United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, SECOND SESSION

Vol. 142 WASHINGTON, MONDAY, MARCH 18, 1996 No. 37

Senate

The Senate met at 11 a.m. and was called to order by the Honorable CHUCK GRASSLEY, a Senator from the State of Iowa.

PRAYER

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

Gracious Father, we are irresistibly drawn into Your presence by the magnetism of Your love. You know all about us and offer forgiveness. You know our needs and grant us Your strength. You know our responsibilities and assure us of Your intervening help. You know the decisions that we must make this week and remind us that if we will seek Your guidance You will show us the way. Jog our memories about Your faithfulness in the past so that we may trust You with our present concerns.

As we begin this new week, give us a renewed vision of our high calling to serve You in government. May all that we do be done for Your glory. Lift us to the sublime level of excellence that is achieved only when we seek to please You above all else. May our work be an expression of our worship of You. Therefore, we will attempt great things for You and know that we will receive great power from You. In our Lord's name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. THURMOND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 18, 1996.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CHUCK GRASSLEY, a Senator from the State of Iowa, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDING OFFICER (Mr. BROWN). The acting majority leader is recognized.

SCHEDULE

Mr. LOTT. Mr. President, for the information of our colleagues, today there will be a period for morning business until the hour of 12 noon, with Senators permitted to speak for up to 5 minutes each.

Following morning business, the Senate will resume consideration of H.R. 3019, which is the omnibus appropriations bill. No rollcall votes will occur during today's session of the Senate. Senators are expected, however, to debate their amendments today, with any requested rollcall votes on those amendments to begin at 2:15 p.m. on Tuesday. Senators should expect a lengthy series of rollcall votes beginning at 2:15, and the Senate will complete action on the omnibus appropriations bill on Tuesday.

Also during tomorrow's session, the Senate will vote on passage of S. 942, the Small Business Regulatory Enforcement Fairness Act, a cloture vote on the motion to proceed to the Whitewater Committee resolution, as well as a cloture vote on the product liability conference report.

So we need to complete our debate on the amendments to the omnibus appropriations bill today, and then we will have a series of recorded votes on Tuesday beginning at 2:15.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business for a period not to exceed the hour of 12 noon, with Senators permitted to speak therein for not to exceed 5 minutes each.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I see the distinguished acting Republican leader on the floor. I ask unanimous consent I be allowed to proceed for 10 minutes in morning business.

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

BANNING ANTIPERSONNEL LANDMINES

Mr. LEAHY. Mr. President, I have some photographs here that have become all too familiar to the Senate. This is a photograph of a young boy, a victim of a landmine. You can see from the photograph, he has one badly injured leg, another leg that has been torn off, and an arm that is also missing. These are similar to photographs I have on my Web page in my office on the Internet. Thousands of people turn to that Web page, and what they see there are these photographs of landmine victims.

Here is one that they turn to, this young woman. I have had somebody tell me that as the picture comes down on the computer screen, the page ends at the bottom of her long skirt. Then they click on further and the picture

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

continues down and they realize she has only one leg. This woman is from Laos. She lost her leg from a landmine.

Mr. President, these photographs are not unusual. Each one represents a tragedy, of course, not only for the person involved, but also but for his or her family. These are only two victims. There are hundreds of thousands of victims of antipersonnel landmines alive today, and of course as many more who died. They are the victims of these tiny, hidden explosives that litter whole countries. They are scattered like seed. They are a blight on our planet, and they must be stopped. This mine I am holding in my hand cost $2 or $3, and is made almost entirely of plastic to make it harder to detect.

These are not weapons that know the difference between a combatant or civilian. They are, as somebody else said, the only weapon where the unsuspecting victim pulls the trigger.

A little over a year ago, President Clinton, in a courageous speech at the United Nations, declared the goal of ridding the world of antipersonnel landmines. With 100 million of these weapons in over 60 countries waiting to explode, they have become the world's most devastating cause of indiscriminate, mass suffering.

Every 22 minutes, the State Department estimates someone somewhere, usually an innocent civilian, is killed or maimed from stepping on a landmine.

NATO forces have suffered 42 landmine casualties since they arrived in Bosnia in December, including 7 deaths. There were three casualties just last Friday, all soldiers of our European allies. Landmines are, by far, the worst threat to our troops there, but also to the people of Bosnia who will be clearing these landmines, an arm and a leg at a time, for decades to come.

The entire 184-member U.N. General Assembly adopted the goal announced by the President. But since President Clinton's announcement, a debate has ensued over how to reach the goal of eliminating antipersonnel mines.

The Pentagon, which says it shares the goal, pushed a strategy to promote the use of so-called smart mines. Mr. President, technology has an answer for many things, but this is not one of them. Antipersonnel landmines are by nature indiscriminate.

There is nothing smart about a landmine that cannot tell the difference between a soldier and a 5-year-old child. These mines are scattered from the air by the tens of thousands, and the same areas can be reseeded many times during a conflict. They legitimize the use of landmines despite their indiscriminate effect.

I am very pleased that Pentagon officials are now questioning the distinction between smart and dumb mines. Again, landmines are by nature indiscriminate. That is what makes them so insidious. I also want to commend our U.N. Ambassador, Madeleine Albright, and her Deputy Karl Inderfurth, who have urged a stronger policy against antipersonnel mines.

A growing coalition, from our soldiers in Bosnia to retired Army generals to officials in the Pentagon to the Pope and the American Red Cross, are urging that we renounce these weapons as we have nerve gas and other indiscriminate killers.

On February 12, my amendment to impose a moratorium on U.S. use of antipersonnel mines was signed into law by President Clinton. That amendment had broad bipartisan support with over two-thirds of the U.S. Senate of both parties voting for it. It represents a clear shift in U.S. policy. But it is already being eclipsed by events elsewhere.

In the past 2 months, Canada and the Netherlands have unilaterally banned their use of antipersonnel mines, and they have joined 22 other countries that have called for an immediate international ban. Many of these countries have been among the largest contributors to U.N. peacekeeping forces, and they have seen the havoc wreaked by landmines. Several, like Belgium and Austria, are destroying their stockpiles of these weapons.

Mr. President, yesterday's New York Times ran a front page story entitled ''Pentagon Weighs Ending Opposition to a Ban on Mines.'' It reports that the Chairman of the Joint Chiefs of Staff, General Shalikashvili, has ordered a review of the landmine issue. I want to applaud General Shalikashvili for this. There is nothing harder than challenging the conventional wisdom, and when others have said something cannot be done, to ask why not and to look for a way to do it.

I want to reiterate what I have said before. There is a tremendous opportunity here for U.S. leadership. We should listen to our Armed Forces veterans, many of whom say antipersonnel mines made their job more dangerous, not safer, and who remember their buddies being blown up by their own minefields.

Over 7,400 of the Americans killed in Vietnam, 20 percent in the Persian Gulf, and 26 percent in Somalia died from landmines. We have more to gain if the use of landmines is a war crime.

We should think of the devastation these weapons are causing around the world. Regardless of what some here may think, the world does look to the United States for leadership. We are the most powerful democracy ever known in history, by far the most powerful nation on Earth. We can exert great moral and political leadership when we want to lead as a country. The President can lead. There are few people more persuasive when he is convinced of something. I have seen him in meetings with world leaders, and I know how effective he can be. With the support of the Secretary of Defense and the Chairman of the Joint Chiefs, the President could bring enormous pressure to bear on world leaders to follow our example.

It is not just the example of the Leahy amendment, but the leadership to press ahead for a ban on antipersonnel landmines worldwide.

Mr. President, this is not a Democrat or Republican issue. It is not a matter of civilians versus the military. It is an opportunity for the United States to end this millennium as the leader of a global effort to ban a weapon that Civil War General Sherman called ''a violation of civilized warfare.''

Mr. President, I commend the Congress for first adopting the moratorium that I proposed, the moratorium on the export of landmines from this country.

I commend the President for supporting my efforts in introducing a resolution in the United Nations to call for the eventual elimination of antipersonnel landmines.

I also commend the U.S. Senate, Republicans and Democrats, conservatives, liberals, moderates joining together to vote for a moratorium on the use of landmines by the United States. Each one of these steps, Mr. President, has given hope and encouragement to other countries. Each one of these steps has reinforced our leadership.

Years ago when I first started on this quest, it seemed a lonely one. So many times Tim Rieser and I would visit other countries, and here on Capitol Hill and to the United Nations, to speak to world leaders and U.N. ambassadors about landmines. At first, we heard only a few encouraging words. But then the International Red Cross, for the first time since the 1920's when it condemned chemical weapons, called for a ban on antipersonnel mines. Then the Pope, and the leaders of so many other nations, especially those who had sent peacekeepers overseas, humanitarian organizations like the American Red Cross, religious organizations, veterans organizations—they are all speaking out against the use of these weapons.

Mr. President, the only way to stop the use of antipersonnel landmines is to stop the use of antipersonnel landmines. When 100 million of these killers are hidden in the ground in over 60 countries, we have to say ''enough is enough.'' Another 2 million are being added each year.

The only way we will stop this is to ban their use, and to turn our attention to the immense job of clearing the mines that have turned so many parts of the world into death traps.

This is an issue whose time has come. I commend those at the Pentagon, the White House, and here in the Congress, in both parties, who have supported this effort so far. Let us go one step further, and make this for all time U.S. policy, to ban their use; and then go to our allies around the world, and to other countries, and say, join with us in what is both a security and a moral imperative.

Mr. President, I ask unanimous consent that the article from yesterday's New York times and an Associated Press article related to the subject be printed in the RECORD.

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

[From the New York Times, Mar. 17, 1996]

PENTAGON WEIGHS ENDING OPPOSITION TO A BAN ON MINES

POLICY REVIEW ORDERED—THREAT TO U.S. FORCE IN BOSNIA BRINGS RECONSIDERATION OF MOVES AGAINST WEAPON

(By Raymond Bonner)

WASHINGTON, March 16.—With the daily threat of land mines to American soldiers in Bosnia having brought the issue home, Gen. John Shalikashvili, the Chairman of the Joint Chiefs of Staff, has ordered a review of the military's longstanding opposition to banning the use of land mines, which kill or maim more than 20,000 people a year, primarily civilians.

In asking for the review last week during a meeting with the chiefs of the military services, General Shalikashvili said he was ''inclined to eliminate all anti-personnel land mines,'' a senior pentagon official said.

The Pentagon was prompted to review its policy in part by a strong bipartisan antimine sentiment in Congress, led by Senator Patrick J. Leahy, Democrat of Vermont, as well as by a growing international campaign to ban antipersonnel mines, Pentagon officials said.

These separate Congressional and international campaigns against mines gained new momentum after American soldiers began arriving in December in Bosnia, where an estimated three million land mines have been planted. Three American soldiers have since been wounded by the weapons.

Nearly a dozen countries have banned the use of land mines. Senator Leahy and other advocates of a ban argue that if the United States renounced their manufacture, sale and use, many other countries would follow. While they concede that there would still be outlaw states, they counter that an international ban backed by sanctions would result in a substantial overall reduction in the use of land mines.

Pentagon officials say General Shalikashvili acted after he and Defense Secretary William J. Perry received a confidential letter from the American representative to the United Nations, Madeleine K. Albright, who has just returned from a trip to Angola. That country has many young men and children whose limbs were ripped off in landmine explosions.

Ms. Albright wrote that a new policy on land mines was urgently needed, because the Administration's current policy would not achieve their elimination ''within our lifetimes.'' She sent copies to other senior Administration officials; parts of the letter were read to The New York Times by a supporter of the ban who had received a copy.

Two years ago in a speech at the United Nations, President Clinton called for the ''eventual elimination'' of land mines. Under current policy, the Administration supports an amendment to the 1980 Convention on Conventional Weapons that would allow the use of only ''smart'' mines, which deactivate or destroy themselves after a few weeks or months.

The United States was barred by Congress in 1993 from exporting land mines for three years. Another law prohibits the United States from using land mines for one year in 1999.

There are an estimated 100 million land mines planted in 62 countries, and an official with the Arms Control and Disarmament Agency said last week that the number is increasing by two million a year. The State Department has said 600 people a month are killed or wounded by mines; the American Red Cross has estimated that it is twice that many.

This week, the Dutch Government renounced the use of land mines, joining Canada, Mexico, Belgium, Austria, Norway and five other countries; France recently prohibited the production and export of land mines. Twenty-four countries have called for an international ban, according to the latest tally by Human Rights Watch, the New York-based human rights organization, which has been a leader in an international campaign for a ban.

Last fall, the International Committee of the Red Cross opened a campaign to ban antipersonnel land mines. It was a highly unusual step for the Swiss organization, which is not an advocacy organization and only once before has called for a weapons ban—of chemical weapons, back in the 1920's.

''We've simply seen too much,'' said Urs Boegli, director of the Red Cross's land mine campaign, explaining why the organization had acted.

More than any other single organization, the Red Cross works in conflicts around the world, he said. He added that the Red Cross had begun its ban campaign only after having fought unsuccessfully to strengthen the 1980 conventional weapons treaty to restrict their use.

China and Russia, which each have stockpiles of more than 100 million mines, have been the major countries blocking an amendment to the convention that would allow all but ''smart'' mines.

In the Pentagon, the Office of Special Operations and Low-Intensity Conflict has pushed for a complete ban on all antipersonnel mines—''smart'' and ''dumb''—except in limited situations, such as along the border between North and South Korea.

Land mines should be put in the category of chemical weapons, said Timothy Connolly, principal Deputy Assistant Secretary of Defense for special operations. Even though they have military utility, chemical weapons have been banned because of their devastating consequences, to soldiers and civilians.

''Some day, and that day has to be sooner rather than later, we are going to reach that same conclusion about antipersonnel land mines,'' Mr. Connolly, who was an Army captain during the Persian Gulf War, said during an interview this week.

Mr. Connolly's office rejects the ''smart'' mine compromise.

The basis of the American support for such a compromise is that it is possible to develop a mine that will self-destruct or self-deactivate with 99.7 percent certainty, according to Robert Sherman, director of advanced projects of the Arms Control and Disarmanent Agency and a negotiator in talks on amending the conventional weapons pact.

But Mr. Connolly said, ''There is no evidence in the United States that we are capable of building a device capable of working 100 percent or nearly 100 percent of the time.''

Until this recent review, Mr. Connolly's voice had been a lonely one in the Pentagon.

Pentagon officials predicted that the Army and Marine Corps would fight the hardest to be allowed to keep at least some land mines, Pentagon officials said. Military doctrine calls for land mines to reduce the number of soldiers needed in certain situations, to canalize the enemy and to protect vital installations, like power stations.

In the closed-door meeting last week when Gen. Shalikashvili ordered the review, the chiefs of the Army and Marine Corps said they needed land mines to police the border between North and South Korea, a Pentagon Official said.

''The U.S. Army's position is that we use land mines responsibly,'' said an Army general who spoke on condition of anonymity.

Senator Leahy believes, however, that with American troops in Bosnia, if President Clinton renounced the use of land mines, ''he would get very substantial support in the military.'' Mr. Leahy, who has led a four-year effort in Congress to ban land mines, said he was constantly hearing from servicemen, from sergeants to generals, who urge him on.

Recently, he received an E-mail message from an Air Force master sergeant, Dale A. Lamell, on duty in Bosnia, who wrote: ''I would like to salute you for your efforts to eliminate the international use of land mines. Bosnia should serve as an example to the rest of the world.''

Requesting anonymity, a senior military officer at the Pentagon also said this week that there was considerably more support among officers for getting rid of land mines than emerges publicly.

Freed from the constraints of being in uniform, several prominent retired generals have agreed to sign an open letter to the President calling for an international ban on the production and use of antipersonnel land mines, said Robert Muller, director of the Vietnam Veterans of America Foundation, which began soliciting signers three weeks ago. Among them are Gen. Frederick R. Woerner, a former commander of the United States Southern Command in Panama, and Lieut. Gen. Harold Moore, a former commander of the Seventh Infantry Division and author of ''We Were Soldiers Once . . . and Young.''

''I very much oppose antipersonnel land mines because they are indeed indiscriminate in their killing and maiming,'' Gen. H. Norman Schwarzkopf wrote this month in a letter to Frank J. Fahrenkopf Jr., who was chairman of the Republican National Committee during the Reagan Presidency and who had written to the general asking him to join the campaign to ban antipersonnel mines.

Though he said he wanted to think a bit longer before deciding whether to sign the letter to the President, General Schwarzkopf said his wish to see land mines ''forever eliminated from warfare'' was based on his personal experiences of ''having seen hundreds of my own troops killed or maimed by them,'' as well as being ''keenly aware of the devastating effects'' of land mines on civilians.

[From the Associated Press, Mar. 17, 1996]

SENATOR PRAISES PENTAGON FOR RECONSIDERING LANDMINE USE

(By Sally Buzbee)

WASHINGTON.—A Senator long opposed to U.S. use of land mines said Sunday he's delighted the Pentagon will reevaluate its position that the deadly, hidden weapons are needed for troop safety.

''There are certain weapons you just don't use,'' said Sen. Patrick Leahy, D-VT.

A Pentagon spokesman confirmed Sunday that a review of the military's longstanding policy on anti-personnel land mines was under review.

''It's been an ongoing issue here,'' said Pentagon spokesman Major Steve Manuel. ''We're still in the process of examining it.''

Gen. John Shalikashvili, chairman of the Joint Chiefs of Staff, ordered the review last week, The New York Times reported Sunday.

A senior Pentagon official told the newspaper that Shalikashvili was ''inclined to eliminate all anti-personnel land mines.''

Worldwide, the use of land mines targeted at people, not tanks, has escalated in the last 15 years, They now kill or injure 26,000

people each year, the State Department estimates.

Most victims are civilians in war-torn countries like Angola, Cambodia, Vietnam and El Salvador, but land mines also pose risks to U.S. troops participating in the Bosnian peacekeeping mission.

U.N. Secretary-General Boutros Boutros-Ghali and the International Red Cross have urged a worldwide ban on land mines. And Canada, Austria, Norway, Holland, Belgium, Mexico, the Netherlands and five other countries already have renounced their use.

But until now, U.S. military officials have insisted they needed the option of using land mines to protect the lives of American soldiers. They also have argued that the United States should not give up a weapon if other nations won't.

Despite Pentagon objections, Leahy pushed through Congress a one-year ban on the military's use of anti-personnel land mines, except along borders and in demilitarized zones. The ban would begin sometime within three years, and President Clinton signed it into law.

''The rest of the world wants the United States to lead on this,'' Leahy said in an interview Sunday. ''If the most powerful nation in the world can't do away with land mines, how can we ever persuade other countries to?''

Shalikashvili ordered the review of Pentagon policy after he and Defense Secretary William J. Perry received a confidential letter from the U.S. ambassador to the United Nations, Madeleine K. Albright, the Times said.

Albright, who had just returned from Angola, urged that the current policy on land mines be changed, the Times said. Parts of the letter were read to the newspaper by an unidentified official who received a copy.

Leahy argues that many military officials, both retired and active-duty, also privately support a permanent ban on land mines.

''This is not a Republican-Democratic, liberal-conservative or civilian versus military issue,'' Leahy said.

The Pentagon estimates Bosnia has 3 million land mines and Croatia another 3 million. Some are sophisticated; others crude or homemade. NATO officials say no more than 30 percent have been mapped.

Mr. LEAHY. Mr. President, I see nobody else seeking the floor, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been noted. The clerk will call the roll.

The assistance legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I do not see anybody seeking recognition, so I ask unanimous consent that I be allowed to speak as in morning business for 6 minutes.

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

NUCLEAR TERRORISM

Mr. LEAHY. Mr. President, the General Accounting Office has released a report which describes the appalling state of Russia's nuclear waste storage facilities. It described how a GAO investigator was able to enter one facility without identifying himself, and there was only one guard present, who was unarmed. There are other descriptions of incredibly lax security that even the most inept thief could easily penetrate undetected. It is almost an open invitation.

The implications of this are staggering. A grapefruit-sized ball of uranium, which would weigh about 30 pounds, could obliterate the lower half of the city of New York. A lot more uranium than that is already unaccounted for. We do not know whether it is in the hands of terrorists, or where it is. All we know is that it is missing.

We have already witnessed several instances of nuclear smuggling, in some cases enough uranium to cause incalculable damage. The fact that these attempts were thwarted should not give anyone a lot of confidence about the future because many, if not most, crimes go unsolved.

Mr. President, I mention this today both because of the timeliness of the GAO report, but also because we spend countless hours, sometimes days and months, here holding hearings on arcane topics and debating sometimes relatively meaningless resolutions, unless it is meaningful for someone's campaign, or voting repeatedly on issues that pale in importance to the dangers of nuclear terrorism. We make speeches about it. I am making one now. But when it comes to providing the money and other resources to seriously address this threat, the Congress oftentimes shirks its responsibility.

One good example is in the foreign aid budget. Some Members of Congress were eager to take credit for sharply cutting funds for foreign aid last year over the objection of myself and a minority of other Senators. To his credit, Senator MCCONNELL, the chairman of the Foreign Operations Subcommittee, supported funds to combat international crime, as did I. But the budget was cut anyway. In fact, some of those funds could have been used to help safeguard nuclear material in countries of the former Soviet Union. It would be hard to think of an example where foreign aid is more in the interest of the security of the American people.

I want to single out Senator NUNN and Senator LUGAR, who have led the effort in Congress to get funds appropriated to safeguard nuclear weapons in the former Soviet Union. Senator NUNN made the point in today's issue of Defense News, when he said ''there is skepticism about spending any money in Russia. Nunn-Lugar funds are often described as foreign aid, in quotes, as if some type of charitable giving was going on * * * We are talking about dismantling warheads and missiles aimed at us * * * things we spent trillions of dollars trying to arm ourselves against.''

We are about to begin the fiscal year 1997 budget process. I hope that the Congress does not make the same mistake twice. I hope Members of Congress will read this GAO report on nuclear proliferation. Unlike some Government reports that you can read to help fall asleep at night, this one will keep you awake. Cutting these programs is the ultimate example of penny-wise, pound-foolish. I am already hearing rumors that foreign aid may be slashed again this year. If that happens, some of those who vote that way should ask themselves what responsibility they bear.

There is no way to guarantee the safety and security of fissile material, but there is a lot more that we and others can and should do to combat the threat of nuclear terrorism. It is going to cost a lot of money. Budgets are already stretched, but can anyone here say that we can afford to watch this problem get worse? This is about the security of every American, and of future generations.

So I urge the Department of Defense, the Department of State, the Department of Energy, and other agencies with responsibility for nuclear safety to develop an effective program to combat this threat. Tell us what needs to be done, and come to Congress with a request for adequate funding for it.

I wish there were better security controls in the former Soviet Union, but there are not. That is the reality, and it is a reality that a lot of thieves, a lot of would-be terrorists know even better than we do.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. THOMAS. I ask unanimous consent that I be given 5 minutes as if in morning business.

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

Mr. THOMAS. I thank the Chair.

CHINA-TAIWAN RELATIONS

Mr. THOMAS. Mr. President, I wanted to comment just a moment on an effort we made last week and intend to make again tomorrow relating to the affairs in the Taiwan Strait. All of us know that there has been now for some time a series of threats, a series of missiles, a series of live-ammunition military maneuvers by the People's Republic designed, we believe and I believe, to intimidate the Taiwanese election that comes up this week. Certainly, our country and the world, indeed, has a great interest in what happens in this area, partly because of our efforts to improve our relationship with the People's Republic of China—a relationship that will be increasingly important as time goes by, increasingly important to the Pacific rim and to the Asian

area, increasingly important in the area of trade; 1.2 billion people with an economy growing at 10 percent—partly because of our concern for Taiwan and the development there of a democracy, this election of the President, the first free election that has been held, one of the first areas of success of democracy in an Asian country; partly because of the agreements that we have made with Taiwan and China through the years, three communiques and the Taiwan Act that spells out where we are, spells out the fact that we have supported the one-China policy and continue to support the one-China policy, spells out the fact that basic to that agreement is the agreement that it be pursued in a peaceful way, and that it not be involved in the military action.

So I think it is appropriate that we do have a statement from this Senate. We have put together a resolution. We put it together last week. It has sponsorship by the chairman of the Foreign Relations Committee as well as the ranking member, and is sponsored by the leader, BOB DOLE. However, we were not able to bring it up by unanimous consent last week. We have now talked to those who were concerned about it, and hopefully we will be able to bring it up tomorrow and get it passed.

The resolution basically, of course, deplores the notion and the activities of the Peoples Republic in these military actions, the idea that they have fired off missiles very close to Taiwan, close to both the ports of Taiwan, and now are involved in live-ammunition activities there.

We have asked in the resolution for the People's Republic as well as Taiwan to come together to discuss these issues in a peaceful way. We also recognize our obligation, if there is military action against Taiwan by the People's Republic, that we will assist in helping them prepare for themselves to have the equipment to defend themselves.

Hopefully, these activities are simply efforts to intimidate. I believe they are. I believe they are simply an expression of the concern that the People's Republic has had, and I hope that they will discontinue that kind of activity. I further hope the Taiwanese will go out of their way not to create the kind of tension that we have had.

So, Mr. President, we intend to bring again, tomorrow, a resolution that will put the Senate on record in that regard.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

THE BOYS AND GIRLS CLUBS OF AMERICA 1995 CONGRESSIONAL BREAKFAST

Mr. THURMOND. Mr. President, this week in March is a traditionally busy one here in Washington as tens of thousands of children of all ages arrive in the Nation's Capital. They come to the District of Columbia from all over the United States during their spring break vacation to learn about our Government and our history, both of which are unparalleled.

Over the past 4 or 5 days, I doubt that there one Member of this Chamber who has not met several groups of his or her young constituents, boys and girls who have stopped by for Gallery passes, a photo, or just to say ''hello.'' I also doubt that there is one Senator who was not pleased to meet with these children as each of us recognizes that the youth of today represent the future of our country. That recognition clearly guides us as we work to ensure that the United States remains a nation of opportunity and freedom.

While what we do here in the Senate helps our children, there are other organizations out there who dedicate all of their efforts to making the lives of our youngest citizens better. One such group is the Boys and Girls Clubs of America. From coast to coast and from north to south, there are boys and girls clubs in thousands of communities of every imaginable size. The service this organization provides range from recreational activities to counseling, but most importantly, they provide a place for our young people to go and be involved in constructive activities.

Each year, the Boys and Girls Clubs of America hosts a congressional breakfast, and as the Capitol is filled with children this week, I thought this would be an ideal time to share the thoughts and comments of those who spoke at this year's event. Their comments will give those who read them an insight into this organization and the significant work they do.

I ask unanimous consent that the remarks be printed in the RECORD.

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

1995 CONGRESSIONAL BREAKFAST

SENATOR THURMOND

Representative Steny Hoyer, Mr. George Grune, the Chairman of the Board, Mr. Robbie Callaway, the Senior Vice President, Melvin Laird, Arnold Burns, one of the outstanding lawyers of this nation, Judge Freeh, all of the distinguished guests, and ladies and gentlemen, I'm very honored to be here on this occasion. Now, as a Senator, there are a lot of events you are asked to attend. I'm always pleased to attend this breakfast. It's the twelfth year.

I'm a strong believer in the Boys & Girls Clubs of America. There's no more important resource than our children. Boys & Girls Clubs of America work to help protect and promote that resource. This is an organization that is making a difference in the lives of tens of thousands of at risk teens. It provides parks and recreational activities, a safe haven from the mean streets, teaches kids the importance of work and responsibility, works to get kids into school, into jobs, off welfare roles, out of public housing and away from the temptations of a life of crime.

The Boys & Girls Clubs of America is an organization on the move, serving more children each year. Thirteen years ago, they served approximately one million kids. This year, they are serving more than 2.2 million boys and girls. More than 1,700 clubs are in the United States. Last year, they averaged an opening of one new club every three days. This is a group that seeks continued growth. By the year 2001, the Boys & Girls Clubs of America aims to have 1,000 new clubs, 1 million new members, over 3 million kids involved in productive activities.

The Boys & Girls Clubs of America is one of the most effective organizations in the nation for supporting our children. It is an organization worthy of the support of everyone in this room. As members of Congress, we are in the position to help the Boys & Girls Clubs and our children. We can support legislation that is beneficial to the Boys & Girls Clubs. One example is the current crime bill. The Boys & Girls Clubs of America is seeking 100 million dollars out of the crime bill over the next five years. The Board of Directors of the Boys & Girls Clubs will match that 100 million from the crime bill. That is 200 million dollars pumped directly into the future of our nation's children.

By attending this breakfast, each of you is demonstrating your support for a worthwhile cause. I urge you to continue to help the Boys & Girls Clubs of America. You can do nothing more worthy. We are proud of the Boys & Girls Clubs of America and we're going to keep on working to make it bigger and stronger every year. Good luck, God bless you and God bless the Boys & Girls Clubs of America and God bless our country.

CONGRESSMAN STENY HOYER

One problem with the Strom and Steny show is that I have to follow Strom Thurmond. Thurmond and Hoyer, that sounds like a good name for a firm at some point in time. Strom's show has been running a lot longer than mine, as you know, but I'm always amazed at the energy, his commitment and the verve that he brings to life and the endeavors which he undertakes. And Senator, I want you to know what an honor and privilege it is to co-chair this breakfast on a continuing basis with you. George Grune, your leadership is critically important. General Burns, you've seen General Burns up here, he looks a lot like Colin Powell. I asked him if he was running for President. He's got those four stars on his lapel, here. I'm sure it's got to have something to do with that. He is outranked, of course, at his table by Secretary Laird and the Secretary is keeping him in line, luckily, so they'll be peaceful. Pete Silas, thank you for all you've done and your leadership. We look forward to working with you on a continuing basis. My friend, Robbie Callaway. I think we ought to give Robbie Callaway a big round of applause for the outstanding leadership he brings to this effort on a regular basis. Ken Gordon is here today, too.

Six or seven of the top law enforcement officials in our nation are here. We have Louis Freeh and a group of his distinguished colleagues. They're the ones who lock up and help convict those who break the laws in our country, to keep our communities and streets and schools safe. That's their job. We ask them to do that. They're people that sometimes themselves risk their life and limb to do so. They're here this morning and I reflect on why and what message that brings us. They're here because unless parents and Boys & Girls Clubs leaders and other youth leaders all over this country do

their job, they know they can't lock up enough people. God bless them and you ladies and gentlemen of the Boys & Girls Club, God bless you. Senator Thurmond is correct because you do God's work.

This is the first line of defense. This is the first line in a battle we all must wage if we are to stop the crime and the violence and the drugs from taking over our streets, our children. And that, ladies and gentlemen is what it's all about.

I am very, very proud to be here with two people who symbolize what is the first line and the best line and ultimately the line that will get us to where we need to be—two parents who all America, and indeed all the world applaud just a few days ago.

Lou Gehrig had the kind of character that all the world would admire. Let us thank God that his record was equaled and surpassed by another individual who had the character of which we can all be proud and say, ''He was worthy of Lou Gehrig''. But, why was it so? It was so because Vi and Cal Ripken Sr. Gave him the leadership and the charcter and the understanding that gave him the will and the strength of character to persevere in the face of pain, the face of frustration, the face of being tired. We all get tired. Cal Ripken Jr. rose and he said, effective, ''My Dad and Mom said go to work every day and do the best you can.'' Is there a more powerful, potent message to be given to young people than that message? God bless Vi and Cal Ripken, Sr. We're proud of you and proud of what you've done. By the way, they're from Maryland.

I know if you'll allow me four more minutes, I will close with this. I hope all of you have read the books left for you. There is a young woman sitting at my table who is typical of all of the young people we come here today to honor. She's a success story. Not just the kind of success story we read about every day, but also a success story of the Boys & Girls Clubs of America. She's from Dallas. She's a young woman. She's an African American woman and a true success story. Read here quote. She says, ''I am proud to tell my story. One of struggle and hardship, but also one of triumph and achievement.'' LaWanda Jones, that's what it's all about because, there are a lot of people who don't have a Vi and Cal to lift them up, to nurture them, to protect them, to give them the kind of internal mechanism and compass that they need to succeed.

And so, as Todd Green said, one word came to mind when he thinks of Boys & Girls Clubs, and that's ''family . . . family''. All of us are extended family for an awful lot of young people who need the kind of nurturing and caring and courage given by Cal and Vi to Cal, Jr. Each of you in this room is a part of that caring family of America that ultimately will be the difference. Not the government, it won't happen in government. Government can help. I am one who believes that government needs to a partner. I'm one who believes that we need to marshall our resources in the form of, yes, paying taxes and applying those to good efforts. But, in the final analysis, we will not solve the problems of making sure America's future is secure and the security of our young people is assured if it's not through our families and through us, individually, caring for our young people. That's what Boys & Girls Clubs of America do. Brooke Kersey said, ''In good times and bad times, the Boys & Girls Clubs have been my life line.'' You do God's work. I am proud to be a part of all of you. Thank you.

''CAPTAIN'' ARNOLD I. BURNS

Good morning. Thank you very much for our kind invitation. I'm delighted to be here with the distinguished members of the law enforcement community mentioned by Congressman Hoyer.

I've come today to make some important arrests. I've come to arrest crime and I've come to arrest violence, to arrest the drug epidemic, to arrest teenage pregnancies, to arrest alcoholism, to arrest youth gangs. One thing responsible people in the law enforcement business have come to know, and know very well, and Steny made this point, and that is that law enforcement alone cannot solve our societal problems. We have come to believe it and to espouse the old adage that an ounce of prevention is worth a pound of cure. We know that in order to make our streets safer and more secure, we must work with organizations such as Boys & Girls Clubs of America.

We need more programs for the young people of this nation of ours—programs like the tried and proven initiatives that have earned Boys & Girls Clubs the reputation as the positive place for kids. These programs help young people to resist the peer and other pressures that lead to substance abuse, to say ''no'' to drugs, ''no'' to alcohol, to say ''no'' to teenage premature sex and to say ''no'' to gangs.

We need more Boys & Girls Clubs which keep kids coming back day after day and year after year under professional, adult supervision to learn how to get up in the morning, to show up on time for an interview, to find employment, to develop good work habits and to become a reliable and important part of the work force. Boys & Girls Clubs of America programs literally save hundreds of thousands of kids from harm and destruction each year. It is these programs that keep kids from harm and destruction each year. It is these programs that keep kids out of our courtrooms and out of jail. It is these programs that prepare kids to become productive and participating citizens in the mainstream of our society. It is these programs which make our kids producers of tax dollars and not consumers of tax dollars as wards of the State or as welfare participants. Boys & Girls Clubs of America saves billions of dollars, multi-billions of dollars of our tax dollars, because the cost of prevention pales beside the cost of cure, particularly as the cure rehabilitation so rarely works.

So, my department, today, is issuing an APB—an all points bulletin—to the 1680 boys & girls clubs facilities across our nation—reach out—reach out for more kids. Ten years ago, boys & girls clubs served 1,000,000 kids. Today, over 2,220,000 kids. Tomorrow—within the next few years—3,000,000 kids. No alibis.

We in law enforcement will continue to investigate, apprehend, prosecute, convict and incarcerate those who slip through the prevention net. We would like—no, we need, no, we must have your help—your continued top flight work, to cut potential miscreants off at the pass and bypass the criminal justice process entirely by opting for good and productive citizenship early. I close by congratulating our ''Youth of the Year'' finalists: Jason Reese, Russell Roberson, Fernando Pantoja, Michael Smith and Michael Lampkins. Each of them personifies the success boys and girls clubs can achieve in providing youngsters with a real alternative to life on the streets.

We will continue our work, you continue yours—ours must be a partnership, a collaboration. Together, we can make America a better place for all.

TRIBUTE TO DR. ROBERT E. HENDERSON

Mr. THURMOND. Mr. President, I rise today to recognize Dr. Robert E. Henderson, of Columbia, SC, for his dedicated service as the president of the South Carolina Research Authority.

Throughout his life, Dr. Henderson has worked to make his community, State, and Nation better places in many different ways, not the least of which was through his stint in the Army during World War II. During that time, he fought our enemies as an infantryman, rising to the rank of staff sergeant and being awarded a Purple Heart. Nearly 50 years later, he continued to work for the defense of the Nation when he was appointed to the prestigious Defense Science Board and the Defense Manufacturing Board.

Dr. Henderson's most significant contributions to my State came through his work as the president of the South Carolina Research Authority, a position from which he recently retired. Under his direction, the authority has helped the Palmetto State to become a force in high-technology research and development, industry, and education. Thanks to the efforts of Dr. Henderson and the SCRA, billions of dollars have been added to our State's economy and South Carolina has become a favored place for companies to do business. Appropriately, Dr. Henderson's good work has been recognized many times and he has even been awarded South Carolina's highest award, the Order of the Palmetto.

Mr. President, Robert Henderson has had an important impact on South Carolina and we are grateful for all his efforts on behalf of our State. I wish him good health and much happiness in the years to come.

TRIBUTE TO COY A. SHORT UPON WINNING THE SAM NUNN AWARD

Mr. THURMOND. Mr. President, the United States gained its freedom from our colonial masters in a bloody and hard fought war for independence. By the end of our 8-year struggle with the Crown, the young United States possessed the Continental Army, the force that ultimately defeated the English, but in 1776, it was ordinary men who grabbed weapons and first fired on the redcoats at Lexington. With that ''shot heard 'round the World,'' not only was a blow for freedom struck, but the tradition of the citizen-soldier was hatched, one that remains alive and strong in our Nation today in the form of the National Guard.

In cities and towns throughout the United States, one will find armories where men and women, much like their Minuteman forefathers, drill and prepare to meet the missions with which they are tasked. While much about the Guard has changed since the 1700's, muskets have been replaced by M–16A2 rifles and the horse cavalry has been replaced by the M1A2 main battle tank, one thing has remained constant, that those who serve in the Guard are willing to serve selflessly as they come to the aid of their community and work for the defense of the United States.

In recent years, perhaps one of the biggest backers of the National Guard here in the Senate has been my good friend, and predecessor as chairman of the Armed Services Committee, Senator SAM NUNN of Georgia. Over the years, Senator NUNN has established a well-deserved reputation for being one of the most well-versed Members of the Senate in matters related to defense and national security. Without question, his opinion is valued and respected by Senators on both sides of the aisle, by senior officers in each of the services, by Presidents, and by the people of the United States. He has stood as an advocate for a strong defense, including what he believes should be a well-trained, well-equipped, and well-supported National Guard.

In recognition of Senator NUNN's support of the military and his belief in the National Guard, the National Guard Association of Georgia established the Sam Nunn Award which it presents each year to a person who they believe has demonstrated ''solid and continuous support for the role, function, mission and purpose of the National Guard in meeting its international, national, state, and local mission.'' I am very proud to have been the recipient of the award for 1995, and I am pleased to have this opportunity to congratulate my friend, Mr. Coy Short of Atlanta, on being awarded this recognition by the National Guard Association of Georgia this year.

I have had the pleasure of knowing Coy for a number of years, over which time he has consistently demonstrated not only his patriotism, but his support for those who serve in all branches of the service, in both the Active Forces, the Reserves, and the Guard. He is a person who has taken a leadership role in community-military relations, lending his leadership to a number of committees designed to serve those who serve, including the Governor's Military Advisory Council; the USO Council of Georgia; and the Atlanta Chamber of Commerce's Greater Atlanta Military Affairs Council. His efforts on behalf of those in uniform have been recognized numerous times over the years by the Army, the National Guard, and by defense-related and community-spirited groups in the following manners:

The 94th Airlift Wing Man of the Year Award; National Committee for Employer Support of the Guard and Reserve Award for Outstanding Public Service; Oglethorpe Distinguished Services Medal for Outstanding Support of the Georgia National Guard, and National Distinguished Service Award, Association of the United States Army.

