 1990 to restore the applicability of that Act to agreements relating to voluntary guidelines governing telecast material and to revise the agreements on guidelines covered by that Act; to the Committee on Commerce, Science, and Transportation.

By Mr. CRAIG (for himself, Mr. GRAHAM, Mr. D'AMATO, Mr. TORRICELLI, Mr. AKAKA, Mr. MACK, Mr. ALLARD, Mr. THOMAS, Mr. REID, Mr. BREAUX, and Mr. WARNER):

S. 472. A bill to provide for referenda in which the residents of Puerto Rico may express democratically their preferences regarding the political status of the territory, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BOND (for himself and Mr. NICKLES):

S. 473. A bill to amend the Internal Revenue Code of 1986 to clarify the standards used for determining that certain individuals are not employees, and for other purposes; to the Committee on Finance.

By Mr. KYL (for himself, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. HUTCHINSON, Mr. GRASSLEY, and Mr. JOHNSON):

S. 474. A bill to amend sections 1081 and 1084 of title 18, United States Code; to the Committee on the Judiciary.

By Mr. JEFFORDS (for himself, Mr. LEAHY, Mr. D'AMATO, and Mr. MOYNIHAN):

S. 475. A bill to amend the Internal Revenue Code of 1986 to clarify the excise tax treatment of draft cider; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. BIDEN, Mr. STEVENS, Mr. GREGG, and Mr. KOHL):

S. 476. A bill to provide for the establishment of not less than 2,500 Boys and Girls Clubs of America facilities by the year 2000; to the Committee on the Judiciary.

By Mr. HATCH (for himself and Mr. BENNETT):

S. 477. A bill to amend the Antiquities Act to require an Act of Congress and the consultation with the Governor and State legislature prior to the establishment by the President on national monuments in excess of 5,00 acres; to the Committee on Energy and Natural Resources.

By Mr. COVERDELL (for himself and Mr. CLELAND):

S. 478. A bill to designate the Federal building and United States courthouse located at 475 Mulberry Street in Macon, Georgia, as the ''William Augustus Bootle Federal Building and United States Courthouse''; to the Committee on Environment and Public Works.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. LOTT, Mr. BREAUX, Mr. NICKLES, Mr. MURKOWSKI, Mr. TORRICELLI, Ms. LANDRIEU, Mr. CRAIG, Mr. KERREY, Mr. HAGEL, and Mr. HUTCHINSON):

S. 479. A bill to amend the Internal Revenue Code of 1986 to provide estate tax relief, and for other purposes; to the Committee on Finance.

By Mr. WELLSTONE:

S. 480. A bill to repeal the restrictions on welfare and public benefits for aliens; to the Committee on Finance.

By Mrs. FEINSTEIN (for herself, Mrs. BOXER, and Ms. MOSELEY-BRAUN):

S. 481. A bill to prohibit certain abortions; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SESSIONS (for himself and Mr. SHELBY):

S. Con. Res. 13. Concurrent resolution expressing the sense of Congress regarding the display of the Ten Commandments by Judge Roy S. Moore, a judge on the circuit court of the State of Alabama; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BROWNBACK (for himself, Mr. LIEBERMAN, Mr. DEWINE, and Mr. KOHL):

S. 471. A bill to amend the Television Program Improvement Act of 1990 to restore the applicability of that Act to agreements relating to voluntary guidelines governing telecast material and to revise the agreements on guidelines covered by that Act; to the Committee on Commerce, Science, and Transportation.

THE TELEVISION IMPROVEMENT ACT OF 1997

Mr. BROWNBACK. Mr. President, I would like to address the body today on legislation that I am introducing, along with Senator LIEBERMAN, Senator DEWINE, and Senator KOHL, an act called the Television Improvement Act of 1997. It is my sincere hope that this bill will help solve one of our nation's most troubling problems.

I am fresh off the campaign trail, as the Senator from Georgia is fresh off the campaign trail. Throughout the 1996 campaign, I traveled across the State of Kansas and talked with thousands of people. I came away from that experience convinced that the most important task that we as a Nation face today is renewing the American culture.

I can recall countless meetings where individuals, particularly parents, would come up to me worried about the future of the American culture, particularly as it affects their children, and they constantly felt they were having to fight the culture to raise their kids. They hearken back to a time when they didn't feel like they were so opposed by the nature of the American culture. They recall a time when the culture was supportive of what they were doing and helped them in raising a good and solid family. They were just pleading for help. ''Help us be able to come to a point where we can effectively raise our children. Don't make us have to constantly fight our culture.''

Hollywood is the center of gravity for the American culture and, increasingly, the world's culture. Hollywood has changed the culture in this country, and, unfortunately, it has led to a decline in our culture. Over the past 15 years, television has made our children think that violence is OK, that sexuality out of wedlock is expected and encouraged, and that criminal activity is OK. Well, these things are not OK, and it's time the industry changed television to make it easier for parents to raise children.

The Television Improvement Act of 1997 is intended to encourage the broadcasting industry to make raising children easier. What it intends to do is to allow the broadcast industry—the television, cable, and motion picture industries to enter into, again, a code of conduct comparable to the one they used until 1983. They would once again be able to say that there is a standard below which they will not go, and they can collaborate to establish that standard without running afoul of Federal antitrust laws.

Previously, the NAB had a self-imposed code of conduct that governed television content. The code recognized the impact of television on our children as well as the responsibility that broadcasters shared in providing programming that used television's influence carefully. However, in 1983, a Federal district court determined that some of the advertising provisions of the code violated Federal antitrust laws.

Although the court did not rule that any of the code's programming standards violated antitrust laws, the NAB decided to stop using the entire code. The past 15 years have demonstrated that the code of conduct is sorely missed. Television has declined over the past 15 years, in no small part due to the absence of the code. I don't think anybody in this body could argue—or in this country who would disagree—that the nature of American television has declined over the past 15 years.

Let me read for the body a statement that is from the old code of conduct that the National Association of Broadcasters used until 1983. It sounds almost quaint today. But listen to the content of what the industry itself had before. It says:

> Above and beyond the requirements of the law, broadcasters must consider the family atmosphere in which many of their programs are viewed. There shall be no graphic portrayal of sexual acts by sight or sound. The portrayal of implied sexual acts must be essential to the plot and presented in a responsible and tasteful manner.

I do not think there would be many people today who would say that this reflects the nature of television today. But I think many Americans today would say, ''That is what I want television to be today so I don't have to always fight the TV to raise my kids.''

It is not enough for everybody to say, ''Just turn it off.'' My wife and I are raising three children. It is a little tougher than just saying, ''Turn it off.'' It is about being there all the time. We are trying. One of us is there all the time. It is also not enough to say, ''Well, we have a rating code so you know what is on television.''

We are pleading with the industry, saying, ''Let's go back to that time when you used a code because television was better then and it so directly impacts the culture and the soul of America.'' The average American spends 5 hours a day watching TV. Most would liken it to a stovepipe of black soot going into the mind and into the soul. Why don't we change that back to the way it used to be, and have it as a well of fresh spring water going into the mind and into the soul?

The industry is fully capable of doing this. Witness some of the current shows, especially ''Touched by an Angel,'' which is a leading show by CBS today. It is a good, positive, and uplifting show. But, sadly, there are far more that are far more degrading that would lead one more to the stovepipe analogy rather than the fresh spring well water.

We are pleading with the industry with this bill. This bill provides no additional authority to the Federal Government; not an ounce of additional authority to the FCC. It is a plea to the industry to help us. We are having trouble. The American family has been under attack. In many places it has disintegrated. In our inner cities we have 70 percent of our children born to single moms. In many places we no longer have families, one of the basic tenets of culture.

We are asking by this very simple act and pleading with the industry. ''Let's go back to the time when television did not hurt our lives.'' And we are not suggesting censorship. If we have a better product coming out of this industry, we will have a better American culture. We will have a better world culture because Hollywood is the center of gravity for not only this culture but increasingly the world's culture. It is coming up time and time again.

So we are introducing this bill today, a bipartisan bill, requesting that the industry negotiate and work together on a code of conduct the like of which it had before.

We will be holding hearings in the Governmental Affairs Committee. We have been joined by the chairman and the ranking member of the appropriate Judiciary subcommittee who are cosponsoring this bill. We anticipate that they will have hearings on it as well. It is a follow-on to Senator Simon's work in this area in 1990. We hope that it will be much more successful. If it is not, there will be further action coming to try to address this corrosive effect that, unfortunately, television has on our society and, indeed, on the world.

So, Mr. President, we are introducing this bill today asking the industry for help to lead our culture back to a brighter and a better time. They can do it. They are capable of doing it.

Mr. President, again, let me say that I am pleased to introduce today with Senators LIEBERMAN, DEWINE, and KOHL, the Television Improvement Act of 1997, a bill that I believe will help solve one of our Nation's most troubling problems. Throughout the 1996 campaign, I traveled across the State of Kansas and talked with thousands of

people. I came away from that experience with the conclusion that the most important task that we as a nation face today is renewing the American culture.

People are desperately worried about the decline of our culture and about the decline of the American family. Many of the parents that I spoke with during the summer and fall believe that they increasingly have to fight their culture to raise their children. These parents feel that American culture in the 1990's actually makes it more difficult to raise children.

Hollywood is the center of gravity for the American culture and increasingly the world's culture. Hollywood has changed the culture in this country, and, unfortunately, it has led to a decline in our culture. Over the past 15 years, television has made our children think that violence is OK, that sexuality out of wedlock is expected and encouraged, and that criminal activity is OK. Well, these things are not OK, and it's time the industry changed television to make it easier for parents to raise children.

Previously, the National Association of Broadcasters had a self-imposed code of conduct that governed television content. The code recognized the impact of television on our children as well as the responsibility that broadcasters shared in providing programming that used television's influence carefully. However, in 1983, a Federal district court determined that some of the advertising provisions included in the code violated Federal antitrust laws.

Although the court did not rule that any of the code's programming standards violated antitrust laws, the NAB decided to stop using the entire code. The past 15 years have demonstrated that the code of conduct is sorely missed. Television has declined over the past 15 years, in no small part due to the absence of the code.

For this reason, Senators LIEBERMAN, DEWINE, KOHL, and I are introducing this bill to make perfectly clear that the broadcast industry is not violating Federal antitrust laws if its members collaborate on a code of conduct that includes voluntary guidelines intended to alleviate the negative impact that television content has had on our children and to promote educational and otherwise beneficial programming.

In drafting this legislation, we have built upon Senator Simon's Television Program Improvement Act of 1990. Unlike that law, however, the Television Improvement Act of 1997 would not include a sunset provision, and we have expanded the scope of the antitrust exemption to enable the industry to tackle such issues as the proliferation of programming that contains sexual content and condones criminal behavior.

Senator LIEBERMAN and I plan to hold hearings in the Governmental Affairs Committee's Government Management and Restructuring Subcommittee, which I chair and on which Senator LIEBERMAN serves as the ranking Democrat. The hearings will explore the impact that the Federal Government has had on the ability of the television industry to broadcast more inspirational and less harmful programming. We will examine whether the application of Federal antitrust laws to a collaboration by the broadcasters to promote better programming hinders the industry's ability to police itself and has resulted in a decline in television broadcasting. The Federal Government should not be impeding any voluntary effort by the industry to improve the quality of programming; the Government should be encouraging such an effort.

Let me just reiterate that we are not calling for a government mandate to be imposed upon the industry, nor are we providing the FCC with an ounce of additional authority with respect to broadcasting. What we are doing is trying to encourage the industry to do what it did prior to 1983—broadcast less programming that harms our kids and more programming that helps us raise our kids. We want Hollywood to start producing, and we want the broadcasters to start airing, better programming.

I ask that the bill be appropriately referred.

Mr. LIEBERMAN. Mr. President, I am proud today to join with my colleagues Senator BROWNBACK, DEWINE, and KOHL in introducing the Television Program Improvement Act of 1997, a bill we believe will help directly address the public's concerns about the declining standards of television and that will hopefully lead the television industry to exercise more responsibility for the programming it puts on the air.

The industry has tried in part to respond to the concerns of parents about the negative influence television is having on children by creating a rating system for sex, violence, and vulgar content. This system is a good start, but there is a general consensus it does not go far enough in providing parents with the information they need to make wise choices for their children.

When I recently testified before the Senate Commerce Committee on this issue, I tried to get this point across by comparing the industry's system to putting up a sign in front of shark-infested waters that said ''Be careful when swimming.'' That is to say that, while these ratings provide a warning to the viewer, they don't tell us why we need to be warned.

But I also used this metaphor to make a larger point, which is regardless of how informative the ratings are, what parents really want is to get the sharks out of the water, to improve the quality of programming on the air, and make it safe for their kids to go swimming again.

The intent of the legislation we are introducing today, the Television Program Improvement Act of 1997, is to reiterate that message and to urge the industry to focus on what's at the heart of this debate over the TV rating system—a very real, broadly-felt concern that television has become a destructive force in our society and it is doing substantial damage to the hearts, minds, and souls of our children.

This bill really amounts to a plea on our part to the industry for their help. Moreover, it is an attempt to move this debate beyond the question of rights, which we all accept, acknowledge and support, and begin talking more about responsibilities.

Specifically, the kind of responsibility that broadcasters once embraced through a comprehensive code of conduct, in which they acknowledged the enormous power they commanded and the need to wield it carefully, and in which they recognized that they had an obligation under the law to serve the public interest. I would urge my colleagues to take a look at some of the standards the Nation's broadcasters set for themselves in the old NAB TV Code, which we've excerpted in the findings of our legislation, and you'll see that they are quite remarkable statements of responsibility.

After reading these principles, I would urge my colleagues to compare them to some of the comments made recently by industry leaders, such as the network official who proclaimed ''it is not the responsibility of network television to program for the children of America,'' or the MTV executive who said his network ''is not safe for kids'' but markets it directly to them anyway.

Watch what these programmers are bringing into our homes today, and it is clear that the face of television has changed dramatically since the industry abandoned the old NAB Code in 1983 and abandoned the ethic undergirding it. It is also clear that while the networks have profited from the resulting competition downward, it is the American family who is paying the price—in the form of the awful daytime talk shows that parade the most perverse forms of behavior into our living rooms and teach our children the worst ways to settle conflicts, and the excesses of prime-time comedies that amount to little more than what we used to call dirty jokes.

The rise of these programs leave little doubt that this debate is about much more than the threat of violence—which was the reason for the original Television Program Improvement Act sponsored by Senator Simon in 1990—although this threat remains a serious problem. What is driving so much of the public's concern is the deluge of casual sex and vulgarities that characterizes so much of television today. The collective force of these messages leaves parents feeling as if they are in a losing struggle to raise their own children, to give them strong values, to teach them right from wrong and guide them to acceptable forms of behavior.

With the bill we're introducing today, we are asking the television industry to do no more than what it did as recently as the early 1980's, and that is to draw some lines that they will not go below, to declare, as author and noted commentator Alan Ehrenhalt has said, ''that some things are too lurid, too violent, or too profane for a mass audience to see.''

If the industry is not willing to refill that responsible role, there will be increasing pressure on the Government to do it for them. One of the most telling polls I've seen recently appeared in the Wall Street Journal, which showed that 46 percent of Americans favor more Government controls on television to protect children. It's not a coincidence that there are bills being prepared in Congress that would in fact censor what is on the air.

Our legislation is designed to help us avoid reaching that point. It will ideally remind the industry of its obligations to the public we both serve, and that changing the subject, as some in the industry prefer to do, won't change the minds of the millions of American families who want programming that reflects rather than rejects their values. Again, to return to my metaphor, we are simply making a plea to the industry to take the sharks out of the water, and make it safe for our kids to go swimming, or perhaps more aptly, to go channel-surfing again.

Mr. President, in closing, I ask unanimous consent that the full text of my remarks be included in the appropriate place in the RECORD to accompany this legislation. I also ask unanimous consent that a summary of the Television Program Improvement Act of 1997 be printed in the RECORD. And to provide my colleagues with some additional background on the old NAB Television Code and what has happened to television since it was abandoned, I ask unanimous consent that a factsheet my staff has prepared be included in the RECORD. This factsheet helps summarize the bill's findings and put them into some historical context.

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

SUMMARY OF THE TELEVISION PROGRAM IMPROVEMENT ACT OF 1997—TPIA

WHAT IS THE PURPOSE

The TPIA is an attempt to persuade the television industry to directly address the public's growing concerns about the negative influence television is having on our children and our country today. Rather than calling for any form of censorship or government restrictions on content, this legislation would encourage industry leaders to act more responsibly in choosing what kinds of programming they produce and when it is aired. The nation's broadcasters once embraced this kind of responsibility in the form of a comprehensive code of conduct, which featured a widely-followed set of baseline programming standards and which showed a special sensitivity to the impact television has on children. This code was abandoned in 1983, and the TPIA would ideally open the door to the reintroduction of a similar set of standards, one that is geared toward making television more family-friendly for 1997 America.