Also the Phoenix Award by the Atlanta Chamber of Commerce, for providing leadership to the Greater Atlanta Military Affairs Council; Award from the National Guard Bureau for outstanding support of the Army National Guard; and Army Commendation Medal for public service on behalf of Forces Command.

Coy Short not only works hard on behalf of Atlanta's military community, he is one of the city's biggest boosters. As a member of the Peach Bowl's executive committee, he helps to make one of college football's most popular events a success, and through his position as the Deputy Regional Commissioner for the Social Security Administration's Atlanta region, Coy's professional efforts have benefited tens of thousands of Georgians. Not surprisingly, he has been recognized by the Social Security Administration for his work, including being awarded the Commissioner's Citation, the highest recognition that can be given by that agency.

At this very moment, there are National Guard soldiers and airmen who are selflessly serving in dangerous assignments throughout the world, and if given the opportunity, I am certain that they would want to express their appreciation to Coy Short for all he has done to support them. I join these brave men and women who are serving in the defense of our Nation, along with the National Guard Association of Georgia, in saluting a man who sets the highest standard for civic mindedness and support for the Nation's military forces. His efforts make Atlanta a better place to live and the United States a safer and more secure Nation.

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, the skyrocketing Federal debt recently surpassed $5 trillion.

As of the close of business Friday, March 15, the Federal debt—down to the penny—stood at exactly $5,045,003,375,350.97 or $19,077.15 on a per capita basis for every man, woman, and child in America.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

BALANCED BUDGET DOWNPAYMENT ACT, II

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to H.R. 3019. The clerk will report the bill.

The bill clerk read as follows:

A bill (H.R. 3019) making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes.

The Senate resumed the consideration of the bill.

Pending:

Hatfield modified amendment No. 3466, in the nature of a substitute.

Lautenberg amendment No. 3482 (to amendment No. 3466), to provide funding for programs necessary to maintain essential environmental protection.

Hatch amendment No. 3499 (to amendment No. 3466), to provide funds to the District of Columbia Metropolitan Police Department.

Boxer/Murray amendment No. 3508 (to amendment No. 3466), to permit the District of Columbia to use local funds for certain activities.

Gorton amendment No. 3496 (to amendment No. 3466), to designate the ''Jonathan M. Wainwright Memorial VA Medical Center'', located in Walla Walla, Washington.

Simon amendment No. 3510 (to amendment No. 3466), to revise the authority relating to employment requirements for recipients of scholarships or fellowships from the National Security Education Trust Fund.

Simon amendment No. 3511 (to amendment No. 3466), to provide funding to carry out title VI of the National Literary Act of 1991, title VI of the Library Services and Construction Act, and section 109 of the Domestic Volunteer Service Act of 1973.

Coats amendment No. 3513 (to amendment No. 3466), to amend the Public Health Service Act to prohibit governmental discrimination in the training and licensing of health professionals on the basis of the refusal to undergo or provide training in the performance of induced abortions.

Bond (for Pressler) amendment No. 3514 (to amendment No. 3466), to provide funding for a Radar Satellite project at NASA.

Bond amendment No. 3515 (to amendment No. 3466), to clarify rent setting requirements of law regarding housing assisted under section 236 of the National Housing Act to limit rents charged moderate income families to that charged for comparable, non-assisted housing, and clarify permissible uses of rental income is such projects, in excess of operating costs and debt service.

Bond amendment No. 3516 (to amendment No. 3466), to increase in amount available under the HUD Drug Elimination Grant Program for drug elimination activities in and around federally-assisted low-income housing developments by $30 million, to be derived from carry-over HOPE program balances.

Bond amendment No. 3517 (to amendment No. 3466), to establish a special fund dedicated to enable the Department of Housing and Urban Development to meet crucial milestones in restructuring its administrative organization and more effectively address housing and community development needs of States and local units of government and to clarify and reaffirm provisions of current law with respect to the disbursement of HOME and CDBG funds allocated to the State of New York.

Lautenberg amendment No. 3518 (to amendment No. 3466), relating to labor-management relations.

Santorum amendment No. 3484 (to amendment No. 3466), expressing the Sense of the Senate regarding the budget treatment of federal disaster assistance.

Santorum amendment No. 3485 (to amendment No. 3466), expressing the Sense of the Senate regarding the budget treatment of federal disaster assistance.

Santorum amendment No. 3486 (to amendment No. 3466), to require that disaster relief provided under this Act be funded through amounts previously made available to the Federal Emergency Management Agency, to be reimbursed through regular annual appropriations Acts.

Santorum amendment No. 3487 (to amendment No. 3466), to reduce all Title I discretionary spending by the appropriate percentage (.367%) to offset federal disaster assistance.

Santorum amendment No. 3488 (to amendment No. 3466), to reduce all Title I 'Salary and Expense' and 'Administrative Expense' accounts by the appropriate percentage (3.5%) to offset federal disaster assistance.

Gramm amendment No. 3519 (to amendment No. 3466), to make the availability of

obligations and expenditures contingent upon the enactment of a subsequent act incorporating an agreement between the President and Congress relative to Federal expenditures.

Wellstone amendment No. 3520 (to amendment No. 3466), to urge the President to release already-appropriated fiscal year 1996 emergency funding for home heating and other energy assistance, and to express the sense of the Senate on advance-appropriated funding for FY 1997.

Bond (for McCain) amendment No. 3521 (to amendment No. 3466), to require that disaster funds made available to certain agencies be allocated in accordance with the established prioritization processes of the agencies.

Bond (for McCain) amendment No. 3522 (to amendment No. 3466), to require the Secretary of Veterans Affairs to develop a plan for the allocation of health care resources of the Department of Veterans Affairs.

Warner amendment No. 3523 (to amendment No. 3466), to prohibit the District of Columbia from enforcing any rule or ordinance that would terminate taxicab service reciprocity agreements with the States of Virginia and Maryland.

Murkowski/Stevens amendment No. 3524 (to amendment No. 3466), to reconcile seafood inspection requirements for agricultural commodity programs with those in use for general public consumers.

Murkowski amendment No. 3525 (to amendment No. 3466), to provide for the approval of an exchange of lands within Admiralty Island National Monument.

Warner (for Thurmond) amendment No. 3526 (to amendment No. 3466), to delay the exercise of authority to enter into multiyear procurement contracts for C–17 aircraft.

Burns amendment No. 3528 (to amendment No. 3466), to allow the refurbishment and continued operation of a small hydroelectric facility in central Montana by adjusting the amount of charges to be paid to the United States under the Federal Power Act.

Burns amendment No. 3529 (to amendment No. 3466), to provide for Impact Aid school construction funding.

Burns amendment No. 3530 (to amendment No. 3466), to establish a Commission on restructuring the circuits of the United States Courts of Appeals.

Coats (for Dole/Lieberman) amendment No. 3531 (to amendment No. 3466), to provide for low-income scholarships in the District of Columbia.

Bond/Mikulski amendment No. 3533 (to amendment No. 3482), to increase appropriations for EPA water infrastructure financing, Superfund toxic waste site cleanups, operating programs, and to increase funding for the Corporation for National and Community Service (AmeriCorps).

AMENDMENT NO. 3530

Mr. BURNS. Mr. President, I call up amendment No. 3530 and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to laying aside the pending amendment? Without objection, it is so ordered. The amendment is now before the Senate.

AMENDMENT NO. 3548 TO AMENDMENT NO. 3530

(Purpose: To amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes)

Mr. BURNS. Mr. President, I send to the desk a second-degree amendment to amendment No. 3530 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Montana [Mr. BURNS], proposes an amendment numbered 3548 to amendment No. 3530.

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

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. BURNS. Mr. President, I offer this amendment on behalf of the people of Montana. This issue was reported—in other words, dealing with the ninth judicial district—this issue was reported out of the Judiciary Committee with an 11 to 7 vote, with strong bipartisan support, and a conference report that was overwhelmingly recommending its passage.

It has often been said that one would wonder, why is there such a movement to reform habeas corpus when the very idea of habeas corpus is as American as apple pie and hot dogs? Americans have always been sensitive to the rights of the accused. It has been a hallmark as long as this United States has been a union. But in our court of appeals, Mr. President, we happen to be situated, in the State of Montana, in the largest judicial district. It is the ninth: Montana, Idaho, Washington, Oregon, California, Nevada, Arizona, Hawaii, and Alaska.

Our proposal, under this proposal to split the ninth circuit, would leave California, Hawaii, Guam, and the northern Mariana Islands with a mission of a 15-judge unit. Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington would form the new 12th circuit of 13 judges. The caseload would be split, and 60 percent of the present-day caseload would still be represented in California and Hawaii, and 40 percent of the present-day caseload would be in the newly formed twelfth. The reasons are very, very compelling for those States that would remain in the 9th district, after the newly formed 12th went into full operation, to remain there.

In this amendment is also a section that allows a national study of our courts of appeals. I think that study should move on. It was recommended by the Senator from California, and I see her on the floor. It made good sense whenever the suggestion was made, and it still makes good sense today. But I think we already have studies. We have studies on the shelf, and yet, after we got the studies, nothing was done to address the problems.

Let us take a look at this circuit. The ninth circuit is big, too big. It includes nine States, 1.4 million square miles, 45 million people. By comparison, the sixth judicial district serves less than 29 million people, and every other circuit serves less than 24 million people.

The Census Bureau is telling us that by the year 2010 the population in the ninth, if it remains in its present size, will be more than 63 million people because of the demographics and the movement of people. That is a 40-percent increase in just 15 years.

Judge O'Scannlain, of the ninth judicial district, testified, and I quote:

In light of the demographic trends in our country, it is clear that the population of the States in the ninth circuit, and thus the caseload of the Federal judiciary sitting in those States, will continue to increase at a rate significantly ahead of most other regions in the country.

The number of judges stands at 28. The fifth judicial district has 17 judges; the first has 6 and the seventh and eighth each have 11. The average of the circuits, other than the ninth, is 12.6 judges. I do not know what they do with the other four-tenths of 1 percent. The ninth recently unanimously made a request from that district requesting an additional 10 more judges. So the prospect of even a larger ninth will be upon us in just a very near future.

If you can imagine having 38 active judges, in addition to 12 senior status judges, on one court, that should give all of us pause. If we do not deal with this issue now, we will only be putting it off into the future. In other words, let us get started.

Having said that, this is the situation that is existing in the district itself today. No. 1 is delay. The ninth is the second slowest of all the circuits. The chief judge himself on the circuit commented in his written testimony, ''It takes about 4 months longer to complete an appeal in our court as compared to the national median time.'' Mr. President, 315 days is the national median time from the filing of appeal to the final conclusion. In the ninth, it is 429 days.

Other methods have been used and they come up with similar results. What does it do? Delay; the bigness leads to inconsistency, unpredictability, and I think what is more important, the lack of collegiality.

The formation of the 3-judge panel, and with 28 of them there on the court, gives us 3,276 different combinations whenever you go up before the ninth district court of appeals. It is difficult for litigants to predict outcomes. The sheer size of the caseloads makes it increasingly difficult for judges to keep abreast of the decisions to avoid conflicting decisions.

We will be hearing the argument there are new devices, new computer systems, where they have a ready library of information to where they be consistent with other decisions. Mr. President, that just has not been the case. They cannot even use what all other districts use. That is en banc. In other words, all the judges in that district getting together, listening to a case, trying to come to some consensus in the consistency of the law. The ninth does not even use that. Mr. President, 28 judges do not use that procedure to resolve intracircuit conflicts. Instead, they use a limited en banc procedure, forming 11-member

panels—10 drawn from the list of judges plus the chief judge. The method permits as few as 6 of the sitting judges to dictate the outcome of a case contrary to a judgment of 22 others, solely depending on the luck of the draw.

In summary, there was a judge in the eleventh circuit that noted what happens and the many ill effects you have in business courts. First, the dynamics of a jumbo court are such that as the court grows larger, the productivity of individual judges declines. Second, the clarity and the stability of the circuit law suffers, creating incentives to litigate that do not exist in jurisdictions with smaller courts. Finally, jumbo courts create and maintain a legal environment that is inhospitable to individual rights. Individuals find it more difficult to conform their conduct to increasingly indeterminate circuit law and suffer higher litigation costs to vindicate a few remaining clear rights to which they may claim. In other words, we go right back and we say it is too big.

The conclusion is that it is inevitable that this is going to happen. A study of 23 years ago called for it then. I think they called for it and also the split of the fifth circuit at that time. The fifth circuit did what it was told to do or was recommended to do and it has been very, very successful. This is a balanced approach and allows the wheels to start turning where we can serve our people in the judiciary a lot better and more efficiently, with more consistency. It is the right thing to do. After all, we provide the services for our citizens. The infrastructure has to be there in order to get it done.

The fifth circuit split was very, very successful. I think when we look at the evidence, the evidence of what is happening in all the other circuits, the first circuit only has 6 judges, a total population of 13 million people; in the ninth circuit, 28 judges, population 49 million people, over 1.4 million square miles. It is hard to serve an area that big.

I urge my colleagues to pass this amendment. We need to do it for the justice of the people who live and reside and do business in the ninth judicial district. I yield the floor and I reserve the balance of my time.

Mrs. FEINSTEIN. Mr. President, I rise to oppose the amendment and also to raise a point of order. Prior to making the point of order, however, I point out that as a member of the Judiciary Committee, I do not believe this measure passed by an overwhelming majority. It really passed only on the basis of partisan lines with one exception on our side of the aisle.

Essentially, this was the subject of much discussion before the Judiciary Committee, Mr. President. As you, yourself, know, there was no hearing on the bill to split the ninth circuit that is encompassed in this second-degree amendment. No public hearing on this proposal was held before the Judiciary Committee.

Essentially, what this proposal does is take the States of Alaska, Washington, Oregon, Idaho, Montana, Nevada, and Arizona, split them from the ninth circuit, and set up their own circuit. This would leave the States of California and Hawaii, along with the territories of Guam and the northern Marianas, in their own circuit. Never before in history has there been a circuit comprised of fewer than three States.

If Congress votes to divide the ninth circuit despite the overwhelming opposition of its bench and bar, Congress will be making, I believe, an irreversible decision that will have far-reaching and long-term implications for all circuits. Congress will be endorsing the view that a political division with no real data to support it is an acceptable way to determine circuit composition. I say it is not an acceptable way to determine what a circuit court of the United States should be.

The fifth circuit has been held to be some kind of a model. This was split in 1980, following the 1973 findings of the Hruska Commission. It is my understanding that the fifth circuit has one of the poorest records with respect to delays today.

The problems of caseload growth are nationwide problems that cannot be resolved by zeroing in on one circuit and wantonly, haphazardly, chopping it up.

I believe that there ought to be a study of the structural aspects of all of the circuits. There ought to be a study of the structural alternatives available to the circuit courts of appeal. Qualified members of a commission should make recommendations to the Congress on circuit structure and alignment, whether and how any realignment should occur.

If you recall, the Hruska Commission, a long time ago, recommended a split of the State of California. I think, in view of the new techniques that have been put into play by the ninth circuit in the past 23 years, this recommendation is perhaps out of date. The ninth circuit has made requests for new judges. These requests have not been honored in terms of presenting the circuit with an adequate number of judges to do the job.

The State bars oppose a ninth circuit split. That is also what makes this a very dangerous proposal. The eleventh circuit split from the fifth only after all of the judges and bar associations essentially agreed with the proposal to create a new circuit.

This is the opposite case. The bar associations of Arizona, of Nevada, of Montana, of California, and of Hawaii have all expressed their opposition to splitting the circuit, as did Idaho, the last time this split came up. I ask unanimous consent that those resolutions be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mrs. FEINSTEIN. The ninth circuit judicial conference has opposed the split. The Judicial Council, the governing body of the ninth circuit, unanimously opposes a split. The Federal Bar Association has opposed this split.

I ask unanimous consent, also, that their statements be printed in the RECORD at the end of my remarks.

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

(See exhibit 2.)

Mrs. FEINSTEIN. As the distinguished Chair knows, the board of governors of the Arizona bar has issued a resolution against the recent Burns proposal, stating the following:

> The proposal cuts Arizona off from California, the State with which it shares the greatest legal and economic ties.

This bill would create a two-State circuit, with one tiny State dwarfed by a large State. California would have 94 percent of the new ninth circuit's caseload.

It is also a very costly proposal. I find it just ironic that the committee would vote to spend so much for no demonstrated gain, when this Congress is so concerned—and I believe commendably concerned—with reducing the costs of the judiciary.

Splitting the ninth circuit would require duplicative offices of clerk of the court, circuit executive, staff attorneys, settlement attorneys, courtrooms, libraries, and mail and computer facilities.

The estimated additional costs of a new or rehabilitated courthouse for a proposed headquarters in Phoenix range from $23 to $59.5 million. Both GSA and CBO have allocated startup costs at an additional $3 million.

GSA and CBO have estimated annual costs of duplicative staff positions at $1 million, and an additional $2 million for the cost of leasing space for the headquarters until permanent quarters could be made available.

So we have duplicative staff to the tune of $1 million, and additional lease costs—unnecessary—of $2 million.

If the twelfth circuit, as proposed in this second-degree amendment, were to be created, substantial expenses already incurred by the taxpayers also would be wasted. Congress has authorized, and GSA has already completed, an extensive post-earthquake restoration of the current ninth circuit headquarters building in San Francisco, at a cost of over $100 million. The GSA has also completed the build-out of the court of appeals courthouse in Pasadena. I am told that 35 percent of the $100 million was essentially spent on quarters for the ninth circuit.

I do not believe that this effort to split the ninth circuit really represents a genuine effort to deal with the problems of the U.S. court system.

I believe, really, it is an example of judicial gerrymandering because some decisions made by that court were not to the liking of certain people. I am aware of the fact that the Senator from Montana, in his press release of May 25, states:

> We are seeing an increase in legal actions against economic activities in States like

Montana, such as timbering, mining, and water development. This threatens local economic stability, but as bad as this economic backlog is, I am particularly disturbed by the delays experienced by families of victims.

The press release of the Senator from Montana also says:

State Senator Ethel Harding, of Polson, knew firsthand the pain of this kind of delay, whose daughter was murdered by Duncan Meccans 20 years ago, but Meccans was put to death only 2 weeks ago. The appeal ended up in the ninth circuit three times over the 20-year period, and part of the delay can be attributed to the heavy caseload and inefficient system of the ninth circuit.

Senator BURNS' press releases illustrate the fact that, clearly, this effort to split the ninth circuit is politically motivated—because a habeas decision of the ninth circuit was not agreed with, for example. I respectfully submit to my distinguished colleague from Montana that there is habeas reform pending. I happen to support that reform. I submit to this body that that is the appropriate way to deal with habeas reform—not to gerrymander the circuit, but to pass a reform law that changes habeas corpus.

Another issue that was brought out in Senator BURNS' press release was the Montana sheriff's appeal of background checks under the Brady law. This was cited as further evidence of the need to split Montana and other northwest States from the circuit. I go into this not to measure the good or the bad of the decision relating to background checks, but simply to say that I believe this is the heart of the reason for the split. It is being done precipitously, without study, at great cost, and I believe for the wrong reasons. It, therefore, sets a precedent for these kinds of political maneuverings.

Let us take a look at the ninth circuit. The ninth circuit does a good job. In the 23 years following the Hruska Commission report, the ninth circuit has become a national leader in experimentation in judicial administration. It is producing good results. The average time, from oral argument submission to disposition, is 1.9 months, or half a month less than the national average. In fact, the ninth circuit is the second most efficient circuit in deciding cases once they are submitted to judges.

The ninth circuit terminates over 8,500 cases a year, almost two-fifths more than the number it terminated 7 years ago.

Since 1992, the number of cases pending before the ninth circuit has decreased annually.

It is also the first Federal court circuit to automate its docket with computerized issue tracking systems that are far more sophisticated than anything available in 1973. These systems keep ninth circuit panels apprised of other panel decisions, helping them avoid intra-circuit conflicts.

So the ninth circuit has pioneered a number of different technological and structural improvements. Additionally, it has used a limited en banc procedure, which has also proved effective in resolving potential intra-circuit conflicts. All active judges participate in the decision as to whether a case will go en banc. The Court's rules allow for rehearing by the full court at the request of either judges or litigants. So either a judge or a litigant can request a hearing by the full court.

It should be noted that the limited en banc procedure is called upon very infrequently. There are only about 12 to 13 limited en banc decisions per year out of a total of about 4,000 written decisions.

[Exhibit 1]

STATE BAR OF NEVADA

RESOLUTION

Whereas, The State Bar of Nevada, through the years, has consistently supported the maintenance of the Ninth Circuit as presently constituted; and

Whereas, a question of dividing the circuit may well reoccur during the present session of Congress or in the discussions before the Judicial Conference;

Now, therefore, the Board of Governors of the State Bar of Nevada *Resolves* that the Ninth Circuit is well constituted as is, promotes judicial economy, and as constituted, promotes the interests of justice, and no alteration should be made nor should the Ninth Judicial Circuit be divided.

Dated: This 9th day of March, 1995.

STATE BAR OF MONTANA

RESOLUTION 4

Whereas, Montana is one of nine states and two territories of the United States Court of Appeals for the Ninth Circuit; and

Whereas, the United States Court of Appeals for the Ninth Circuit has provided significant guidance to all circuit courts regarding issues of collegiality, maintaining precedent and effectively accomplishing and administrating the business of the circuit courts; and

Whereas, the United States Court of Appeals for the Ninth Circuit has been a leader in implementing Gender Equity and recognizing the need to address Racial and Ethnicity concerns to improve the involvement of all citizens in the administration of justice; and

Whereas, the United States Court of Appeals for the Ninth Circuit has provided innovative leadership in the involvement of lawyers in all functions and committees of the circuit; and

Whereas, the United States Court of Appeals for the Ninth Circuit has instituted long range planning to project the needs of the circuit into the upcoming century; and

Whereas, Montana has therefore reaped significant benefit from being a part of the Ninth Circuit; and

Whereas, the Congress has once again undertaken consideration of a bill to divide the circuit and to create a new Twelfth Circuit which would divide out the northern tier states into a new separate smaller circuit; and

Whereas, a divided circuit would remove the numerous benefits which Montana enjoys as a part of the United States Court of Appeals for the Ninth Circuit with very little, if any, gains; and

Whereas, a divided circuit would result in additional one time construction and division costs and increased annual administrative expenses thereby straining the already inadequate budget of the Judiciary, resulting in fewer funds for the direct administration of justice and for Civil Justice panel lawyers and other essential components of the administration of justice; and

Whereas, a division of the Ninth Circuit would not address or resolve the principal problem of circuits which serve rapidly growing regions, that is, the crisis of volumes of filings with inadequate judicial resources to resolve them; and

Whereas, a division of the circuit would remove the present opportunity to obtain the appointment of a practicing Montana lawyer to current vacancies on the Ninth Circuit and would significantly reduce the opportunity to appoint practicing Montana lawyers to the Twelfth Circuit in the future.

Now, therefore, be it *Resolved* that the State Bar of Montana Opposes Passage of the Ninth Circuit Court of Appeals Reorganization Act of 1995. Senate Bill 853.

Dated this day of June, 1995.

THE STATE BAR OF CALIFORNIA,
San Francisco, CA, February 26, 1996.

Re Opposition to H.R. 2935 and Substitute Bill S. 956, Ninth Circuit Court of Appeals Reorganization Act of 1995.

Hon. BILL BAKER,
House of Representatives, Longworth Office Building, Washington, DC.

DEAR REPRESENTATIVE BAKER: The Board of Governors of the State Bar of California urges you to oppose H.R. 2935 and substitute bill S. 956, which would split the Ninth Circuit Court of Appeals, leaving California, Hawaii and the Pacific territories in a new Ninth Circuit and placing the remaining seven states (Alaska, Arizona, Montana, Nevada, Oregon, Utah and Washington) into a new Twelfth Circuit.

H.R. 2935 was introduced on February 5, 1996. Substitute bill S. 956 was reported out of the Senate Judiciary Committee on December 21, 1995. We urge you to oppose both of these bills.

The case for splitting the circuit has not been made. The Ninth Circuit is the largest circuit; however, size alone does not argue for its division. In fact, we believe the size of the Ninth Circuit gives its residents certain advantages. It is an advantage to all states bordering the West Coast to have a single federal court of appeals. This single circuit provides uniform and predictable case law applicable to the region and crucial to Pacific Rim trade, which is of growing importance to California and other Western states. Splitting the region into two circuits is likely to increase inter-circuit conflict, forum shopping and races to the courthouse. The size of the Ninth Circuit also provides greater flexibility in responding to caseload growth and greater diversity of judicial backgrounds as a result of judges drawn from a larger area.

The issue of caseload growth is common to courts of appeals nationwide. However, repeated division of circuits in response to growth is not likely to be the answer to this problem and will likely create a proliferation of balkanized circuits. Splitting the Ninth Circuit, ostensibly because of its caseload, before considering how to respond to growing filings nationwide, will complicate rather than advance solutions to caseload growth.

In an era where shrinking financial resources dictate cost-saving measures, a Ninth Circuit split would increase costs by requiring a new circuit office, more court clerks and attorneys, as well as additional courtrooms and libraries. Absent a compelling argument for a split, and a clear and comprehensive study on the most efficient method to effectuate this division, the proposals are both premature and imprudent.

The Board of Governors respectfully urges you to oppose H.R. 2935 and substitute bill S. 956.

Very truly yours,

JAMES E. TOWERY,
President.

STATE BAR OF ARIZONA

RESOLUTION OF THE BOARD OF GOVERNORS, OCTOBER 20, 1995

This Board, in repeated resolutions, has expressed its opposition to the various proposals to divide the Ninth Circuit Court of Appeals and its support for maintaining the Circuit as it is. A new proposal has now been raised as to which the view of the Bar is desired. This new proposal would divide the Circuit by creating a Ninth Circuit of California, Hawaii and the Pacific Islands and a Twelfth Circuit consisting of Alaska, Washington, Oregon, Idaho, Montana, Nevada and Arizona. Such a plan would be extremely unfortunate for Arizona and wastefully unwise as a matter of judicial administration. The considerations which concern us follow:

1. The proposal cuts Arizona off from California, the state with which it shares the greatest legal and economic ties. On the one hand, as we have previously declared, Arizona does not wish to be in a circuit dominated by California; but at the same time, it needs to be in a circuit with California. Our law is commonly guided by California law. The proposed division puts a premium on racing for choice of forum so that California and Arizona parties to a disputed business transaction will each have an incentive to sue first to keep the matter in ''their'' circuit; and yet this may be a matter which, without fostering a race to the courthouse, might never be litigated at all.

2. The headquarters of the proposed Twelfth Circuit would presumably be in Seattle. This would materially increase costs and inconvenience for Arizona attorneys and litigants. Airfare between Arizona and either Portland or Seattle is such that this proposal will cost Arizonans at least two or three times as much in every case. Flights to the Northwest take twice as long as to San Francisco and are less than half as frequent, giving Arizona endless burdens with so remote a court.

3. Politically the disadvantages to Arizona are substantial. With the present Ninth Circuit, non-California senators outnumber California senators 14 to 2, and non-California judges also outnumber California judges. In the newly proposed Twelfth Circuit, Arizona and Nevada would be outnumbered in the Senate 10 to 4, which means that the judgeships and courthouses will go to the Northwest.

4. The dollar waste is regrettable. The Ninth Circuit presently has a major court building to serve the Circuit in Pasadena and is in the final stages of completion of a $100 million post earthquake renovation of the present Circuit headquarters in San Francisco, a headquarters for the entire Circuit. Not only will much of the San Francisco space be wasted under this proposal, but something of the kind will have to be duplicated in the proposed Twelfth Circuit. There will also need to be duplication of offices of Clerk, Circuit Executive, computer center, mailroom and other support offices.

In the light of all these factors, the Board of Governors of the State Bar of Arizona strongly recommends against the proposal for a new Arizona-to-Alaska Twelfth Circuit.

MICHAEL KIMERER,
President.

HAWAII STATE BAR ASSOCIATION,
Honolulu, HI, August 21, 1995.

Re Division of Ninth Circuit Court of Appeals (S. 956).

Hon. DANIEL K. INOUYE,
U.S. Senate, 109 Hart Senate Office Building, Washington, DC.

DEAR SENATOR INOUYE: The Hawaii State Bar Association Board of Directors last week voted unanimously to oppose proposed legislation to divide the Ninth Circuit Court of Appeals.

Similar legislation proposed in 1989, 1991, and earlier this year was also opposed by the Hawaii State Bar Association. See 10/30/91 letter from Wolff to Inouye, *Exhibit A.*

A position paper prepared by the Office of the Circuit Executive dated 6/22/95 sets forth the arguments against dividing the Ninth Circuit. *See* Exhibit B. The Hawaii State Bar Association is in agreement with those arguments and would like to reiterate its concern over inconsistent law that would inevitably occur as a result of a division in the Ninth Circuit. As explained in Peter Wolff's 10/30/91 letter to you, a different rule of law might apply to a maritime case depending on whether the departure or destination point was Seattle or Los Angeles.

We hope that you will vote and lobby against the passage of Senate Bill 956. If we can be of any assistance to you in this matter, please do not hesitate to contact me at 547–6119.

Sincerely,

SIDNEY K. AYABE,
President.

THE FEDERAL BAR ASSOCIATION

RESOLUTION 95–

SUPPORT FOR THE POSITION OF THE NINTH CIRCUIT COURT OF APPEALS CONCERNING THE SPLIT OF THE NINTH CIRCUIT

Whereas, Congress has before it Senate Bill No. 956, which is designed simply to split the Ninth Circuit Court of Appeals by creating a new Twelfth Circuit comprised of the District Courts for the States of Montana, Idaho, Washington, Oregon and Alaska; and

Whereas, the Ninth Circuit Judges are overwhelmingly against the division of the circuit and the Ninth Circuit Judicial Council, the governing body for all of the courts in the Ninth Circuit, recently voted unanimously against any legislation which would divide the Ninth Circuit;

Now, therefore, be it *Resolved,* that the Federal Bar Association states it support for the position of the United States Court of Appeals for the Ninth Circuit, as expressed by Chief Judge J. Clifford Wallace of the Ninth Circuit given before the Senate Judiciary Committee on September 13, 1995, and in the Position Paper of the Office of the Circuit Executive for the United States Court for the Ninth Circuit dated June 30, 1995;

Be it further *Resolved* that the President of the Federal Bar Association is authorized and directed to communicate copies of this resolution to Senator Orrin Hatch and the Senate Judiciary Committee, and Senator Dianne Feinstein forthwith.

IDAHO STATE BAR,
February 7, 1990.

Re Idaho State Bar Resolution S2–1

Hon. JAMES R. BROWNING,
Ninth Circuit Court of Appeals, San Francisco, CA.

DEAR JUDGE BROWNING: This is in response to your inquiry concerning the Idaho State Bar's position on the proposal to split the 9th Circuit Court of Appeals.

Perhaps uniquely, the Idaho State Bar is limited in its ability to take political positions. Idaho Bar Commission Rule 906 requires that we engage in a plebiscite of our members before considering resolutions for changes of law or policy. The resolution process is conducted each November.

Resolution S2–1, considered last fall, was entitled ''Bifurcation of 9th Circuit Court of Appeals,'' and was circulated at the request of both of our U.S. Senators. A copy of the resolution is included with this letter.

The resolution failed by a vote of 978 to 2373.

Please feel free to contact me if you have any questions.

Sincerely,

WILLIAM A. MCCURDY,
President, Idaho State Bar.

EXHIBIT 2

GOVERNOR PETE WILSON,
December 6, 1995.

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

DEAR ORRIN: I have been following with interest the current debate over whether to split the Ninth Circuit, and wish to register my strong opposition to any split before an objective study is concluded as to whether a split before an objective study is concluded as to whether a split will properly address the concerns that have been raised concerning the size of the circuit.

As you know, I have been on record in opposition to previous bills to split the circuit on the grounds that they were a form of gerrymandering which sought to cordon off some judges and keep others.

Admittedly, the Ninth Circuit handles more cases than any other circuit. However, the median time for it to decide appeals (14.8 months as of December 1994) is only slightly higher than that for the Sixth, Seventh, and D.C. Circuits and less than the Eleventh Circuit (14.8 months), and in fairness, the destruction of the San Francisco courthouse in the Loma Prieta earthquake is party responsible for the backlog.

Splitting the circuit, without adding more judge, will not necessarily expedite the processing of the Ninth Circuit's cases and may generate a number of inconsistent rulings along the West Coast in areas such as admiralty, environmental law, and commercial law, since the West Coast would be split, under the pending proposal, into two circuits (i.e., California in one, and Washington and Oregon in the other). Indeed, splitting the Ninth Circuit could add an additional burden on the Supreme Court, which ultimately must resolve conflicts between circuits. I recognize that some concerns have been raised over intra-circuit conflicts, but there is a mechanism for resolving them—the en banc hearing. See Fed.R.App.Pro. 35.

Ultimately, the real issue raised in the debate over splitting the Ninth Circuit appears to be one of judicial gerrymandering, which seeks to cordon off some judges in one circuit and keep others in another. If this is the issue, I submit that the proper means to address this is through the appointment of new judges who do not inspire judicial gerrymandering because they share our judicial philosophy that judges should not make policy judgments but interpret the law, based on the purpose of the statute as expressed in its language, and who respect the role of the states in our federal system.

An objective study can focus on the concerns raised about the Ninth Circuit and determine whether a split is the answer. For instance, reform of our habeas corpus procedures and reforms which curb frivolous inmate litigation may do more to address a growing caseload than splitting the circuit.

In any event, I would urge that a study be commissioned to carefully examine the concerns raised about the Ninth Circuit and determine whether the concerns are legitimate and whether a change in the circuit's boundaries is the best method of addressing them. I would be pleased to contribute one or more representatives to assist with such a study.

Sincerely,

PETE WILSON.

U.S. COURT OF APPEALS,
NINTH CIRCUIT,
Reno, NV, December 18, 1995.

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

DEAR SENATOR FEINSTEIN: I am pleased that you are going to carry your opposition to S. 956 to the floor of the Senate. You will be speaking for more than the interests of the citizens of your state. This important issue affects all of the people of our nation and their united belief that there must be one federal law applicable to each of us.

As you know, I was a Republican member of the United States House of Representatives from a district in southern California for a period of 12 years, commencing in 1967. I served continuously on the House Judiciary Committee. In addition, I was a member of the Hruska Commission in 1972–73. I left Congress voluntarily in 1979. In 1984, I was appointed by President Reagan to the United States Court of Appeals for the Ninth Circuit. I am now an active judge on that Court.

The foregoing record of public service gives me, I believe, special insights into the management of cases within the existing Ninth Circuit. My understanding of the role of circuit courts in our system of federal justice has changed over the years from that which I held when the Hruska Commission issued its final report in 1973. At that time, I endorsed the recommendations of the Commission calling for a division of the Fifth and Ninth Circuits. I have grown wiser in the succeeding 22 years.

The Hruska Commission was created to deal with the problem of the Fifth Circuit. In recommending the division of the old Fifth Circuit into a new Fifth Circuit and a new Eleventh Circuit, we were responding to the united views of federal judges and bar associations in the respective states, and not insignificantly, the views of the late Senator Eastland, the then Chairman of the Senate Judiciary Committee. The recommended changes in the Fifth Circuit were ultimately implemented, but those respecting the Ninth Circuit were, wisely I think, not.

You have recommended a new Commission to be appointed to review and update the findings of the old Hruska Commission. I endorse this recommendation. Although I strongly oppose the division of the Ninth Circuit, I believe the Senate is entitled to review facts, and modern case management techniques, now employed within the Ninth Circuit. Moreover, the continued balkanization of our circuits must be confronted and the case for fewer, larger, circuits, must be studied. I wish you well in this undertaking.

The proponents of a new Twelfth Circuit have evidently abandoned their often made arguments that the new circuit would be needed to save excessive travel costs. No circuit stretching from Tucson, Arizona, to Prudhoe Bay in Alaska will support this argument.

The majority report also contains the misleading statement that the recommended division of the Ninth Circuit is not in response to ideological differences between judges from California and judges elsewhere in the circuit. I strongly disagree that such a motive does not in fact underlie the proposal for the change. Such a regionalization of the circuits in accordance with state interests is wrong. There is *one* federal law. It is enacted by the Congress, signed by the President, and is to be respected in every state in the union. The law in Montana and Washington is the same law as exists in Maine and Vermont. It is the mission of the Supreme Court to maintain one consistent federal law. I do hope that you will challenge the supporters of the revision to explain the reasons justifying their proposal.

Respectfully,

CHARLES E. WIGGINS,
Circuit Judge.

Mrs. FEINSTEIN. Mr. President, let me speak for just a moment on the subject of the pertinence of this amendment at this time. This amendment filed by the distinguished Senator from Montana is really not a relevant amendment, to which, if the subject of the amendment were known, there would clearly have been objection. The amendment carries an appropriation for the Judiciary, which has been funded for the entire fiscal year through a previous continuing resolution. That is the vehicle for this kind of appropriation. It is not relevant to this bill before us.

So, Mr. President, on behalf of Senator REID and myself, I raise this point of order.

Mr. REID. Mr. President, will the Senator withhold for just a moment so that we can consult?

Mrs. FEINSTEIN. I would be happy to withhold for a moment.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURNS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, I raise this point of order that amendment No. 3530 is not relevant to the Hatfield substitute or to the House bill.

The PRESIDING OFFICER. The point of order is well taken.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I would like to speak on the underlying amendment that has been offered by my friend from Montana.

Mr. President, first of all, in reviewing the amendment, it appears to me that the amendment is backward. What I mean by that is that the amendment by my friend from Montana calls not only for the division of the ninth circuit but it also calls for a commission to study the restructuring of the circuit.

I have spoken to the Presiding Officer of this body, I have spoken to the Senator from Montana, I have spoken to the Senator from California, who is in the Chamber, and lots of other people about this circuit and whether or not it should be split. I think this is a very good question. We should give some serious consideration to it. But it would seem to me that the best way for this body to do that would be to have a commission, one that is composed of prominent people appointed by the judiciary. The Chief Justice of the U.S. Supreme Court, I think, should be in on the appointment of people to serve on this prestigious commission, and the President of the United States. Of course, we should have legislative input into this commission.

I think, also, the commission should have adequate staff so that they can report back to us in a short period of time. It seems to me, if we would empower this commission to go forward with the appropriate resources to look into the structuring of the circuits, that we, by next year at this time, would have all of the information at our disposal to make an appropriate decision.

The Hruska commission that was impaneled some 23 years ago came up with some ideas that were based on some good that they have done. They decided that the fifth circuit and the ninth circuit should be split. I say to my friend, the junior Senator from Montana, that the split of the fifth circuit subsequently took place. The split of the ninth circuit has not taken place. But I say to my friend from Montana that, if you are going to follow the 23-year-old Hruska commission and its findings, you certainly will not split the ninth circuit the way they have done it in this bill, because what the Hruska commission said is that you would, in effect, cut the ninth circuit in half and have one-half in northern California and one half in southern California and the rest of the circuit would be split up in a number of different ways.

So I say to my friend from Montana and to everyone within the sound of my voice that I think the amendment is backward. I think we should have a commission to study the restructuring of the circuits, and once that is done, come back here and determine if, in fact, there should be changes in the ninth circuit and all of the rest of the circuits in the country, because, if you go ahead and divide the ninth circuit and create a twelfth circuit, you have already taken away the ability we have to realign some of the other circuits.

Mr. President, if you look at this long, very narrow twelfth circuit, you have the chief judge, the headquarters of the court, sitting in Phoenix, AZ. I do not know how far away from Montana, I do not know how far away from Alaska, but it is away from major population centers in that circuit. Seattle and Portland are examples. I cannot imagine, with most of the cases coming from Oregon and Washington, why it would be fair for them to have to travel to Phoenix.

In addition to that, Mr. President, in November 1994, after there was this revolution that took place with the elections in the House and, to a lesser degree, in the Senate, we were told that we were going to start saving money, that we would not be wasteful in the things that we spent money on. If there was ever a waste of money, it would be what we are trying to do here—upward of $60 million in one-time spending to create this new circuit and, of course, spend lots more money on a

yearly basis because you would have two circuits whereas in the past you have one circuit.

So, Mr. President, I really believe that I should ask my friend, with whom I serve on the Appropriations Committee and for whom I have the greatest respect, to review the offering of this amendment.

The Chair has ruled that this amendment is not germane, and it really is not. I appreciate the ruling of the Chair because we entered into a unanimous-consent agreement that there would be only relevant amendments. Mr. President, if, in fact, the Chair had ruled any other way, this place would be chaotic. There simply would be no end to floor procedures. There would never be another unanimous-consent agreement reached.

I, for example, wrote a letter to our staff here on my side of the floor several months ago saying if anything comes up regarding the splitting of the ninth circuit that I be notified. The reason I mention that, of course, is that this amendment was offered late at night, and, for whatever reason, the procedure was that this is not relevant. I am glad the Chair has ruled accordingly.

I think it is appropriate, though, Mr. President, that we talk about the ninth circuit and whether or not this should be split. To divide the ninth circuit would create two geographically and demographically unequal units. What I mean by that is, splitting this circuit is not going to solve the problem. Splitting the circuit is not going to solve the problems that I know my friend from Montana—and, believe me, many of my constituents in Nevada—is concerned about. Creating two circuits from one without increasing judicial resources would not address the fundamental problems of expanding caseloads and delays. We know from dividing the fifth circuit in 1980 that it has resulted in no long-term benefits in expediting case processing.

I, also—back to the commission aspect of it—again stress that I would be very happy to have this commission that we created on a bipartisan basis have a short time-line as to when to report back to us. The Hruska Commission reported back in 1973. In 1980, the fifth circuit was split. But, as I have mentioned, there have been no long-term benefits in expediting case processing. That does not mean the split was not important and was not necessary, but if we are going to look at splitting the circuits to expedite case processing, that will not do it, especially when you consider the ninth circuit judges are the fastest in the Nation in disposing of cases once a panel receives the cases.

Also, understand that, if you look at the western coast of the United States, you have the long, long State of California. But also on that coast you have Oregon and Washington, two extremely important States as far as maritime and admiralty law. One reason we have had peace and quiet in the admiralty and maritime law in the western part of the United States is because there has been one voice that has spoken about that most important part of our commerce. If the split took place, we would have one circuit ruling and deciding cases in Washington and Oregon; you would have another circuit deciding cases based in California, that great Western United States. The maritime law of that part of the country would be bifurcated. That is not the way it should be.

It would increase the potential for inconsistent law relating to admiralty, commercial trade, and the utility laws on the western seaboard. Establishing a circuit consisting of just two States would defeat the federalizing function of the multistate circuit. That is the central purpose of the American Federal appellate process.

Senator FEINSTEIN talked, Mr. President, about the cost to construct a new twelfth circuit with its headquarters. As I have indicated, the estimate, among others, with the GAO is $60 million—approximately $59.5 million—plus $2 to $3 million in annual costs duplicating existing administrative functions.

An additional headquarters would result in waste of taxpayer dollars spent on the recently completed $100 million earthquake rehabilitation in San Francisco.

Mr. President, prior to coming back here, I was a trial lawyer, and I have appeared in that beautiful ninth circuit where I have argued cases. It is a beautiful, beautiful building, and the earthquake damaged that. One reason the ninth circuit does not have a better record of moving cases is because they had no building in which to work. The earthquake damaged the building so that the Ninth Circuit Court of Appeals could not work in it. So the money that was spent rehabilitating that facility, $100 million, in effect would be wasted.

Mr. President, it is also important, I think, for me to say something—it is unnecessary, but in this age of political correctness, perhaps I should mention it. I have a son who just graduated from Stanford Law School last June. We are very proud of him. He is one of my four boys. He works as a clerk in the ninth circuit. So if I have any prejudice because of my son, I acknowledge that here in this Chamber, but I was against this split long before my son went to work in whatever—sometime this past summer—for one of the judges of the ninth circuit.

That beautiful ninth circuit court building was restored, and I am happy it was restored. But let us not have any waste of it at this stage.

The official bar organizations of Arizona, California, Hawaii, Idaho, even Montana, and Nevada, and the Federal bar associations have all adopted resolutions opposing any split. I think it is important we have input of the bar relative to this split. But I can say to my friend from Montana that if, in fact, we have a commission and the study comes out that there should be a restructuring, I would weigh that much more heavily than I weigh the opinion of the bar from the State of Nevada because the bar from the State of Nevada, even though I have great respect for them, are traditionalists and would not have the benefit of the study of what I feel would be this bipartisan Commission composed of people appointed by the Chief Justice, people appointed by the President, and people appointed from the legislative branch.

The ninth circuit judges, I repeat, are the fastest in the Nation in disposing of cases once the panel receives the cases. That is pretty good. The ninth circuit I think—I have certainly not asked them individually, but I think they would welcome an independent, congressionally mandated study of Federal appellate courts to update Congress certainly before it makes any far-reaching structural changes. The Ninth Circuit Court of Appeals has functioned successfully in its present configuration for more than 100 years. The sponsors, including my friend from Montana and also my friend, the senior Senator from the State of Washington, who is one of the prime movers of this legislation, have cited a number of reasons for this legislation. One is the unmanageable caseload, a decrease in consistency of decisions due to size, inability to appreciate the interests of the Northwest, and, lastly, a decline in the performance of the circuit.

First of all, let us talk about caseload. The ninth circuit has managed efficiently a caseload that is comparable on a per-judge basis and far exceeds in total that of other circuits. Also, as far as caseload, the ninth circuit has maintained a high degree of consistency in its case law. Also, the ninth circuit has functioned well to avoid regionalism by federalizing the application of national law over a wide geographic area, and, Mr. President, they have demonstrated a high level of performance in managing the caseload.

I also say that the ninth circuit is a court that our U.S. Supreme Court looks to for guidance, for lack of a better word, if the Supreme Court looks anyplace for guidance. If there is a conflict in the ninth circuit and one in the tenth circuit, heavy reliance is placed upon precedents developed out of the ninth circuit. I think that answers one of the criticisms that my friend from Montana has raised.

I think the proposals to divide the circuit have numerous drawbacks, including the substantial cost of setting up, as I have already outlined, the duplicative administrative structures and a new circuit headquarters. I do not think I can talk too much here about the fact that we are supposed to be balancing the budget, so how can we, in good conscience, spend $60 million with this legislation and still call for a study where we are going to have to do some more restructuring. It just does not make a lot of sense.

I would also say that the loss of advantage of size really does not answer the question. We have strong opposition of the majority of the lawyers and judges in the circuit to which we have to give some credence. This is the ninth circuit. We cannot say we are going to ignore the lawyers and judges. We are talking about one of our branches of government, a separate but equal branch of government. With the potential for inconsistent law relating to admiralty, commercial trade, and utility law along the western seaboard, including Alaska and Hawaii, which I have not talked about, and the territories, it is important that we speak with one voice in that regard.

An opportunity for litigants to forum shop certainly would come about as a result of this split. The potential for increased inner-circuit conflicts would place an additional burden on the U.S. Supreme Court to resolve these conflicts that are now handled internally within the circuit.

We need hearings on this. I am willing to forego hearings. I know that the Judiciary Committee, of which neither sponsor of this legislation, and certainly not the junior Senator from Montana, is a member, has spent, as I understand it—I know it is true—the full Judiciary Committee had a single half-day hearing on this legislation that is now before the Senate. So I think that we really need to spend a little more time on this.

I am convinced that the Commission could do a good job with all the many things that we have to do, especially this being a Presidential election year. And I know how my friend from Montana and others feel about it. I repeat for the third time here today that we would be willing to put a short time limit on how long it would take for them to come back with their work. We would make sure during that short time period that they have adequate resources to study it well.

The proposed legislation very simply would not solve the problems of caseload growth and would increase the ninth circuit caseload burden. Here is why I say that. Throughout the United States, in all the circuits, the caseload has increased dramatically in proportion to the number of judges. Some of these figures are really startling. So the key problem to be addressed is the number of judges to handle the caseload rather than configuration of circuits.

It is interesting here; this Senator from Nevada, a Democrat, and my friend, the Senator from California, who has just spoken, a Democrat, have always supported the Republicans in the changing of habeas corpus. Every time I have had a chance to vote here since I have been in the Senate I have supported streamlining and expediting the habeas corpus procedures in this country.

That is something that would allow the ninth circuit and every other circuit to move on with its cases. I think it is absolutely wrong for a person—it does not matter how you feel about the death sentence. If you believe in the rule of law, it is absolutely wrong that someone be sentenced to death when it takes an average of 16 or 17 years from the time that sentence is imposed until the time the execution takes place, if, in fact, it ever takes place. If we want to talk about expediting the cases that the ninth circuit and other circuits hear, that is how we can do it. Let us move the habeas legislation that would streamline what the Federal courts hear.

There are other things we could do. Forty percent of the cases in the Federal District in Nevada are cases that are initiated by prisoners. The majority leader, Senator DOLE, and I, and others have joined in legislation that has passed this body, saying let us do away with that. If somebody has a good case, a prisoner, let him file it. But not as to whether or not it should be chunky peanut butter or smooth peanut butter, how many times can you change your underwear, whether it is real sponge cake or not sponge cake. These are ridiculous things that really turn my stomach, and that is what is taking the time of our Federal judiciary, hearing these ridiculous nonsense cases. It is not the size of the circuits, it is what they are forced to hear because we, as a legislative body, have not acted responsibly.

I repeat, the key problem to be addressed is the number of judges to handle the caseload rather than the configuration of the circuits. From 1978 to 1995 the number of appeals filed in the Ninth Circuit Court of Appeals increased by 179 percent. The number of judges increased 22 percent. In spite of this, in spite of this, plus the earthquake that completely disrupted its operations, the Ninth Circuit Court of Appeals should receive an award, rather than being criticized for not doing their work well. Remember, the Ninth Circuit Court of Appeals moves its cases. There is no one faster in the entire circuit system in disposing of cases once the panel receives the cases.

In spite of this, in spite of the 22-percent increase in judges to cover the 180 percent increase in caseload, and the courthouse being damaged and ruined, almost—it took $100 million to fix it up—they still managed to keep up with their work. They actually are determining more cases in the last 3 out of 4 years than were filed. They are not dropping behind, they are gaining. This is a remarkable record.

The presumption that increasing the number of circuits would solve the problem of expanding Federal court caseloads is the underlying fallacy of my friend's amendment. I say the cases are resolved by judges, men and women wearing those robes, not by circuits, this artificial tenth or twelfth, because increasing the number of circuits without increasing the number of judges would only exacerbate the problem. What we are being asked to do here is not only not increase the number of judges, but build an entire new court complex, and of course we would have a new circuit with all of its administrative personnel, which we have already established would cost at least $3 million extra a year. This would have no effect on caseload growth and there is no reason to believe it would be different in the proposed twelfth circuit than in the ninth circuit.

In its review of circuit size, the American Bar Association Appellate Practice Committee—and we have to go to the American Bar Association or some group of lawyers. Remember, we are dealing with courts here. We cannot go to the American Medical Association or certified public accountants or the Stock Car Racers of America. We have to go to attorneys, no matter how people feel about attorneys. What the ABA has said is, ''We have found no compelling reasons why circuit courts of various sizes, ranging from a few judges to 50, cannot effectively meet the caseload challenge.''

Indeed, for every argument in favor of smaller circuits there is an equally compelling argument for larger circuits. That is why I say, Mr. President, we are not doing this the right way. That is why it is important that we step back from this and let experts look at it, not we Senators who have preconceived ideas. Let us have the Chief Justice of the U.S. Supreme Court appoint some prominent people to take a look at this, and the President, and we as legislators should have our input. Equal numbers, so the judicial does not have too many on it, the executive does not have too many, nor do we—equally distributed between the legislative, judicial, and executive branches of the Government. I repeat, give them adequate staff, other resources, and have them report back to us in a reasonable period of time. That way, then we can make decisions as to whether it is going to be important to have more circuits, or have more judges, or have both.

I believe that the administration of justice in any society, especially in ours, is based upon the certainty of punishment, if we are talking about the criminal justice system. The problem we have in our system, of course, is that we do not have certainty of punishment. I think a study of the circuit system in our country, with that in mind, would go a long ways to satisfying some of the questions that I have.

I think it is important that we spread across this record the fact that the proposed legislation would be costly and it would be wasteful, for the reasons I have already outlined. The GSA [General Services Administration] has virtually completed an earthquake rehabilitation of this historic building in San Francisco at a cost of over $100 million. That renovation was designed to accommodate the administrative personnel of the ninth circuit as it presently exists, to meet its needs for

the foreseeable future. If we did not do that, we would waste what we have already done.

We have some advantages from the size of the ninth circuit. The consequences are not all negative. That is why I think this panel, this commission we should appoint, will be instructive. The size of the ninth circuit, some say, is an asset that is to improve decisionmaking and judicial administration both within the circuit and throughout the Federal judiciary. There are some legal scholars who feel rather than splitting circuits we should be joining some of them; that there are built-in efficiencies. As my friend from Montana, in his statement, talked about one circuit—and I apologize, I do not know to which he was referring, but there were six appellate judges, as I recall the statement—maybe we should join that with another circuit. I do not know. But, certainly, is it not worth looking at?

A single court of appeals serving a large geographic region, the ninth circuit, has promoted uniformity and consistency in the law and has facilitated trade and commerce by contributing to stability and orderly process.

I again talk about admiralty and commerce under that entire western Pacific United States, which includes, as I have mentioned, Hawaii and the area out through there. We have one voice speaking about what the law should be. That has been very important. The court of appeals is strengthened and enriched, and the inevitable tendency to be parochial is done away with. This is because of the variety and diversity of the background of its judges drawn from the nine States comprising the circuit.

I had a conversation with a very close friend of mine who was home this weekend, somebody for whom I have the greatest respect. He was complaining about a decision that had been reached within the past couple of weeks, dealing with assisted suicide. He was complaining about that, about, ''This judge did this.''

I proceeded to remind my friend that it was an 11-member panel that decided the case, 11 judges out of the ninth circuit. They heard this case en banc. The decision by the majority was by 8 of the 11. The decision was written by that one man just because he happened to have drawn the assignment to write it, but seven of the other judges joined with him. So, in the ninth circuit more than any other circuit, there is not a tendency of one judge to dominate that circuit. There is not a tendency of two or three or four judges to dominate that circuit.

The ninth circuit is a leader in developing innovative solutions to caseload and management challenges, and they have done this in many different ways. It served as a laboratory for experimentation in many other areas, including computerized docketing and case tracking systems, decentralized budgeting, improving tribal court relations, flexible judicial reassignments and effective and limited en banc procedures, which is—really, what they have done with en banc procedure in that case is really historic in nature.

No one complains about 11 of these appellate judges sitting down and hearing these cases. They do it expeditiously. We have had improved Federal-State judicial relations. They have been far advanced with alternative dispute resolution and use of appellate commissioners.

If I were going to vote today, I would vote against splitting the circuit, but I am not going to be voting today, Mr. President. I am going to be, hopefully, reviewing what has taken place on the floor.

I see standing today my friend from Arizona, who is a fellow attorney. I have great respect for his legal talents and abilities. He was a prominent and very refined lawyer before he came here. I am willing to sit down and talk with him and anyone else as to what is the right way to go in coming up with this division. But let us not make it here on a Monday afternoon or by an amendment offered late at night.

I think there is a better way to do this. I do not in any way criticize or think that my friend from Montana did anything improper or wrong. If I felt that, I would say that to him personally. I do not feel that is the way it is. I just feel that on multiple appropriations bills—five bills lumped into one—it is not the way to do it. I think what we should do, I repeat for the fourth time, is have a commission, a fair commission with a reasonably short period of time to report back.

Mr. President, while we are still talking about the ninth circuit, it has a high degree of consistency in its case law. It would be improper for a circuit court of appeals to favor regional interests. This is a court of the land.

Also, an objective, updated study is needed before undertaking piecemeal realignments of the circuit. We had the Hruska study, which took place 23 years ago, and it was very important that we did that. The effects of growth on the entire Federal appellate system needs to be reviewed. It can be done in a relatively short period of time with computerization and all the other modern methods we have at our disposal to get statistics.

Yet, in the last two decades, no hearing has been held on that subject, nor has any commission conducted a study to determine how the Federal appellate system will continue to manage the continuing, growing influx of cases. It is not only that the ninth circuit is growing, the whole United States is growing. So we need to look at all of them.

I repeat to my friends who feel this is the appropriate way to go—stop and look at this. What this amendment does is call for a split of the ninth circuit, creating the twelfth circuit, and, at the same time, it calls for a commission to study restructuring. It is the wrong way to do it. We have already, in effect, let the cow out of the barn, because it makes it almost impossible to go back and pull out some of the resources, the assets of the twelfth and ninth circuits to help realign part of the other circuits if, in fact, that is necessary.

If you look, Mr. President, at the alignment of the court system, you will find that the way my friend from Montana has proposed this in his amendment, we have a very strange-looking circuit. I do not know how far it is from the tip of Washington to the tip of Arizona, but I would say it has to be 1,000 miles or more, because I know the State of Nevada is 600 miles long or more. So it is probably, I would say, 1,200 miles.

If we are going to talk about realignment, we might want to see if it is appropriate that the tenth circuit remain the way it is. I think if we follow the findings of the Hruska Commission, or at least take that as a starting point, we might want to cut California right in two, if, in fact, there is a cut necessary. If you did that, I think there would be a significantly different division than my friend has here.

Also, there are some long-time tendencies, practices, and procedures of which we have to be aware, and I think people need to study this. For example, we do not have a law school. Nevada does not have a law school. I do not know if there is another State in the Union that does not have a law school, but we do not have a law school. The vast majority of our lawyers are educated in California. I might say just offhand, I oppose the taxpayers of Nevada spending a lot of money on a law school. It comes up in every legislative session. I think we have enough law schools, and Nevada has plenty of lawyers. They are not having difficulty finding a place to go to school.

I say that it is going to take a little education in Nevada—and I think this commission is the way to go—to have lawyers, judges find some rationale for splitting Nevada off from California. What the U.S. Senate decides in a debate of a few hours is not going to satisfy the court and bar in the State of Nevada.

I think this commission that I have recommended, that was originally the idea of my friend from California, Senator FEINSTEIN, is an appropriate way to go. I respectfully submit, Mr. President, that it is not the right way to go to split the circuit and then come back and say, ''Let's do a restructuring study.'' An objective, updated study is needed before undertaking piecemeal realignment of the courts.

Some say that the Hruska Commission is outdated and the time has long since passed when its findings are of any merit. I do not know that to be the case, although there are some who feel that is the case. Arthur Hellman, who testified at our hearing, who is a professor and served as deputy executive director of the Hruska Commission 23 years ago, wrote in 1995:

Although the Hruska Commission recommended in 1973 that the ninth circuit be divided, that recommendation has been made obsolete by intervening events.

This is not some disinterested professor who was asked to look at it; this was the executive director of the commission.

A former Congressman, a member of the ninth circuit, Judge Wiggins, who was a member of the Hruska Commission and a former Member of the House of Representatives on the Judiciary Committee, one of the people who was responsible for the Hruska Commission going forward, has expressed in a recent letter his opposition to a circuit division and supported the idea of an up-to-date new study. That is not unreasonable.

Our lurching off into this is not the right way to go. Senator, now Governor, Pete Wilson conveyed similar sentiments in a recent letter to Senator HATCH. He said, among other things:

I would urge that a study be commissioned to carefully examine the concerns raised about the ninth circuit and determine whether those concerns are legitimate and whether a change in the circuit's boundaries is the best method of addressing it.

That is from Pete Wilson, a veteran legislator and certainly now a veteran administrator.

I ask unanimous consent, Mr. President, to have the letter from Governor Pete Wilson printed in the RECORD.

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

GOVERNOR PETE WILSON,
December 6, 1995.

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

DEAR ORRIN: I have been following with interest the current debate over whether to split the Ninth Circuit, and wish to register my strong opposition to any split before an objective study is concluded as to whether a split will properly address the concerns that have been raised concerning the size of the circuit.

As you know, I have been on record in opposition to previous bills to split the circuit on the grounds that they were a form of gerrymandering which sought to cordon off some judges and keep others.

Admittedly, the Ninth Circuit handles more cases than any other circuit. However, the median time for it to decide appeals (14.3 months as of December 1994) is only slightly higher than that for the Sixth, Seventh, and D.C. Circuits and less than the Eleventh Circuit (14.8 months), and in fairness, the destruction of the San Francisco courthouse in the Loma Prieta earthquake is party responsible for the backlog.

Splitting the circuit, without adding more judges, will not necessarily expedite the processing of the Ninth Circuit's cases and may generate a number of inconsistent rulings along the West Coast in areas such as admiralty, environmental law, and commercial law, since the West Coast would be split, under the pending proposal, into two circuits (i.e., California in one, and Washington and Oregon in the other). Indeed, splitting the Ninth Circuit could add an additional burden on the Supreme Court, which ultimately must resolve conflicts between circuits. I recognize that some concerns have been raised over intra-circuit conflicts, but there is a mechanism for resolving them—the en banc hearing. See Fed.R.App.Pro. 35.

Ultimately, the real issue raised in the debate over splitting the Ninth Circuit appears to be one of judicial gerrymandering, which seeks to cordon off some judges in one circuit and keep others in another. If this is the issue, I submit that the proper means to address this is through the appointment of new judges who do not inspire judicial gerrymandering because they share our judicial philosophy that judges should not make policy judgments but interpret the law, based on the purpose of the statute as expressed in its language, and who respect the role of the states in our federal system.

An objective study can focus on the concerns raised about the Ninth Circuit and determine whether a split is the answer. For instance, reform of our habeas corpus procedures and reforms which curb frivolous inmate litigation may do more to address a growing caseload than splitting the circuit.

In any event, I would urge that a study be commissioned to carefully examine the concerns raised about the Ninth Circuit and determine whether the concerns are legitimate and whether a change in the circuit's boundaries is the best method of addressing them. I would be pleased to contribute one or more representatives to assist with such a study.

Sincerely,

PETE WILSON.

Mr. REID. Mr. President, I have indicated that Arthur Hellman, former deputy executive director of the Hruska Commission, is opposed to the split. I also ask unanimous consent to have printed in the RECORD a letter written to Senator FEINSTEIN, dated December 5, 1995, from Prof. Arthur Hellman, at the University of Pittsburgh School of Law, in opposition.

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

UNIVERSITY OF PITTSBURGH
SCHOOL OF LAW,
Pittsburgh, PA, December 5, 1995.

Re S. 956.

Hon. DIANE FEINSTEIN,
U.S. Senator, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: You have asked whether dividing the Ninth Circuit today would interfere with Congress's ability to pursue more comprehensive appellate reform in the future. Plainly, it would.

The Ninth Circuit's problems are problems that are shared, in varying degrees and in differing manifestations, by all of the circuits. As the American Bar Association's Standing Committee on Federal Judicial Improvements emphasized in a 1989 report, ''the problems of the federal courts of appeals . . . are problems of an entire system, which cannot be solved by examining each component of the system in isolation.''

In 1990, the Federal Courts Study Committee, which included among its members Senators Heflin and Grassley, concluded that the Federal appellate courts were already in a ''crisis of volume.'' It anticipated that ''within as few as five years the nation could have to decide whether or not to abandon the present circuit structure in favor of an alternative structure that might better organize the more numerous appellate judges needed to grapple with a swollen caseload.'' The Committee's report presented several ''structural alternatives,'' but it did not endorse any of them; instead, it called for ''further inquiry and discussion.''

Dividing the Ninth Circuit today would significantly interfere with Congress's ability to pursue the reconsideration that the Study Committee urged. This is so for three reasons.

First, if a Twelfth Circuit is established—whatever its configuration—the effect will be create new structural arrangements and institutionalize new modes of doing business. These will soon take on a life of their own, reinforcing the status quo and making comprehensive reform more difficult.

Second, dividing the Ninth Circuit would set Congress on a course that prefers circuit splitting to other, perhaps more fruitful, measures for meeting the ''crisis'' of appellate overload. Indeed, even today, the division of the Fifth Circuit is being cited as a precedent for dividing the Ninth, notwithstanding the many and significant differences between the two situations.

Finally, to divide the Ninth Circuit now would be to lose the full benefit of a vital experiment in judicial administration. As noted above, the Federal Courts Study Committee presented several models of appellate reorganization, but it did not endorse any of them. That is quite understandable. None of the models is very attractive; all have serious drawbacks.

Over the last decade, the Ninth Circuit has undertaken a remarkable range of innovations in an effort to determine whether a large circuit can be made to work effectively. Nothing could be more useful to Congress as it considers systemic reform than to have the concrete empirical information that the Ninth Circuit's experimentation will provide.

Of course, it would be wrong to conduct an experiment if the ''subjects''—here, the judges, lawyers, and citizens of the Ninth Circuit—were being hurt. But the evidence is overwhelming that they are not. For example, bar associations in five Ninth Circuit states have spoken out on S. 956. All have expressed opposition to the split. Other evidence is presented in Chief Judge Wallace's statement at the September hearing.

More than five years have passed since the Federal Courts Study Committee issued its strong warning. Rather than divide one circuit ad hoc, Congress should proceed systematically by creating a new, focused commission to examine the problems of the ''entire [appellate] system'' and make recommendations that will serve the country for the long run.

Sincerely,

ARTHUR D. HELLMAN,
Professor of Law.

Mr. REID. Mr. President, also, I think we should look at how the press feels about this split throughout the Western part of the United States.

I think it is fair to say that most all the press is opposed to the split. I say this, not based upon the newspapers being all of a liberal persuasion, because I think that, for example, if you take the Arizona Republic, I think it has been accused of a lot of things, but certainly it does not have a liberal bias. They wrote in an editorial on November 10, 1995, among other things:

The bill can best be described as a case of unwarranted political meddling in the Federal judiciary . . . The bill is a wolf in sheep's clothing. What it's really about is a perceived liberal bias that comes from domination of the district by—guess who?—California. The agenda of the bill's backers is less geared toward the efficient administration of justice than it is to isolate California.

It goes on to state what a bad idea it is to split this.

Mr. KYL. Would my friend yield for one quick question or comment on my

behalf in relation to what the Senator just said?

Mr. REID. Mr. President, prior to doing that, I ask for the regular order. Mr. President, I ask for the regular order.

The PRESIDING OFFICER (Mr. CRAIG). The regular order is amendment 3533 to amendment 3482, which is the first-degree amendment to 3466.

Mr. REID. Parliamentary inquiry. The regular order having been called, it is my understanding that the ability to appeal the rule of the Chair on germaneness is now not possible; relevancy is not possible.

The PRESIDING OFFICER. Intervening business having taken place, the right of appeal has been lost.

Mr. REID. Thank you, Mr. President.

I would be happy to yield to my friend from Arizona, without losing my right to the floor, for purposes of a question.

Mr. KYL. I appreciate my colleague yielding. I want to make it clear, since you were quoting from my hometown newspaper editorializing against the bill, it was not the bill that is before us today.

Mr. REID. I appreciate that, I say to my friend from Arizona. I did not know that.

Mr. KYL. That was the original bill as introduced that they were writing about, not the amendment of the Senator from Montana.

Mr. REID. I thank my friend very much.

Mr. President, we have editorials, as corrected, from the Arizona Republic, from the San Francisco Chronicle, the Seattle Times, the Los Angeles Times—and not a western newspaper, of course—the New York Times.

I yield the floor, Mr. President.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I would like to comment on some of the things that have been said so far. I say to the Senator from California, Senator FEINSTEIN, and the Senator from Nevada, who has just been speaking about their presentation, this is a rather complex issue. I certainly would begin by noting this is a matter on which reasonable people can differ.

In this case I do differ, but certainly the arguments they have made are legitimate points to debate. I would like to get on with that prospect right now. The Senator from Montana has revised the original version of the bill as introduced, as I just pointed out to the Senator from Nevada, and has presented what I think now represents a division of the ninth circuit of appeals that would make a lot more sense than proposals that had earlier been made.

As the Senator from Montana knows, there have been numerous hearings and numerous substitutions as to how to divide the circuit, hearings being conducted almost every 5 years, 1984, 1990, 1995, not to mention the hearing of the Hruska Commission back in 1993. I am sure the Senator from California winced a little bit when the Senator from Nevada said that Hruska recommended dividing the State of California into two parts.

In any event, to the first point. The Senator from Nevada said that this would be a rather odd looking circuit, stretching from the tip of Alaska to the southern boundary of Arizona. I would note that that is exactly what the north and south boundaries of the ninth circuit today are. It stretches from the northern tip of Alaska to the southern boundary of Arizona.

This new circuit would be precisely the same. What it would not have is the extreme western part of the trust territories, the States of California and Hawaii. The States of Arizona and Alaska, those would be made part of the new twelfth circuit. The remainder of the ninth would remain the same, but be part of the new twelfth circuit.

So it does not seem to me that represents some strange division, but rather a commonsense way of dividing the circuit in order to operate more efficiently. What we are talking about is a caseload which would be split roughly 60 to 40, with the States of California, Hawaii, and the Trust Territories.

Mr. President, to show you how much the State of California dominates the ninth circuit today, it dominates it by virtue of the fact that it has by far and away the largest amount of the caseload and the largest population. The ninth circuit itself represents by far and away the largest circuit in the country. It spans nine States and two territories, covering 1.4 million square miles, serving the population of 45 million people. The next circuit in size by way of illustration is the sixth circuit, serving fewer than 29 million people. Every other circuit serves fewer than 24 million.

Mr. President, the Census Bureau estimates by the year 2010 the population of the ninth circuit will be more than 63 million, a 40-percent increase. That is in just 15 years. Everyone who studies the issue understands that sooner or later that the size of the ninth circuit will have to be dealt with.

As long ago as 1993 the Hruska Commission was suggesting a division of the circuit. In the ninth circuit there are 28 judgeships there today, and 13 active senior judges. The court has asked for 10 additional judgeships, which would make 38 —excuse me—I think there are about 10 senior circuit judges right now. So in addition to the 28 existing, and 13 senior judges, the court has asked for an additional 10, which would put it close to the 50 mark in terms of the number of judges that would be deciding cases when those additional 10 are granted.

As a result of the large number of judges in the circuit, there are divisions within the circuit unlike other circuits. It is impossible for all of the judges to know what each of the judges is deciding. It is also impossible for the court to sit en banc, as the Senator from Nevada noted.

I will state from the beginning, that I think that the ninth circuit has done a good job and the presiding judges of the ninth circuit have done a good job under very difficult circumstances in managing the caseload of the circuit. They have tried to institute efficiencies which have enabled it to do its job notwithstanding the huge amount of area and population under its jurisdiction and the large number of cases coming to it as a result. So my discussion of the court's handling of its caseload is in no way meant to be a criticism, Mr. President. If anything I would take my hat off to the presiding judges, who have done a good job under the circumstances. But facts are facts.

This is a circuit that has never been able to have an en banc hearing because the number of judges are simply too great. You do not have all 26 judges or 28 judges sitting down at the same time to hear a decision or an argument based on a decision of the 3-judge panel, which is what the courts ordinarily sit on.

As a result of the ninth circuit, you end up with 11-judge en banc hearings, unique among all of the other circuits. What that means is essentially by a luck of the draw, your decision is reviewed not by the entire circuit but by 11 judges in the circuit. I will come back to that point in just a moment.

One of the questions about the splitting of the circuit is whether it would make much of a difference. I think that depends on what you define the problem as. A part of the problem is the large caseload.

The Senator from Nevada makes the point that until we add more judges, we will not know whether that problem has been resolved. But that is not the only problem, Mr. President. As a matter of fact, size itself is just part of the problem. As I noted, adding more judges might help to resolve more cases, but it does not do anything about the problems that are cropping up in this large circuit as a result of judges not being able to keep track of what each other are doing and what the various 3-judge panels are doing. This has created opportunities for intracircuit conflicts. It has also meant there are more per curiam decisions. Judges usually write opinions. And an average is more than a fourth of the cases result in opinions being written. In the ninth circuit, it is down to about 19 percent of the cases that actually have opinions written.

So with that low number of cases in which opinions are written, it is difficult for the judges to keep up with the decisions that have been made by the other three-judge panels, and it is not always the case they can clearly follow or clearly determine the circuit's precedent has been followed when cases are simply decided without the benefit of an opinion.

This is also rather maddening for the litigants and for the lawyers. It is, I am sure, understandable that if litigants spend thousands of dollars to

take a case to the circuit and say, ''You win in the lower court and take it on appeal to the ninth circuit,'' and they reverse without opinion—all they say is, ''The case is reversed.'' You do not know why they reversed the case. It is more than maddening because you ordinarily have to make decisions based on what the law is. If the court has not told you why it reversed, then you are not going to know what you have to do in the conduct of your business or other affairs to comport with what the law theoretically is. It is difficult when you do not have an opinion telling you what you should be doing. That is one of the problems that lawyers have told me has caused them to be unclear about advice that they give their clients with respect to the question of whether or not to appeal in a case.

This is very difficult for clients because you may lose a case at the lower level and wonder whether you should expend the time, energy and money to take the case to the circuit court. If it is unclear what the law is going to be, it is kind of a crap shoot, to use the phrase that a lawyer in Arizona used with me. He said, ''With so many judges, it is a crap shoot as to what kind of a panel you get.'' In a circuit that has six judges, as mentioned earlier, you have a pretty good idea of who will be sitting on your panel or what its likely composition will be. If you have a number of possibilities, as exists in this particular circuit, you have no idea what the composition of the court is going to be. There are 3,276 possible combinations of panels on this court—3,276. It is impossible for a litigant to have any idea who the judges will be and, therefore, what to expect. Given the broad range of ideology within this particular circuit, therefore, a lawyer hardly knows how to advise his clients.

Assume you have a decision from a three-judge panel. The question is, do you try to take it en banc? But you have no idea who the 11 en banc will be and whether it will be a fair reflection of the circuit. Since there are not as many written decisions as there are in other circuits, you also find it more difficult to follow the precedence of the court. It is more difficult for lawyers to advise their clients on whether to take an appeal or not in the ninth circuit than it is in most of the other circuits.

Much has been made, Mr. President, of the length of time that it takes for a case to get to hearing, and the ninth circuit is the worst or second worst, depending on how you count in this regard. There has been a statistic cited, and I think cited by both the Senator from Nevada and the Senator from California, that suggests, actually this court is fairly quick. That is the time from the time the judges get the case to the time their decision is published. That is the only area of the nine areas in which this circuit does particularly well.

There is a reason for that: They do not write as many opinions. It is fairly easy once you decide the case to notify the litigants of the decision if you do not have to write an opinion expressing your view. I suspect that is the reason why that particular statistic is one in which the ninth circuit looks good. Otherwise, the ninth circuit is the slowest from filing of the last brief to the hearing or submission of a case. It takes about 4 months longer to complete an appeal compared to the national median time. It is over 14.3 months, as I understand.

In the other indicia of speed, the court does not fare well compared to the other circuits. That is something that more judges would do something about. You have to wonder how many judges in number you get to for the court still to function adequately. At the hearing we held a few months ago on the subject, judges from the nine-county circuit were asked that question, and they acknowledged there was a point at which, obviously, the court would have too many judges. It would be too big and have to be split. There was disagreement, as you might imagine, on exactly what the appropriate number is.

I mentioned the fact that there is inconsistency between the panels, which results from the fact that there are so many different possible combinations in the ninth circuit. That is the thing that worries the attorneys for the litigants so much.

I also think it is instructive, Mr. President, to determine how the Supreme Court has dealt with the opinions from the lower circuits, from the circuit courts in the lower courts. It may be some evidence of a court that is overburdened that it is reversed frequently, and in this regard it is interesting that the ninth circuit has one of highest reversible rates of any of the circuits. For example, last year in the cases that the U.S. Supreme Court decided in the term ending June 29, 1995, according to the Court's records, 82 percent of the ninth circuit cases heard by the Court were reversed—82 percent. That is not a very good standard of success, I suggest, Mr. President.

Now, lest people jump to the conclusion that this means that the ninth circuit cannot get it right 82 percent of the time, let me hasten to note that this is of the cases that the Court takes. By definition, the cases that the U.S. Supreme Court takes on review are the more difficult, the more controversial cases. So we should not believe that being wrong 82 percent of the time represents the full caseload of the court. That is not the case. We are talking about the number of cases that the court has been reversed in by the U.S. Supreme Court, of those cases taken by the Supreme Court. Again, by definition, those are going to be the more difficult cases. Still, being reversed 82 percent of the time is not a particularly good record.

I suggest that an article recently appearing in the Wall Street Journal may indicate a reason why this is so. It may be that some members of some of the courts do not have the high regard for precedent that we would like to see in our circuit court judges. It may also be, as I noted, that this court simply is particularly burdened.

Just a few day ago, last Friday, March 15, the Wall Street Journal carried an article I found fascinating but also very troubling. The headline of the story is, ''Bench Pressure: Federal Appeals Judge Embraces Liberalism in Conservative Times,'' and a subheading, ''Ninth Circuit's Reinhardt Discovers New Rights That Appeal to the Left.''

The story, written by Paul Barrett of the Wall Street Journal, discusses a most recent ruling in which Judge Reinhardt was the author of a lengthy opinion, according to the Wall Street Journal, announcing that the terminally ill now have a right to die with the help of a doctor. According to the Wall Street Journal, ''The mammoth 109-page ruling struck down a Washington State ban on assisted suicide—the first such action by a Federal appeals court.''

They quote the author of the opinion, Judge Stephen Reinhardt, as saying, ''I think this may be my best ever.'' The article goes on to discuss the record and career of this very bright, very intellectual and, according to the article, very liberal lawyer-judge, who the article says is widely respected by friend and foe as a crafty advocate for his left-leaning views.

Mr. President, I do not know Judge Reinhardt or the degree to which his views may inform his decisions, but one indication that the ninth circuit might be overruled as often as it is could be reflected in the reported comments of Judge Reinhardt about the current U.S. Supreme Court, and suggests that there is perhaps not enough respect for the precedent coming from the U.S. Supreme Court. Remember, Mr. President, that the judges on the circuit courts are supposed to be not making new law but simply applying the precedents of the U.S. Supreme Court.

According to this article, after discussing the fact that Judge Reinhardt has been somewhat criticized by some of his opinions, he says it has happened many times that he has been reversed by the Supreme Court, and then is quoted as saying, ''There's nothing I can do if that court is run by reactionaries.'' ''There's nothing I can do if that court''—meaning the U.S. Supreme Court—''is run by reactionaries.''

Mr. President, I hope that Judge Reinhardt was kidding if he is suggesting that the U.S. Supreme Court is run by a bunch of reactionaries because those who have defended the current composition of the ninth circuit have correctly said that the circuit courts should not reflect the attitude of just their own area. That is not really how circuit judges should be selected because, after all, they are not supposed

to declare the law just for their area; they are supposed to be declaring the law of the United States as enunciated by the precedence of the U.S. Supreme Court, the Constitution of the United States, and the laws of the United States. Those are not defined by any kind of regionalism. So they correctly note that the judges are supposed to be declaring the law, informed by those three sources.

Yet, here is a judge who at least is quoted in the Wall Street Journal last Friday as apparently referring to the current members of the U.S. Supreme Court as ''a bunch of reactionaries.'' As I said, I hope he was kidding. It is probably not a very judicious thing for him to have said, and I hope that, in retrospect, he will reflect upon that and perhaps pronounce himself chagrined that that perhaps off-the-cuff comment found its way into print. I hope that will be his reaction.