WHAT THE BILL WOULD DO

This proposal builds on the original Television Program Improvement Act of 1990, which created an antitrust exemption for the broadcast and cable industries that allowed them to collaborate on a set of ''voluntary guidelines'' aimed at reducing the threat of violence on television. The TPIA of 1997 would permanently reinstate that antitrust exemption (which expired at the end of 1993) and then broaden it. The new exemption would permit the television industry to collaborate on an expanded set of guidelines designed to address the public's concerns about the broad range of programming—not only violence but also sexual content, vulgar language, and the lack of quality educational programs for children.

WHAT THE BILL WOULD NOT DO

This proposal would not give the government any authority to censor or control in any way what is seen on television. Any guidelines or programming standards the industry chose to adopt would be purely voluntary and could not be enforced by the government in any way or result in any form of economic boycott. Nor would the TPIA result in the ''whitewashing'' of television or prevent networks from showcasing sophisticated, mature-themed works such as ''Schindler's List'' and ''NYPD Blue.'' Last, the television industry could not use the antitrust exemption to fix advertising prices or engage in any form of anticompetitive behavior.

TELEVISION CODE OF CONDUCT BACKGROUND SHEET

THE NAB TELEVISION CODE

The first broadcaster TV code was implemented in 1952, to provide broadcasters with guidelines for meeting their statutory obligation to serve the public interest.

The NAB required all members to follow the code, which was enforced by a committee called the NAB Code Authority. Stations that adhered to the code were permitted to display a seal of approval on screen known as the ''NAB Television Seal of Good Practice.'' Those members that were found to have violated the code could be suspended and denied the ability to display the seal.

The NAB Code was abandoned in 1983 following an antitrust challenge brought by the Reagan Justice Department.

In that case, Justice filed a motion for summary judgement in the D.C. Federal District Court in 1982 challenging three provisions restricting the sale of advertising. These provisions limited: 1) the number of minutes per hour a network or station may allocate to commercials; 2) the number of commercials which could be broadcast in an hour; and 3) the number of products that could be advertised in a commercial. The court ruled that one of the provisions—the multiple product standard—constituted a per se violation of the antitrust laws, and granted Justice's motion for summary judgement on those grounds.

In November 1982, the NAB entered into a consent decree with Justice and agreed to throw out the advertising guidelines being challenged. Then, claiming that the TV Code in general left it vulnerable to antitrust lawsuits, the NAB threw out the entire code in January of 1983.

The programming standards contained in the code were never found to violate any antitrust laws during the code's 31-year existence.

THE FAMILY HOUR CASE

In 1975, after being prodded by FCC Chairman Dick Wiley, the NAB added a family viewing policy to its TV code. This policy said that entertainment programming inappropriate for a general family audience should not be aired between the hours of 7 p.m. and 9 p.m. EST.

In October of 1975, the Writers Guild of America (led by Norman Lear) filed a lawsuit challenging the family viewing policy on First Amendment grounds, alleging that the NAB had been coerced by the government into adopting the policy.

The District Court struck down the family viewing provision in the code in 1976, concluding that FCC Chairman Wiley had engaged in a ''successful attempt . . . to pressure the networks and the NAB into adopting a programming policy they did not wish to adopt.''

However, the court decision did not rule that a voluntary family viewing policy would be unconstitutional, and said that networks were free to implement a family hour policy on their own.

In the end, the District Court's decision was vacated and remanded on appeal in 1979, on the grounds that the District Court was not the proper forum for the initial resolution of a case relating to broadcast regulation. The case was returned to the FCC for judgement, and in 1983 the FCC concluded that the family viewing policy did not violate the First Amendment, ruling that Chairman Wiley's actions amounted to permissible jawboning and not coercion.

No court has ever ruled that a voluntary family hour violates the First Amendment rights of broadcasters or of producers.

THE ORIGINAL ''TELEVISION PROGRAM IMPROVEMENT ACT''

Senator Paul Simon (D–IL) sponsored legislation in 1989 to create a temporary antitrust exemption that would allow the television industry to collaborate on a set of guidelines designed to ''alleviate the negative impact'' of television violence. The exemption had a life of three years.

This legislation was passed by Congress in the waning days of the 1990 session as part of the Judicial Improvements Act (a federal judgeships bill).

When the Simon bill first moved through the Senate in 1989, the Judiciary Committee approved an amendment that would broaden the bill's scope to cover guidelines relating to the glamorization of drug use.

The version passed by the Senate also was broadened to cover sexual content. Senator Jesse Helms (R–NC) succeeded in passing an amendment relating to sexually explicit material by a vote of 91–0.

The language relating to sexual content and the depiction of drug use was stripped from the bill that came out of conference after House Democrats objected to broadening the scope of the exemption beyond violence.

THE INDUSTRY RESPONSE TO THE SIMON BILL

A few months prior to the passage of the Simon bill, the NAB issued new ''voluntary programming principles'' in four areas: children's television, indecency and obscenity, drugs, and violence. These principles were general statements resembling several provisions in the old NAB Code, but they were strictly voluntary and unenforceable.

After the Simon bill passed, the broadcast and cable industries held a few meetings in 1991, but with no discernible results.

As concern about television violence mounted, the networks felt increasing pressure to produce some results. In December of 1992, the major broadcast networks agreed to adopt a new set of joint standards on the depiction of violence.

Although billed as being ''new,'' the networks made clear that these guidelines tracked closely with their own individual

programming standards. The joint guidelines were broadly-worded and did not make any specific statements regarding the time shows with graphic violence should be aired, noting only that the composition of the audience should be taken into consideration.

In June of 1993, the networks took the additional step of agreeing on a set of ''parental advisories'' that would be applied to programs with violent content.

With criticism from the public and Congress continuing to grow, the four major networks and the cable industry announced in February of 1994 that they would conduct separate monitoring studies to measure the level of violence in their programming. The first of these studies was done in 1995.

THE SIMON LEGACY ON VIOLENCE

The results of the Simon legislation could accurately be described as mixed.

On the one hand, the 1996 UCLA violence study suggested that the amount of violence on broadcast television had declined somewhat since it peaked a few years earlier, and industry observers generally acknowledge that primetime series television has become less violent. The UCLA study also found that the networks had taken some steps to reduce the violence in on-air promotions. ''The overall message is one of progress and improvement,'' the UCLA study concluded. ''The overall picture is not one of excessive violence.''

On the other hand, the UCLA study still found that there is still a serious problem with violence on broadcast television. It singled out the high number of violent theatrical movies, five primetime series that ''raised frequent concerns,'' and the disturbing rise of ''reality'' shows (such as Fox's ''When Animals Attack'') that often feature graphic violence.

In addition, the National Television Violence Study, the comprehensive review sponsored by the cable industry, is scheduled to release its 1996 report later this month, and it is generally expected to show that the kinds of violence depicted on both broadcast and cable television still presents a real threat to viewers.

THE CURRENT SITUATION

When asked about reviving a code of conduct, some television industry leaders have expressed concern about potential antitrust lawsuits that might arise.

The Justice Department, however, has issued rulings since the Simon exemption expired that strongly suggest that a voluntary code of conduct would not run afoul of any antitrust laws.

In a ''business review'' letter released in November 1993, the Justice Department told Simon that additional steps the industry took to reduce the threat of violence ''may be likened to traditional standard setting efforts that do not necessarily restrain competition and may have significant procompetitive benefits.''

Justice repeated this finding in another business review letter sent to Senator LIEBERMAN in January 1994 regarding the video game industry's efforts to develop a rating system for violent and sexual content.

Some in the television industry also contend that a code of conduct is unnecessary because the major broadcast networks and most local stations and cable networks all have individual programming standards to which they adhere.

The reality, however, is that few people know that these standards even exist. That's largely because they are often hidden from public view. Of the big four networks, only CBS will release its programming standards to the public. ABC, NBC, and Fox have refused to do so.

By Mr. CRAIG (for himself, Mr. GRAHAM, Mr. D'AMATO, Mr. TORRICELLI, Mr. AKAKA, Mr. MACK, Mr. ALLARD, Mr. THOMAS, Mr. REID, Mr. BREAUX and Mr. WARNER):

S. 472. A bill to provide for referenda in which the residents of Puerto Rico may express democratically their preferences regarding the political status of the territory, and for other purposes; to the Committee on Energy and Natural Resources.

THE PUERTO RICO SELF-DETERMINATION ACT OF 1997

Mr. CRAIG. Mr. President, I am proud to join with my colleague from Florida today in the introduction of the Puerto Rico Self-Determination Act.

In the 104th Congress, I joined as a cosponsor of S. 2019, with a bipartisan effort in the Senate to deal with this issue. I know that some of my colleagues will question the need for Congress to take up this issue. The most common reaction is that we should let Puerto Ricans decide the issue for themselves. The problem with that approach is that there are two parties in that relationship: Congress, due to its constitutional plenary power expressly vested in it by the territorial clause of article IV, section 3, clause 2, on the one hand and the people of Puerto Rico who have U.S. citizenship but are not yet fully self-governing on the other.

When Congress failed to approve legislation to provide a status resolution process in 1991, the Puerto Ricans conducted a status vote, and the commonwealth option was defined on the ballot in the terms most favorable to its approval, to the point that it promised a lot more than Congress could ever approve. Even with the ballot definition that would significantly enhance the current status, the existing commonwealth relationship received less than a majority of the vote. So there is a serious issue of the legitimacy of the current less-than-equal or less-than-full self-governing status, especially given the U.S. assertion to the United Nations in 1953 that Puerto Rico was on a path toward decolonization.

That is why the legislature of Puerto Rico passed Concurrent Resolution 2, on January 23, 1997, requesting Congress to sponsor a vote based on definitions it would be willing to consider, if approved by voters. With timely approval of this legislation, 1997 will be the year Congress provides the framework for the resolution of the Puerto Rican status question, through a three-phase decisionmaking process that will culminate during the second decade of the next century. It will be a process with respect to the right of residents of Puerto Rico to become fully self-governing, based on local self-determination, and, at the same time, recognizes that the United States also has a right of self-determination in its relationship to Puerto Rico.

Consequently, resolution of the status of Puerto Rico should take place in accordance with the terms of a transition plan that is determined by Congress to be in the national interest. Acceptance of such a congressionally approved transition plan by the qualified voters of Puerto Rico in a free and informed act of self-determination will be required before the process leading to change of the present status will commence.

The bill that I am introducing today, joined in by nine other colleagues, and my colleague from Florida, creates an evenhanded process that can lead to either separate sovereignty or statehood, depending on whether Congress and the residents of Puerto Rico approve the terms of the implementation of either of the two options of full self-government. Preservation of the current status also will be an option on the plebiscite ballot. However, the existing unincorporated territory status, including the commonwealth structure of local government, is not a constitutionally guaranteed form of self-government. Thus, until full self-government is achieved for Puerto Rico, there will be a need for periodic self-determination procedures as provided in this legislation.

Whichever new status proves acceptable to Congress and the people of Puerto Rico, final implementation of the new status could be subject to approval by Congress and the people of Puerto Rico, at such time in the first or second decade of the next century as a transition process is completed.

This explanation of the bill should dispel any concern in this body or the House that empowerment of the people of Puerto Rico to exercise the right of self-determination will impair the ability of Congress to work its will regarding the status of Puerto Rico.

Mr. President, in 1956, 4 years after Congress and the people of Puerto Rico approved the Constitution of the Commonwealth of Puerto Rico, the U.S. Supreme Court considered the constitutional nature and status of unincorporated territories such as Puerto Rico. In its opinion in the case of *Reid* v. *Covert* (354 U.S. 1), the Supreme Court confirmed that the territorial clause of the U.S. Constitution—article IV, section 3, clause 2—confers on Congress the power, in the court's words, ''. . . to provide rules and regulations to govern temporarily territories with wholly dissimilar traditions and institutions . . .''

While the Reid case was not a territorial status decision, it is significant that the Supreme Court's opinion in this case recognizes the temporary nature of the unincorporated territory status defined by the high court in an earlier line of status decisions known as the Insular Cases. For even though Puerto Ricans have had statutory U.S. citizenship since 1917, and local constitutional self-government similar to that of the States since 1952, it has become quite clear that U.S. citizens residing in an unincorporated territory cannot become fully self-governing in the Federal constitutional system on the basis of equality with their fellow

citizens residing in the States of the Union.

Specifically, unincorporated territorial status with the commonwealth structure for local self-government cannot be converted into a permanent form of union with constitutionally guaranteed U.S. citizenship, or equal legal and political rights with citizens in the States including voting rights in national elections and representation in Congress. At the same time, Congress cannot abdicate, divest or dispose of its constitutional authority and responsibility under the territorial clause or be bound by a statutory conferral of special rights intended to make the citizens of a territory whole for the lack of equal rights under the Federal constitution.

The concept of an unalterable bilateral pact between Congress and the territories is politically implausible and constitutionally impermissible. A mutual consent based relationship would amount to a local veto power over acts of Congress and would give the territories rights and powers superior to those of the States. Indeed, I am not certain what the results would be if the States were given the option of trading in representation in Congress and the vote in Presidential elections for the power to veto Federal law, but it is a prospect inconsistent with American federalism.

Thus, altering our constitutional system to attempt to accommodate the unincorporated territories in this way would be a disproportionate, inequitable, and politically perverse remedy for the problems the territories are experiencing due to the lack of voting in Federal elections or representation in Congress.

Moreover, the concept of enhancing a less-than-equal status so that the disenfranchisement of U.S. citizens in the Federal political proces becomes permanent would arrest the process of self-determination and decolonization that began when the local constitution was established by Congress and the voters in the territory in 1952.

It would reverse the progress that has been made toward full self-government to attempt to transform a temporary territorial status into a permanent one, although that is precisely what has been attempted by some in Puerto Rico for the last 40 years. Some in Congress have facilitated and promoted the fatally flawed notion that Puerto Rico could become a nation within a nation—if only at the level of partisan politics while being careful never to formally accept or commit that it could be constitutionally sustained.

In reality, Puerto Rico is capable of becoming a State or a separate nation, or of remaining under the territorial clause if that is what the people and Congress prefer. But a decision to retain territorial status must be based on acceptance that this is a temporary status under the territorial clause, which can lead to full self-government outside the territorial clause only when Congress and the voters determine to pursue a recognized form of separate nationhood or full incorporation into the Federal political process leading to statehood.

Thus, the question becomes one of how long can a less-than-equal and non-self-governing status continue now that Puerto Rico has constitutional self-government at the local level and has established institutions and traditions which are based upon, modeled after, and highly compatible with those of the United States? How long is temporary when we consider that Puerto Rico has been within U.S. sovereignty and the U.S. customs territory for a century?

The proposals in the past that the self-determination process be self-executing may have had the appearance of empowering the people to determine their destiny. However, any attempt to bind Congress and the people to a choice the full effect and implications of which cannot be known at the time the initial choice is made is actually a form of disempowerment. For self-determination to be legitimate it must be informed, and a one-stage binding and self-executing process prevent both parties to the process—Congress and the people—from knowing what it is they are approving.

Any process which does not enable Congress and the voters to define the options and approve the terms for implementation through a democratic process which involves a response by each party to the freely expressed wishes of the other as part of an orderly self-determination procedure is a formula for stagnation under the status quo.

That is why the legislation defining a self-determination process for Puerto Rico must be based on the successful process Congress prescribed in 1950 through which the current constitution was approved by Congress and the voters in 1952. That process empowered the people and Congress to approve the process itself, then approve the new relationship defined through the process.

As explained below, this is the most democratic procedure possible given the complicated dilemma faced by the United States and Puerto Rico. For only when the people express their preference between status options defined in a manner acceptable to Congress can the United States inform the people of the terms under which the preferred option could be accepted by Congress. This would empower the people to then engage in an informed act of self-determination, and it would empower Congress to define the national interest throughout the process.

In the 104th Congress, S. 2019, was a response to Concurrent Resolution 62, adopted by the Legislature of Puerto Rico on December 14, 1994, and directed to the U.S. Congress, requesting a response to the results of a 1993 plebiscite conducted in Puerto Rico under local law. See, CONGRESSIONAL RECORD S9555–S9559, August 2, 1996. Like a similar locally managed vote in 1967, the 1993 vote did not resolve the question of Puerto Rico's future status, in large part because of pervasive confusion and misinformation about the legal nature of Puerto Rico's current status.

The problem of chronic nonproductive debate in Puerto Rico and in Congress with respect to definition of the current status of Puerto Rico, as well as the options for change, is examined carefully in House Report 104–713, part 1, July 26, 1996, pp. 8–23, 29–36. In addition to responding to Resolution 62 by introducing legislation addressing the subject matter of that request by the elected representatives of the residents of Puerto Rico, S. 2019 was intended to complement and support the efforts of a bipartisan group of knowledgeable Members in the House to address the troubling issues raised in House Report 104–713, part 1.

S. 2019 was a companion measure to H.R. 3024, the United States-Puerto Rico Political Status Act, which was the subject of House Report 104–713, part 1. Although H.R. 3024 was scheduled for a vote by the House in the last days of the 104th Congress, and overwhelming approval was expected, a vote was delayed due to ancillary issues. However, important amendments to H.R. 3024 were agreed upon by participants in the House deliberations, and some of these should be incorporated in any measure to be considered in the 105th Congress.

For example, because the debate in the 104th Congress and in the 1996 elections in Puerto Rico clarified certain fundamental issues regarding definition of status options, it may now be appropriate to include a three-way array of ballot options in any future status referendum. Thus, commonwealth, independence, and statehood should appear side-by-side on the ballot the next time there is a status vote in Puerto Rico.

In the 104th Congress I concurred in the bipartisan position that developed in the House deliberations in support of a two-part ballot, separating the question of preserving the current unincorporated territory status from the two options for change to a permanent form of full self-government—separate sovereignty or statehood. However, the agreed upon House bill amendments and this new Senate bill make it clear that separate nationality or statehood remain the two paths to full self-government, and that commonwealth is a territorial clause status. I believe this approach will result in a free and informed act of self-determination by the residents based on accurate definitions.

This will simplify the structure of the ballot, and make it all the more imperative that the definitions of status options also remain as simple and straightforward as possible. All the options presented on the ballot in a future status referendum must be based on the objective elements of each status option under applicable provisions

of the U.S. Constitution and international law as recognized by the United States.

In this connection, it must be noted that in the last four decades every attempt by Congress and territorial leaders to define the status options and establish a procedure to resolve the status question has failed. The last process which produced a tangible result and advanced Puerto Rico's progress toward self-government was that which Congress established in 1950 to allow the residents of Puerto Rico to organize local constitutional government.

Thus, instead of trying to revisit battles of the past over any of the bills considered by Congress in 1990 and 1991, a better model for taking the next step in the self-determination process for Puerto Rico is the one employed by Congress to authorize and establish the current commonwealth structure for local self-government based on consent of the voters. The process established under Federal law in 1950 was based on a three-stage process through which the proposed new form of self-government was defined, approved and implemented with consent of both the United States and the residents of the territory at each stage.

In the successful 1950 process, Congress set forth in U.S. Public Law 600 an essentially three-phase procedure as follows:

Congress acted first, defining a framework under Federal law for instituting constitutional self-government over local affairs. An initial referendum was conducted in which the voters approved the terms for instituting constitutional self-government as defined by Congress.

A second referendum was conducted on the proposed constitution and the President of the United States was required under Public Law 600 to transmit the draft constitution approved in that second referendum to Congress with his findings as to its conformity with the criteria defined by Congress.

Congress approved final implementation of the new local constitution with amendments which were accepted by the locally elected constitutional convention and implemented on that basis by proclamation of the Governor.

We should adopt a similar procedure for taking the next step to complete the process leading to full self-government which began with enactment of Public Law 600 in 1950. Such a three-stage process would be one through which:

First, Congress defines the procedures and options it will accept as a basis for resolving the status question. In an initial referendum the voters then approve a status option they prefer.

Second, the President transmits a proposal with recommended terms for implementing the choice of the voters consistent with the criteria defined by Congress, and upon approval by Congress a second referendum is held to determine if the voters accept the terms upon which Congress would be willing to implement the new status.

Third, both Congress and the voters must act affirmatively to approve final implementation once the terms of the transition plan have been fulfilled.

This would track the successful model of Public Law 600, except that it improves upon it by requiring Congress and the voters to approve final implementation. This is more democratic than the procedure followed in 1952, in which Congress amended the Constitution and the revisions were accepted by the constitutional convention and put into effect by proclamation of the Governor.

To ensure that there is no ambiguity about the new relationship as there was after the current local constitution was implemented in 1952, the Congress and the voters themselves, again, should have the last word on implementation. This prevents the local political parties from attempting to exploit ambiguity and convert it into a political platform, as has been the case with the current commonwealth structure for local self-government.

In this regard, I note that there are those who continue to suggest that definitions of status options for a political status referendum should be based upon the formulations adopted by the political parties in Puerto Rico. This approach is urged in the name of consensus building. However, the history of attempts to address this problem—including the approval of H.R. 4765 by the House in 1990—makes it clear that the illusion of consensus has been achieved on status definitions in the past only by sacrificing the constitutional, legal, and political integrity of the process.

Recognizing the principle of consent by the qualified voters through an act of self-determination to retain the current status or seek change under definitions acceptable to Congress is very different from the idea that legislation to make self-determination possible cannot be enacted unless there is consent by local political parties to both the form and content of what is proposed. The qualified voters of Puerto Rico, not the local political parties, are Puerto Rico for purposes of the self-determination process.

No sleight-of-hand gimmicks or disclaimers disguised as good-faith commitments will substitute for intellectually honest status definitions. We must approve legislation that makes it clear that Congress will propose a transition plan on terms it deems to be in the best interests of the United States, and when it does the people qualified to vote in Puerto Rico will have to decide if the terms prescribed by Congress are acceptable.

If the terms for a change of status defined by Congress are not acceptable to the voters, then the right of self-determination can be exercised thereafter in an informed manner based on that outcome. There should be no stated or implied commitment to a moral obligation to consider any status definition—no matter who might propose it—which is deemed unconstitutional or unacceptable to Congress. That would be misleading and dishonest, and no clever caveat could redeem such a breach of the institutional integrity and constitutional duty of the Congress.

In 1997, Congress must take responsibility for informing the people of Puerto Rico of what the real options are based on congressional definition of the status formulations which Congress determines to be consistent with the national interest and the right of self-determination of both the United States and the people of Puerto Rico. This represents an opportunity and challenge as we seek to define our Nation in the next century, and there is an obligation for all concerned to ensure that the voters in Puerto Rico are given an opportunity for a free and informed act of self-determination.

If we accomplish that, then whatever the outcome may be will vindicate 100 years of democratization and development for Puerto Rico through its evolving relationship with the United States and the self-determination of its people.

Mr. GRAHAM. Mr. President, I rise today to introduce the Puerto Rico Self Determination Act of 1997. I am proud to cosponsor this important legislation with Senator LARRY CRAIG and a bipartisan coalition of eight other distinguished colleagues.

Mr. President, on December 10, 1898, through the Treaty of Paris that ended the Spanish-American War, Puerto Rico became part of the United States. Next year marks the 100th anniversary of this union.

Mr. President, there is no better way for us to commemorate this special occasion than to give the U.S. citizens of Puerto Rico the same right that their counterparts in all 50 States and the District of Columbia enjoy—the right to choose their political destiny.

In 1917, the Jones Act gave the people of Puerto Rico U.S. citizenship, but it was less than complete. Though they are citizens, Puerto Ricans can only vote in Presidential elections if they are registered in a State or the District of Columbia. They have a delegate in Congress—a position currently held by Congressman CARLOS ROMERO-BARCELÓ—who does not have voting privileges.

But this lack of political rights is not due to a lack of communication. Throughout their history as part of the United States, Puerto Ricans have expressed their desire to achieve full political rights. They have on various occasions let Congress know of their desire to be full participants in our democracy. And their actions speak even louder than their words.

Puerto Ricans have contributed in all aspects of American life,—in the arts, in sciences, in sports, and especially in service to the Nation. Their record of service to this country speaks for itself. In World War II alone, more than

65,000 Puerto Rican men and women served in the Armed Forces. In Vietnam, over 60,000 served. The first United States soldier killed in Somalia was Puerto Rican. One of the airmen shot down over Libya in 1986 was Puerto Rican. And it was a soldier from Puerto Rico who sounded the alarm—and saved lives—in the 1983 bombing of the Marine barracks in Beirut.

I recently received a letter from retired U.S. Army Lt. Col. Dennis Freytes, a Puerto Rican who resides in Orlando. He states in his letter:

As an American Puerto Rican, who has proudly served our country, I think that Puerto Rico's political status should be promptly resolved, so we don't have second class citizens in our democratic form of government.

Puerto Ricans voluntarily joined our Armed Forces and have given their lives in defense of our country and democratic way of life. I emphasize ''our'' because U.S. citizens must have the same rights no matter where they were born or where they choose to live.

In 1996 and 1997, the Legislature of Puerto Rico, the democratically elected representatives of 3.7 million U.S. citizens, overwhelmingly approved resolutions requesting that the Congress and the President of the United States respond to their legitimate democratic aspirations. They requested that a plebiscite be held not later than December 31, 1998, almost exactly 100 years after Puerto Rico gained territorial status. There have been similar referendums in the past, but those were locally mandated—Congress gave no direction as to how, if at all, the results might affect Puerto Rico's political status.

It is time for the people of Puerto Rico to have a referendum process which defines the choices in a manner which are constitutionally valid, and that Congress is willing to uphold.

Mr. President, I want to particularly stress this latter point. Congress needs to understand that if it passes this bill—and I share the hope of my friend and colleague, Senator CRAIG that we will and that we will do so expeditiously—it is assuming an important political, and moral obligation to the American citizens of Puerto Rico.

This is not a bill without significant consequences. If Puerto Ricans ask to remain a Commonwealth, we need to respect their wishes. If they want to become a State, we must begin the process of incorporation. And if they desire independence, we must take steps to meet that request. To do otherwise would be to seriously undermine our credibility with the 3.7 million citizens of Puerto Rico and the nearly 300 million residents of Latin America.

Mr. President, for the last 100 years, the United States had given Puerto Ricans status as citizens but withheld some of the rights, privileges, and responsibilities that come with that privilege. It is time for that to end. Puerto Ricans do not deserve second-class political status. For all that they have done to enrich our culture and defend our Nation from external threats, they have earned the right to decide their own political destiny.

Mr. President, since the early 1900's, self-determination has been a cornerstone principle of our Nation's foreign policy.

As we approach the century mark of the union between Puerto Rico and the United States, this bill will serve as a model of American democracy at its best—providing citizens with their right to decide their own futures.

By Mr. BOND (for himself and Mr. NICKLES):

S. 473. A bill to amend the Internal Revenue Code of 1986 to clarify the standards used for determining that certain individuals are not employees, and for other purposes; to the Committee on Finance.

THE INDEPENDENT CONTRACTOR TAX REFORM ACT OF 1997

Mr. BOND. 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. 473

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 ''Independent Contractor Tax Reform Act of 1997''.

SEC. 2. SAFE HARBOR FOR DETERMINING THAT CERTAIN INDIVIDUALS ARE NOT EMPLOYEES.

(a) IN GENERAL.—Chapter 25 of the Internal Revenue Code of 1986 (relating to general provisions relating to employment taxes) is amended by adding after section 3510 the following new section:

''SEC. 3511. SAFE HARBOR FOR DETERMINING THAT CERTAIN INDIVIDUALS ARE NOT EMPLOYEES.

''(a) SAFE HARBOR.—

''(1) IN GENERAL.—For purposes of this title, if the requirements of subsections (b), (c), and (d), or the requirements of subsections (d) and (e), are met with respect to any service performed by any individual, then with respect to such service—

''(A) the service provider shall not be treated as an employee,

''(B) the service recipient shall not be treated as an employer,

''(C) the payor shall not be treated as an employer, and

''(D) compensation paid or received for such service shall not be treated as paid or received with respect to employment.

''(2) AVAILABILITY OF SAFE HARBOR NOT TO LIMIT APPLICATION OF OTHER LAWS.—Nothing in this section shall be construed—

''(A) as limiting the ability of a service provider, service recipient, or payor to apply other applicable provisions of this title, section 530 of the Revenue Act of 1978, or the common law in determining whether an individual is not an employee, or

''(B) as a prerequisite for the application of any provision of law described in subparagraph (A).

''(b) SERVICE PROVIDER REQUIREMENTS WITH REGARD TO THE SERVICE RECIPIENT.—For purposes of subsection (a), the requirements of this subsection are met if the service provider, in connection with performing the service—

''(1) has the ability to realize a profit or loss,

''(2) incurs unreimbursed expenses which are ordinary and necessary to the service provider's industry and which represent an amount at least equal to 2 percent of the service provider's adjusted gross income attributable to services performed pursuant to 1 or more contracts described in subsection (d), and

''(3) agrees to perform services for a particular amount of time or to complete a specific result or task.

''(c) ADDITIONAL SERVICE PROVIDER REQUIREMENTS WITH REGARD TO OTHERS.—For the purposes of subsection (a), the requirements of this subsection are met if the service provider—

''(1) has a principal place of business,

''(2) does not primarily provide the service at a single service recipient's facilities,

''(3) pays a fair market rent for use of the service recipient's facilities, or

''(4) operates primarily with equipment not supplied by the service recipient.

''(d) WRITTEN DOCUMENT REQUIREMENTS.—For purposes of subsection (a), the requirements of this subsection are met if the services performed by the service provider are performed pursuant to a written contract between such service provider and the service recipient, or the payor, and such contract provides that the service provider will not be treated as an employee with respect to such services for Federal tax purposes.

''(e) BUSINESS STRUCTURE AND BENEFITS REQUIREMENT.—For purposes of subsection (a), the requirements of this subsection are met if the service provider—

''(1) conducts business as a properly constituted corporation or limited liability company under applicable State laws, and

''(2) does not receive from the service recipient or payor benefits that are provided to employees of the service recipient.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) FAILURE TO MEET REPORTING REQUIREMENTS.—If for any taxable year any service recipient or payor fails to meet the applicable reporting requirements of section 6041(a) or 6041A(a) with respect to a service provider, then, unless the failure is due to reasonable cause and not willful neglect, the safe harbor provided by this section for determining whether individuals are not employees shall not apply to such service recipient or payor with respect to that service provider.

''(2) BURDEN OF PROOF.—For purposes of subsection (a), if—

''(A) a service provider, service recipient, or payor establishes a prima facie case that it was reasonable not to treat a service provider as an employee for purposes of this section, and

''(B) the service provider, service recipient, or payor has fully cooperated with reasonable requests from the Secretary or his delegate,

then the burden of proof with respect to such treatment shall be on the Secretary.

''(3) RELATED ENTITIES.—If the service provider is performing services through an entity owned in whole or in part by such service provider, the references to 'service provider' in subsections (b) through (e) may include such entity, provided that the written contract referred to in subsection (d) is with such entity.

''(g) DETERMINATIONS BY THE SECRETARY.—For purposes of this title—

''(1) IN GENERAL.—

''(A) DETERMINATIONS WITH RESPECT TO A SERVICE RECIPIENT OR A PAYOR.—A determination by the Secretary that a service recipient or a payor should have treated a

service provider as an employee shall be effective no earlier than the notice date if—

''(i) the service recipient or the payor entered into a written contract satisfying the requirements of subsection (d),

''(ii) the service recipient or the payor satisfied the applicable reporting requirements of section 6041(a) or 6041A(a) for all taxable years covered by the agreement described in clause (i), and

''(iii) the service recipient or the payor demonstrates a reasonable basis for determining that the service provider is not an employee and that such determination was made in good faith.

''(B) DETERMINATIONS WITH RESPECT TO A SERVICE PROVIDER.—A determination by the Secretary that a service provider should have been treated as an employee shall be effective no earlier than the notice date if—

''(i) the service provider entered into a contract satisfying the requirements of subsection (d),

''(ii) the service provider satisfied the applicable reporting requirements of sections 6012(a) and 6017 for all taxable years covered by the agreement described in clause (i), and

''(iii) the service provider demonstrates a reasonable basis for determining that the service provider is not an employee and that such determination was made in good faith.

''(C) REASONABLE CAUSE EXCEPTION.—The requirements of subparagraph (A)(ii) or (B)(ii) shall be treated as being met if the failure to satisfy the applicable reporting requirements is due to reasonable cause and not willful neglect.

''(2) CONSTRUCTION.—Nothing in this subsection shall be construed as limiting any provision of law that provides an opportunity for administrative or judicial review of a determination by the Secretary.

''(3) NOTICE DATE.—For purposes of this subsection, the notice date is the 30th day after the earlier of—

''(A) the date on which the first letter of proposed deficiency that allows the service provider, the service recipient, or the payor an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, or

''(B) the date on which the deficiency notice under section 6212 is sent.

''(h) DEFINITIONS.—For the purposes of this section—

''(1) SERVICE PROVIDER.—The term 'service provider' means any individual who performs a service for another person.

''(2) SERVICE RECIPIENT.—Except as provided in paragraph (4), the term 'service recipient' means the person for whom the service provider performs such service.

''(3) PAYOR.—Except as provided in paragraph (4), the term 'payor' means the person who pays the service provider for the performance of such service in the event that the service recipient does not pay the service provider.

''(4) EXCEPTIONS.—The terms 'service recipient' and 'payor' do not include any entity in which the service provider owns in excess of 5 percent of—

''(A) in the case of a corporation, the total combined voting power of stock in the corporation, or

''(B) in the case of an entity other than a corporation, the profits or beneficial interests in the entity.

''(5) IN CONNECTION WITH PERFORMING THE SERVICE.—The term 'in connection with performing the service' means in connection or related to the operation of the service provider's trade or business.

''(6) PRINCIPAL PLACE OF BUSINESS.—For purposes of subsection (c), a home office shall in any case qualify as the principal place of business if—

''(A) the office is the location where the service provider's essential administrative or management activities are conducted on a regular and systematic (and not incidental) basis by the service provider, and

''(B) the office is necessary because the service provider has no other location for the performance of the essential administrative or management activities of the business.

''(7) FAIR MARKET RENT.—The term 'fair market rent' means a periodic, fixed minimum rental fee which is based on the fair rental value of the facilities and is established pursuant to a written agreement with terms similar to those offered to unrelated persons for facilities of similar type and quality.''