But, as I said, it might illustrate why this circuit has been reversed as many times as it has been. There are stories, which I cannot confirm, that many of the opinions from this particular judge in this particular court are in some sense red-flagged for their review. The high percentage of cases reversed from the ninth circuit may suggest that that is true, and we may have a suggestion of why that is so.

Now, that does not suggest that the answer to this is the split in the circuit. I do not make that claim here. But I do find it interesting that the opinion written by Judge Reinhardt in this particular matter, this right-to-die case, was written for an en banc panel which was hardly representative of the court as a whole—which illustrates the problem with an en banc hearing of less than the entire membership of the court—unique to the Ninth Circuit Court of Appeals and only the case because the court is too big to have all of the judges sitting by themselves.

The calculations have been done here, and what we find is that in this particular decision, the limited en banc panel was comprised of six Democratic appointees and five Republican appointees. The ninth circuit has 15 Republican appointees and 9 Democrat appointees. So the limited en banc panel in the right-to-die case had 5 of the 15 Republican appointees and 6 of the 9 Democratic appointees.

Now, Mr. President, I am not suggesting that being appointed by a Democrat or a Republican President will dictate how you decide a case either. But I do suggest that of all of the indicators of how a case might be decided—the State from which a judge comes, the age of the judge, the sex of the judge, the race of the judge, the color of hair of the judge, or whatever criteria you may want to look at—the party of the President appointing the judge probably has more to do with the decisions of that judge, day in and day out, than any other single factor.

Therefore, it is not irrelevant to look, in this particular case, at the political composition of the panel. Again, I am not suggesting that that is what caused the decision in this case. But it is a most controversial decision, the first of its kind ever, and, I suspect, the kind of case the Supreme Court will want to take a look at.

My point in all of this, Mr. President, is that a court that gets so big that you cannot even have an en banc hearing of all of the judges, which can result in a skewed composition of en banc panels, can result in skewed decisions, can result in overruling in many, many cases. That is what we have found with respect to the Ninth Circuit Court of Appeals. So it is not just the fact that we have not given them the 10 additional judges they want that creates a problem with a court of this size.

Let me dispel some of the other notions that have crept into this debate so far. One is that this is going to be costly. I find it interesting that a Congress that frequently spends money like it is going out of style is suddenly concerned about cost. But let us put that in perspective. Justice, of course, should be one of the highest priorities of this Congress. I, for one, Mr. President, do not want to skimp when it comes to providing for justice. I have voted against a lot of appropriations bills since I have been in the Congress, but I cannot recall a bill that I voted against that funded the judiciary. I believe strongly in enforcing the laws of our country and ensuring the judiciary has what it needs.

The cost of this particular bill, according to the General Accounting Office, for the construction of the new offices that would be necessary, is $18 million—$18.1 million to be precise. That is just 0.68 percent, which is less than 1 percent, slightly over half of 1 percent of the annual budget of the judiciary last year, about $2.5 billion. Next year, we are looking at $3.1 billion. So in the year it will occur, it will be much less than 1 percent of the budget. There would be a small start-up cost of about $3 million, but that would be a one-time-only cost.

It has been noted that the chambers in San Francisco and Pasadena have recently been renovated and that they could accommodate more judges. The fact is that judges of the ninth circuit today sit in, have chambers in, and argue cases throughout the circuit—in Phoenix, in San Francisco, in Pasadena, in Portland, in Seattle. That is the way it is done today. I think it would be nice if the judges moved to the site of the headquarters of the circuit and sat there and had their chambers there, but they fly around the country today. That is why you only have 5 chambers in San Francisco, even though it is the headquarters of the circuit with 28 sitting judges, with 10 more requested. In addition, there are eight offices in Pasadena, the other place of primary headquarters of the circuit.

So you have a situation that could accommodate additional judges as they are appointed, and, certainly, at least half of the 10 judges that have been requested would have to be assigned to California. Apparently the headquarters there could accommodate those judges.

It is also noted that the bar associations of most of the States, and the Federal Bar Association itself, oppose the split of the circuit. That is not surprising, although I note that in my State of Arizona, there is very definitely a split. The so-called organized bar, the political organization, has written a letter in opposition. Of the lawyers and judges I have talked to, I find a real split, depending upon their point of view. I do not want to suggest that we should, however, simply follow the advice of the lawyers and the States on this. While I have not taken a poll of all of the lawyers in Arizona—for my sake anyway—I do not think that would be the determining factor, in my view. I understand the point others have made that bar associations may oppose it. I do not find that to be a persuasive reason to not support the amendment of the Senator from Montana.

Another question is that Phoenix is kind of out of the way. Those of us in Phoenix do not really think that. In any event, it is about $38 or $39 to fly from Las Vegas, NV, to Phoenix, the home of my colleague from Nevada. It is pretty cheap on at least three or four of the airlines to get to Phoenix. It does not take very long at all. The point here, I think, is missed, and that is that cases are argued throughout the circuit. That would remain the case whether the circuit is split or not.

It is also the case that the law would remain the same. I think the Senator from Nevada made a good point in noting that his own State did not have a law school and that many of the lawyers there are educated in California. It is important that the law remain the same. It should be noted here that when the fifth circuit was divided into the fifth and eleventh circuits, they made the decision, correctly, to keep the law of the previous circuit. That has been done. Our hearing indicated, and people who testified at our hearing indicated, that it worked very well. Of course, that is the way it would be done here, as well. We would not have to dictate that result. The judges on the circuit themselves would correctly make the decision as a result, even though the court would be split into two parts. The law that had been built up from the ninth circuit would, of course, continue to be the law governing the new twelfth circuit as well. That should not be a factor.

Mr. President, there are several other things I think we can say about this. But let me simply conclude with this point. This is not judicial gerrymandering, because the amendment of the Senator from Montana would result in a division that just about evenly divides the judges on the court, and they could go wherever they wanted to

between the ninth circuit and the twelfth circuit. If you go by their State of origin, presumably half would go to California and the other half would remain or would go to the twelfth circuit in the States from which they come.

So you would have a division geographically that is almost identical to the division that you had today. And, by the way, for those who are interested, the division politically would be almost identical as well. So both circuits would end up with just as many Republicans and Democrats and percentage as the court today has. And, in any event, as I said, this is not an effort to put all of the conservatives in one court and all of the liberals in another. I think that is illustrated by the fact that perhaps at least from public accounts one of the most conservative leaders on the ninth circuit and one of the most liberal leaders on the ninth circuit would both remain in California under the divisions imposed here.

So there is not an effort at judicial gerrymandering. It is an effort to do finally what countless studies have suggested; that is, sooner or later this circuit is going to have to be divided—going back well over 20 years. I suppose we could have another study, and I am sure it would be informative. But I question whether the Senate and the House would act on the study—at least would any time soon. And, therefore, at least this legislation is an attempt to get the ball rolling and make something happen so we do not continue to have the circumstance we have today.

A study, by the way, is also I think prone to the same kind of thing that has occurred in the past where you have people doing the studying themselves. I would suggest that, if there is going to be a study, it should not be done by the very people who are involved; that is to say, the judges on the ninth circuit. There is a certain incestuousness that develops over time and a desire to do it the way we have been doing it, and liking the way it is done. It seems to me, if there is going to be a fresh look at this, it ought to be done by people who can with some expertise view the situation from some distance as well as relying upon the expertise of those who are on the inside.

I think also that it should be composed of people who are not just the judges by also litigants, members of the bar who practice before the circuit, and perhaps people who have other expertise to bring to bear.

But in the end, as the Constitution requires, it is the U.S. Congress that has the responsibility here to decide on the composition of the so-called lower courts. So it is our responsibility to make this decision, Mr. President.

I simply want to conclude by complimenting the Senator from Washington, Senator GORTON, and also the Senator from Montana, Senator BURNS, for bringing this matter to the attention of the Congress, and for getting the bill through the Judiciary Committee. I urge our colleagues to review the report of the committee. It is a good report, a good description of the issue I think, and they can all benefit by reading that report and then determine whether additional study is necessary, or whether it is time to take action now.

I hope that in the comments that I have made I have made two or three things clear. No. 1, that I am not criticizing the court or its administration. As I said about four times, it has done admirably well under the circumstances. The circumstances are what bring the difficulty. I am suggesting that adding more judges is not just the answer to this problem. So we should not think that simply funding more judges will solve the problem here.

The problem here is the point at which any circuit becomes too large to function in the way intended. Virtually everybody who has talked about this—opponents and proponents alike—agree that there is a point beyond which the court is too large. Many have determined that that point has now been reached. Others think it is around the corner a bit. But in any event, we all understand that that is a problem which this Congress has to address. So whether it is done by this legislation, or whether it is done by a committee, clearly one of the probable recommendations has to be a division.

And the third and final point is that of all of the ways that have been considered to divide the court—dividing California in the middle, cutting off Arizona and sending it to the tenth circuit, allowing Nevada, California, Hawaii, and the trust territories, and perhaps others to constitute another circuit—a lot of different iterations have been proposed. The only one that has made sense to the people with whom I have discussed the issue in Arizona—judges, lawyers, and litigants—is the proposal that the Senator from Montana has presented to us today. And it is, therefore, that proposal and only that proposal which I am willing to support, and urge my colleagues, therefore, to consider that proposal as really the only viable alternative to the situation that we have today.

AMENDMENT NO. 3533

Mr. BOND. Mr. President I would like to take a moment to outline what the increases for EPA are in the Bond-Mikulski amendment which we will be voting on tomorrow. The amendment is a complete substitute for the pending Lautenberg amendment.

First, the amendment takes the $162 million of EPA addbacks included in title IV of the bill, removes their contingency status, and finds offsets for them. These four provisions are:

[In millions of dollars]

Safe drinking water State revolving fund	50
Clean Water State revolving fund	50
EPA buildings and facilities	50
Program & Management	12

Second, the amendment then provides another $325 million for EPA in the following manner, also fully offset:

[In millions of dollars]

Safe Drinking water State revolving fund	125
Clean water State revolving fund	75
Superfund	50
Operating programs	75

Thus the total new noncontingent funding for EPA is $487 million—all now fully offset. The amendment attempts to continue our ongoing efforts to force the EPA to set priorities and to spend their resources in areas of greatest need. In particular—the unfunded mandates that the State revolving funds are designed to address.

In the Bond-Mikulski amendment, of the additional $487 million, the two State revolving funds receive $300 million; Superfund is given $50 million; program management $87 million, and building and facilities the remaining $50 million.

I believe this is a fair compromise and should be supported.

Mr. HATFIELD. Mr. President, we are in the process of trying to clear some other amendments which we have—11 amendments that we had clearance at one time, or agreement—and other intervening actions have now made it impossible to adopt those amendments at this moment.

Mr. President, I also indicate that we were here 3 hours today waiting for amendments, as we were most of Friday. I am very grateful to the Senators who have just completed the colloquy on this ninth circuit subject for at least bringing up one of our amendments. Very frankly, I have more important business pending in my office than I have waiting for Senators to appear on the floor and offer their amendments.

I have to also say, again in the context as chairman of the Appropriations Committee, that we are expected to create miracles around here by completing this omnibus package, going to conference with the House of Representatives, getting that resolved, and getting the conference reports adopted before midnight Friday this week. I am not a miracle person. I cannot commit miracles. Others in history have. But I am not such a person.

Also I note that the Senator from Arizona, the Senator from Idaho, and myself as western Senators—and the Senator from Nevada—four western Senators find it increasingly difficult due to the plane schedules to get out to the West and back. And we all would like a 3-day workweek in order to do that. But we are here to do business. And I would be highly tempted to do a bedcheck vote right now of how many Senators are in town to do business.

So I think it is imposing upon our time, and it is imposing upon the time of the requirements with the conference of the House. Therefore, it is an imposition on the House as well for us to then say everybody comes back to Washington and they will come running in here with their amendments on Tuesday, and they have to all be acted upon by a certain time on Tuesday. I

can see it now. They will come to Senator BYRD and myself where they do not have time to debate their amendments, or get them acted upon, and they will say, ''Include my amendment in the managers' package.''

I am going to look with great reservation on such requests because that is not again the procedure by which we should enact some of these very important amendments or dispose of them.

I stood here before with such pleas to my colleagues. Maybe I could get a going away present and have them all come immediately and we will complete this bill this afternoon because this is my last year to stand here and manage an appropriations bill. But having been gentle in my remarks in so urging our colleagues, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been noted. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENTS NOS. 3499, 3510, 3518, 3529, 3549, AND 3550, EN BLOC, TO AMENDMENT NO. 3466

Mr. HATFIELD. Mr. President, I have a group of amendments that have been cleared that I now send to the desk. I ask unanimous consent that they be considered en bloc, agreed to en bloc, and the motions to reconsider be laid upon the table.

I emphasize, Mr. President, that these are six amendments that have been cleared on both sides of the aisle.

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

So the amendments (Nos. 3499, 3510, 3518, 3529, 3549, and 3550) were agreed to.

The texts of amendments Nos. 3549 and 3550 are as follows:

AMENDMENT NO. 3549

On page 754, before the heading on line 5, insert:

SEC. . (a) In addition to the amounts made available in Public Law 104–61 under the heading ''Research, Development, Test and Evaluation, Defense-Wide'', $50,000,000 is hereby made available to continue the activities of the semiconductor manufacturing consortium known as Sematech;

(b) Of the funds made available in Public Law 104–61 under the heading ''Research, Development, Test and Evaluation, Army'', $7,000,000 are rescinded;

(c) Of the funds made available in Public Law 104–61 under the heading ''Research, Development, Test and Evaluation, Navy'', $12,500,000 are rescinded;

(d) Of the funds made available in Public Law 104–61 under the heading ''Research, Development, Test and Evaluation, Air Force'', $16,000,000 are rescinded;

(e) Of the funds made available in Public Law 104–61 under the heading ''Research, Development, Test and Evaluation, Defense-Wide'', $14,500,000 are rescinded; and

(f) Of the funds rescinded under subsection (e) of this provision, none of the reduction shall be applied to the Ballistic Missile Defense Organization.

AMENDMENT NO. 3550

(Purpose: To provide for the transfer of funds for carrying out training and activities relating to the detection and clearance of landmines for humanitarian purposes)

Insert at the appropriate place:

SEC. . Of the funds appropriated in Title II of Public Law 104–61, under the heading ''Overseas Humanitarian, Disaster, and Civic Aid'', for training and activities related to the clearing of landmines for humanitarian purposes, up to $15,000,000 may be transferred to ''Operations and Maintenance, Defense Wide'', to be available for the payment of travel, transportation and subsistence expenses of Department of Defense personnel incurred in carrying out humanitarian assistance activities related to the detection and clearance of landmines.

AMENDMENT NO. 3496

Mrs. MURRAY. Mr. President, I rise as a cosponsor of the amendment to change the name of the Walla Walla Veterans Medical Center in Walla Walla, WA, to the Jonathan M. Wainwright Memorial VA Center.

General Wainwright was born at Fort Walla Walla and was a member of the 1st Cavalry after graduating from West Point. He served in France during World War I and was awarded the Congressional Medal of Honor in 1945 by President Truman for his service in World War II. He spent nearly 4 years in a prisoner of war camp in the Philippines and was known as the Hero of Bataan and Corregidor. General Wainwright was a true war hero and won the praise and respect of all Americans.

Mr. President, the people of Walla Walla, WA, want this name change to honor a war veteran and local hero. In May, they are dedicating a statue in his honor and would like to dedicate the name change of the hospital at the same time. The entire Washington State congressional delegation supports this change. And all of the veterans service organizations in Washington State support the change.

I urge my colleagues to support changing the name of the Walla Walla Veterans Medical Center to the Jonathan M. Wainwright Memorial VA Medical Center, and to allow this war hero the recognition he so rightly deserves.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ASHCROFT. 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. ASHCROFT. Mr. President, I rise to speak in regard to the matter under consideration, the appropriations bill, that this body is considering, and I ask unanimous consent to speak for 10 minutes.

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

Mr. ASHCROFT. The situation we debate today concerning our inability as an institution to control spending is not a situation about allocating spending or the responsibility to pay for spending from one group in our society or culture to another. We are not talking about whether the rich should pay for the spending or the poor should pay for the spending. All too frequently, we find ourselves talking about the displacement of the costs which we incur from our current culture to the culture of the future, to the next generation.

We literally, in so many cases, find ourselves debating about the expenditure of the earnings of the next generation, because when we go into debt, we break our responsibility to pay for that which we consume. When we go into debt, we really ask the next generation to pick up the tab.

No family in America finds its children encumbered by the debts of their parents. That is against the rules in our society. No parent, no matter how irresponsible the parent is, can cause an enforceable obligation to fall upon the children. We just say that is inappropriate. However, when it comes to us collectively as a group of individuals, we can spend as recklessly, apparently, as we like and cause the greatest of debts to fall upon the next generation.

I find that to be unwise and counterproductive, because it means that instead of leaving them with assets, we are leaving the children with debts. That is very bad for the future of the country. I find it to be immoral to spend the money and resources of the next generation without the consent of the next generation.

We have tried over and over again as a body here in the U.S. Senate to deal with this problem of recurring debt. We had the Gramm-Rudman-Hollings Act, the Gramm-Rudman Act II, then we had the budget deals of 1990 and 1993. We have not been able to get one Senate to bind the next Senate successfully with discipline.

As a matter of fact, this past year we had a substantial debate about whether or not we should have a balanced budget amendment. The occupier of the chair and I firmly agree we need a balanced budget amendment to the Constitution to bind, not only ourselves, but future Senates to the discipline of paying for that which we consume.

Unfortunately, there are enough Members of this body who resist that, saying that we should not bind future Senates, that we should not bind future Congresses to live with the discipline of paying for that which is consumed. Equally unfortunate, as a matter of fact more unfortunately, is the willingness of those same people to bind future generations to debt.

So what we have is a Congress unwilling to bind itself to discipline but which finds itself more than willing to bind the next generation in debt. It is a kind of bondage which will restrain the next generation substantially in the way it consumes its resources and the way it allocates what spending it ought to have the right to allocate.

The next generation will end up allocating that spending to the payment of our debts.

It appears from this debate that we are not even able to successfully bind this Senate to the limits it set for itself. Every year the Senate passes a budget resolution to cap our spending. We passed a budget reconciliation act, the so-called Balanced Budget Reconciliation Act of 1995.

That act would have saved enough money by slowing the increase of spending in Government to have enabled us to reach a balanced budget by the year 2002, if the President had not vetoed it. We all know what happened. President Clinton, after alleging compellingly and consistently his desire for a balanced budget, had the opportunity, the first opportunity in a quarter century to sign one, and he vetoed it.

As introduced, the omnibus appropriations bill might have allowed us to achieve the first-year target for reducing the deficit set up by the Balanced Budget Act of 1995, but it did not achieve that by reducing the rate of Federal spending as we had intended.

Instead, this pending bill, it is my understanding, increases the rate of spending by displacing some of the overall savings which we had hoped to achieve over the next 7 years under the Balanced Budget Act. That means we will no longer be able to count on these funds which were gathered from outyears, stolen, or taken from outyears, to help balance the budget over the next 7 years.

This malady, or this pathology, this consistent way of doing business is not a stranger to the Congress, which has always been gathering to itself spending, deferring from itself savings, and displacing from itself the payment of its responsibility.

If that were not bad enough, look at what is happening now. I think it is time that we need to stand firm. It is time to prioritize programs, and it is time to make tough choices, protect at least our deficit target if not the target for slowing spending. We are somehow experiencing in this body a collapse of will. We cannot allow that to happen.

Each time we add more spending to this bill, we push ourselves further away from achieving a balanced budget that we had hoped to achieve under the Balanced Budget Act. We are throwing away the savings from slower spending which we had worked so hard to achieve and we cast votes to achieve last year.

We should not be spending more of the taxpayers' money that is included in this bill. We should be spending less. Are the spending limits really so onerous, are they so draconian, are these limits so oppressive when this bill includes a couple hundred thousand dollars for the expenses of the Commission for the Preservation of America's Heritage Abroad? Are these spending limits that we need to impose really onerous in this bill when they provide for hundreds of thousands of dollars for the purchase of passenger cars for the International Trade Administration bureaucrats abroad at $30,000 per vehicle designation, as though that is an exercise in fiscal restraint?

During the first session of this Congress, in the deliberations concerning the adoption of a balanced budget amendment to the Constitution, we frequently heard that there was no need for us to amend the Constitution. Why amend the Constitution when we, as reasonable individuals sent here by voters who want a balanced budget, when we can exercise the restraint, it was said, in order to balance the budget, in order to provide a stable fiscal therapy for the next generation instead of a malady for the next generation?

Let us just do the right thing. We do not have to have a balanced budget amendment to the Constitution, we were told; there is authority for the U.S. Congress to do what is right and to be able to live within our means and that we should do so immediately.

Frankly, it is not such authority that this Congress lacks. We do have the authority. The truth of the matter is that we lack the discipline. We have not had the will, we have not had the courage. I see it eroding as we amend this bill over and over to add spending, and we do it from savings from the years in which we would need to exercise restraint in order to balance the budget by the year 2002.

Money was and is the source of Government's basic power. The tale of history bears out this truth undeniably. The Magna Carta prescribed that the king could not impose taxes except through the consent of the Great Council. Charles I was executed because he tried to govern without seeking the consent of Parliament in spending public money. Let us not forget that the American Revolution itself was rooted in the relationship between taxation and representation. Very frankly, the taxes we are spending now are the taxes of the next generation, and they are not represented in this Chamber.

Congress today does not have to vote to raise more revenue in order to spend more money. Unfortunately, our legislature takes the debtor's path of spend and beg, spend and plead, spend and borrow, and borrow against the future of the young people of America. Our current system of government lets the Government spend on credit and sign the next generation's name to the dotted line. When their credit card becomes due, it is the American people who are confronted with the dilemma. They can either send more money to Washington to pay the bill or default on the debt incurred in their name.

When the American people expressed the belief that Government is out of control, as they did in the November election of 1994, they indeed were correct. For too long we have been out of control. This body has assembled to satisfy the appetites of narrow interests at the public's expense. Protracted deficit spending empowers the central Government with the means to undermine our basic liberties. The American people are understandably fed up with the Congress that spends the yet unearned wages of the next generation.

Mr. President, deficit spending is not only a threat to our own prosperity here and now, but it undermines and threatens substantially our children's future. It is the method by which Washington's imperial elite has circumvented the public, the law, and the Constitution. Deficit spending allows beltway barons to run this country without regard for the people.

Whether it is pork projects or political payoffs, the Washington elite know how to play the game. The playing of the game must end. We must develop the will, the intensity, and the capacity to enact a balanced budget.

Mr. President, as a freshman Senator, I may have not yet mastered the rules of the Senate budget process to the same extent as many of my learned colleagues, but as a former Governor who balanced budgets on a regular basis without raising taxes, I have more experience than most in this Chamber at achieving a balanced budget.

Something is wrong with the system when an amendment which increases spending by $3.1 billion can be brought forward for a vote while an amendment proposed by the junior Senator from Minnesota, Senator GRAMS, to put the savings that we achieve into a deficit lockbox instead of spending it on other programs, is deemed to be a violation of the Budget Act. It is time for us to have our House in order. It is time for us to have an order which allows us to be orderly in this House.

A good friend of mine says something which is undeniably true: Your system is perfectly designed to give you what you are getting. It may not be what you are wanting or intending, but the system is giving you what you are getting, and it is perfectly designed to do it or you would not be getting that result.

What have we been getting? Instead of discipline, we have been getting debt; instead of a restrained Government, we have been getting an intrusive Government. These are not outcomes that are lauded by anyone. We all know that these are outcomes which threaten not only our own existence, but they threaten the next generation's ability free people. If we do not like the outcome, if we do not like what we are getting from the system, it is time to change the system.

I think it is time for us to consider the kind of remedy which has been brought forward by the Senator from Minnesota and the Senator from Arizona, together, in the lockbox provision. If we do not like what we are getting—debt—and we need and want discipline, we should change our structure in favor of discipline, rather than a

structure which favors debt and is prejudiced toward debt, being institutionalized and solidified over and over again.

Mr. President, I thank you for allowing me the opportunity to speak. I want to say that because I believe this omnibus appropriations bill which is now before the Senate will impair our ability to reach a balanced budget in the year 2002, I intend to vote against it. I intend to vote against it because I want to vote in favor of the next generation and their capacity to allocate their own resources. I want to vote in favor of discipline and against debt. I want us to have not only the ability to put our House in order, I would like to have us enjoy the structure which would require us to keep our House in order.

I hope that other Members of this body will similarly review the evidence as I have and come to a similar conclusion; a conclusion that it is not time for us to additionally burden the next generation, but to exercise the kind of restraint and discipline which will provide for them investment and opportunity, rather than debt.

I thank the Chair.

COMMENDING JEAN SCHRAG LAUVER

Mr. CHAFEE. Mr. President, today I come to the floor in what you might call a bittersweet mood, and that is to announce to my colleagues the retirement of one of our most trusted Senate advisers, Ms. Jean Lauver, who has served on the Environment and Public Works Committee for over 21 years.

Together with Senator BAUCUS, the ranking Democrat, and the entire membership of the committee, I send a resolution to the desk to express the gratitude of the committee and of the Senate to Jean Lauver for her years of service to the U.S. Senate, and will later ask for its immediate consideration.

Mr. President, Jean was born on a farm in Sioux Falls, SD, and graduated from Goshen College in Indiana and later received a master's degree in education from George Washington University. After serving as a school teacher in Puerto Rico, Jean joined the Environment Committee staff in 1974. Jean has been with us ever since.

Anyone who knows her also knows that she is the undisputed expert in the Senate on Federal highway issues. Jean and the committee have been through scores of pieces of legislation over the past many years. There have been some great successes: The Surface Transportation Act of 1987, the so-called ISTEA bill of 1991, just to name two. There have been scores of tough battles, as well, on transportation safety issues, demonstration projects, and billboards on our highways and byways. Over the years, I have no doubt Jean has seen it all.

Yet, after all the hearings and all the bills, the meetings in room 468 Dirksen and S–211 of the Capitol, what we will all remember most about Jean is her unflappable professionalism, her extraordinary knowledge and memory, and her dedication to doing a good job for Republicans and for Democrats alike.

Without question, Jean is one of the most extraordinary staffers that I have had the pleasure to work with. So it is with great admiration that we wish Jean and her husband, Hesston, and their son, Jason, all the best in their future endeavors. I might add that Jean and her family are off to a new challenge, and that is owning and operating a bed and breakfast in Goshen, IN. If Jean's service to the Senate is any indication, you can be sure that the Prairie Manner B&B in Goshen will be top notch. I am tempted to give a telephone number of the new B&B, but that might be considered advertisement. For anybody that is interested, I have her telephone number for the B&B they are establishing called the Prairie Manner in Goshen, IN.

I know all Senators join with me in wishing Jean good luck and thanking her for her dedicated service to the Senate and this Nation of ours. Jean, we say thank you.

I urge the adoption of the resolution, and I ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 232) to commend Jean Schrag Lauver for her long, dedicated, and exemplary service to the United States Senate Committee on Environment and Public Works.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

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

The PRESIDING OFFICER. Without objection, the resolution is agreed to.

The resolution (S. Res. 232) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 232

Whereas Jean Lauver has expertly served the Committee on Environment and Public Works over the past twenty-one years, both as a majority and minority professional staff person;

Whereas Jean Lauver has helped shape federal infrastructure policy for over two decades;

Whereas Jean Lauver has at all times discharged the duties and responsibilities of her office with unparalleled efficiency, diligence and patience;

Whereas her dedication, good humor, low key style and ability to get along with others are a model for all of us in the Senate; and

Whereas Jean Lauver's exceptional service has earned her the respect and affection of Republican and Democratic Senators and their staffs alike: Now, therefore, be it

Resolved, That the United States Senate—expresses its appreciation to Jean Schrag Lauver and commends her for twenty-one years of outstanding service to the Senate and the country.

BALANCED BUDGET DOWNPAYMENT ACT, II

The Senate continued with consideration of the bill.

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

The PRESIDING OFFICER. The pending question is amendment No. 3533.

Mr. HATFIELD. Mr. President, I ask unanimous consent to temporarily lay aside the pending amendment in order to offer an amendment.

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

AMENDMENT NO. 3551 TO AMENDMENT NO. 3466

(Purpose: To amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes)

Mr. HATFIELD. Mr. President, I send to the desk an amendment on behalf of Senator BURNS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for Mr. BURNS, proposes an amendment numbered 3551 to amendment No. 3466.

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

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

The amendment is as follows:

At the appropriate place, insert:

TITLE IX—RESTRUCTURING OF THE CIRCUITS OF THE UNITED STATES COURTS OF APPEALS

Subtitle A—Ninth Circuit Court of Appeals Reorganization

SEC. 901. SHORT TITLE.

This subtitle may be cited as the ''Ninth Circuit Court of Appeals Reorganization Act of 1996''.

SEC. 902. NUMBER AND COMPOSITION OF CIRCUITS.

Section 41 of title 28, United States Code, is amended—

(1) in the matter before the table, by striking out ''thirteen'' and inserting in lieu thereof ''fourteen'';

(2) in the table, by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

''Ninth	California, Hawaii, Guam, Northern Mariana Islands.'';

and

(3) between the last 2 items of the table, by inserting the following new item:

''Twelfth	Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington.''.

SEC. 903. NUMBER OF CIRCUIT JUDGES.

The table in section 44(a) of title 28, United States Code, is amended—

(1) by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

''Ninth ..... 15''; and

(2) by inserting between the last 2 items at the end thereof the following new item:

''Twelfth ..... 13''.

SEC. 904. PLACES OF CIRCUIT COURT.

The table in section 48 of title 28, United States Code, is amended—

(1) by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

''Ninth ..... San Francisco, Los Angeles.'';

and

(2) by inserting between the last 2 items at the end thereof the following new item:

''Twelfth ..... Portland, Seattle, Phoenix.''.

SEC. 905. ASSIGNMENT OF CIRCUIT JUDGES AND CLERK OF THE COURT.

(a) CIRCUIT JUDGES.—(1) Subject to paragraph (2), each circuit judge in regular active service of the former ninth circuit whose official duty station on March 1, 1996—

(A) was in California, Hawaii, Guam, or the Northern Mariana Islands is assigned as a circuit judge of the new ninth circuit; and

(B) was in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, or Washington is assigned as a circuit judge of the twelfth circuit.

(2)(A) No more than 2 circuit judges in each of the new ninth circuit and the twelfth circuit as assigned under paragraph (1), may elect to be assigned to a circuit other than the circuit so assigned.

(B) An election under this paragraph—

(i) may be only for assignment to the new ninth circuit or the twelfth circuit; and

(ii) shall be made on the basis of seniority.

(C)(i) If the elections of circuit judges under subparagraph (A) result in a greater number of judges for a circuit than is provided under the amendments made under section 903, the number of vacancies described under clause (ii) in the office of circuit judge for such circuit shall not be filled.

(ii) The number of vacancies referred to under clause (i) are the number of vacancies that—

(I) first occur after the date on which such elections become effective; and

(II) are necessary for the number of judges in such circuit to conform with the amendments made under section 903.

(D) The judicial council of the former ninth circuit shall administer this paragraph.

(3) If no election is made by a circuit judge under paragraph (2), and as a result of assignments under paragraph (1) the number of judges assigned to a circuit is not in conformity with the amendments made under section 903, such conformity shall be achieved by not filling the number of vacancies in the office of circuit judge for such circuit that—

(A) first occur after the effective date of this subtitle; and

(B) are necessary for the number of judges in such circuit to conform with the amendments made under section 903.

(b) CLERK OF THE COURT.—The Clerk of the Court for the Twelfth Circuit United States Court of Appeals shall be located in Phoenix, Arizona.

SEC. 906. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.

Each judge who is a senior judge of the former ninth circuit on the day before the effective date of this subtitle may elect to be assigned to the new ninth circuit or to the twelfth circuit and shall notify the Director of the Administrative Office of the United States Courts of such election.

SEC. 907. SENIORITY OF JUDGES.

The seniority of each judge—

(1) who is assigned under section 905 of this subtitle; or

(2) who elects to be assigned under section 906 of this subtitle;

shall run from the date of commission of such judge as a judge of the former ninth circuit.

SEC. 908. APPLICATION TO CASES.

The provisions of the following paragraphs of this section apply to any case in which, on the day before the effective date of this subtitle, an appeal or other proceeding has been filed with the former ninth circuit:

(1) If the matter has been submitted for decision, further proceedings in respect of the matter shall be had in the same manner and with the same effect as if this subtitle had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which it would have gone had this subtitle been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings in respect of the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this subtitle, or submitted before the effective date of this subtitle and decided on or after the effective date as provided in paragraph (1) of this section, shall be treated in the same manner and with the same effect as though this subtitle had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this subtitle had not been enacted.

SEC. 909. DEFINITIONS.

For purposes of this subtitle, the term—

(1) ''former ninth circuit'' means the ninth judicial circuit of the United States as in existence on the day before the effective date of this subtitle;

(2) ''new ninth circuit'' means the ninth judicial circuit of the United States established by the amendment made by section 902(2) of this subtitle; and

(3) ''twelfth circuit'' means the twelfth judicial circuit of the United States established by the amendment made by section 902(3) of this subtitle.

SEC. 910. ADMINISTRATION.

The court of appeals for the ninth circuit as constituted on the day before the effective date of this subtitle may take such administrative action as may be required to carry out this subtitle. Such court shall cease to exist for administrative purposes on July 1, 1998.

SEC. 911. APPROPRIATIONS.

Of the $2,433,141,000 appropriated under the subheading ''SALARIES AND EXPENSES'' under the heading ''COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES'' under the heading ''TITLE III—THE JUDICIARY'' of this Act, $3,000,000 shall remain available until expended for the Twelfth Circuit Court of Appeals.

SEC. 912. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect 60 days after the date of the enactment of this subtitle.

Mr. REID. Mr. President, parliamentary inquiry.

Mr. BURNS. Mr. President, I ask unanimous consent——

Mr. REID. Parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator from Montana yield for a parliamentary inquiry?

AMENDMENT NO. 3552 TO AMENDMENT NO. 3551

(Purpose: To establish a Commission on restructuring the circuits of the United States Courts of Appeals)

Mr. BURNS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. BURNS] proposes an amendment numbered 3552 to amendment No. 3551.

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

Mr. REID. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard. The clerk will read the amendment.

The assistant legislative clerk continued with the reading of the amendment.

Mr. REID. Mr. President, I join with my friend from Montana and ask the formal reading be dispensed with.

The PRESIDING OFFICER. The only request in order is to discontinue the reading of the amendment.

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

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

The amendment is as follows:

At the end of the amendment add the following:

Subtitle B—Commission on Restructuring the Circuits of the United States Courts of Appeals

SEC. 921. ESTABLISHMENT AND FUNCTIONS OF COMMISSION.

(a) ESTABLISHMENT.—There is established a Commission on restructuring for the circuits of the United States Courts of Appeals which shall be known as the ''Heflin Commission'' (hereinafter referred to as the ''Commission'').

(b) FUNCTIONS.—The function of the Commission shall be to—

(1) study the restructuring of the circuits of the United States Courts of Appeals; and

(2) report to the President and the Congress on its findings.

SEC. 922. MEMBERSHIP.

(a) COMPOSITION.—The Commission shall be composed of twelve members appointed as follows:

(1) Three members appointed by the President of the United States.

(2) Three members appointed by the President pro tempore of the Senate.

(3) Three members appointed by the Speaker of the House of Representatives.

(4) Three members appointed by the Chief Justice of the United States.

(b) CHAIR.—The Commission shall elect a Chair and Vice Chair from among its members.

(c) QUORUM.—Seven members of the Commission shall constitute a quorum, but three may conduct hearings.

(d) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(e) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(f) MEETINGS.—The Commission shall meet at the call of the Chairman.

SEC. 923. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this subtitle.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this subtitle. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC 924. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for the services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay of the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC 925. TERMINATION OF THE COMMISSION.

The Commission shall terminate 90 days after the date on which the Commission submits its final report.

SEC 926. REPORT.

No later than 2 years after the date of the enactment of this subtitle, the Commission shall submit a report to the President and the Congress which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

SEC 927. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, beginning in fiscal year 1997, such sums as necessary to carry out the purposes of this subtitle.

Mr. BURNS. Mr. President, we have already debated the merits of the second-degree amendment, which establishes the commission to study the reorganization or the probable reorganization of the courts of appeals across this Nation. But the real emphasis should be placed upon the first-degree amendment, which actually has something to do with the restructuring of the ninth judicial circuit. We have already debated the issue. Those who are opposed to the issue made their points, and made them very well. But I think the most compelling reasons why we should do this is that it is just a big, big circuit.

Under this proposal—that is, the first degree—to split the ninth circuit, California, Hawaii, Guam, and the Northern Mariana Islands would form one 15-judge unit. That would be the ninth circuit. Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington would form the new twelfth circuit of 13 judges. The caseload would be split, and the heavy end of it would still be with the California, Hawaii, or the old ninth. They would still, under today's procedures, have 60 percent of the caseload, while 40 percent would go into the new twelfth circuit.

The reasons are as compelling for those States that would remain in the ninth after the newly formed twelfth went into full operation.

The circuit is just too big—9 States, 1.4 million square miles, 45 million people. It is, by far, the largest circuit of all of the 11. By comparison, the sixth serves less than 29 million people, and every other circuit serves less than 24 million people. So, basically, this is the right thing to do.

The commission, too, should move forward and get their work done, as far as the rest of the country. We have had studies and we have had recommendations, and now it is time to start the wheels in motion.

Mr. President, we have already debated this. I have already made the points. I think they are very convincing on why we should do it.

I yield the floor.

Mr. REID. Mr. President, I make a point of order that the first-degree amendment is not relevant and should not be in order in the unanimous-consent agreement that is now on the Senate's calendar.

The PRESIDING OFFICER. The point of order is well taken.

Mr. BURNS. Mr. President, I appeal the ruling of the Chair and call 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. Under the order, the vote will be put off until tomorrow.

Mr. REID. Mr. President, we have debated this issue at some length and because of a parliamentary situation that occurred earlier, the vote was not taken.

Mr. President, we are on very dangerous ground procedurally here. I say to my colleagues, the reason we enter into unanimous-consent agreements—we, the minority—is so that we can proceed with business in the Senate. Virtually everything that is done in the U.S. Senate is done by a unanimous-consent agreement.

This very important legislation that we are going to complete tomorrow, with its many amendments, is going to be completed by virtue of the fact that a unanimous-consent agreement was arrived at between the minority and majority.

Always in unanimous-consent agreements—I should say with rare exception—there are amendments that are saved. The Senator from Minnesota, or the Senator from Montana, or the Senator from Rhode Island, or the Senator from Nevada may feel that it is a complicated issue, and we might want to reserve an amendment. In order to get the unanimous-consent agreement adopted, we save what is called a relevant amendment. That says it all—a relevant amendment.

The Parliamentarian of the U.S. Senate has ruled in this instance that the amendment offered by my friend from Montana is not relevant. Therefore, it would set an extremely dangerous precedent if the Senate would overrule the Parliamentarian of the Senate. The Parliamentarian has a tremendous obligation to be fair and impartial and to rule by virtue of the Senate precedence and traditions in the Senate. I believe the Parliamentarian has clearly ruled in the right manner in this instance.

Now, the reason I lay this foundation is that, if tomorrow, by virtue of partisan vote, the Parliamentarian is overruled, we would never, ever—the minority would never enter into another unanimous-consent request. Why? Because we would be put on notice that any unanimous-consent agreement would not be subject to relevancy. Why would we enter into an agreement to that effect? Any amendment, no matter what the subject, could be brought and be in order. I think that is wrong.