(b) CLARIFICATION OF RULES REGARDING EVIDENCE OF CONTROL.—For purposes of determining whether an individual is an employee under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.), compliance with statutory or regulatory standards shall not be treated as evidence of control.

(c) REPEAL OF SECTION 530(d) OF THE REVENUE ACT OF 1978.—Section 530(d) of the Revenue Act of 1978 (as added by section 1706 of the Tax Reform Act of 1986) is repealed.

(d) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end the following new item:

''Sec. 3511. Safe harbor for determining that certain individuals are not employees.''

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by, and the provisions of, this section shall apply to services performed after the date of enactment of this Act.

(2) DETERMINATIONS BY SECRETARY.—Section 3511(g) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to determinations after the date of enactment of this Act.

(3) SECTION 530(d).—The amendment made by subsection (c) shall apply to periods ending after the date of enactment of this Act.

By Mr. KYL (for himself, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. HUTCHINSON, Mr. GRASSLEY, and Mr. JOHNSON):

S. 474. A bill to amend sections 1081 and 1084 of title 18, United States Code; to the Committee on the Judiciary.

THE INTERNET GAMBLING PROHIBITION ACT OF 1997

Mr. KYL. Mr. President, I rise to introduce the Internet Gambling Prohibition Act of 1997. It will outlaw gambling on the Internet. I believe it will protect children from logging on to the Internet and being exposed to activities that are normally prohibited to them. And for those people with a gambling problem, my bill will make it harder to gamble away the family paycheck.

Gambling erodes values of hard work, sacrifice, and personal responsibility. Although the social costs of gambling are difficult to quantify, research indicates they are potentially staggering. Gambling is a growing industry in the United States, with revenues approaching $550 billion last year—three times the revenues of General Motors Corp. In 1993, more Americans visited casinos than attended a major league baseball game.

The problem can only grow worse with online casinos. Now it is no longer necessary to go to a casino or store where lottery tickets are sold. Anyone with a computer and a modem will have access to a casino: Internet users can access hundreds of sites for blackjack, craps, roulette, and sports betting. Gambling addiction is already on the rise. Online gambling will only increase the problem.

Why is this bill necessary? It dispels any ambiguity by making clear that all betting, including sports betting, is illegal. Currently, nonsports betting is interpreted as legal. The bill also clarifies the definition of bets and wagers. This ensures that those who are gambling cannot circumvent the law. For example, virtual gaming businesses have been known to offer prizes instead of money, in an attempt to evade the law.

Additionally, my bill clarifies that Internet access providers are covered by the law. As the National Association of Attorneys General [NAAG] task force on Internet Gambling reported, ''this is currently the most important section to State and local law enforcement agencies, because it provides a civil enforcement mechanism.'' FCC-regulated carriers notified by any State or local law enforcement agency of the illegal nature of a site are required to discontinue services to the malfeasor. NAAG believes that this can be a very effective deterrent. The bill includes interactive computer-service providers among those entities required to discontinue such service upon notice. Federal, State, and local law enforcement entities are explicitly authorized to seek prospective injunctive relief against continued use of a communications facility for purposes of gambling.

The Internet Gambling Prohibition Act makes explicit the intent of Congress to create extraterritorial jurisdiction regarding Internet gambling activities. Too often, illicit operators of virtual casinos set up shop in friendly jurisdictions beyond the direct application of U.S. law. It will also require the DOJ to report on the difficulties associated with enforcing the statute. Finally, it places some burden on the bettor.

The Internet has great potential to promote both educational opportunities and business expansion in this country. At the same time, the Internet is fast becoming a place where inappropriate activities such as gambling, pornography, and consumer fraud thrive. Recently, many businesses have welcomed law enforcement's involvement in cracking down on consumer fraud. We must find a constitutional way to deal with the other problems raised by this revolution in communications. I believe that it is possible to impose some conditions, as we have in other areas, without violating free speech rights.

There is growing support for changes to current law. As I mentioned, the NAAG has a task force on Internet gambling, and the report of the task

force—authored by Attorneys General Dan Lungren and Hubert Humphrey—called for a legislative remedy to stem the tide of gambling electronically. NAAG has endorsed my bill.

Mr. President, the Internet Gambling Prohibition Act of 1997 ensures that the law will keep pace with technology and keep gambling off the Internet. I urge my colleagues to pass the bill.

● Mr. GRAHAM. Mr. President, I join my friend and colleague from Arizona, Senator KYL, in cosponsoring the Internet Gambling Prohibition Act introduced today, which is intended to address a growing problem in the United States as our technology continues to modernize our modes of communication.

This legislation is an attempt to take a step forward in meeting the needs of State law enforcement organizations and officials.

With the development of the Internet World Wide Web, the ability of Americans to access information for their personal and professional use has taken a quantum leap. It is safe to say that the Internet is one of the more important technological advances of the late 20th century with respect to the influence that the technology can have on the lives of so many Americans.

The number of American Internet users has grown from 1 million in 1992 to over 50 million today. This number is expected to grow to several hundred million users by the year 2000. As we bring Internet technology into our schools, we will see greater use of the Internet particularly among our youth, many who are already adept at using their home computers and surfing the Internet for educational and recreational purposes.

With this convenience and easy access to a variety of information sources, many of which are of great educational, cultural and professional value, come certain expected problems. The one that I want to speak to briefly is that of the increasing use of the Internet for the purposes of gambling.

The National Association of Attorney Generals has recently studied the problem of Internet gambling. In a 1996 report, ''Gambling on the Internet,'' the Association cited the following:

> The availability of gambling on the Internet * * * threatens to disrupt each State's careful balancing of its own public welfare and fiscal concerns, by making gambling available across State and national boundaries, with little or no regulatory control.
>
> There are literally hundreds of gambling-related sites on the Internet. Dozens more are being added monthly.

Let me make several key distinctions that must be understood with respect to this legislation.

First, it is important to note that the number of actual online gambling operations are few at this time due to electronic commerce and technical limitations. Advancements in technology, however, make such shortcomings temporary. Only 6 months ago, there were only 17 active Internet gambling sites on the World Wide Web. Today, there are over 200. And, today, there are hundreds of advertisements for gambling as well as informational how-to sites on the Internet. In short, the Internet's ability to serve as an information conduit for the gambling industry has been recognized.

Second, States have historically been the primary regulator of gambling activities. However, the widespread use of the Internet and its potential to serve as a conduit of gambling activities across national and State borders, serves to undermine States' regulatory control. Our legislation is not intended to disrupt this prerogative, but rather to assist States' ability to enforce its own gambling laws.

Finally, the legislation would not hold Internet access providers—such as America Online—liable for gambling activities that occur on the Internet. However, the Internet access providers are required, once notified by a State or law enforcement agency of the illegal activity, to discontinue Internet services to the malfeasor.

Mr. President, there is growing awareness of the importance of this issue in my State of Florida. The attorney general of the State of Florida wrote me on February 17, 1997, urging strong support of this legislation. I am committed to providing strong support in the Congress for Florida law enforcement concerns.

It is timely and necessary for the Congress to assist States on this growing problem which undermines States' jurisdiction and control. We should support the efforts of our State and local law enforcement officials so that they can prevent the growth of activities which are illegal in that State.

I thank my colleague from Arizona for his work in drafting this important legislation. I look forward to working with him this year in support of passage of this bill.

Mr. President, I ask my colleagues in the Senate to join us in supporting this measure.●

By Mr. JEFFORDS (for himself, Mr. LEAHY, Mr. D'AMATO, and Mr. MOYNIHAN):

S. 475. A bill to amend the Internal Revenue Code of 1986 to clarify the excise tax treatment of draft cider; to the Committee on Finance.

TAX TREATMENT OF HARD APPLE CIDER LEGISLATION

● Mr. JEFFORDS. Mr. President, I am introducing tax legislation designed to increase opportunities for the apple industry in the United States. I am pleased that Senators LEAHY, D'AMATO, and MOYNIHAN are joining me as original cosponsors of the bill.

Our bill clarifies the excise tax treatment of fermented apple cider. Current Federal tax law unfairly taxes fermented apple cider at a much higher rate than beer despite the two beverages similar alcohol levels. Currently, fermented apple cider, commonly known as draft cider, is subject to a tax of $1.07 per wine gallon, despite its alcohol level. This bill lowers the excise tax on draft cider containing not more than 7 percent alcohol to equal the beer tax rate of 22.6 cents per gallon.

I believe this small tax change would allow draft cider producers to compete more fairly in the market with comparable beverages. As draft cider becomes more competitive the market will likely grow. This will greatly benefit the apple growers throughout this Nation, by expanding the use and need for their product.

The production of draft hard cider comes from apples that are culls, processing apples or apples that are not usable in the fresh market. The conversion of culled apples into high value processed products such as draft cider is important to growers as well as to processors.

Cider and other apple byproducts are important to Vermont's economy, providing a market for otherwise unmarketable fruit. Of Vermont's average annual crop of 1.1 million bushels, approximately 20 percent, or 220,000 bushels, are graded out as culls, or processing apples. Apple production has a long history in Vermont, and is an integral part of agriculture in our State as it is in many States.

Many States have recognized the potential benefits to their apple farmers by lowering the tax on draft cider to equal the beer tax rate. State Departments of Agriculture, farm bureaus, and representatives from the apple industry across this Nation have voiced their support for lowering the cider tax rate.

This bill that I introduce today is similar to legislation that I introduced along with my friend from Vermont, Senator LEAHY, and my colleagues from New York in the last Congress. The same bill was successful in the Senate last Congress as part of the Small Business Job Protection Act of 1996, H.R. 3448. Unfortunately, the language was not included in the conference report of H.R. 3448.

Mr. President, it is my hope that this legislation will again pass in the Senate and be signed by the President. I ask my colleagues to support this legislation.●

● Mr. LEAHY. Mr. President, I am pleased to join my friend from Vermont, Senator JEFFORDS, in introducing tax legislation designed to stimulate the apple industry in the United States. I am pleased that Senators D'AMATO and MOYNIHAN are joining me as original cosponsors of the bill.

Our bill revises the Federal excise tax on fermented apple cider, more commonly known as draft cider, to beer tax rates. As one of the senior members of the Senate Agriculture Committee, I believe this small tax change will be of great benefit to cider makers and apple growers across the country.

Draft cider is one of the oldest categories of alcoholic beverages in North America. Back in colonial times, nearly every innkeeper served draft cider to

his or her patrons during the long winter. In fact, through the 19th Century, beer and draft cider sold equally in the United States.

Recently, draft cider has made a comeback in the United States and around the world. Our tax law, however, unfairly taxes draft cider at a much higher rate than beer despite the two beverages sharing the same alcohol level and consumer market. This tax treatment, I believe, creates an artificial barrier to the growth of draft cider. Our legislation will correct this inequity.

Present law taxes fermented cider, regardless of its alcohol level, as a wine at a rate of $1.07 per gallon. Our bill would clarify that draft cider containing not more than 7 percent alcohol and marketed in various size containers would be taxed at the beer rate of 22.6 cents per gallon. I believe this tax change would allow draft cider producers to compete fairly with comparable beverage makers. As draft cider grows in popularity, apple growers around the nation should prosper because draft cider is made from culled apples, the least marketable apples.

The growth of draft cider should convert these least marketable apples, which account for about 20 percent of the entire U.S. apple production, into a high value product, helping our struggling apple growers. Indeed, I have received letters from officials at state agriculture departments from across the nation—Arizona, Connecticut, Georgia, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Vermont and Virginia—supporting the taxing of draft cider at the beer rate because this change would allow apple farmers in their States to reap the benefits of an expanded culled apple market.

I have also heard from the Northeast McIntosh Apple Growers Association, the New York Apple Association, the New England Apple Council and many apple farmers, processors and cider producers that support revising the excise tax on draft cider.

This bill is identical to legislation I introduced with Senators JEFFORDS, D'AMATO and MOYNIHAN in the last Congress. That bill passed the Senate as part of the Small Business Job Protection Act of 1996, H. R. 3448, but was not included in the conference report on H.R. 3448. I am hopeful that with the leadership of Senators JEFFORDS, D'AMATO and MOYNIHAN, we can enact into law this small tax change that will have a large positive impact on the Nation's apple industry.

I urge my colleagues to support this legislation.●

By Mr. HATCH (for himself, Mr. BIDEN, Mr. STEVENS, Mr. GREGG and Mr. KOHL):

S. 476. A bill to provide for the establishment of not less than 2,500 Boys and Girls Clubs of America facilities by the year 2000; to the Committee on the Judiciary.

BOYS AND GIRLS CLUBS OF AMERICA LEGISLATION

Mr. HATCH. Mr. President, I rise today to introduce a measure to further the commitment of the Republican Congress to support the expansion of the Boys and Girls Clubs of America, one of the best examples of proven youth crime prevention. I am pleased to be joined in introducing this bill by a bipartisan group of Senators, including Senator BIDEN, the ranking Democrat on the Youth Violence Subcommittee, Senator STEVENS, the chairman of the Senate Appropriations Committee, Senator GREGG, the chairman of the Commerce, Justice, State Appropriations Subcommittee, and Senator KOHL, who serves on the Judiciary Committee.

Our legislation addresses our continuing initiative to ensure that, with Federal seed money, the Boys and Girls Clubs of America are able to expand to serve an additional 1 million young people through at least 2,500 clubs by the year 2000. The dedication of all of these Members demonstrates our commitment to both authorize and fund this effort.

Last year, in a bipartisan effort, the Republican Congress enacted legislation I authored to authorize $100 million in Federal seed money over 5 years to establish and expand Boys and Girls Clubs in public housing and distressed areas throughout our country. With the help of the Appropriations Committee, we have fully funded this initiative.

The bill we are introducing today streamlines the application process for these funds, and permits a small amount of the funds to be used to establish a role model speakers' program to encourage and motivate young people nationwide.

It is important to note that what we are providing is seed money for the construction and expansion of clubs to serve our young people. This is bricks and mortar money to open clubs, and after they are opened they will operate without any significant Federal funds. In my view, this is a model for the proper role of the Federal Government in crime prevention. The days are over when we can afford vast never-ending federally run programs. According to a GAO report last year, over the past 30 years, Congress has created 131 separate Federal programs, administered by 16 different agencies, to serve delinquent and at-risk youth. These programs cost $4 billion in fiscal year 1995. Yet we have not made significant progress in keeping our young people away from crime and drugs.

What we can and must afford is short-term, solid support for proven private sector programs like the Boys and Girls Clubs that really do make a difference. Boys and Girls Clubs are among the most effective nationwide programs to assist youth to grow into honest, caring, involved, and law-abiding adults.

We know that Boys and Girls Clubs work. Researchers at Columbia University found that public housing developments in which there was an active Boys and Girls Club had a 25 percent reduction in the presence of crack cocaine, a 22 percent reduction in overall drug activity, and a 13 percent reduction in juvenile crime. Members of Boys and Girls Clubs also do better in school, are less attracted to gangs, and feel better about themselves.

Distinguished alumni of Boys and Girls Clubs include role models such as actor Denzel Washington, basketball superstar Michael Jordan, and San Francisco 49ers quarterback Steve Young.

More important, however, are the uncelebrated success stories—the miracles performed by Boys and Girls Clubs every day. At a Judiciary Committee hearing today, we have some of these miracles with us. Amador Guzman, from my State of Utah, told us how he believes the club in his neighborhood saved his life, by keeping him from gangs, drugs, and violence.

The reason Boys and Girls Clubs work, and the Republican Congress wants to do more for them is because they are locally run, and depend mostly on community involvement for their success.

Never have our youth had a greater need for the positive influence of Boys and Girls Clubs, and never has the work of the clubs been more critical. Our young people are being assaulted from all sides with destructive messages. For instance, drug use is on the rise. Recent statistics reconfirm that drugs are ensnaring young people as never before. Overall drug use by youth ages 12 to 17 rose 105 percent between 1992 and 1995, and 33 percent between 1994 and 1995; 10.9 percent of our young people now use drugs on a monthly basis, and monthly use of marijuana is up 37 percent, monthly use of LSD is up 54 percent, and monthly cocaine use by youth is up 166 percent between 1994 and 1995.

Our young people are also being assaulted by gangs. By some estimates, there are more than 3,875 youth gangs, with 200,000 members, in the Nation's 79 largest cities, and the numbers are going up. Even my State of Utah has not been immune from this scourge. In Salt Lake City, since 1992, the number of identified gangs has increased 55 percent, from 185 to 288. The number of gang members has increased 146 percent, from 1,438 to 3545; and the number of gang-related crimes has increased a staggering 279 percent, from 1741 in 1992 to 6611 in 1996. Shockingly, 208 of these involved drive-by shootings.

Every day, our young people are being bombarded with cultural messages in music, movies, and television that undermine the development of core values of citizenship. Popular culture and the media glorify drug use, meaningless violence, and sex without commitment.

The importance of Boys and Girls Clubs in fighting drug abuse, gang recruitment, and moral poverty cannot

be overstated. The clubs across the country are a bulwark for our young people and deserve all the support we can give.