I advise my colleagues, both in the majority and in the minority—especially the majority party—that they should vote to sustain the Parliamentarian. Why? Because if we do not, it is going to be a long time before there is another unanimous-consent agreement adopted because we could not enter into one. How could we? It would mean that no matter what we agreed to, it could be changed by a simple majority. That is not the way it should be. We lose our rights under the

Senate to protect ourselves with a filibuster, where it would take 60 votes, or in a number of other parliamentary points that we reserve to ourselves when there is not a unanimous-consent agreement that is pending.

This amendment offered by my friend from Montana, which has been ruled not relevant, would clearly be one of those measures. Here is a matter that has had part of a day in a hearing, and we have had no studies of the very complicated circuit since 1973. When that Hruska Commission reported, they said the State of California should be cut in the middle. This amendment maintains the State of California as an isle unto itself. Everyone else that lives in the Western United States, except the State of Hawaii, is thrown into the so-called twelfth circuit. California is left alone. That is wrong.

So what I say, Mr. President, is that the majority is the majority, and we well understand that. They have three more Senators than we have. By virtue of that, we enter into unanimous-consent requests and agreements all the time, recognizing that you will be fair and impartial as it relates to relevancy, because, otherwise, there would be no reason when a unanimous-consent agreement is entered into, as we have here.

On H.R. 3019, the matter now before the Senate, we have here a number of Senators who have reserved relevant amendments. That is what it says, ''relevant.'' If it is not relevant, it has to fall. It would certainly be wrong and set a very, very bad precedent, not only in this Senate, but in future Senates, if somebody could come in and say, sure, it is not relevant, but we are the majority and we will do whatever we want.

It is wrong, by any connotation, to have the majority in effect ride roughshod over the rules of this Senate.

Mr. President, I am part of the Senate leadership, and we meet every Tuesday prior to our party conferences. We talk about what is going to go on in the coming week, the best that we can. I know one of the subjects of discussion tomorrow will be the terribly damaging precedent that would be set if this relevancy point of order is overruled. I think it will make for a very, very long congressional session, because the Senate would not be what it is supposed to be.

It would mean that unanimous-consent requests, where the issue of relevancy comes out, would mean absolutely nothing. Instead of having, as we have in the calendar here, Senator SIMON having a relevant amendment, we would just say ''Senator Simon amendment.'' You know that we would never get any unanimous-consent request if Senator MCCAIN has two relevant amendments, if it just said, ''Senator McCain amendment.'' We know when we enter into unanimous-consent requests that we can expect there to be relevancy. And, if it is not relevant, the Parliamentarian, the bipartisan person who has to be in this body, will rule that it is not relevant. It is not only a protection for the minority. It is also a protection for the majority.

I would guarantee with all of the amendments here that to allow this unanimous-consent request to be offered—it would not have been approved if some of the Democrats on this—WELLSTONE, SIMON, LAUTENBERG—just said, ''We want to offer these amendments,'' the unanimous-consent request would never be approved. But that is where we would be if this point of order is not upheld.

I suggest and recommend respectfully that this should be something discussed in some detail rather than it being something that would be a victory for a short period of time. It would be a terrible defeat for the procedures in this body.

The merits of the amendment we discussed at great length today. There has been discussion that has gone on for some period of time—a matter of hours a day. The debate started around 3 o'clock. Here it is now approaching 6 o'clock, and most of the debate this afternoon has been related to this amendment.

So I think it is quite clear that to sustain the point of order is in the best interest of the Senate. To overrule the point of order is not in the best interests of the Senate nor this country because with this election year approaching—not approaching, it is here—it is difficult enough to get work done. It is difficult enough to get unanimous-consent requests agreed to. I can tell you this does not mean there will not be one agreed to someday or during the next 8 months. But they will be few and far between. Because why would anyone want to enter into a unanimous-consent request when it can be changed at the whim of any Senator?

As I indicated, Mr. President, we have talked about the merits of whether or not the ninth circuit should be split. And there are arguments for and against why the amendment should be split. To show how this amendment is headed in the wrong direction, what this underlying legislation does is split the ninth circuit without a hearing, without any commission, and then in the same breath says we are going to go ahead and split the ninth circuit but we are also going to order a commission that costs $3 million to study restructuring the courts. This really seems somewhat unusual especially when the Federal Government has just spent $100 million refurbishing and restructuring the ninth circuit court building because of the earthquake that occurred there. They did it keeping in mind the fact that the ninth circuit administrative offices would be there.

We have another problem, of course—that this legislatively gerrymandered new twelfth circuit starts in Alaska and goes to the coast of Mexico with the headquarters being in Phoenix, AZ, even though the major cities in the area, of course, are Portland and Seattle.

I respectfully say that appealing the point of order violates the spirit of what we are trying to do here. By no stretch of the imagination can you consider this relevant. And by no stretch of the Parliamentarian's imagination could he rule it irrelevant. He has ruled it not relevant, not once today but twice today. And now to even think that the majority could come back and overrule the Parliamentarian would leave a very bad taste in the mouths of many people.

I do not know how my colleague from California feels. But I think she would agree with me there would never be for the remainder of this year another unanimous-consent request that would be agreed to.

We need to study the circuit courts. Let us do so with hearings and legislation—not through some kind of tricky parliamentary maneuver on an appropriations bill.

I again state that the procedure before this body is the fact that we are here today by virtue of a unanimous-consent request that allows us to go forward with very important legislation. What is that legislation? To fund five appropriations bills so we will not have to have another Government shutdown. But it is clear to me that this should not pass. It is not relevant. But if it does, it is just another basis to cloud up this legislation. No wonder the American people are wondering. ''What are you people doing back there? You spend $60 million in creating a new court because you do not like California? Do you think California is too liberal, that California does not rule right?'' This court is not California's court. It is as much Nevada's court as it is California's. The Ninth Circuit Court of Appeals is not California's. The headquarters of the ninth circuit is in San Francisco. Most of the judges have been appointed by Republican Presidents.

The problem is not the size of the ninth circuit. The problem is we as legislators have not done enough to give the courts tools to move cases.

As I talked about earlier today, in the Federal District of Nevada 40 percent of the cases are filed by prisoners. Why do we not do something here to stop that nonsense? Is it important that we have Federal judges deciding whether they should have chunky or smooth peanut butter? The answer is no. But we as legislators have not been willing to step forward and eliminate that. We do not want to stop prisoners from being able to file lawsuits. We just want them to be able to file lawsuits in a temperate, reasonable manner. We need to do something to speed up the criminal appeals process. That would help free a lot of the court's time. But what do the Federal circuit courts hear? They hear endless appeals from criminals, especially those who have been convicted of murder—appeal

after appeal after appeal. That is not the fault of the court because it sits in San Francisco. They are obligated by law just as the other courts that sit in Denver and wherever else they sit throughout the United States—the various circuits.

I ask the Senate to confirm and affirm what the Parliamentarian has done in this instance; that is, rule that this is not relevant. And in so doing it will speed up the work of this Senate and this Congress. To overrule the Parliamentarian would bring about chaos in this body. People can say, ''Well, you know, the Senators from California and Nevada they just feel this way. It is not important. We can overrule them. It does not set a dangerous precedent.'' It sets a horrible precedent.

I repeat. We simply will not be able to get anything done. Look how hard it was to get this unanimous-consent agreement agreed to initially. It took days. It took lots of different pieces to get this unanimous consent agreement.

No. 9: ''Ordered that during the consideration of H.R. 3019, an act making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes, the following amendments be the only remaining first-degree amendments, and that they be subject to the relevant second-degree amendments.'' Here we go, listing all of the amendments, time that the floor staff, the staff of the Senator from Oregon, and the staff of the Senator from West Virginia worked to arrive at this—25 or 30 different amendments were agreed to, all having to be relevant unless mentioned otherwise. So I say, it is important that the position of the Parliamentarian of the Senate, where he said this amendment was not relevant, be upheld. To do otherwise would be to state that unanimous-consent agreements will no longer be part of the Senate's business.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise in support of the concerns of the Senator from Nevada and to reiterate those concerns. Obviously, this is an issue which is of predominant interest to my State, a State of 32 million people. In effect, it creates a very unbalanced situation. We have tried to make some of those arguments in the Chamber.

Even more importantly than that, I think it will destroy, certainly for the rest of this session, what has been a measure of consensus on which this body essentially predicates its movement.

Let me tell you why I believe that. As Senator REID pointed out, the notation in the Executive Calendar is that, for everybody who submitted an amendment on the basis that it is relevant to the bill before it—we take their word for it. We take their word for it, that they are not trying to play a trick, they are not trying to put something that is not relevant before this body.

In fact, there is a legitimate vehicle for this bill. Senator BURNS' position prevailed in the Judiciary Committee. There is a bill which was passed out of the Judiciary Committee which is the proper vehicle on which to discuss this. So I think the claim that to get action we have to breach what is the word of a Member—a Member who has agreed that an amendment is going to be relevant—is a bad claim. To proceed with that amendment when it is found by the Chair on two occasions not to be relevant sets a dangerous precedent. To persist with that amendment is something that in toto destroys the opportunity for consensus in this body.

I would say there would be no reason for anyone on this side, after being treated in this manner, to agree to a unanimous-consent agreement for the remainder of this session. We would be very foolish to do so, because clearly the precedent is being set that the rights of the minority are being abrogated right here and now, that it does not really matter what the finding of the Chair is with respect to relevancy, we are going to be overturned.

I find this very difficult, particularly when there is a legitimate vehicle on which to discuss this issue. The Senator from Montana knows that. Every member of the Judiciary Committee knows that. The issue was discussed in committee. A bill was passed out of the committee. The chairman of the committee and the majority leader of the Senate can certainly schedule that bill on this floor. That is, then, an appropriate vehicle on which to debate this.

So I am very puzzled as to why this has to be done in a precipitous manner, at a time when most of the Members are not here, cannot hear the arguments, and the results of which are going to cast a precedent on the legal system of this Nation which is very large indeed, and shatter consensus making for this body—the kind of honesty, the kind of commitment that is necessary to achieve a unanimous-consent agreement.

There is no incentive, certainly, for me to ever agree to a unanimous-consent agreement for the rest of this session if something as important to the State of California as this is going to be dealt with in this manner. Both Senator REID and I have met with Senator BURNS. We have indicated our agreement to proceed with a study. We have indicated that we would shorten the time of the study from the 2 years proposed.

I have an amendment for a study which is somewhat broader than Senator BURNS' amendment. We have agreed to cut the time in half. We have reached out in trying to solve this in the tradition of the Senate, which I always thought involved a certain conviviality. But now to find out that there is just simply going to be a partisan vote, with no chance to debate it when all the Members are here, I think is a big mistake.

We have tried earlier, Mr. President, to indicate the deficiencies of the amendment. We have argued about its cost. This is cost that does not have to be incurred. A building was rehabilitated in San Francisco with 35 percent more space provided and $100 million spent in earthquake recovery funds to accommodate expansion and new judges for the ninth circuit; $23 to $59 million will need to be spent for new courthouse expansion and construction the Burns bill would require. I indicated earlier that at least $3 million of that is entirely duplicative. It is a duplication. At a time when we are scrambling for every dollar, we are going to duplicate staff for a political proposal.

I pointed out that this is an unfair division. California, Hawaii, Guam, and the North Marianas would have 62 percent of the caseload, and Alaska, Arizona, Nevada, Washington, Oregon, Idaho, and Montana would have only 38 percent of the caseload. The way the allocation of the judges is structured in this, it is an unfair, unbalanced allocation of judges. California, Guam, and the Marianas would not get 62 percent of the judges to handle 62 percent of the caseload. They would get a greatly reduced amount.

It is clearly a political proposal. To ram it through on an irrelevant amendment sticks in the craw. So it is unfair at best. It is a disproportionate allocation of cases and of judges.

Third, there has never been a hearing on this proposal. This proposal would restructure—with no public hearing—the largest circuit in the Nation that hears about 8,000 cases a year. There was a hearing on a former proposal by Senator GORTON. We understood that proposal. Then suddenly a new proposal was made in the Judiciary Committee, and there was no public hearing.

Fourth, we have argued that there is a need for a study. The last comprehensive study was done in 1973, by the Hruska Commission. This was before the ninth circuit instituted many changes in its methodology for doing business and speeding up caseload. I believe, if you really dispassionately look at the facts, you will see that the ninth circuit is processing cases just as fast as the dominant majority of other circuits, certainly faster than the fifth circuit that was split in 1980 based on the Hruska Commission's recommendations.

So, we say take 2 years, have 12 members appointed in a dispassionate way by three different entities, and fund it with $500,000, to look at all the circuits, look at the workload across this Nation, and make some decision.

I would like, if I might, to read from the minority report that was filed by Senator KENNEDY and myself in the Judiciary Committee on a couple of points. One of these points that I would like to make is the impact of having

one State predominate in the proposed new ninth circuit.

The majority acknowledged that California will undoubtedly predominate in the new ninth circuit. But the majority also insisted that this situation is not without precedent in the court of appeals. The fact is that California would predominate in the new Ninth Circuit Court of Appeals to a degree that is without precedent or parallel. According to the majority's own figures on the other circuits dominated by one State, New York contributes 87 percent of the caseload of the second circuit; Texas contributes only 69 percent of the fifth circuit's caseload. In the proposed new ninth circuit, however, 94 percent of the caseload would come from California.

That is an inordinate amount. It has never been done before in the history of this Nation. I would like to read one other section: ''To divide circuits in order to accommodate regional interests''—which is clearly what we are doing here. Let us not pretend. Every press release indicates that this is the reason for the split—regional interests, economic interests, criminal justice interests, the fact that a group of people do not like some decisions. I think that is true for everybody, for every appellate court decision that is made, there are some people who do not like the decision.

Former Chief Justice Warren Burger, rejected such a premise for dividing circuits as completely unacceptable, in testimony about an earlier version of this legislation. Chief Justice Burger stated:

I find it is a very offensive statement to be made, that a U.S. judge, having taken the oath of office, is going to be biased because of the economic conditions of his own jurisdiction.

Judge Charles Wiggins, Reagan appointee and former Republican Member of Congress, recently wrote a letter criticizing the political motivations behind the current proposal:

The majority report . . . contains the misleading statement that the recommended division of the ninth circuit is not in response to ideological differences between judges from California and judges from elsewhere in the circuit. I strongly disagree that such a motive does not, in fact, underlie the proposal for the change. Such a regionalization of the circuits in accordance with State interests is wrong. There is one Federal law. It is enacted by the Congress, signed by the President, and is to be respected in every State in the Union. The law in Montana and Washington is the same law as exists in Maine and Vermont. It is the mission of the Supreme Court to maintain one consistent Federal law. I do hope that you will challenge the supporters of the revision to explain the reasons justifying their proposal.

So, we know that with no public hearing on this proposal, we have an unprecedented, unparalleled proposal to split a court, giving the big weight to one State in that court, over 90 percent, and to do a split in a way that the judges are not fairly allocated. California, Hawaii, Guam, and the Northern Marianas Islands, with 62 percent of the caseload, will have far below the number of judges required to handle that, and seven States with 38 percent of the caseload would have a better allocation of judges.

This is a very serious proposal and it is being done in a way that is of very deep concern to this Senator: In an amendment found twice to be unrelated to the legislation contemplated by this body at that time—in a way that most certainly is going to create a problem in terms of the people of this side ever agreeing to a unanimous consent-request again.

So, Mr. President and Members of the Senate, I hope there would be due consideration given to these arguments. I think this is a very serious situation indeed, and I am hopeful that cooler heads will prevail.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I thank my colleague from Nevada for his indulgence while a make a brief statement.

CLINTON POLICY FAILURE IN HAITI

Mr. McCAIN. Mr. President, today at Fort Polk, President Clinton welcomed our troops back from Haiti, and commended them for a job well done. It was appropriate for the President to do so. As they always do, U.S. forces exhibited a high degree of professionalism and courage in the performance of their mission.

However, it is quite another matter to suggest that the restoration of the Aristide regime was a worthwhile mission for U.S. forces to undertake in the first place. The Clinton administration has made Haiti a test case for their foreign policy. But what its Haiti policy has clearly revealed is that the administration's foreign policy is based on international social work, not on defending United States' interests.

Dozens of political and extra-judicial killings occurred after Aristide was returned to power, and are continuing under the Preval regime. There is credible information available to the President from the Federal Bureau of Investigation and the Department of State that indicates the involvement of officials in the Aristide and Preval governments in the planning, execution, and coverup of some of these murders.

Last year, an amendment authored by Senator DOLE passed Congress, requiring the President to certify the Haitian Government's progress in investigating political murders before the United States provided Haiti with anymore aid. But President Clinton could not certify that Haiti was investigating political murders allegedly committed by members of the Haitian Government for a very simple reason—the Haitian Government has steadfastly declined to undertake such investigations.

Since he could not certify, President Clinton used his authority to waive the Dole conditions, saying—disingenuously, I believe—that the waiver was ''necessary to assure the safe and timely withdrawal of United States forces from Haiti.''

Earlier this month, at least seven more Haitian citizens were killed apparently by members of the United States-hand picked, United States-trained, and United States-equipped Haiti national police. The victims were shot at point blank range. Witnesses report that they saw policemen do the killings. Mr. President, 24 hours after the shootings, the bodies had not been picked up, and no member of the Haiti judicial system had made an official report. The UN/OAS Mission has opened an inquiry into the killings, but not any member or agency of the Government of Haiti.

It is a sad commentary on the administration's policy that after the United States has spent $2 billion, and the men and women of the U.S. Armed Forces endured hardship and danger, the government they were sent to restore and protect has participated in death squads, and done so with impunity.

As a final act of gratitude, President Aristide recognized the government of the man who recently ordered the murder of American citizens—Fidel Castro.

The Clinton administration's policy in Haiti is a failure. I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

BALANCED BUDGET DOWNPAYMENT ACT, II

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3551

Mr. REID. Mr. President, I would like to discuss, again, the ruling of the Chair. The Parliamentarian has ruled that an amendment is not relevant. A unanimous-consent request was entered allowing the calendar item to go forward, as set forth on page 3 of Monday's Calendar of Business.

A number of relevant amendments were allowed to be offered under the confines of the unanimous-consent request. Every Senator here agreed to this. Every Senator said only relevant amendments could be offered.

It seems rather unusual now that in spite of a unanimous-consent agreement—that does not mean 99 percent of the Senators, that does not mean 99 Senators, that means every Senator agreed to this unanimous-consent request—it seems rather unusual now we have some Senators who say that the referee, the Parliamentarian, ruled that this amendment is not relevant, ''But I'm going to do it my way anyway. I really didn't mean it when I agreed to that unanimous-consent request.''

For this body to rule otherwise—that is, to overrule the Parliamentarian—would be putting not only the Senate but certainly the Chair in a very, very awkward position, because it is clear that this amendment is not in order.

Mr. President, if the Parliamentarian is overruled, it would be like playing a

basketball game and you have Dennis Rodman as one of the players and you do not have a referee. Or you decide before any game, ''Let's just not have any referees. Let's just have a free-for-all.'' That is, in effect, what this will wind up doing. That is why we will never ever have another unanimous-consent agreement this year.

I think the Senators, especially the majority, really have to look at what precedent this sets. Every Senator has agreed that amendments can only be offered that are relevant. The referee, the Parliamentarian, through the Chair, has said an amendment is not relevant. To think now that we could come back as a body and overrule the referee does not seem very fair to me, or I think to most everyone it does not seem fair. I think it is going to be real hard to get work done around here.

Mr. President, I do not know, but I would think that the chairman of the Appropriations Committee, the distinguished senior Senator from Oregon—although I do not know—I have to think he would vote to sustain the Parliamentarian. For the chairman to vote otherwise would put this bill certainly at jeopardy and the precedents of this body.

I almost guarantee, although I have not talked to him, that the ranking member of the Appropriations Committee, the senior Senator from West Virginia, would vote to sustain the Chair. I think those of us who have not been in this body very long should follow these two great Senators.

There have been a number of statements made in the debate today, but let me speak now as a Senator from Nevada. Nevada wants no part of this split. We share a border that is 1,000 miles with the State of California—a 1,000-mile border. We do not want to stop having legal intercourse with the State of California. That would be wrong.

Mr. President, if, in fact, there is a commission like the Senator from California has talked about establishing that would come back and give reasons for why we should split off from the State of California in this circuit, I would be very strongly inclined to go along with that, but right now we have nothing.

As we have established clearly in the debate today, more circuits does not mean we are going to handle more cases. Quite frankly, it means just the opposite.

I think, if we have a fair study of the circuits, I do not know what can happen. We may want to combine circuits. We might wind up, instead of having 12 circuits, having 14 circuits, or instead of having 12 circuits, we might wind up having 8 circuits. I do not know. But let us have a good study by people appointed by the Chief Justice of the U.S. Supreme Court, by the President, by the legislative body, having adequate staff so that they can work on this matter.

The majority party, the Chair included, I have heard on a number of occasions make statements about how important it is to balance this budget. The Presiding Officer today may feel more strongly about other things, but as far as I am concerned, having worked and served with the Presiding Officer, I do not know of a thing the Chair feels more strongly about than balancing the budget, because I heard remarks made on a continuing, repetitive basis from this floor about how important it is to get this Nation's financial house in order.

Using that as a foundation for what is important in this body, how can we justify without a hearing, without a commission made up of academics or judges or the private sector, how can we justify spending up to $60 million creating this new circuit with added expenses of millions of dollars every year? You cannot justify that. This must be laughable to the American public.

If the jury were the American public and we presented this to them, they would return a verdict very quickly saying, ''Well, I'm not sure there should be a split, but let's at least study the issue before that decision is made.''

To spend $60 million after we have already spent $100 million just renovating a building so that we can take care of this large ninth circuit does not make a lot of sense. So instead of spending $100 million, we are going to spend $160 million, plus the yearly increase in cost. It does not make sense to the American public. It certainly does not make sense to this Senator.

My staff handed me something earlier today that says: ''Further Information Relating to the Issue of Splitting the Ninth Circuit.'' I have not had a chance to read all this, but neither has anyone else in this body. We have had no hearings. There has been no commission set up to determine if we are doing the right thing, but there has been a lot said as to why we are doing the wrong thing: editorials, academics, judges. Just from this piece of paper that I have here, there are some things that I think we should be aware of in this body.

The American Bar Association Appellate Practice Committee, Subcommittee To Study the Circuit Size. I read an excerpt from that today saying that they thought it was a bad idea.

Thomas Baker wrote in the Arizona, I assume this is the Law Review 22 Ariz. S.L.J. 917 (1990) ''On Redrawing Circuit Boundaries—Why the Proposal To Divide the United States Court of Appeals for the Ninth Circuit Is Not Such a Good Idea.'' It is something of which we should be aware.

Carl Tobias, Emory Law School Law Review, 1995. His is entitled ''The Impoverished Idea of Circuit Splitting.''

The Honorable Clifford J. Wallace, who for many years was the chief judge of the ninth circuit and now is retired, wrote an article saying: ''The Ninth Circuit Should Not Be Split.''

There are a number of other references in this piece of paper indicating why the circuit should not be split.

But let us determine that from a basis rather than the seat of our pants in the Senate. We should do it with congressional hearings, but if you do not want to go the congressional hearing route, I am willing to go along with the suggestion of the Senator from California that we have a commission, because splitting the ninth circuit is a piecemeal approach, it is not the answer to a nationwide problem. We need to look at all the circuits. The 1996 legislation should not be based on a report that is 23 years old.

I would not even feel as upset if this amendment had followed the Hruska report that is 23 years old. They do not even do that. The Hruska report said you should split the State of California in two. They did not do that. They lumped California all together. As the Senator from California pointed out, there has never been anything done like that before.

Creating a new circuit is a costly proposition. The bench and bar oppose the ninth circuit split. Regionalism and ideology should play no part in the boundaries of circuits. The division of the fifth circuit provides no precedent for dividing the ninth circuit. The Hruska report shows that a large circuit can operate effectively, as the ninth circuit has done. The ninth circuit is doing a very good job.

But even on the merits, Mr. President, even if we are totally wrong and my friend from the State of Montana is totally right—that we are all wrong, assuming that for the purposes of this argument—we must sustain the point of order. The Parliamentarian has ruled this amendment is not germane—I am sorry, not relevant. So we should uphold the Chair. It is the only way we are going to have order in this body. To have this Senate overrule the ruling of the Chair would set a precedent that we would learn to regret. We would come to regret it.

So I hope that we will follow the recommendation, as I am confident will be of the chairman of the Appropriations Committee and the ranking member of the Appropriations Committee, and vote to uphold the ruling of the Chair and have this matter declared, once and for all, not relevant.

Mr. BRYAN. Mr. President, today I rise in strong opposition to the second-degree amendment introduced by the junior Senator from Montana to his original amendment to split the Ninth Circuit Court of Appeals, while also calling for a restructuring study of all the U.S. circuit courts of appeal.

I commend the Chair's ruling on the two points of order brought by both Senator FEINSTEIN and Senator REID earlier today to hold the Burns amendment irrelevant to this omnibus appropriations bill.

This amendment is the fourth attempt to break up the ninth circuit since 1983. These same drums have been

beaten before—the circuit is too big—the cases are not decided in a timely manner.

But this is, I fear, only a smokescreen for the real reason splitting the ninth circuit is proposed from time to time.

Many simply do not like the decisions rendered by the circuit.

Surely not all of the decisions in the ninth circuit, or for that matter, in any circuit come down the way all of us would like. I have even cosponsored legislation to reverse some ninth circuit decisions.

But I do not believe differences over the decisions rendered by the ninth circuit are adequate grounds to split the circuit.

What kind of precedent would Congress then be setting? Would a circuit court of appeals face possible reconfiguration, whenever Congress does not like the decisions being rendered? Does this Congress really want to support what is essentially judicial gerrymandering? I think not.

The ninth circuit serves nine western States, and has been one circuit for over 100 years. Whenever the issue of splitting the circuit is put to a vote of the judges and lawyers in the circuit, the vote is overwhelming to retain the circuit as it is currently.

Who better than those judges whose decisions are appealed to, and those lawyers who represent clients whose cases are heard by the ninth circuit to determine whether the circuit is working or not? It has been my experience that judges and lawyers have never been shy about stating an opinion when they think something needs to be changed.

The last study of the Federal circuit courts of appeal was the 1973 Hruska Commission. A fellow Nevadan, the Honorable Charles Wiggins, a ninth circuit court judge, served as a member of that Commission.

Judge Wiggins, a former Republican Congressman, originally supported a split of the ninth circuit. In his recent letter to Senator FEINSTEIN, however, he stated:

> My understanding of the role of the circuit courts in our system of federal justice has changed over the years from that which I held when the Hruska Commission issued its final report in 1973. At that time, I endorsed the recommendations of the Commission calling for a division of the 5th and 9th Circuits. I have grown wiser in the succeeding 22 years.''

We should heed Judge Wiggins experience—act wisely and not split the ninth circuit.

The last time a circuit court of appeals was split was 1980, when the fifth circuit was divided. And it should be noted that the judges of the fifth circuit unanimously requested the split—a situation we do not have with the ninth circuit.

Judge Wiggins recently wrote me,

> Circuit division is not the answer. It has not proved effective in reducing delays. The former 5th Circuit ranked sixth in case processing times just prior to its division into the 5th and 11th Circuits. Since the division, the new 5th Circuit is still ranked sixth or seventh, while the new 11th circuit now ranks 12th, the slowest of all the circuits. The 9th circuit Court of Appeals judges are the fastest in the nation in disposing of cases once the panel receives the case.

The ninth circuit has taken administrative steps to manage its caseload through innovative ways that other circuits use as models. The ninth circuit disposes of cases in 1.9 months from oral argument to rendering a decision.

This is 2 weeks less than the national average. This currently makes the ninth circuit the second most efficient circuit. It is obvious the circuit has recognized court management areas that needed improving, and has successfully addressed them.

I find it particularly ironic in this current political atmosphere with extremely tight Federal budget restraints that a proposal is being made to create a new circuit court. As my colleagues before me have discussed, it is estimated to cost $60 million to construct another Federal court house, and set up another circuit court. An additional $2 to $3 million is estimated to be needed to provide for the transition period. And thereafter, we would face the continuing costs of operating an additional circuit court. This makes no sense.

I reiterate my opposition to the proposal to split the ninth circuit. This circuit has worked well for the nine western States it serves, and will continue to do so into the future.

For those who believe the ninth circuit must be split, let the proposed commission to review all the U.S. circuit courts go forward. When the information necessary to determine whether any circuits need their geographical jurisdiction changed is available, we can then debate this issue intelligently.

But let us not split the ninth circuit prematurely. To implement the ninth circuit split at the same time as a commission is gathering the information to make that decision simply would make no sense.

This issue is simply too important to debate without all necessary information. I would hope my colleagues would join me tomorrow in voting to uphold the Chair's rulings on the irrelevancy of the Burns amendment.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENTS NOS. 3484, 3485, 3486, AND 3487

Mr. SANTORUM. Mr. President, I rise to discuss an issue that I spoke about at great length last week. I want to speak very briefly about the amendments that I have put forward that are pending concerning the disaster relief portion of this bill and the emergency spending declaration that was attached to those spending provisions.

I really want to focus on just sort of the broad outline of what I am trying to accomplish in these amendments. There are really three subjects that the amendments deal with. The first subject really is the immediate subject, which is, are we going to offset the money that we spent here in the Senate bill with other spending reductions in the bill so we do not add to the deficit this year? That is the first issue.

The second issue is, do we get a bill out of conference that does not add to the deficit?

Third, what do we do long term to deal with the issue of disaster relief?

Let me address all three of those, if I can, and discuss the amendments that I have to take those subjects on. First, the Senate bill. We had an amendment by the Senator from Texas and me. Senator GRAMM and I put forward an amendment to offset the spending with an across-the-board cut in all the nondefense discretionary appropriations accounts. We had 45 votes on that, which I consider is a pretty good showing, but not good enough.

We are continuing to look. I have three amendments filed, and, in fact, am working on a fourth with the Appropriations Committee and the leadership, to try to come up with a way where we can pass a bill here in the U.S. Senate that does not add to the deficit this year.

So I am hopeful that in the end, whether we do it with the amendments that I have pending or whether we can come up with a modification to one of those amendments to accomplish a deficit-neutral bill in this bill that we are working on, I am confident that we can make that happen. That is No. 1.

No. 2 is the issue in conference. In the Senate, as I said before, I am hopeful we can get a bill that comes out of here that does not add to the deficit. The House has already put forward a bill that does not—that does not—increase the deficit. So I have a sense-of-the-Senate resolution which would instruct the conferees to hold firm and come out with a bill that is within the budget caps that we set in the budget resolution last year, so we do not add additional red ink in this round of trying to finish the appropriations process for the rest of this year. So we have something that clearly states the Senate is on record that we should pay for the disaster relief funds in this bill.

Third—and this gets to, I think, a very important issue, and I am hopeful we can get very broad support for this—is another sense-of-the-Senate that the Congress and the relevant committees examine how we deal with disaster relief. How we deal with disaster relief now is—actually, we do not. We appropriate a few hundred million dollars, very little money relative to the amount of disasters that we have in this country, that are eligible for Federal relief. We appropriate a few hundred million dollars a year to FEMA and then, as the disasters come along, as they certainly do—whether they are earthquakes in California or whether they are fires in Texas or whether they are floods in Pennsylvania or hurricanes in South Carolina, we

have them—we have a Federal role to play in helping the people who have been hurt, whether it is physically or whether it is their property or with the public roads or bridges, infrastructure.

There is a Federal role to play in assisting an area, a community, that has been hit. So the question is, how do we pay for it? How do we budget for it? And what we do right now is we do not budget for it, and we pay for it by putting it on the next generation's credit card, so to speak. The difference with the next generation's credit card is that unlike most credit cards we have to pay after 30 days—we get charged interest, but eventually we pay it back—this credit card, we never pay it back, we just keep paying interest on it forever, and the future generations pay forever and ever and ever.

So what we ask is, look at a long-term solution. How can we, within the budget, allocate resources as disasters come up, to make sure we can be fiscally responsible, and at the same time provide the needed assistance for disasters as they occur across this country? That is the last leg or last subject area that I am trying to address with these amendments that I have on the floor.

I am hopeful we can get support for all three subjects, fixing the Senate bill, getting a bill out of conference and to the President's desk that does not add to the deficit, and No. 3, coming up with a suggestion to the Congress that the relevant committees do some good work and determine how we can begin to pay for disasters within the budget.

Senator GRAMM and I mentioned last week when we were debating his amendment that over the past 7 years, we have added $100 billion to the deficit—$100 billion to the deficit—in disaster declarations. They have been things from very serious, as I said before—floods, earthquakes, hurricanes, tornadoes, et cetera—to things such as declaring an emergency because we had a 6-percent rate of unemployment and we wanted to pay extended unemployment compensation benefits.

There really is a very loose standard of what is an emergency. In fact, there is no standard of what an emergency is. It is whatever the President declares, whatever the Congress declares. I think we need to do a little better than that. I think we have to have some guidelines and we have to have some procedures by which we are going to declare emergencies and which would cause us to increase the deficit. That is an appropriate standard.

That is something, frankly, we should have done when we put together the emergency provisions in the 1990 Budget Act in the first place, but we did not. Those who argued for some sort of parameters to define an emergency hearkened back then that we were going to see everything that was politically popular for the moment declared an emergency and thrown on the deficit. I think their fears have been brought to fruition. We have, as I said before, $100 billion of such spending.

I want to make it very clear that we have an obligation here to provide emergency disaster relief for communities in States that are hit. I am for that. I want to make sure that we can do that and we do it properly, but I think we have to make sure we do it within the confines of trying to get to a much more responsible fiscal policy here in Washington, to a balanced budget, to a better America and, again, avoiding this knee-jerk reaction we have had in this town for a long, long time, that if we have a problem, and we do not want to take money from some area of the budget that may have your name attached to a program, or whatever the case may be, and put it to where the emergency is, that instead we just add it to the deficit.

I think that is irresponsible behavior, and it is certainly not in keeping with the changes that have occurred since the 1994 election. We focused so much of our time and energy on trying to balance this budget, but when an emergency comes along that we frankly should have budgeted for but did not budget for, we are the first to run, even now, and talk about, well, we have just got to put it on the deficit. I think it is talking out of both sides of your mouth and is not what we should be doing here, or what the public expects us to be doing.

We are talking $1.2 billion out of $1.6 trillion that we will spend this year. Somewhere around we can find some money in a lot of areas of Government to put where it should go, which is to pay for this emergency. The three things I am hoping to accomplish tomorrow, whether we can do it, and I hope we can, by agreement or consent on both sides of the aisle, is something frankly that both Democrats and Republicans should be for: Fiscal responsibility, a long-term solution, and more of a structure to funding emergencies and standing up for the Senate not to be fiscally irresponsible and adding to the deficit in this appropriations process.

I yield the floor.

AMENDMENT NO. 3551

Mrs. FEINSTEIN. Mr. President, not to belabor the point, but earlier I made the point about the duplicative costs of the ninth circuit split proposal, the inordinate costs of the proposal, the unnecessary costs of the proposal, the unfair division that the Burns bill presents.

I would like to just clarify what I said. What I said was that California, Hawaii, Guam, and Northern Marianas have currently 62 percent of the caseload; Alaska, Arizona, Nevada, Washington, Oregon, Idaho, and Montana have 38 percent. In the Burns proposal, the group of States with 62 percent of the cases get 15 judges, and the States with only 38 percent of the caseload get 13 judges. The States with 62 percent of the cases end up getting proportionately fewer judges relative to caseload. According to ninth circuit statistics for 1995, the proposed new twelfth circuit would have only 765 filings per three-judge panel, whereas the ninth circuit would have 1,065 filings per three-judge panel. How this huge caseload is going to be handled with a disproportionately low number of judges should cause some concern because this will still remain a very large circuit. It will be unable to function due to a heavy backlog of cases.

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

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

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Foreign Relations.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE AGREEMENT FOR COOPERATION BETWEEN THE UNITED STATES AND THE ARGENTINE REPUBLIC CONCERNING THE PEACEFUL USES OF NUCLEAR ENERGY—MESSAGE FROM THE PRESIDENT—PM 132

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 Foreign Relations:

To the Congress of the United States:

I am pleased to transmit to the Congress, pursuant to sections 123 b. and 123 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153 (b), (d)), the text of a proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Argentine Republic Concerning Peaceful Uses of Nuclear Energy with accompanying annex and agreed minute. I am also pleased to transmit my written approval, authorization, and determination concerning

the agreement, and the memorandum of the Director of the United States Arms Control and Disarmament Agency with the Nuclear Proliferation Assessment Statement concerning the agreement. The joint memorandum submitted to me by the Secretary of State and the Secretary of Energy, which includes a summary of the provisions of the agreement and various other attachments, including agency views, is also enclosed.

The proposed agreement with the Argentine Republic has been negotiated in accordance with the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978 (NNPA) and as otherwise amended. In my judgment, the proposed agreement meets all statutory requirements and will advance the non-proliferation and other foreign policy interests of the United States. The agreement provides a comprehensive framework for peaceful nuclear cooperation between the United States and Argentina under appropriate conditions and controls reflecting a strong common commitment to nuclear non-proliferation goals.

The proposed new agreement will replace an existing U.S.-Argentina agreement for peaceful nuclear cooperation that entered into force on July 25, 1969, and by its terms would expire on July 25, 1999. The United States suspended cooperation with Argentina under the 1969 agreement in the late 1970s because Argentina did not satisfy a provision of section 128 of the Atomic Energy Act (added by the NNPA) that required full-scope International Atomic Energy Agency (IAEA) safeguards in nonnuclear weapon states such as Argentina as a condition for continued significant U.S. nuclear exports.

On December 13, 1991, Argentina, together with Brazil, the Argentine-Brazilian Agency for Accounting and Control of Nuclear Materials (ABACC) and the IAEA signed a quadrilateral agreement calling for the application of full-scope IAEA safeguards in Argentina and Brazil. This safeguards agreement was brought into force in March 1994. Resumption of cooperation would be possible under the 1969 U.S.-Argentina agreement for cooperation. However, both the United States and Argentina believe it is preferable to launch a new era of cooperation with a new agreement that reflect among other things:

—An updating of terms and conditions to take account of intervening changes in the respective domestic legal and regulatory frameworks of the parties in the area of peaceful nuclear cooperation:

—Reciprocity in the application of the terms and conditions of cooperation between the parties; and

—Additional international non-proliferation commitments entered into by the parties since 1969.

Over the past several years Argentina has made a definitive break with earlier ambivalent nuclear policies and has embraced wholeheartedly a series of important steps demonstrating its firm commitment to the exclusively peaceful uses of nuclear energy. In addition to its full-scope safeguards agreement with the IAEA, Argentina has made the following major non-proliferation commitments:

—It brought the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco) into force for itself on January 18, 1994;

—It became a full member of the Nuclear Suppliers Group in April 1994; and

—It acceded to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) on February 10, 1995.

Once Argentina's commitment to full-scope IAEA safeguards was clear, and in anticipation of the additional steps subsequently taken by Argentina to adopt responsible policies on nuclear non-proliferation, the United States entered into negotiations with Argentina on a new agreement for peaceful nuclear cooperation and reached ad referendum agreement on a text on September 3, 1992. Further steps to conclude the agreement were interrupted, however, by delays (not all of them attributable to Argentina) in bringing the full-scope IAEA safeguards agreement into force, and by steps, recently completed, to resolve issues relating to Argentina's eligibility under section 129 of the U.S. Atomic Energy Act to receive U.S. nuclear exports. As the agreement text initialed with Argentina in 1992 continues to satisfy current U.S. legal and policy requirements, no revision has been necessary.

The proposed new agreement with Argentina permits the transfer of technology, material, equipment (including reactors), and components for nuclear research and nuclear power production. It provides for U.S. consent rights to retransfers, enrichment, and reprocessing as required by U.S. law. It does not permit transfers of any sensitive nuclear technology, restricted data, or sensitive nuclear facilities or major critical components thereof. In the event of termination, key conditions and controls continue with respect to material and equipment subject to the agreement.

From the U.S. perspective the proposed new agreement improves on the 1969 agreement by the addition of a number of important provisions. These include the provisions for full-scope safeguards; perpetuity of safeguards; a ban on ''peaceful'' nuclear explosives; a right to require the return of exported nuclear items in certain circumstances; a guarantee of adequate physical protection; and a consent right to enrichment of nuclear material subject to the agreement.

I have considered the views and recommendations of the interested agencies in reviewing the proposed agreement and have determined that its performance will promote, and will not constitute an unreasonable risk to, the common defense and security. Accordingly, I have approved the agreement and authorized its execution and urge that the Congress give it favorable consideration.

Because this agreement meets all applicable requirements of the Atomic Energy Act, as amended, for agreements for peaceful nuclear cooperation, I am transmitting it to the Congress without exempting it from any requirement contained in section 123 a. of that Act. This transmission shall constitute a submittal for purposes of both sections 123 b. and 123 d. of the Atomic Energy Act. The Administration is prepared to begin immediately the consultations with the Senate Foreign Relations and House International Relations Committees as provided in section 123 b. Upon completion of the 30-day continuous session period provided for in section 123 b., the 60-day continuous session period provided for in section 123 d. shall commence.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 18, 1996.*

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2150. A communication from the Assistant Administrator of the U.S. Environmental Protection Agency, transmitting, pursuant to law, the report of a final rule under the Federal Insecticide, Fungicide, and Rodenticide Act; to the Committee on Agriculture, Nutrition, and Forestry.

ADDITIONAL COSPONSORS

S. 258

At the request of Mr. PRYOR, the name of the Senator from New Hampshire [Mr. GREGG] was added as a cosponsor of S. 258, a bill to amend the Internal Revenue Code of 1986 to provide additional safeguards to protect taxpayer rights.

S. 553

At the request of Ms. MOSELEY-BRAUN, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 553, a bill to amend the Age Discrimination in Employment Act of 1967 to reinstate an exemption for certain bona fide hiring and retirement plans applicable to State and local firefighters and law enforcement officers, and for other purposes.

S. 704

At the request of Mr. SIMON, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 704, a bill to establish the Gambling Impact Study Commission.

S. 814

At the request of Mr. MCCAIN, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 814, a bill to provide for the reorganization of the Bureau of Indian Affairs, and for other purposes.

S. 942

At the request of Mr. BOND, the name of the Senator from Iowa [Mr. HARKIN]

was added as a cosponsor of S. 942, a bill to promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes.

S. 1271

At the request of Mr. CRAIG, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of S. 1271, a bill to amend the Nuclear Waste Policy Act of 1982.

S. 1423

At the request of Mr. GREGG, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 1423, a bill to amend the Occupational Safety and Health Act of 1970 to make modifications to certain provisions, and for other purposes.

S. 1483

At the request of Mr. KYL, the names of the Senator from Michigan [Mr. ABRAHAM], the Senator from Oklahoma [Mr. INHOFFE], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of S. 1483, a bill to control crime, and for other purposes.

S. 1568

At the request of Mr. HATCH, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1568, a bill to amend the Internal Revenue Code of 1986 to provide for the extension of certain expiring provisions.

S. 1610

At the request of Mr. BOND, the name of the Senator from Ohio [Mr. DEWINE] was added as a cosponsor of S. 1610, a bill to amend the Internal Revenue Code of 1986 to clarify the standards used for determining whether individuals are not employees.

SENATE RESOLUTION 224

At the request of Mr. D'AMATO, the names of the Senator from Nebraska [Mr. EXON], the Senator from Nebraska [Mr. KERREY], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of Senate Resolution 224, a resolution to designate September 23, 1996, as ''National Baseball Heritage Day.''

AMENDMENT NO. 3528

At the request of Mr. BAUCUS his name was added as a cosponsor of amendment No. 3528 proposed to H.R. 3019, a bill making appropriations for fiscal year 1996 to made a further downpayment toward a balanced budget, and for other purposes

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CHAFEE (for himself, Mr. BAUCUS, Mr. WARNER, Mr. SMITH, Mr. FAIRCLOTH, Mr. KEMPTHORNE, Mr. INHOFE, Mr. THOMAS, Mr. MCCONNELL, Mr. BOND, Mr. MOYNIHAN, Mr. LAUTENBERG, Mr. REID, Mr. GRAHAM, Mr. LIEBERMAN, and Mrs. BOXER):

S. Res. 232. A resolution to commend Jean Schrag Lauver for her long, dedicated, and exemplary service to the United States Senate Committee on Environment and Public Works; considered and agreed to.

SENATE RESOLUTION 232—RELATIVE TO JEAN LAUVER

Mr. CHAFEE (for himself, Mr. BAUCUS, Mr. WARNER, Mr. SMITH, Mr. FAIRCLOTH, Mr. KEMPTHORNE, Mr. INHOFE, Mr. THOMAS, Mr. MCCONNELL, Mr. BOND, Mr. MOYNIHAN, Mr. LAUTENBERG, Mr. REID, Mr. GRAHAM, Mr. LIEBERMAN, and Mrs. BOXER) submitted the following resolution; which was considered and agreed to:

S. RES. 232

Whereas Jean Lauver has expertly served the Committee on Environment and Public Works over the past twenty-one years, both as a majority and minority professional staff person;

Whereas Jean Lauver has helped shape federal infrastructure policy for over two decades;

Whereas Jean Lauver has at all times discharged the duties and responsibilities of her office with unparalleled efficiency, diligence and patience;

Whereas her dedication, good humor, low key style and ability to get along with others are a model for all of us in the Senate;

Whereas Jean Lauver's exceptional service has earned her the respect and affection of Republican and Democratic Senators and their staffs alike: Now, therefore, be it

Resolved, That the United States Senate—expresses its appreciation to Jean Schrag Lauver and commends her for twenty-one years of outstanding service to the Senate and the country.

AMENDMENTS SUBMITTED

THE 1996 BALANCED BUDGET DOWNPAYMENT ACT, II

BURNS AMENDMENT NO. 3548

Mr. BURNS proposed an amendment to amendment No. 3530 proposed by him to amendment No. 3466 proposed by Mr. HATFIELD to the bill (H.R. 3019) making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes; as follows:

In lieu of the pending matter, insert the following:

TITLE IX—RESTRUCTURING OF THE CIRCUITS OF THE UNITED STATES COURTS OF APPEALS

Subtitle A—Ninth Circuit Court of Appeals Reorganization

SEC. 901. SHORT TITLE.

This subtitle may be cited as the ''Ninth Circuit Court of Appeals Reorganization Act of 1996''.

SEC. 902. NUMBER AND COMPOSITION OF CIRCUITS.

Section 41 of title 28, United States Code, is amended—

(1) in the matter before the table, by striking out ''thirteen'' and inserting in lieu thereof ''fourteen'';

(2) in the table, by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

''Ninth ..... California, Hawaii, Guam, Northern Mariana Islands.'';

and

(3) between the last 2 items of the table, by inserting the following new item:

''Twelfth ..... Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington.''.

SEC. 903. NUMBER OF CIRCUIT JUDGES.

The table in section 44(a) of title 28, United States Code, is amended—

(1) by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

''Ninth ..... 15'';

and

(2) by inserting between the last 2 items at the end thereof the following new item:

''Twelfth ..... 13''.

SEC. 904. PLACES OF CIRCUIT COURT.

The table in section 48 of title 28, United States Code, is amended—

(1) by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

''Ninth ..... San Francisco, Los Angeles.'';

and

(2) by inserting between the last 2 items at the end thereof the following new item:

''Twelfth ..... Portland, Seattle, Phoenix.''.

SEC. 905. ASSIGNMENT OF CIRCUIT JUDGES AND CLERK OF THE COURT.

(a) CIRCUIT JUDGES.—(1) Subject to paragraph (2), each circuit judge in regular active service of the former ninth circuit whose official duty station on March 1, 1996—

(A) was in California, Hawaii, Guam, or the Northern Mariana Islands is assigned as a circuit judge of the new ninth circuit; and

(B) was in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, or Washington is assigned as a circuit judge of the twelfth circuit.

(2)(A) No more than 2 circuit judges in each of the new ninth circuit and the twelfth circuit as assigned under paragraph (1), may elect to be assigned to a circuit other than the circuit so assigned.

(B) An election under this paragraph—

(i) may be only for assignment to the new ninth circuit or the twelfth circuit; and

(ii) shall be made on the basis of seniority.

(C)(i) If the elections of circuit judges under subparagraph (A) result in a greater number of judges for a circuit than is provided under the amendments made under section 903, the number of vacancies described under clause (ii) in the office of circuit judge for such circuit shall not be filled.

(ii) The number of vacancies referred to under clause (i) are the number of vacancies that—

(I) first occur after the date on which such elections become effective; and

(II) are necessary for the number of judges in such circuit to conform with the amendments made under section 903.

(D) The judicial council of the former ninth circuit shall administer this paragraph.

(3) If no election is made by a circuit judge under paragraph (2), and as a result of assignments under paragraph (1) the number of judges assigned to a circuit is not in conformity with the amendments made under section 903, such conformity shall be achieved by not filling the number of vacancies in the office of circuit judge for such circuit that—

(A) first occur after the effective date of this subtitle; and

(B) are necessary for the number of judges in such circuit to conform with the amendments made under section 903.

(b) CLERK OF THE COURT.—The Clerk of the Court for the Twelfth Circuit United States Court of Appeals shall be located in Phoenix, Arizona.

SEC. 906. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.

Each judge who is a senior judge of the former ninth circuit on the day before the effective date of this subtitle may elect to be assigned to the new ninth circuit or to the twelfth circuit and shall notify the Director of the Administrative Office of the United States Courts of such election.

SEC. 907. SENIORITY OF JUDGES.

The seniority of each judge—

(1) who is assigned under section 905 of this subtitle; or

(2) who elects to be assigned under section 906 of this subtitle;

shall run from the date of commission of such judge as a judge of the former ninth circuit.

SEC. 908. APPLICATION TO CASES.

The provisions of the following paragraphs of this section apply to any case in which, on the day before the effective date of this subtitle, an appeal or other proceeding has been filed with the former ninth circuit:

(1) If the matter has been submitted for decision, further proceedings in respect of the matter shall be had in the same manner and with the same effect as if this subtitle had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which it would have gone had this subtitle been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings in respect of the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this subtitle, or submitted before the effective date of this subtitle and decided on or after the effective date as provided in paragraph (1) of this section, shall be treated in the same manner and with the same effect as though this subtitle had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this subtitle had not been enacted.

SEC. 909. DEFINITIONS.

For purposes of this subtitle, the term—

(1) ''former ninth circuit'' means the ninth judicial circuit of the United States as in existence on the day before the effective date of this subtitle;

(2) ''new ninth circuit'' means the ninth judicial circuit of the United States established by the amendment made by section 902(2) of this subtitle; and

(3) ''twelfth circuit'' means the twelfth judicial circuit of the United States established by the amendment made by section 902(3) of this subtitle.

SEC. 910. ADMINISTRATION.

The court of appeals for the ninth circuit as constituted on the day before the effective date of this subtitle may take such administrative action as may be required to carry out this subtitle. Such court shall cease to exist for administrative purposes on July 1, 1998.

SEC. 911. APPROPRIATIONS.

Of the $2,433,141,000 appropriated under the subheading ''SALARIES AND EXPENSES'' under the heading ''COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES'' under the heading ''TITLE III—THE JUDICIARY'' of this Act, $3,000,000 shall remain available until expended for the Twelfth Circuit Court of Appeals.

SEC. 912. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect 60 days after the date of the enactment of this subtitle.

Subtitle B—Commission on Restructuring the Circuits of the United States Courts of Appeals

SEC. 921. ESTABLISHMENT AND FUNCTIONS OF COMMISSION.

(a) ESTABLISHMENT.—There is established a Commission on restructuring for the circuits of the United States Courts of Appeals which shall be known as the ''Heflin Commission'' (hereinafter referred to as the ''Commission'').

(b) FUNCTIONS.—The function of the Commission shall be to—

(1) study the restructuring of the circuits of the United States Courts of Appeals; and

(2) report to the President and the Congress on its findings.

SEC. 922. MEMBERSHIP.

(a) COMPOSITION.—The Commission shall be composed of twelve members appointed as follows:

(1) Three members appointed by the President of the United States.

(2) Three members appointed by the President pro tempore of the Senate.

(3) Three members appointed by the Speaker of the House of Representatives.

(4) Three members appointed by the Chief Justice of the United States.

(b) CHAIR.—The Commission shall elect a Chair and Vice Chair from among its members.

(c) QUORUM.—Seven members of the Commission shall constitute a quorum, but three may conduct hearings.

(d) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(e) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(f) MEETINGS.—The Commission shall meet at the call of the Chairman.

SEC. 923. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this subtitle.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this subtitle. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 924. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 925. TERMINATION OF THE COMMISSION.

The Commission shall terminate 90 days after the date on which the Commission submits its final report.

SEC. 926. REPORT.

No later than 2 years after the date of the enactment of this subtitle, the Commission shall submit a report to the President and the Congress which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

SEC. 927. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, beginning in fiscal year 1997, such sums as necessary to carry out the purposes of this subtitle.

HUTCHISON AMENDMENT NO. 3549

Mr. HATFIELD (for Mrs. HUTCHISON) proposed an amendment to amendment No. 3466 proposed by Mr. HATFIELD to the bill H.R. 3019, supra; as follows:

On page 754, before the heading on line 5, insert:

SEC. . (a) In addition to the amounts made available in Public Law 104–61 under

the heading ''Research, Development, Test and Evaluation, Defense-Wide'', $50,000,000 is hereby made available to continue the activities of the semiconductor manufacturing consortium known as Sematech;

(b) Of the funds made available in Public Law 104–61 under the heading ''Research, Development, Test and Evaluation, Army'', $7,000,000 are rescinded;

(c) Of the funds made available in Public Law 104–61 under the heading ''Research, Development, Test and Evaluation, Navy'', $12,500,000 are rescinded;

(d) Of the funds made available in Public Law 104–61 under the heading ''Research, Development, Test and Evaluation, Air Force'', $16,000,000 are rescinded;

(e) Of the funds made available in Public Law 104–61 under the heading ''Research, Development, Test and Evaluation, Defense-Wide'', $14,500,000 are rescinded; and

(f) Of the funds rescinded under subsection (e) of this provision, none of the reduction shall be applied to the Ballistic Missile Defense Organization.

LEAHY AMENDMENT NO. 3550

Mr. HATFIELD (for Mr. LEAHY) proposed an amendment to amendment No. 3466 proposed by Mr. HATFIELD to the bill H.R. 3019, supra; as follows:

Insert at the appropriate place:

SEC. . Of the funds appropriated in Title II of Public Law 104–61, under the heading ''Overseas Humanitarian, Disaster, and Civic Aid'', for training and activities related to the clearing of landmines for humanitarian purposes, up to $15,000,000 may be transferred to ''Operations and Maintenance, Defense Wide'', to be available for the payment of travel, transportation and subsistence expenses of Department of Defense personnel incurred in carrying out humanitarian assistance activities related to the detection and clearance of landmines.

BURNS AMENDMENT NO. 3551

Mr. HATFIELD (for Mr. BURNS) proposed an amendment to amendment No. 3466 proposed by Mr. HATFIELD to the bill H.R. 3019, supra; as follows:

At the appropriate place, insert:

TITLE IX—RESTRUCTURING OF THE CIRCUITS OF THE UNITED STATES COURTS OF APPEALS

Subtitle A—Ninth Circuit Court of Appeals Reorganization

SEC. 901. SHORT TITLE.

This subtitle may be cited as the ''Ninth Circuit Court of Appeals Reorganization Act of 1996''.

SEC. 902. NUMBER AND COMPOSITION OF CIRCUITS.

Section 41 of title 28, United States Code, is amended—

(1) in the matter before the table, by striking out ''thirteen'' and inserting in lieu thereof ''fourteen'';

(2) in the table, by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

''Ninth ..... California, Hawaii, Guam, Northern Mariana Islands.'';

and

(3) between the last 2 items of the table, by inserting the following new item:

''Twelfth ..... Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington.''.

SEC. 903. NUMBER OF CIRCUIT JUDGES.

The table in section 44(a) of title 28, United States Code, is amended—

(1) by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

''Ninth ..... 15'';

and

(2) by inserting between the last 2 items at the end thereof the following new item:

''Twelfth ..... 13''.

SEC. 904. PLACES OF CIRCUIT COURT.

The table in section 48 of title 28, United States Code, is amended—

(1) by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

''Ninth ..... San Francisco, Los Angeles.'';

and

(2) by inserting between the last 2 items at the end thereof the following new item:

''Twelfth ..... Portland, Seattle, Phoenix.''.

SEC. 905. ASSIGNMENT OF CIRCUIT JUDGES AND CLERK OF THE COURT.

(a) CIRCUIT JUDGES.—(1) Subject to paragraph (2), each circuit judge in regular active service of the former ninth circuit whose official duty station on March 1, 1996—

(A) was in California, Hawaii, Guam, or the Northern Mariana Islands is assigned as a circuit judge of the new ninth circuit; and

(B) was in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, or Washington is assigned as a circuit judge of the twelfth circuit.

(2)(A) No more than 2 circuit judges in each of the new ninth circuit and the twelfth circuit as assigned under paragraph (1), may elect to be assigned to a circuit other than the circuit so assigned.

(B) An election under this paragraph—

(i) may be only for assignment to the new ninth circuit or the twelfth circuit; and

(ii) shall be made on the basis of seniority.

(C)(i) If the elections of circuit judges under subparagraph (A) result in a greater number of judges for a circuit than is provided under the amendments made under section 903, the number of vacancies described under clause (ii) in the office of circuit judge for such circuit shall not be filled.

(ii) The number of vacancies referred to under clause (i) are the number of vacancies that—

(I) first occur after the date on which such elections become effective; and

(II) are necessary for the number of judges in such circuit to conform with the amendments made under section 903.

(D) The judicial council of the former ninth circuit shall administer this paragraph.

(3) If no election is made by a circuit judge under paragraph (2), and as a result of assignments under paragraph (1) the number of judges assigned to a circuit is not in conformity with the amendments made under section 903, such conformity shall be achieved by not filling the number of vacancies in the office of circuit judge for such circuit that—

(A) first occur after the effective date of this subtitle; and

(B) are necessary for the number of judges in such circuit to conform with the amendments made under section 903.

(b) CLERK OF THE COURT.—The Clerk of the Court for the Twelfth Circuit United States Court of Appeals shall be located in Phoenix, Arizona.

SEC. 906. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.

Each judge who is a senior judge of the former ninth circuit on the day before the effective date of this subtitle may elect to be assigned to the new ninth circuit or to the twelfth circuit and shall notify the Director of the Administrative Office of the United States Courts of such election.

SEC. 907. SENIORITY OF JUDGES.

The seniority of each judge—

(1) who is assigned under section 905 of this subtitle; or

(2) who elects to be assigned under section 906 of this subtitle;

shall run from the date of commission of such judge as a judge of the former ninth circuit.

SEC. 908. APPLICATION TO CASES.

The provisions of the following paragraphs of this section apply to any case in which, on the day before the effective date of this subtitle, an appeal or other proceeding has been filed with the former ninth circuit:

(1) If the matter has been submitted for decision, further proceedings in respect of the matter shall be had in the same manner and with the same effect as if this subtitle had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which it would have gone had this subtitle been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings in respect of the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this subtitle, or submitted before the effective date of this subtitle and decided on or after the effective date as provided in paragraph (1) of this section, shall be treated in the same manner and with the same effect as though this subtitle had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this subtitle had not been enacted.

SEC. 909. DEFINITIONS.

For purposes of this subtitle, the term—

(1) ''former ninth circuit'' means the ninth judicial circuit of the United States as in existence on the day before the effective date of this subtitle;

(2) ''new ninth circuit'' means the ninth judicial circuit of the United States established by the amendment made by section 902(2) of this subtitle; and

(3) ''twelfth circuit'' means the twelfth judicial circuit of the United States established by the amendment made by section 902(3) of this subtitle.

SEC. 910. ADMINISTRATION.

The court of appeals for the ninth circuit as constituted on the day before the effective date of this subtitle may take such administrative action as may be required to carry out this subtitle. Such court shall cease to exist for administrative purposes on July 1, 1998.

SEC. 911. APPROPRIATIONS.

Of the $2,433,141,000 appropriated under the subheading ''SALARIES AND EXPENSES'' under the heading ''COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES'' under the heading ''TITLE III—THE JUDICIARY'' of this Act, $3,000,000 shall remain available until expended for the Twelfth Circuit Court of Appeals.

SEC. 912. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect 60 days after the date of the enactment of this subtitle.

BURNS AMENDMENT NO. 3552

Mr. BURNS proposed an amendment to amendment No. 3551 proposed by

him to amendment No. 3466 proposed by Mr. HATFIELD to the bill H.R. 3019, supra; as follows:

At the end of the amendment add the following:

Subtitle B—Commission Restructuring the Circuits of the United States Courts of Appeals

SEC. 921. ESTABLISHMENT AND FUNCTIONS OF COMMISSION.

(a) ESTABLISHMENT.—There is established a Commission on restructuring for the circuits of the United States Courts of Appeals which shall be known as the ''Heflin Commission'' (hereinafter referred to as the ''Commission'').

(b) FUNCTIONS.—The function of the Commission shall be to—

(1) study the restructuring of the circuits of the United States Courts of Appeals; and

(2) report to the President and the Congress on its findings.

SEC. 922. MEMBERSHIP.

(a) COMPOSITION.—The Commission shall be composed of twelve members appointed as follows:

(1) Three members appointed by the President of the United States.

(2) Three members appointed by the President pro tempore of the Senate.

(3) Three members appointed by the Speaker of the House of Representatives.

(4) Three members appointed by the Chief Justice of the United States.

(b) CHAIR.—The Commission shall elect a Chair and Vice Chair from among its members.

(c) QUORUM.—Seven members of the Commission shall constitute a quorum, but three may conduct hearings.

(d) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(e) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(f) MEETINGS.—The Commission shall meet at the call of the Chairman.

SEC. 923. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this subtitle.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this subtitle. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 924. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 925. TERMINATION OF THE COMMISSION.

The Commission shall terminate 90 days after the date on which the Commission submits its final report.

SEC. 926. REPORT.

No later than 2 years after the date of enactment of this subtitle, the Commission shall submit a report to the President and the Congress which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

SEC. 927. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, beginning in fiscal year 1997, such sums as necessary to carry out the purposes of this subtitle.

NOTICE OF HEARING

COMMITTEE ON RULES AND ADMINISTRATION

Mr. WARNER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR–301, Russell Senate Office Building, on Wednesday, March 20, 1996, at 9:30 a.m., to hold an oversight hearing on the Congressional Research Service.

For further information concerning this hearing, please contact Ed Edens of the committee staff on 224–6678.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the public that the hearing scheduled before the full Committee on Energy and Natural Resources to receive testimony regarding S. 1605, a bill to amend and extend certain authorities in the Energy Policy and Conservation Act which either have expired or will expire June 30, 1996, on Thursday, March 21, 1996, has been canceled.

A new date and time for the hearing will be announced.

For further information, please call Karen Hunsicker or Betty Nevitt at (202) 224–0765.

SUBCOMMITTEE ON INVESTIGATIONS

Mr. STEVENS. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold hearings regarding the Global Proliferation of Weapons of Mass Destruction, part II.

This hearing will take place on Wednesday, March 27, 1996, in room 342 of the Dirksen Senate Office Building. For further information, please contact Daniel S. Gelber of the subcommittee staff at 224–9157.

AUTHORITY FOR COMMITTEE TO MEET

SUBCOMMITTEE ON POST OFFICE AND CIVIL SERVICE

Mr. LOTT. Mr. President, I ask unanimous consent that the Subcommittee on Post Office and Civil Service, Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Monday, March 18, 1996, to review U.S. postal reform.

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

ADDITIONAL STATEMENTS

CBO ANALYSIS OF UNFUNDED MANDATES

• Mr. MURKOWSKI. Mr. President, pursuant to Public Law 104–4, I am submitting for the information of the Senate a CBO analysis of unfunded mandates of bills reported by the Senate Energy and Natural Resources Committee currently on the Senate Calendar. As further information is available, it will also be provided to the Senate. The analysis follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 15, 1996.

Hon. FRANK MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In previous correspondence dated February 8, 1996, regarding The Unfunded Mandates Reform Act of 1995 (Public law 104–4), the Congressional Budget Office (CBO) included two lists of the legislation on the calendar as of January 23, 1996. The lists assessed intergovernmental

mandates and private-sector mandates for legislation under your committee's jurisdiction. The bills were grouped into three categories: those that do not contain mandates as defined in Public Law 104–4; those that contain mandates but the direct costs are below the relevant thresholds; and legislation that needed further review to make a determination concerning mandates. CBO has completed its analysis of those bills on the lists requiring further review.

CBO finds that the following bills would impose no new private-sector mandates as defined in Public Law 104–4:

S. 92, Bonneville Power Administration Appropriations Refinancing Act.

S. 363, Rio Puerco Watershed Act of 1995.

S. 444, An act to amend the Alaska Native Claims Settlement Act to authorize purchase of common stock of Cook Inlet region.

S. 587, An act to amend the National Trails System Act to designate the Old Spanish Trail for inclusion in the National Trails System.

S. 852, Public Rangelands Management Act of 1995.

S. 884, Utah Public Lands Management Act of 1995.

S. 907, A bill to amend the National Forest Ski Area Permit Act of 1986.

S. 1459, A bill to provide for uniform management of livestock grazing on federal land.

H.R. 536, An act to prohibit the use of Highway 209 within the Delaware Water Gap National Recreation Area by certain commercial vehicles.

CBO also finds that the following bill would impose no new intergovernmental mandates, as defined in Public law 104–4:

S. 92, Bonneville Power Administration Appropriations Refinancing Act.

If you wish further details on this analysis, we will be pleased to provide them. The CBO contacts are Patrice Gordon (226–2940) for private-sector mandates and Marjorie Miller (225–3220) for intergovernmental mandates.

Sincerely,

JUNE E. O'NEILL,
Director.●

REVISITING A DANGEROUS PLACE

● Mr. MOYNIHAN. Mr. President, I had the pleasure of attending the American Jewish Congress' Profiles in Courage Awards Dinner last Saturday night in New York City at which former Israeli President Chaim Herzog delivered a most memorable address.

I first met Chaim Herzog some 21 years ago when then-President Ford appointed me the Permanent Representative of the United States to the United Nations. He was the Israeli Ambassador to that body where a Soviet-led coalition wielded enormous power and used it in an assault against the democracies of the world. In that regard, I cite an editorial in the New Republic which recently said of the United Nations, ''During the Cold War, the U.N. became a chamber of hypocrisy and proxy aggression.''

Proxy aggression in particular directed against the State of Israel, which became a metaphor for democracy under virtual siege at the United Nations.

Those who failed to destroy Israel on the field of battle joined those who wished to discredit all Western, democratic governments in an unprecedented, sustained attack on the very right of a U.N. member state to exist within the family of nations.

The efforts in the 1970's to delegitimize Israel came in many forms, none more insidious than the campaign to declare Zionism a form of racism.

With the collapse of the Soviet Union, both the Zionism resolution and the rejectionist Arab Front lost their major source of support.

On June 19, 1991, the Senate Foreign Relations Committee held a coffee-hour for then-President-elect Yeltsin of the Russian Soviet Federative Socialist Republic. In the receiving line, one of the members of the Russian delegation asked if I remembered him. ''I was stationed at the United Nations when you were the U.S. Representative. You did not think anyone was listening, did you? But we heard you.'' He was, in fact, Andrei Kozyrev.

The very last vote that the Soviet Union cast in the General Assembly was the vote on December 16, 1991, to repeal Resolution 3379. And the same Andrei Kozyrev who served the Soviet Union at the United Nations in 1975, was, in his capacity as Foreign Minister of Russia, one of the two witnesses to the historic Oslo Accords, signed on the South Lawn of the White House on September 13, 1993.

The same Andrei Kozyrev who monitored Leonard Garment's remarks before the Third Committee joined Warren Christopher in witnessing Yasser Arafat's signature to a paper that three decades of Soviet foreign policy sought to prevent.

The Soviet Union has gone to its richly deserved place in the dustbin of history which it once promised would be the burial place of democratic society.

The Soviet Union may be gone. But events during the past few weeks must remind us all that Israel remains very much a metaphor for democracy in the twilight struggle between the forces of totalitarianism and the values of freedom.

The bombs that rocked London and the terrorist violence that shattered the peace of Jerusalem and Tel Aviv were attacks on all democracies. While the immediate victims of the recent bombings in Israel may have been Israeli citizens of the Jewish, Moslem, and Christian faiths and visitors and pilgrims from other nations, those responsible for these actions are simply at war with all civilized societies.

There can be no place in the family of nations for the murderous cowards who send others on suicide missions to slaughter civilians in the name of any cause. President Clinton has taken important measures to help protect the people of Israel from a continuation of these atrocities.

President Herzog spoke Saturday night of the appropriate response to these terrorist atrocities. His message concerning the future of the peace process is an important one and I ask that his remarks be printed in the RECORD.

The remarks follow:

ADDRESS BY PRESIDENT CHAIM HERZOG TO THE AMERICAN JEWISH CONGRESS ON THE OCCASION OF THE PRESENTATION OF THE PROFILES IN COURAGE AWARDS

Mr. Chairman: I am most grateful to you for your kind words, and, indeed, to the American Jewish Congress for having made this memorable award to me in such distinguished company as former comrades-in-arms, Senator Daniel Patrick Moynihan and Leonard Garment.

As I stand here in this building I recall the years in which I represented Israel—years in which we were treated by so many as a pariah state, years in which the theater of the absurd which was the United Nations at that time devoted so much time, energy and resources to condemning the small State of Israel while ignoring the evils that befell the world on all sides. At that time, we were outnumbered by the automatic majority comprised of an alliance of hatred based on the Soviet bloc, the Arab bloc and the so-called Non-Aligned group. If ever there was a misnomer, it was this, because nobody was more aligned in those days than the so-called Non-Aligned. They were aligned in hatred of Western democracy, they were aligned in support of Communist hegemony, they were aligned in the common lofty purpose of maligning Israel with a view to leading to its delegitimization.

The battle began in October 1975 in the Third Committee, the so-called Human Rights Committee, with a violent attack against Israel and Zionism. The three great bulwarks of democracy and freedom—Cuba, Somalia and Benin—had submitted to the UN Third Committee, the Human Rights Committee, an amendment proposing an addition to the existing resolution attacking racism and apartheid. What they wanted to add was an attack on Zionism, equating it with racism. This move was particularly grave because it was the first attack in the United Nations on an ''ism.'' Nobody had ever attempted to attack Communism, Socialism or capitalism before. But now our national liberation movement was becoming the center of attack. In that debate, Leonard Garment, the U.S. representative on the committee, attacked the resolution with the dramatic words, ''This is an obscene act.''

On Friday evening, October 17th, the debate concluded in the Third Committee, and it met to vote on it. In my remarks, I thanked the delegations who had stood by our side, and said that we would never forget those who voted to attack our religion and our faith. I shouted out the last words, ''We shall never forget.''

The resolution passed with a majority, and our enemies seemed to be on the verge of a victory war dance. I saw Pat Moynihan, the blood rushing to his head, livid, standing up. He straightened his tie, pulled down and buttoned his jacket, and crossed the floor to me. I rose to greet him and held out my hand. He took it, pulled me to him and embraced me in front of the entire hall. I shall never forget that gut reaction of his, which spoke more than anything else. It was not planned, it was not part of policy—that was just Pat Moyniham behaving instinctively. I was very moved. He whispered to me what we could do to our enemies.

I was perplexed and could not understand the absence of any meaningful Jewish reaction to the vote at the time, and when I addressed the Conference of Presidents of Major American Jewish Organizations, I pulled no punches. As soon as my remarks at the meeting were published, the reaction amongst American Jewry was something that had to be seen to be believed. Paul Johnson, the brilliant editor of ''The New

Statesman,'' wrote an outstanding article which concluded with his views that ''The melancholy truth, I fear, is that the candles of civilization are burning low.''

In the General Assembly, I delivered the speech defending Israel, and indeed the Jewish people, and at the conclusion of my remarks I took the resolution in my hands and tore it up in front of the Assembly. The effect of the debate and the resolution on Jews all over the world was electrifying. The fight had done more for Zionism than thousands of speeches by Zionist leaders. It had clearly touched a nerve.

Nothing can demonstrate more vividly the change which has occurred than the attitude to Israel in the United Nations today. The resolution was rescinded by an overwhelming majority in 1992. Our delegation is no longer the whipping boy of the United Nations, and enjoys open and cordial relations with many Arab delegations. The Soviet Union has disappeared, and with it the hostility that it bred in the Assembly. Perhaps few events can demonstrate the unbelievable success of Israel in its efforts to achieve peace and break down the barriers of hatred than the attitude towards Israel in the General Assembly today.

I have come from Israel, which has been through some very difficult experiences in the past months. Like many other countries in the area, we are at war with Islamic Fundamentalism. It is a bitter struggle, fuelled by deep hatred and an approach by the Islamic Fundamentalists which entertains no compromise.

The new type of terror which is being used by our enemies is not easy to cope with, because here you have individuals who have been promised that they go straight to heaven and benefit from the priorities given to holy martyrs on their arrival, if they blow themselves up. This is a very difficult problem to deal with, and it is not always easy to detect the individual bent on creating havoc and chaos by detonating himself. It has been difficult to apply emergency legislation, but every one of these would-be suicide bombers now knows that an attack by them will involve very severe official action against their families, who will not have had the good fortune to reach heaven with them.

I do not have to recall to you the scenes of horror and devastation which filled the television screens of the world and which you doubtless saw, but we can be proud of the fact that the Opposition rallied behind the Government on the occasion of these disasters, and of the leadership given by Prime Minister Peres in these difficult and almost impossible times.

We have been through very difficult periods in the past when we had ranged against us the entire Palestinian people. We are experiencing a very difficult period now. But there is a difference: some 70% of the Palestinian people, represented by the PLO and led by a leader who was elected by secret ballot, has withdrawn from the circle of terror and has ceased to use terror in the struggle against Israel. It has been active in coordination with Israel against the terrorists of the Hamas and the Islamic Jihad, although we have maintained, and continue to maintain, that its action has not been as determined and as effective on occasions as we would wish. But one thing is clear: 70% of the Palestinian people have withdrawn from the circle of terror which endangered us over the years and they no longer partake in such activities.

We have to remember that the forces in conflict with us are also in conflict with the government of Jordan; are engaged in a life-and-death struggle in Algeria; and in Egypt, where President Mubarak has been successfully curbing their activities. The terrorists who have unleashed this recent violence have the same goal as their predecessors during the past fifty years: the destruction of Israel. They understand that their ambition will never succeed if the peace process succeeds and the Palestinians compromise. Those of us who react to trauma by despairing that the peace process will succeed are handing the terrorists a victory.

The arrangements under the Oslo Agreements have been moving along fairly satisfactorily. The Palestinian elections gave a convincing majority to those favoring the peace process, but we face the danger of terrorism instigated by a comparatively small minority. This is complicated by the new and very serious phenomenon of suicide bombing. We have demanded from the Palestinians to honor their commitments under the Oslo Agreements, and above all, to join us in fighting this new terrorism organized by the Hamas and the Islamic Jihad. There is daily cooperation, there are joint patrols everywhere, but because of the complexities of Arab society we have not been convinced that the Palestinian Authority has been doing its utmost to combat the wave of terrorism. I emphasize that it has done a great deal, and a large number of what could have been tragic events were prevented: but it is just not enough. The closure of the territories and the creation of a dividing wall between Israel and the Palestinians is having a very serious economic effect on the Palestinian population. They will thus have to reach painful decisions for they are entirely dependent on Israel for their economic existence.

The phenomenal success of Israel's economy has placed Israel in a dominant position, from an economic point of view, in the area. Israel's annual gross national product is going on 90 billion dollars and is more than the gross national product of Egypt, Jordan, Syria and the Palestinians together. The closure of Israel to labor from the Arab sector will deprive the Palestinian Authority of an income of some $700 million, but these facts do not influence the Fundamentalist activities of the Hamas and the Islamic Jihad who would create chaos throughout the area. The battle is going on in each and every one of the countries against the Fundamentalists, but so long as Iran is the home of terrorism and the finance center of the terrorist activities in the area, we have to adapt ourselves to a long struggle in many countries around us.

Let us remember that Israel has been at war with Arab terrorists throughout its history, and the terrorists who have unleashed this present violence have the same goal as their predecessors during the past hundred years—the destruction of Israel.

We have always moved forward and pursued our national interest in the face of violence and horror. Most Israelis understand that Palestinian self-rule with security guarantees for Israel is in our interest. This is no time to throw up our hands and declare that the peace process is finished. That would be an admission of defeat unlike any in our history.

We did not back down in 1929, when hundreds of innocent Jews were slaughtered by Arabs in Hebron. We did not back down in 1947, when the UN resolution to partition Palestine promoted mass murder and the ransacking of Jewish neighborhoods in Aleppo, Syria, in Aden, Jerusalem, Haifa and Jaffa. We buried our dead, rolled up our sleeves and created a Jewish state.

We did not back down in 1948, as Arab armies blocked the roads to Jerusalem and cut off food and weapons from its inhabitants. I was in that city in a building when a bomb destroyed it and nearly killed my wife. After I carried her out of the charred ruins and rushed her to hospital, it never occurred to us to surrender to those who wanted to destroy us. That spirit was nearly universal in our small population—one percent of which was killed in the War of Independence; it animated most Israelis and our supporters around the world in the decades—and wars—ahead.

We certainly did not back down under Labor, Likud and national unity governments when hundreds of Israeli men, women and children were killed by all manner of terrorist. We fought against terror while emphasizing our commitment to peace. Israel and the Jewish people need much more of that spirit now.

In recent years, the sense of permanent siege that has defined our national experience has begun to lift. But after so many decades of being a pariah state, at times it is hard for many to see that each and every Arab is no longer an enemy. And that is precisely what Hamas wants. As their popularity wanes in the West Bank and Gaza, their only hope is to generate violent conflict by returning to the days when to Israelis, all Arabs were indistinguishable from one another.

That is why Hamas has created a new breed of desperate fanatic with sophisticated explosives and the will to die. We must not let them win, and that means not only stopping murder, but also insisting that peace with legitimate Palestinian partners remains our national goal.

The effect of the recent terrorist attacks in Israel has been dramatic, leading to the joint initiative of President Clinton and Prime Minister Shimon Peres, together with King Hussein and President Mubarak, to convene a summit conference at Sharm el-Sheikh to set up a united international front against the danger of terrorism. We can only be gratified that finally the nations of the world seem to be awakening to the inherent danger of the Terrorist International threatening the free world. We can only hope and trust that the resolutions reached at the summit conference will be strictly adhered to, and what is most important of all, that the organizational aspects of the international struggle against terrorism will be implemented.

As I stand here in this building, I cannot but recall the dramatic debate which took place here in July 1976 after the unforgettable rescue by the Israel Defense Forces of the Jews hijacked to Entebbe, Uganda, in an Air France plane. In the course of my remarks in the debate in the Security Council in this very building, I said: ''It has fallen to the lot of my small country, embattled as we are, facing the problems which we do, to demonstrate to the world that there is an alternative to surrender to terrorism and blackmail.