Indeed, Federal efforts are already paying off. Using over $15 million in seed money appropriated for fiscal year 1996, the Boys and Girls Clubs of America opened 208 new clubs in 1996. These clubs are providing positive places of hope, safety, learning, and encouragement for about 180,000 more kids today than in 1995. In my state of Utah, these funds have helped keep an additional 6,573 kids away from gangs, drugs, and crime.

The $20 million appropriated for fiscal year 1997 is expected to result in another 200 clubs and 200,000 more kids involved in clubs. We need now to redouble our efforts. The legislation we introduce today demonstrates our commitment to do that. I urge my colleagues to support it.

By Mr. HATCH (for himself and Mr. BENNETT):

S. 477. A bill to amend the Antiquities Act to require an Act of Congress and the consultation with the Governor and State legislature prior to the establishment by the President of national monuments in excess of 5,000 acres; to the Committee on Energy and Natural Resources.

THE NATIONAL MONUMENT FAIRNESS ACT OF 1997

Mr. HATCH. Mr. President, along with my colleague, Senator BENNETT, I am pleased to introduce the National Monument Fairness Act of 1997. This act will promote procedural fairness in the creation of national monuments on Federal and State lands under the Antiquities Act of 1906 and further congressional efforts in the area of environmental protection. Identical legislation is being introduced today in the House of Representatives by Congressman JIM HANSEN with the support of Congressmen MERRILL COOK and CHRISTOPHER CANNON.

As my colleagues know, on September 18, 1996, President Clinton invoked the Antiquities Act of 1906 to create the Grand Staircase/Escalante Canyons National Monument. The 1.7 million acre monument, larger in size than the States of Rhode Island and Delaware combined, locks up more than 200,000 acres of State lands, along with vast energy reserves located beneath the surface.

Like the attack on Pearl Harbor, this massive proclamation came completely without notice to the public. Although State officials and members of the Utah congressional delegation were told that the Administration would consult us prior to making any change in the status of these lands, the President's announcement came as a complete surprise. The biggest Presidential land set-aside in almost 20 years was a sneak attack.

Without any notification, let alone consultation or negotiation, with our Governor or State officials in Utah, the President set aside this acreage as a national monument by the stroke of his pen. Let me emphasize this point. There was no consultation, no hearings, no town meetings, no TV or radio discussion shows, no nothing. No input from Federal managers who work in Utah and manage our public lands. As I Stated last September, in all my 20 years in the U.S. Senate, I have never seen a clearer example of the arrogance of Federal power than the proclamation creating this monument. It continues to be the mother of all land grabs.

We in Utah continue to work with the hand President Clinton has dealt us. That is, we are attempting to recognize and understand the constraints placed upon the future use of the land and resources contained within the monument's boundaries. We are trying to identify the various adverse effects this action will have on the surrounding communities.

Personally, while I would have preferred a monument designation considerably smaller in scope, I could have enthusiastically supported a monument designation for the area covered by the proclamation had I been consulted prior to last September and invited to work with the President on a designation that was tailored to address the many concerns we have heard over the years on this acreage. Two of these concerns involve the 200,000 acres of school trust lands captured within the monument boundary and the locking up of 16 billion tons of recoverable, low-sulfur, clean-burning coal.

Remember, our wilderness bill considered last year proposed designation of approximately one-quarter of this land as wilderness. I wanted to protect most of it; the people of Utah wanted to protect most of it. But, we were not consulted; we were not asked; our opinion was not sought. Rather, in an effort to score political points with a powerful interest group 48 days before a national election, President Clinton unilaterally acted.

In taking this action in this way, the President did it all backwards. Instead of knowing how the decision would be carried out—and knowing the all ramifications of this implementation and the best ways to accommodate them—the President has designated the monument and now expects over the next 3 years to make the designation work. The formal designation ought to come after the discussion period. It is how we do things in this country. Unfortunately, however, the decision is now fait accompli, and we will deal with it as best we can. I hope the President will be there to help our people in rural Utah and our school system as the implementation of the designation order takes place.

The legislation we are introducing today, the National Monument Fairness Act, is designed to correct the problems highlighted by the Clinton Antiquities Act proclamation in Utah. It will do this in two significant ways.

First, the act makes a distinction between national monument proclamations greater in size than 5,000 acres, and those 5,000 acres and less. The President retains his almost unfettered authority under the Antiquities Act over monument designations 5,000 acres and less. Specifically, the Antiquities Act delegates to the President discretion to declare as a national monument that part of Federal land that contains historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest—but only as long as the declared area is confined to the ''smallest area compatible with proper care and management of the objects to be protected.'' The 5,000 acre limitation will give effect to this ''smallest area compatible'' clause, which both the courts and past Presidents have often ignored.

For areas larger than 5,000 acres, the President must consult, through the Secretary of Interior, with the Governor of the State or States affected by the proposed proclamation. This consultation will prevent executive agencies from rolling over local concerns—local concerns that, under the dictates of modern land policy laws such as the Federal Land Policy and Management Act of 1976 [FLPMA] and the National Environmental Policy Act, certainly deserve to be aired.

The National Monument Fairness Act also provides time constraints on the consultation requirement. From the date the Secretary of Interior submits the President's proposal to the appropriate State Governor, the Governor will have 90 days to respond with written comments. Ninety days after receiving the Governor's comments, the Secretary will then submit appropriate documentation, along with the Governor's written comments, to the Congress. If the Governor fails to comment on the proposal, the Secretary will submit it to the Congress after 180 days from the date of the President's proposal. These time constraints assure that the process will be fair. It will prevent State officials from unnecessarily delaying proposed proclamations, but will allow appropriate time for State and localities to voice their concerns through the Governor's comments on the President's actions.

Consequently, the consultation requirement ensures that large monument designations will be made fairly, and in a manner that allows the participation, through their Governor, of the people most directly affected by the proclamation.

Second, the National Monument Fairness Act allows all citizens of the United States to voice their concerns on large designations through Congress. The act provides that after the Secretary has presented the proposal, Congress must pass it into law and send it to the President for his signature before the proposal becomes final and effective. Thus, the Nation, through its elected representatives, will make the decision whether certain

lands will become national monuments. This is the way our democracy ought to operate. Indeed, it furthers the intent of the Framers in the Constitution who anticipated that laws and actions affecting one or more individual States would be placed before the legislature and debated, with a State's representatives and senators able to defend the interests of their State.

Mr. President, the purpose of our legislation is to ensure that a fair and thorough process is followed on any future large-scale monument designations under the authority granted in the Antiquities Act. Since Utah is home to many other areas of significant beauty and grandeur, I am concerned that this President or those within his administration, or a future President or administration, might consider using this authority in the same manner as last September. In other words, it will be ''deja vu all over again.'' We cannot afford to have the entire land area of our state subject to the whims of any President. Many have proposed plans, including myself, for these areas, that have been the subject of considerable public scrutiny and comment. The consensus building process must be allowed to continue without the threat that a Presidential pen will intervene to destroy any progress and goodwill that has been established or that may be underway among the citizens of our State.

I am aware that Interior Secretary Babbitt stated publicly last month that ''there are no plans for any additional executive withdrawals'' during the remaining years of the Clinton administration. That is fine. However, as my colleagues know perfectly well, Secretary Babbitt told me and other members of our congressional delegation last December that there was no final decision to designate the Grand Staircase/Canyons of the Escalante Monument and that we, the congressional delegation, would be consulted prior to any designation. Since then, we have learned from press reports that many decisions leading to the monument announcement had already been made, if not finalized, prior to our meeting with the Secretary.

But, regardless of whether the Clinton administration plans to designate any more monuments, I do not think it is unreasonable to look at the authorities contained in the Antiquities Act—particularly the authority that permits such sweeping and long-lasting changes for individual States and towns without State input and congressional approval. That is the issue.

That is why we are introducing this legislation today. This matter of due process for State and local officials—as well as for small business people, ranchers, school systems, and many others affected by locking up lands—is an issue about which I believe all Senators and Congressmen need to be concerned. While Senators representing the so-called public lands States may need to pay particular attention, if the long arm of the Federal Government can do this to Utah without so much as a day's notice, it can do it to your State as well.

It is time we incorporate some common sense protections for all States into the Antiquities Act. I continue to believe that last September's act was a Federal land grab, and I unwilling to stand by and let it happen again in my State or any other State without a fair and proper airing in the court of public opinion.

Some may ask why this legislation focuses only on proposed areas over 5,000 acres. First, it is not our desire to completely withdraw the authority granted the President in the 1906 act. But, the original act is clear when it States that this authority should be limited to ''the smallest area'' possible. In my mind, this authority should be available for those areas that are small in nature that may require quick or emergency protection for which a monument designation is warranted. That is how I envision this authority being used.

Second, there is already precedence in Federal law for 5,000 acres as the threshold amount for determining certain pending or future Federal action or consequence. For example, the Wilderness Act of 1964 defines wilderness as having ''at least 5,000 acres of land.'' Also, FLPMA authorizes the Secretary to withdraw 5,000 acres or more for up to 20 years ''on his own motion or upon request by a department or agency head.'' And, there is reference to ''roadless areas of 5,000 acres or more'' in that section of FLPMA that authorizes the 15-year Bureau of Land Management wilderness study process.

I am sure that any detractors of this bill will State that had our bill been enacted in the past, some of the Nation's most gorgeous and long lasting monuments would never have been designated as a national monument. I would say two things to this point.

First, our bill will not prevent the establishment of any monument consisting of 5,000 acres or more. The bill simply modifies the process by which proposed monuments of acreage above this amount can be designated. Second, and most importantly, I understand that there are 72 national monuments in the United States. Of that number, only one-third, or 24, have a total acreage figure greater than 5,000 acres. Enactment of our bill will not bring a halt to the ability of Congress—or even the President—to designate national monuments.

In addition, I realize that some of our existing national parks, such as Arches and Canyonlands National Parks in Utah, were originally established as national monuments, only to be designated a park afterward. It is not fair to say that had our bill been in law prior to the designation of these monuments that parks like Arches and Canyonlands or the Grand Canyon National Park would never have been designated. Certainly, any monument proposal consisting of more than 5,000 acres that is proposed by the President where a consensus exists within Congress that such a designation is warranted would be favorably received and acted upon by Congress. And, at least home State senators and representatives have a voice. In many cases, it is likely that they would pursue a designation of these areas prior to the President exercising his authority under the Antiquities Act.

But, let's not lose focus of the purposes of this bill. We simply want to ensure that a public process is undertaken prior to any large monument designation under the Antiquities Act. As I stated earlier, we conduct such a process whenever a similar proposal is introduced in Congress; why can't Congress insist that it be done when the President desires to achieve the same purpose?

I mentioned that we are in the process of recognizing and understanding the constraints this proclamation will place on the economic and social aspects of the surrounding communities. When an area the size of the Grand Staircase-Escalante Canyons National Monument is withdrawn from public use and given a special designation, there are many ramifications that need to be addressed, the burden of which falls primarily on the shoulders of the local community. These include the following items:

First, county land-use plans will have to be studied and amended to address necessary changes relating to the new monument.

Second, consideration of the transportation improvements required to improve the existing inadequate transportation system to access the new monument for visitors to the area.

Third, increased visitation to the area will place greater burden on services provided by local government, such as law enforcement, fire, emergency, search-and-rescue, and solid waste collection.

Fourth, increased visitation to the area will place greater burden on the proper disposition of limited natural resources, such as water, both for culinary and irrigation purposes.

These are just a few items that are currently being discussed and reviewed by local leaders in the area of the new national monument. These are not trivial matters; they are critical to continuing the livelihood of the cities and towns in the area. So, no one should think that creating a new monument of this size, as endearing a concept as that is, does not create significant matters that must be addressed.

Of course, the other consequence the creation of this monument has created which continues to be of utmost concern to me is the final disposition of the State school trust lands captured within the monument's boundaries. The inability to access the natural resources contained on these lands will

have a devastating impact on providing crucial funds to Utah's public school educational system. The Utah Congress of Parents and Teachers has indicated that ''the income from the mineral resources within the Monument could have made a significant difference in the funding of Utah schools now and for many generations to come.'' It remains to be seen the manner in which the President will fulfill the promises he made to the children of Utah last September when he created the new monument. Specifically, he said ''creating this national monument should not and will not come at the expense of Utah's children.'' He also added that it is his desire to ''both protect the natural heritage of Utah's children and ensure them a quality educational heritage.'' I am eager to work with him to fulfill these promises.

I mention these items to simply paint a picture for my colleagues that there are many pieces to the monument puzzle that remain to be resolved. The President can come to town—or 75 miles to the south in another State—and designate a monument, but Utahns are left to pick up the pieces of his action to make sure that it works—and that it works properly. That is what I want, and I am sure that is what the President wants.

Finally, Mr. President, I must point out that the adoption of this act will likely result in more stringent environmental protection of Federal lands. The most ironic fact of the administration's monument designation in Utah is that national monuments permit a greater level of activity than does a wilderness designation. Last year, the Utah delegation proposed that 2.1 million acres of land on and around the Grand Staircase/Escalante Canyons area be declared wilderness, under the language of the Wilderness Act of 1964. The wilderness designation is far more stringent than the administration's monument designation and prevents the construction of the roads and visitors centers envisioned under the monument designation. The Utah proposal of the 104th Congress included more area than BLM had officially recommended to Congress following its 13-year inventory of the lands in Southern Utah. This is yet another compelling reason why it is vital for local and State officials to be consulted prior to national monument declarations.

Mr. President, the Antiquities Act is antiquated. It needs to be updated. It can be amended in a manner consistent with today's pressing land policy concerns without destroying the original intent behind the act. That is what we have proposed in this legislation and why I urge passage of the National Monument Fairness Act of 1997. This bill will preserve the President's ability to act to protect lands of historic and scientific significance that are threatened with development. However, the act will promote greater environmental stewardship by forcing the executive branch to consider the views of local and State officials prior to making large-scale changes in land designation and management.

Finally, the requirement that massive monument proposals be passed through the Congress, under the strictures of article I of the Constitution, will ensure that all Americans have a say in land policy decisions that fundamentally change the Nation. And, this, Mr. President, may be the most compelling reason of all to enact this measure.

I invite Senators to join me in support of this legislation and 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. 477

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 ''National Monument Fairness Act of 1997.''

sec. 2. consultation with the governor and state legislature.

Section 2 of the Act of June 8, 1906, commonly referred to as the ''Antiquities Act'' (34 Stat. 225; 16 U.S.C. 432) is amended by adding the following at the end thereof: ''A proclamation under this section issued by the President to declare any area in excess of 5,000 acres to be a national monument shall not be final and effective unless and until the Secretary of the Interior submits the Presidential proclamation to Congress as a proposal and the proposal is passed as a law pursuant to the procedures set forth in Article 1 of the United States Constitution. Prior to the submission of the proposed proclamation to Congress, the Secretary of the Interior shall consult with and obtain the written comments of the Governor of the State in which the area is located. The Governor shall have 90 days to respond to the consultation concerning the area's proposed monument status. The proposed proclamation shall be submitted to Congress 90 days after receipt of the Governor's written comments or 180 days from the date of the consultation if no comments were received.''.

By Mr. GRASSLEY (for himself, Mr. MURKOWSKI, Mr. TORRICELLI, Ms. LANDRIEU, Mr. CRAIG, Mr. KERREY, Mr. HAGEL, Mr. BAUCUS, Mr. LOTT, Mr. BREAUX, Mr. NICKLES and Mr. HUTCHINSON):

S. 479. A bill to amend the Internal Revenue Code of 1986 to provide estate tax relief, and for other purposes; to the Committee on Finance.

THE ESTATE TAX RELIEF FOR THE AMERICAN FAMILY ACT

Mr. GRASSLEY. Mr. President, I rise today to introduce a bipartisan effort to relieve the estate tax burden on the American family. I want to thank the other original cosponsors and particularly the Majority Leader. Estate tax relief is on the respective top ten legislative objective lists of both parties. It is my honor to lead the effort for my party. I think that estate tax reform will happen in this Congress. Therefore, I encourage my colleagues to associate themselves with our bipartisan legislation. It doubtlessly will become the focus of the estate tax reform efforts in the Senate efforts. The list of original cosponsors already includes Senators BAUCUS, LOTT, BREAUX, NICKLES, MURKOWSKI, KERREY, HAGEL, TORRICELLI, LANDREIU, and Mr. HUTCHINSON.

I will go about this introductory statement in two steps. First, I am going to discuss the importance of this legislation to my state of Iowa. Then, I will make some remarks about the specific provisions of the bill.

In nearly every area of my state and the nation, we saw in the past decade estate tax ultimately confiscate many family farms. For example, in 1981, the children of two family farmers in Hancock County, Iowa, inherited tracks of land that were debt free. In both of these cases a father was passing the farm to one of his children. The estate was forced to borrow the amount to pay for both the state inheritance tax and the federal estate tax. At the time, the profitability of farming was low, and the value of farm land plummeted. In both cases the estate tax unfortunately brought about the foreclosure of these farms which had been in each family for four generations.