''It has fallen to our lot to prove to the world that this scourge of international terror can be dealt with. It is now for the nations of the world, regardless of political differences which may divide them, to unite against this common enemy which recognizes no authority, knows no borders, respects no sovereignty, ignores all basic human decencies, and places no limits on human bestiality.

''. . . We are proud not only because we have saved the lives of over 100 innocent people—men, women and children—but because of the significance of our act for the cause of human freedom.

''We call on this body to declare war on international terror, to outlaw it and eradicate it wherever it may be. We call on this body, and above all we call on the Member States and countries of the world, to unite in a common effort to place these criminals outside the pale of human society, and with

them to place any country which cooperates in any way in their nefarious activities.''

Mr. Peres has done what an Israeli Prime Minister should do by making it crystal clear that Israel will take stern and—if necessary—unilateral measures to thwart these killers. And he has told Arafat that the Palestinian Authority must prove that it is a real partner by dismantling the terrorist infrastructure in the West Bank and Gaza, once and for all.

If Arafat does demonstrate the capacity to stop the fanatics, Israel should not take the coward's way out by capitulating to the rejectionists: it should do everything possible to make sure that the Palestinian Authority fulfills its obligations under the Oslo Agreements. It must insist that our security comes first, even as we continue to mourn our dead. That is the brave as well as the sensible thing to do.

There is a debate in Israeli society about the advantages or disadvantages of the peace process. When evaluating the possibilities, one has to remember that we are now becoming more and more an integral part of the Middle East. We have relations with many Arab countries; trade with the Arab world is booming; joint projects are being set up on all sides; tens of thousands of Arab tourists are pouring in from Jordan and now from Egypt too; our hospitals are flooded with Arab patients from all over the Middle East. A new form of life is developing which these terrorist organizations see as a great danger to them.

When evaluating our reaction to the current events, we must recall that the alternative to moving along the path of the peace process would cause 70% of the Palestinian population which had ceased to use terror as a weapon to return to a tragic and dangerous situation. It would mean a return to the 'intifada,' with the terrible consequences of such an ongoing struggle. It would mean, according to some, a return to the alleyways and backyards of Gaza, with all that that implies. The enemy says openly that its purpose is to destroy the peace process, hence nothing could be more counter-productive to our cause than giving in to the terrorists and stopping the process.

I emphasize, of course, that we have to insist that our Palestinian interlocutors honor all the obligations which they have taken on themselves, otherwise they know full well that we hold all the strong cards.

My friends, only five years have passed since the Gulf War, during which Iraq attacked senselessly with Scud missiles the civilian population of Israel. At that time, the grand alliance organized by President Bush reacted and soundly beat the Iraqi army. But at that time Israel could not convince the alliance that it had a place in it. It is an indication of the long distance we have covered since then and the revolution which has occurred in the Middle East, that this week the leaders of the Arab world and of the free world sat together with the Prime Minister of Israel, who was treated as a full and equal partner in this international struggle against terrorism. This was followed by President Clinton's third visit to Israel, in which a far-reaching agreement on a joint effort to combat terror has reached between the United States and Israel.

That is the measure of advance that has occurred in our area, and the degree to which Israel has become an ally of, among others, the leading Arab countries in the Middle East. That is the measure of advance and positive change which we have witnessed in the Middle East.

I am convinced that the international effort being made to coordinate the struggle against terrorism will ultimately bear fruit. In the meantime, Israel continues its impressive march along the road to regional peace and economic development, a road along which it is advancing in partnership with the leading Arab countries of the area.

Let us not forget the intricate path along which we have advanced; let us not forget the struggle conducted by many others before me who received the award being given tonight; let us not forget that many of our leaders of old would have given their right hands just to see the revolutionary change which has occurred to Israel in the Middle East. We in Israel have lived through very trying and difficult times, but we have always known that our cause is just. Our dedication to that cause is what will advance us to new goals and a new and promising era in the future.●

IMMIGRANTS AND JOBS

● Mr. ABRAHAM. I would like to alert my Senate colleagues to today's editorial by the Wall Street Journal on why the Congress should think twice before cutting legal immigration.

As currently written, the legal immigration reform measures, H.R. 2202 and S. 1394, would slash legal immigration by nearly half, largely through the elimination of whole categories of family-sponsored immigration by U.S. citizens. In my judgment, the drastic cuts in legal immigration contemplated in these bills would hurt U.S. economic growth, job creation; and competitiveness. The fact is that many immigrants contribute to our economic well-being by inventing new products, starting new entrepreneurial businesses, and creating jobs for Americans: A new study by immigration policy analyst Philip Peters found that one in four patents in this country is created by immigrants alone or by immigrants collaborating with U.S. born coinventors. Four of the immigrants surveyed in Mr. Peter's study started their own businesses, generating over 1,600 jobs here in America.

Mr. President, it is also important to point out that not all these talented immigrants and entrepreneurs came to America through the employment-based immigration system; some of them, like the Intel Corp.'s founder Andrew Grove, arrived through the refugee system. Others came through the family-sponsored system as minor children, adult children, and siblings. The bottom line is that restrictions on immigration categories not labeled as ''economic'' will end up hurting our economy and our competitiveness.

Both the academic literature and empirical evidence strongly suggest that legal immigrants make important positive contributions to American society. I would hope that my colleagues would keep this fact in mind as we debate the merits of the pending legal immigration reform bill. I ask that the Wall Street Journal article and the study by Mr. Peters be printed in the RECORD.

[From the Wall Street Journal, Mar. 18, 1996]

REVIEW & OUTLOOK

SCAN THE CONGRESS

First, require all laws that apply to the rest of the country also apply equally to the Congress.—Contract With America, September 27, 1994.

Wise words, and we hope they apply to the immigration bill being pushed on the House floor by Congressman Lamar Smith (R., Texas) and up for a vote as early as Tuesday night. By all means, set up a little office in the House gym and let Congresspeople be the first to line up for their retina scans.

Indeed, such an amendment was pondered by Colorado Democrat Pat Schroeder, bless her palpitating heart, though it didn't make the long list of amendments and resolutions available Friday. While the Republican Contract also called for a smaller government, Representative Smith's brainstorm would move toward requiring all citizens to get verification from a federal database before they are allowed to take a new job. Like the Senate version of the bill, it would also pilot a ''voluntary'' national ID system, although both sides, for the moment, seem to be backing away from the sinister biometric identifiers such as retina scans we heard about earlier.

The ID system is an ornament, of course, on the bill reducing legal immigration by nearly half, cutting family reunions and slashing the intake of refugees. It at least has the virtue of not hiding behind arguments about illegal immigration; it is purely a mean-spirited outburst against legal immigration. The horde of amendments and resolutions try to separate ''good'' immigrants—former H'Mong soldiers, for example, from ''bad'' immigrants—parents of citizens, for example. All of this is to be decided by a Congress that routinely deplores micromanagement from inside the Beltway; proposals to vitiate the family unification principle for immigration come from the same lips that deplore the decline of family values.

The reality of the immigration contribution to American society comes clear in a study by Philip Peters of the Alexis de Tocqueville Institute. As a proxy for intellectual and economic contribution, Mr. Peters looked at recent U.S. patents. He found that one patent in four in this country is created by immigrants or immigrants working with U.S.-born engineers or investors. This is three times their presence in our population (8.7%), so presumably immigrants are out there doing more than their share to keep the U.S. competitive with Japan.

Nor of course did all the patenters in the Tocqueville study enter the country on skilled worker visas. Take Alexander Owczarz (O-zarz), a product development engineer who stopped counting after registering his 25th U.S. patent. Mr. Owczarz reckons that one recent patent alone generated 20 jobs at Semitool, the Kalispell, Montana, exporter where he works. Mr. Owczarz is a citizen now, but he entered this country on a tourist visa when he got sick of Communist Poland. Nineteen-nineties restrictionists would expel people like Mr. Owczarz when they overstay their visa.

Or how about refugees? Mr. Smith would cut them. Tocqueville found Ernesto E. Blanco, a professor at MIT who fled Havana in 1960 on a visa provided through a special accelerated program to rescue Cubans from Castro. Mr. Blanco has 13 patents, including a flexible arm that makes endoscopic surgery easier. There are more famous examples: Smith-Simpson-style legislation would bar the door to the future equivalents of Intel's Hungarian refugee, Andrew Grove. For that matter, another big job creator in Silicon Valley, Borland International, was founded by an illegal immigrant, Philippe Kahn.

In recent days we've seen growing recognition of these points. On the Senate side, Spencer Abraham was able to defeat the far

more senior Alan Simpson, and split the Senate legislation into two bills, on legal and illegal immigration. On the House side Congressmen Dick Chrysler (R., Michigan), Sam Brownback (R., Kansas), Howard Berman (D., California) and Phil Crane (R., Illinois) were able to squeeze an unfriendly rules committee into letting them offer an amendment that would remove all Mr. Smith's cutbacks on legal, family-sponsored immigration. Steve Chabot, a freshman Republican, and John Conyers, a Democrat, are offering an amendment to strike the odious ID system.

For freshmen Republicans, this is an issue of heritage. Put bluntly, are they children of Ronald Reagan and the House Contract, or Pat Buchanan and his nativist campaign? Between Senator Simpson and Representative Smith, all of the noxious provisions are likely to come back with the conference committee report. The best hope is that the bills will fall on their own weight, like Hillary Clinton's health-care boondoggle, and that the issue can be taken up by another Congress where cooler heads prevail.

MADE IN THE USA: IMMIGRANTS, PATENTS, AND JOBS

EXECUTIVE SUMMARY

In an effort to quantify the contribution of immigrants to U.S. technological innovation, the Alexis de Tocqueville Institution performed a study of recent U.S. patents. Using a random selection of 1988 and 1994 patents, we found:

Based on the responses to our survey, about one patent in four (26.4%) is created by immigrants alone or by immigrants collaborating with U.S.-born co-inventors.

Based on our entire sample (i.e. counting nonresponses as nonimmigrant inventors), about one patent in five (19.2%) involves immigrants as sole or co-inventors. That's a conservative estimate with a 5% margin of error.

Immigrants account for about 8.7% of the U.S. population. Hence, the study shows immigrants to be more than twice as likely as the general population to generate patented innovations.

OVERVIEW: IMMIGRANTS CONTRIBUTE TWICE THEIR SHARE OF PATENTS

Scores of anecdotes have created a poetic image of immigrants who arrive as refugees, students, laborers or professionals and go on to create products, companies and even entire industries. But beyond the anecdotes, can the contributions of immigrants to America's industrial cutting edge be quantified?

The Alexis de Tocqueville Institution (AdTI) endeavored to do this by using a well known indicator of technological innovation—issuance of new patents—to measure immigrants' inventiveness and spirit of enterprise.

Examining 250 recently issued U.S. patents chosen at random, AdTI found that over 19% of the patents in our sample (48 patents) were issued to immigrants alone or to immigrants collaborating with U.S.-born co-inventors. This is over twice immigrants' proportion of the U.S. population—8.7%.[1]

The immigrant inventors identified in our study include researchers, executives, entrepreneurs and an MIT professor. Four started their own businesses, generating over 1,600 jobs. Their innovations include: A system that protects Americans troops inside a front-line combat vehicle from chemical, biological and nuclear contamination; 100 sensors used on the space shuttle, all produced by a company founded by an immigrant inventor, now employing 1500 people; components of GE electric power generators that are exported to Japan; a machine made by a Montana company that generated $10 million in sales last year, and is expected to generate $15 million in sales to both U.S. and export markets this year.

The economic contributions of immigrant inventors are worth considering at a time when Congress is debating legislation to reduce all categories of legal immigration, including specially skilled workers. American high-tech firms rely on skilled foreign workers to meet particular needs. For example, Microsoft software developers are about 95% U.S.-born, yet the company finds it ''absolutely essential'' to draw on the technical and cultural knowledge that foreign-born employees can bring, according to Microsoft Chairman Bill Gates. New restrictions on the entry of skilled foreign workers or their families ''will really put pressure on us to do a major portion of our software development outside the United States,'' Gates says.[2] A U.S.-born inventor contacted in this study said immigrants are a ''very valuable asset for American science and technology. . . . You need a constant influx of new ideas and new points of view.''[3]

Our findings seem to justify concerns long expressed by foreign governments about the ''brain drain''—the economic loss they suffer when highly skilled citizens emigrate to pursue careers overseas. For example, nearly 2,000 professional or semi-professional South African citizens emigrated in 1994. As a result, some South Africans are concerned that emigration means fewer jobs, a smaller tax base and zero return on the state's investment in educating physicians and other professionals. ''For every emigrant—they are mostly highly qualified—at least ten local people lose their jobs,'' said Karen Theron of South Africa's Central Economics Advisory Services.[4]

IMMIGRANT INVENTORS' STORIES

As immigrant inventors were identified in the study, the author conducted interviews with many of them. They described their work and their motivations for coming to America, and offered some thoughts as to why the United States attracts inventive people and why they are productive in the U.S. work environment. Some of the information gathered in those interviews follows: The inventors' patent numbers are noted in parentheses.

Fred Kavli is Chairman of the Board and CEO of the Kavlico Corporation in Moore Park, California. Kavli immigrated from Norway in 1956 with a physics degree in hand, and founded the company on a shoestring two years later. ''This was the land of opportunity—especially then,'' he told us. ''There was no other country I could go to to do that.''

Kavlico makes sensors, primarily for aeronautical controls and automotive pollution controls. One hundred Kavlico sensors operate on the space shuttle.

Kyong Park is Kavlico's Vice President for Research and Development. A physicist, he came to the U.S. from Korea in 1969 to pursue his education. Park joined Kavlico in 1977 and holds 24 patents.

With Kavli's assistance, Park was able to stay in the United States to pursue his career. He preferred to stay here because Korea was under a ''corrupt'' military government in the 1970's, where bribery was rife and ''only people with connections had opportunity,'' he said. ''Here, if you work hard you have opportunity. People from outside really appreciate this society and this culture.''

According to Kavli, Kyong Park was ''instrumental'' in the pressure sensor development that brought Kavlico into the automotive pollution control market. This has helped to propel Kavlico's growth from $4 million in sales and 120 employees in 1977 to $150 million in sales and 1,500 employees today.

Park was reticent to be interviewed, explaining that he does not seek special recognition for his work. But he did describe an experience at a recent company picnic. A colleague pointed to the 3,000 employees and family members and told Park, ''See, all these people are making a living because of your hard work.'' ''I never thought of it that way,'' Park said. ''I felt good that I have helped not just my family, but many of those people too.'' (Kavli/Park joint patent 1988/4735098)

Ram Labhaya Malik of San Jose, California immigrated from India in 1971. An engineer, he is co-inventor of an air purification system now in use in the Army's Bradley Fighting Vehicle, a front-line troop carrier. The system protects personnel inside from nuclear, chemical and biological contamination. One of his co-inventors immigrated from the Netherlands, the other is U.S.-born. (1988/4793832)

Richard Baker is founder and president of Membrane Technologies of Menlo Park, California. A native of the United Kingdom, he came to the U.S. to pursue post-doctoral studies, was offered a job and immigrated in 1966. He holds a Ph.D. in chemistry and has 57 patents. His company employs 30 people. Membrane Technologies produces and sells air purification systems and conducts scientific research under government contract. (1944/5364629)

Aleksander Owczarz is a mechanical engineer at Semitool Inc., a Kalispell, Montana company that makes capital equipment for the semiconductor industry. Dissatisfied with the system in Poland (''It was not my cup of tea''), he emigrated in 1978 to seek new opportunity in the United States. He stopped counting his patents when his 25th was issued. His latest patent is for a precision cleaning machine for wafer boxes and wafer carriers. Over 20 Semitool employees work full-time manufacturing that machine. It is sold in the U.S., Europe and Asia; sales were $10 million in 1995 and are projected to grow to $15 million this year. ''It's not just bright people'' that lead to technological innovation, he said. ''The combination of bright individuals and the right environment is what makes people productive here.'' (1944/5357991)

Ernest Blanco immigrated from Cuba in 1960 and teaches engineering at the Massachusetts Institute of Technology. He holds thirteen patents. In our sample, we found a design for a flexible arm for medical endoscopes (diagnostic and surgical devices) that he and a student created for Johnson & Johnson. Discussing the propensity of immigrants to work hard in scientific and technological research, he said, ''It's the environment here and the way we immigrants thing about the United States as a land where great inventions are being made. Immigrants feel the way to break the economic barrier is to invent something that will be of use to large numbers of Americans. We become worthy by using our brains.'' (1994/5348259)

Anatoly Galperin, an engineer, came to the U.S. as a refugee from Russia in 1989. He works for the Miller Edge company in Concordville, Pennsylvania. In Russia, he worked in telecommunications; here, his field is sensors, including the invention found in our sample: a safety feature (''sensing Edge'') of mechanical doors sold throughout the U.S. and to some overseas customers. (1994/5299387)

Michael Pryor of Woodbridge, Connecticut immigrated from England in 1953 with a doctorate in metallurgy. He holds 130 U.S. patents, and become vice President for Metals

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Footnotes at end of article.

Research at the Olin Corporation in 1973. He is now retired. At Olin, he calculated that the research department he directed produced a three-to-one monetary return. Its innovations include alloys, manufacturing processes, and the process used to produce the metal composites needed to mint quarters and dimes ever since the 90 percent silver-10 percent copper blend was discontinued. Pryor recruited both U.S.-born and immigrant scientists for his labs, and expressed particular admiration for Indian and Asian metallurgists. ''I didn't hire immigrants because I wanted to,'' he said, ''there were just not enough U.S. citizens graduating to fill up the ranks—there was too much competition from other labs and universities.'' (1988/4781050)

Angela Michaels of Elkhart, Indiana is a chemist who works for the Bayer Corporation. She immigrated from Italy in 1962. She holds six patents; all are in use in Bayer's products, including ''dip and read'' urinalysis strips for kidney disease detection. (1988/4717658)

Sung Kwon of Burnsville, Minnesota was among many investors drawn to the United States for educational opportunity. After completing his undergraduate work at the best university of Korea, he came to the University of Minnesota in 1965 to pursue the advanced engineering studies that was ''not available in Korea.'' He is now employed at Thermo King Corporation (a Westinghouse division) and holds seven US patents. (1994/5288643)

Jacob Haller and his family immigrated to the United States from the former Yugoslavia in 1955. An engineer, he founded the Emconn Tool company of Wheeling, Illinois and holds six patents. Emconn makes equipment for the electrical connector industry; its customers are the major telecommunications companies. After building the company up to 20 employees, Haller sold the manufacturing operation and now works with one other employee developing new products. (1988/4718167)

David Lomas of Arlington Heights, Indiana is a chemical engineer with the UOP corporation. He came to the United States from England in 1973. He holds over 30 patents; the invention in our sample is a ''catalytic cracking'' process used in petroleum refining. (1988/4757039)

Mohamed Hashem, a chemist, is an Egyptian-born immigrant working for the Rhone-Poulenc corporation's unit in Cranbury, NJ. He holds about two dozen patents, several of which are in commercial use, principally polymers for paints and coatings. (1988/4760152)

Ian Crawford, an electrical engineer from Scotland, was offered a job in the U.S. while here on a sales trip in 1980. Dissatisfied with the opportunities before him in Scotland, he took the job, came to the United States and went on to found his own company. Analog Modules of Orlando, Florida now employs over 60 people in the design, development and manufacture of laser electronics. (1994/5311353)

Mitchell Budniak of Skokie, Illinois is an electrical engineer who holds six patents. He and his parents were taken from the native Poland to Germany during World War II where, he said, his parents ''were basically slave labor.'' When the war ended, Budniak was eleven years old, and they came to the United States. His patents including a blood analysis unit and a computerized unit that monitors the vital signs of at-home patients and dispenses medication. (1988/4740080)

The late Stephen Slovenkai of Leominster, Massachusetts had a 30-year chemical engineering career, including a patent for a polymer fabrication method. In 1940 at age 14, he came to the United States from the former Czechoslovakia. His family settled in northeastern Pennsylvania, where his father worked as a coal miner and he graduated first in his high school class. He joined the U.S. Army and served in the postwar occupation forces in Italy. (1988/4730027)

Ranjit Gill of Schenectady, New York is an engineer who immigrated from India in 1970. The invention we encountered in our study is a cooling system that his employer, GE, has put to use in the world's largest electrical power generators, which are exported to Japan. (1994/5374866)

Dodd Wing Fong of Naperville, Illinois is a chemist who came to the United States from Hong Kong in 1962 to attend graduate school. He holds over 70 patents; the one encountered in our study is a polymer used in water purification. (1988/4731419)

SURVEY RESULTS

Sample size: 250.

Patents issued to immigrant inventors: 48.

Patents issued to U.S.-born inventors: 134.

No response: 68.

Patents issued to immigrants, as percentage of total sample (48/250): 19.2 percent.

Patents issued to immigrants, as percentage of respondents (48/180): 26.4 percent.

Foreign-born percentage of U.S. population: 8.7 percent.

HOW THIS STUDY WAS CONDUCTED

Sample. This study was performed by contacting inventors whose inventions resulted in U.S. patents issued in 1988 and 1994. To generate a random sample of 250 patents approved in 1988 and 1994, the Alexis de Tocqueville Institution created a random list of patent numbers from those years, and drew our sample from that list.[5] This process generated patents issued to both U.S. and foreign inventors. Excluding the patents issued to inventors living overseas, we were left with a sample of 122 1988 patents and 128 1994 patents. The years 1988 and 1994 were chosen to yield a sample including both very recent patents and patents that might have been used in commercial applications.

Canvassing. Using the home addresses in the patent applications, we attempted to reach these inventors by phone and/or letter. When we could not reach an inventor by mail or telephone, or through a representative such as a patent attorney, that patent was listed as ''no response.'' The canvassing took place between January 15 and March 4, 1996.

Margin of error. This survey's margin of error is 4.9% at a 95% confidence level. That is, there is 95% likelihood that identical surveys will yield results within a range 4.9 percentage points higher or lower than the result found here (19.2%, or 48 immigrant inventors/250 patents). Because we effectively counted as non-immigrants those inventors who did not respond or could not be reached, our finding of 19.2% immigrant inventors is probably conservative.

FOOTNOTES

1. 1994 foreign-born population as a percentage of total U.S. population, based on the Census Bureau's Current Population Survey.

2. Bill Gates, ''A World of Talent Out There,'' The Buffalo News, January 2, 1996, p. E7.

3. Author's interview with inventor Andrew Olah of Spencer, Ohio, February 13, 1996.

4. Johan Coetzee, ''Emigration Costs Country 10,000 Jobs Yearly,'' Johannesburg BEELD, December 1, 1995, p. S2.

5. We generated the list using a Lotus spreadsheet, using the formula P=(RN)+L, where P is the patent number, R is a random number between 0 and 1, N is the number of patents issued in the year (1988 or 1994) and L is the lowest patent number issued in that year. Patent numbers are assigned consecutively and sequentially.●

PUBLIC RANGELANDS MANAGEMENT ACT OF 1995

● Mr. DOMENICI. Mr. President, when S. 1459, the Public Rangelands Management Act of 1995 comes before the Senate later this week, I intend to offer a substitute amendment that is the result of 6 months of bipartisan effort to reach consensus on this legislation. I ask that the text of the substitute be printed in the RECORD, so that all Senators will have the opportunity to review it prior to the debate on the Senate floor.

AMENDMENT NO.—

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This title may be cited as the ''Public Rangelands Management Act of 1995.''

SEC. 2. EFFECTIVE DATE.

(a) IN GENERAL.—This Act and the amendments and repeals made by this Act shall become effective on the date of enactment.

(b) APPLICABLE REGULATIONS.—

(1) Except as provided in paragraph (2), grazing of domestic livestock on lands administered by the Chief of the Forest Service and the Director of the Bureau of Land Management, as defined in section 104(11) of this Act, shall be administered in accordance with the applicable regulations in effect for each agency as of February 1, 1995, until such time as the Secretary of Agriculture and the Secretary of the Interior promulgate new regulations in accordance with this Act.

(2) Resource Advisory Councils established by the Secretary of the Interior after August 21, 1995, may continue to operate in accordance with their charters for a period not to extend beyond February 28, 1997, and shall be subject to the provisions of this Act.

(c) NEW REGULATIONS.—With respect to title I of this Act—

(1) the Secretary of Agriculture and the Secretary of the Interior shall provide, to the maximum extent practicable, for consistent and coordinated administration of livestock grazing and management of rangelands administered by the Chief of the Forest Service and the Director of the Bureau of Land Management, as defined in section 104(11) of this Act, consistent with the laws governing the public lands and the National Forest System;

(2) the Secretary of Agriculture and the Secretary of the Interior shall, to the maximum extent practicable, coordinate the promulgation of new regulations and shall publish such regulations simultaneously.

TITLE I. MANAGEMENT OF GRAZING ON FEDERAL LAND

Subtitle A General Provisions

SEC. 101. FINDINGS.

(a) FINDINGS.—Congress finds that—

(1) multiple use, as set forth in current law, has been and continues to be a guiding principle in the management of public lands and national forests;

(2) through the cooperative and concerted efforts of the Federal rangeland livestock industry, Federal and State land management agencies, and the general public, the Federal rangelands are in the best condition they have been in during this century, and their condition continues to improve;

(3) as a further consequence of those efforts, populations of wildlife are increasing and stabilizing across vast areas of the West;

(4) grazing preferences must continue to be adequately safeguarded in order to promote the economic stability of the western livestock industry;

(5) it is in the public interest to charge a fee for livestock grazing permits and leases on Federal land that is based on a formula that—

(A) reflects a fair return to the Federal Government and the true costs to the permittee or lessee; and

(B) promotes continuing cooperative stewardship efforts;

(6) opportunities exist for improving efficiency in the administration of the range programs on Federal land by—

(A) reducing planning and analysis costs and their associated paperwork, procedural, and clerical burdens; and

(B) refocusing efforts to the direct management of the resources themselves;

(7) in order to provide meaningful review and oversight of the management of the public rangelands and the grazing allotment on those rangelands, refinement of the reporting of costs of various components of the land management program is needed;

(8) greater local input into the management of the public rangelands is in the best interests of the United States;

(9) the western livestock industry that relies on Federal land plays an important role in preserving the social, economic, and cultural base of rural communities in the western States and further plays an integral role in the economies of the 16 contiguous western States with Federal rangelands;

(10) maintaining the economic viability of the western livestock industry is in the best interest of the United States in order to maintain open space and fish and wildlife habitat;

(11) since the enactment of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the amendment of section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) by the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.), the Secretary of the Interior and the Secretary of Agriculture have been charged with coordinating land use inventory, planning and management programs on Bureau of Land Management and National Forest System lands with each other, other Federal departments and agencies, Indian tribes, and State and local governments within which the lands are located, but to date such coordination has not existed to the extent allowed by law; and

(12) it shall not be the policy of the United States to increase or reduce total livestock numbers on Federal land except as is necessary to provide for proper management of resources, based on local conditions, and as provided by existing law related to the management of Federal land and this title.

(b) REPEAL OF EARLIER FINDINGS.—Section 2(a) of the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901(a)) is amended—

(1) by striking paragraphs (1), (2), (3), and (4);

(2) by redesignating paragraphs (5) and (6) as paragraphs (1) and (2), respectively;

(3) in paragraph (1) (as so redesignated), by adding ''and'' at the end; and

(4) in paragraph (2) (as so redesignated)

(A) by striking ''harassment'' and inserting ''harassment''; and

(B) by striking the semicolon at the end and inserting a period.

SEC. 102. APPLICATION OF ACT.

(a) This Act applies to—

(1) the management of grazing on Federal land by the Secretary of the Interior under—

(A) the Act of June 28, 1934 (commonly known as the ''Taylor Grazing Act'') (48 Stat. 1269, chapter 865; 43 U.S.C. 315 et seq.);

(B) the Act of August 28, 1937 (commonly known as the ''Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937'') (50 Stat. 874, chapter 876; 43 U.S.C. 1181a et seq.);

(C) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

(D) the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.);

(2) the management of grazing on Federal land by the Secretary of Agriculture under—

(A) the 12th undesignated paragraph under the heading ''SURVEYING THE PUBLIC LANDS.'' under the heading ''UNDER THE DEPARTMENT OF THE INTERIOR.'' in the first section of the Act of June 4, 1897 (commonly known as the ''Organic Administration Act of 1897'') (30 Stat. 11, 35, chapter 2; 16 U.S.C. 551);

(B) the Act of April 24, 1950 (commonly known as the ''Granger-Thye Act of 1950'') (64 Stat. 85, 88, chapter 97; 16 U.S.C. 580g, 580h, 580l);

(C) the Multiple-Use Sustained Yield Act of 1960 (16 U.S.C. 528 et seq.);

(D) the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.);

(E) the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.);

(F) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

(G) the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.); and

(3) management of grazing by the Secretary on behalf of the head of another department or agency under a memorandum of understanding.

(b) Nothing in this title shall authorize grazing in any unit of the National Park System, National Wildlife Refuge System, or on any other Federal lands where such use is prohibited by statute, nor supersedes or amends any limitation on the levels of use for grazing that may be specified in other Federal law, nor expands or enlarges any such prohibition or limitation.

(c) Nothing in this title shall limit or preclude the use of and access to Federal land for hunting, fishing, recreational, watershed management or other appropriate multiple use activities in accordance with applicable Federal and State laws and the principles of multiple use.

(d) Nothing in this title shall affect valid existing rights. Section 1323(a) and 1323(b) of Public Law 96–487 shall continue to apply to nonfederally owned lands.

SEC. 103. OBJECTIVE.

The objective of this title is to—

(1) promote healthy, sustained rangeland;

(2) provide direction for the administration of livestock grazing on Federal land;

(3) enhance productivity of Federal land by conservation of forage resources, reduction of soil erosion, and proper management of other resources such as control of noxious species invasion;

(4) provide stability to the livestock industry that utilizes the public rangeland;

(5) emphasize scientific monitoring of trends and condition to support sound rangeland management;

(6) maintain and improve the condition of riparian areas which are critical to wildlife habitat and water quality; and

(7) promote the consideration of wildlife populations and habitat, consistent with land use plans, principles of multiple-use, and other objectives stated in this section.

SEC. 104. DEFINITIONS.

IN GENERAL.—In this title:

(1) ACTIVE USE.—The term ''active use'' means the amount of authorized livestock grazing use made at any time.

(2) ACTUAL USE.—The term ''actual use'' means the number and kinds or classes of livestock, and the length of time that livestock graze on, an allotment.

(3) AFFECTED INTEREST.—The term ''affected interest'' means an individual or organization that has expressed in writing to the Secretary concern for the management of livestock grazing on a specific allotment, for the purpose of receiving notice of and the opportunity for comment and informal consultation on proposed decisions of the Secretary affecting the allotment.

(4) ALLOTMENT.—The term ''allotment'' means an area of designated Federal land that includes management for grazing of livestock.

(5) ALLOTMENT MANAGEMENT PLAN.—The term ''allotment management plan'' has the same meaning as defined in section 103(k) of Pub. L. 94–579 (43 U.S.C. 1702(k)).

(6) AUTHORIZED OFFICER.—The term ''authorized officer'' means a person authorized by the Secretary to administer this title, the Acts cited in section 102, and regulations issued under this title and those Acts.

(7) BASE PROPERTY.—The term ''base property'' means—

(A) private land that has the capability of producing crops or forage that can be used to support authorized livestock for a specified period of the year; or

(B) water that is suitable for consumption by livestock and is available to and accessible by authorized livestock when the land is used for livestock grazing.

(8) CANCEL; CANCELLATION.—The terms ''cancel'' and ''cancellation'' refer to a permanent termination, in whole or in part, of—

(A) a grazing permit or lease and grazing preference; or

(B) other grazing authorization.

(9) CONSULTATION, COOPERATION, AND COORDINATION.—The term ''consultation, cooperation, and coordination'' means, for the purposes of this title and section 402(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752(d)), engagement in good faith efforts to reach consensus.

(10) COORDINATED RESOURCE MANAGEMENT.—The term ''coordinated resource management''—

(A) means the planning and implementation of management activities in a specified geographic area that require the coordination and cooperation of the Bureau of Land Management or the Forest Service with affected State agencies, private land owners, and Federal land users; and

(B) may include, but is not limited to practices that provide for conservation, resource protection, resource enhancement or integrated management of multiple-use resources.

(11) FEDERAL LAND.—The term ''Federal land''—

(A) means land outside the State of Alaska that is owned by the United States and administered by—

(i) the Secretary of the Interior, acting through the Director of the Bureau of Land Management; or

(ii) the Secretary of Agriculture, acting through the Chief of the Forest Service; but

(B) does not include—

(i) land held in trust for the benefit of Indians; or

(ii) the National Grasslands as defined in section 203.

(12) GRAZING PERMIT OR LEASE.—The term ''grazing permit or lease'' means a document authorizing use of the Federal land—

(A) within a grazing district under section 3 of the Act of June 28, 1934 (commonly known as the ''Taylor Grazing Act'') (48 Stat. 1270, chapter 865; 43 U.S.C. 315b), for the purpose of grazing livestock;

(B) outside grazing districts under section 15 of the Act of June 28, 1934 (commonly known as the ''Taylor Grazing Act'') (48 Stat. 1275, chapter 865; 43 U.S.C. 315m), for the purpose of grazing livestock; or

(C) in a national forest under section 19 of the Act of April 24, 1950 (commonly known as the ''Granger-Thye Act of 1950'')(64 Stat. 88, chapter 97; 16 U.S.C. 5801), for the purposes of grazing livestock.

(13) GRAZING PREFERENCE.—The term ''grazing preference'' means the number of animal unit months of livestock grazing on Federal land as adjudicated or appropriated

and attached to base property owned or controlled by a permittee or lessee.

(14) LAND BASE PROPERTY.—The term ''land base property'' means base property described in paragraph (7)(A).

(15) LAND USE PLAN.—The term ''land use plan'' means—

(A) with respect to Federal land administered by the Bureau of Land Management, one of the following developed in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)—

(i) a resource management plan; or

(ii) a management framework plan that is in effect pending completion of a resource management plan; and

(B) with respect to Federal land administered by the Forest Service, a land and resource management plan developed in accordance with section 6 of the Forest and Rangeland Resources Planning Act of 1974 (16 U.S.C. 1604).

(16) LIVESTOCK CARRYING CAPACITY.—The term ''livestock carrying capacity'' means the maximum sustainable stocking rate that is possible without inducing long-term damage to vegetation or related resources.

(17) MONITORING.—The term ''monitoring'' means the orderly collection of data using scientifically-based techniques to determine trend and condition of rangeland resources. Data may include historical information, but must be sufficiently reliable to evaluate—

(A) effects of ecological changes and management actions; and

(B) effectiveness of actions in meeting management objectives.

(18) RANGE IMPROVEMENT.—The term ''range improvement''—

(A) means an authorized activity or program on or relating to rangeland that is designed to—

(i) improve production of forage;

(ii) change vegetative composition;

(iii) control patterns of use;

(iv) provide water;

(v) stabilize soil and water conditions; or

(vi) provide habitat for livestock, wild horses and burros, and wildlife; and

(B) includes structures, treatment projects, and use of mechanical means to accomplish the goals described in subparagraph (A).

(19) RANGELAND STUDY.—The term ''rangeland study'' means a documented study or analysis of data obtained on actual use, utilization, climatic conditions, other special events, production trend, and resource condition and trend to determine whether management objectives are being met, that—

(A) relies on the examination of physical measurements of range attributes and not on cursory visual scanning of land, unless the condition to be assessed is patently obvious and requires no physical measurements;

(B) utilizes a scientifically based and verifiable methodology; and

(C) is accepted by an authorized officer.

(20) SECRETARY; SECRETARIES.—The terms ''Secretary'' or ''Secretaries'' mean—

(A) the Secretary of the Interior, in reference to livestock grazing on Federal land administered by the Director of the Bureau of Land Management; and

(B) the Secretary of Agriculture, in reference to livestock grazing on Federal land administered by the Chief of the Forest Service or the National Grasslands referred to in title II.

(21) SUBLEASE.—The term ''sublease'' means an agreement by a permittee or lessee that—

(A) allows a person other than the permittee or lessee to graze livestock on Federal land without controlling the base property supporting the grazing permit or lease; or

(B) allows grazing on Federal land by livestock not owned or controlled by the permittee or lessee.

(22) SUSPEND; SUSPENSION.—The terms ''suspend'' and ''suspension'' refer to a temporary withholding, in whole or in part, of a grazing preference from active use, ordered by the Secretary or done voluntarily by a permittee or lessee.

(23) UTILIZATION.—The term ''utilization'' means the percentage of a year's forage production consumed or destroyed by herbivores.

(24) WATER BASE PROPERTY.—The term ''water base property'' means base property described in paragraph (7)(B).

SEC. 105. FUNDAMENTALS OF RANGELAND HEALTH.

(a) STANDARDS AND GUIDELINES.—The Secretary shall establish standards and guidelines for addressing resource condition and trend on a State or regional level in consultation with the Resource Advisory Councils established in section 161, State departments of agriculture and other appropriate State agencies, and academic institutions in each interested State. Standards and guidelines developed pursuant to this subsection shall be consistent with the objectives provided in section 103 and incorporated, by operation of law, into the applicable land use plan to provide guidance and direction for Federal land managers in the performance of their assigned duties.

(b) COORDINATED RESOURCE MANAGEMENT.—The Secretary shall, where appropriate, authorize and encourage the use of coordinated resource management practices. Coordinated resource management practices shall be—

(1) scientifically based;

(2) consistent with goals and management objectives of the applicable land use plan;

(3) for the purposes of promoting good stewardship and conservation of multiple-use rangeland resources; and

(4) authorized under a cooperative agreement with a permittee or lessee, or an organized group of permittees or lessees in a specified geographic area. Notwithstanding the mandatory qualifications required to obtain a grazing permit or lease by this or any other act, such agreement may include other individuals, organizations, or Federal land users.

(c) COORDINATION OF FEDERAL AGENCIES.—Where coordinated resource management involves private land, State land, and Federal land managed by the Bureau of Land Management or the Forest Service, the Secretaries are hereby authorized and directed to enter into cooperative agreements to coordinate the associated activities of—

(1) the Bureau of Land Management;

(2) the Forest Service; and

(3) the Natural Resources Conservation Service.

(d) RULE OF CONSTRUCTION.—Nothing in this title or any other law implies that a minimum national standard or guideline is necessary.

SEC. 106. LAND USE PLANS.

(a) PRINCIPLE OF MULTIPLE USE AND SUSTAINED YIELD.—An authorized officer shall manage livestock grazing on Federal land under the principles of multiple use and sustained yield and in accordance with applicable land use plans.

(b) CONTENTS OF LAND USE PLAN.—With respect to grazing administration, a land use plan shall—

(1) consider the impacts of all multiple uses, including livestock and wildlife grazing, on the environment and condition of public rangelands, and the contributions of these uses to the management, maintenance and improvement of such rangelands;

(2) establish available animal unit months for grazing use, related levels of allowable grazing use, resource condition goals, and management objectives for the Federal land covered by the plan; and

(3) set forth programs and general management practices needed to achieve the purposes of this title.

(c) APPLICATION OF NEPA.—Land use plans and amendments thereto shall be developed in conformance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) CONFORMANCE WITH LAND USE PLAN.—Livestock grazing activities, management actions and decisions approved by the authorized officer, including the issuance, renewal, or transfer of grazing permits or leases, shall not constitute major Federal actions requiring consideration under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in addition to that which is necessary to support the land use plan, and amendments thereto.

(e) Nothing in this section is intended to override the planning and public involvement processes of any other Federal law pertaining to Federal lands.

SEC. 107. REVIEW OF RESOURCE CONDITION.