That was sixteen years ago, and the estate tax has hardly improved since then. The general estate tax exemption has risen to $600,000, but that number is over $200,000 behind the rate of inflation. The important thing to keep in mind about estate tax reform is that estates do not pay taxes, surviving families pay taxes. This bill is simply about fairness and equity for families. Furthermore, it is about correcting latent defects in the estate tax rules that make tax lawyers rich, but also make families crazy.

Reform in this legislation comes in three major parts. First, we increase the broad based estate tax exemption from $600,000 to $1,000,000 over a period of six years. Second, we grant family owned businesses relief similar to what was introduced by former Senators Dole and Pryor. For businesses passed down among the family, this bill provides a complete exemption for the first $1,500,000 of family business assets. It also provides an additional 50 percent exemption on the next $8,500,000. Thus, there is a $10,000,000 cap on our family-owned business relief. This provision is therefore a smaller provision than the original Dole/Pryor legislation.

Finally there is a section that I call repair and maintenance. Here we improve some popular existing provisions. For example, housekeeping and improvement is done to special use valuation. The Government financed estate tax deferral provision is improved. A generation skipping tax equity problem is fixed that has already been passed twice but vetoed for unrelated reasons. Finally, an IRS gift tax audit statute of limitations problem for families is fixed.

Because it is especially complicated, I want to discuss the generation skipping transfer tax problem that is addressed in the repair and maintenance section of this bill. For reference purposes, this legislation was known as bill number S. 1170 in the 104th Congress. It too was passed on the Balanced Budget Act of 1995 which was subsequently vetoed.

The GST tax is an extra tax that families pay when a grandparent makes a gift to a grandchild. The provision in our bill has the support of over 200 charities in the Nation including the public universities in my State of Iowa. It has passed twice in the last 10 years, but was not enacted because the greater legislation was vetoed for unrelated reasons.

Our provision expands the current law predeceased parent exception. This is an exception to the GST tax where a grandparent gifts to a grandchild but the grandchild's parent has already died. The grandchild steps up into the place of the parent. In our bill, this exception is broadened to include gifts not only to grandchildren with predeceased parents but also grandnieces and grandnephews. The expansion to include these gifts that are affected by trusts is necessary to promote charitable giving and also protect families. The White House supported this provision during the debate of the Balanced Budget Act of 1995, given the prospective effective date as in our bill.

Humility requires me to admit that each of these provisions passed as part of the vetoed Balanced Budget Act of 1995. In some places we have made technical improvements suggested by the tax experts, but by and large there is little original thought here. If you have good legislation you don't need to improve upon it.

Some will ask about how this estate tax bill fits into the debate over a balanced budget. The answer is that the balanced budget is still a No. 1 priority and this bill will need to fit in a balanced budget. Since the White House has supported provisions in the President's budget similar to these provisions, we should expect the White House to offer assistance to us in resolving the estate tax problem. If the era of big government is over, then the White House should step up to the plate and aid us in eliminating estate tax theft upon surviving families.

Mr. BAUCUS. Mr. President, I am very pleased to join with Senator GRASSLEY and my other colleagues in introducing the Estate Tax Relief for the American Family Act of 1997 today. This bill is designed to provide farmers, ranchers, and others who own family businesses and much needed relief from the estate tax.

Montana is a small-town, rural State, Mr. President. People run farms, ranches, and work in small businesses. One of the wonderful things about life in rural Montana is the way these operations stay in the family. It holds communities together, and creates a lasting bond between generations.

As I listen to farmers, ranchers and small business owners, one topic comes up every time, and that is the estate and gift tax. I hear about the burden it puts on agricultural producers and small businesses, and about how difficult this tax makes it to hand down an operation to your sons and daughters.

To avoid this tax, an operation today has to be under $600,000 in value. That amount hasn't budged since 1987. Our State, one the other hand, has changed a lot in that time. In 1988, the average Montana farm was worth $579,735. In 1995, that amount was up to $867,769. If we had figures for today, I am confident this amount would be even higher.

So if you're an average fellow, you often have three choices when your farm goes on to the next generation. You can subdivide the land and thus decrease production. You can sell off part of the farm to pay the taxes. Or, you can sell the whole thing and get out of farming altogether. None of these options are good for the family, nor are they necessarily good for the community. Unbridled development brings with it its share of problems, and changes the nature of Montana life—not always for the better. Our farms, ranches and other small businesses are a part of our heritage and valuable contributors to our economy and the Montana way of life. It is simply not right to destroy them with onerous estate taxes.

The Estate Tax Relief for the American Family Act of 1997 is the first step toward bringing the estate tax up to date and making it more fair. Our bill raises the unified credit to cover estates up to $1 million, which is roughly where the cap would be if the credit had kept pace with inflation all these years. We give folks a bit longer to pay off the bill when they do have a tax due, by lengthening the deferral from 10 years to 20. We provide additional exemptions for family-owned small businesses, by allowing them to exclude completely the first $1.5 million in value of their estates, and one-half of the next $8.5 million. We also make a few other common-sense changes to make it easier to keep these business operations in the family.

That's good news for farmers, ranchers and small business owners. It's good for the communities they live in. And more than anything else, it's the right thing to do. So I'm very proud to be a part of this effort today, and I look forward to working with my other colleagues, and with the administration, to get this relief enacted into law this year.

Mr. LOTT. Mr. President, I am delighted to take part in introducing the first bipartisan family tax relief bill of the 105th Congress—the Estate Tax Relief for the American Family Act.

Today, the Government can confiscate up to 55 percent of an estate in tax when a person dies. This tax is a grotesque relic of an earlier era when some people believed it was the Government's job to determine who should be allowed to keep what they earn. They believed it was the Federal Government's job to confiscate the hard-earned dollars of working Americans when they died.

The estate tax is a monster that must be exterminated. If it were up to me, we would simply repeal the estate tax in its entirety. Unfortunately, our budget process does not allow us to completely repeal this tax all at once. We must do it in stages.

Therefore, the bill we are introducing today will increase the amount of every estate that will be exempt from estate tax. When fully phased in, up to $1 million will be automatically excluded from every estate before imposition of the estate tax.

The bill also creates a new category of excludable assets for family-owned businesses that are passed on to succeeding generations. No longer will small business owners be forced to sell part or all of their business assets merely to feed the voracious tax appetite of the Federal Government. Our bill allows an exclusion of $1.5 million of the assets of a family-owned business from the estate tax, and 50 percent of the next $8.5 million. For many small businesses this will make the difference between staying viable and closing their doors. It will preserve jobs, give many communities around the country stability and certainty, and encourage entrepreneurship. It is the right thing to do for our farmers, for our ranchers, for every American who owns a small business that he or she wishes to keep in the family.

These businesses are, after all, the engines of prosperity in communities across America, and we must help them to remain so.

This bill is the first step. The tax on death should be zero, and that is what we will continue to work for.

I want to thank Senator GRASSLEY for his leadership on this bill, and Senator BAUCUS and Senator BREAUX as well for joining in this bipartisan effort to reduce the crushing tax load on all Americans.

Mr. BREAUX. Mr. President, today I join with several of my colleagues to introduce the Estate Tax Relief for the American Family Act of 1997.

Tax policy should meet two criteria. It should provide an effective and efficient way to collect taxes for the operation of our Government and it should encourage positive economic and social policies. This tax does neither. After looking at the current system, I have concluded that Federal estate and gift taxes are not worth the cost to our economy, to businesses and to American families.

In 1995, the estate tax generated $14.8 billion in revenue, only 1.09 percent of total Federal revenues. Conversely, the cost of collecting and enforcing the estate tax to the Government and taxpayers was 65 cents of every dollar collected.

The effects of the estate tax are felt most by family-owned businesses. More than 70 percent of family-owned businesses do not survive the second generation and 87 percent do not survive the third generation. Many families are forced to liquefy their businesses in order to pay the estate tax.

There is a definite need to remedy these problem and this bill takes steps in the right direction. The legislation would increase the estate tax exemption from $600,000 to $1 million, and allow estate tax-free transfers of certain qualified small business assets.

I hope that any tax bill we put forth this year will include estate tax relief based on the principles we have put forth in this bill.

Mr. NICKLES. Mr. President, I have always believed that economic freedom is a critical part of life, liberty, and the pursuit of happiness. Unfortunately, the Internal Revenue Code does not always promote or encourage economic freedom, and one area where this is strikingly clear is the confiscatory, anti-family, anti-growth estate tax.

Most Americans work diligently throughout their lives to provide for their families and give their children and grandchildren a better future. This work often results in the accumulation of assets like homes, businesses, and farms; all acquired with hard work and bought with after-tax dollars. Unfortunately, those without high-paid lawyers and accountants realize too late that up to 55 percent of those assets could be confiscated by the Federal Government upon their death.

Some people mistakenly believe estate taxes only affect the rich, but there are thousands of small businesses and farms throughout the country owned and operated by middle-income Americans that are affected by existing estate tax laws. These small businesses may appear to be economically significant on paper, but often they have little liquid assets to cover estate tax liabilities. Historically, these businesses have created most of the new jobs in this country and fueled the growth of the economy.

The unfortunate result of high estate taxes is that families are frequently forced to sell off part of the family business to pay the taxes incurred by the deceased family member's estate. This liquidation of productive assets to finance tax liabilities is anti-family and anti-business. At the very least, families and businesses are forced to employ an army of expensive experts to avoid the worst estate taxes, a make-work exercise that exacerbates the inefficiency of the system.

Mr. President, I believe it is patently unfair for the Federal Government to assume that it has the right to take an individual's hard-earned assets and redistribute them to others. If our goal as a society and a government is to encourage long-term, private savings and investment we cannot continue the policy of confiscating estates. With an average savings rate in the United States of 2.9 percent, which is lower than that of any other industrialized country, we should be encouraging individuals, families, and businesses to save and invest.

Since 1987, a unified tax credit for gifts and estate transfers has effectively exempted $600,000 worth of assets from estate taxes. This basic exemption has increased modestly over the years, from $60,000 in the 1940's, 1950's and 1960's to $225,000 in 1982. Unfortunately, the current estate exemption of $600,000 has been greatly eroded by inflation.

The legislation I am introducing today with the Senate majority leader, Senator GRASSLEY, Senator BREAUX, Senator BAUCUS, and others addresses the problems associated with the estate tax in a thoughtful, bipartisan manner. It is not the perfect solution to these problems, Mr. President, but it is a good first step. I believe that ultimately we must radically restructure the estate tax by reducing marginal rates, which now exceed 55 percent for estates larger than $3 million, and I believe we must strive to treat all types of family businesses equally. However, I recognize the budget constraints Congress is working under, and I believe it is important to move forward in a bipartisan manner.

The legislation we are introducing today increases the estate tax exemption from $600,000 to $1,000,000, thus allowing more homeowners, farmers, and small businesses to keep their hard-earned wealth. Further, our bill would provide special relief for closely-held family businesses. We would allow estate-tax free transfers of up to $1.5 million in small business assets to qualified family members, and a 50 percent exclusion for up to $8.5 million in assets above that threshold, as long as the heirs continue to operate the business.

The legislation we are introducing today makes simple pro-family, pro-business, and pro-economy changes to our tax code. It will allow more homeowners, farmers, and small businesses to keep their hard-earned wealth. I encourage my colleagues to join us as cosponsors of this bill.

Mr. TORRICELLI. Mr. President, I am proud to include my name as an original cosponsor of the Estate Tax Relief for the American Family Act of 1997, which was introduced today. This is a critical tax reform bill that will modernize our antiquated estate tax policy, provide significantly improved economic security for family businesses, promote efficient and pro-growth economic policy and ensure sound financial practices for millions of American working families.

This legislation gradually increases over 6 years the estate and gift tax exemption from the current limit of $600,000 to $1 million. The graduated time schedule would increase the exemption by $100,000 in each of the first 2 years following enactment and $50,000 in each of the next 4 years.

For families with their own small business, the bill would provide a new small business exemption of $1.5 million of business-related assets above the first $1 million in an estate as well as 50 percent of the next $8.5 million of such assets. This proposal would provide new safeguards for family business solvency that is not currently provided under current law.

These changes are desperately needed as our current estate tax policy has not been upgraded in a decade. Even worst, the current policy has proven to be a economic failure. Estate and gift taxes are one of the smallest sources of revenue, collecting only $10 to $15 billion per year, mostly because Americans have found legal means of avoiding the tax. Indeed, Prof. Douglas Bernheim of Stanford University has theorized that more income tax revenue may be lost through clever estate planning than is actually collected through the estate tax.

Even worse, the current policy encourages Americans to spend capital on consumption items rather than save because saving their money would increase the value of their estate and, ultimately, their estate tax liability. Indeed, it has been estimated that the tax cost of a dollar saved increases by an amount somewhere between 7.4 cents and 55 cents because of current estate tax law.

And for small business, the current policy is devastating. The family-owned pizza parlor, dry cleaning store, grocery and family farm are failing to provide the kind of generational economic continuity that national policy should be encouraging. Indeed, more than 70 percent of family businesses don't survive the second generation and almost 90 percent don't survive to a third generation. Most of these failures occur because current estate tax policy drains a family's financial ability to keep a business afloat as it passes from one generation to the next.

The existing estate tax policy creates economic inefficiencies and places its heaviest burdens on the middle class. The rates of estate taxes are excessive, unfair, punitive, and contrary to the interests of both business owners and their employees. Indeed, these taxes destroy the work of a lifetime and the dreams of a generation of Americans. The time to make genuine and sensible changes is now.

Enactment of the Estate Tax Relief for the American Family Act of 1997 is an essential part of any plan to balance the budget by 2002. It would likely provide a net increase in revenues while at the same time restore tax fairness for millions of Americans. I am proud to be an original cosponsor of this legislation and will be a tireless advocate for its enactment into law.

By Mr. WELLSTONE:

S. 480. A bill to repeal the restrictions on welfare and public benefits for aliens; to the Committee on Finance.

THE FAIRNESS TO IMMIGRANTS ACT

• Mr. WELLSTONE. Mr. President, on April 1, the Nation will begin to see the disastrous effects of the Personal Responsibility and Work Act of 1996, passed and signed into law in the 104th Congress. When Congress debated the bill, strong arguments were made for getting people off welfare and back to work. I supported those intents. However, I believed then as I do now that the bill we were debating went beyond what is humanly justifiable in terms of repealing basic assistance to people who are in need. This bill was not about able bodied people working. It was about good people suffering. Under the guise of able bodied people working, we are forcing disabled and elderly people into hunger, into homelessness.

Beginning around April 1, roughly 500,000 legal immigrants will lose their SSI benefits and about 1 million will lose food stamps. By the year 2002, approximately, 260,000 elderly immigrants and 140,000 children will lose Medicaid coverage.

The bill I am introducing today restores those benefits to elderly and disabled immigrants by repealing provisions of the Personal Responsibility Act of 1996.

When the American people supported welfare reform, they supported that able bodied people would work. I want that. You want that. However, I do not think that the American people intended the ensuing consequences.

These consequences are people like Yanira, who, with her husband came to the United States legally 20 years ago from her native El Salvador. For 20 years they raised three children. For 20 years, they paid income taxes. For 20 years, they paid sales taxes. For 20 years they paid State taxes. For 20 years, they paid their car registration. For 20 years, they abided by the laws and rules here.

Then Yanira's husband divorced her. So, Yanira got a job. For about 8 years she cleaned toilets, washed floors and laundered towels in a hotel near her home. Eventually, the work became too demanding physically and she quit. At 64, Yanira has received SSI for a few years. Soon, she will not.

Since her husband is no longer married to her, she is not entitled to count her husband's work history toward the required 40 quarters—10 years. In spite of the fact that we willingly took her taxes and other fiscal contributions, we are denying her the basics for human survival, human dignity. How will Yanira survive? She doesn't know. Neither do I.

Yanira's situation is not isolated. There are Yaniras living in Minnesota, in Ohio, in New York and Mississippi. They are here legally but will not receive SSI until they become U.S. citizens. Many of them are elderly and cannot work and considering their age, learn all that is necessary to become citizens. They will be denied benefits for the rest of their lives.

Gladys has lived in the United States for 40 years, working as a nanny—caring for children in our Nation. Though she paid taxes and followed all the rules of the United States, she will lose her SSI benefits in July. She does have the option of struggling through forms and tests to become a citizen. Sounds like a good option until you realize: Gladys is 105 years old, blind and housebound. Gladys spent a good share of her times caring for and nurturing our children. She now needs the same.

Lucrecia has lived here for 17 years. For 8 of them, she labored in a factory, assembling artificial Christmas trees. At 75, facing the loss of her sole means of support, Lucrecia is desperate.

Rose, a 92-year-old, came from Lebanon 76 years ago. She has lived in a nursing home for the past 30 years. She has dementia. In December, she received a letter from the Government. The letter said, in essence, Rose had been shirking her responsibilities and she will no longer receive her benefits that support her stay in a nursing home. She can't speak for herself. I think we should speak for her. We should send the message that this is unacceptable. We must not let this happen to Rose.

During my many visits with communities in Minnesota and while talking with folks here, I have never seen more fear in the faces of so many people, so many good people, people who came to this country and followed the rules. I hear stories every day of people so full of fear that they take their own lives.

The Personal Responsibility and Work Opportunity and Reconciliation Act has abjured the contributions the legal immigrants like Yanira have made to our economic livelihood. I ask, How will their contributions be rewarded? Taxation without benefits is morally wrong.

Last year, we discussed and debated the merits and failings of the welfare reform law. As you know, I voted against it. I did not vote against it because I am against people working, people contributing to our country. I did not vote against it because I am against paychecks replacing welfare checks. I voted against it because I am against pushing the unemployable into poverty. I am talking about benefits for the disabled and elderly immigrants in our country. On April 1, we will see the first trickle in the torrent of suffering that this bill will inflict on our Nation's most vulnerable.

Around this time last year, we heard testimony from Robert Rector of the Heritage Foundation that ''welfare is becoming a way of life for elderly immigrants.'' A picture was painted depicting newly arrived immigrants being picked up by a sponsor at the airport and driven in a Cadillac directly to the welfare office to sign up for benefits such as SSI and food stamps. While I will not argue with you that there has been some abuse, I think this assertion is absurd.

Last year, Robert Rector also testified that ''the presence of large numbers of elderly immigrants on welfare is a violation of the spirit, arguably, the letter, of U.S. immigration law.'' I beg to differ. This country was based on the dignity of the human spirit, fairness and equity. The spirit of this country is to give voice to the voiceless, to care for the elderly and to nurture the children.

When we talk about reform, we should focus on change for the better, improvements to the system, revisions on our mistakes. When we talk of reform, we should not be discussing more people in hunger, more people who are homeless, more people in poverty. That is what this ''reform'' has led to.

People who supported the welfare reform bill said they ''responded to the wishes of the American people and put an end to the widespread use and abuse of our welfare system.'' I am asking you now to respond to the voice of the American people. A recent nationwide L.A. Times poll found that 56 percent of the American people favor restoring cuts to legal immigrants. Not too long ago, several Republican Governors were here. They are already anticipating the effects of this legislation. The American people do not want people like Gladys and Lucrecia left hungry and homeless. They want responsible, ethical government.

Responsible, ethical government costs money. I know that. I propose that instead of taking food from our Nation's elderly and children, we tax oil companies, we tax tobacco companies, we tax pharmaceutical companies. Why should wealthy corporations flourish and benefit from our policies while hardworking, law abiding people go hungry? This is not reform. This is a sham. Furthermore, it is shameful.

People like Gladys and Lucrecia don't have high-paid lobbyists. Privileged industries avoid paying their fair share of taxes because of the efforts of lobbyists. I propose that we take away the privileges of the wealthy and provide necessities for the poor.

Today, I am imploring you to look beyond politics and look beyond polls and see the faces and hear the stories that this reform will portend. This is no longer a political issue. This is an issue concerning humanity. To disregard this population, to turn our backs on those who are so vulnerable is disgraceful and dishonorable. Tonight, you know where you are sleeping. Tonight, you know what you will eat. Soon, Gladys and Lucrecia will not be able to say the same.

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. 480

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

SECTION 1. REPEAL.

(a) IN GENERAL.—Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193;

110 Stat. 2260–2277), as amended by title V of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–1772–3009–1803), is repealed.

(b) NOTICE AND REDETERMINATION.—Not later than 30 days after the date of enactment of this Act, any Federal or State official responsible for the administration of a Federally funded program that provides benefits or assistance to an individual who, as of such date, has been determined to be ineligible for such program as a result of the provisions of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2260–2277) (as so amended), shall—

(1) notify the individual that the individual's eligibility for such program shall be redetermined; and

(2) shall conduct such redetermination in a timely manner.●

ADDITIONAL COSPONSORS

S. 28

At the request of Mr. THURMOND, the name of the Senator from Wyoming [Mr. ENZI] was added as a cosponsor of S. 28, a bill to amend title 17, United States Code, with respect to certain exemptions from copyright, and for other purposes.

S. 66

At the request of Mr. HATCH, the names of the Senator from Nebraska [Mr. HAGEL], and the Senator from North Carolina [Mr. FAIRCLOTH] were added as cosponsors of S. 66, a bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes.

S. 72

At the request of Mr. KYL, the name of the Senator from Nebraska [Mr. HAGEL] was added as a cosponsor of S. 72, a bill to amend the Internal Revenue Code of 1986 to provide a reduction in the capital gain rates for all taxpayers, and for other purposes.

S. 75

At the request of Mr. KYL, the names of the Senator from Missouri [Mr. ASHCROFT], the Senator from Idaho [Mr. CRAIG], the Senator from Ohio [Mr. DEWINE], the Senator from Wyoming [Mr. ENZI], the Senator from Utah [Mr. HATCH], the Senator from Oregon [Mr. SMITH], and the Senator from Wyoming [Mr. THOMAS] were added as cosponsors of S. 75, a bill to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers.

S. 114

At the request of Mr. INOUYE, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 114, a bill to repeal the reduction in the deductible portion of expenses for business meals and entertainment.

S. 219

At the request of Mr. DASCHLE, the names of the Senator from South Dakota [Mr. JOHNSON], the Senator from North Dakota [Mr. CONRAD], and the Senator from Illinois [Ms. MOSELEY-BRAUN] were added as cosponsors of S. 219, a bill to amend the Trade Act of 1974 to establish procedures for identifying countries that deny market access for value-added agricultural products of the United States.

S. 239

At the request of Mr. DASCHLE, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 239, a bill to amend the Internal Revenue Code of 1986 relating to the treatment of livestock sold on account of weather-related conditions.

S. 295

At the request of Mr. JEFFORDS, the names of the Senator from Colorado [Mr. ALLARD], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Arizona [Mr. MCCAIN] were added as cosponsors of S. 295, a bill to amend the National Labor Relations Act to allow labor management cooperative efforts that improve economic competitiveness in the United States to continue to thrive, and for other purposes.

S. 306

At the request of Mr. FORD, the name of the Senator from Nebraska [Mr. HAGEL] was added as a cosponsor of S. 306, a bill to amend the Internal Revenue Code of 1986 to provide a decrease in the maximum rate of tax on capital gains which is based on the length of time the taxpayer held the capital asset.

S. 314

At the request of Mr. THOMAS, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 314, a bill to require that the Federal Government procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, and for other purposes.

S. 388

At the request of Mr. LUGAR, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 388, a bill to amend the Food Stamp Act of 1977 to assist States in implementing a program to prevent prisoners from receiving food stamps.

S. 400

At the request of Mr. GRASSLEY, the names of the Senator from Michigan [Mr. ABRAHAM] and the Senator from Arkansas [Mr. HUTCHINSON] were added as cosponsors of S. 400, a bill to amend rule 11 of the Federal Rules of Civil Procedure, relating to representations in court and sanctions for violating such rule, and for other purposes.

S. 413

At the request of Mrs. HUTCHISON, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 413, a bill to amend the Food Stamp Act of 1977 to require States to verify that prisoners are not receiving food stamps.

S. 440

At the request of Mr. FEINGOLD, the name of the Senator from New Hampshire [Mr. GREGG] was added as a cosponsor of S. 440, a bill to deauthorize the Animas-La Plata Federal reclamation project and to direct the Secretary of the Interior to enter into negotiations to satisfy, in a manner consistent with all Federal laws, the water rights interests of the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe.

S. 447

At the request of Mr. NICKLES, the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of S. 447, a bill to amend title 18, United States Code, to give further assurance to the right of victims of crime to attend and observe the trials of those accused of the crime, and for other purposes.

At the request of Mr. HAGEL, his name was added as a cosponsor of S. 447, supra.

S. 456

At the request of Ms. MOSELEY-BRAUN, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 456, a bill to establish a partnership to rebuild and modernize America's school facilities.

SENATE JOINT RESOLUTION 19

At the request of Mr. HELMS, the names of the Senator from Arkansas [Mr. HUTCHINSON] and the Senator from New York [Mr. D'AMATO] were added as cosponsors of Senate Joint Resolution 19, a joint resolution to disapprove the certification of the President under section 490(b] of the Foreign Assistance Act of 1961 regarding foreign assistance for Mexico during fiscal year 1997.

SENATE JOINT RESOLUTION 20

At the request of Mr. HELMS, the names of the Senator from Arkansas [Mr. HUTCHINSON] and the Senator from New York [Mr. D'AMATO] were added as cosponsors of Senate Joint Resolution 20, a joint resolution to disapprove the certification of the President under section 490(b] of the Foreign Assistance Act of 1961 regarding foreign assistance for Mexico during fiscal year 1997.

SENATE JOINT RESOLUTION 21

At the request of Mr. COVERDELL, the name of the Senator from Colorado [Mr. ALLARD] was added as a cosponsor of Senate Joint Resolution 21, a joint resolution to disaprove the certification of the President under section 490(b] of the Foreign Assistance Act of 1961 regarding assistance for Mexico during fiscal year 1997, and to provide for the termination of the withholding of and opposition to assistance that results from the disapproval.

At the request of Mr. HELMS, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of Senate Joint Resolution 21, supra.

SENATE CONCURRENT RESOLUTION 11

At the request of Mr. GREGG, the names of the Senator from Alaska [Mr. STEVENS], the Senator from Nevada [Mr. REID], the Senator from North Dakota [Mr. DORGAN], and the Senator from Nebraska [Mr. HAGEL] were added as cosponsors of Senate Concurrent

Resolution 11, a concurrent resolution recognizing the 25th anniversary of the establishment of the first nutrition program for the elderly under the Older Americans Act of 1965.

SENATE CONCURRENT RESOLUTION 13—REGARDING A DISPLAY OF THE TEN COMMANDMENTS

Mr. SESSIONS (for himself and Mr. SHELBY) submitted the following concurrent resolution; which was referred to the Committee on Governmental Affairs:

S. CON. RES. 13

Whereas Judge Roy S. Moore, a lifelong resident of Etowah County, Alabama, graduate of the United States Military Academy with distinguished service to his country in Vietnam, and graduate of the University of Alabama School of Law, has served his country and his community with uncommon distinction;

Whereas another circuit judge in Alabama, has ordered Judge Moore to remove a copy of the Ten Commandments posted in his courtroom and the Alabama Supreme Court has granted a stay to review the matter;

Whereas the Ten Commandments have had a significant impact on the development of the fundamental legal principles of Western Civilization; and

Whereas the Ten Commandments set forth a code of moral conduct, observance of which is universally acknowledged to promote respect for our system of laws and the good of society: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the Ten Commandments are a declaration of fundamental principles that are the cornerstones of a fair and just society; and

(2) the public display, including display in government offices and courthouses, of the Ten Commandments should be permitted.

Mr. SESSIONS. Mr. President, I rise to send a resolution to the desk on behalf of myself and my home state colleague Senator SHELBY.

Mr. President, this concurrent resolution we are introducing today expresses the sense of the Congress that the display of the Ten Commandments in government offices and courthouses should be permitted. This resolution is identical to House Concurrent Resolution 31, sponsored by my good friend, Representative ADERHOLT, which passed the House of Representatives on March 5, 295 to 125.

The Constitution guarantees freedom of religion. This resolution does not endorse any one religion but, rather, states that a religious symbol which has deep-rooted significance for our Nation and its history should not be excluded from public display.

Mr. President, the Founders wisely realized that in a free society, it is imperative that individuals practice forbearance, respect, and temperance. These are the very values taught by all the world's major religions. The Founders devised a Constitution that depended on religion serving as a civilizing force in societal life. John Adams, our second President, and one of the intellectual forces behind the formation of our Nation, said that ''our Constitution was designed for a moral and religious people only. It is wholly inadequate to any other.''

But strangely today, there are those who seem determined to drive all trace of religion from the public sphere. They ignore the religious traditions on which this great Nation was founded and work to drive religion and religious people out of public life.

Many of my colleagues are aware Judge Roy Moore, circuit court judge in Gadsden, AL, has been ordered to take down a two-plaque replica of the Ten Commandments displayed in his courtroom.

The irrationality of the action is highlighted by the fact that the judge's display is consistent with other displays involving religious symbols and art in our public property. In fact, a door to the U.S. Supreme Court bears two tablets numbered one to ten, which we interpret to represent the Ten Commandments. And yet a judge in a small Alabama town cannot hang a simple display of the Ten Commandments on the wall without being sued?

Mr. President, this resolution is not just about Judge Moore and it is not just about the display of the Ten Commandments in Gadsden, AL. This resolution provides a good opportunity to discuss this curious governmental hostility towards the display of these plaques that are important to our law, our Nation, and our culture.

The Ten Commandments represent a key part of the foundation of western civilization of our legal system in America. To exclude a display of the Ten Commandments because it suggests an establishment of religion is not consistent with our national history, let alone common sense itself. This Nation was founded on religious traditions that are an integral part of the fabric of American cultural, political, and societal life.

Mr. President, it is time for common sense. No member of this body, on either side of the aisle, should oppose the simple display of documents that are important to our law, to our Nation, and to our culture.

Mr. SHELBY. Mr. President, I rise today to express support for Judge Roy S. Moore. Judge Moore is a judge on the circuit court of the State of Alabama. Judge Moore is a lifelong resident of Etowah County, a graduate of the United States Military Academy, a distinguished veteran of the Vietnam War, and a graduate of the University of Alabama School of Law. Judge Moore has always and continues to serve his community, Alabama, and this country with distinction and principle.

It is because of his principles that Judge Moore has become an issue. Two years ago, Judge Moore was sued by the Alabama chapter of the American Civil Liberties Union because he opened his court with a prayer and because he displayed the Ten Commandments over his bench. A lower court judge enjoined Judge Moore from praying before court sessions and later barred his display of the Ten Commandments. The Supreme Court of Alabama has since issued a stay of the order barring display of the Ten Commandments.

Judge Moore has refused to acknowledge the orders which stop him from praying and displaying the Ten Commandments. I support Judge Moore in his actions. I do not believe that his convocation prayer or the presence of the Ten Commandments in the courtroom violates the Constitution.

As the Members of this body well know, a prayer, said from the floor of this Chamber, begins every day in which the Senate is in session. This practice is also followed in the House of Representatives. Furthermore, the Marshal of the Supreme Court, in calling each session to order, implores ''God {to} save the United States and this honorable court.'' It has also become a tradition for Presidents to conclude their State of the Union Addresses with the simple prayer, ''God Bless America.'' I believe these are just a few of the many instances where the Lord is invoked during civil ceremonies and occasions. I believe that these examples are entirely appropriate and in line with the provisions of the Constitution. I feel that our history teaches that the Founding Fathers were against government making efforts to promote specific religions at the expense of others. I do not think it was ever the view of the Founders that the government should adopt a position of Godless neutrality. It is constitutional, it is traditionally appropriate and it is just simply right for our leaders to request the assistance of God in their daily deliberations.

I believe that Judge Moore is also correct in refusing to remove the Ten Commandments from his courtroom. The Judge's display is consistent with other displays involving religious symbols and art in or on public property. In fact, a door to the Supreme Court of the United States bears two tablets numbered one to ten, which I interpret to represent the Ten Commandments. Moreover, there are friezes within the Supreme Court which depict Moses, King Solomon, Confucius, Mohammed, St. Louis and a figure called ''Divine Inspiration.'' I believe that these symbolic representations, just like Judge Moore's, are appropriately placed within our public spaces. Their very presence provides guidance and inspiration for our Nation's leaders.

AMENDMENTS SUBMITTED

DECENNIAL CENSUS CONCURRENT RESOLUTION

ABRAHAM AMENDMENT NO. 24

(Ordered referred to the Committee on Governmental Affairs.)

Mr. ABRAHAM submitted an amendment intended to be proposed by him

to the concurrent resolution (S. Con. Res. 12) expressing the sense of the Congress with respect to the collection on data on ancestry in the decennial census; as follows:

In the preamble, in the fifth clause, insert '', but is not intended to be used for racial preference programs'' before the colon.

Mr. ABRAHAM. Mr. President, I rise today to offer my support as a co-sponsor to S. Con. Res 12. This resolution expresses the sense of the Congress that the decennial census should collect data on the ancestral backgrounds of all Americans. Ours is a nation of immigrants, of people with many different ethnic origins and backgrounds. People came here from around the world to become a part of a nation of opportunity and freedom. They did not come here to forget who they are and where they came from.

The Census Bureau has collected information on ancestry and ethnic composition in the past two decennial censuses. Thus, it collects the only complete information on the ethnic makeup of the United States and provides very useful data pertaining to numbers, household income, and educational status of Americans from numerous backgrounds. This data, in turn, is used by a wide variety of people and organizations in both the public and the private sector—including researchers, businesses, community organizations, ethnic institutions, and policymakers.

It is important to note that the ancestry data does not relate in any way to questions of race as defined by civil rights statutes, and therefore is not utilized for preference programs. To make this point crystal clear, I have offered an amendment to S. Con. Res. 12 stating that this data is not intended to be used for racial preference programs.

When the Census Bureau approaches Congress for approval of its recommendations for the 2000 Census, I and my colleagues who co-sponsored this resolution hope that the ancestry question will be included in the recommendations and contained on the long form the Census Bureau asks Americans to fill out.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. NICKLES. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized to meet on March 19, 1997, at 2 p.m. on PROCODE (S. 377).