(a) Upon the issuance, renewal, or transfer of a grazing permit or lease, and at least once every six (6) years, the Secretary shall review all available monitoring data for the affected allotment. If the Secretary's review indicates that the resource condition is not meeting management objectives, then the Secretary shall prepare a brief summary report which—

(1) evaluates the monitoring data;

(2) identifies the unsatisfactory resource conditions and the use or management activities contributing to such conditions; and

(3) makes recommendations for any modifications to management activities, or permit or lease terms and conditions necessary to meet management objectives.

(b) The Secretary shall make copies of the summary report available to the permittee or lessee, and affected interests, and shall allow for a 30-day comment period to coincide with the 30-day time period provided in section 155. At the end of such comment period, the Secretary shall review all comments, and as the Secretary deems necessary, modify management activities, and pursuant to section 134, the permit or lease terms and conditions.

(c) If the Secretary determines that available monitoring data are insufficient to make recommendations pursuant to subsection (a)(3), the Secretary shall establish a reasonable schedule to gather sufficient data pursuant to section 123. Insufficient monitoring data shall not be grounds for the Secretary to refuse to issue, renew or transfer a grazing permit or lease, or to terminate or modify the terms and conditions of an existing grazing permit or lease.

Subtitle B Qualifications and Grazing Preferences

SEC. 111. SPECIFYING GRAZING PREFERENCE.

(a) IN GENERAL.—A grazing permit or lease shall specify—

(1) a historical grazing preference;

(2) active use, based on the amount of forage available for livestock grazing established in the land use plan;

(3) suspended use; and

(4) voluntary and temporary nonuse.

(b) ATTACHMENT OF GRAZING PREFERENCE.—A grazing preference identified in a grazing permit or lease shall attach to the base property supporting the grazing permit or lease.

(c) ATTACHMENT OF ANIMAL UNIT MONTHS.—The animal unit months of a grazing preference shall attach to—

(1) the acreage of land base property on a pro rata basis; or

(2) water base property on the basis of livestock forage production within the service area of the water.

Subtitle C Grazing Management

SEC. 121. ALLOTMENT MANAGEMENT PLANS.

If the Secretary elects to develop or revise an allotment management plan for a given area, he shall do so in careful and considered consultation, cooperation, and coordination with the lessees, permittees, and landowners involved, the grazing advisory councils established pursuant to section 162, and any State or States having lands within the area to be covered by such allotment management plan. The Secretary shall provide for public participation in the development or revision of an allotment management plan as provided in section 155.

SEC. 122. RANGE IMPROVEMENTS.

(a) RANGE IMPROVEMENT COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—The Secretary may enter into a cooperative agreement with a permittee or lessee for the construction, installation, modification, removal, or use of a permanent range improvement or development of a rangeland to achieve a management or resource condition objective.

(2) COST-SHARING.—A range improvement cooperative agreement shall specify how the costs of labor, or both, shall be shared between the United States and the other parties to the agreement.

(3) TITLE.—

(A) IN GENERAL.—Subject to valid existing rights, title to an authorized structural range improvement under a range improvement cooperative agreement shall be shared by the cooperator(s) and the United States in proportion to the value of the contributions (funding, material, and labor) toward the initial cost of construction.

(B) VALUE OF FEDERAL LAND.—For the purpose of subparagraph (A), only a contribution to the construction, installation, or modification of a permanent rangeland improvement itself, and not the value of Federal land on which the improvement is placed, shall be taken into account.

(4) NONSTRUCTURAL RANGE IMPROVEMENTS.—A range improvement cooperative agreement shall ensure that the respective parties enjoy the benefits of any nonstructural range improvement, such as seeding, spraying, and chaining, in proportion to each party's contribution to the improvement.

(5) INCENTIVES.—A range improvement cooperative agreement shall contain terms and conditions that are designed to provide a permittee or lessee an incentive for investing in range improvements.

(b) RANGE IMPROVEMENT PERMITS.—

(1) APPLICATION.—A permittee or lessee may apply for a range improvement permit to construct, install, modify, maintain, or use a range improvement that is needed to achieve management objectives within the permittee's or lessee's allotment.

(2) FUNDING.—A permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance of a range improvement covered by a range improvement permit.

(3) AUTHORIZED OFFICER TO ISSUE.—A range improvement permit shall be issued at the discretion of the authorized officer.

(4) TITLE.—Title to an authorized permanent range improvement under a range improvement permit shall be in the name of the permittee or lessee.

(5) CONTROL.—The use by livestock of stock ponds or wells authorized by a range improvement permit shall be controlled by the permittee or lessee holding a range improvement permit.

(c) ASSIGNMENT OF RANGE IMPROVEMENTS.—An authorized officer shall not approve the transfer of a grazing preference, or approve use by the transferee of existing range improvements unless the transferee has agreed to compensate the transferor for the transferor's interest in the authorized permanent improvements within the allotment as of the date of the transfer.

SEC. 123. MONITORING AND INSPECTION.

(a) MONITORING.—Monitoring of resource condition and trend of Federal land on an allotment shall be performed by qualified persons approved by the Secretary, including but not limited to Federal, State, or local government personnel, consultants, and grazing permittees or lessees.

(b) INSPECTION.—Inspection of a grazing allotment shall be performed by qualified Federal, State or local agency personnel, or qualified consultants retained by the United States.

(c) MONITORING CRITERIA AND PROTOCOLS.—Rangeland monitoring shall be conducted according to regional or State criteria and protocols that are scientifically based. Criteria and protocols shall be developed by the Secretary in consultation with the Resource Advisory Councils established in section 161, State departments of agriculture or other appropriate State agencies, and academic institutions in each interested States.

(d) OVERSIGHT.—The authorized officer shall provide sufficient oversight to ensure that all monitoring is conducted in accordance with criteria and protocols established pursuant to subsection (c).

(e) NOTICE.—In conducting monitoring activities, the Secretary shall provide reasonable notice of such activities to permittees or lessees, including prior notice to the extent practicable of not less than 48 hours. Prior notice shall not be required for the purposes of inspections, if the authorized officer has substantial grounds to believe that a violation of this or any other act is occurring on the allotment.

SEC. 124. WATER RIGHTS.

(a) IN GENERAL.—No water rights on Federal land shall be acquired, perfected, owned, controlled, maintained, administered, or transferred in connection with livestock grazing management other than in accordance with State law concerning the use and appropriation of water within the State.

(b) STATE LAW.—In managing livestock grazing on Federal land, the Secretary shall follow State law with regard to water right ownership and appropriation.

(c) AUTHORIZED USE OR TRANSPORT.—The Secretary cannot require permittees or lessees to transfer or relinquish all or a portion of their water right to another party, including but not limited to the United States, as a condition to granting a grazing permit or lease, range improvement cooperative agreement or range improvement permit.

(d) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to create an expressed or implied reservation of water rights in the United States.

(e) VALID EXISTING RIGHTS.—Nothing in this act shall affect valid existing water rights.

Subtitle D Authorized of Grazing Use

SEC. 131. GRAZING PERMITS OR LEASES.

(a) TERMS.—A grazing permit or lease shall be issued for a term of 12 years unless—

(1) the land is pending disposal;

(2) the land will be devoted to a public purpose that precludes grazing prior to the end of 12 years; or

(3) the Secretary determines that it would be in the best interest of sound land management to specify a shorter term, if the decision to specify a shorter term is supported by appropriate and accepted resource analysis and evaluation, and a shorter term is determined to be necessary, based upon monitoring information, to achieve resource condition goals and management objectives.

(b) RENEWAL.—A permittee or lessee holding a grazing permit or lease shall be given first priority at the end of the term for renewal of the grazing permit or lease if—

(1) the land for which the grazing permit or lease is issued remains available for domestic livestock grazing;

(2) the permittee or lessee is in compliance with this title and the terms and conditions of the grazing permit or lease; and

(3) the permittee or lessee accepts the terms and conditions included by the authorized officer in the new grazing permit or lease.

SEC. 132. SUBLEASING.

(a) IN GENERAL.—The Secretary shall only authorize subleasing of a Federal grazing permit or lease, in whole or in part—

(1) if the permittee or lessee is unable to make full grazing use due to ill health or death; or

(2) under a cooperative agreement with a grazing permittee or lessees (or group of grazing permittees or lessees), pursuant to section 105(b).

(b) CONSIDERATION.—

(1) Livestock owned by a spouse, child, or grandchild of a permittee or lessee shall be considered as owned by the permittee or lessee for the sole purposes of this title.

(2) Leasing or subleasing of base property, in whole or in part, shall not be considered as subleasing of a Federal grazing permit or lease: *Provided,* That the grazing preference associated with such base property is transferred to the person controlling the leased or subleased base property.

SEC. 133. OWNERSHIP AND IDENTIFICATION OF LIVESTOCK.

(a) IN GENERAL.—A permittee or lessee shall own or control and be responsible for the management of the livestock that graze the Federal land under a grazing permit or lease.

(b) MARKING OR TAGGING.—An authorized officer shall not impose any marking or tagging requirement in addition to the requirement under State law.

SEC. 134. TERMS AND CONDITIONS.

(a) IN GENERAL.—

(1) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use (stated in animal unit months) in a grazing permit or lease.

(2) A grazing permit or lease shall be subject to such other reasonable terms or conditions as may be necessary to achieve the objectives of this title, and as contained in an approved allotment management plan.

(3) No term or condition of a grazing permit or lease shall be imposed pertaining to past practice or present willingness of an applicant, permittee or lessee to relinquish control of public access to Federal land across private land.

(4) A grazing permit or lease shall reflect such standards and guidelines developed pursuant to section 105 as are appropriate to the permit or lease.

(b) MODIFICATION.—Following careful and considered consultation, cooperation, and coordination with permittees and lessees, an authorized officer shall modify the terms and conditions of a grazing permit or lease if monitoring data show that the grazing use is not meeting the management objectives established in a land use plan or allotment management plan, and if modification of such terms and conditions is necessary to meet specific management objectives.

SEC. 135. FEES AND CHARGES.

(a) GRAZING FEES.—The fee for each animal unit month in a grazing fee year to be determined by the Secretary shall be equal to the three-year average of the total gross value of production for beef cattle for the three years

preceding the grazing fee year, multiplied by the 10-year average of the United States Treasury Securities 6-month bill ''new issue'' rate, and divided by 12. The gross value of production for beef cattle shall be determined by the Economic Research Service of the Department of Agriculture in accordance with subsection (e)(1).

(b) DEFINITION OF ANIMAL UNIT MONTH.—For the purposes of billing only, the term ''animal unit month'' means one month's use and occupancy of range by—

(1) one cow, bull, steer, heifer, horse, burro, or mule, seven sheep, or seven goats each of which is six months of age or older on the date on which the animal begins grazing on Federal land;

(2) any such animal regardless of age if the animal is weaned on the date on which the animal begins grazing on Federal land; and

(3) any such animal that will become 12 months of age during the period of use authorized under a grazing permit or lease.

(c) LIVESTOCK NOT COUNTED.—There shall not be counted as an animal unit month the use of Federal land for grazing by an animal that is less than six months of age on the date on which the animal begins grazing on Federal land and is the natural progeny of an animal on which a grazing fee is paid if the animal is removed from the Federal land before becoming 12 months of age.

(d) OTHER FEES AND CHARGES.—

(1) CROSSING PERMITS, TRANSFERS, AND BILLING NOTICES.—A service charge shall be assessed for each crossing permit, transfer of grazing preference and replacement or supplemental billing notice except in a case in which the action is initiated by the authorized officer.

(2) AMOUNT OF FLPMA FEES AND CHARGES.—The fees and charges under section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734(a)) shall reflect processing costs and shall be adjusted periodically as costs change.

(3) NOTICE OF CHANGE.—Notice of a change in a service charge shall be published in the Federal Register.

(e) CRITERIA FOR ERS.—

(1) The Economic Research Service of the Department of Agriculture shall continue to compile and report the gross value of production of beef cattle, on a dollars-per-bred-cow basis for the United States, as is currently published by the Service in: ''Economic Indicators of the Farm Sector: Cost of Production—Major Field Crops and Livestock and Dairy'' (Cow-calf production cash costs and returns).

(2) For the purposes of determining the grazing fee for a given grazing fee year, the gross value of production (as described above) for the previous calendar year shall be made available to the Secretary of the Interior and the Secretary of Agriculture, and published in the Federal Register, on or before February 15 of each year.

SEC. 136. USE OF STATE SHARE OF GRAZING FEES.

Section 10 of the Act of June 28, 1934 (commonly known as the ''Taylor Grazing Act'') (43 U.S.C. 315i) is amended—

(1) in subsection (a), by striking ''for the benefit of'' and inserting ''in a manner that will result in direct benefit to, improved access to, or more effective management of the rangeland resources in'';

(2) at the end of subsection (a), by striking '';'' and inserting '': *Provided further,* that no such moneys shall be expended for litigation purposes;'';

(3) in subsection (b), by striking ''for the benefit of'' and inserting ''in a manner that will result in direct benefit to, improved access to, or more effective management of the rangeland resources in'';

(4) at the end of subsection (b), by striking ''.'' and inserting ''*: Provided further,* That no such moneys shall be expended for litigation purposes.''.

Subtitle E Unauthorized Grazing Use

SEC. 141. NONMONETARY SETTLEMENT.

An authorized officer may approve a nonmonetary settlement of a case of a violation described in section 141 if the authorized officer determines that each of the following conditions is satisfied:

(1) NO FAULT.—Evidence shows that the unauthorized use occurred through no fault of the livestock operator.

(2) INSIGNIFICANCE.—The forage use is insignificant.

(3) NO DAMAGE.—Federal land has not been damaged.

(4) BEST INTERESTS.—Nonmonetary settlement is in the best interests of the United States.

SEC. 142. IMPOUNDMENT AND SALE.

Any impoundment and sale of unauthorized livestock on Federal land shall be conducted in accordance with State law.

Subtitle F Procedure

SEC. 151. PROPOSED DECISIONS.

(a) SERVICE ON APPLICANTS, PERMITTEES, LESSEES, AND LIENHOLDERS.—The authorized officer shall serve, by certified mail or personal delivery, a proposed decision on any applicant, permittee, lessee, or lienholder (or agent of record of the applicant, permittee, lessee, or lienholder) that is affected by—

(1) a proposed action on an application for a grazing permit or lease, or range improvement permit; or

(2) a proposed action relating to a term or condition of a grazing permit or lease, or a range improvement permit.

(b) NOTIFICATION OF AFFECTED INTERESTS.—The authorized officer shall send copies of a proposed decision to affected interests.

(c) CONTENTS.—A proposed decision described in subsection (a) shall—

(1) state reasons for the action, including reference to applicable law (including regulations); and

(2) be based upon, and supported by rangeland studies, where appropriate, and;

(3) state that any protest to the proposed decision must be filed not later than 30 days after service.

SEC. 152. PROTESTS.

An applicant, permittee, or lessee may protest a proposed decision under section 151 in writing to the authorized officer within 30 days after service of the proposed decision.

SEC. 153. FINAL DECISIONS.

(a) NO PROTEST.—In the absence of a timely filed protest, a proposed decision described in section 151(a) shall become the final decision of the authorized officer without further notice.

(b) RECONSIDERATION.—If a protest is timely filed, the authorized officer shall reconsider the proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case.

(c) SERVICE AND NOTIFICATION.—After reviewing the protest, the authorized officer shall serve a final decision on the parties to the proceeding, and notify affected interests of the final decision.

SEC. 154. APPEALS.

(a) IN GENERAL.—Any person whose interest is adversely affected by a final decision of an authorized officer, within the meaning of 52 U.S.C. 702, may appeal the decision within 30 days after the receipt of the decision, or within 60 days after the receipt of a proposed decision if further notice of a final decision is not required under this title, pursuant to applicable laws and regulations governing the administrative appeals process of the agency serving the decision. Being an affected interest as described in section 104(3) shall not in and of itself confer standing to appeal a final decision upon any individual or organization.

(b) SUSPENSION PENDING APPEAL.—

(1) IN GENERAL.—An appeal of a final decision shall suspend the effect of the decision pending final action on the appeal unless the decision is made effective pending appeal under paragraph (2).

(2) EFFECTIVENESS PENDING APPEAL.—The authorized officer may place a final decision in full force and effect in an emergency to stop resource deterioration or economic distress, if the authorized officer has substantial grounds to believe that resource deterioration or economic distress is imminent. Full force and effect decisions shall take effect on the date specified, regardless of an appeal.

(c) In the case of an appeal under this section, the authorized officer shall, within 30 days of receipt, forward the appeal, all documents and information submitted by the applicant, permittee, lessee, or lienholder, and any pertinent information that would be useful in the rendering of a decision on such appeal, to the appropriate authority responsible for issuing the final decision on the appeal.

SEC. 155. PUBLIC PARTICIPATION AND CONSULTATION.

(a) GENERAL PUBLIC.—The Secretary shall provide for public participation, including a reasonable opportunity to comment, on—

(1) land use plans and amendments thereto; and,

(2) development of standards and guidelines to provide guidance and direction for Federal land managers in the performance of their assigned duties.

(b) AFFECTED INTERESTS.—At least 30 days prior to the issuance of a final decision, the Secretary shall notify affected interests of such proposed decision, and provide a reasonable opportunity for comment and informal consultation regarding the proposed decision within such 30-day period, for—

(1) the designation or modification of allotment boundaries;

(2) the development, revision, or termination of allotment management plans;

(3) the increase or decrease of permitted use;

(4) the issuance, renewal, or transfer of grazing permits or leases;

(5) the modification of terms and conditions of permits or leases;

(6) reports evaluating monitoring data for a permit or lease; and

(7) the issuance of temporary non-renewable use permits.

Subtitle G Advisory Committees

SEC. 161. RESOURCE ADVISORY COUNCILS.

(a) ESTABLISHMENT.—The Secretary of Agriculture and the Secretary of the Interior, in consultation with the Governors of the affected States, shall establish and operate joint Resource Advisory Councils on a State or regional level to provide advice on management issues for all lands administered by the Bureau of Land Management and the Forest Service within such State or regional area, except where the Secretaries determine that there is insufficient interest in participation on a council to ensure that membership can be fairly balanced in terms of the points of view represented and the functions to be performed.

(b) DUTIES.—Each Resource Advisory Council shall advise the Secretaries and appropriate State officials on—

(1) matters regarding the preparation, amendment, and implementation of land use and activity plans for public lands and resources within its area; and on

(2) major management decisions while working within the broad management objectives established for the district or national forest.

(c) DISREGARD OF ADVICE.—

(1) REQUEST FOR RESPONSE.—If a Resource Advisory Council becomes concerned that its advice is being arbitrarily disregarded, the Resource Advisory Council may, by majority vote of its members, request that the Secretaries respond directly to the Resource Advisory Council's concerns within 60 days after the Secretaries receive the request.

(2) EFFECT OF RESPONSE.—The response of the Secretaries to a request under paragraph (1) shall not—

(A) constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal; or

(B) be subject to appeal.

(d) MEMBERSHIP.—

(1) The Secretaries, in consultation with the Governor of the affected State or States, shall appoint the members of each Resource Advisory Council. A council shall consist of not less than nine members and not more than fifteen members.

(2) In appointing members to a Resource Advisory Council, the Secretaries shall provide for balanced and broad representation from among various groups, including but not limited to, permittees and lessees, other commercial interests, recreational users, representatives of recognized local environmental or conservation organizations, educational, professional, or academic interests, representatives of State and local government or governmental agencies, Indian tribes, and other members of the affected public.

(3) The Secretaries shall appoint at least one elected official of general purpose government serving the people of the area of each Resource Advisory Council.

(4) No person may serve concurrently on more than one Resource Advisory Council.

(5) Members of a Resource Advisory Council must reside in one of the States within the geographic jurisdiction of the council.

(e) SUBGROUPS.—A Resource Advisory Council may establish such subgroups as the council deems necessary, including but not limited to working groups, technical review teams, and rangeland resource groups.

(f) TERMS.—Resource Advisory Council members shall be appointed for two-year terms. Members may be appointed to additional terms at the discretion of the Secretaries.

(g) FEDERAL ADVISORY COMMITTEE ACT.—Except to the extent that it is inconsistent with this subtitle, the Federal Advisory Committee Act shall apply to the Resource Advisory Councils established under this section.

(h) OTHER FLPMA ADVISORY COUNCILS.—Nothing in this section shall be construed as modifying the authority of the Secretaries to establish other advisory councils under section 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739).

SEC. 162. GRAZING ADVISORY COUNCILS.

(a) ESTABLISHMENT.—The Secretary, in consultation with the Governor of the affected State and with affected counties, shall appoint not fewer than five nor more than nine persons to serve on a Grazing Advisory Council for each district and each national forest within the 16 contiguous Western States having jurisdiction over more than 500,000 acres of public lands subject to commercial livestock grazing. The Secretaries may establish joint Grazing Advisory Councils wherever practicable.

(b) DUTIES.—The duties of Grazing Advisory Councils established pursuant to this section shall be to provide advice to the Secretary concerning management issues directly related to the grazing of livestock on public lands, including—

(1) range improvement objectives;

(2) the expenditure of range improvement or betterment funds under the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.) or the Taylor Grazing Act (43 U.S.C. 315 et seq.);

(3) developing and implementation of grazing management programs; and

(4) range management decisions and actions at the allotment level.

(c) DISREGARD OF ADVICE.—

(1) REQUEST FOR RESPONSE.—If a Grazing Advisory Council becomes concerned that its advice is being arbitrarily disregarded, the Grazing Advisory Council may, by unanimous vote of its members, request that the Secretary respond directly to the Grazing Advisory Council's concerns within 60 days after the Secretary receives the request.

(2) EFFECT OF RESPONSE.—The response of the Secretary to a request under paragraph (1) shall not—

(A) constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal; or

(B) be subject to appeal.

(d) MEMBERSHIP.—The members of a Grazing Advisory Council established pursuant to this section shall represent permittees, lessees, affected landowners, social and economic interests within the district or national forest, and elected State or county officers. All members shall have a demonstrated knowledge of grazing management and range improvement practices appropriate for the region, and shall be residents of a community within or adjacent to the district or national forest, or control a permit or lease within the same area. Members shall be appointed by the Secretary for a term of two years, and may be appointed for additional consecutive terms. The membership of Grazing Advisory Councils shall be equally divided between permittees or lessees, and other interests: *Provided*, That one elected State or county officer representing the people of an area within the district or national forest shall be appointed to create an odd number of members: *Provided further*, That permittees or lessees appointed as members of each Grazing Advisory Council shall be recommended to the Secretary by the permittees and lessees of the district or national forest through an election conducted under rules and regulations prescribed by the Secretary.

(e) FEDERAL ADVISORY COMMITTEE ACT.—Except to the extent that it is inconsistent with this subtitle, the Federal Advisory Committee Act shall apply to the Grazing Advisory Councils established pursuant to this section.

SEC. 163. GENERAL PROVISIONS.

(a) DEFINITION OF DISTRICT.—For the purposes of this subtitle, the term ''district'' means—

(1) a grazing district administered under section 3 of the Act of June 28, 1934 (commonly known as the ''Taylor Grazing Act'') (48 Stat. 1270, chapter 865; 43 U.S.C. 315b); or

(2) other lands within a State boundary which are eligible for grazing pursuant to section 15 of the Act of June 28, 1934 (commonly known as the ''Taylor Grazing Act'') (48 Stat. 1270, chapter 865; 43 U.S.C. 315m).

(b) TERMINATION OF SERVICE.—The Secretary may, after written notice, terminate the service of a member of an advisory committee if—

(1) the member—

(A) no longer meets the requirements under which appointed;

(B) fails or is unable to participate regularly in committee work; or

(C) has violated Federal law (including a regulations); or

(2) in the judgment of the Secretary, termination is in the public interest.

(c) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—A member of an advisory committee established under sections 161 and 162 shall not receive any compensation in connection with the performance of the member's duties as a member of the advisory committee, but shall be reimbursed for travel and per diem expenses only while on official business, as authorized by 5 U.S.C. 5703.

SEC. 164. CONFORMING AMENDMENT AND REPEAL.

(a) AMENDMENT.—The third sentence of section 402(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752(d)) is amended by striking ''district grazing advisory boards established pursuant to section 403 of the Federal Land Policy and Management Act (43 U.S.C. 1753)'' and inserting ''Resource Advisory Councils and Grazing Advisory Councils established under section 161 and section 162 of the Public Rangelands Management Act of 1995''.

(b) REPEAL.—Section 403 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1753) is repealed.

Subtitle H Reports

SEC. 171. REPORTS.

(a) IN GENERAL.—Not later than March 1, 1997, and annually thereafter, the Secretaries shall submit to Congress a report that contains—

(1) an itemization of revenues received and costs incurred directly in connection with the management of grazing on Federal land; and

(2) recommendations for reducing administrative costs and improving the overall efficiency of Federal rangeland management.

(b) ITEMIZATION.—If the itemization of costs under subsection (a)(1) includes any costs incurred in connection with the implementation of any law other than a statute cited in section 102, the Secretaries shall indicate with specificity the costs associated with implementation of each such statute.

TITLE II—MANAGEMENT OF NATIONAL GRASSLANDS

SEC. 201. SHORT TITLE.

This title may be cited as the ''National Grasslands Management Act of 1995''.

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the inclusion of the National Grasslands within the National Forest System has prevented the Secretary of Agriculture from effectively administering and promoting grassland agriculture on National Grasslands as originally intended under the Bankhead-Jones Farm Tenant Act;

(2) the National Grasslands can be more effectively managed by the Secretary of Agriculture if administered as a separate entity outside of the National Forest System; and

(3) a grazing program on National Grasslands can be responsibly carried out while protecting and preserving recreational, environmental, and other multiple uses of the National Grasslands.

(b) PURPOSE.—The purpose of this title is to provide for improved management and more efficient administration of grazing activities on National Grasslands while preserving and protecting multiple uses of such lands, including but not limited to preserving hunting, fishing, and recreational activities, and protecting wildlife habitat in accordance with applicable laws.

SEC. 203. DEFINITIONS.

As used in this title, the term—

(1) ''National Grasslands'' means those areas managed as National Grasslands by the Secretary of Agriculture under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1012) on the day before the date of enactment of this title; and

(2) ''Secretary'' means the Secretary of Agriculture.

SEC. 204. REMOVAL OF NATIONAL GRASSLANDS FROM NATIONAL FOREST SYSTEM.

Section 11(a) of the Forest Rangeland Renewable Resource Planning Act of 1974 (16 U.S.C. 1609(a)) is amended by striking the phrase ''the national grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525, 7 U.S.C. 1010–1012),''.

SEC. 205. MANAGEMENT OF NATIONAL GRASSLANDS.

(a) IN GENERAL.—The Secretary, acting through the Chief of the Forest Service, shall manage the National Grasslands as a separate entity in accordance with this title and the provisions and multiple use purposes of title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1012).

(b) CONSULTATION.—The Secretary shall provide timely opportunities for consultation and cooperation with interested State and local government entities, and other interested individuals and organizations in the development and implementation of land use policies and plans, and land conservation programs for the National Grasslands.

(c) GRAZING ACTIVITIES.—In furtherance of the purposes of this title, the Secretary shall administer grazing permits and implement grazing management decisions in consultation, cooperation, and coordination with local grazing associations and other grazing permit holders.

(d) REGULATIONS.—The Secretary shall promulgate regulations to manage and protect the National Grasslands, taking into account the unique characteristics of the National Grasslands and grasslands agriculture conducted under the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010). Such regulations shall facilitate the efficient administration of grazing and provide protection for the environment, wildlife, wildlife habitat, and Federal lands equivalent to that on the National Grasslands on the day prior to the date of enactment of this Act.

(e) CONFORMING AMENDMENT TO BANKHEAD-JONES ACT.—Section 31 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010) is amended to read as follows:

''To accomplish the purposes of title III of this Act, the Secretary is authorized and directed to develop a separate program of land conservation and utilization for the National Grasslands, in order thereby to correct maladjustments in land use, and thus assist in promoting grassland agriculture and secure occupancy and economic stability of farms and ranches, controlling soil erosion, reforestation, preserving and protecting natural resources, protecting fish and wildlife and their habitat, developing and protecting recreational opportunities and facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety and welfare, but not to build industrial parks or commercial enterprises.''.

(f) HUNTING FISHING, AND RECREATIONAL ACTIVITIES.—Nothing in this title shall be construed as limiting or precluding hunting or fishing activities on National Grasslands in accordance with applicable Federal and State laws, nor shall appropriate recreational activities be limited or precluded.

(g) VALID EXISTING RIGHTS.—

(1) IN GENERAL.—Nothing in this title shall affect valid existing rights, reservations, agreements, or authorizations. Section 1323(a) of Public Law 96–487 shall continue to apply to nonfederal land and interests therein within the boundaries of the National Grasslands.

(2) INTERIM USE AND OCCUPANCY.—

(A) Until such time as regulations concerning the use and occupancy of the National Grasslands are promulgated pursuant to this title, the Secretary shall regulate the use and occupancy of such lands in accordance with regulations to such lands on May 25, 1995, to the extent practicable and consistent with the provisions of this Act.

(B) Any applications for National Grasslands use and occupancy authorizations submitted prior to the date of enactment of this Act, shall continue to be processed without interruption and without reinitiating any processing activity already completed or begun prior to such date.

SEC. 206. FEES AND CHARGES.

Fees and charges for grazing on the National Grasslands shall be determined in accordance with section 135, except that the Secretary may adjust the amount of a grazing fee to compensate for approved conservation practices expenditures.●

WHITEWATER DEVELOPMENT CORP. AND RELATED MATTERS—MOTION TO PROCEED

CLOTURE MOTION

Mr. LOTT. Mr. President, I now move to proceed to Senate Resolution 227, the Whitewater legislation, and send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Senate Resolution 227, regarding the Whitewater extension:

Alfonse D'Amato, Dan Coats, Phil Gramm, Bob Smith, Mike DeWine, Bill Roth, Bill Cohen, Jim Jeffords, R.F. Bennett, John Warner, Larry Pressler, Spencer Abraham, Conrad Burns, Al Simpson, John H. Chafee, Frank H. Murkowski.

Mr. LOTT. Mr. President, I ask unanimous consent that the vote occur on Wednesday, March 20, at a time to be determined by the two leaders and that the mandatory quorum under rule XXII be waived.

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

Mr. LOTT. Mr. President, I now withdraw the motion.

The PRESIDING OFFICER. The motion is withdrawn.

COMMONSENSE PRODUCT LIABILITY LEGAL REFORM ACT OF 1996—CONFERENCE REPORT

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of the product liability conference report.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 956), a bill to establish legal standards and procedures for product liability litigation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The Senate resumed consideration of the conference report.

CLOTURE MOTION

Mr. LOTT. Mr. President, I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 956, the Product Liability Fairness Act:

Slade Gorton, Trent Lott, Hank Brown, Chuck Grassley, Craig Thomas, Larry E. Craig, Frank H. Murkowski, Nancy L. Kassebaum, Mark Hatfield, Larry Pressler, Bob Smith, Jon Kyl, John H. Chafee, Conrad Burns, Pete V. Domenici, John McCain.

Mr. LOTT. Mr. President, for the information of all Senators, this cloture vote will occur on Wednesday, March 20, unless invoked on Tuesday of this week.

ORDERS FOR TUESDAY, MARCH 19, 1996

Mr. LOTT. Mr. President, I now ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9 a.m. on Tuesday, March 19; further, that immediately following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired, and that the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of the omnibus appropriations bill, under the previous order. There will be 3 hours of debate on the abortion issue, to be followed by debate on the Murkowski amendment No. 3525.

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

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate stand in recess between the hours of 12:30 p.m. and 2:15 p.m. in order for the weekly party caucuses to meet.

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

PROGRAM

Mr. LOTT. Mr. President, for the information of all Senators, the Senate will debate amendments relative to the abortion issue under the unanimous-consent agreement in place with respect to the omnibus appropriations bill on Tuesday morning. There will be no rollcall votes on Tuesday morning. However, a series of votes will occur beginning at 2:15 p.m. on amendments

to the appropriations bill, a cloture vote relative to the Whitewater Special Committee, passage of the small business regulatory reform bill, and cloture on the product liability conference report.

ADJOURNMENT UNTIL 9 A.M., TOMORROW

Mr. LOTT. If there be no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:20 p.m., adjourned until Tuesday, March 19, 1996, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate March 18, 1996:

DEPARTMENT OF STATE

CHRISTOPHER ROBERT HILL, OF RHODE ISLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA.

DANE FARNSWORTH SMITH, JR., OF NEW MEXICO, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SENEGAL.

GEORGE F. WARD, JR., OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF NAMIBIA.

SHARON P. WILKINSON, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO BURKINA FASO.

FOREIGN SERVICE

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASSES STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH:

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS ONE, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA.

DEPARTMENT OF STATE

ALFRED THOMAS CLARK, OF CALIFORNIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS TWO, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

MAHLON ATKINSON BARASH, OF VIRGINIA
DONALD ALLEN DRGA, OF TEXAS
RICHARD JAY GOLD, OF VIRGINIA

DEPARTMENT OF STATE

BARBARA S. AYCOCK, OF THE DISTRICT OF COLUMBIA
DANA M. WEANT, OF WASHINGTON

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS THREE, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

CHRISTINE ADAMCZYK, OF MICHIGAN
SYED A. ALI, OF FLORIDA
TODD HANSON AMANI, OF MARYLAND
R. DOUGLASS ARBUCKLE, OF FLORIDA
DAVID CHAPMANN ATTEBERRY, OF TEXAS
E. JED BARTON, OF NEVADA
BARBARA L. BELDING, OF CALIFORNIA
SCOTT H. BELLOWS, OF SOUTH CAROLINA
ALEKSANDRA ELIZABETH BRAGINSKI, OF THE DISTRICT OF COLUMBIA
ROBERT F. CUNNANE, OF WASHINGTON
THOMAS R. DELANEY, OF PENNSYLVANIA
THOMAS A. EGAN, OF WASHINGTON
BRANDEN W. ENROTH, OF DELAWARE
THEODORE VICTOR GEHR, OF OREGON
LAWRENCE HARDY II, OF WASHINGTON
LAURA ANNE KEARNS, OF GEORGIA
CAROL BRUCE KIRANBAY, OF VIRGINIA
CHARLES G. KNIGHT, OF VIRGINIA
CHARLES ERIC NORTH, OF MARYLAND
PATRICIA O'CONNOR, PH.D., OF FLORIDA
TIMOTHY WARD O'CONNOR, OF CALIFORNIA
BETH S. PAIGE, OF TEXAS
ANDREW WILLIAM PLITT, OF TEXAS
MARK M. POWDERMAKER, OF WASHINGTON
ALAN I. REED, OF WASHINGTON
WILLIAM EARL REYNOLDS, OF MONTANA
SCOTT M. TAYLOR, OF CALIFORNIA
JILL JACQUELINE THOMPSON, OF TEXAS

DEPARTMENT OF AGRICULTURE

MARGARET M. BAUER, OF VIRGINIA
MICHAEL L. CONLON, OF MICHIGAN
CATHERINE M. SLOOP, OF WASHINGTON
MARGARET E. THURSLAND, OF VIRGINIA
DENNIS B. VOBORIL, OF KANSAS
DAVID J. WILLIAMS, OF WEST VIRGINIA

DEPARTMENT OF STATE

KEVIN BLACKSTONE, OF NEW YORK

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS FOUR, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF AGRICULTURE

JOANI M. DONG, OF CALIFORNIA
HOA V. HUYNH, OF OREGON
EMIKO M. PURDY, OF PENNSYLVANIA

DEPARTMENT OF STATE

JULIE DEIDRA ADAMS, OF MARYLAND
ANTOINETTE ROSE BOECKER, OF TEXAS
SCOTT DOUGLAS BOSWELL, OF NEW JERSEY
WILLIAM W. CHRISTOPHER, OF CALIFORNIA
JOHN CHARLES COE, OF FLORIDA
MARIKO DIETERICH, OF TEXAS
MARY DOETSCH, OF CALIFORNIA
PAMELA DUNHAM, OF OREGON
LARA SUZANNE FRIEDMAN, OF ARIZONA
PAUL F. FRITCH, JR., OF WYOMING
PETER G. HANCON, OF ILLINOIS
JOHN DAVID HAYNES, OF COLORADO
MICHAEL G. HEATH, OF CALIFORNIA
CAMILLE DIANE HILL, OF CALIFORNIA
ANDREW P. HOGENBOOM, OF NEW YORK
SHERRI ANN HOLLIDAY, OF KANSAS
RANDALL WARREN HOUSTON, OF CALIFORNIA
BRUCE K. HUDSPETH, OF VIRGINIA
LISA ANNE JOHNSON, OF VIRGINIA
MICHAEL ROBERT KELLER, OF FLORIDA
PATRICIA KATHLEEN KELLER, OF VIRGINIA
GEORGE P. KENT, OF VIRGINIA
PHILIP G. LAIDLAW, OF FLORIDA
SHERRIE L. MARAFINO, OF PENNSYLVANIA
RAYMOND D. MAXWELL, OF NORTH CAROLINA
KATHLEEN A. MORENSKI, OF VIRGINIA
ANDREW LEONARD MORRISON, OF ARKANSAS
JONATHAN EDWARD MUDGE, OF CALIFORNIA
TULINABO SALAMA MUSHINGI, OF VIRGINIA
DAVID REIMER, OF VIRGINIA
MADELINE QUINN SEIDENSTRICKER, OF FLORIDA
ELLEN BARBARA THORBURN, OF MICHIGAN
HALE COLBURN VANKOUGHNETT, OF TEXAS
WENDY FLEMING WHEELER, OF WASHINGTON
WILLIAM RANDALL WISELL, OF VERMONT
DIANA ELIZABETH WOOD, OF WASHINGTON

UNITED STATES INFORMATION AGENCY

ANGELA DELPHINITA WILLIAMS, OF CALIFORNIA

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENTS OF AGRICULTURE, COMMERCE, AND STATE TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED:

CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DANIEL K. ACTON, OF VIRGINIA
MEA ARNOLD, OF VIRGINIA
VAUGHN FREDERICK BISHOP, OF VIRGINIA
JOHN P. BOOHER, OF VIRGINIA
LEA ANN BOOHER, OF VIRGINIA
J. ALEX BOSTON, OF MARYLAND
BRETT J. BRENNEKE, OF ILLINOIS
JOHN G. BUCHANAN III, OF VIRGINIA
PAUL DAVID BURKHEAD, OF NORTH CAROLINA
RICHARD K. CHOATE, OF VIRGINIA
BART D. COBBS, OF ARKANSAS
MICHELE ONDAKO CONNELL, OF OHIO
CAROLYN CREATORE, OF DELAWARE
JULIE SADTLER DAVIS, OF GEORGIA
PAUL GRADY DEGLER, OF TEXAS
CECELIA DARLENE DYSON, OF VIRGINIA
CRAIG E. FARMER, OF VIRGINIA
ALEXANDER G. FELIU, OF VIRGINIA
JOHN H. FORT, OF VIRGINIA
ELLEN JACQUELINE GERMAIN, OF NEW YORK
GARY J. GLUECKERT, OF VIRGINIA
JACQUES LEROY GUDE, OF VIRGINIA
CERESA L. HANEY, OF VIRGINIA
TODD C. HOLMSTROM, OF MICHIGAN
WILLIAM M. HOWE, OF ALASKA
BRYAN DAVID HUNT, OF VIRGINIA
KIM DECOUX INVERGO, OF VIRGINIA
HENRY VICTOR JARDINE, OF VIRGINIA
AMER KAYANI, OF CALIFORNIA
LUCILLE L. KIRK, OF THE DISTRICT OF COLUMBIA
DAVID ALLAN KATZ, OF CALIFORNIA
JOSEPH R. KUZEL, OF VIRGINIA
MITCHELL G. LARSEN, OF ILLINOIS
RAYMOND R. LAU, OF VIRGINIA
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