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

COMMITTEE ON FINANCE

Mr. NICKLES. Mr. President, the Finance Committee requests unanimous consent to conduct a hearing on Wednesday, March 19, 1997, beginning at 10 a.m. in room 215 Dirksen.

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

COMMITTEE ON THE JUDICIARY

The Senate Committee on the Judiciary would request unanimous consent to hold a hearing on Wednesday, March 19, 1997, at 2 p.m. in room 226 of the Senate Dirksen Building, on ''What Works: The Efforts of Private Individuals, Community Organizations, and Religious Groups to Prevent Juvenile Crime.''

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. NICKLES. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on Food and Drug Administration reform, during the session of the Senate on Wednesday, March 19, 1997, at 9:30 a.m.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. NICKLES. The Committee on Veterans' Affairs would like to request unanimous consent to hold a joint hearing with the House Committee on Veterans' Affairs to receive the legislative presentation of the Disabled American Veterans. The hearing will be held on March 19, 1997, at 9:30 a.m., in room 345 of the Cannon House Office Building.

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

SUBCOMMITTEE ON ACQUISITION AND TECHNOLOGY

Mr. NICKLES. Mr. President, I ask unanimous consent that the Subcommittee on Acquisition and Technology of the Committee on Armed Services be authorized to meet at 10 a.m. on Wednesday, March 19, 1997, in open session, to review the status of acquisition reform in the Department of Defense.

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

SUBCOMMITTEE ON COMMUNICATIONS

Mr. NICKLES. Mr. President, I ask unanimous consent that the Communications Subcommittee of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on March 19, 1997, at 9:30 a.m. on universal service.

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

SUBCOMMITTEE ON READINESS

Mr. NICKLES. Mr. President, I ask unanimous consent that the Subcommittee on Readiness of the Committee on Armed Services be authorized to meet on Wednesday, March 19, 1997, at 2 p.m. in open session, to receive testimony on the President's budget request for the operation and maintenance, spare parts, and ammunition accounts for fiscal year 1998.

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

SUBCOMMITTEE ON SEAPOWER

Mr. NICKLES. Mr. President, I ask unanimous consent that the Subcommittee on Seapower of the Committee on Armed Services be authorized to meet at 2 p.m. on Wednesday, March 19, 1997, in open session, to receive testimony in review of the Defense authorization request for fiscal year 1998 and the future years defense program.

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

SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. NICKLES. Mr. President. I ask unanimous consent that the Subcommittee on Transportation and Infrastructure be granted permission to conduct a hearing Wednesday, March 19, 9:30 a.m., hearing room (SD–406), on the Intermodal Surface Transportation Efficiency Act [ISTEA] and environmental programs and statewide and metropolitan planning.

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

ADDITIONAL STATEMENTS

FAMILY HERITAGE PRESERVATION ACT OF 1997

• Mr. BURNS. Mr. President, as a cosponsor of S. 75, the Family Heritage Preservation Act, I urge my colleagues to support the immediate passage of this measure before more family businesses and farms are lost.

They say the only things that are certain in life are death and taxes. The Government has done a perverse job of combining the two in the Federal estate and gift taxes and the tax on generation-skipping transfers, known as the death taxes. These are the taxes assessed on assets passed from one generation to another, such as family businesses, ranches, and farms. The tax rate starts at 37 percent and quickly rises to a whopping 55 percent, often forcing the liquidation of assets just to pay the tax.

S. 75, introduced by Senator KYL, will repeal the death taxes. It is clear that these taxes do more harm than good, raising only 1 percent of Federal revenues but consuming 8 percent of annual savings. What's more, enforcement and compliance with these taxes takes up 65 cents for each dollar collected. The effects of the taxes on the economy are equally stark: Over an 8-year period without the taxes, the gross domestic product would have been $80 billion higher and 228,000 more jobs would have been created.

These death taxes punish hard work and wealth accumulation and drive many family businesses into the ground by forcing them to sell assets to pay the tax. Family farms are hit especially hard—over 90 percent of farms and ranches are sole proprietorships or family partnerships, subjecting most to the taxes when ownership is transferred.

I want to note that S. 75 is endorsed by a broad range of small business groups as well as the American Farm Bureau Federation. I thank Senator KYL for his leadership on this issue.•

JUDGE FRED J. BORCHARD

• Mr. LEVIN. Mr. President, I rise today to pay tribute to one of the iron men of our judicial system, Judge Fred J. Borchard, who has served the State of Michigan for over 50 years. Judge Borchard's tenure marks the longest term of service of any Michigan judge in history.

Judge Borchard put himself through the University of Michigan and its law school by working various full time jobs. His law practice was postponed while he served his country as a forward gun observer in the Pacific theater during World War II. In 1947, he was elected municipal judge and in 1954, he was elected Probate Judge.

In 1958, Gov. G. Mennen Williams appointed Judge Borchard to the Saginaw circuit bench, where he served until his retirement in 1989. Since then, he has continued to serve Michigan by filling in for judges away on vacations and conferences.

Judge Borchard's love of law has kept him fully engaged during his long service on the bench. His court was known for its courteous and efficient atmosphere where citizens could settle their disputes. He wholeheartedly believes in the ability of our legal system to make a positive difference in our lives. It is these traits that have made Judge Borchard a favorite among his colleagues, constituents and contemporaries. Judge Borchard has been a leader in his community as well. He has served in the University of Michigan Club, Germania of Saginaw, and the Kiwanis Club of Saginaw. He has served on the Board of Directors of both St. Luke's Hospital and the Saginaw County Chamber of Commerce. He has also shown his commitment to serving others through the work he has done with his church.

Judge Borchard was married to the late Helen Fay Honeywell for almost 50 years, and they had four children Fred, Barb, Jim, and Sara. They have carried on Judge Borchard's ideals of service to the public in their own lives. Judge Borchard has been married to Dorothy Denton for the past 5 years.

I know my Senate colleagues will join me in honoring Judge Fred J. Borchard for his 50 historic years of service to the State of Michigan's judicial system.•

GREEK INDEPENDENCE DAY

• Ms. SNOWE. Mr. President, March 25, 1997, marks a special day for the Greek people and for all the friends of Greece around the world. It is the 176th anniversary of the day in 1821 when the people of Greece declared their independence from centuries of political, religious and cultural repression under the Ottoman Empire. Greek independence was recognized 8 years later only after a long, hard-fought struggle during which the people of Greece made countless sacrifices for their freedom.

Contemporary American leaders, such as James Monroe and Daniel Webster, recognized that the ideals of the American Revolution—individual liberty, representative democracy, and personal dignity—were also the foundation for Greece's declaration of independence. Americans in the 1820's quickly identified with the struggle of the Greek patriots because they knew in their hearts that it was a continuation of their own struggle for political and religious freedom. The same spirit of democracy that was born and flourished in Greece a thousand years ago, and which fanned the flames of the American revolution, inspired the Greek patriots to persevere in their struggle against their Turkish oppressors.

The United States and Greece are now old friends and trusted allies. Our two nations and people are bound by unbreakable bonds which link us through common interests, values, and political heritage. It is clear that our cherished ideals of democracy and freedom are as strong as ever and continue to inspire other countries to follow our example. One need look no further than to the fledgling democracies of Eastern Europe and the New Independent States of the former Soviet Union to see the huge impact these ideals are still having on our world as we enter the 21st century.

Independence, of course, must be guarded vigilantly, and in the past 176 years Greece's independence has been challenged by forces both external and internal. Therefore, even as we recognize and celebrate Greece's long independence today, we must also be mindful of the threats which Greece faces in today's world. The ongoing dispute with Turkey over the islet of Imia and the Albanian Government's recent military action near the Greek border serve as troubling reminders of Greece's vulnerability and the instability of the Balkan region.

On this, the 176th anniversary of Greek independence, let us extend our warmest congratulations to the people of Greece. And let us also rededicate America's commitment to Greece and to strengthening the solidarity that exists between our two great nations.•

ARTURO HALE

• Mr. LEAHY. Mr. President, one of my duties as ranking member of the Senate Judiciary Committee is oversight of Immigration and Naturalization policy. It is a role to which I give the highest importance. My own grandparents came to the United States from Italy and Ireland for a better life.

I am pleased that on April 9 we will welcome another new citizen. Arturo Hale came to the United States from Mexico to attend the University of Minnesota, where he earned a doctorate in chemical engineering. He now works at Bell Laboratories, conducting research on optical fibers. I have had the pleasure of meeting Arturo on a few occasions. He has contributed to our Nation not only as a researcher and taxpayer, but as a caring, involved resident. He has shown that he accepts all the responsibilities of a citizen, and I am proud that he will now have the rights of a citizen as well.

On behalf of the Senate, I would like to welcome Arturo Hale as a citizen of the United States.•

HOME-BASED BUSINESS FAIRNESS ACT OF 1997

• Mr. BURNS. Mr. President, as an original cosponsor of the Home-Based Business Fairness Act of 1997, introduced yesterday by Senate Small Business Committee Chairman BOND, I rise in strong support of this measure and urge the Senate to approve it as soon as possible.

This legislation is composed of three vitally important provisions, and together they make this measure one of the most important the Senate will consider during this Congress. First, this legislation will increase the health insurance deduction for self-employed individuals to 100 percent from the current 40 percent. Second, it will restore the home-office tax deduction where a taxpayer performs essential business functions in a home office used exclusively for business purposes. Finally, it will clarify when a worker is an employee versus an independent contractor, removing the uncertainty of the IRS's current test which can hit small businesses retroactively with liability for back taxes, interest, and penalties. These measures are especially important in Montana, where 98 percent of our businesses are small businesses, accounting for 72.7 percent of all employment in our State. This 72 percent is considerably higher than the 53 percent for the United States as a whole. And we're growing: Montana leads the Nation in new business incorporations. So when we talk about small business issues such as the home-office tax deduction, the health insurance deduction for the self-employed, the independent contractor classification, and other issues, these are the issues affecting Montana businesses.

Many of today's workers spend part of their time working at home, often performing administrative duties such as billing. These workers either have no permanent office or perform their main duties in an unconventional environment, such as an operating room. For them, the work performed in a home office is an essential part of their job, even though it may not be the main part of their job. Back in 1993, the Supreme Court in Commissioner versus Soliman created a restrictive test for determining eligible home-based functions. Functions such as billing, though essential, do not meet the Soliman test. The Court went well beyond congressional intent and even beyond the IRS's own interpretation of the law.

Shortly after the Soliman decision, I introduced the Home Office Tax Deduction Bill, and I've been pushing for it

ever since. We must allow a tax deduction for essential activities, such as billing, performed in the home when that is the only available place for such activities. As the law now stands, workers like Dr. Soliman who spend 15 hours per week doing billing in an exclusive home office are denied the deduction. That's not right. Home offices that are used regularly and solely for business purposes—whether it's by physicians, salespeople, or mothers working at home—should be an allowable deduction. I am proud to be a cosponsor of Sen. HATCH's bill which, like this bill, will restore the deduction for essential functions.

I was very pleased that last Congress we enacted an increase in the health insurance tax deduction for the self-employed to 80 percent by 2006. This is a positive first step, but why should not small businesses receive a 100 percent deduction just like big businesses? Health care costs are one of the main barriers to successful self-run businesses, and this modest proposal will go a long way toward helping these businesses survive and thrive.

Finally, the top priority of small businesses is clarification of the independent contractor definition. The current 20-part test used by the IRS to determine who is an employee, for which, of course, employers must pay Federal taxes, is confusing and imprecise. The law is tough to follow when it is unpredictable from case to case. This bill simply clarifies who is an independent contractor by applying a clear three-part test. Businesspeople need a simple rule to follow, and this will provide it. No business should be subject to the whim of the IRS.

I thank Chairman BOND for his leadership on this bill and I look forward to working with him to get it to the President's desk.●

CONGRATULATING NORTHWEST NAZARENE COLLEGE'S NATIONAL CHAMPIONS

● Mr. KEMPTHORNE. Mr. President, I rise with great pride today to pay tribute to an outstanding group of young women who have reached the pinnacle of their sport. Northwest Nazarene College's women's basketball team last night won its first-ever national title. The Lady Crusaders beat Black Hills State 64–46 to claim the National Association of Intercollegiate Athletics Division 2 tournament championship. It was the school's first national championship in any sport.

NNC, located in Nampa, ID, is one of America's finest colleges. It consistently ranks among the top schools in academic national rankings. Now it proudly sits at the top in athletic rankings as well.

Coach Roger Schmidt's Lady Crusaders entered the 1996–97 season ranked 11th in the country. The team finished the season with the most wins in school history at 27–7, and also won the Cascade Collegiate Conference title.

In the national championship game, NNC broke open a tight contest and pulled away to claim the trophy. It was just 25–24 at halftime, but a pressing and aggressive Crusader defense did the trick and helped clinch the game.

Staci Wilson paced the NNC attack, with 22 points. She also was the leading rebounder with 13. Erica Walton scored 12 points, and was named the tournament's most valuable player. Kari Smith added 11 points for the Lady Crusaders.

Mr. President, I'm pleased to say that seven of the 12 players on the Northwest Nazarene College roster are Idahoans. Here is the roster of this outstanding team: Christy Farrar of Hillsboro, OR; Jessica Knowlton of Craigmont, ID; Jennifer Myers of Parma, ID; Kimberly Riggs of Boise, ID; Brooke Warren of Pomeroy, Washington; Kari Smith of Meridian, ID; Ellen Duncan of McCall, ID; Chelsey Hall of Grangeville, ID; Staci Wilson of Molalla, OR; Staci Kirk of Boise, ID; Sunshine Cecrle of Hillsboro, OR; and Erica Walton of Ontario, OR.

I also congratulate the head coach, Roger Schmidt, and his assistant coaches, Becky Nichols and Duane Slemmer. And my congratulations also go to NNC President Dr. Richard Hagood and Athletic Director Eric Forseth.

I am sure all Idahoans join me in proudly recognizing the accomplishments of these young women and the support of the students, faculty, staff, alumni, and community at Northwest Nazarene College.

OLDER AMERICANS FREEDOM TO WORK ACT

● Mr. BURNS. Mr. President, I want to commend the majority leader for reintroducing the Older Americans Freedom to Work Act, S. 202, which I recently have cosponsored. This bill will repeal the Social Security earnings limitation, which punishes seniors between the ages of 65 and 69 for working. That's right—for working.

The earnings limit, like so many other Government policies, is outdated. Back in the 1930's, it may have made sense to encourage older workers to leave the work force by reducing their Social Security benefits if they worked beyond age 65. But today, the opposite is true: With the baby boomers getting ready to retire, and with a higher life expectancy, we should be encouraging folks to work longer. Most important, workers should have the freedom to work longer if they want to.

Last year, after a long-fought effort by Majority Leader LOTT and many others, we enacted a gradual increase in the earnings limit from $13,500 today to $30,000 per year in 2002. That is, for seniors between the ages of 65 and 69, each $3 earned over $30,000 per year reduces the worker's Social Security benefits by $1. While this increase is certainly helpful, there is no sound reason for retaining any earnings limitation on seniors who continue to work. That's why this bill is so important. Let's not discourage seniors from working—let's guarantee their freedom to work.●

APPOINTMENTS BY THE DEMOCRATIC LEADER

The PRESIDING OFFICER. The Chair, on behalf of the Democratic leader, pursuant to Public Law 104–264, appoints the following individuals to the National Civil Aviation Review Commission: Linda Barker, of South Dakota, and William Bacon, of South Dakota.

ORDERS FOR THURSDAY, MARCH 20, 1997

Mr. HELMS. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 9:30 a.m., on Thursday, March 20. I further ask unanimous consent that on Thursday, immediately following the prayer, the routine requests through the morning hour be granted, with the time for the two leaders reserved unless it is used.

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

PROGRAM

Mr. HELMS. Mr. President, for the information of all Senators, on Thursday the Senate may consider a resolution relating to the decertification of Mexico. The Senate may also proceed to the consideration of the nuclear waste legislation. Senators should be aware that rollcall votes may occur at any time during Thursday's session of the Senate. The Senate may also consider any other legislative or executive items that can be cleared.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. HELMS. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:20 p.m., adjourned until Thursday, March 20, 1997, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate, March 19, 1997:

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

JAMES H. ATKINS, OF ARKANSAS, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING SEPTEMBER 25, 2000. (REAPPOINTMENT)

DEPARTMENT OF LABOR

KATHRYN O'LEARY HIGGINS, OF SOUTH DAKOTA, TO BE DEPUTY SECRETARY OF LABOR, VICE THOMAS P. GLYNN, RESIGNED.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

KEVIN EMANUAL MARCHMAN, OF COLORADO, TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT, VICE JOSEPH SHULDINER.

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

RICHARD THOMAS WHITE, OF MICHIGAN, TO BE A MEMBER OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES FOR A TERM EXPIRING SEPTEMBER 30, 1999. (REAPPOINTMENT)

IN THE NAVY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE NAVY TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 12203:

To be rear admiral (lower half)

CAPT. KAREN A. HARMEYER, 0000.

CONFIRMATION

Executive nomination confirmed by the Senate, March 19, 1997:

THE JUDICIARY

MERRICK B. GARLAND, OF MARYLAND, TO BE U.S. CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT.